

MEMORANDUM

TO DEPARTMENTAL COMPTROLLER,

FROM RIGHT-OF-WAY AGENT,  
PROVINCIAL DEPT. HIGHWAYS,  
BUILDINGS.

PROVINCIAL DEPT. HIGHWAYS,

BUILDINGS.

RECEIVED

DEPT. OF HIGHWAYS

APRIL 14th,

1958.

*Cleared*  
OK # 1002  
146 A 118 333

0/04/1958  
MAY 6 1958  
APR 14/58  
ANG. *[Signature]*  
NOTED *[Signature]*  
DATE *[Signature]*  
KELORNA BRIDGE.

Electoral: South Okanagan.

The following settlement has been completed  
on the above project and compensation may be reimbursed  
from the B. C. Highways and Bridges Authority.

R/W.	Claimant and Description.	Amount.
1816	Receiver General of Canada - Part of Tsinstikeptum Indian Reserve #10 - Holdings of Annie Lindley.	\$1,693.50

*[Signature]*  
G. E. Gould, for  
Chief Right-of-Way Agent.

OEO:emca.

1234637

# COMPENSATION IN TERMS OF THE "HIGHWAY ACT"

(SECTION 16)

DEPT. FILE NO. \_\_\_\_\_ PLAN NO. \_\_\_\_\_ RIGHT-OF-WAY FILE 1816  
 REGIONAL DISTRICT NO. 2 ELECTORAL DISTRICT South Okanagan  
 Name and details of highway or incidental works Kelowna Bridge Approaches

Description of property Kainetikeptum Indian Reserve #10

Name of registered owner Receiver General of Canada  
 Is title unencumbered? Yes If not, give details of encumbrance \_\_\_\_\_

Name, title, etc., of party to whom compensation is recommended to be paid  
Receiver General of Canada

## DETAILS OF COMPENSATION RECOMMENDED TO BE PAID PURSUANT TO SECTION 16 OF THE "HIGHWAY ACT"

### A. For Improvements on the Lands Taken

(Subsec. (1) (a).) "Improvements on the land so taken, that is to say, everything constructed on or annexed to the soil by the hand of man."

Roads: Length, \_\_\_\_\_; width, \_\_\_\_\_; height, \_\_\_\_\_  
 Buildings: Length, \_\_\_\_\_; width, \_\_\_\_\_; height, \_\_\_\_\_  
 See Remarks \_\_\_\_\_

Structures: See Remarks \_\_\_\_\_

Fences: Length, \_\_\_\_\_ feet. See Remarks \_\_\_\_\_  
 Clearing: Area, 0.89 acres. pasture land @ \$200.00 per acre 178.00  
 Grading: Area, \_\_\_\_\_ acres \_\_\_\_\_  
 Planting: Area, \_\_\_\_\_ See Remarks \_\_\_\_\_  
 Cultivation: Area, 4.33 ac. See Remarks grain acreage @ \$350.00 per 1,515.50  
 Other Improvements (to be stated) \_\_\_\_\_ ac. \_\_\_\_\_

Remarks: \_\_\_\_\_

COMPENSATION RECOMMENDED

1,693.50 A.

### B. For Lands Taken (Not Subdivided Lands)

(Subsec. (1) (b).) "Lands which were originally granted to some person by the Crown, either in the right of the Province or the Dominion, and by the taking of which the total area taken for the purpose of highways from the lands comprised in the original Crown grant is found to exceed one-twentieth of the total area of the lands comprised in the Crown grant, and then only for the area in excess of one-twentieth of that total area."

Area of original Crown grant \_\_\_\_\_ ac. \_\_\_\_\_ ac. \_\_\_\_\_ ac.  
 Total area taken for road purposes 5.22 ac. \_\_\_\_\_ ac. \_\_\_\_\_ ac.  
 Deduct one-twentieth of area of original Crown grant \_\_\_\_\_ ac. \_\_\_\_\_ ac. \_\_\_\_\_ ac.  
 Area for which compensation is payable 5.22 ac. \_\_\_\_\_ ac. \_\_\_\_\_ ac.  
 The land is valued at \$ \_\_\_\_\_ per acre.

COMPENSATION RECOMMENDED \$ Paid under Section A.

I hereby certify that this statement is in accordance with the provisions of section 16 of the "Highway Act."

Date February 13th, 1958

[Signature]  
 Regional Highway Engineer, Highways Dept.

I hereby recommend that compensation be paid accordingly.

Date \_\_\_\_\_, 19\_\_\_\_

District Official, Highways Dept.

Date \_\_\_\_\_, 19\_\_\_\_

APPROVED:

Regional Highway Engineer.

(DEALT WITH.)

Deputy Minister or Assistant Deputy Minister.

(OVER)





TO ENSURE IMMEDIATE ATTENTION  
PLEASE QUOTE FILE NO. R/W 1816

DEPARTMENT OF HIGHWAYS

RIGHT-OF-WAY AGENT

523 Columbia Street,  
Kamloops, B. C.

July 8th, 1958.

Mr. W. S. Arnell,  
Indian Commissioner for B. C.,  
Department of Citizenship and Immigration,  
P. O. Box 70,  
Postal Station A,  
Vancouver, B. C.

Dear Sir:

Re: Kelowna Bridge Approaches

Enclosed herewith is compensation cheque number  
9180 in the amount of \$2,330.75 payable to the Receiver  
General of Canada.

This compensation is for property acquired  
through Tsinstikeptum Indian Reserve #10 for right-of-  
way purposes on the above project.

Yours truly,

*H. D. Francis*  
H. D. FRANCIS *val*  
Right-of-Way Agent

MHC:c  
Encl.

*Ref # B10821  
A 2-330-75  
10-7-58  
9610-0*



(SECTION 15)

Page 4  
TRA-2011-00162



# WESTBANK INDIAN COUNCIL

BOX 850 WESTBANK, B.C. V0H 2A0 — TELEPHONE 768-5200

CHIEF RONALD M. DERRICKSON

COUNCILLORS

WILLIAM J. DERRICKSON

ALBERT WILSON

February 3, 1977

Department of Highways  
1420 Water Street  
Kelowna, B.C.

Attention: Mr. Wilf McDonald

Dear Sir:

As a result of our meeting last week where we discussed your proposed plan for the widening of Highway 97 between Westbank and Kelowna on Indian Reserve Number 9 and Indian Reserve Number 10, we assured you that we felt the widening of the proposed highways would be a benefit to the areas concerned. We also assured you that we would negotiate in good faith but we also expressed our concern that the Department of Highways has in the past not acted in good faith with the Westbank Indian Band concerning some of the problems we have had with them, therefore it was a decision of the Westbank Indian Council that we are not willing to negotiate for the widening of those roads until some of these past problems are settled.

Some of the problems the Westbank Indian Council have are:

We wish to settle the re-routing of some of the road ways through Indian Reserve Numbers 9 and 10 for example Casa Loma Road on Indian Reserve Number 10; no payment has been made for this road to the Reserve. Also, this road uses up some of the most valuable lake front property. It is also a very narrow and unsafe road. Westside Road from the Ferry Wharf North to the end of the Reserve uses up a half mile of very valuable beach which makes it un-usable. We have never been paid for this road.

*Langille Road*  
*both explained*

The two above roads will have to be re-routed at the expense of Department of Highways and compensation made for the land.

*no compensation due*

...../2



*Cham P. P. P.*  
We cannot find any record of payment made for the property the ferry wharf sets on. This property has not been used by the Provincial Government and we would request negotiations for the transfer back to the band. It is also our understanding that Inland Natural Gas has applied for a right-of-way from the ferry wharf up Westside Road to Highway 97. We would object to this right-of-way until this ferry wharf question is settled.

*Cham P. P. P.*  
Many thousands of yards of rock were taken from the rock pile on Casa Loma Road by the Department of Highways when Okanagan Lake Bridge was built. We have never been paid for this rock, also the removal of this rock has created a large unsightly cavity in the property which we feel further distracts from the value of the land. This will have to be corrected and we request payment in full for this rock.

Any widening of the highways through the Reserves would require complete fencing. We would request that both sides of the Reserves be fenced with gates and cattle guards where needed.

We would also request proper accesses to the new highway routes as well as frontage roads. The Westbank Indian Band would like a contract to sell gravel from the Westbank Indian Band Gravel Pit for any proposal widening project.

The Westbank Indian Council feels that we would have to have a social and financial impact study completed at the Department of Highways' cost but without obligation so that we would be able to determine the advantages and disadvantages of the changes you have requested in the Highways systems to the Reserves.

The individual members and the Westbank Indian Council would request funding for appraisal services to determine the values of any land to be taken for the highway widening.

The above noted are some of the problems the Westbank Indian Council have encountered in the past with the Department of Highways and we trust our relationship in the future will be an improved, more encouraging one for the benefit of both parties.

Yours very truly,

WESTBANK INDIAN COUNCIL

Chief Ronald M. Derrickson

RMD/ec



OFFICE - THE  
DEPUTY MINISTER



W. A. Drew  
Director of Property Services

VICTORIA  
V8V 2M3

~~MINISTRY OF HIGHWAYS AND PUBLIC WORKS~~  
MINISTRY OF HIGHWAYS AND PUBLIC WORKS

March 28, 1977

File: 33-1

Chief Ron Derrickson  
Westbank Indian Council  
Box 850  
Westbank, B. C. V0H 2A0

Dear Sir:

Re: Ministry of Highways and Public Works and  
Tsimstikeptum Indian Reserves #9 and #10

Further to the meeting in the office of the Honourable Minister of Highways on March 8, 1977 and the meeting between your Band and Ministry of Highways officials, including the writer, in Westbank on March 16th, as undertaken then I am herewith writing a letter of intent to the Band.

The Ministry of Highways and Public Works intends to:-

1. Offer compensation for lands to be taken for the widening of the present right-of-way of Highway #97 subject to appraisal and to our standard terms and conditions. This refers to both I.R. #9 and I.R. #10.
2. Bear costs of such appraisal, such to be by a mutually agreed appraiser, and Mr. R. L. dePfyffer appeared acceptable to both parties. Such appraiser also to appraise lands required for Westside and Campbell Road relocations.
3. Bear costs by way of a fee for a Band member for such to provide interpreter services in dealing with individual Indian locatees who cannot speak English.
4. On agreement being reached for compensation the widened right-of-way will be fenced and legally surveyed, and plans deposited and registered with both Governments, established by Orders-in-Council, and all fencing, survey and legal costs will be met by this Ministry with ownership of the rights-of-way in the Province.

.....2

*Apr. 4/77  
Tsimstikeptum  
ew*

2.....

5. Having in mind that a preliminary layout plan has been made in the land use planning of I.R. #9 by the Band's consultant, Interform Planning and Design Ltd., 811A Seventeenth Avenue, S.W., Calgary, through Mr. P. V. Esnouf, M.R.A.I.C., this Ministry intends to bear costs of a study to define access points to the highway in I.R. #9 both now and in the future in relation to such planning so that these can be installed cooperatively by this Ministry both now and in the future. Such study to be by Interform Planning and Design Ltd. and terms of reference to be agreed and an estimate of cost made in advance. If costs are in excess of \$5,000. this Ministry will require Cabinet Committee approval.
6. If frontage roads are necessary or if and where widening of Indian roads at intersections is necessary, all such construction and maintenance shall be by the Ministry and compensation paid for lands required to standard terms and conditions.
7. The Ministry intends to relocate and construct Westside Road to a new and improved intersection with the highway and will offer compensation for land involved to standard terms and conditions and will fence, legally survey and register plans, etc. for such relocation, bearing all legal costs and will undertake such construction at Ministry cost as per paragraph 4 with ownership in the Province.
8. The Ministry intends to relocate and construct Campbell Road (also known as Casa Loma Road) to a new and improved intersection with the highway and will offer compensation for lands involved to standard terms and conditions and will fence, legally survey and register plans, etc. for such relocation, bearing all legal costs, and will undertake such construction at Ministry cost as per paragraph 4 with ownership in the Province.
9. When such relocation and construction are complete and the right-of-way is properly established by plan and Order-in-Council on the respective sections of Westside and Campbell Roads, this Ministry shall have no further use for the existing right-of-way and roadway sections by-passed by the new sections, except for a section of Westside (formerly Highway #97) which is shown outlined in red on print of Plan R.P. 4791 hereto attached. The reason that it may not be possible to return this section of road is that the road serves as access to two water lots, Lots 5093 and 4003, O.D.Y.D., which are under the jurisdiction of the Ministry of Environment (Lands Branch) and it has been brought to attention that the lots are reserved from alienation and dedicated for the use, recreation and enjoyment of all the Public of B. C. However, should it be possible to transfer this section of road to the Band, as same is covered by a properly registered plan (R.P. 4791), Provincial and Federal Orders-in-Council will be necessary. This will also be required for that portion of Campbell Road which is shown outlined in red on print of Plan M.533 attached. Equal consideration should be given to compensation to Government for lands returned to the Band and covered by plans, as to lands gained from the Band for the relocations and the appraiser should assess valuation of lands returned, and legally registered by plan.

.....3

3.....

10. As previously mentioned, the two water lots (Lots 5093 and 4003) outside the Reserve are beyond the control of this Ministry and are under the control of the Ministry of Environment (Lands Branch). An application to lease these lots should be directed to the Ministry of Environment. Compensation of \$1,000. was paid to the Band by the Provincial Government in 1953 for foreshore rights involved in Lot 5093.
11. In the matter of the rock quarry and the rock used on the causeway at the west side of the floating bridge, it was agreed that full research will be made by this Ministry of the records of the B.C. Toll Authority who constructed the causeway and removed the rock from the Reserve. It will be necessary to determine whether such quarrying and rock removal was done without consent and compensation to the Band or to the Federal Government. This consideration includes the matter of leaving the quarry on Indian land and the treatment to be given to the quarry to screen it from sight. Notwithstanding the results of such research, to be commenced immediately, this Ministry will do all possible to effect such screening during the relocation of Campbell Road by constructing a berm with material excavated, and the Ministry will also ensure proper drainage to the quarry area.
12. In the matter of hiring of Indians on the highway construction, such will be a factor in the Ministry requiring the contractor to hire local labor to the extent that a suitable and competent group of individuals are available. Similarly, in any day labor work undertaken by the Ministry in the Band lands, then suitable and available Indians will be employed.
13. In the matter of use of Band gravel, pit run or crushed, the Ministry will test the quality, gradation, etc. of such gravel source and determine its quantity by drilling, with Band permission, and if suitable gravel is available and in sufficient quantity in the Indian land, then it will be specified to the contractor that such source shall be used in construction within the Reserve, subject to normal provisions.

Certain other points were discussed in the meeting and should be recorded:-

- a) In negotiations with individual Indian locatees the Ministry's regular conditions and procedures of right-of-way acquisition should be outlined to the Band. Such matters as providing for water line and drainage crossings, compensation to lessors and lessees, dealing with wells, building set-back, etc. to be outlined, and such will be provided to the Band by the Ministry's Director of Property Services.

.....4



4.....

- b) In the matter of lesser Provincial roads crossing the Indian Reserves to serve non-Indians beyond, the Ministry will continue to maintain such roads and will discuss with the Indian Band, relocations of such roads to suit Band planning and development. Where such roads sever and render undevelopable, small corners of the Reserve, severage compensation might be indicated.
- c) Where subdivisions adjacent to Reserve boundaries are contemplated in future, the Ministry will forward such plans for Band comments before approval. The Ministry will also recommend to the Regional District that Indian Band development plans be fully considered in community planning in the area. The District Highways Manager will investigate drainage problems to the Indian lands by some such subdivisions.
- d) In respect to the Provincially owned Shannon Lake Road, maintained by this Ministry, consideration of cattle underpasses and drainage requirements will be fully assessed and reported upon by the District Highways Manager, Kelowna.
- e) In respect to the cut-off lands as determined by the McKenna-McBride Royal Commission Report, the Westbank Indian Band wish it placed on record that present agreements made affecting I.R.'s #9 and #10 in no way prejudice or jeopardize the Band's rights and position in requesting full compensation for such cut-off lands.
- f) In respect to the provision of improved road access along the east boundary of I.R. #9 from the recreation center to the Boucherie Road (about two miles) this Ministry undertakes to carry out a survey of this, such route to be along the common boundary as much as possible. Upon full agreement and acquisition of right-of-way, consideration of construction will be made between this Ministry and the M.L.A., once costs are estimated.
- g) At Hayman and Boucherie roads where the new highway leaves the alignment of the old, the section of old road, upon successful acquisition of right-of-way for the new, will be handed over to the Band. The Ministry is to undertake legal survey and also moving of utilities.
- h) The Ministry will give consideration to purchasing shot rock rip-rap available from the Band, if required, at a mutually agreeable price.
- i) The Ministry will undertake paving of at least one mile of the Provincial road known as the Old Okanagan Highway to coincide with paving of the new highway. The Ministry will also give increased attention to dust control on such road.

.....5



5.....

- k) The Ministry will give every possible effort to avoid interference with wells, and also with moving of houses. If necessary and possible, houses will be moved and wells redrilled.

I trust this covers the points raised at the meeting.

In respect to immediate and future action, having in mind the pressing need of the Ministry to proceed with final design preparatory to calling of contracts this summer, on final right-of-way acquisition, it is proposed that the following sequence of action proceed:-

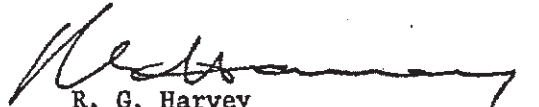
- (i) The Regional Superintendent of Design and Surveys, Ministry of Highways and Public Works, Kamloops, will stake out the new limits of right-of-way for Highway #97 and discuss and explain all factors of the design which will affect the Band and the locatees. Consent of the locatees and the Band for the Ministry of Highways and Public Works to enter and survey will be obtained by the Band Council.
- (ii) The Appraiser will be appointed immediately and will proceed to make his appraisal for right-of-way for Highway #97.
- (iii) Full research of facts surrounding rock and quarry past use will be made.
- (iv) This Ministry will proceed immediately with design, right-of-way plan preparation and ground layout for the relocations of the Westside and Campbell Roads to enable appraisal of the rights-of-way to be made and the appraiser will be instructed to appraise the old and the new rights-of-way.
- (v) Consideration will be made of the Band's intention to acquire the right-of-way as registered, to the old ferry landing if the Band is successful in obtaining a lease to the water lots and the right-of-way as registered for the Campbell Road.
- (vi) Based on all of the above, a complete offer of compensation for a negotiated purchase of Indian lands will be made rather than expropriation or resumption. In the event that a mutually satisfactory settlement is reached, the Province will not be relying on Order-in-Council 1036 in this case.
- (vii) This Ministry will await terms of reference from the Indian Band for the Consultant's planning study for Government approval and upon agreement a start will be made at once and upon completion a defined process, policy, and agreement for access definition within I.R. #9 will be agreed upon and implemented in the construction and future dealings with the Band. The need for speed in this process is underlined.

.....6

6.....

I trust the foregoing meets with the approval of the Band and your comments are requested.

Yours very truly,

  
R. G. Harvey  
Deputy Minister

RGH-ew  
Attachs.

cc: Executive Director, Engineering  
Director of Hwy. Design & Surveys  
Regional Highway Engineer, Kamloops  
District Highways Manager, Kelowna  
Director of Property Services  
N. J. Prelypchan, Ministry of the Attorney-General  
P. J. Pearlman, " " "  
Hon. Minister of Highways & Public Works (2)  
Asst. Deputy Minister  
Asst. Deputy Minister & Chief Engineer.

# WESTBANK INDIAN COUNCIL

BOX 850 WESTBANK, B.C. V0H 2A0 — TELEPHONE 768-5200

CHIEF RONALD M. DERRICKSON

COUNCILLORS

WILLIAM J. DERRICKSON

ALBERT WILSON



RECEIVED  
MINISTRY OF HIGHWAYS  
& PUBLIC WORKS

October 6, 1977

OCT 12 1977

R. G. Harvey, Deputy Minister  
MINISTRY OF HIGHWAYS AND PUBLIC WORKS  
Victoria, B.C.  
V8V 2M3

ANSWERED.....  
NOTED.....  
DATE.....

Dear Sir:

RE: YOUR FILE #33-1  
Letter of Intent to the Westbank Indian Band  
March 28, 1977

In reply to your letter of March 28, 1977 -

- V.A. Smith  
to answer*
- V.A. Smith  
to answer*
- CL 1/11/78*
- CL 1/11/78*
- CL 1/11/78*
- #1. The Westbank Indian Council would require clarification of the phrase 'standard terms and conditions'.
  - #2. We understand that the Department has not found Mr. de Pfyffer's appraisals of other reserve land values to be acceptable. Is Mr. de Pfyffer of Columbia Appraisals Ltd. still acceptable to the Department?
  - #3. Bear cost of all fees for interpreter services for any Band members who request such services, and who cannot speak or clearly understand English.
  - #4. ... all fencing, survey and legal costs will be met by this Ministry with ownership of the rights-of-way in the Province, if requested by the Band Council or the individual locatee.
  - #5. ... this Ministry intends to bear costs of a study to define access points to the highway in I.R. #9 and I.R. #10.

339647

..... 2



It is the understanding of the Westbank Indian Council that a Social and Financial Impact Study would be done for both I.R. #9 and I.R. #10 at the Highway's expense to determine the advantages and disadvantages of the changes to the reserves. In your letter, it does not make a direct reference to this Social Impact study. The Westbank Indian Band is unable to undertake this study until advance funds are forwarded. We would suggest an advance of \$5,000.00 be made to the Westbank Indian Council, so that this work may be started. We would not object to you negotiating the total price with Esnouf, Nielsen, Selnar. Total costs must be arrived at and approved for the Social Impact Study.

#6. Who is to determine whether frontage roads are necessary, and where widening of Indian roads at intersections are necessary?

Again, we would require clarification of the phrase 'standard terms and conditions'.

#7. Again, we would require clarification of the phrase 'standard terms and conditions'.

#8. Okay

#9. Equal consideration cannot be fairly given to the Government for lands returned to the Band and covered by plans, because in many cases, the Band has not been fairly compensated for these lands.

Although a letter will be sent to the Minister of the Environment regarding the mentioned water lots 5093 and 4003, ODYD, regarding the return of the upland access, it is important that the Westbank Indian Band consider all of the requirements for the road system as a package. To this end, negotiations with the Department of the Environment should not be pursued in isolation. We would strongly recommend that the Department of Highways should take the inter-ministerial responsibility.

#10. Again, we must state that we feel that the Department of Highways must take the inter-ministerial responsibility for the return of these lands to the Band.

#11. We would request compensation, plus the Westbank Indian Council does not agree to the phrase 'screen it from sight'. We would want it made usable.



The matter of the rock quarry should be part of the Social impact study, and recommendations should be forthcoming from that.

*VA Green*

What is the progress of the Department of Highways research into B.C. Toll Authority records? If no compensation was paid, who is to calculate quantities? Who would pay compensation?

*OK*

All road edges should be considered for 'natural' appearance. No scars should be left at quarry or elsewhere. The Ministry should make available to the planner, the records of the B. C. Toll Authority.

#12. Okay

#13. a)

*OK*

The test results should be delivered to the Westbank Indian Band.

*VA Green*

We would require clarification of the phrase 'regular conditions and procedures'.

*VA Green*

The Westbank Indian Band would require a list of the Ministry's regular conditions and procedures of right-of-way acquisition immediately.

b)

*VA Green*

... sewerage compensation must be made.

c)

*OK*

The District Highways Manager will investigate drainage problems to the Indian lands by all such sub-divisions.

d)

The Westbank Indian Council does not concede ownership to the Ministry of Shannon Lake Road.

*VA Green*  
*VA Green*

Also, the Westbank Indian Council feels that no further development be undertaken until the road is up-graded to handle this traffic.

e)

Okay



f)

Times, dates and commitments established.

g)

Okay

h)

Okay

i)

The Band feels that all of old Okanagan Highway should be paved and that the dust control given this year was of no help.

k)

If it is necessary to move a home, then all existing services should be provided for by the Ministry. If it is impossible to move a locatee, then he will be compensated for the comparable value of that home. All moving and re-drilling expenses will be undertaken by the Ministry.

(i)

Okay

(ii)

To our knowledge, this has not taken place.  
Our appraisers or theirs? Cost established.

(iii)

Okay

(iv)

Okay

(v)

Okay

(vi)

Assuming Order-In-Council #1036 is in respect of



VAQ:ew

Provincial right to 5% of Indian Reserves for roads, it is our calculation that in excess of 6% will be required on I.R.#10. The wording of the last sentence is threatening. It would be preferred if the wording were to the effect that 'realizing that the Westbank Indian Band is endeavouring to develop its lands in the best tradition of community planning, the Department of Highways anticipates a satisfactory settlement of our mutual objectives and assures the Band that it will not be relying on Order-in-Council #1036 under any circumstances.

(viii)

Refer to attached Terms of Reference - Highway Impact Study, I.R. #9 and I.R. #10.

The Westbank Indian Council feels there is still substantial differences in your letter of intent than was agreed to at our last meeting at the Copper Kettle Restaurant in Westbank, and as a result of the fact that your promises appear to have changed, we have appointed Mr. Derril Warren, Warren, Ladner, Barristers and Solicitors of the City of Kelowna, to represent the Band, and his recommendation to us is to avoid further correspondence, and that a second meeting be held to discuss these points that separate the two parties.

It has also been brought to the attention of the Westbank Indian Band that the Jacks are demanding compensation for Bear Creek Road, which leads up to the Peterson properties. This road is also known as Peterson Road.

We are quite prepared to meet with you at a convenient time. <sup>S22</sup> in my absence, please contact William J. Derrickson, Councillor and Administrator for the Westbank Indian Band.

Yours very truly,

WESTBANK INDIAN COUNCIL

  
Chief Ronald M. Derrickson

RMD/st





Province of  
British Columbia

Ministry of  
Highways and  
Public Works

Parliament Buildings  
Vancouver  
British Columbia  
V6V 2M3

OFFICE OF THE  
DEPUTY MINISTER

HIGHWAYS

*PM 1816*

YOUR FILE

OUR FILE **33-1**

September 29, 1978

Chief Ronald M. Derrickson  
Westbank Indian Council  
Box 850  
Westbank, B. C. V0H 2A0

Dear Sir:

Re: Additional Right-of-Way for Highway #97 and  
Right-of-Way for Relocations of Westside and  
Campbell Roads - Tsinstikeptum I.R.'s #9 & #10

Further to your stated desire to commence negotiations by September 30th we have been pressing ahead with all possible speed towards that goal.

The position we are now in is that we have prepared a set of plans which I enclose, based on the Consultant, P. Esnouf's recommendations of locations of intersections, accesses, highway location and arterial road locations. These plans encompass I.R. #9 and I.R. #10 and include Highway #97 and its frontage roads, etc. and the Westside Road and the Campbell Road.

We wish your agreement in principle to these plans at this point, bearing in mind that as we proceed in negotiation there may be minor amendments.

We also seek your concurrence that such negotiations be with the individual locatees concerned, with Band Council involvement and ratification, including if necessary, interpreters to be provided at our cost. This is what we understand to be the best arrangement. If you wish an alternative approach, please advise.

In respect to the overall agreement which we believe must follow locatee settlements, I am pleased to say that concurrence has been given that we will construct the road along the east boundary of I.R. #9 at our cost. As laid out in the minutes of the January 12, 1978 meeting, item "f", the Band will turn over the land for the right-of-way for this road when it is constructed. This construction will cost in excess of \$500,000. The road connection from this road across McDougal Creek we consider to be a Band responsibility.

...2



Chief R. M. Derrickson - Hwy. 97 Relocation - Sept. 29/78

2.....

In respect to the rock used in the causeway we can only assume it was taken in accordance with some form of agreement between the contractor, General Construction, now defunct, the owner, the B.C. Toll Highways and Bridges Authority, now defunct, and the Band and we know it was covered by a Band Council resolution to accept \$1500 in compensation because we have a copy of that resolution; a copy also went to the Canada Department of Indian Affairs. We can only assume the rock was removed under their auspices. The Canada Department of Indian Affairs now advise us that they cannot confirm whether or not the payment was ever made. Under these circumstances we are advised that the Provincial Government has no legal responsibility in this matter; however I am authorized to propose a purely "ex gratia" payment to the Band of \$20,000 in this respect.

Concerning the road from Highway 97 to the old ferry landing, covered by plan, and the water lots, we have written to the Minister of Environment. He has authorized the Surveyor General to survey the filled lands in these lots. We have not at this point the concurrence of the Minister of Environment nor Cabinet to hand over these lands. I am hopeful that in due course such approval can be obtained. Westside Road north of the old ferry landing to the north boundary of I.R. #10 will be degazetted when the relocation of Westside Road is constructed and established.

I request your concurrence, in principle only, with the attached plans and your agreement that we proceed with locatee contact and negotiation if that is your concept of the procedure.

For your information our appraiser has reviewed the valuation of the 92.5 acres of land which these plans show for additional and new right-of-way, and his appraisal is \$545,575. We look for an early appraisal figure from your appraiser.

I am enclosing two sets of plans and I am sending one set each to Mr. Esnouf and Mr. Walchli with copy of this letter.

Hoping to hear from you soon,

Yours truly,

R. G. Harvey  
Deputy Minister

RGH-ew  
Attach.

cc: Esnouf, Neilson, Selnar -  
Attn: P. Esnouf - Encls.

F. J. Walchli, Reg. Director General  
B.C. Region,  
Indian & Northern Affairs - Encls.

SIR 2000





# WESTBANK INDIAN COUNCIL

BOX 850 WESTBANK, B.C. V0H 2A0 — TELEPHONE 768-7666

CHIEF RONALD M. DERRICKSON

COUNCILLORS

R. E. WILLIAM J. D. DERRICKSON  
MINISTRY OF HIGHWAYS  
& PUBLIC WORKS

BRIAN ELLIOTT

NOV 10 1978

November 7, 1978

ANSWERED

NOTED

DATE

Mr. R. G. Harvey  
Deputy Minister  
Province of British Columbia  
Ministry of Highways and Public Works  
Parliament Buildings  
Victoria, BC  
V8V 2M3

Dear Sir:

RE: Your letter of September 29, 1978 -- Your file #33-1  
Subject: Additional Right-of-way for Highway 97 and the  
Right-of-way for relocation of Westside and  
Campbell Roads, Indian Reserve #10

1 In answer to your letter, the Westbank Indian Council would like to inform your Ministry that we have received the plans, and with the exception of Lot 15, Gellatly Road intersection, and Lot 33-1 and Lot 33-2 and the north end of the road intersection, we are in basic agreement. There are some minor changes as requested by Band members, which we intend to bring up at our next meeting on Tuesday, November 14th, 1978 at 2:00 p.m.

2 We would like to also respond to your statement that such negotiations with individual locatees concerning this matter, be with Band Council involvement and ratification, with interpreter services provided at your cost. We have no basic disagreement as long as we both clearly understand your statement. We propose that no negotiations will be held with the individual locatees unless the Council is present. In other words, no meetings will be set up with individual locatees period. If meetings are required with locatees, Council will make the arrangements.

3 In respect to the Ministry's agreement to build and construct a road along the east boundary of I.R. #9 at your cost. The Band will turn over the Right-of-way for this road when it is constructed, and that the Band will be compensated for the land, as it is a through road. In regard to any locatee involvement in this east boundary road, the same method will be used as with the highway through #9 and #10.





Mr. R. G. Harvey  
Deputy Minister  
Ministry of Highways and Public Works  
November 7, 1978

page 2

④ The road connection from this road across McDougall Creek, we disagree with you, and feel it is the responsibility of your Ministry to construct an interlocking road. We feel it is ridiculous to construct accesses to Highway 97 and convince the locatees to give up their land, and then not construct an interlocking road. It has always been my understanding that your Ministry would pay for this.

⑤ In respect to the rock used in the causeway, and your Ministry's offer to pay \$20,000.00, in this regard we accept the \$20,000.00 as full payment.

⑥ Concerning the road from Highway 97 to the old ferry landing, covered by plan and the water lots, and your statement that the Surveyor General has been authorized to survey the filled portion of the lots. This is not the intention of our agreement. Our intention was that we would be given the entire water lots. As you know, we have done extensive planning for that area, and we require the entire water lots, not just the filled portions.

⑦ In regard to the evaluation set by your appraiser on 92.5 acres of land, and his figure of \$545,575.00, we consider this utterly ridiculous, and reject it fully.

⑧ I have been reviewing the files, and I have come to the conclusion that in order to be fully satisfied, the Westbank Indian Band would like to enter into a contract, a legally binding agreement, that is to be ratified by the Department of Indian Affairs and your government. It will spell out the obligations of both parties as to issues raised since the negotiations began, and final agreement of each issue. I feel that this way there can be no doubt as to what was said on both sides, as I feel that some of our issues have been omitted or sidetracked from the original agreements. I feel that in the interest of maintaining a good working relationship with your Ministry, it will be necessary to enter into such an agreement.

Yours very truly,

WESTBANK INDIAN COUNCIL

  
Chief Ronald M. Derrickson

RMD/st  
c.c. The Honourable W. R. Bennett  
Mr. Fred Walchli, Director General



Province of  
British Columbia

OFFICE OF THE  
DEPUTY MINISTER

Ministry of  
Transportation,  
Communications  
and Highways  
HIGHWAYS

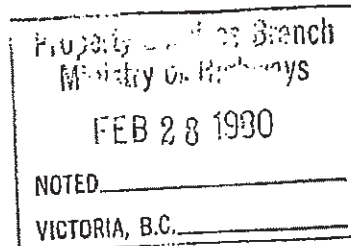
940 Blanshard Street  
Victoria  
British Columbia  
V8W 3E8  
Phone: 387-3280

YOUR FILE: .....

OUR FILE 70-60-09 .....

February 26, 1980

Chief Ronald M. Derrickson  
Westbank Indian Band  
P.O. Box 850  
Westbank, B.C.  
VOH 2A0



Dear Sir:

Re: Negotiations for Increased #97 Highway Right-of-way  
and for various public road rights-of-way in  
Tsinstikeptum Indian Reserve #10

Please excuse the delay in my writing in response to your phone call. What I decided to do was to follow a suggestion contained in a previous letter from you of November 7th, 1978 in which you remarked in the context of the need of a contract, that it would be advisable to "spell out the obligations of both parties as to issues raised since the negotiations began and the final agreement of each issue". I believe we should "spell out these obligations" and try to settle these issues so that we can get down to compensation negotiation.

I believe we have five basic issues still to be resolved and I have taken considerable time to prepare the attached documentation for each issue, to recount the past correspondence and minutes, and to discuss what we believe is our current position based on the overall dealings we have had to date.

One of the five issues, Issue #5, on the East Boundary Road and McDougall Cross Road, does not concern Indian Reserve #10, so I do not include documentation of it with this letter.

I note your letter of January 15th, 1980 to the Honourable Minister. The Minister left on vacation very shortly after he received this and will be returning and will reply soon.

My feeling is as expressed in your second last paragraph of that letter, that agreement on Indian Reserve #10 is more possible immediately so I am addressing this letter to Indian Reserve #10 only. If we can resolve all outstanding matters in respect of Indian Reserve #10, we shall seek agreement on compensation as to

....2

February 26, 1980

that Reserve separately. However our position remains that the final agreement referred to in our letter of December 7th, 1978 should bear relationship to all outstanding matters, including compensation, as concluded on both reserves. I will write on Indian Reserve #9 separately later.

We do not believe there has been any sudden change of attitude and we believe that an examination of the attached recountings of past correspondence, etc. will support this position.

Before dealing with the outstanding issues relating to Indian Reserve #10, I should reiterate that all positions stated in this letter and in the attached documents remain subject to our previous provisos that a mutually satisfactory settlement must be reached in respect of all outstanding issues.

In respect to Indian Reserve #10, we now have a design and you will now have the plans. We have included the berms for sound proofing and we have included the drainage and curbs you desired.

Concerning employment of Indians, we will address ourselves to this immediately. Firstly, concerning Highway 97, the construction will be by tendered contract; however we are prepared to exclude clearing and grubbing, fencing, and all work on the berms save for rough grading, i.e. topsoil placement, shaping and landscaping, from the tendered contract; and perform such work with the employment of Band members if they are willing to do this. This work, except for the berm treatment, could go ahead at an early date, immediately after settlement of the land compensation. We can also do all the work on Campbell Road or on Westside Road by day labour employing Band members and equipment as available, if such is possible, or include one or both of these roads within the tendered contract. We need an early decision on this and if you have a preference for one road to be completed earlier or to be done by day labour we would like to know this.

Concerning gravel, we can designate Band pits for the tendered contract for subsurface select gravel use, if the Band gives us appropriate and firm prices and undertakings on these items. This can also apply to the Campbell Road and the Westside Road. We are forwarding test findings.

With respect to Issue #2- ("The Compensation for Existing or Relocated Roads and the Application of Order-in-Council 1036") documentation has been included with this letter. However for Indian Reserve #10 we really believe this is not an issue in respect of the existing Westside and Campbell Roads, as we will be returning all lands no longer needed following their relocation.

....3

February 26, 1980

We will be compensating for the Bear Creek Road and we are prepared to compensate for 2.28 acres on the Westside Road (Highway 97 to old Ferry Landing Section) and 1.013 acres for the existing main Highway 97 in this reserve, as apparently in the past this compensation was not made. It is further understood that all of the above is without prejudice to our position that many of these roads were excluded from the transfer of the Reserve in 1938.

In respect to the old ferry landing lease of filled land we believe that the access problem can be solved, and that subject to this, the lease can go ahead.

Your response to the documentation attached is sought and if you see no obstacles to commencing land compensation negotiations for Indian Reserve #10 we will commence these immediately.

I will await your response on Indian Reserve #10 before writing on Indian Reserve #9 which has many more problems.

I also enclose a consolidation of the three original letters of March 28th, October 12th and November 17th, 1977 for your convenience.

Yours sincerely,

Original Signed By

R.G. Harvey  
Deputy Minister

Attachs.  
RGH/ek

cc: Honourable Premier+  
cc: Honourable Alex V. Fraser+  
cc: F.J. Walchli, Regional Director General,  
B.C. Region, Indian and Northern Affairs+  
cc: B.A. Barrington-Foote, Constitutional  
and Administrative Law, Ministry of Attorney-General+  
cc: Assistant Deputy Minister, Operations+  
cc: Director of Property Services+  
cc: Regional Highway Engineer, Kamloops+



REVIEWED ✓

Date: June 30, 1981

Headquarters File:

Regional File: P/N 1816

District File:

H118  
9410 Gen.  
westside  
Campbell  
97-10

To: Tsinstikeptum Indian Reserve No. 10  
Campbell Road Right-of-Way  
Revised Compensation Offer

This is prepared as the result of a discussion of the memorandum dated 29 June, 1981, which records our meeting with the Westbank Indian Band 26 June, 1981.

- OK.
1. With respect to the creation of a new Indian Reserve by acquisition of privately owned lands either by the Indian Band or Canada. The Government of British Columbia would not be involved in this transaction except in the latent capacity as Crown Grantor. The Indian Band or Canada is unable to acquire any rights not already alienated, and British Columbia retains full right of reservation and applicability of the Statutes of British Columbia.

Where the lands to be acquired are unalienated Provincial Crown land, then British Columbia would arrange to pass title to Canada, in trust, under the same terms and conditions as O.I.C. 1036, the document applicable to the Reserve from which the right-of-way was acquired.

2. The Ministry of Transportation and Highways is not prepared to consider any additional expenditure by Esnouf-Neilson Partnership at this time.
3. The underpass in question, large enough to accomodate golf course machinery, is shown on plan R2-60-12A at Section 12+50 (final location to be determined by Project Supervisor) and is designed to be a structural steel arch 5900 mm wide (19.36') by 3700 mm (12.14') high as was agreed in design discussion with Mr. A.W.G. Smith.
4. Comments with respect to the rock quarry and bridge are noted.

..... /2



- 2 -

## 5. Access.

- (a) The Ministry of Transportation and Highways will agree to a 30 ft. designated width for all accesses on Campbell Road and Highway 97.
  - (b) The Ministry of Transportation and Highways will restore those accesses presently in use at the time of construction of this project.
  - (c) The construction of future accesses not presently required by designated in our discussions is the responsibility of the owner or developer at the time of development.
  - (d) No accesses will be installed during the construction nor allowed at a later date which are not covered by a valid access permit obtainable on application to the District Highway Manager, Kelowna.
  - (e) The accesses defined in this document are clearly understood by both parties to be construction commitments granted pursuant to the regulations governing such accesses, and not to be a right-of-way commitment in this agreement.
6. The Ministry of Transportation and Highways is prepared to offer, without prejudice, the sum of \$20,000.00 as a contribution towards the construction of the easement road in Parcel Q and the rehabilitation of old road in Parcel FF Remainder; this sum to be expended as the owner deems most suitable in order to provide access to the "FF beachfront lots".
7. The Ministry of Transportation and Highways is prepared to amend its total offer of compensation for Campbell Road as follows:
1. Parcel GG & GK
  2. Parcel P Remainder
  3. Parcel FF Remainder
  4. Parcel FF-1
  5. Lot A, Plan 59924 CLSR
  6. Parcel Q

S17

. . . . /3



- 3 -

The total acreage acquired as r/w in this transaction totals:

1. Parcel GG & GK	0.13 Acres
2. Parcel P Remainder	0.21 Acres + 0.01 Acres
3. Parcel FF Remainder	0.06 Ac.+0.04 Ac.+0.95 Ac.+0.10 Ac.+1.16 Ac.
4. Parcel FF-1	0.55 Ac.
5. Lot A, Plan 59924	1.40 Ac.+0.05 Ac.+0.30 Ac.+4.71 Ac.
6. Parcel Q	0.32 Ac.
TOTAL	9.99 Acres

Campbell Road, etc., acreage value total divided by 9.99 Acres  
acquired equals S17 per acre.

### Highway 97

We must still acquire an additional portion of I.R. 10 for Hwy. 97 right-of-way. These additional acquisitions are listed as follows:

1. Parcel V	R2-60-10/11	9.65 Acres
2. Parcel W-6	R2-60-11	0.37 Acres
3. Parcel W-5	R2-60-11	0.58 Acres
4. Parcel T-2	R2-60-11	0.39 Acres
5. Parcel T-1	R2-60-11/12	1.80 Acres
6. Parcel I	R2-60-12	0.56 Acres
7. Parcel J. Rem.	R2-60-12	0.85 Acres
8. Rem. Pcl. EE	R2-60-12/12C	1.53 Acres
9. Parcel K	R2-60-12/12C	2.77 Acres
10. Parcel S	R2-60-12	1.24 Acres
11. Parcel CC	R2-60-12	1.88 Acres
12. Parcel N	R2-60-12/13	0.92 Acres
13. Parcel O	R2-60-13	0.11 Acres
		22.65 Acres

S17

Per instruction

22.65 Acres x Average cost per acre Campbell Road S17  
= S17

Recommend

MacSween appraisal Hwy. 97

S17

A. C. Brown  
Director of Property Services

Per:



D.I.F. MacSween  
Senior Property Negotiator

DIFM/do



# **1983 HIGHWAYS AGREEMENT**

## **CORRESPONDENCE**

**&**

## **RELEVANT DRAWINGS**



No. 3

March 2003

THIS AGREEMENT is made as of the 15th day of April, 1983.

AMONG:

HER MAJESTY THE QUEEN IN RIGHT OF  
CANADA as represented by the Minister  
Indian Affairs and Northern Development

("Canada")

OF THE FIRST PART;

AND:

WESTBANK INDIAN BAND as represented  
by its duly constituted Council

("Westbank")

OF THE SECOND PART;

AND:

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

("British Columbia")

OF THE THIRD PART;

WHEREAS:

A. British Columbia wishes to acquire for highways purposes or other works of public utility or convenience the lands (the "Lands") described in Schedule "A" attached hereto;

B. Canada and Westbank have agreed to transfer the Lands to British Columbia on terms and conditions that have been agreed to the satisfaction of the parties;

C. The parties wish to enter into this Agreement to provide for and set forth the terms and conditions upon which the transfer of the Lands is to take place.

NOW THEREFORE THIS AGREEMENT WITNESSETH that in consideration of the premises and of the respective covenants, conditions and agreements hereinafter contained and other good and valuable consideration, the parties hereto covenant and agree each with the other as follows:

PART I: INTERPRETATION

1. DEFINITIONS

For the purpose of this Agreement, unless the context otherwise requires:

- (a) "Band" means the Westbank Indian Band;
- (b) "Construction Plans" means Drawing Nos. R2-60-10 amended to January 8, 1980, R2-60-11 amended to January 8, 1980, R2-60-12 amended to April 7, 1980, R2-60-12A amended to April 7, 1980, R2-60-12B amended to May 13, 1980, R2-60-12C amended to May 13, 1980, R2-60-13 amended to April 7, 1980 and R2-60-13A amended to July 21, 1982 prepared by the Design and Surveys Branch of the Ministry of Highways and Public Works;
- (c) "Council" means the duly constituted council of the Westbank Indian Band as defined in the Indian Act;
- (d) "Indian Act" means the Indian Act, Chapter 1-6 Revised Statutes of Canada 1970, as amended from time to time and any regulations pursuant thereto;

- (e) "Lands" means those properties within the Tsinstikeptum Indian Reserve No. 10 which are described on Schedule "A" attached hereto;
- (f) "locatee" means a member of the Band who holds a Certificate of Possession or Notice of Entitlement issued by the Department of Indian and Northern Affairs;
- (g) "New Highway" means those sections of Westside Road, Campbell Road and Okanagan Highway No. 97 passing through the Reserve which are proposed for highway works as shown on the Construction Plans;
- (h) "Plan of Survey" means the survey plans registered under numbers 68152, 68076, and 68077 in the Canada Lands Surveys Records, Ottawa, Ontario;
- (i) "Reserve" means the Tsinstikeptum Indian Reserve No. 10;
- (j) "tenant" means any person lawfully occupying the Reserve who is not a member of the Westbank Indian Band.

## 2. INDEX AND HEADINGS

The index and the headings of this Agreement are inserted for convenience of reference only and shall not affect the construction of this Agreement or any part thereof.

## 3. APPLICABLE LAW

This Agreement shall be governed by and construed in accordance with the laws of British Columbia except that wherever the laws of British Columbia conflict with the provisions of the Indian Act and regulations made thereunder, the latter shall prevail.

4. SINGULAR AND MASCULINE FORM

Whenever the singular or masculine is used in this Agreement, it shall be deemed to include and mean the plural, the feminine or the body politic or corporate as the context or the parties hereto may require.

PART II: THE TRANSFER

5. Subject to the terms and conditions herein contemplated:

- (a) Canada and Westbank agree to transfer to British Columbia for highways purposes or other works of public utility or convenience and British Columbia agrees to acquire from Canada and Westbank for the said purposes all right, title and interest of Canada and Westbank in and to the Lands free and clear of all encumbrances save and except for the rights and interests in respect thereto retained by Canada and Westbank pursuant to this Agreement;
- (b) Canada agrees to undertake to pass or cause to be passed a Federal Order in Council effecting the transfer herein contemplated, which Order in Council is required pursuant to section 35 of the Indian Act.

PART III: COMPENSATION

6. AMOUNT OF COMPENSATION

The total amount of compensation to be paid by British Columbia to Canada for the use and benefit of Westbank for the transfer of the Lands to British Columbia by Canada shall be

S17

S17

7. PAYMENT OF COMPENSATION

The Compensation Price has been paid by British Columbia to Westbank's solicitor to be held in trust by him until the Completion Date as hereinafter defined at which time, subject to the terms of this Agreement, it shall be paid directly to Canada in trust for Westbank. All interest earned on the Compensation Price prior to the Completion Date shall be paid at monthly intervals directly to Westbank by Westbank's solicitor for distribution to the parties entitled thereto.

8. APPORTIONMENT OF COMPENSATION

The Compensation Price is by way of lump sum compensation for the transfer of the Lands and any apportionment of the Compensation Price among the respective locatees and the Band shall be the sole responsibility of the Council.

PART IV: DATES

9. CLOSING

The Closing shall be completed on such date (the "Completion Date") as the Federal Order in Council referred to in clause 5(b) has been passed or at such other date as may be mutually agreed upon in writing between the parties hereto.

Each of the representations, warranties, and covenants set forth in this Agreement shall be true as of the Closing as though made at the Closing and shall survive the Closing except to the extent expressly waived in writing by the parties hereto or as otherwise provided in this Agreement.

10. POSSESSION

Canada and Westbank shall deliver to British Columbia vacant possession of the Lands, excepting for Parcels GG and GK of the Campbell Road Properties, on the Completion Date.

PART V: WARRANTIES AND REPRESENTATIONS

11.(1) Canada and Westbank warrant and represent to British Columbia that:

- (a) the Lands are part of the Tsinstikeptum Indian Reserve No. 10, title to which is held by Canada and which has been set apart for the use and benefit of Westbank;
- (b) each and every locatee of the Lands has consented to the transfer herein contemplated in so far as the same specifically applies to him;
- (c) Canada and Westbank have full and absolute right and authority to deal with the Lands as herein contemplated;
- (d) except for the lease listed in Schedule "B" hereto, which it shall be the responsibility of Canada and Westbank to clear from the Lands, the Lands are free and clear of all encumbrances and



(1)

INCIDENTAL COSTS

- (a) British Columbia shall pay all legal fees and disbursements reasonably incurred in connection with and/or incidental to this Agreement and the transactions herein contemplated;
- (b) British Columbia shall reimburse the Chief of Westbank for the cost of any travel and living expenses reasonably incurred by him in connection with the negotiations for the transactions herein contemplated, subject to his production of acceptable receipts and vouchers;
- (c) British Columbia shall pay all appraisal and planning costs reasonably incurred in connection with and/or incidental to this Agreement and the transactions herein contemplated;
- (d) British Columbia shall pay \$25,000.00 towards Westbank's cost of retaining engineering and similar technical expertise in connection with and/or incidental to this Agreement and the transactions herein contemplated.

(2)

FIXTURES, APPURTENANCES AND IMPROVEMENTS

- (a) Subject to clause 14(2)(b), the Compensation Price shall include any and all fixtures, appurtenances and improvements of the locatees situated in or upon the Lands;
- (b) The three sheds located on Parcel G within the Westside Road Properties are not included in the Compensation Price and may be removed by Westbank within 30 days following the Completion

DN paper 33

of any litigation, disputes, demands or adverse claims of any kind;

(e) there are no outstanding contracts, agreements, engagements or commitments affecting the Lands.

(2) The representations and warranties contained in subparagraph 11(1) shall be true at and as of the Completion Date as though such representations and warranties were made at and as of the Completion Date and shall survive the Closing and continue in full force and effect except to the extent expressly and specifically waived by British Columbia in writing.

PART VI: CONDITIONS PRECEDENT

12. Notwithstanding anything contained in this Agreement, the obligation of the parties to complete the acquisition of the Lands shall be subject to the following conditions precedent being in effect or complied with on the Completion Date but which may each be waived unilaterally by the party to benefit from it at its election by notice to other parties on or before the Completion Date:

(a) the representations and warranties contained in subparagraph 11(1) shall be true and correct in all material respects at and as of the Completion Date;

(b) the Governor In Council shall have passed the Order in Council referred to in clause 5(b);

(c) Westbank shall have procured:

(i) a release signed by each <sup>on page 4</sup> every locatee substantially in the form set out in Schedule "C".

(ii) any and all consents, approvals and orders from any person which shall be requisite for Westbank to carry out the terms and conditions of this Agreement;

- (d) The responsible Ministry of the Province of British Columbia, subject to formal application by Westbank, shall have entered into the lease referred to in subparagraph 14(4).

PART VII: DELIVERIES ON COMPLETION

13. (1) On or before the Completion Date, British Columbia shall deliver to Westbank:
- (a) the lease referred to in subparagraph 14(4);
  - (b) its undertaking in a form acceptable to Westbank's solicitor that it will pass or cause to be passed the Provincial Order in Council referred to in subparagraph 14(5);
  - (c) such further deeds, acts, things and assurances as may be requisite in the opinion of Westbank's solicitor for more perfectly and absolutely effecting the transactions herein contemplated.

PART VIII: COVENANTS AND CONDITIONS

14. The parties hereto covenant and agree with each other that the transfer of the Lands and the rights and interests hereby granted are and shall be subject to the following conditions:

Date, provided that if the said ~~lands~~ are not removed within the said time, then Westbank shall be deemed to have waived all right and title thereto;

- (c) The Compensation Price shall not include any fixtures, appurtenances or improvements of any tenant of the Lands and British Columbia shall be solely responsible to compensate any such tenant for any damage to his fixtures, appurtenances or improvements as a result of any works or construction by British Columbia.

(3) NATURAL RESOURCES

- (a) Any merchantable timber which has or shall be cut down by British Columbia on or before the Completion Date shall be valued in accordance with the wood type value at the time of determination and shall be paid for by British Columbia at a price calculated from such valuation and a volume report of a Registered Forester and the parties agree that all timber cut down before the date of execution of this Agreement has been fully paid for by British Columbia;
- (b) British Columbia shall pay all invoices submitted by Westbank for the supply of gravel on an "as and when required" basis at such time as the invoices are received by British Columbia, the price for this gravel to be calculated at \$0.50 cents per cubic yard during construction of the New Highway and thereafter by agreement between the parties hereto;



(4) WATERLOT

The responsible Ministry of the Province of British Columbia shall, following formal application by Westbank, for a term of 99 years commencing on the Completion Date, lease to Westbank, upon standard terms and conditions and in a form satisfactory to Westbank's solicitor, waterlot D.L. No. \_\_\_\_\_ for the total consideration of \$1.00.

(5) FORMER HIGHWAY

Those portions of the former highway which lie outside the boundaries of the Lands and which are shown hatched on the Plan of Survey shall, at the earliest date possible following the Completion Date, be released from the public right of way and shall be transferred, for the sum of \$1.00, upon the same terms and conditions as British Columbia Order in Council 1036 dated the 29th day of July 1938 ("Order In Council 1036"), to Canada for the use and benefit of Westbank so as to vest an estate in fee simple freed and discharged from all other estates, interests, rights and charges including the public right of way which subsisted in, over or on the former highway immediately before such transfer other than interests, rights and charges then existing relating to utilities on, under or above the lands in question and for which Westbank has not negotiated a discharge.

(6) CLEARING AND GRUBBING

British Columbia shall contract to Westbank, for such consideration and upon such terms and conditions as shall be agreed upon between Westbank and British Columbia at the time of making of such contract, any and all clearing and grubbing work to be carried out on the Lands prior to the Completion Date.

(7) HIGHWAY CONSTRUCTION

(a) British Columbia shall construct the New Highway in a good and workmanlike manner in accordance with the Plan of Survey, the Construction Plans and item nos. 1 - 23 inclusive set forth in the letter of April 14, 1983 from Westbank's solicitor to British Columbia (collectively, the "Construction Requirements");

(b) claims and disputes arising between the parties hereto and any ambiguity, error, omission or dispute in connection with the Construction Requirements that may arise or become apparent shall be settled by negotiation between the parties and, in the event they are unable to agree, shall be referred to the Federal Court of Canada as provided in paragraph 16.

(8) FINAL INSPECTION

It shall be the additional responsibility of Westbank to inspect the New Highway at the completion of work to ensure that it has been constructed in accordance

with the Construction Requirements and any deficiencies thereof shall be rectified forthwith by British Columbia except that if the parties cannot agree on the existence or extent of any deficiencies the matter shall be referred for judicial determination as provided in paragraph 16.

(9) COST OF CONSTRUCTION

The entire cost of the construction of the New Highway shall be paid by British Columbia.

(10) PURCHASE OF OTHER LANDS

In the event that Westbank or any of the locatees decides to expend up to the total value of the Compensation Price in the acquisition of lands other than the Lands, British Columbia shall lend its support to the application of Westbank to Canada for the transfer thereof to Indian reserve land status and shall give such consents, approvals and/or orders as may be necessary or desirable to effect such transfer.

PART IX: REVERSION

15. In the event that British Columbia abandons the use of the whole or any party of the Lands (the "Abandoned Lands") for highway purposes or other works of public utility or convenience, then title and ownership of the Abandoned Lands shall immediately revert to Canada for the use and benefit of Westbank, and British Columbia shall do any and all acts and things necessary to transfer the Abandoned Lands back to Canada in terms identical to Order In Council 1036.

PART X: DISPUTES

16. Any dispute between the parties shall be referred for determination to the Federal Court of Canada where it has jurisdiction and, otherwise, to the Supreme Court of British Columbia.

PART XI: OTHER

17. NOTICES

All notices, requests, demands or directions to one party to this Agreement by another shall be in writing and delivered by hand or sent by mail addressed as follows:

To Canada

Ministry of Indian Affairs and  
Northern Development  
P.O. Box 10061  
700 West Georgia Street  
VANCOUVER, British Columbia  
V7Y 1C1

Attention: Director, Reserves & Trusts  
B.C. Region

To Westbank

Westbank Indian Band  
P.O. Box 850  
WESTBANK, British Columbia  
VOH 2A0

Attention: Chief and Council

To British Columbia

Province of British Columbia  
Ministry of Transportation and Highways  
940 Blanshard Street  
VICTORIA, British Columbia  
V8W 3E6

Attention: Deputy Minister



or to such other addresses as may be specified by one party to the other in a notice given in the manner herein provided. Any notice, request, demand or direction given in such manner shall be deemed to have been received by the party to whom it is given, if delivered by hand, when delivered or, if sent by mail, three days after the mailing thereof.

18. LEGAL CAPACITY

It is hereby agreed between the parties that Westbank has the legal capacity to contract and no party shall challenge the validity of this Agreement in legal proceedings or otherwise on the ground that Westbank did not have the legal capacity to be a party hereto.

19. FURTHER ACTS

Each of the parties will at all times hereafter execute and deliver, at the request of another, all such further documents, deeds, instruments and do all such acts as may be necessary to give full effect to the intent and meaning of this Agreement.

20. SUCCESSORS AND ASSIGNS

This Agreement and everything herein contained shall enure to the benefit of and be binding upon the parties hereto and their respective successors and assigns.

IN WITNESS WHEREOF this Agreement has been executed as of the day and year first above written.

HER MAJESTY THE QUEEN IN RIGHT  
OF CANADA, as represented by the  
Minister of Indian Affairs and  
Northern Development

Per: Altu Cark.

WESTBANK INDIAN BAND

Per: Chief Ronald M. Derrickson

Per: Brian D. Eli

Councillor Brian D. Eli

Per: Harold J. Derickson

Councillor Harold J. Derickson

HER MAJESTY THE QUEEN IN RIGHT OF THE  
PROVINCE OF BRITISH COLUMBIA as repre-  
sented by the Minister of Transportation  
and Highways

Per: [Signature]

## THE "LANDS"

1. The "Westside Road Properties"

<u>Parcel</u>	<u>Acreage</u>	
Parcel W-4	0.1016	
Private Road	0.09046	
Parcel W-1	0.07334	
Parcel G (except Parcel GD)	31.1290	
Parcel H	5.5640	
Parcel F	0.4816	
Lot 112	<u>0.4870</u>	<u>37.927</u>

2. The "Campbell Road Properties"

<u>Parcel</u>	<u>Acreage</u>	
Parcel GG & GK	0.1336	
Parcel P	0.2089	
Parcel FF-1	0.5399	
Parcel FF (Remainder)	2.275	
Lot A	6.3076	
Parcel Q	<u>0.30072</u>	<u>9.7657</u>

3. The "Highway 97 Properties"

<u>Parcel</u>	<u>Acreage</u>	
Parcel O	0.1735	
Parcel N	0.81	
Parcel K	2.7302	
Parcel CC	1.9175	
Part of Parcel J	1.4972	
Inside of Parcel EE		
Remainder of Parcel JJ	0.1236	
Parcel I	0.5708	
Parcel W-5	0.5826	
Parcel W-6	0.3585	
Parcel V	9.4194	
Parcel S	1.1604	
Subdivision 1 of Parcel T	1.8662	
Subdivision 2 of Parcel T	<u>0.3798</u>	<u>21.58</u>

TOTAL ACREAGE TO BE TAKEN:

69.2727

Lease affecting the "Lands"

1. Her Majesty the Queen in right of Canada to Mernie's Enterprises Ltd., registered in the Indian Lands Registry, Ottawa under number 27910D.



RELEASE

KNOW ALL MEN BY THESE PRESENTS that in consideration of the payment by or on behalf of HER MAJESTY THE QUEEN IN RIGHT OF THE PROVINCE OF BRITISH COLUMBIA as represented by the Minister of Transportation and Highways the sum of \$\_\_\_\_\_, receipt of which is hereby acknowledged, I, the undersigned, \_\_\_\_\_, do hereby for myself, my heirs, executors, administrators and assigns release and forever discharge HER MAJESTY THE QUEEN IN RIGHT OF THE PROVINCE OF BRITISH COLUMBIA as represented by the Minister of Transportation and Highways and from any and all actions, causes of actions, claims and demands, whether known or unknown, suspected or unsuspected, whatsoever and wheresoever which I or any of my heirs, executors, administrators and assigns have or hereafter can, shall or may have and which have arisen out of or resulted in any way from or developed from or related in any way whatsoever to the transfer to HER MAJESTY THE QUEEN IN RIGHT OF THE PROVINCE OF BRITISH COLUMBIA as represented by the Minister of Transportation and Highways for highways purposes or other works of public utility or convenience of that certain property belonging to me and described as \_\_\_\_\_, Tsinstikeptum I.R. No. 10.

I acknowledge that I have carefully read the foregoing Release and know the contents thereof, and I sign the same as my own free act.

IN WITNESS WHEREOF I have hereunto set my hand and seal this  
day of \_\_\_\_\_, 198 .

SIGNED, SEALED AND DELIVERED  
in the presence of:

\_\_\_\_\_  
Name

\_\_\_\_\_  
Address

\_\_\_\_\_  
Occupation



Province of  
British Columbia

Ministry of  
Transportation  
and Highways

940 Blanshard Street  
Victoria  
British Columbia  
V8W 3E6

Date: July 13, 1987  
Branch/Dist.: Property Services  
Phone: 387-1838  
Our File: P/S 1816  
Your File:

Westbank Indian Band  
P.O. Box 850  
Westbank, B.C.  
V0H 2A0

Attn.: Chief Robert Louie, Esq.

This has reference to Tsinstikeptum Indian Reserve No. 10 and our agreement for new highway rights-of-way. I write in respect of a right-of-way which has yet to be transferred, and of certain surplus roads which have yet to be closed and vested to Canada in trust for the Band under the same terms and conditions as are set out in O.I.C. 1036/1938.

I am aware that you have recently assumed office only to find files incomplete in some respects so I proposed to give you a reasonably complete picture of the situation facing us below. Enclosed herewith you will find a series of legal survey plans lettered "A" to "E" inclusive, and each is discussed separately.

Plan A: Plan of Statutory Right-of-Way for Highway  
through Tsinstikeptum Indian Reserve No. 10, Osoyoos  
Division of Yale District, Province of British Columbia  
Kamloops Land Title Office No. H-16773  
Canada Land Surveys No. 68077

This plan depicts the widening of the right-of-way for the Okanagan Highway 97. The areas shaded yellow indicate the existing right-of-way (already Provincial by previous transactions or events), the areas shown red are covered by the recent Privy Council Order, and the areas shaded green are now surplus to our requirements and are promised to the Band before our file closes on this transaction.

Note 1: The shading in the vicinity of the Westside Road Intersection will be considerably modified when we come to Plan D.

. . . 2

Note 2: Parcel "M", the Band Cemetery is surrounded by the old and new highway rights-of-way but is not included nor was it to be included in the transfers to the Province. The right-of-way behind (east of) Parcel "M" was acquired to provide public access to the former City of Kelowna lookout (Parcel C, Plan 50392 CLSR). We understand the lease ~~on this~~ on this former lookout now expired and that the title has now reverted to the Band/locatee.

Plan B: Plan of Statutory Right-of-Way for Highway through Tskinstikeptum Indian Reserve No. 10, Osoyoos Division of Yale District, Province of British Columbia  
Kamloops Land Title Office No. H-16774  
Canada Land Surveys & Records No. 68076

Plan B depicts the widening and realignment of the Campbell Road. Again the yellow shading depicts existing right-of-way, red shows new acquisition and green areas now surplus. (The shading system used is consistent throughout all plans attached).

Note: This plan is modified by Plan C.

Plan C: Plan of Statutory Right-of-Way for Highway through Part of Tsinstikeptum Indian Reserve No. 10, Osoyoos Division of Yale District, Province of British Columbia.  
Kamloops Land Title Office No. H-17839  
Canada Land Surveys Records No. 68823

Plan C depicts a small area of additional right-of-way found to be required during the construction of Campbell Road. As the legal survey of the original right-of-way for this project had already been surveyed (Plan B - KLTO H-16774 - CLSR 68076) this additional survey was required.

Plan D: Plan of Statutory Right-of-Way for Highway and Closed Road in Tsinstikeptum Indian Reserve No. 10, Osoyoos Division of Yale District, Province of British Columbia  
Kamloops Land title Office No. H-16876  
Canada Land Survey Records No. 68152

Broadly, Plan D illustrates in the broad, red, sweeping curve around the top of the plan, the New Westside Road alignment with its "fishhook" to provide public access to the Bear Creek Road. Across the bottom of the plan is the Ferry Wharf Road while its extension along the shore of Okanagan Lake (shown green) joins with the new Westside Road.

. . . 3

The new Westside Road alignment is self-explanatory. Note the changes to the Westside Road intersection with the Okanagan Highway 97 (refer to Plan A).

The Ferry Wharf Road is a more difficult proposition. Our Design and Surveys Branch did not want the Ferry Wharf Road to intersect with the Westside Road at its original location, for it would have been too close to the Westside/Hwy. 97 intersection to properly handle the traffic. Consequently the objectionable intersection was designed and acquired by this Ministry at a point (2') west as depicted on Plan H-16867 (CLSR 68152). The Band in later negotiations desired a greater distance between the Ferry Wharf intersection and the Highway and arranged for the preparation of a further legal survey (see Plan E) at their cost. As the Band's new proposal came between our agreement and construction, the new Ferry Wharf Road was constructed per Plan E. We await the transfer of the road allowance depicted on Plan E at this time.

Plan E: Plan of Statutory Right-of Way for Highway and Closed Road in Tsinstikeptum Indian Reserve No. 10, Osoyoos Division of Yale District, Province of British Columbia  
Kamloops Land Title Office No. - unknown  
Canada Land Surveys Records No. - unknown

Plan E is a survey done to instructions issued by the Band to depict the area they desired as the new location of the Ferry Wharf Road. The construction was done on this alignment. At this time we await the transfer of this new right-of-way to the Province in order that we may commence the closure and vesting process of the roads shown green.

The original alignment for the Ferry Wharf Road (as transferred on Plan D - KLTO H-16867 - CLSR 68152) was of a sufficient width to permit the widening of this Road to four lanes of traffic should development of the Reserve ever demand such. The area of right-of-way on Plan E is only wide enough to permit two lanes of traffic and we would propose that in the transfer of the new right-of-way (Plan E) to the Province that the Band and Canada give an undertaking that they will protect from development and provide to the Province free-of-charge any additional right-of-way required to widen the Ferry Wharf Road should the necessity arise. This obligation would permit us to close the existing width without a return of funds from the Band.

It has taken some length to set out for you the present situation in respect of I.R. 10 and to get to the point where we can enquire of you:

Question 1: Do you have the originals of Plan E in your possession?  
If not do you know where they are?



10/7/87

- 4 -

P/S 1816

Question 2: In view of the fact that a portion of the Ferry Wharf Road was constructed on the Plan E alignment behest,<sup>?</sup> is the Band still prepared to transfer to Provincial control in the usual way, the new right-of-way shown on Plan E, together with the undertaking as set out above? If so, we would appreciate knowing your schedule, for we desire to continue the process of transfers, closures and vesting that we may complete this transaction. If not please advise that we might consider the options available to us.

Further, and in respect of the Ferry Wharf Structures, we have to advise that this Ministry no longer has any obligations in respect of these structures. I understand:

- ✓ a) that the Westbank Band has made application to the Ministry of Forests and Lands, Kamloops for a 99 year lease on a waterlot covering these structures and that currently Lands awaits advice from the Band on its planned developed before the lease proceeds.
- b) that there exists a Map Reserve in favour of Parks (BC) but that Parks are prepared to relinquish their interest on request.
- c) this Ministry was (approximately two years ago) preparing to remove the structures when the Band indicated its desire to obtain them for use in their development. The Band produced a letter, see copy attached, in which they have assumed all liability for any occurrence whatsoever on the structures, during the time their application is under consideration.

Question 3: May we received advise as to the Band's intention's in pursuing this lease?

Question 4: Does the Band intend to do any remedial maintenance (as seems only reasonable in view of their liability acceptance) on the structures? We understand those structures are deteriorating rapidly and will shortly be in a condition which can only be termed hazardous.

I have taken the liberty of forwarding a copy of this letter to Gardner and Company, Barrister and Solicitor of Vancouver who was employed by the previous administration of the Band and who was deeply involved in this transaction, and who, I trust, is still in a position to advise you on those matters should you so wish.

10/7/87

- 5 -

P/S 1816

I trust this clearly sets out for you, our concerns, and our desire -  
to complete this transaction which is now approaching 9 years of age.

Yours truly  
A.C. Brown  
Director of Property Services

Per: D.I.F. MacSween  
Manager of Operations

c.c. Stan Ashcroft  
Barrister and Solicitor

c.c. Department of Indian and Northern Affairs  
Attn.: Juliet Balfour

b.c.c. Regional Property Agent  
Kamloops, B.C.

/bb

ENCLOSURE



# WESTBANK FIRST NATION

OLB Library  
0203

Our file: PW-20-5040  
Reply to: Rob Richardson  
E-mail: rrichardson@wfn.ca

Tuesday, May 28, 2002

Mr. Ron W. Mathieson, P. Eng.  
Project Manager  
Okanagan Lake Bridge Project  
200 - 546 Yates Street  
Victoria, BC V8W 1K8

Herb Erikson, P. Eng.  
Project Manager  
Transportation Planning Engineer  
Ministry of Transportation  
Thompson-Okanagan Region  
523 Columbia Street  
Kamloops, BC, V2C 2T9

Gentlemen:

## Re: Okanagan Lake Bridge Project and Highway 97 - Project A and B

As we approach the end of Project A and B for the Okanagan Lake Bridge and Highway 97 and prepare a final response to the various meetings and reports, the significant impact of Highway 97 on the Westbank First Nation Community becomes very apparent. Recognizing this fact, Council wishes to work cooperatively with your ministry to ensure a successful project for both parties.

We note that Projects A and B were intended more as "issues identification" than "issues resolution", more so for Project B. There are, however, a number of significant issues needing much discussion before any conclusions can be reached and a course of action determined.

Many of these issues have been part of the ongoing discussions including the unresolved matters and outstanding commitments surrounding the "1983 agreement", however, there are some issues that haven't been documented in any previous correspondence. The previously undocumented issues include the following:

1. The Project A1 and A2 work plan focused only on IR#10 and impacts to IR#10 lands and residents. Specific to the Campbell Road access issues, we are aware of the impact of this access on the Casa Loma area residents and the

need to collaborate with them to reach a solution that meet their needs as well as those of Westbank First Nation.

2. The Westbank First Nation has concerns with the potential impact of noise on IR# 10 and wishes to review this matter further with you. Specific reference is made to this item in the Project Summary Report (attached).
3. In addition to the need to conclude an acceptable alignment and standard for the required new cemetery access, WFN wishes to have MoT return, to Westbank First Nation, the existing highway right-of-way that surrounds the cemetery.
4. While not specific to road transportation, the Westbank First Nation is concerned with moving the navigation channel to the west side of the lake for all marine use which will concentrate the impact on the shoreline and the existing water intakes.
5. As a result of the bridge being built, the shore area immediately north has gradually turned into marshland. As part of the new bridge project, Westbank First Nation requests this area to be returned to its original sandy beach status. Additionally, Westbank First Nation request full involvement in discussions to determine how this is accomplished.

We look forward to discussions aimed at resolving all of these issues to the satisfaction of both parties prior to the commencement of any improvements to the highway corridor.

We thank you for the opportunity to have worked on this project with you and look forward to ongoing dialogue to resolve the outstanding issues.

#### WESTBANK FIRST NATION

Per:

  
Chief Brian Eli

  
Councilor Chad Paul

  
Councilor Mickey Werstuik

  
Councilor Raf DeGuevara

  
Councilor Deanna Hamilton

cc. Dick Fletcher, P. Eng., Urban Systems Ltd.

**MEMORANDUM OF UNDERSTANDING,**  
**dated as of February 24, 2004;**

**BETWEEN:**

Westbank First Nation, as represented by its elected Chief and Council ("WFN"), by its authorized representative

**AND:**

Her Majesty the Queen in Right of the Province of British Columbia, as represented by an authorized representative of the Minister of Transportation  
(the "Province")

(collectively, the "Parties")

**WHEREAS:**

- A. The Province is considering making affordable improvements at Campbell Road and Sneena Road along that portion of the Highway 97 corridor that runs through WFN's Indian Reserve No. 10 (the "Improvements") that are within the Province's \$20 million budget;
- B. The Province is also considering making improvements to the Okanagan Lake Bridge and associated approaches (the "Project");
- C. Having expended considerable resources on issues surrounding the Okanagan Lake Bridge project, WFN has expressed interest in being involved in the design and possible delivery of the Improvements;
- D. The Parties signed a memorandum of understanding in February 2004 to provide for funding to develop a functional design and related costing of the Improvements that meet the interests of both Parties; and
- E. The Province and WFN wish to work together to attempt to reach an agreement outlining the role of the WFN in the delivery of the Improvements.

**1. Purpose**

The purpose of this Memorandum of Understanding is to establish a process for the Province and the WFN to attempt to reach agreement on:

- (a) the role of the WFN in the delivery of the Improvements;
- (b) issues of mutual concern respecting Highway 97, including some of the matters included in the April 15, 1983 agreement between the Province and the WFN (the "1983 Agreement"); and



- (c) the provision of funding to the WFN to assist the WFN in its discussions with the Province.

## **2. Funding for WFN – Participation Costs**

The Province agrees to provide WFN with the sum of \$16, \$17 to enable the WFN to participate in the discussions contemplated by, and to carry out the terms of, this Memorandum of Understanding. Payment of said amount is due upon execution of this Memorandum of Understanding by WFN and payable within seven working days of the execution of this Memorandum of Understanding.

## **3. Funding for WFN – Process Costs**

The Province also agrees to reimburse the WFN, up to a maximum of \$16, \$17 for the cost of legal and business related advice in respect of negotiating the agreements contemplated by this Memorandum of Understanding. The Province agrees to enter into discussions with the WFN with respect to increasing this funding if during the process of discussions this amount is not sufficient.

## **4. Negotiation Process**

The Province and the WFN agree to instruct their respective negotiators to meet in a timely and ongoing manner with the objective of negotiating an agreement or agreements, as the case may be, respecting:

- (a) the WFN's role in the delivery of the Improvements;
- (b) the relationship between the delivery of the Improvements and the Project;
- (c) certain outstanding issues between the Parties respecting the 1983 Agreement;  
and
- (d) any other issue of concern to a Party related to the Improvements and the Project.

The Parties agree that the objective is to have an agreement in principle in place by March 30, 2004.

## **5. Procurement Process**

The Province intends to have a public procurement process for the Okanagan Lake Bridge. The Province requires that the procurement process for the Okanagan Lake Bridge be fair, transparent and open, including:

- treating all proponents fairly and equally in the selection process;
- no unfair advantage, bias or hidden criteria in the selection process; and

- equal access by all proponents to lands or adjacent property that may be made available for staging, detours and short term traffic management during construction.

The Parties agree to discuss how this objective could be reached if the WFN participates in the design or delivery of the Improvements.

#### **6. Functional Design and Affordability**

The Parties agree that the commitment to attempt to negotiate an agreement(s) as contemplated by this Memorandum of Understanding and, in particular, as set out in section 4 of this Memorandum of Understanding, is subject to: (a) the Parties agreeing upon a mutually acceptable functional design of the Improvements, and (b) the Province agreeing that such functional design of the Improvements is affordable.

#### **7. Other Improvements**

The Parties agree that they will discuss what other improvements may be necessary in the highway corridor that runs between Campbell Road and Boucherie Road and the timing and conditions upon which such improvements could be made.

#### **8. Conditions**

Any agreement(s) arising from this Memorandum of Understanding is subject to:

- (a) final approval of the elected Chief and Council of the WFN;
- (b) ratification by the Executive Council of the Province; and
- (c) the WFN being able to secure the required lands for the Improvements.

#### **9. Process**

- (a) The following person from each Party will be the primary contact for each Party in respect of discussions carried out under this Memorandum of Understanding:

##### **For the Province:**

Mr. Peter Milburn  
Executive Director, Sea to Sky Project  
B.C. Ministry of Transportation  
1120 – 777 Dunsmuir Street  
Vancouver, British Columbia  
V7Y 1K3

Phone: (604) 609-3886  
Facsimile: (604) 609-3881

For WFN:

Mr. Rob Richardson  
Westbank First Nation  
#301- 515 Highway 97 South  
Kelowna, British Columbia  
V1Z 3J2

Phone: (250) 769-2449  
Facsimile: (250) 769-2441

Vendor 251314 Loc \_\_\_\_\_ Ch. Sub \_\_\_\_\_

ACCOUNTS USE ONLY D M Y INVOICE #  
26/02/04 02FEB04WES

DATE INVOICE RECEIVED 26/02/04 COMMIT. OR EMPLOYEE #  
DATE GOODS/SVS REC'D 26/02/04 1. \_\_\_\_\_  
2. \_\_\_\_\_

LOGS/SERVICES REC'D SIGNATURE: \_\_\_\_\_

REF	REF	SERVICE LINE	STOR	PROJECT	
	55080	62340	P001	5577860	S16; S17
					\$
					\$
TOTAL					\$

Certified correct payment to sections 32 and 33 of the Financial Administration Act and related policies.

SPENDING AUTHORITY SIGNATURE: [Signature]

#### 10. Amendments

This Memorandum of Understanding may be amended by agreement in writing between the Parties.

#### 11. Term

This Memorandum of Understanding is effective from the date first noted above until May 30, 2004.

12. The Parties agree that Memorandum of Understanding will be legally enforceable.

Executed for and on behalf of the Westbank First Nation, as represented by its Chief and Council, by its authorized representative:

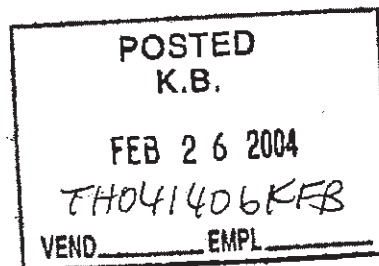
[Signature]  
Rob Richardson

Feb 25/04  
Date

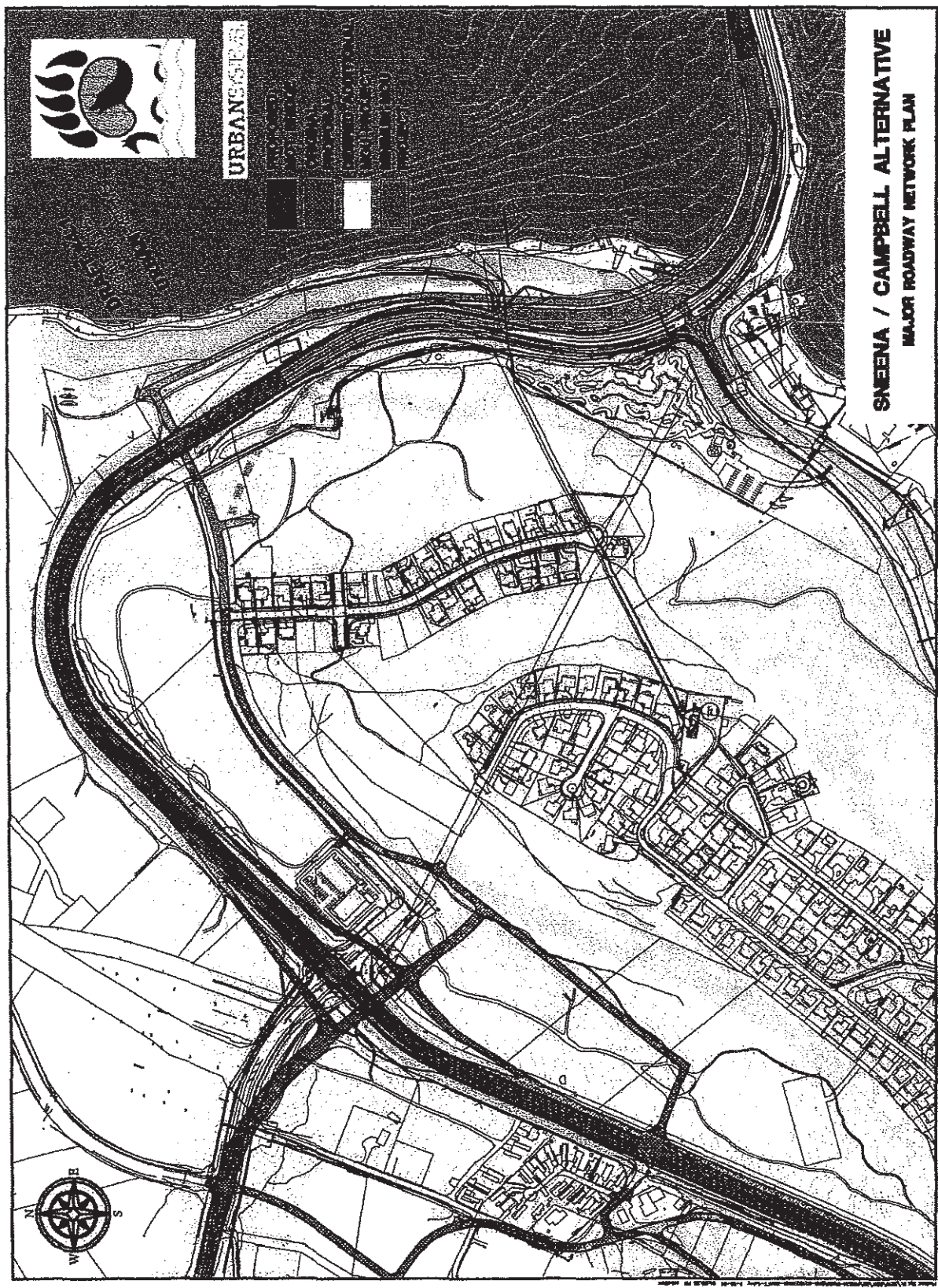
Executed for and on behalf of the Her Majesty the Queen in Right of the Province of British Columbia, as represented by an authorized representative of the Minister of Transportation:

[Signature]  
Peter Milburn

Feb 25, 2004  
Date



SCHEDULE "A"



GS 37





# WESTBANK FIRST NATION

Copy to  
Sarah

<b>RECEIVED</b>	
MINISTER'S OFFICE MINISTER OF TRANSPORTATION	
125800 JUL 08 2004	
DRAFT REPLY <input type="checkbox"/>	FYI <input type="checkbox"/> FILE <input type="checkbox"/>

July 8, 2004

Honourable Kevin Falcon  
Minister of Transportation  
PO Box 9055  
STN PRV GOVT  
Victoria, B.C.  
V8W 9E2

Rush  
Please.  
(pls. show to Sam  
& show it signed out  
where we're at)

Dear Minister:

**Re: Okanagan Lake Bridge and Associated Improvements**

As you are likely aware, Westbank First Nation (WFN) has been negotiating with your staff on the potential for WFN to deliver the improvements for the "west approach" to the Okanagan Lake Bridge Project. The request for these negotiations was made by your predecessor, the Honourable Judith Reid, when she verbally advised me that she was not accepting our Government to Government proposal to construct a new Okanagan Lake crossing as well as improvements at five intersections through WFN's Tsintikeptum IR #10.

While the above noted negotiations appear to be moving along satisfactorily, it is quite likely that they will not be sufficiently concluded in time for WFN to have an appropriate level of the necessary discussion with our Members to seek their approval prior to the expiration of the option to purchase the land required for the Campbell Road portion of the project.

In addition to our concerns about the time-frame, there are a number of issues that are critical to WFN arising from these negotiations that would be more appropriately dealt with at a political level rather than a staff level. With this in mind, I'm inviting you and Premiere Campbell to visit the WFN territory to discuss these matters with me and my Council prior to the end of July

#301 - 515 Highway 97 South, Kelowna, B.C. V1Z 3J2  
Telephone: (250) 769-4999 Facsimile (250) 769-3492

F:\Procurement\Chief Louise Lohd.doc



Please contact my office 769-2422 at your earliest convenience with proposed dates in order that we may confirm a meeting date and time.

Yours truly,

**WESTBANK FIRST NATION**

Per:



Chief Robert Louie

RL/cc

#301 - 515 Highway 97 South, Kelowna, B.C. V1Z 3J2  
Telephone: (250) 769-4999 Facsimile (250) 769-3492

P:\President\Chief Louie\jrh.doc

## MEMORANDUM OF UNDERSTANDING

### BETWEEN:

Westbank First Nation, as represented by its Chief and Council  
("Westbank")

### AND:

Her Majesty the Queen in Right of the Province of British  
Columbia, as represented by the Minister of Transportation  
(the "Province")

(collectively, the "Parties")

### WHEREAS:

- A. The Province is considering making improvements to the Okanagan Lake Bridge (the "Project"), and such Project improvements must be efficient, affordable and represent good value for money;
- B. Westbank wishes to discuss various issues arising from the April 15, 1983 agreement between Westbank and the Province respecting the transfer and use of certain Westbank lands for transportation purposes (the "1983 Agreement");
- C. The Parties wish to reach a common understanding in respect of each Party's objectives arising from the Project and a common understanding of interpreting and implementing the 1983 Agreement; and
- D. The Parties wish to develop and maintain a positive working relationship in respect of the Project and the 1983 Agreement.
- E. Westbank has submitted a proposal to construct a new bridge across Okanagan Lake on a government to government basis.

#### 1. Purpose

The purpose of this Memorandum of Understanding is to:

- (a) provide a framework for discussions between the Parties on a government-to-government basis;
- (b) facilitate a good working relationship between the Parties; and
- (c) to reach a mutually acceptable understanding between the Parties in respect of the issues set out in section 3 of this Memorandum of Understanding.

## **2. Timing**

The Parties will make reasonable best efforts to achieve the objectives of this Memorandum of Understanding in a timely manner, including ensuring the reasonable availability of each Party's representatives and technical support personnel.

## **3. Issues for Discussion**

- (a) The Parties agree that the issues for discussion include:
  - (i) exploring technical options with respect to the Project that best meet each Party's respective interests and objectives;
  - (ii) issues of concern arising from the 1983 Agreement; and
  - (iii) any other issue mutually agreed upon by the Parties.
- (b) The Parties will limit their discussion of the Project to technical and practical matters, and will not discuss any commercial aspect of the Project.

## **4. Process**

- (a) The following person from each Party will be the primary contact for each Party in respect of discussions carried out under this Memorandum of Understanding:

### **For the Province:**

Mr. Peter Milburn  
Executive Director, Sea to Sky Project  
B.C. Ministry of Transportation  
1120 – 777 Dunsmuir Street  
Vancouver, British Columbia  
V7Y 1K3

Phone: (604) 609-3886  
Facsimile: (604) 609-3881



### **For Westbank:**

Chief Robert Louie  
Westbank First Nation  
#301- 515 Highway 97 South  
Kelowna, British Columbia  
V1Z 3J2

Phone: (250) 769-4999  
Facsimile: (250) 769-3492

### **Technical Inquiries for WFN:**

Rob Richardson

- (b) The Province will make relevant information available to Westbank respecting the Project, including but not limited to, the Project's performance requirements, subject to such information not being confidential, or that the provision of such information does not compromise the Project's competitive process.
- (c) Any notice to be provided under this Memorandum of Understanding shall be sent to the person noted for each Party in subsection 4(a) of this Memorandum of Understanding.
- (d) The Parties agree to meet on July 4, 2003 at the Westbank offices to review the technical discussions and other issues referred to in section 3 of this Memorandum of Understanding, and to co-operate with each other to schedule any further meetings on an as needed basis.
- (e) This Memorandum of Understanding is effective as of the 26th day of May, 2003 until July 15, 2003. August 15, 2003  
- (f) Any Party may terminate this Memorandum of Understanding at any time in writing.

## 5. Amendments

This Memorandum of Understanding may be amended by agreement in writing between the Parties.

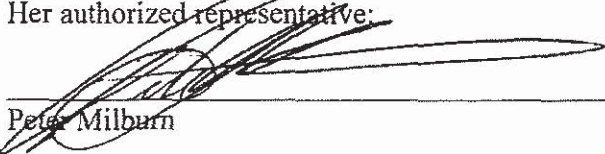
Executed for and on behalf of the Westbank First Nation, as represented by its Chief and Council, by its authorized representative:



Chief Robert Louie

JUNE 30, 2003  
Date

Executed for and on behalf of the Her Majesty the Queen in Right of the Province of British Columbia, as represented by the Minister of Transportation, by Her authorized representative:



Peter Milburn

June 25 / 03  
Date

OCT 13 2004  
WFN



## WESTBANK FIRST NATION COUNCIL

Suite 301 - 515 Highway 97 South, Kelowna, B.C. V1Z 3J2  
Telephone: (604) 769-4999 — Fax: (604) 769-4377

September 29, 2004

Honourable Kevin Falcon  
Ministry of Transportation  
PO Box 9055 Stn Prov Govt  
Victoria, B.C. V8W 9E2

Dear Minister Falcon:

**Re: West Approach to Okanagan Lake Bridge:**

Thank you for meeting with us on Friday, September 24, 2004. It was an excellent opportunity for us to discuss this very important project. We were pleased with the outcome.

Your desire to conclude appropriate agreements by the end of October 2004 is much appreciated and represents a significant challenge. We will do everything we can to meet this time frame. To achieve this, close collaboration on critical matters will be essential. Our internal process requires the approval of our Membership. We will be holding our first required meeting with our Membership within 20 days to present the details of what the final agreement will encompass. Following that, two more Membership meetings will be required to finalize the sale/exchange of land for the road right of way.

Our agreements must of course ensure that any outstanding issues from the 1983 Agreement are fully resolved or dealt with in a manner that is acceptable to WFN. It is important that the West Approach include the related highway corridor from Boucherie Road through to the new bridge. Time frames and Provincial commitments to construction are essential.

For clarity, I've outlined the commitments you made together with our understanding of the issues which are fundamental to concluding a successful agreement:

- The Province will provide the necessary funding for WFN to immediately secure Parcel "O" for the project from the WFN band member and CP holder. As discussed, this may require an immediate deposit to ensure its availability.
- The remainder of Parcel "O" not required for actual roads will be surveyed off at the Province's expense and will remain as WFN Lands.



- The Province will participate and be supportive in immediate meetings/negotiations with the federal Department of Fisheries and Oceans (DFO), Ministry of Environment (MOE), etc. to minimize the use of portions of the causeway and to provide environmental remediation/mitigation with the balance of the causeway. Any requisite water lots are to be turned over to WFN. WFN expects possession of the balance of the causeway and requisite water lots upon completion of the Bridge Project.

S16

- Although we did not specifically discuss the funding of the related "local road" network in detail, we confirm per the negotiations to date that the Province will participate financially in the construction of the roads and support WFN in their applications for construction funding for these roads.
- Your staff will identify the "offset lands" that will be made available to WFN to compensate for the lands that will be taken out of reserve status and transferred to the Province. Pursuant to the 1983 Agreement, freehold lands could be included in the "offset lands".
- WFN requires that issues pertaining to the two existing memorandums of understanding (MOU#1 and MOU#2) with WFN be finalized concurrently at the time the final agreement for this project is signed off.
- The timetable for the Westside Road interchange and related works will be moved up by the Province by two years to allow construction commencement by no later than 2009. The other phases will be adjusted accordingly.
- The Province will immediately transfer The Ferry Wharf road and The Ferry Wharf lands to WFN. It is assumed that the Province will ensure that any outstanding environmental remediation is carried out prior to the transfer or preferably, that an allowance for this remediation be included with the transfer.

In conclusion, we are extremely encouraged by the result of our meeting and thank you and Minister Thorpe for your commitment to jointly work with WFN to provide an effective transportation solution to the west approach of Okanagan Lake Bridge.

Based on our understanding of our meeting as described above, we have instructed our negotiating team to work diligently with Messrs. Milburn and Isaacs to conclude the required work that will allow us to sign-off on the final agreements. We have also taken

12/2004 13:46 2507692441

WFN

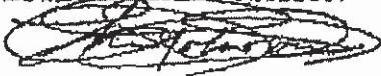
PAGE 03

immediate steps to arrange a meeting with our Membership to gain the necessary support to finalize these arrangements.

We look forward to working with you to finalize an agreement at the earliest date possible.

Yours Sincerely,

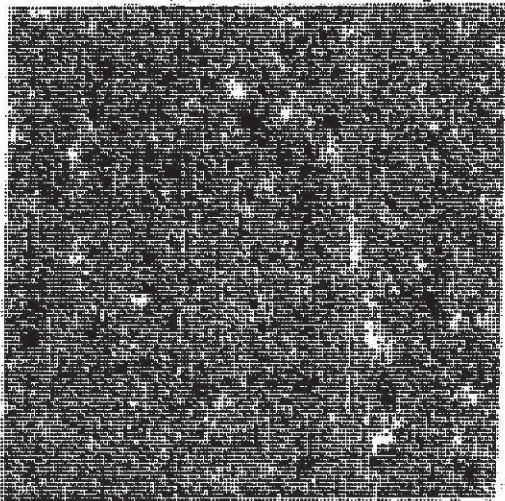
WESTBANK FIRST NATION



Per:  
Chief Robert Louie

RL/cc

cc: Honourable Rick Therpe



Oct-20-04 08:29

From-WESTBANK FIRST NATION

T-885 P.02/03 F-628



## WESTBANK FIRST NATION COUNCIL

Suite 301 - 515 Highway 97 South, Kelowna, B.C. V1Z 3J2

Telephone: (604) 769-4999 — Fax (604) 769-4377

October 18, 2004

Honourable Kevin Falcon  
Minister of Transportation  
PO Box 9055 Stn Prov Govt  
Victoria, B.C. V8W 9E2

Dear Minister Falcon:

Re: West Approach to Okanagan Lake Bridge - Causeway Environmental Issues

I'm writing as a follow up to the meeting in our office on Friday September 24, 2004 and a serious issue that has arisen since our meeting.

During our meeting you indicated to me that you were prepared to turn over any portions of the causeway that were not required for environmental remediation/mitigation. We assumed, in good faith, that your staff would honour the spirit of this commitment by proactively, enthusiastically, and expeditiously proceeding to investigate/negotiate with the federal Department of Fisheries and Oceans (DFO) to identify options for meeting the environmental requirements.

Our negotiators had a phone conference with Messrs Mathieson and Kent from your staff, one of the MoT consultants, and two staff member from DFO. Unfortunately, it is our feeling that there is a lack of interest on the part of your bridge project staff and, understandably, DFO to reconsider this matter to incorporate the interest of the Westbank First Nation.

Mr. Kent stated, in the above referenced meeting, that they had been working on this for five years and that they already had information in the bridge project data room. The implication of this was that it was already a done deal.

Our very simple request is that MoT staff join with WFN in exploring all available alternatives in a committed fashion with the view to resolving WFN's concerns about environmental remediation/mitigation.

#301 - 515 Highway 97 South, Kelowna, B.C. V1Z 3J2  
Telephone: (250) 769-4999 Facsimile (250) 769-3492

1

T:\Precidents\Minister Kevin Falcon 12 Sept 24, 2004.doc

Oct-20-04 08:28

FROM-WESTBANK FIRST NATION

T-965 P.03/03 F-828

In the meantime, it is our intention to continue to work with your government to come to a solution to all of the outstanding issues related to the West Approach to the new Okanagan Lake Bridge and to work with you to finalize an agreement at the earliest date possible.

Yours Sincerely,

**WESTBANK FIRST NATION**

Per:

Chief Robert Louie

RL/cc

cc Honourable Rick Thorpe

#301 - 515 Highway 97 South, Kelowna, B.C. V1Z 3J2  
Telephone: (250) 769-4999 Facsimile (250) 769-3492

2

F:\PetaJenisMasyarakatKaryaFakultasSept 29, 2004.doc



November 2, 2004

Rob Richardson  
Westbank First Nation  
#301 – 515 Highway 97 South  
Kelowna, British Columbia V1Z 3J2

Dear Rob Richardson:

Thank you for the opportunity to discuss improvements to the Okanagan Lake Crossing, including improvements to the Campbell Road and Westside Road accesses to Highway 97.

As you know achieving, safety and reliability improvements as well as improving the movement of residents, commuters, tourists and goods are vital as we proceed to improve access to Highway 97 from Campbell Road and Westside Road and as we proceed with construction of the new Okanagan Lake Bridge.

To achieve these goals, it is necessary to complete negotiations in a timely manner with the Westbank Nation regarding a revised agreement-in-principle concerning your specific interests in the Campbell Road and Westside Road accesses, and other issues identified in the revised agreement-in-principle, and more generally in the Okanagan Lake Crossing Project.

It is unfortunate that parcel 0 is unavailable for consideration in our discussions, however, we would like to discuss alternative options with you in an effort to complete a revised agreement-in-principle. You will recall that the Hon. Kevin Falcon, Minister of Transportation, offered to accelerate completion of the Westside Road interchange from completion in 2010 to completion in 2008, if an agreement-in-principle was completed by Nov. 1, 2004. The Minister has informed me that he is willing to continue this offer and extend the deadline until midnight Nov. 8, 2004 in an extraordinary effort to successfully conclude an agreement-in-principle.

.../2

---

Ministry of  
Transportation

#1300 – 1075 West Georgia Street  
Vancouver, BC V6E 3C9  
Tel: (604) 669-8848  
Fax: (604) 605-5936



Rob Richardson  
Page 2

---

I am available to meet with you today, or any day between now and Nov. 8, 2004 to complete our discussions and conclude an agreement-in-principle.

Thank you for your attention to this matter.

Sincerely,

Peter Milburn  
Ministry of Transportation

Attach.

December 22, 2004

Chief Robert Louie  
Westbank First Nation  
515 Highway 97 South, Suite 301  
Kelowna BC V1Z 3J2

Reference: 130551

Dear Chief Louie:

**Re: Okanagan Lake Bridge**

I am writing to provide a response to the key issues raised in your letters of September 29, October 18, and November 24, 2004 to my office.

I appreciated the opportunity to meet with you on September 24, 2004 to discuss issues of mutual concern. I understand that the Westbank First Nation (WFN) is no longer able to facilitate the purchase of Parcel O, which has meant that we must re-examine other designs for the proposed Campbell Road improvements. I further understand that these discussions are ongoing between our respective representatives.

As you can appreciate, while we were focussing considerable time and resources on the possibility of purchasing Parcel O, the procurement process for an Okanagan Lake Crossing Project has been proceeding. I am concerned, therefore, about the considerable delay in reaching a mutual understanding on the western approach improvements. To that end, my officials have shared with yours a draft agreement in principle (AIP) with the objective of setting out the core elements of a final agreement designed to guide our negotiations to a successful conclusion by February 2005.

In your September 29, 2004 letter you noted that we agreed to work together to see what, if any, alternatives may exist to the environmental remediation/mitigation plan currently proposed for the causeway in respect of the project and that this could include going together to the Department of Fisheries and Oceans (DFO) to determine whether such alternatives could be pursued. You also noted in your October 18, 2004 letter that you felt that ministry representatives had a lack of interest in pursuing alternatives with DFO representatives.

.../2

- 2 -

As we discussed at our September 24, 2004 meeting, whatever approach we mutually take with respect to the causeway issue and DFO, it cannot result in project schedule delay. While I disagree with your observation about my ministry's lack of interest in finding an alternative solution, it is clear that DFO is not prepared to re-examine the environmental compensation plan without seriously undermining the project schedule. While I realize this is disappointing, we need to bring the search for an alternative environmental solution to a close.

S21

While this timing makes this issue very difficult to resolve, we are committed to discussing WFN's involvement in the other components of the project, including the western approach, that could include, among other things, a role for the WFN to manage the delivery of improvements and an express requirement that WFN members and contractors be considered in the delivery of the agreed upon improvements. My Project Director, Mr. Ron Mathieson, has also discussed with your representative the opportunity of including an incentive in the West Causeway works, which is about to be released for tender, for local hire of WFN members. Over and above this offer, my staff are prepared to provide a part-time training role for a WFN member to gain experience in survey and quality assurance aspects of road construction from February through to June 2005.

Your September 29, 2004 letter sets out a number of other points with respect to our discussion of September 24, 2004. The items we discussed that day were discussed with the understanding that there would be an overall agreement respecting the western approach improvements. Presuming that such an agreement is reached, I have instructed my officials to deal with the remaining issues we discussed on September 24, 2004.

.../3

- 3 -

Our objective is to have a final agreement reached by February 2005, and I remain committed to reaching a final agreement that meets our mutual interests and the interests of the travelling public on Highway 97. We believe that putting an AIP in place as soon as possible will help focus our discussions, and facilitate a mutually beneficial agreement.

Thank you for taking the time to consider these issues and for working with us to finalize an agreement.

Sincerely,

*Original Signed By*

Kevin Falcon  
Minister

Copy to: Honourable Rick Thorpe  
Minister of Provincial Revenue  
MLA, Okanagan-Westside



## WESTBANK FIRST NATION

### PUBLIC WORKS DEPARTMENT

515 Highway, 97 South, Kelowna, B.C. V1Z 3J2  
Telephone: (250) 769-4999 - Fax: (250) 769-2441

Tuesday, November 02, 2004

Ministry of Transportation Partnerships Development,  
Government of BC  
PO Box 10426, Pacific Center,  
777 Dunsmuir St.  
Vancouver, BC, V7Y 1K3

Attention: Peter Milburn, P. Eng.,  
Executive Project Director

Dear Sir:

**Re: Westbank First Nation ("WFN") - Your Letter of November 2, 2004**

We've received your draft AIP and are presently reviewing it.

We agree with the principles outlined in your letter, which we have included in this letter for clarity.

"As you know achieving, safety and reliability improvements as well as improving the movement of residents, commuters, tourists and goods are vital as we proceed to improve access to Highway 97 from Campbell Road and Westside Road and as we proceed with construction of the new Okanagan Lake Bridge."

S16



Page 2  
Tuesday, November 02, 2004  
Mr. Peter Milburn

S16

Throughout this entire time, we could have been working towards an AIP in a manner that would have allowed WFN's negotiating team a full opportunity to review the AIP with Chief and Council and to have a proper review by our legal Council. As you have been aware for sometime, I will be away from November 5th through to November 16<sup>th</sup>. There is no time to have this discussion with Council, as Chief Louie will be away until after I've left for my vacation. In addition, because of previous commitments, WFN's legal counsel for this project is unavailable to review this document until later this week.

With respect to the fourth paragraph, I suspect Chief Louie will be dismayed by your suggestion that Minister Falcon agreed to the advancement of the timing for the Westside Road interchanges contingent upon a satisfactory agreement being in place by November 1, 2004.

I simply don't see how this matter can be resolved until late November at the earliest.

While I appreciate your offer to meet at any time up until November 8<sup>th</sup>, you are fully aware that I will not be available from the evening of November 4<sup>th</sup> onward. Given the record of our discussions over the past year, including the backtracking by the Ministry negotiating team (e.g., Shelter Bay Marina breakwater offered and then seemed to be taken away), unnecessary delays as noted above, and failure to acquire Parcel "O" in a timely manner, WFN cannot commit to such a large and complex project based on a few days of review. I would be very surprised if Chief and Council would continue discussions in my absence as I am the one person who has full WFN continuity in the negotiations.

In addition to the above concerns, it is only recently that we have been discussing options that don't include Parcel "O". Chief and Council have not had time to fully absorb these changes. The latest Ministry proposal to WFN is, at the time of writing this letter, less than 24 hours old. Not enough time!

Page 3  
Tuesday, November 02, 2004  
Mr. Peter Milburn

While we feel there is an opportunity to reach an agreement that will be beneficial to the transportation corridor and address the interests of WFN, it requires substantial time to properly review your proposal.

I hope this letter clarifies our issues and concerns with the current process and our lack of progress to date. I expect that Chief Louie will be writing Minister Falcon later this week to request a meeting during the week of November 22, 2004.

Yours truly,

**WESTBANK FIRST NATION**

Per:



R Richardson, P. Eng.  
Director of Public Works

Pages 78 through 79 redacted for the following reasons:

-----

S14

**From:** Koyl, Mary TRAN:EX  
**Sent:** Wednesday, November 24, 2004 12:03 PM  
**To:** Fitzpatrick, Suzanne M TRAN:EX  
**Cc:** Kent, Mike TRAN:EX; Hutchings, Geraldine AG:EX  
**Subject:** filing: wfn consultation: Okanagan Lake Crossing Project

*Mary Koyl*

-----Original Message-----

**From:** Mathieson, Ron W TRAN:EX  
**Sent:** Tuesday, November 23, 2004 4:30 PM  
**To:** Rob Richardson (rrichardson@wfn.ca)  
**Cc:** XT:Isaac, Tom Translink EAO;IN; Milburn, Peter R TRAN:EX; Koyl, Mary TRAN:EX  
**Subject:** Okanagan Lake Crossing Project

Rob

I have not heard anything from you on the attached letter so I searched our files for a copy and could not find one. I was positive that I could recall faxing this letter to you personally and I would like to know if you did indeed receive it? I had fully intended to send it and my apologies if this did not take place. Clearly, some of the information in the letter is outdated, but my offer to meet with you to develop a schedule for the next several months to ensure that the WFN is fully in the loop with the New Crossing still stands. (So too does my offer to make a coastal engineering expert available to you.)

The proponents are required to submit their technical responses to the RFP by December 1st, followed by their commercial responses on December 13th. As you are aware, we expect to select the preferred proponent by the close of March, 2005. During the coming months, I would like to work with you to determine which portions of the concession agreement and appended schedules would be of interest to WFN. (For your information, I have attached the table of contents and the list of schedules for the latest version of the draft concession agreement).

I thought perhaps the best approach would be for me to meet with you in Kelowna to develop a schedule as to what documents and reports we should bring to you so that we can engage in a meaningful discussion regarding items that we are negotiating with the proponents, and as far as possible, include WFN's input into our negotiations as they proceed. The Ministry is prepared to continue to provide a reasonable level of funding to assist with the technical expertise required for the WFN to work with the information we will be providing.

I would be available immediately to work with you on this - please advise me as to your thoughts regarding this approach.

Regards,  
 Ron



Response to RR  
 0808 letter.doc...



toc000.PDF (391  
 KB)



November 24, 2004

Ministry of Transportation  
306 Parliament Buildings  
Victoria, B.C.  
V8V 1X4

Attention; The Honourable Kevin Falcon

Dear Minister:

Re; Westbank First Nation (WFN)  
Inclusion in Valuation of P3 Proponent Proposals:

I have been advised that the documentation the Province has produced for the Okanagan Lake New Crossing Services does not include any discussion in the documentation or the evaluation criteria requiring the proposal proponents to include WFN, members and WFN Contractors and WFN related organizations as part of their project team.

As the adjacent property owners and the First Nation neighbour to this project we feel this is unacceptable. I have instructed our administration to request your project team to issue an addendum to the request which will revise the evaluation criteria to include involvement of our people and contractors in the proposals.

During the September 24 meeting in our offices with yourself and Minister Thorpe there was general agreement that there needed to be effort put into building a good long-term relationship between MOT and WFN in order to move forward in a cooperative manner to deliver the transportation solutions for the region. Inclusion of opportunities for WFN and our Members is a critical first step in this initiative.

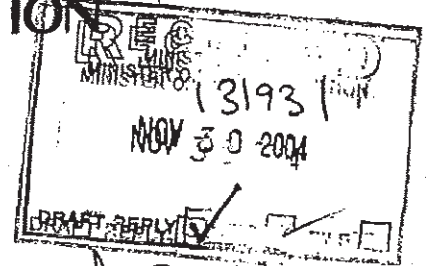
This matter requires prompt attention by your project team. I respectfully request your immediate response assuring that the matter will be dealt with as requested.

Yours truly,

WESTBANK FIRST NATION

  
Chief Robert Louie

Cc The Honourable Rick Thorpe  
WFN Council Members



X-ref 130551  
Response

Pls. show  
John Dyble at  
his request.





January 11, 2005

Rob Richardson  
Westbank First Nation  
#301 - 515 Highway 97 South  
Kelowna, British Columbia V1Z 3J2

Dear Rob Richardson:

**Re: Response to your November 2, 2004 Letter**

I am writing in response to your letter to me of November 2, 2004 respecting our discussions regarding potential improvements to the Okanagan Lake Crossing, including improvements to the Campbell Road and Westside Road accesses to Highway 97.

A number of your statements in your letter require clarification.

First, with respect to the timing of an agreement in principle, which you note at the bottom of page 1 of your letter, we have been advising you from the beginning of our discussions that the Ministry requires certainty with respect to the improvements on the western approaches so as to be able to procure the replacement of the Okanagan Lake Crossing and that such certainty was on a strict time-line. This time-line was reiterated by the Minister in his meeting with the Chief on September 24, 2004, and by me to you on numerous occasions both at our face to face meetings and on the telephone.

S16

---

Ministry of  
Transportation

#1300 - 1075 West Georgia Street  
Vancouver, BC V6E 3C9  
Tel: (604) 669-8848  
Fax: (604) 605-5936

Rob Richardson  
January 11, 2005  
Page 2

---

S16

While our discussions have taken a great deal of time and energy to date, we have been optimistic that we can reach an agreement that will meet both parties' interests. We believe that there are significant benefits on the table for the Westbank First Nation, not only with respect to the improvements themselves, but the potential for a significant role for the Westbank First Nation in the delivery of these improvements.

Sincerely,



Peter Milburn  
Ministry of Transportation

c: John Dyble, ADM, MOT  
Chief Robert Louie, WFN



# WESTBANK FIRST NATION

## COUNCIL

Suite 301 - 515 Highway 97 South, Kelowna, B.C. V1Z 3J2

Telephone: (250) 769-4999 — Fax: (250) 769-4377

Our file: PW-20-5040

Monday, January 17, 2005

Honourable Kevin Falcon  
Minister of Transportation  
PO Box 9055 Stn Prov Govt  
Victoria, B.C. V8W 9E2

COPY

Dear: Minister Falcon

RE: Okanagan Lake Bridge Project – Your letter of December 22, 2004

I am writing this letter to request a meeting to discuss the Okanagan Lake Bridge Project.

It is important that we meet to avoid a delay in the causeway-fill portion of the work and to avoid jeopardizing the bridge project.

There seems to be much confusion and dispute arising from our September 24, 2004 meeting. There are significant differences in interpretation between your staff and mine regarding the items discussed and the resolutions agreed to. In my opinion, we had a very good and productive meeting on September 24<sup>th</sup> and I would very much like to bring things back on track.

Once we've agreed upon a time and place for our meeting, I'll have my staff prepare an issues list for our discussions and will have that issues list immediately forwarded to you.

My preference is to meet in Kelowna as it will allow my Council and support staff to be present. However, if you can't make a meeting in Kelowna, I am willing to travel to Victoria with one or two Council and support staff. I look forward to hearing from you at your earliest possible opportunity.

Yours truly,

Chief Robert Louie  
Westbank First Nation

301 - 515 Highway 97 South  
Kelowna, BC V1Z 3J2



January 25, 2005

Cliff # 133135

Chief Robert Louie  
Westbank First Nation  
515 Highway 97 South, Suite 301  
Kelowna BC V1Z 3J2

Dear Chief Louie:

**Re: Okanagan Lake Bridge Project**

I appreciated the opportunity to discuss the Okanagan Lake Bridge Project with you and Council yesterday on the telephone, and to follow-up on your letter to Minister Falcon of January 17th requesting an urgent meeting.

As discussed yesterday, I hope that we can resolve the issues of dispute and confusion identified in your letter.

You raised 3 items in our discussion yesterday:

1.

2.

S16

Ministry of  
Transportation

Office of the  
Assistant Deputy Minister  
Highways Department

Mailing Address:  
PO Box 9850 Stn Prov Govt  
Victoria British Columbia V8W 9T5  
Telephone: (250) 387-3260

Location:  
940 Blanshard Street  
Victoria British Columbia  
[www.gov.bc.ca/tran](http://www.gov.bc.ca/tran)

Chief Robert Loule  
Page 2  
January 25, 2005

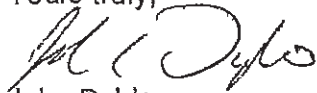
3

S16

Finally, as offered in Minister Falcon's letter of December 22, 2004, we would also be pleased to provide a training role for a WFN member as part of the owner's team throughout the construction of this bridge project. Your contact for this commitment will be Ron Mathieson, Project Director, Okanagan Lake Crossing Project.

I hope that the discussions between our respective negotiators can produce significant progress today. I would be happy to have a further discussion on outstanding issues later this week.

Yours truly,



John Dyble  
Assistant Deputy Minister  
Highways Department

Attachment  
copy: Peter Milburn, Executive Project Director



Page 87 redacted for the following reason:

-----

S16, S21

02/09/2005 13:07 FAX 250 789 4377

WESTBANK FIRST NATION

002/020



## WESTBANK FIRST NATION

February 9, 2005

**VIA FACSIMILE: 1 (250) 356-2290**

The Minister of Transportation  
PO Box 9055  
STN PROV GOVT  
Victoria BC V8W 9E2

**Attention: The Honourable Kevin Falcon**

Dear Mr. Falcon:

**Re: The Proposed New Okanagan Lake Bridge**

As you know, over the last several months our respective representatives have been meeting and discussing the Westbank First Nation's involvement in the proposed new Okanagan Lake bridge and the west approach to same. Those discussions appear to have come to an impasse, at least for the present, with respect to a number of issues. Hopefully those will be worked out in relatively short order, however, we believe, given the current position of your representatives, this will not occur for some months. Obviously this has delayed, and will continue to delay, the awarding of tenders, and concluding the concessions necessary for the bridge construction. Your representatives have indicated that this is problematic to them given their timetables.

The problem is exacerbated by the fact that neither your Ministry nor the Department of Fisheries and Oceans has properly consulted with us, much less accommodated our concerns, in respect of the west causeway and environmental matters relating to the demolition of the current bridge and the construction of the new bridge, together with its approaches. As you know, this is a legally binding obligation and duty of both the Provincial and Federal Governments based upon the honour of the Crown.

S16, S17

02/08/2005 13:08 FAX 250 768 4377

WESTBANK FIRST NATION

0087020

February 9, 2005  
Page 2

S16, S17

We look forward to your hopefully positive response to this proposal. If you agree with its contents, our Council is prepared to execute this Agreement forthwith which we would ask for within one week of the date of this letter.

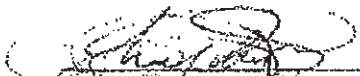
In the spirit of cooperation and good faith, we have instructed our negotiating team to continue their negotiations on the balance of the issues to conclude the agreement.

We look forward to your response to this proposal.

Yours very truly,

Westbank First Nation

Per:

  
Chief Robert Louis

  
Councillor Michael Werstuk

  
Councillor Michael De Guevara

  
Councillor Brian Eli

  
Councillor Loretta Swite

Enclosure

Pages 90 through 91 redacted for the following reasons:

-----

S14

Not Responsive

-----Original Message-----

From: Nyland, Dirk TRAN:EX <Dirk.Nyland@gov.bc.ca>  
To: Dick Fletcher <dfletcher@urban-systems.com>  
CC: Rob Richardson (E-mail) <RobRichardson@shaw.ca>  
Sent: Wed Jun 22 19:52:21 2005  
Subject: RE: Contact Info

Dick;



Please email me as soon as you know the results. I have given people a heads-up and can have a cheque cut and couriered on the 29th if the vote is positive.

Dirk

-----Original Message-----

From: Dick Fletcher [mailto:dfletcher@urban-systems.com]  
Sent: Wednesday, June 22, 2005 11:38 AM  
To: Nyland, Dirk TRAN:EX  
Subject: RE: Contact Info

Dirk:

Thanks for the info. Jon is a great choice to deliver the project and continue to rebuild the WFN- MoT relationship that you have helped get back on track.

S13, S16

S13, S16

S13, S16 I believe that Rob has at least left messages for Tom Isaac and possibly Peter Milburn but I don't know that they have acted on the matter. Perhaps as the Acting ADM you could "cause it to happen"? We also need to discuss the "interface" of Campbell and the west bridge ramps before the pre load is concluded. I've heard that they are having to let settlement "catch up" so maybe we can make revisions? Hope to see you on July 5 here.

Regards:

Dick

Richard Fletcher, P.Eng.  
Principal  
Urban Systems Ltd.  
Tel. (250) 762-2517/ Fax. (250) 763-5266  
E-Mail- dfletcher@urban-systems.com

-----Original Message-----

From: Nyland, Dirk TRAN:EX [mailto:Dirk.Nyland@gov.bc.ca]  
Sent: Wednesday, June 22, 2005 9:42 AM  
To: Rob Richardson; Dick Fletcher  
Cc: 'Jon Buckle'  
Subject: Contact Info

Morning;

Attached is Jon's contact info as I have it.

Dirk

<<Jon Buckle>>

Dirk Nyland P.Eng.,  
Chief Engineer  
British Columbia Ministry of Transportation  
Victoria

phone: (250) 387-2310 fax: (250) 387-7735  
cell: (250) 812-6645  
mailto:dirk.nyland@gov.bc.ca <mailto:dirk.nyland@gov.bc.ca>  
www.gov.bc.ca/tran <www.gov.bc.ca/tran>

The information transmitted is intended only for the person or entity to which it is addressed and may contain confidential and/or privileged material. Any retransmission, dissemination or other use of, or taking of any action in reliance upon, this information by persons or entities other than the intended recipient is prohibited.

The information transmitted is intended only for the person or entity to which it is addressed and may contain confidential and/or privileged material. Any retransmission, dissemination or other use of, or taking of any action in reliance upon, this information by persons or entities other than the intended recipient is prohibited.

From: Nyland, Dirk TRAN:EX  
Sent: Saturday, June 25, 2005 1:55 PM  
To: 'dfletcher@urban-systems.com'; 'RobRichardson@shaw.ca'  
Subject: Re: Requested letter

That would be good as I have to find a time slot between mtgs or curtail a mtg....

Dirk Nyland P.Eng.,  
Chief Engineer,  
British Columbia Ministry of Transportation  
Victoria

phone: (250) 387-2310 FAX: (250) 387-7735  
cell: (250) 812-6645  
mailto:dirk.nyland@gov.bc.ca  
www.gov.bc.ca/tran

-----Original Message-----

From: Dick Fletcher <dfletcher@urban-systems.com>  
To: Nyland, Dirk TRAN:EX <Dirk.Nyland@gov.bc.ca>; RobRichardson@shaw.ca  
<RobRichardson@shaw.ca>  
Sent: Sat Jun 25 12:36:36 2005  
Subject: Re: Requested letter

Dirk:

Our penalty is only rrelated to the S16, S17 being paid out by WFN by the 30th. The signing of the leases can happen after. By all means let's talk Monday AM- do you want to call me and I can connect Rob?

Regards:

Dick

Richard Fletcher, P.Eng.

Principal

Urban Systems Ltd.

Tel. (250) 762-2517/ Fax (250) 763-5266

E-Mail- dfletcher@urban-systems.com

The information transmitted is intended only for the person or entity to which it is addressed and may contain confidential and/or privileged material. Any review, retransmission, dissemination or other use of, or taking of any action in reliance upon, this information by persons or entities other than the intended recipient is prohibited. If you received this in error, please contact the sender and delete the material from any computers.

-----Original Message-----

From: Nyland, Dirk TRAN:EX <Dirk.Nyland@gov.bc.ca>  
To: Dick Fletcher <dfletcher@urban-systems.com>; 'RobRichardson@shaw.ca'  
<RobRichardson@shaw.ca>  
Sent: Sat Jun 25 09:54:42 2005  
Subject: Re: Requested letter

Dick

Ok....we need to talk about a game plan for the signing of the leases and your need to avoid a penalty.....I'm given to understand the Minister needs to sign the leases so I foresee an extremely tight timeframe between ratification of the Agreement, getting the Minister's and WFN signatures and getting the cheques delivered.

Are you available to discuss on Monday?

Dirk

Dirk Nyland P.Eng.,  
Chief Engineer,  
British Columbia Ministry of Transportation  
Victoria

phone: (250) 387-2310 FAX: (250) 387-7735  
cell: (250) 812-6645  
mailto:dirk.nyland@gov.bc.ca  
www.gov.bc.ca/tran

-----Original Message-----

From: Dick Fletcher <dffletcher@urban-systems.com>  
To: Nyland, Dirk TRAN:EX <Dirk.Nyland@gov.bc.ca>; RobRichardson@shaw.ca  
<RobRichardson@shaw.ca>  
Sent: Sat Jun 25 09:02:22 2005  
Subject: Re: Requested letter

Hi Dirk:

Thanks for your prompt attention to this matter.

S13

S13

Dick Richard

Fletcher, P.Eng. Principal Urban Systems Ltd. Tel. (250) 762-2517/ Fax  
(250) 763-5266

E-Mail- dffletcher@urban-systems.com

The information transmitted is intended only for the person or entity to which it is addressed and may contain confidential and/or privileged material. Any review, retransmission, dissemination or other use of, or taking of any action in reliance upon, this information by persons or entities other than the intended recipient is prohibited. If you received this in error, please contact the sender and delete the material from any computers.

-----Original Message-----

From: Nyland, Dirk TRAN:EX <Dirk.Nyland@gov.bc.ca>  
To: Rob Richardson (E-mail) <RobRichardson@shaw.ca>  
CC: Dick Fletcher <dffletcher@urban-systems.com>  
Sent: Fri Jun 24 17:13:57 2005  
Subject: Requested letter

Rob;

Further to Jon's mtg with Chief Louie, I'll have a letter out to WFN, copy to you, by FAX with original to follow, first thing Monday morning. I left a message on your office phone as I seem to have an incorrect cell phone number for you. If you could send me the correct one that would be great.

Thx,

Dirk

Dirk Nyland P.Eng.,  
Chief Engineer  
British Columbia Ministry of Transportation  
Victoria

phone: (250) 387-2310 fax: (250) 387-7735  
cell: (250) 812-6645  
mailto:dirk.nyland@gov.bc.ca  
www.gov.bc.ca/tran  
nutmeg

The information transmitted is intended only for the person or entity to which it is addressed and may contain confidential and/or privileged material. Any retransmission, dissemination or other use of, or taking of any action in reliance upon, this information by persons or entities other than the intended recipient is prohibited.

The information transmitted is intended only for the person or entity to which it is addressed and may contain confidential and/or privileged material. Any retransmission, dissemination or other use of, or taking of any action in reliance upon, this information by persons or entities other than the intended recipient is prohibited.

77880-1.05

**WESTBANK FIRST NATION****Office of the Chief**

#301, 515 Hwy. 97 South, Kelowna, BC V1Z 3J2  
Telephone: (250) 769-4999 – Fax: (250) 769-4377

June 24, 2005

Ministry of Transportation  
#300 - 1358 St. Paul Street  
Kelowna BC  
V1Y 2E1

**Attention: Jon Buckle, P.Eng.,  
Project Director**

Dear Sir:

**Re: Okanagan Lake Bridge Project Meeting with Chief and Council**

Congratulations on your appointment as Project Director for the Okanagan Lake Bridge Project and to thank you for making it a priority to meet with us today. We look forward to building a strong relationship with you and your project team. You indicated the team would include; Barry LeBlonde, as Senior Project Manager, Dan Williams, Doug Kirk and, Teresa Switzer as an Administration/Communications person.

In the spirit of creating good communications the following is our understanding of the key issues and related agreed upon actions from our discussions this morning;

**Project Communications with WFN**

As we discussed, your project and our West Approach agreement with MoT are closely linked and require close cooperation which can only be achieved with good communications with yourself. Your commitment to make that a priority is welcome. As WFN lacks the staff resources to effectively interface with MoT on the Bridge and West Approach Projects, Dick Fletcher, P.Eng., of Urban Systems and Rob Richardson, P.Eng., have been retained to fulfill this function.. Your main WFN contact will be with them. They will liaise with Council and staff as appropriate. They have been responsible for our dealings with your Ministry concerning these projects since 1999.

S16



2

**Action:**

You will review the matter and provide a response next week, ideally by the close of business Tuesday so we can report the agreement to our community at our membership meeting on the evening of June 28th.

**West Approach Interface:**

This is an important consideration and requires immediate attention as the current plans for the bridge and preload have yet to be revised to accommodate the Campbell Road Interchange. The bridge project concession agreement has wording to allow this to take place.

**Action:**

You will be reviewing the matter so it can be addressed next week.

S16, S17

**Action:**

Once the Concessionaire is in place this matter will be given consideration in conjunction with WFN.

**WFN Opportunities during the Bridge construction:**

This is a major issue for our Members. It is critical that we have something in writing confirming the verbal indication that there were clauses in the Best and Final Offer documentation that provided incentives for involvement of WFN members and companies in the Bridge construction.

We also had verbal representations that your owner's team would provide the resources to fund a number of our members to job shadow. This is extremely important to our building the capacity we will require in the future to fully implement self government and our projects.

**Action:**

On the matter of opportunities with the construction of the bridge, you will provide us with a letter confirming the concessionaire agreement contains incentives for the involvement of our members on the Bridge Project by next Tuesday.

You will review and advise of the job shadow opportunities that will be made available for our Members on your team.

**Highway 97 Traffic Impact during Bridge Construction:**

WFN recognizes there is potentially a major impact to Bridge Hill portion of Highway 97 during the 3 years of construction. This will be detrimental to the regional economy and impact the efficiency of the constructors and their ability to achieve the "incentives" you mentioned are in the Concession Agreement. We suggest that portions of the Campbell Road and local roads projects, if constructed early, could route the construction traffic off the highway at the Westside Road intersection resulting in a considerable traffic impact reduction and potential construction cost savings.

**Action:**

You and WFN to work together to maximize the benefits of scheduling the construction of the West Approach works.

**Disposal of Existing Bridge Pontoons:**

WFN may wish to acquire some or all of the pontoons from the old bridge and therefore wish to have "first right of refusal" to the pontoons.

**Action:**

You will convey the request to the Concessionaire making the official request and provide confirmation of acceptance.

**Disposal of Causeway Fill to be Removed:**

The existing causeway that is not required for the new bridge and approach is to be lowered to near Lake level. As the causeway fill material was originally "mined" from IR#10, WFN wishes to have the removed material placed on IR#10 lands; half on Parcel "O" north of the highway and half on the Shelter Bay to the south.

**Action:**

You will advise the Concessionaire of the requirement and assure that it becomes part of the construction schedule.

4

**Bridge Announcement:**

The date for the Province to announce the selected concessionaire is Wednesday June 29. WFN would like to participate in the announcement.

The Province has yet to determine the means of the announcement, the options being; a news release from the Minister's office in Victoria or the Minister, Rick Thorpe etc., doing a media event in Kelowna. If the plan is the news release then a quote from me would be included. If the media event is the means, then I and Council wish to be involved.

**Action:**

You will have the communications people be in touch with our contacts to advise of the means to be used and arrange appropriate involvement by WFN.

In closing I wish to reiterate the strong desire of myself and all of council to work collaboratively with you and the bridge concessionaire to effectively deliver the bridge and west approach projects.

Yours truly,

**WESTBANK FIRST NATION**

Per: 

Chief Robert Louie

RL/lac

c.c. Council

c.c. James F. Montain, A.Sc. T. CMC, LGA. Director of Operations

c.c. Rob Richardson, P. Eng.

c.c. Dick Fletcher, P.Eng., Urban Systems Ltd



June 29, 2005

77880-1.05

Sent by Fax – Original to Follow

Chief Robert Louie  
Office of the Chief  
Westbank First Nation  
#301 – 515 Hwy 97 South  
Kelowna BC V1Z 3J2

Chief Robert Louie:

Re: William R. Bennett Bridge and your letter of June 24, 2005

Thank you for the above noted letter with respect to our June 24<sup>th</sup> meeting. I very much appreciated the opportunity to meet with you and Council on such short notice.

While the Ministry's response to the specific issues outlined in your letter is in process on some items, I wanted to get back to you today to advise on their status:

1.

S16

**West Approach Interface:**

The Ministry concurs that the transition from bridge to interchange must be very carefully coordinated. A meeting with Rob Richardson, Dick Fletcher, Dirk Nyland and Jon buckle has been arranged for July 5<sup>th</sup> at which time this will be addressed.

2. Parcel "O" Foreshore:

The location on parcel "O" for a possible staging and graving dock has been examined closely by MOT and the proponent. The site is not suitable for the graving dock but the proponent will work with WFN to consider the site for a staging area.

.../2

Ministry of  
Transportation

Okanagan Shuswap District  
Southern Interior Region

Mailing Address:  
#300 – 1358 St. Paul Street  
Kelowna, BC V1Y 2E1

Telephone: (250) 712-3660  
Facsimile: (250) 712-3669  
Web Address:  
[www.gov.bc.ca/tran](http://www.gov.bc.ca/tran)

3. WFN Employment Opportunities:  
Dirk Nyland has forwarded a separate letter confirming that employment incentive for WFN is included in the concession agreement. MOT has also discussed with the proponent the opportunities for job sharing and this will be explored in more detail with WFN.
4. Traffic During Construction:  
Options for managing traffic will be worked out jointly with WFN once the preliminary design is finalized. This will be discussed at the July 5<sup>th</sup> meeting.
5. Disposal of Pontoons:  
WFN's interest in utilizing the pontoons will be conveyed to the proponent and the matter will be followed up as the project proceeds.
6. Disposal of Causeway Fill:  
At this time MOT is unsure about the future of the existing causeway. We will speak further to this issue at the July 5<sup>th</sup> meeting.
- 7.

S16

8. Bridge Announcement:  
MOT greatly appreciates the support of WFN in this endeavor, and will be working hard to continue the partnership which has already developed.

I look forward to furthering our positive working relationship as we continue to address the above issues and other matters in delivering this essential project.

Sincerely,

Jon Buckle, P. Eng.  
Project Director

cc: Rob Richardson, P. Eng.  
Dirk Nyland, P. Eng., Chief Engineer, Ministry of Transportation

LEASE

THIS LEASE OF LOTS 427-1, 461, 462 AND 463 AS SHOWN ON PLAN OF SURVEY NO. RSBC 3988R, TSINIKTEPTUM INDIAN RESERVE NO. 10 IS MADE EFFECTIVE AS OF THE 9 DAY OF August, 2005, AND HAS BEEN EXECUTED THIS 29 DAY OF June, 2005:

BETWEEN:

The WESTBANK FIRST NATION, of 301-515 Highway 97  
South, Kelowna, B.C. V1Z 3J2

("WFN")

OF THE FIRST PART

AND:

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

("the Lessee")

OF THE SECOND PART

RECITALS

- A. The Lands leased under this Lease are part of the Reserve.
- B. Pursuant to the Self-Government Agreement and the *Self-Government Act* the WFN has jurisdiction over, and is the lessor, of the Lands.
- C. Pursuant to the Constitution, and in particular section 104.2 thereof, any lease of WFN Community Lands, as defined in the Constitution, for a term of in excess of fifteen years, but not exceeding forty-nine years, must be approved by the WFN membership at a Special Membership Meeting. At a Special Membership Meeting held on the 28th day of June, 2005, the majority of the WFN membership in attendance voted in favour of the granting of this Lease.
- D. The Lessee is entering into this Lease for the purpose of using the Lands for Transportation Purposes.
- E. The Lessee has applied to lease the Lands in furtherance of the Agreement. In consideration of the rents, covenants and agreements reserved and contained in this Lease, the



Parties covenant and agree as follows:

#### PART 1 - DEFINITIONS

##### 1.1

- (n) "Agreement" means the Agreement made as of the 18<sup>th</sup> day of April 2005, between the WFN and the Lessee attached hereto as Schedule "A".
- (b) "Alterations" means any substantial alterations, restorations, renovations, relocations, reductions, additions, expansions, reconstructions, removals, replacements, modifications, or improvements to the Premises.
- (c) "Authority" means any one, or any combination of, federal, provincial, WFN, municipal, local, and other governmental and quasi-governmental authorities, departments, commissions, and boards having jurisdiction, including the Band Council and any utility company lawfully acting under its statutory power.
- (d) "BCICAC" means British Columbia International Commercial Arbitration Centre.
- (e) "Canada" means Her Majesty the Queen in right of Canada.
- (f) "CEAA" means the *Canadian Environmental Assessment Act*, S.C. 1992, c. 37 and regulations made under it, all as amended or replaced from time to time.
- (g) "CEPA" means the *Canadian Environmental Protection Act*, 1999, S.C. 1999, c. 33, and any regulations made under it, all as amended or replaced from time to time.
- (h) "Commencement Date" means the effective date of this Lease as set forth on page 1.
- (i) "Constitution" means the WFN Constitution in force as at the 1<sup>st</sup> day of April, 2005.
- (j) "Contaminant" includes any contaminant, toxic substance, hazardous substance, hazardous waste, hazardous recyclable, ozone-depleting substance, halocarbon, pesticide, waste, or any similar substance, and any substance defined or referred to as such under any Environmental Laws or other provincial legislation.
- (k) "Council" means the Council of the WFN within the meaning of the Self-Government Agreement, or any successor to the Council pursuant to a WFN Law.
- (l) "Environment" means the components of the earth and includes:
  - (a) air, land, and water;
  - (b) all layers of the atmosphere;

- (c) all organic and inorganic matter and living organisms; and
- (d) the interacting natural systems that include components referred to in paragraphs (a) to (c).
- (m) "Environmental Laws" mean:
  - (i) any laws relating, in whole or in part, to the protection and enhancement of the Environment, public health, public safety, and the transportation of dangerous goods; and
  - (ii) any specifications, mitigative measures, and environmental protection measures describes, contained, or referred to in any audit, report, or environmental screening decision pertaining to any Project on the Premises.
- (n) "Improvements" means all buildings, structures, works, facilities, services, landscaping and other improvements by whomsoever made and which are at any time and from time to time situate on, under, above or adjacent to the Lands including all equipment, machinery, apparatus and fixtures forming part of or attached to the Improvements and all alterations, removals, additions to, replacements and substitutions of the Improvements.
- (o) "Land Exchange" has the same meaning as defined in the Agreement.
- (p) "Lands" means those lands outlined in black in Schedule "B" to this Lease and identified as lots 427-1, 461, 462 and 463 as shown on plan of survey no. RSBC 3988R, all on Tsinstikoptum Indian Reserve No. 10.
- (q) "Laws" means all laws, statutes, regulations, by-laws, rules, codes, guidelines, approvals, permits, licenses, or other authorizations, standards, declarations, notices, ordinances, requirements, and directions of any Authority in force from time to time, including WFN Laws.
- (r) "Lease" means this Indenture of Lease and any Schedules attached hereto.
- (s) "Lease Date" means the date on which the Term of this Lease commences, and this Lease becomes effective.
- (t) "Lease Year" means each consecutive twelve-month period comprising the Term of this Lease, with the First Lease Year being the first period of twelve months commencing on the Commencement Date and ending on the day immediately preceding the first anniversary of the Commencement Date.
- (u) "Minerals" means ore of metal and every natural substance that can be mined and that:

- (i) occurs in fragments or particles lying on or above or adjacent to the bedrock source from which it is derived, and commonly described as talus, or
- (ii) is in the place or position in which it was originally formed or deposited, as distinguished from loose, fragmentary or broken rock or float which by decomposition or erosion of rock, is found in wash, loose earth, gravel or sand,
- (iii) and includes coal, petroleum and all other hydrocarbons, regardless of gravity and howsoever and wheresoever recovered, natural gas, building and construction stone, limestone, dolomite, marble, shale, clay, sand and gravel.
- (v) "Party" means a party to this Lease and "Parties" means all of them.
- (w) "Person" includes any natural person, partnership, association or corporation.
- (x) "Premises" means the Lands and the Improvements and every reference in this Lease to the "Premises" includes a reference to every part of the Premises.
- (y) "Project" has the meaning ascribed to it under CEAA, but excludes any project on the "exclusion list", as that term is defined under CEAA.
- (z) "Registry" means the Westbank First Nation Register of the First Nations Self-Government Land Registry, located in the National Capital Region, or its successor.
- (aa) "Rent" means the rent set forth in Part 4 hereof.
- (bb) "Replacement Cost" means the total cost of repairing, replacing or reinstating any item of property with materials of like kind and quality on the same or a similar site, without deduction for physical, accounting or other depreciation.
- (cc) "Reserve" means Tsinitkeptum Indian Reserve No. 10 which is set apart by Canada for the use and benefit of the WFN.
- (dd) "Self-Government Act" means the *Westbank First Nation Self-Government Act* S.C. 2004, c 17 which came into force on the 1<sup>st</sup> day of April, 2005.
- (ee) "Self-Government Agreement" means the Westbank First Nation Self-Government Agreement entered into as between the WFN and Canada on the 3<sup>rd</sup> day of October, 2003.
- (ff) "Spill" includes discharge, dispose, spray, inject, inoculate, abandon, deposit, spill, leak, leach, seep, pour, emit, empty, throw, dump, place, and exhaust.
- (gg) "Term" means that forty-nine year period of time commencing on the Commencement Date and expiring on the 9<sup>th</sup> day of August, 2054 unless earlier terminated pursuant to this Lease.

- (hh) "Transportation Act" means the *Transportation Act*, S.B.C., 2004, c.44, and any regulations made under it, all as amended or replaced from time to time.
- (ii) "Transportation Purposes" means for provincial public highway purposes or alternatively for both provincial highway purposes and other improvements or works of public utility related to transportation.
- (jj) "Unavoidable Delay" means a delay in the performance or completion of the construction or repair of the Improvements that is beyond the reasonable control of the Lessee caused by reason of fire, war or acts of military authority, rebellion or civil commotion, general strike or work boycott, industrial relation disputes, material and labour shortages, explosion, flood, wind, water, earthquake or other acts of God, acts or omissions by third parties not related to the Lessee, or acts or failures to act by lawful authorities with respect to land tenure, approval of documentation and plans and all other matters within the control of lawful authorities, but excluding any delay caused by lack of funds or other financial reasons.
- (kk) "WFN Law" means a law, bylaw or statute of the WFN in force and effect at the relevant time.

#### PART 2 - THE DEMISE

- 2.1 The WFN hereby leases to the Lessee the Premises, excepting and reserving unto the WFN and Canada all Minerals upon or under the Lands, **TO HAVE AND TO HOLD** the Premises unto the Lessee for the Term, yielding and paying Rent as hereinafter provided, and subject to the terms, conditions, provisos, exceptions and reservations contained in this Lease and the prior termination as herein set forth.
- 2.2 This Lease shall terminate prior to the end of the Term upon the completion of the Land Exchange as set forth in Subsection 2.5(b) of the Agreement.

#### PART 3 - PERMITTED USE

- 3.1 The Lessee will not use the Premises, or any part thereof, or suffer or permit the Premises, or any part thereof, to be used, for any purpose other than for Transportation Purposes in accordance with the *Transportation Act*.
- 3.2 The Lessee shall, subject to Section 3.1, have the unrestricted right and responsibility to occupy, use and operate the Premises as if they were on Crown land under the administration and control of the Lessee.

**PART 4 - RENT**

- 4.1 The Lessee will pay as Rent to the WFN in lawful money of Canada the £ 0 within forty-eight (48) hours of the Commencement Date.
- 4.2 No additional rent, charges or fees, will be payable to the Lessee under this Lease.
- 4.3 Nothing in this Part 4 shall be interpreted or construed as being a consent by the WFN to the sale, assignment, transfer, sublease or mortgage of the Lessee's interest in this Lease, which consent will not be unreasonably withheld or delayed.

**PART 5 - UTILITIES**

- 5.1 The Lessee is responsible for providing at its expense all services and facilities required by it for use of the Premises. The WFN agrees to cooperate in providing all necessary consents, approvals and cooperation as the Lessee may reasonably require in order to obtain such services and facilities.
- 5.2 Without limiting the generality of the foregoing, the Lessee will pay for all water, gas, telephone, light, power, heat, air-conditioning, sewer and garbage disposal services and facilities for use of the Premises.
- 5.3 No interruption of any service or facility provided to the Premises, except those caused by the WFN, its employees or agents, will be deemed to be a disturbance of the Lessee's enjoyment of the Premises or render the WFN liable for injury to or in damages to the Lessee or relieve the Parties from their obligations under this Lease.
- 5.4 The Lessee acknowledges that permits dated April 6, 1979, under registration number 62828 and April 28, 1976, under registration number 51079 (the "Permits") are in place in favour of, respectively, Inland Natural Gas Company Limited ("Inland") in respect of a natural gas pipeline (the "Gas Pipeline") and British Columbia Hydro and Power Authority ("B.C. Hydro") in respect of the provision of hydroelectric power (the "Hydro Line") through portions of Parcels "C" and "N". In addition, the WFN has an unregistered water line running through Parcels "C" and "N". The Lessee will work with Inland, or its successor Terasen Gas, B.C. Hydro and the WFN in minimizing any adverse impacts upon the Gas Pipeline, the Hydro Line and the WFN's water line resulting from the Improvements, and will use its reasonable best efforts to ensure that Inland, or its successor Terasen Gas, B.C. Hydro and the WFN will not suffer any damage or loss in respect of same.
- 5.5 The Lessee agrees that any Permit fees, or fees for replacement tenure for the Gas Pipeline or Hydro Line, will remain payable to the WFN until the end of the term or earlier termination of this Lease pursuant to section 2.2.

#### PART 6 - COMPLIANCE WITH LAWS

- 6.1 The Lessee will at its expense observe and perform all of its obligations under, and all matters and things necessary or expedient to be observed or performed by it, by virtue of any applicable Laws.
- 6.2 If any statutory notice is given lawfully requiring the execution of works by any contractors or subcontractors the Lessee on the Premises during the Term, and
- (a) if notice is served upon the Lessee, the Lessee will forthwith forward it or a copy of it to the WFN and will (unless a certificate of exemption is obtained from the respective statutory authority) forthwith, at its expense, execute such works as are necessary to comply with the notice, or
  - (b) if the notice is served upon the WFN, the WFN will forthwith forward it or a copy of it to the Lessee and thereupon the Lessee will, forthwith, at its expense, execute such works as are necessary to comply with the notice, and, in each such instance, the Lessee will, forthwith upon completion of the works required by such statutory notice or order, provide evidence satisfactory to the WFN of compliance with the terms of the statutory notice or order, including any certificates of inspection issued in respect of the works.
- 6.3 If the Lessee contests the validity of any requirements set out in Section 6.1, proceedings relating thereto must be commenced before the expiration of sixty (60) days after the Lessee has first been notified of any breach of such requirements.

#### PART 7 - NUISANCE

- 7.1 The Lessee will not cause, permit or suffer any nuisance in, on, or about the Premises.
- 7.2 Without limiting Section 7.1, the Lessee will, upon written notice from the WFN, abate any nuisance arising directly or indirectly out of the use or occupation of the Premises by the Lessee or someone else.
- 7.3 The normal carrying on at any time by the Lessee of the uses permitted by Part 3 to the standards required of it under the provisions of this Lease will not be considered to be a nuisance for the purpose of this Part.

#### PART 8 - WASTE

- 8.1 Except as permitted by Section 8.2, the Lessee will not cause, permit or suffer the commission of any waste of the Premises.
- 8.2 Except as required by construction and installations expressly permitted by this Lease, and by standard maintenance requirements for the Premises, and except as otherwise



permitted in writing by the WFN, the Lessee will not cause, permit or suffer the removal of any sand, gravel, mard, topsoil, or other material constituting part of the Lands.

#### **PART 9 - RUBBISH**

- 9.1 Without limiting Part 7, the Lessee will not cause, permit or suffer any refuse, rubbish or debris to be placed or left in, on or about the Premises except as is reasonably necessary in accordance with the uses permitted by Part 3 or as permitted in writing by the WFN, and will take all necessary, reasonable, precautions to protect the Premises against fire.

#### **PART 10 - ENVIRONMENT**

##### **10.1 CONTAMINANTS**

The Lessee will not use the Premises to generate, manufacture, refine, treat, transport, store, handle, dispose of, transfer, produce, Spill, or process any Contaminants, except as may be reasonably required for uses permitted under Part III and in strict compliance with Environmental Laws, and with the prior written consent of the WFN, which consent may be unreasonably and arbitrarily withheld, and provided that the WFN acknowledges that (a) the Premises will be used as part of the Lessee's highway infrastructure and (b) any transportation of Contaminants on or through the Premises by a member of the public will not constitute a breach of this Lease, and (c) the Lessee will not be under any obligation to inspect for Contaminants.

##### **10.2 REMOVAL OF CONTAMINANTS**

- (n) Without limiting Section 10.3, if requested by the WFN or any Authority, the Lessee will, at its own expense, promptly remove from the Premises any Contaminants that are, or have been, located, stored, or incorporated in, on, or under the Premises in a manner prohibited under Section 10.1 and, upon the removal, will immediately provide the WFN with documentation satisfactory to the WFN confirming the completion of the removal satisfactory to the WFN and any Authority.
- (b) Prior to the end of the Term, the Lessee will, at its own expense, remove from the Premises any Contaminants that are, or have been, located, stored, or incorporated in, on, or under the Premises.

##### **10.3 REPORT OF SPILL**

Upon the Spill of any Contaminants, or discovery of a Spill of any Contaminants, by the Lessee in, on, above, or under the Premises, the Lessee will:

- (n) immediately deliver written notice to the WFN and any appropriate Authority of the occurrence of the Spill and details relating to the Spill, including, the time

and extent of the Spill, the estimated amount of Contaminants involved, the remedial action taken prior to the delivery of the notice, the remedial action that the Lessee intends to take in order to contain or rectify the Spill, and any Persons observed who appeared to have caused or who were in the vicinity of the Spill;

- (b) at its own expense, immediately take all remedial action necessary to fully rectify the effects of the Spill in compliance with all Environmental Laws;
- (c) provide the WFN with an independently-prepared report, satisfactory to the WFN, of the Lessee's activities under Subsection 10.3(b) and the state of the Premises after such activities compared with the state of the Premises prior to the Spill, if known; and
- (d) do such further activities as the WFN may reasonably require, based on the report referred to in Subsection 10.3(c), to rectify the Spill.

#### 10.4 INCREASED RISKS

The Lessee will not or construct any Improvements or carry out any Alterations that materially increase the risk of liability to the WFN (whether direct or indirect) as a result of the application of Environmental Laws (as determined by the WFN acting reasonably).

#### 10.5 TITLE TO CONTAMINANTS

Notwithstanding any rule of law to the contrary, any Contaminants that are located, stored, Spilled, or incorporated in, on, or under the Premises remain the sole and exclusive property of the Lessee and will not become the property of the WFN, regardless of any degree of affixation of the Contaminants to the Premises.

- 10.6 The provisions of this Part 10 will be reasonably interpreted and enforced and will not apply to:

- (a) Spills of Contaminants that are not contrary to Law;
- (b) Minor or negligible Spills of Contaminants that do not constitute a significant threat to the Environment provided the Lessee takes reasonable steps to effect a timely clean up of such Spills after notice of them, or
- (c) Spills of Contaminants by the WFN or those for whom it is responsible at law.

### PART 11-AUDIT AND ENVIRONMENTAL SITE ASSESSMENT

- 11.1 The Lessee will have an independent consultant undertake an environmental site assessment, and prepare a report (screening level) in accordance with the requirements of CEAA, immediately prior to the Commencement Date.

- 11.2 Within 8 months before the expiration of this Lease, the Lessee will undertake, at the Lessee's own expense, and provide to the WFN, an environmental site assessment report (screening level) in accordance with the requirements of CEA conducted by an independent consultant designated or approved by the WFN.
- 11.3 In preparing the reports referred to in Sections 11.1 and 11.2, the environmental consultant was, or will be, as the case may be, required to review the site history and inspect the Premises to identify portions of the Premises with indicators of contamination and to conduct appropriate testing to assess suspect soil and, if practical, water. In identifying such portions of the Premises, the consultant relied, or will rely, as the case may be, at least on historical information and instances of visually apparent unusual soil, water, or vegetation conditions.
- 11.4 The reports referred to in Sections 11.1 and 11.2 will be *prima facie* evidence between the Parties of the respective environmental condition of the Premises immediately prior to the Commencement Date and at the termination of this Lease.
- 11.5 At the expiration or earlier termination of this Lease, the Lessee will remediate the Premises to the environmental condition of the Premises identified in the report referred to in Section 11.1, or the environmental condition acceptable to the WFN.

#### PART 12 - IMPROVEMENTS

- 12.1 Subject to the provisions of this Part 12 and Parts 13 and 14, the Lessee may, at its own expense, construct any Improvements on the Lands.
- 12.2 The Lessee agrees to discuss with Inland, or its successor Tensian Gas, B.C. Hydro, and the WFN the impact that the Improvements may have upon the Gas Pipeline, the Hydro Line or the WFN water line and take reasonable measures to resolve any outstanding issues, including the loss of any fees that would otherwise have been payable to the WFN.

#### PART 13 - REPAIR OF PREMISES

- 13.1 (a) The Lessee will at its own expense at all times during the Term, consistent with its policies and standards, keep in good order and condition the Premises, and repair, renew, replace and maintain all Improvements excepting reasonable wear and tear only as is not inconsistent with the foregoing.
- (b) Without limiting the generality of Subsection 13.1(a), the maintenance, repair, replacement and renewal of the Improvements will include any defects to the Improvements arising out of construction of the Improvements, including all work of a structural nature.

- (c) The Lessee will take reasonable steps, consistent with its policies and standards, to keep all roadways and sidewalks on the Premises free and clear of all snow, ice and other obstructions.

- 13.2 The Lessee will complete all repair and renewal under this Part in accordance with the provisions of Part 14.

#### **PART 14 - CONSTRUCTION REQUIREMENTS**

- 14.1 Without limiting Part 6, all construction and other work on the Premises will be carried out and completed to a standard and quality at least as high as those of any improvements which are being repaired, restored, renewed, replaced or substituted and in accordance with the Lessee's policies and standards.

#### **PART 15 - INSURANCE**

- 15.1 The Lessee agrees to self-insure to the extent necessary in or to ensure that the WFN will not incur any liability or costs in relation to the Premises.

#### **PART 16 - REMOVAL OF BUILDINGS, FIXTURES AND CHATELS**

- 16.1 At any time during the Term or within NINETY (90) days after the expiration of this Lease, if the Lessee is not in default under the Lease it may at its expense remove all of its moveable goods and chattels from the Premises, provided that any and all damage caused by such removal is repaired to the reasonable satisfaction of the WFN.

- 16.2 The Lessee will at the Lessee's own expense, upon written demand by the WFN given on or before the 90th day after the expiration or of this Lease, forthwith remove from the Premises any or all of the Lessee's moveable goods and chattels as the WFN requires and leave the remainder of the Premises in good and substantial repair and condition and free from all debris to the reasonable satisfaction of the WFN.

- 16.3 If the Lessee does not remove its moveable goods and chattels from the Premises as provided in Section 16.1 or, if applicable, Section 16.2, then the WFN may remove them and dispose of them as it sees fit. The Lessee will pay to the WFN, forthwith upon demand, all costs and expenses incurred in the removal and disposal of the moveable goods and chattels and in making good all damage caused to the Premises by the removal. The WFN will not be responsible to the Lessee for any loss suffered by the Lessee as a result of the removal or the disposal of moveable goods and chattels.

#### **PART 17 - INDEMNITY**

- 17.1 The Lessee will indemnify and save harmless the WFN and Canada against and from all

loss, costs (including legal costs), damages, liabilities and expenses arising out of or related to any breach of a Lessee's covenant and all claims, demands, actions, suits and other proceedings for personal injury, death or property damage or loss arising out of or related to any act or omission of the Lessee, its officials, employees or agents or any act or omission of a sublessee under this Lease, its officials, employees or agents, and this indemnity shall survive the expiration or earlier termination of this Lease.

17.2 Notwithstanding Section 17.1, the Lessee's covenant to indemnify and save harmless will not apply to any claim, demand, loss, cost, damage, action, suit or other proceeding to the extent that same is occasioned or contributed to by the negligence or wilful act or omission of the WFN, or Canada, their officials, employees or agents.

17.3 Notwithstanding Section 17.2, the Lessee will indemnify and save harmless the WFN and Canada against and from all loss, costs (including legal costs), damages, liabilities and expenses arising out of or related to all claims, demands, actions, suits and other proceedings for personal injury, death or property damage or loss arising out of or related to construction of any improvements on the Lands or any defect or want of repair therein, or any want of maintenance thereof.

#### **PART 18 - QUIET ENJOYMENT**

18.1 The Lessee by paying the Rent and observing and performing the covenants in this Lease may peaceably and quietly possess, hold and enjoy the Premises during the Term without any interruption or disturbance by the WFN.

#### **PART 19 - PAYMENTS BY THE WFN REGARDED AS RENT**

19.1 If at any time before or after the expiration or earlier termination of the Lease the WFN suffers or incurs any damage, loss or expense by reason of any failure of the Lessee to perform or observe any of the Lessee's covenants or makes any payment for which the Lessee is liable under this Lease, or if the WFN is compelled or elects to incur any expense including legal fees in instituting, prosecuting or defending any action or proceeding instituted by reason of any default of the Lessee under this Lease (including any action or proceeding against the Lessee), then in every such case the amount of damage, loss, expense or payment (including legal fees of the WFN on a special costs or solicitor and own client basis), together with interest as provided in Section 20.1, will be paid by the Lessee to the WFN forthwith on demand by the WFN.

19.2 The amount of any damage, loss, expense or payment referred to in Section 19.1 will be added to or deemed to be Rent due under the Lease, and be recoverable in the manner provided by law for the recovery of Rent in arrears.

**PART 20 - ARREARS TO BEAR INTEREST**

- 20.1 If the Rent or any other sum owing by the Lessee to the WFN under this Lease is not paid within thirty (30) days from the date on which it is due then it will bear interest at the Prime Rate in effect from time to time plus four percent (4%) per annum from the date the Rent or the sum is due until the date of the payment by the Lessee, but this stipulation for interest will not prejudice or affect any other remedies of the WFN under this Lease or otherwise, or be construed to relieve the Lessee from any default in making the Rent payment at the time and in the manner specified in this Lease.

**PART 21- REMEDIES CUMULATIVE**

- 21.1 All rights and remedies of the WFN are cumulative and are in addition to and do not exclude any other right or remedy provided in this Lease or otherwise allowed by law.
- 21.2 All rights and remedies of the WFN may be exercised concurrently.

**PART 22 - SURRENDER OF POSSESSION**

- 22.1 Subject to Part 16, when the Term expires, the Lessee will peaceably surrender the Premises to the WFN maintained, repaired and renewed as provided in Part 13.

**PART 23 - NET LEASE**

- 23.1 This Lease is to be a completely carefree net lease for the WFN and notwithstanding anything in this Lease to the contrary the WFN is not to be responsible during the Term for any costs, charges, expenses or outlays of any nature in respect of the Premises, and without limiting the generality of the foregoing, the WFN shall not in any way be responsible or liable for any damage or destruction in or to the Premises howsoever occurring, and the WFN shall not be obligated to maintain or to make any repairs, renewals or replacements in or to the Premises.

**PART 24 - NO WARRANTIES**

- 24.1 No representations, warranties or conditions have been made to the Lessee in respect of the Premises by the WFN, its officials, servants and agents.
- 24.2 The Lessee is fully familiar with the Premises and every part and aspect of the Premises and, without limiting the generality of the foregoing, the Lessee acknowledges that it has carried out a full inspection of the Premises and takes the Premises as is in reliance of its own inspection and not relying on any representations or warranties of the WFN, its officials, servants or agents.



**PART 25 - HEADINGS**

- 25.1 All headings in this Lease have been inserted as a matter of convenience and for reference only and in no way define, limit, enlarge, modify or explain the scope or meaning of the Lease or any of its provisions.
- 25.2 Any reference in this Lease to a Part, Section, Subsection or Paragraph will mean a Part, Section, Subsection or Paragraph of this Lease unless otherwise expressly provided.
- 25.3 Any reference in this Lease to Lessee's covenants will be deemed to include all terms and conditions to be performed or observed by the Lessee under this Lease.

**PART 26- AMENDMENTS**

- 26.1 Subject to the provisions of the Agreement, this Lease constitutes the entire agreement between the Parties, and no modification of this Lease will be inferred from anything done or omitted to be done by either of the Parties except pursuant to an agreement in writing duly executed by the Parties.
- 26.2 This Lease, together with the Agreement, constitutes the entire agreement between the Parties with respect to the subject matter of this Lease and no waiver of any provision of the Lease will be inferred from anything done or omitted by either of the Parties except by an express waiver in writing duly executed by the respective Party.
- 26.3 No condoning, excusing or overlooking by the WFN of any default by the Lessee at any time or times in performing or observing any of the Lessee's covenants will operate as a waiver of or otherwise affect the rights of the WFN in respect of any continuing or subsequent default and no waiver of these rights will be inferred from anything done or omitted by the WFN except by an express waiver in writing.

**PART 27 - GOVERNING LAW**

- 27.1 This Lease will be governed by and construed in accordance with the applicable laws of the WFN, Canada and the Province of British Columbia, which laws as the case may be will be deemed to be the proper law of this Lease.

**PART 28 - DISPUTE RESOLUTION**

- 28.1 The Parties agree that any dispute, controversy or claim arising out of or relating to this Lease or the interpretation of any of its provisions will be resolved in the following manner and in the following order:
- (d) First, by good faith discussions between the representatives of the Parties on a timely basis;

- (o) Failing good faith discussions between representatives of the Parties, then through discussion as between the Minister of Transportation and the Chief of the WFN;
- (f) Failing discussions between the Minister of Transportation and the Chief of the WFN, then through mediation by a mediator jointly chosen by the Parties, with such costs of mediation to be paid by the Lessee and the WFN in equal parts, during the course of the mediation; and
- (g) Failing mediation, then through binding arbitration in accordance with the Arbitration Rules of the BCICAC in effect on the date of such dispute. The Parties further agree that in such case:
  - (i) the appointing authority will be the BCICAC;
  - (ii) the case will be administered by the BCICAC in accordance with its "Procedures for Cases under the BCICAC Arbitration Rules";
  - (iii) the place of arbitration will be Vancouver, British Columbia;
  - (iv) the number of arbitrators will be one (1);
  - (v) the language used in the proceedings will be English; and
  - (vi) the arbitrator's fees will be paid by the Lessee and the WFN in equal parts, during the course of the arbitration. The arbitrator's fees will, unless otherwise determined by the arbitrator, be borne equally by the Parties.

#### PART 29 - NOTICES

- 29.1 All notices under this Lease must be given in writing and delivered in accordance with this Part.
- 29.2 All notices will be delivered to the other Party and no notice will be effective until such delivery has been made.

The addresses for delivery are:

To the WFN:

Westbank First Nation  
301-515 Highway 97 South  
Kelowna, British Columbia  
V1Z 3J2

To the Lessee at:  
 Ministry of Transportation  
 940 Blanchard Street  
 Victoria, British Columbia  
 V8W 3E6

- 29.3 Notice will be deemed to have been delivered:
- (a) if delivered by hand, upon receipt; or
  - (b) if sent by registered mail, four (4) days after the mailing thereof, provided that if there is a postal strike or other disruption such notice will be delivered by hand or electronic transmission.
- 29.4 The Parties may change their respective addresses for delivery by delivering notice of change as provided in this Part.

#### PART 30 - TIME OF THE ESSENCE

- 30.1 Time is of the essence in this Lease and each of its terms and conditions.

#### PART 31 - SEVERABILITY

- 31.1 If any part of this Lease is declared or held invalid for any reason, the invalidity of that part will not affect the validity of the remainder which will continue in full force and effect and be construed as if this Lease had been executed without the invalid portion. The intention of the Parties is that this Lease would have been executed without reference to any portion which may, for any reason, be declared or held invalid.

#### PART 32 - PLURALITY AND GENDER

- 32.1 This Lease will be for the benefit of and be binding upon the contractors, administrators, successors, assigns and other legal representatives, as the case may be, of each of the Parties. Every reference in this Lease to any Party includes the contractors, administrators, successors, assigns and other legal representatives of the Party.
- 32.2 Reference to a Party will be read as if all required changes in the singular and plural and all grammatical changes rendered necessary by gender had been made.
- 32.3 If a Party is comprised of more than one Person then all covenants and agreements of that Party will be deemed joint and several.

**PART 33 - REGISTRATION**

33.1 Upon full execution, the WFN will arrange for this Lease to be registered in the Registry.

**PART 34 - COUNTERPARTS**

34.1 This Lease may be signed in counterparts.

IN WITNESS WHEREOF the Parties have caused this Lease to be signed by their duly authorized representatives.

SIGNED, SEALED AND DELIVERED  
in the presence of:

SIGNATURE  
\_\_\_\_\_

PRINT NAME  
Della Elliott

301 - 515 Hwy 97 South

Seaside BC V1Z 3J2

ADDRESS  
OCCUPATION  
ASSISTANT TO THE CHIEF SECRETARY

SIGNATURE  
\_\_\_\_\_

WESTBANK FIRST NATION  
by its Director of Lands

SIGNED, SEALED AND DELIVERED  
in the presence of:

SIGNATURE  
\_\_\_\_\_

PRINT NAME  
Geraldine Hird

601-1175 Douglas St. Victoria

ADDRESS  
OCCUPATION  
Lawyer

SIGNATURE  
\_\_\_\_\_

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

Pages 121 through 122 redacted for the following reasons:

-----

S16



## WESTBANK FIRST NATION

July 25, 2005

Minister of Transportation  
 PO Box 9055 Stn. Prov. Govt.  
 Victoria, BC  
 V8W 9B2

Attention: Honourable Kevin Falcon,  
 Minister

137637

Received in CU:	JUL 27 2005
Issue:	PROTECTS - WRB BRIDGE
Program Area:	HWYS.
Copy to:	

IMPORTANT: If this is not your issue, please advise the CU immediately at CorrespondenceUnit@rcmns.j.gov.bc.ca

Dear Minister Falcon;

Re: WFN Delivery of Campbell Road Interchange Improvements.

Congratulations on the announcement of SNC - Lavalin as the contractor for construction and operation of the long awaited William R Bennett Bridge. We are aware that the April 18, 2005 agreement between your ministry and our government which was approved by our membership June 28 was a critical factor in the overall project proceeding. I have instructed our team to move positively forward in support of the project within the context of our agreement.

S16

#301 - 515 Highway 97 South, Kelowna, B.C. V1Z 3J2  
 Telephone: (250) 769-4999 Facsimile (250) 769-3492



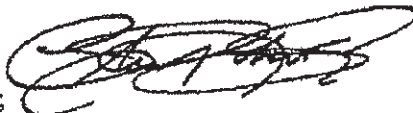
2

S16

Yours truly,

WESTBANK FIRST NATION

Per:



Chief Robert Louie

cc. Council

cc. Jon Buckle, Ministry of Transportation

cc. James F. Montain, A.S.C.T CMC, LGA Director of Operations

cc. Dick Fletcher, P.Eng., Urban Systems Ltd

✓ cc. Dirk Nyland, Chief Engineer # (250) 387-7735

PC P. MILBURN

#301 - 515 Highway 97 South, Kelowna, B.C. V1Z 3J2  
Telephone: (250) 769-4999 Facsimile (250) 769-3492

July 27, 2005

Chief Robert Louie  
Westbank First Nation  
515 Highway 97 South, Suite 301  
Kelowna BC V1Z 3J2

Reference: 137637

Facsimile: 250 769-3492

Dear Chief Louie:

**Re: Campbell Road Interchange Improvements**

S16

I understand your representatives are meeting this week with senior staff from my ministry, including Project Director Jon Buckle and Chief Engineer Dirk Nyland, to discuss options for delivering the projects, and I look forward to hearing about the outcome of those discussions.

.../2

- 2 -

Thank you again for taking the time to write, Chief Louie.

Sincerely,

***Original Signed By***

Kevin Falcon  
Minister

Copy to: Peter Milburn, Assistant Deputy Minister  
Highways Department

Jon Buckle, Project Director  
William R. Bennett Bridge Project

Dirk Nyland, Chief Engineer

WESTBANK FIRST NATION 301-515 Hwy 97 South, Kelowna, British Columbia, Canada V1Z 3J2



FAX

Date: July 26, 2005

No. of pages including cover sheet: 3

To: Ministry of Transportation - Victoria  
Attn: Dirk Nyland

Ph: (250) 387-6931

Ex: (250) 387-7735

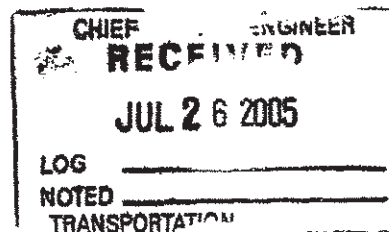
From: Laureen for Chief Robert Louie  
Westbank First Nation

Ph: (250) 769-4999

Fx: (250) 769-4377

REMARKS: ☒ Urgent ☐ For your review ☐ Reply ASAP ☐ Please comment**Re: WFN Delivery of Campbell Road Interchange Improvements**Please see attached letter of Chief Robert Louie dated July 25<sup>th</sup>, 2005

*Laureen Casey*  
*Assistant to the Directors*  
*Westbank First Nation*  
*(250) 769-4999 Ext. 307*



THIS MESSAGE IS INTENDED FOR THE USE OF THE INDIVIDUAL OR ENTITY TO WHICH IT IS ADDRESSED, AND MAY CONTAIN INFORMATION THAT IS PRIVILEGED, CONFIDENTIAL AND EXEMPT FROM DISCLOSURE. ANY OTHER DISTRIBUTION, COPYING OR REVIEW IS STRICTLY PROHIBITED. IF YOU HAVE RECEIVED THIS MESSAGE IN ERROR, PLEASE NOTIFY US IMMEDIATELY BY TELEPHONE AND RETURN THE ORIGINAL TRANSMISSION TO US BY MAIL WITHOUT MAKING A COPY.

THANK YOU.

**MEMORANDUM OF UNDERSTANDING**  
**(the "MOU")**  
**dated as of August 1, 2005**

**BETWEEN:**

Westbank First Nation, as represented by an authorized representative ("Westbank")

**AND:**

Her Majesty the Queen in Right of the Province of British Columbia, as represented by an authorized representative of the Minister of Transportation (the "Province")

(collectively, the "Parties")

**WHEREAS:**

- A. The Province and Westbank have entered into an agreement dated April 18, 2005 respecting improvements at Campbell Road along that portion of the Highway 97 corridor that runs through Westbank's Indian Reserve No. 10 (the "Agreement");
- B. The Province and Westbank wish to establish a mechanism for communication between them respecting issues of mutual interest relating to the construction of the William R. Bennett Bridge;
- C. The Province and Westbank wish to work together to attempt to reach an agreement outlining the role of Westbank in the delivery of the Campbell Road improvements as contemplated by Section 4.1 of the Agreement (the "Improvements") and other improvements contemplated by Sections 8, 9.1 and 10 of the Agreement; and
- D. The Province and Westbank acknowledge that a future agreement(s) may deal with matters relating to the implementation of Section 4.2 through 4.12 of, and other unresolved issues relating to, the Agreement.

**1. Purpose**

The purpose of this MOU is to establish a process for the Province and Westbank to:

- (a) reach agreement on the role of Westbank in the delivery of the Improvements and implementation of certain of the matters set forth in the Agreement;
- (b) establish a mechanism for communication between them respecting issues of mutual interest relating to the construction of the William R. Bennett Bridge; and
- (c) set out the terms of funding to be provided by the Province to Westbank to assist Westbank in implementing this MOU.

## 2. Funding for Westbank

- (a) Further to Section 4.9 of the Agreement, the Province agrees to reimburse Westbank for those matters set forth in Schedule A attached to, and which forms part of, this MOU, to a maximum amount of, and not to exceed, S16, S17 upon the receipt of invoices for the purpose of negotiating the agreement(s) contemplated by Section 3 of this MOU. The Parties recognize that given the scope of the tasks to be undertaken, additional funding for these purposes will likely be required. As such, the Parties agree to meet on or before December 15, 2005, and at regular intervals thereafter, not less than monthly, to discuss in good faith, additional funding requirements of Westbank and will use reasonable efforts to conclude an agreement relating thereto. This subsection is effective until the agreement(s) contemplated by Section 3 of this MOU is executed or negotiations for such agreement(s) cease, in either case this subsection and Schedule A related thereto will cease to be effective and will no longer apply to either Party.
- (b) The Province will provide Westbank with up to S16, S17 for those matters set forth in Schedule B attached to, and which forms part of, this MOU, to facilitate Westbank communicating, as it considers necessary, with its members and the Province respecting issues of mutual interest relating to the construction of the William R. Bennett Bridge. Once at least S16, S17 has been expended under Schedule B and this Subsection, the Parties will meet to discuss in good faith whether additional funding above the S16, S17 is required and will use reasonable efforts to conclude an agreement relating thereto. Any additional funding for activities set out in Schedule B can only be increased upon written agreement of the Parties.
- (c) Any payment of money by the Province under this MOU is subject to there being an appropriation by the Legislature of British Columbia for the payment for the fiscal year in which the payment becomes due. The Province confirms that an appropriation by the Legislature of British Columbia has been made for the S16, S17 amounts set forth in each of Subsections 2(a) and 2(b).

## 3. Delivery of the Improvements

The Parties agree that their respective representatives will meet in a timely and ongoing manner with the objective of negotiating an agreement(s), as the case may be, respecting Westbank's role in the delivery of the Improvements. The Parties further agree that they intend that such agreement(s) will be executed no later than January 31, 2006.

## 4. Bridge Construction Matters

The Parties agree that their respective representatives will meet in a timely and ongoing manner to discuss issues of mutual interest and exchange information relating to the construction of the William R. Bennett Bridge.

## 5. Conditions

Any agreement(s) arising from this MOU is subject to:



- (a) final approval of the elected Chief and Council of Westbank; and
- (b) ratification by the Executive Council of the Province.

## 6. Process

- (a) The following person from each Party will be the primary contact for each Party in respect of discussions carried out under this MOU:

### **For the Province:**

Mr. Dirk Nyland  
 Chief Engineer  
 B.C. Ministry of Transportation  
 940 Blanchard Street  
 Victoria, British Columbia  
 V8W 9T5

Phone: (250) 387-2310  
 Facsimile: (250) 387-7735

### **For Westbank:**

Mr. Dick Fletcher  
 Westbank First Nation  
 c/o Urban Systems  
 No. 500 - 1708 Dolphin Avenue  
 Kelowna, British Columbia  
 V1Y 9S4

Phone: (250) 762-2517  
 Facsimile: (250) 763-5266

## 7. Amendments

This MOU may be amended by agreement in writing between the Parties.

## 8. Term

This MOU is effective from the date first noted above until 90 days after the de-commissioning of the old Okanagan Lake Bridge, unless the Parties are unable to reach agreement for additional funding pursuant to Subsection 2(b) at which time this MOU will expire.

Executed for and on behalf of the Westbank First Nation, as represented by its Chief and Council, by its authorized representative:

  
\_\_\_\_\_  
Dick Fletcher

05/11/16  
\_\_\_\_\_  
Date

Executed for and on behalf of the Her Majesty the Queen in Right of the Province of British Columbia, as represented by an authorized representative of the Minister of Transportation:

  
\_\_\_\_\_  
Dirk Nyland

Dirk Nyland, P. Eng.  
Chief Engineer

05/11/15  
\_\_\_\_\_  
Date

### **Schedule A**

Westbank will invoice the Province on a monthly basis, in accordance with Subsection 2(a), and for the purposes of Section 3, of the MOU, under the following sub-headings:

- Meetings with Ministry of Transportation officials and representatives;
- Meetings with Westbank Chief and Council and with Westbank members;
- Meeting with Westbank administration;
- Issue research and discussion preparation;
- Drafting/reviewing relationship and delivery model processes and related documents; and
- Legal fees and related disbursements.

This MOU does not cover, Westbank will not invoice, and the Province will not pay, any costs associated with engineering related matters, except upon express written consent of the Province.

**Schedule B**

Westbank will invoice the Province on a monthly basis, in accordance with Subsection 2(b) of the MOU, under the following sub-headings:

- Communications with William R. Bennett Project Team;
- Meetings with Ministry of Transportation officials and representatives;
- Communications materials;
- Meetings with Westbank members;
- Issues resolution - research and discussion preparation;
- Westbank role/opportunities in respect of the William R. Bennett Bridge;
- Briefing preparation;
- Meetings with Westbank Chief and Council and Westbank staff;
- Legal fees and related disbursements relating to the Agreement; and
- Significant issues that may arise, to be named expressly.

This MOU does not cover, Westbank will not invoice, and the Province will not pay, any costs associated with engineering related matters, except upon express written consent of the Province.

0-10-06; 2:13PM; Delta Sun Take

25057880001

P 2/ 2



September 19, 2005

Cliff # 138833 3492  
VIA FACSIMILE (250) 769-4877

Chief Robert Louie  
Westbank First Nation  
515 Highway 97 South, Suite 301  
Kelowna BC V1Z 3J2

Dear Chief Louie:

Re: Graving Dock Site

Further to your discussion with John Dyble, Deputy Minister, Ministry of Transportation ("MoT"), I write to confirm that MoT acknowledges that the Westbank First Nation ("WFN") asserts that the graving dock site may have significant cultural value to its membership.

The existence and extent of any cultural value can only be determined after a review has been conducted of the archaeological and anthropological material available and relevant to the site. At that time, it is understood and acknowledged that WFN may wish to investigate and pursue the acquisition of the site which, as you know, is privately owned. Should the site prove to be of significant cultural value to the WFN, MoT assures the WFN that it will be supportive of the efforts made by the WFN in this regard, and would be willing to consider what steps the Province might be able to take to offer such support. You will appreciate; however, that currently MoT has no mechanism to provide for the acquisition of the site.

I trust that this is satisfactory.

Yours truly,



Peter Milburn  
A/Assistant Deputy Minister  
Highways Department

copy: Stan Ashcroft, Legal Council, Westbank First Nations

Ministry of  
TransportationOffice of the  
Assistant Deputy Minister  
Highways OperationsMailing Address:  
P.O. Box 9850 Sun Prov Govt  
Victoria BC V8W 8T5  
Telephone: (250) 387-3260Location:  
940 Blanshard Street  
Victoria BC

Z0000

MONTREAL BRANCH

1000 1000 1000 1000 1000 1000 1000 1000 1000 1000

**Consultation Agreement Regarding the Bear Creek Project  
Between the Westbank First Nation and  
the Ministry of Transportation**

**Overview**

The MOT of Transportation ("MOT") has planned and has been undertaking construction of the Bear Creek Graving Dock (the "Project").

The Ministry is consulting with the Westbank First Nation ("WFN") to determine the nature and extent of the potential infringement of the WFN's aboriginal interests that will result from the Project.

The purpose of the WFN's consultation with the MOT is to identify any potential aboriginal interests that may be impacted by the Project and exchange information with the MOT to clarify the nature of the potential aboriginal interests and how infringements may be avoided or mitigated.

The process undertaken to consider aboriginal interests and avoid potential infringements is guided by the MOT's Guidelines for Consultation With First Nations (the "Guidelines") (copy attached as Schedule "A"). In addition to the Guidelines this Agreement forms part of the consultative process of the MOT.

**The Agreement**

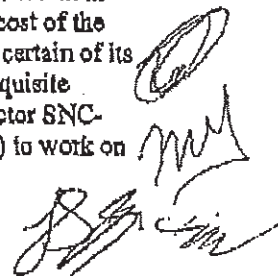
In accordance with the Guidelines and this Agreement, the MOT and the WFN agree to the following steps for consultation:

**1. Information Exchange and Review**

- The MOT will provide all relevant information to the WFN that details the MOT's plans, and those of its concessionaire(s), consultants and contractors for the Project. The MOT has provided the Environmental Screening Report and all available information from the Archaeology Branch on recorded archaeological sites that are in proximity to the Project area.
- The MOT and the WFN will exchange information during the development of archaeological, anthropological and environmental impact assessments, mitigation plans, and monitoring programs.
- The MOT will provide to the WFN any additional Project planning and design information that will assist in the review of the potential for infringement.

**2. Joint Archaeological work**

- The MOT and the WFN agree to undertake joint archaeological work at the Project site and wherever analysis of artifacts is required, at the cost of the MOT. The WFN has retained Golder Associates ("Golder") and certain of its members (the "WFN Archaeological Team") to undertake the requisite archaeological work on its behalf. The MOT, through its contractor SNC-Lavalin, has retained Arcas Consulting Archaeological ("Arcas") to work on its behalf.





**Consultation Agreement Regarding the Bear Creek Project  
Between the Westbank First Nation and  
the Ministry of Transportation**

- Golder, the WFN Archaeological Team and Arcas will work together to undertake the requisite archaeological work in accordance with the work plan attached hereto as Schedule "B" (the "Work Plan"). The Work Plan may be amended at such times, and upon such terms, as are agreed to by Golder, the WFN Archaeological Team and Arcas. If one or more of Golder, the WFN Archaeological Team and Arcas wish to amend the Work Plan but one or more of the other parties does not, the issue may be resolved by way of dispute resolution as set forth in section 8.
- Golder, the WFN Archaeological Team and Arcas will reach an agreement on the proper analysis and preservation of all artifacts that are uncovered, failing which the matter will be referred to dispute resolution pursuant to section 8.
- Golder, the WFN Archaeological Team and Arcas will prepare a joint report, which will be simultaneously provided to the MOT and the WFN for review and comment.
- The MOT, through Arcas, and the WFN, through Golder, agree to jointly seek the amendment of the permit issued to Arcas respecting the Project (the "Permit") whereby the Permit will provide that the WFN will be the repository of all artifacts and human and other remains that are uncovered following their analysis.

**3. Anthropological Work Required**

- WFN will, at the MOT's cost, undertake all anthropological work that is required, including the interviewing of WFN Elders and, if necessary, their being on the Project site, respecting their knowledge of the use of the Project site and the surrounding area.
- In addition to covering the WFN's costs, the MOT will reimburse the WFN for reasonable honoraria paid to the WFN Elders for their participation.

**4. Identify Potential Aboriginal Interests and Potential for Infringement**

- The Westbank First Nation will review the information contained in the archaeological report and the results of the anthropological work undertaken and thence advise the MOT of any potential WFN aboriginal interests that may be adversely impacted by the Project.
- The WFN and the MOT will exchange information and clarify the nature of the aboriginal interest where there may be a potential for infringement.

**Consultation Agreement Regarding the Bear Creek Project  
Between the Westbank First Nation and  
the Ministry of Transportation**

**5. Avoid or Minimize any Potential Infringements**

- The MOT will work with the WFN to determine how potential infringements can be avoided, or to mitigate any potential impacts arising from the Project.
- The MOT will accommodate identified aboriginal interests, including an economic interest, where there may be a potential infringement by the Project, by first avoiding the potential for infringement if possible or secondly by mitigating the impact in a manner as agreed to by the MOT and the WFN.
- The MOT will work with the WFN to identify and agree on specific measures and, where relevant, monitoring procedures for avoidance and mitigation.

**6. Provide Resources to Assist the Westbank First Nation**

- The MOT will reimburse the WFN for its reasonable costs and those of its consultants as may be required in relation to the preparation of this Agreement and any other related agreements and the fulfillment of their terms. The WFN will submit an invoice to the MOT on a monthly basis detailing the costs for which it is seeking reimbursement. The MOT will pay the invoices within 30 days of receiving them.

**7. Timeframe**

- The anticipated timeframe for completing the identification of potential aboriginal interests and the potential for infringement is December 15, 2005. Discussions and negotiations as between the MOT and the WFN will continue as required thereafter. Both the MOT and the WFN agree to use their reasonable best efforts to reach an agreement on any outstanding issues and coordinate schedules for meetings.

**8. Dispute Resolution**

- The MOT and WFN agree that any dispute, controversy or claim arising out of or relating to this Agreement or the interpretation of its provisions will be resolved in the following manner and in the following order:
  - (a) First, by good faith discussions between the representatives of the MOT and the WFN on a timely basis;
  - (b) Failing good faith discussions between representatives of the MOT and the WFN, then through discussions between MOT Deputy Minister John Dyble, or his successor, (the "DM") and the Chief of Westbank;



**Consultation Agreement Regarding the Bear Creek Project  
Between the Westbank First Nation and  
the Ministry of Transportation**

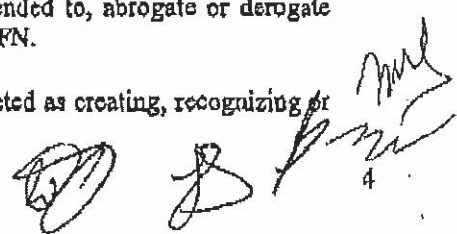
- (c) Failing discussions between the DM and the Chief of Westbank, then through mediation by a mediator jointly chosen by the MOT and the WFN with such costs of mediation to be paid by the MOT and the WFN, in equal parts, during the course of the mediation; and
- (d) Failing mediation, then through binding arbitration in accordance with the Arbitration Rules of the British Columbia International Commercial Arbitration Centre ("BCICAC") in effect on the date of such dispute. The MOT and the WFN further agree that in such cases:
  - (i) the appointing authority will be the BCICAC;
  - (ii) the case will be administered by the BCICAC in accordance with its "Procedures for Cases under the BCICAC Arbitration Rules";
  - (iii) the place of arbitration will be Kelowna, British Columbia;
  - (iv) the number of arbitrators will be one (1);
  - (v) the language used in the proceeding will be English; and
  - (vi) the arbitrator's fees will be paid by the MOT and the WFN, in equal parts, during the course of the arbitration unless otherwise determined by the arbitrator.

**9. Further Acts**

- The Parties will perform such further acts and execute and deliver such further documents and instruments as may reasonably be required to give effect to this Agreement.

**10. Nature of this Agreement**

- This Agreement does not constitute a treaty or a land claims agreement within the meaning of sections 25 or 35 of the *Constitution Act*, 1982.
- This Agreement does not, and is not intended to, abrogate or derogate from any aboriginal rights or title of the WFN.
- Nothing in this Agreement will be interpreted as creating, recognizing or denying aboriginal rights or title.



**Consultation Agreement Regarding the Bear Creek Project  
Between the Westbank First Nation and  
the Ministry of Transportation**

- This Agreement does not, and is not intended to, detract from or affect any position the WFN has taken or may take in other negotiations, proceedings or claims, including Specific Claims that have been or may be submitted to Indian and Northern Affairs Canada.
- If the MOT breaches this Agreement, the WFN will, at its option, have the right to bring to the attention of a Court of competent jurisdiction the existence of this Agreement and its terms.

**11. Applicable Laws**

- This Agreement is legally binding and will be governed by and interpreted in accordance with the laws of the WFN, the Province of British Columbia and Canada applicable therein.

**12. Notices**

- Any notices or communications required or permitted to be given pursuant to this Agreement will be in writing and shall be delivered to, or sent by prepaid courier or confirmed facsimile, address as follows:

- (a) in the case of communication to British Columbia:

Ministry of Transportation  
940 Blanshard Street  
Victoria, British Columbia, V8W 3E6  
Attention: Assistant Deputy Minister

- (b) in the case of communication to the WFN

Westbank First Nation  
301 - 515 Highway 97 South  
Kelowna, British Columbia V1Z 3J2  
Attention: Chief and Council

or to such other address as either Party may notify the other in accordance with this action, and if so delivered shall be deemed to have been given when delivered, or at the time of confirmation of electronic transmission if sent by facsimile if such day is a business day, otherwise the next business day following, and if mailed shall be deemed to have been given on the seventh business day after the date of mailing.

**Consultation Agreement Regarding the Bear Creek Project  
Between the Westbank First Nation and  
the Ministry of Transportation**

**13. Amendment**

- This Agreement may be amended from time to time by the MOT and WFN by an instrument in writing.

**14. Enurement**

- This Agreement and the promises and the obligations herein set out shall enure to the benefit of and be binding upon the MOT, the WFN and their respective agents, employees, successors and assigns.

**15. Waiver**

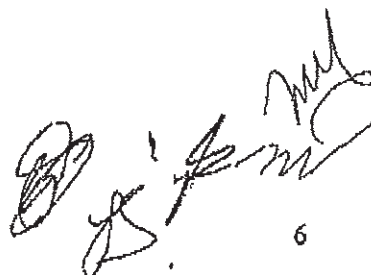
- No term, condition, covenant or other provision of this Agreement will be considered to have been waived by a party unless such waiver is expressed in writing by the party. The waiver by a party of any breach by the other party of any term, condition, covenant or other provision of this Agreement will not be construed as or constitute a waiver of any further or other breach of the same or any other term, condition, covenant or other provision and the consent or approval of a party to any act by the other party requiring the consent or approval of the party will not be considered to waive or render unnecessary such consents or approvals to any subsequent same or similar act by the other party.

**16. Time**

- Time is of the essence in relation to this Agreement and all the matters set forth herein, including the respective obligations of the MOT and the WFN.

**17. Counterparts**

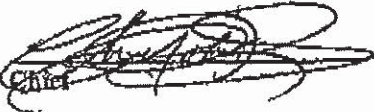
- This Agreement may be signed in counterparts.

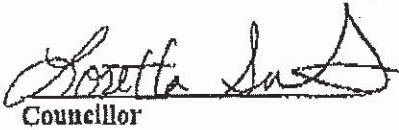


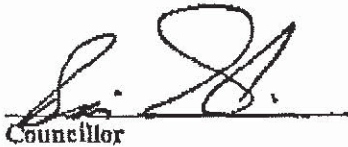
**Consultation Agreement Regarding the Bear Creek Project  
Between the Westbank First Nation and  
the Ministry of Transportation**

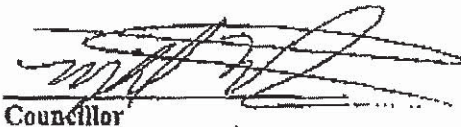
IN WITNESS WHEREOF the Parties have caused this Agreement to be executed  
by their duly authorized representatives.

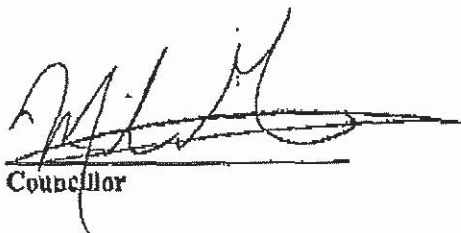
Signed on behalf of:  
**WESTBANK FIRST NATION**

  
Chief


  
Councillor

  
Councillor

  
Councillor

  
Councillor

Dated: SEPTEMBER 19, 2005

  
Witness KIRK DESSLER

Dated: AS TO ALL SIGNATURES BY  
WESTBANK CHIEF AND COUNCIL

Witness

Dated:

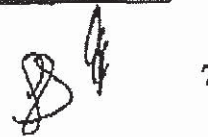
Witness

Dated:

Witness

Dated:

Witness

 7

**Consultation Agreement Regarding the Bear Creek Project  
Between the Westbank First Nation and  
the Ministry of Transportation**

\_\_\_\_\_  
Dated:

Signed on behalf of:  
**THE MINISTRY OF  
TRANSPORTATION:**

\_\_\_\_\_  
Witness

  
John Dyble  
Deputy Minister of Transportation

Sept 15/05  
Dated:

bandad/9302/WFN.Bear Creek.blacklined.01



## SCHEDULE "A"

9 September 2005

Bear Creek North Graving Dock  
Preliminary Archaeology Workplan

This is a preliminary archaeological workplan designed by Roxanne Lindley (Westbank First Nation), Arnold Stryd (Arcas) and Clinton Coates (Golder), with follow-up input by it is based on, and compatible with, the workplan designed by Georgie Hurre (Arcas) and consistent with the terms of the Heritage Inspection Permit issued by the Archaeology. Because only a limited amount of information is presently known about the site, the workplan is designed to be flexible, and specific tasks and methods may be dropped, added or Golder will provide one archaeologist to be on site to monitor the archaeological fieldwork on a schedule to be determined by Westbank First Nation (WFN). In addition Golder will work with WFN to establish WFN as a Provincially recognized repository for archaeological materials, including obtaining of requisite funding.

Task#	Task Description	Duration (days)	Start	Finish	Comments/Resources Required
<b>Phase I. Archaeological Site Exploration</b>					
Task 1.	Examine and record existing trenches around casing	6.0-11.0	16-Sep-05	21-Sep-05 to 26-Sep-05	Purpose of Phase I: to establish horizontal and vertical site boundaries and obtain initial understanding of nature of archaeological deposits and material up to 6 Arcas, up to 6 WFN, up to 4 OKIB
Task 2.	Remove backfill/screen or rake backfill (possibly part of Phase II or IV)	1.0	16-Sep-05	16-Sep-05	
Task 3.	Trench in all directions from casing + screen sample of sediments, AND/OR	2.0-4.0	17-Sep-05	18-Sep-05 to 20-Sep-05	up to 6 Arcas, up to 6 WFN, up to 4 OKIB, backhoe with narrow finishing bucket
Task 4.	Auger in all directions from casing on grid + screen all sediments	2.0-4.0	19-Sep-05 to 21-Sep-05	20-Sep-05 to 24-Sep-05	up to 6 Arcas, up to 6 WFN, up to 4 OKIB, backhoe with screw auger
Task 5.	Trench or auger inside casing + screen	1.0	21-Sep-05 to 25-Sep-05	21-Sep-05 to 25-Sep-05	up to 6 Arcas, up to 6 WFN, up to 4 OKIB, backhoe with narrow finishing bucket or screw auger
Task 6.	Additional trenching or augering (if needed)	1.0	22-Sep-05 to 26-Sep-05	22-Sep-05 to 26-Sep-05	up to 6 Arcas, up to 6 WFN, up to 4 OKIB, backhoe with narrow finishing bucket or screw auger
<b>Phase II. Archaeological Site Study in Controlled Manner (Mitigation)</b>					
		1.0-10.0?	22-Sep-05 to 27-Sep-05	22-Sep-05 to 6-Oct-05	Purpose of Phase II: to document in detail the nature of site use and history. Depending on scope of work, may require heritage mitigation permit from Archaeology Branch subject to the prior written consent of WFN having been obtained, such consent not to be unreasonably withheld. Duration could be considerably longer, depending on findings in Phase I.
	Tasks to be determined. Probably will involve excavation of controlled Excavation Units, opening up of larger areas, recording (mapping, photography, profiling) and possibly screening/raking of backfill piles.				If backfill is to be screened or raked, this task will go later than rest of project.
<b>Phase III. Preliminary Reporting and Site Alteration Permit Application</b>					
Task 1.	Write draft letter report on findings, with maps	5.0	23-Sep-05 to 27-Oct-05	27-Sep-05 to 11-Oct-05	Purpose of Phase III: to provide sufficient information to Archaeology Branch to issue Site Alteration Permit
Task 2.	Draft report reviewed by Golder, WFN	2.0			
		3.0-5.0			

**Bear Creek North Graving Dock  
Preliminary Archaeology Workplan**

9 September 2005

Task 3. Prepare draft Site Alteration Permit application for SNC-Lavalin	1.0			
Task 4. Draft SAP review by Golder, WFN	3.0-5.0			
Task 5. Submit letter report and SNC-Lavalin submit SAP application if consented to by WFN in writing, such consent not to be unreasonably withheld				
<b>Phase IV. Detailed Analysis and Reporting</b>	<b>45.0-60.0</b>	<b>3-Oct-05 to 12-Dec-05</b>	<b>Dec-05</b>	<b>Purpose of Phase IV: understand the use and history of this archaeological site, and make findings available in an easy-to-read format. Scale of work can vary dramatically, depending on extent of controlled site study (mitigation)</b>
Task 1. Analysis of recovered material (artifacts, bones, etc.)				
Task 2. Analysis of sediments and stratigraphy				
Task 3. Dating of archaeological remains				
Task 4. Other analysis as needed				
Task 5. Preparation of site profiles and maps				
Task 6. Preparation of draft report				
Task 7. Review of draft report by Golder, WFN	30.0			
Task 8. Preparation of final report				
Task 9. Curation of artifacts, other material, notes, photos, etc.				

*JS* *md* *W* *W* *W*



Sam to  
OF

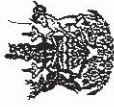
RECEIVED

FEB 10 2006

Westbank First Nation

cc. P.W. Robert  
Council

COPY

BRITISH  
COLUMBIA

FEB 07 2006

Chief Robert Louie  
Westbank First Nation  
515 Highway 97 South, Suite 301  
Kelowna BC V1Z 3J2

Reference: 141318

Dear Chief Louie:

Re: Campbell Road Interchange

Thank you for your letter of December 2, 2005, following up on our earlier correspondence about future work related to the Campbell Road interchange.

As I have written before, my ministry is willing to enter into an agreement directly with the Westbank First Nation (WFN) on a government-to-government basis, pursuant to which the WFN will be responsible for arranging the delivery of the work, provided that in doing so, WFN implements appropriate safeguards and statutory compliance arrangements.

I am particularly interested in developing a mutually acceptable framework for this work as I believe that it may provide a good foundation for future arrangements between the Province and WFN.

One important element of a contracting framework that will be important to me and the Ministry of Transportation will be the establishment a competitive process for the procurement of the actual construction work. The process for selecting the contractor for this work will need to meet the requirements of Section 4 of the Transportation Act. This is the issue that I outlined in my letter to you of November 24, 2005. I understand this same matter was discussed in some depth at a meeting on January 6, 2006, between your lawyers and counsel for my ministry, and I trust that you now have an appreciation of the significance of this issue for the ministry.

.../2

Ministry of  
Transportation  
Office of the Minister



Mailing Address:  
Parliament Buildings  
Victoria BC V8W 1X4

- 2 -

There are a number of elements which could be included in an acceptable competitive process which would ensure that the process meets the needs of both WFN and the Ministry of Transportation. To achieve these objectives, the process, rather than a narrowly focused low-price "tender" process, could involve a request-for-proposals process where the evaluation criteria, in addition to cost, includes an evaluation of other matters that are important to the WFN, such as:

- the company's experience and proven track record in construction;
- demonstrated experience in the development and implementation of an effective First Nations employment program; and
- demonstrated experience in implementing training programs in conjunction with performance of construction work.

Other elements, such as a "shadow bid" or similar cost verification process, and a value-engineering process would be of assistance in validating prices received from proponents during the request-for-proposals phase.

Chief Louie, I am confident my ministry and the Westbank First Nation can reach agreement on the best way to proceed with the needed improvements at the Campbell Road interchange, and I look forward to the outcome of continued discussions. I encourage you to keep working with my staff, including my Assistant Deputy Minister, Peter Milburn, to keep moving things forward.

Thank you again for taking the time to write.

Sincerely,



Kevin Falcon  
Minister

Copy to:

Peter Milburn, Assistant Deputy Minister  
Highways Department

MEMORANDUM OF UNDERSTANDING  
(the "MOU")  
dated as of February 1, 2006

BETWEEN:

Westbank First Nation, as represented by an authorized representative ("Westbank")

AND:

Her Majesty the Queen in Right of the Province of British Columbia, as represented by an authorized representative of the Minister of Transportation (the "Province")  
(collectively, the "Parties")

WHEREAS:

- A. The Province and Westbank have entered into an agreement dated April 18, 2005 respecting improvements at Campbell Road along that portion of the Highway 97 corridor that runs through Westbank's Tsinstikeptum Indian Reserve No. 10 (the "Agreement");
- B. The Province has requested Westbank to develop a 30% detailed design, as described further in Schedule A (the "30% Detailed Design"), for the Campbell Road improvements as contemplated by Section 4.1 of the Agreement (the "Improvements") to enable the Parties to reach an agreement on the role and responsibilities of Westbank in delivering the Improvements;
- C. The Province and Westbank have agreed that Westbank, working in conjunction with Urban Systems Ltd., will produce the 30% Detailed Design in accordance with budget set out in Schedule B;
- D. Westbank has requested, and the Province has agreed to provide, an administration fee for the services contemplated by this MOU, as set out in Section 1(e) on the condition that such administration fee is not in any way to be construed by the Parties as a precedent or basis for the negotiation of administration or other such fees in respect of the main project delivery contract relating to the Campbell Road Improvements to be negotiated between Westbank and the Province; and
- E. Required archaeological investigations and, where appropriate, mitigation, will be the subject of a subsequent agreement between the Parties.

1. Funding

- (a) The Province agrees to reimburse Westbank for those matters set forth in Schedule B attached to, and which forms part of, this MOU, to a maximum amount of, and not to exceed \$11,000,000 (eleven million dollars) unless otherwise agreed to in writing

YDO\_DOCS #1491444 v. 3.0

517

by both Parties, upon the receipt of sufficiently detailed invoices, in accordance with the invoicing schedule attached hereto as Schedule C.

- (b) The Parties agree that the amounts under Section 1(a) will be paid forthwith by the Province upon receipt of detailed invoices from Westbank.
- (c) In addition to the amount set out in Section 1(a), the Province will pay Westbank an administration fee for the purposes of administering the activities contemplated by this MOU in accordance with Schedule B, with such administration fee to be equivalent to ten percent (10%) of the total amount determined under Section 1(a), but in any event such administration fee will not exceed \$100,000 unless otherwise agreed to in writing by both Parties. For greater certainty, the administration fee set out in this section is not in any way to be construed by the Parties as a precedent or basis for the negotiation of administration or other such fees in respect of the Campbell Road improvement project delivery contract to be negotiated between Westbank and the Province.

## 2. Schedule

- (a) Westbank agrees to provide the 30% Detailed Design, along with all relevant plans, documents and reports for the 30% Detailed Design to the Province by June 16, 2006.
- (b) Any payment of money by the Province under this MOU is subject to there being an appropriation by the Legislature of British Columbia for the payment for the fiscal year in which the payment becomes due. The Province confirms that an appropriation by the Legislature of British Columbia has been made for the amounts contemplated under Section 1(a).

## 3. Process

- (a) The following person from each Party will be the primary contact for each Party in respect of discussions carried out under this MOU:

For the Province:

Mt. Dirk Nyland  
Chief Engineer  
B.C. Ministry of Transportation  
940 Blanchard Street  
Victoria, British Columbia  
V8W 9T5

Phone: (250) 387-2310  
Facsimile: (250) 387-7735

YDO\_DOCS #1491444 v. 3.0

DR



**For Westbank:**

Mr. Dick Fletcher  
Westbank First Nation  
c/o Urban Systems  
No. 500 - 1708 Dolphin Avenue  
Kelowna, British Columbia  
V1Y 9S4

Phone: (250) 762-2517  
Facsimile: (250) 763-5266

- (b) The authority delegated to Mr. Dick Fletcher by the Council of Westbank pursuant to Section 3(a) is subject to any final decisions being made by the Council of Westbank.

**4. Amendments**


This MOU may be amended by agreement in writing between the Parties.


**5. Memorandum of Understanding of August 1, 2005**

This MOU does not render the memorandum of understanding between the Parties on August 1, 2005 void, in whole or in part, or unenforceable in any manner.

Executed for and on behalf of WESTBANK FIRST NATION

By:   
Name: \_\_\_\_\_  
Title: Chief

By:   
Name: \_\_\_\_\_  
Title: Councillor

By:   
Name: \_\_\_\_\_  
Title: Councillor


By:   
Name: \_\_\_\_\_  
Title: Councillor

*AL*

By: \_\_\_\_\_

Name:  
Title: Councillor

Executed for and on behalf of HER MAJESTY  
THE QUEEN IN RIGHT OF THE PROVINCE  
OF BRITISH COLUMBIA, as represented by an  
authorized representative of the Minister of  
Transportation

  
Dirk Nyland

MAR 15 2006

Date

82

SIR 245

SCHEDULE A

30% Detailed Design

VDO\_DOCS #1491444 v. 3 #

2

TERMS  
OF  
REFERENCE

PROJECT NO. 7787X-0001

HIGHWAY NO. 97  
CAMPBELL ROAD INTERCHANGE AND  
ASSOCIATED WORKS

Westbank First Nation / Ministry of Transportation

9

## A. LOCATION AND SCOPE OF PROJECT

The "Project" is defined as follows:

Project No. 7787X-0001  
Highway No. 97 – Campbell Road Interchange and Associated Works  
Segment 1117 - km 13.56 to km 15.2

### Location

The project is located on Highway No. 97 at the west end of the Okanagan Lake (W.R. Bennett Bridge) in Kelowna. The northerly limit is at the "match point" with the Bridge Project and the southerly limit is north of the Highway 97 / Westside Road intersection.

### Scope

On behalf of Westbank First Nation (WFN) and at the request of the Ministry of Transportation (Ministry), this Project involves the identification and performance of all engineering work required to complete the field survey, geotechnical, environmental, drainage and other utilities, structural, archaeological, traffic operations, electrical and roadway engineering required to produce a 30% DETAILED DESIGN (see Appendix B) of the Campbell Road Interchange and associated works. The 30% Detailed Design will serve as the foundation for a subsequent and separate design-build delivery model. The primary components of the Project include:

- A full-movement Campbell Road interchange (highway over) complete with on/off ramps, overpass structure and access to adjacent properties. The Campbell Road Interchange configuration will be based on "Schedule F" of the April 18, 2005 Agreement (Agreement) between the Westbank First Nation and the Ministry of Transportation, as modified by "Proposal 02", as identified in the "Collaborative Design Matching Session" report prepared by Value Management Inc., October 2005 (copies of Schedule F and Proposal 02 are appended hereto);
- Revisions to the existing Highway 97 cross-section, including a southbound climbing lane from the W.R. Bennett Bridge causeway to Westside Road; and;
- As per the Agreement, access to, and amenities for, the Westbank First Nation (WFN) cemetery.

The design will be prepared in accordance with the Agreement and meet the access needs of the Westbank First Nation and will conform to current Ministry standards and guidelines and the Project Design Criteria, and will provide a solution for the construction and future maintenance of this highway segment (owned by the Ministry) which is mutually beneficial to both the Westbank First Nation and the Ministry of Transportation. The design and traffic management strategy will also be consistent with and complementary to the works being carried out under the W.R. Bennett Bridge Concession Agreement. This is not to be construed that the Consultant will strive only to achieve Ministry standards, guidelines or Project Design Criteria, but rather that the Consultant will explore all reasonable criteria that safely achieve the desired objectives at the lowest life cycle cost.

In the event that the Consultant foresees or discovers significant scope changes that affect the level or nature of services required to complete this assignment, the Consultant will advise WFN in writing (with a copy to the Ministry). WFN will then formally advise the Ministry in writing. Written approval from the Ministry will be provided before WFN authorizes the Consultant to undertake any such work which is considered beyond the scope of this assignment.

The contract for consulting services will include, but will not necessarily be limited to, the following:

- Detailed ground survey as required within the limits of this project.
- Incorporate the results of the Archaeological Overview Assessment and an Archaeological Impact Assessment (AIA), recommendations report and any additional work as required.
- Geotechnical field investigations and recommendations report;
- 30% detailed geometric design, including an operational analysis for the Campbell Road interchange, accommodation of required access to adjacent land, guide signage design, and landscaping / aesthetic design along the entire project length;
- A sign feature (commemorative cairn) as required by the Agreement;
- Conceptual design of the Campbell Road overpass, considering both steel and concrete structures.
- 30% structural design for the Campbell Road overpass, retaining walls and guide sign foundations (GA drawings);
- 30% drainage design, allowing for contribution from WFN lands and coordination with the Bridge project for outfall to Okanagan Lake;
- Electrical design report for illumination of interchange ramps, highway and underside of overpass structure;
- Utility relocation design;
- Constructability review, including confirmation of traffic management requirements and restrictions during construction including coordination with the bridge concessionaire;
- Traffic management report including coordination with the bridge concessionaire;
- Class B Cost estimate, including confirmation of all construction quantities;
- Preparation of a "Project Specification" and identification of applicable design standards/guidelines;
- All required project approvals including environmental approvals for areas other than Okanagan Lake and foreshore, and;
- 30% detailed design of a pedestrian/cycle pathway from the Campbell Road Interchange to the W.R. Bennett Bridge.



**B. SURVEY and BASE PLAN PREPARATION SERVICES REQUIRED**

The Consultant will undertake detailed field survey to the extents necessary to prepare a digital terrain model for the Project area. The Consultant will perform the following Services with respect to the Project as required to complete the ground survey and base mapping:

B.1 Complete a ground survey of the project area and establish horizontal and vertical control points. The survey will include all cadastral (legal), topographic and planimetric features and all utilities within the project corridor and any other additional features as necessary to complete the detailed design. The survey will conform to the Ministry's General Survey Guide dated January 2005.

- The survey will be based on Geodetic Elevations.
- The coordinate system and grid orientation will match that of the W.R. Bennett Bridge Project.
- If GPS is utilized, all coordinates will be corrected to ground level coordinates using a single combined scale factor for the project. The Combined Scale Factor used for the ground level correction on the project will be shown on the base plans produced.
- Primary Control Lines will be to the second order. Traverse tables will be provided indicating the closures achieved or in the case of GPS Surveys, sufficient information to verify the accuracy of the survey.
- Horizontal and Vertical Control Points will be solid, marked, and set in a manner so that they will not be disturbed during construction.
- Horizontal Control Points will be inter-visible.

B.2 Prepare a Digital Terrain Model of the project in accordance with Ministry standards or guidelines. The Digital Terrain Model will be created using the "CAICE Visual PE" software and adhere to the Ministry's General Survey Guide. The CAICE Project file will include, but is not limited to:

- All planimetric and topographic features (survey points and chains),
- All legal pins and monuments,
- All control points (not necessarily included in the DTM) with a Feature Code of "RP",
- A digital terrain model (include the report file confirming that the survey has been checked for DTM compliance),
- Contour intervals appropriate to the scale of drawings being produced, and
- Log file containing all relevant information, which will include, but is not limited to:
  - Original ground DTM name,
  - Origin of the ground survey (transit, gps, cross section, etc.),
  - DTM compliance report file name, etc.

Terms of Reference

February 15, 2006

B.3 Prepare AutoCAD base plan drawings of the project which will be used in the subsequent design stages in accordance with the Ministry's BC Supplement to TAC Geometric Design Guide, Section 1200, and the Ministry's General Survey Guide. The AutoCad drawings will include, but is not limited to;

- All planimetric and topographic survey points and chains,
- All legal pins, monuments and descriptions,
- Survey Control Point locations will be noted, showing their north, east and elevation coordinates,
- Contours at the appropriate interval for the scale of drawings being produced with major contours being highlighted and annotated,
- All archaeologically sensitive areas as identified in the archaeological report, and
- Line-styles and symbols at the appropriate scale for the drawings produced.

B.4 Arrange for permission from WFN prior to contacting property owners for permission to enter properties for survey purposes related to the project. Permission for access for any other reason will be obtained from the property owner in writing. Arrange for all permits, approvals and/or insurance necessary to secure entry and carry out field work required to complete the assignment. Advise WFN (with a copy to the Ministry). WFN will then formally advise the Ministry in the event entry is denied, but required to properly complete the assignment.

B.5 Acquire and examine legal plans and land titles. (Includes the Canada Lands Survey Records equivalent) and include the legal boundaries on the AutoCad base drawings. Cadastral information required will include, but is not limited to;

- Lands identified in Schedule C of the Agreement (attached)
- Subdivisions
- Easements and Rights of Ways
- District Lots
- Sections, ¼ Sections and Legal Subdivisions
- Highway Gazettes
- Lots internal to IR #10 that abut the project
- Provincial Park Boundaries
- Agricultural Land Reserve Boundaries
- All relevant legal, lot, plan, and RW descriptions
- Mining Claims
- Regional District Boundaries

Submit a copy of the land titles and legal plans to WFN and the Ministry.

Terms of Reference

February 15, 2006

B.6 Submit a copy of all relevant Project correspondence, including letters, memos, facsimiles, emails, conversation records, meeting minutes, decision papers, reports, etc., to WFN and the Ministry.

B.7 Acquire and review existing aerial and underground utility information from the utility owners as necessary and include these on the AutoCad base drawings.

B.8 Prepare and submit a Survey Report including, but not limited to, summaries of the following:

- The initial Project scope;
- Quality Control / Assurance measures put into effect to ensure the quality outcome of the survey project;
- Traverse Tables and closures achieved;
- Bench Marks and Horizontal Control points used;
- Cadastral calculations and closures achieved;
- Subsequent major revisions and/or scope changes and the reasons for them, and;
- All unresolved survey issues, and any other special conditions and considerations that may impact on the design or construction of the Project.

**C. ARCHAEOLOGICAL SERVICES REQUIRED**

C.1 Subject of separate agreement.

Terms of Reference

February 15, 2008

#### D. GEOTECHNICAL SERVICES REQUIRED

##### The Consultant will:

D.1 Examine and assess all existing and available geotechnical information, designs and reports to establish their completeness with respect to the earthwork, structural and drainage design requirements. Identify all additional geotechnical investigation, review, assessment and design (in accordance with the geotechnical design criteria identified in Appendix D) required to complete the 30% detailed design. Liaise with the Geotechnical Engineer with respect to the Ministry's geotechnical design requirements.

D.2 Conduct additional geotechnical investigation and design services in support of the structural and geotechnical design. The main components of work included, but are not limited to:

- **Structures and Retaining Wall Analysis and Design**
  - Overturning / sliding
  - Bearing capacity / settlement
  - Foundation design, including seismic evaluation, stability and backfill requirements
  - Global stability
  - Seismic analysis (spring constants, Mononobe-Okabe, pseudo static, and liquefaction analysis)
  - Lateral pile analysis (for piled foundations)
  - Lateral earth pressures and loads ( $k_a$ ,  $k_p$ )
- **Embankment Design**
  - Moisture impact and management during construction and subsequent operation.
  - Use of excavated cut materials with estimated shrink and swell factors
  - Fill slope angles
  - Potential embankment settlement and stability analysis, monitoring and remediation measures
  - Geosynthetics specifications, if being recommended for construction, with detailed installation procedures.
- **Soil Slope Design**
  - Moisture impact and management during construction and subsequent operation.
  - Cut slope angle
  - Soil slope stability assessment
  - Ditch design
  - Stripping depth for removal of organic and unsuitable material

Project 778/X-0001

\\ODMA\PC\CCCS\VOO\_DOCS\14990A11

Page 6

- **Pavement Structure Design**

- Evaluation and design / rehabilitation of pavement structure for Highway 97 per 19-95 Pavement Design Standards.
- As the geometric design progresses, reappraise all aspects of the pavement structure design to achieve the most economical solution compatible with the proposed profile and geometric design.

D.3 Obtain any necessary approvals as may be required for completion of any fieldwork.

D.4 Present the above mentioned work in a geotechnical report which follows the format of Guidelines for Geotechnical Reports (Bulletin #GM9801). The report and all drafts will be submitted to the Ministry's Geotechnical Engineer for review.

#### E. ROADWAY GEOMETRIC DESIGN SERVICES REQUIRED

The Consultant will:

The 30% detailed design will be completed using the "CAICE Visual PE" software and adhere to the Ministry's BC Supplement to TAC Geometric Design Guide, Section 1270 as amended by the Agreement.

The Consultant will perform the following Services with respect to the Project as required to complete the 30% Detailed Design:

E.1 If necessary, revise the Campbell Road Interchange configuration as shown in "Schedule F" of the Agreement to reflect "Proposal 02", as identified in the "Collaborative Design Matching Session" report prepared by Value Management Inc. (October 2005);

E.2 Confirm the operational characteristics of the Campbell Road interchange based on available traffic projections and development proposals. Document all assumptions, input and resulting interchange and intersection performance measures in a traffic Operations Report.

E.3 Prepare a 30% detailed roadway design, after acceptance of the revised interchange configuration, in accordance with the Design Criteria Identified in Section O of these Terms of Reference in conformance with the Ministry's BC Supplement to TAC Geometric Design Guide, Transportation Association of Canada (TAC), the Geometric Design Guide for Canadian Roads (1999), and the Ministry's Technical Bulletins, Circulars and Design Memoranda and as may be amended by the Agreement. Information required on the drawings and reports will include, but will not be limited to, the following:

- A Front Page and a Key Plan
- Topography with one meter contour intervals;
- Survey control monuments with their coordinates;



Terms of Reference

February 15, 2006

- Limits of construction;
- Property acquisition plans showing easements and rights-of-way to be acquired and surplus right-of-way areas;
- Design criteria (design speeds, maximum grades, vertical and lateral clearances, etc.);
- Horizontal curve and spiral data;
- Surcharge areas and requirements;
- Curbs, edges of pavement, traffic barrier flares, critical dimensions, access provisions, cut / fill toes;
- Laning and geometric drawings showing access movements, design vehicles, general laning and geometric layouts;
- Profile drawings showing the control line profile, vertical curve data, K values, quantities, development of superelevation and the original ground profile;
- Typical sections;
- Drainage drawings and storm sewer profiles as required;
- Signing and Pavement Marking drawings;
- Cemetery access and amenities;
- Sign feature (calm);
- Utility conflicts;
- Structure types, locations and layouts, and;
- Necessary supplementary drawings illustrating special details, e.g. drainage structures, retaining walls, impact attenuators, etc.

The design drawings will provide sufficient detail and geometry to ensure that the final design will meet all Project requirements and objectives. Geometric designs will conform to Sections O.1, O.2 and O.3 of these Terms of Reference.

## E.4

Ensure that operating efficiency and safety appropriate to the design speeds are maintained throughout all areas influenced by construction of the Project. Design all permanent pavement markings and locate all guide signs in accordance with the Ministry's Manual of Standard Traffic Signs and Pavement Markings. Prepare a set of signing and pavement marking drawings appropriate for a 30% detailed design to show all guide signing and pavement marking requirements, including:

- Locations of all guide signs required including the identification of height clearance signs for all structures
- Guide sign messaging
- All required lane line markings, chevron markings and cross-hatching
- Preliminary details of all sign structures



E.5 Prepare reproducible working cross sections. Refer to the Ministry's BC Supplement to TAC Geometric Design Guide, Section 410, for cross section format and content requirements. Typically, the cross sections will show the following information but not limited to:

- Existing ground line and soil strata with features identified;
- Existing structures, e.g. retaining walls, culvert end walls, fences, buildings, etc.;
- Proposed finished grade cross fall at each section;
- Control line with existing and proposed centreline elevations;
- Proposed ditch elevations;
- Proposed sound berms with slopes and elevations;
- Existing and proposed highway right-of-way boundaries;
- Existing and proposed storm drainage and culvert crossings with arrows indicating flow direction;
- Proposed access and side road profiles;
- Proposed retaining walls including foundation excavation, and pay line;
- Proposed structures.

E.6 Consult with the Ministry's Area Manager with respect to operational requirements. Include necessary maintenance, emergency, and traffic operation features as may be necessary for the completed Project. Operational requirements will include the provision of direct access to the WFN cemetery from Highway 07 at Sinoona Road (full time right-in and right-out movements, and periodic left-in movements (using median barrier gating) associated with special occasions).

E.7 Confirm that the proposed works will not adversely impact the noise mitigation functionality of the existing earth berms.

## F. STRUCTURAL SERVICES REQUIRED

The Consultant will:

F.1 The Consultant will complete a conceptual design for the new overpass structure. The structure may be a steel or concrete single or multi-span bridge and may or may not incorporate MSE walls as part of the abutment structure. The structure must meet Ministry design and safety standards in accordance with Section 0.4 of these Terms of Reference as amended by the Agreement, and will incorporate sound engineering principles with regard to economy, future maintenance and aesthetics.

F.2 Identify and complete conceptual designs for any retaining walls or other structures as required for the Project. Make recommendations for the use of any additional structures and if applicable, evaluate what type of structure would be best suited to the final design.

- F.3** Prepare a Structures Conceptual Design Report together with conceptual drawings and construction cost estimates to a Class C level. The conceptual structural drawings will show span configurations, substructure details, wall elevations, superstructure and component cross sections etc. All preliminary drawings will be 11X17 size folded into the report. The Structures Conceptual Design Report will provide a comparison of the various structure alternatives considered.

The Structural Conceptual Design report will contain the following information:

- Recommendations for final design
- Conceptual drawings for each structure alternative considered
- Construction cost estimates for the alternatives considered
- A short discussion of significant issues such as construction costs, construction scheduling and staging, future maintenance, geometric, environmental, geotechnical and any other issues to support the recommendations for the final design.

- F.4** Prepare General Arrangement Drawings, in general conformance with the Manual of Bridge Standards and Procedures, and any required supplemental drawings for the selected structures. The drawings will provide sufficient detail and geometry to ensure that the final design will meet all Project requirements and objectives. Structural designs will conform to Section C.4 of those Terms of Reference as amended by the Agreement.

- F.5** Suggest structural specific project specifications for the final design and construction of the structures to ensure that the final design and construction will meet the Project requirements and objectives.

- F.6** Prepare Class C cost estimates for all structures in the Project including an appropriate contingency amount to arrive at a reasonably accurate overall estimate of cost with reference to the Ministry's Historical Cost Data Website. Notify the Ministry of any factors which are considered by the Consultant to be beyond their control and which are likely to qualify the accuracy of the cost estimates.

#### **G. DRAINAGE DESIGN SERVICES REQUIRED**

The Consultant will:

- G.1** Develop a joint system benefiting both the Ministry and WFN for storm water drainage where improvements are required to the existing system as a result of Highway 97 Improvements. Matters to be considered, but not necessarily limited to, are:

- Capacity of existing system to meet current needs as well as foreseeable future needs;
- Main outfall to be on the south side of the existing causeway and will incorporate existing oil separator as practicable; and,
- Identify improvements required for the short and long term.

#### **H. ELECTRICAL DESIGN SERVICES REQUIRED**

Project 7787X-0001  
 :ODMAP-GDUCSVDO\_D0CSY4990411

Page 10

Terms of Reference February 15, 2008

**The Consultant will:**

- H.1 Prepare a preliminary design report for illumination of the project, including underpass lighting if required.

**I. SIGNING AND COMMEMORATIVE CAIRN**

**The Consultant will:**

- In collaboration with WFN, review and recommend final message text designs, layouts and locations for all guide signs in accordance with the Manual of Standard Traffic Signs and Pavement Markings.
- In collaboration with WFN locate and identify servicing for the commemorative cairn feature including locations, structure, text, and landscape as developed by WFN.

Project 7787X-0001  
 :ODWA\PCDOCS\YDO\_DOCS\14980411

Page 11

Terms of Reference

February 15, 2008

**J. UTILITY RELOCATION DESIGN SERVICES REQUIRED****The Consultant will:**

- J.1 Identify all public and private utilities or other installations to be removed, relocated or adjusted as a result of the improvements.
- J.2 Identify the location, size and intended use of existing carrier pipes within the Highway 97 right-of-way and, in consultation with WFN, requirements for additional carrier pipes to accommodate future utility crossings.
- J.3 Accommodate the installation of carrier or casing pipe required for servicing improvements in the interchange area.
- J.4 Advise and consult with all utility owners affected by the Project. Address all valid concerns and modify the design as necessary or as directed by WFN and the Ministry. Obtain written agreement in principle of the 30% Detailed Design from all applicable parties and agencies. Identify all permits and formal approvals required by such parties or agencies for construction of the Project.

**K. TRAFFIC MANAGEMENT AND CONSTRUCTABILITY REVIEW SERVICES REQUIRED****The Consultant will:**

- K.1 Conduct a constructability review and recommend provisional construction scheduling, including the scheduling of existing service relocations. Prepare drawings illustrating practical staging of construction, general detour routings and special traffic handling provisions. In collaboration with the Ministry's Traffic Engineer, prepare a constructability and traffic management report for the proposed works.

- K.2 In collaboration with the Ministry, prepare a traffic management report based on the traffic management strategy prepared by the Ministry

**L. COST ESTIMATING SERVICES REQUIRED****The Consultant will:**

- L.1 Prepare Class B cost estimate with reference to the Ministry's Historical Cost Data Website including estimated costs of utility relocations and contingency amounts. Notify the WFN in writing who will in turn notify the Ministry in writing, giving details of any factors considered to be beyond the Consultant's control which quality, or are likely to quality, the accuracy of the cost estimate. When requested, submit further information and recommendations required to assist WFN and the Ministry in making an evaluation of such qualifications for the necessary budgeting process and/or for other decision making purposes of the Ministry.

**M. 30% DETAILED DESIGN REPORT AND PERFORMANCE SPECIFICATIONS****The Consultant will:**

Project 7787X-0001

CDMAVPCDCGSVDO\_DOCS149960A1

Page 12



M.1 Prepare and submit a 30% Detailed Design Report including, but not limited to, summaries of the following:

- The initial Project scope;
- Design activities that have resulted in revisiting the interchange concept, and their outcomes;
- Subsequent major revisions and/or scope changes and the reasons for them;
- All utility conflicts and required relocations;
- All environmental concerns / issues for areas other than Okanagan Lake and foreshore;
- Critical construction staging and traffic management considerations;
- Identify all project activities and provide costs where available with reference to the Ministry's Historical Cost Data Website;
- All unresolved design issues, all agreements, and any other special conditions and considerations that may impact on the construction of the Project;
- Variances in design criteria, including a signed copy of the Recommended Design Criteria with supporting documentation;
- Structures Conceptual Design Report
- Recommend a preferred option for advancement to final design phase that is best suited to the project objectives and budget
- Identify, and quantify where possible, all known or potential project risks that may have an impact on construction costs and schedule.

Make necessary revisions to the report taking into consideration WFN and Ministry review comments and resubmit copies of the revised report as required.

Submit a copy of all relevant Project correspondence, including letters, memos, facsimiles, emails, conversation records, meeting minutes, decision papers, reports, etc., to WFN who will in turn forward material to the Ministry as the design progresses.

M.2 Suggest and submit "Project Specifications" which will form the basis of the design-build technical specification for subsequent design and construction activities.

#### N. ENVIRONMENTAL SERVICES REQUIRED

The Consultant will:

N.1 Environmentally sensitive areas are affected by the proposed improvements. They include, but are not limited to:

- Okanagan Lake and adjacent foreshore and land areas

N.2 The Ministry will be responsible for undertaking the environmental mitigation strategy and environmental protection plan, and for obtaining environmental

Terms of ReferenceFebruary 15, 2006

approval and permits for all work impacting Okanagan Lake and adjacent foreshore.

N.3 The Consultant will provide preliminary environmental assessments, document any impacts, and recommend mitigation strategies as required for the land areas. The Consultant will incorporate this information and the information from N.2 in order to provide the overall requirements that must be addressed by the design-builder.

N.4 In collaboration with the Ministry and the W.R. Bennett Bridge Concessionaire, liaise with Environmental Agencies to confirm the Environmental Permits required for the Project and to confirm the location and extent of mitigation for any HADD.

N.5 For work not having a direct impact on Okanagan Lake and adjacent foreshore and land areas, obtain "approval in principle" from the Environmental Agencies for the proposed environmental mitigation strategy and associated work.





#### O. ADDITIONAL ENGINEERING SERVICES

The Consultant will be required to perform the following Services with respect to the Project to complete the 30% detailed design:

- O.1 Provide drawings and reports for a Road Safety Audit Review of the project; and provide a response to the RSA report;
- O.2 Provide presentation material and attendance at one session with WFN Chief and Council, one presentation to WFN Membership, and a subsequent open house or public information session. Liaise with WFN on an ongoing basis and specifically for the coordination of presentation material and scheduling of meetings with Chief and Council, and Membership.

#### P. DESIGN CRITERIA

Sections P.1, P.2 P.3 and P.4 of these Terms of Reference identify the Design Criteria that conform to the Agreement and the design guidelines required for the Project. It is recognized that applying these criteria may potentially have a severe impact on some Project constraints, such as environmentally or geotechnically sensitive areas, property, existing structures or the Project budget. After examining the application of the Recommended Design Criteria and identifying and analyzing the impacts on Project constraints, the Consultant will recommend to either meet or vary the criteria to mitigate or eliminate the impacts.

Should variations to the criteria be considered, it is not intended that only one aspect be modified where a combination of variances would be better suited, safer, or more desirable. The Consultant will provide reasons why the Ministry standards, guidelines or Design Criteria cannot be attained, as well as justification for a recommended safe and viable alternative. Any variance to the Design Criteria will require discussion with the Regional Engineering Manager for formal approval by the Ministry. A signed-off design criteria form and supporting documentation for recommended variances will be included in the 30% Detailed Design Report.

At a meeting August 4, 2004, the following project-specific criteria marked with an \* were generally agreed to by representatives of the Westbank First Nation and Ministry of Transportation (Dirk Nyland, Frank Dacho and Rob Sylvester).

##### P.1 HIGHWAY NO. 97

- Classification: ..... Rural Arterial Divided
- Design Speed: ..... 70 km/h
- No. of Lanes ..... 5 (including new southbound climbing lane)
- Minimum Radius: ..... 190 m
- \* Lane Width: ..... 3.6 m (widened where necessary through curves)
- \* Median Width ..... 2.6 m (including CMVB)
- \* Outside Shoulder Width ..... Southbound - 2.5 m paved, Northbound - 3.0m (both separated from through lanes by mountable curb)
- Inside shoulder Width ..... 1.0 m (to CMVB)
- Minimum K Factors ..... crest 16-23; sag 20-25 (headlight control)

Project 7787X-0001

::CDMAPCDOCSDOQ\_DOC014996041

Page 15

Terms of Reference

February 15, 2008

- Maximum Grade ..... 6%; (8% for < 500 m), 3% at intersections
- Minimum Grade ..... 0.5%
- Maximum Superelevation ..... 6% (4% at intersections)
- Design Vehicle ..... WB20
- RW width ..... minimum of 6m past the proposed cut and fill toes
- Pedestrian/Cyclist ..... barrier separation

**P.2 INTERCHANGE RAMPS**

- Classification: ..... Ramp
- Design Speed: ..... 50 km/h
- No. of Lanes ..... 1
- Minimum Radius: ..... 90 m
- Lane Width: ..... 4.5 m
- Outside Shoulder Width ..... 1.5 m paved
- Inside shoulder Width ..... 1.0 m
- Minimum K Factors ..... crest 8-7, sag 5-6 (comfort control)
- Maximum Grade ..... 8%; (10% for < 500 m), 3% at intersections
- Minimum Grade ..... 0.5%
- Maximum Superelevation ..... 6% (4% at intersections)
- Design Vehicle ..... WB20
- RW width: ..... minimum of 6m past the proposed cut and fill toes

**P.3 CAMPBELL ROAD**

- Classification: ..... Rural Local Undivided
- Design Speed ..... 50 km/h
- Minimum Radius ..... 120 m (with reverse crown)
- Lane Width ..... 3.8 m
- Outside Shoulder Width ..... 1.5 m paved; 0.5 m gravel rounding
- Maximum Grade ..... 8%; (10% for < 500 m), 3% at intersections
- Minimum Grade ..... 0.5%
- Maximum Superelevation ..... 2% (reverse crown)
- Sidewalk ..... 3 m, east side only
- Design Vehicle ..... WB20

**P.4 OVERPASS STRUCTURE**

- Design Code ..... CAN/CSA-S6-00-Canadian Highway Bridge Design Code
- Ministry Standards ..... Manual of Bridge Standards and Procedures; Construction Standard Specifications for Highway Construction
- Future Load Allowance ..... Provision will be made for an additional dead load Allowance for a future topping of 50 mm of concrete
- Deck Width ..... In accordance with the geometric design requirements
- Deck Drainage ..... Convoy runoff water from deck surface to discharge at locations that are environmentally acceptable.
- Railings ..... The performance level used for this site will be in accordance with the governing design code.

Project 7187X-0001  
 :CDMAIPCDOSVDO\_DOC8149950A11

Page 16

Terms of Reference February 15, 2006

- **Structure ID #** ..... Any structures with spans greater than 3.0 m or any retaining walls with an effective height greater than 2.0 m at any point will require the assignment of a unique structure ID number. The Ministry will assign the structure ID numbers once the structures for the project have been sufficiently identified.
- **End Flares** ..... End flares will be provided in accordance with the geometric design requirements unless otherwise specified by the Ministry.
- **Reinforcing Steel** ..... Reinforcing steel will meet the requirements of CAN/CSA-G30.18. The top mat of deck reinforcing steel will be epoxy coated
- **Structural Steel** ..... For a structural steel bridge, the superstructure members will be 350 AT. Bracing members may be 350 A. Superstructure members located within a distance of 1.5 h of all deck joints will be coated for increased corrosion resistance. The parameter h will be the overall depth of the superstructure. The use of weathering steel will be in accordance with Technical bulletin TB-307, 1990 by Bethlehem Steel as signed by Thomas Willett, Director, Office of Engineering FHWA. Surfaces of weathering steel will be painted at all locations that are in contact with galvanized steel. In general, all stop connections will be welded and all field connections will be high strength bolted.
- **Corrosion Rates** ..... For steel below ground the sacrificial thickness will be computed for each surface exposed to the soil as follows:  
Galvanization loss = 15 micrometers/year for the first two years and 4 micrometers/year for subsequent years.  
Carbon Steel loss = 12 micrometers/year. Design Service Life = 100 years.

**Q. MILESTONES / SCHEDULE / REPORTING / MEETINGS**

**Q.1 MILESTONES**

The Consultant will submit the following for WFN and Ministry review on or before the specified completion dates.

- Complete Traffic Operations Report February 14, 2006
- Revise and Submit Interchange Concept: February 14, 2006
- **Confirm SB off-ramp geometry:** February 14, 2006
- Design Progress Meeting No. 1 February 14, 2006
- Complete Geotechnical Investigations: February 28, 2006

Project 7787X-0001  
::ODMA\PCDOCS\NDO\_DOCS\14986041

Page 17

*g*

Terms of Reference

February 15, 2006

• Complete Drainage Design and Report:	February 28, 2006
• Constructability & Traffic Management Report	March 15, 2006
• Complete Survey and Base Plan Preparation:	March 15, 2006
• Draft Structures Conceptual Design Report	March 15, 2006
• Design Progress Meeting No. 2	March 15, 2006
• Final Structures Conceptual Design Report	April 30, 2006
• 'Draft' 30% Detailed Design	April 30, 2006
• Design Progress Meeting No. 3	April 30, 2006
• Formal Presentation to WFN Chief and Council	May 5, 2006
• Formal Presentation to WFN Membership	May 19, 2006
• Complete Archaeological Impact Assessment:	(by others)
• Design Progress Meeting No. 4	May 30, 2006
• 'Final' 30% Detailed Design Report	June 15, 2006

**Q.2 SCHEDULE**

The Consultant, WFN, and the Ministry will undertake to maintain the Project on the agreed schedule and within the scope and approved budget for the assignment. The schedule requires the timely availability of all WFN and Ministry personnel as required. If the schedule slips, the consultant will submit an action plan to WFN and the Ministry outlining proposed steps to ensure that the Project is brought back on schedule. An extension of time will not be permitted without prior authorization. The Ministry will not unreasonably refuse a request for an extension of time.

**Q.3 MEETINGS**

The Consultant will undertake the following with respect to the Project:

- Liaise with WFN as required;
- Liaise with the Ministry project team as required
- Attend site meetings as necessary to discuss with stakeholders, WFN and Ministry representatives factors which may affect the construction of the Project.
- Attend design review meetings as per the milestones noted above, and as required, to review and evaluate progress, summarize resolved issues, identify and discuss new issues, outline work to be completed prior to the next meeting, and update plans, special provisions, costs and schedule.
- Maintain effective liaison with WFN and Ministry representatives by regular contact and scheduled meetings. Attend meetings with WFN, Ministry representatives, consultants, municipalities, regional districts, utility owners, environmental agencies, or other affected parties as necessary to satisfy the requirements of the detailed design.
- Prepare and provide WFN and Ministry Project team members with minutes of all meetings within one week of the date of the meeting.

Project 7787X-0001  
 :ODMAPCDCCSVDO\_DCCS11498041

Page 18



- Contact Persons:
  - For the Ministry: Barrio LeBlond or Jon Buckle
  - For WFN: Dick Fletcher or Rob Richardson

#### Q.4 PROJECT PROGRESS REPORTING

The consultant will provide progress reports concurrently to WFN and the Ministry on a regular monthly basis (the 15<sup>th</sup> of each month). Include statements regarding any potential changes to the scope of the work or any outstanding issues that might imply an increase in assignment of scheduling difficulty, plus an estimate of the assignment progress, including a summary of activities completed as well as planned for the upcoming month.

#### R. MINISTRY'S RESPONSIBILITIES

**NOTE:** While the Ministry will strive to provide adequate and timely information, the Consultant will review in detail all this information to ensure it provides all the details necessary for a comprehensive, thorough and accurate design.

The Ministry will undertake the following with respect to the Project as required:

##### R.1 GENERAL

- Provide access to all available pertinent reports, inventories and correspondence that will assist in the design process.
- Take the lead role in advising and consulting with the Concessionaire for the W.H. Bennett Bridge Project concerning the Campbell Road Interchange interface.
- Critically review the work as it proceeds and advise on matters regarding standards, guidelines and policy. This review does not constitute an acceptance of liability by the Ministry or its employees for the design, but is solely conducted as a Quality Assurance check. Assess and approve all scope changes, revisions to the design criteria and changes to the design schedule.
- Provide copies of all agreements pertaining to existing utilities within the highway right-of-way.

##### R.2 GEOTECHNICAL

- Provide all available geotechnical information and reports. Provide gravel source recommendations.

##### R.3 TRAFFIC

- Provide all available Ministry traffic counts.

Terms of Reference

February 15, 2008

- Traffic management strategy including constraints, closure regimes, clearance times, signing requirements, restrictions on hours of work, and all other traffic management objectives.

**R.4 SIGNING AND COMMEMORATIVE CAIRN**

The Consultant will:

- In collaboration with WFN, review and approve final message text designs, layouts and locations for all guide signs.
- Approve the location of the Commemorative Cairn

**R.5 ENVIRONMENTAL**

- Refer to Section "N".

**R.6 TRANSIT**

- Collaborate with the Consultant and BC Transit to determine bus stop locations.

Project 7787X-0001

\\ODMAP\CDOS\NDO\_DOCS\149950411

Page 20

*Q*



- **APPENDICES**

**APPENDIX A: QUALITY MANAGEMENT**

The Ministry is responsible, as part of general project management responsibilities, for assuring that the quality of work submitted meets the standards and guidelines expected by the Ministry. The Quality Management activity is composed of two parts:

***Submission and Review of the Consultants Quality Management Plan***

The Consultant will submit a detailed Quality Control Plan for review by the Highway Design Coordinator prior to acceptance. The Quality Control Plan will govern the Consultant's internal review and checking process throughout the entire course of the work. The Plan is intended to demonstrate how the Consultant will achieve a quality product. The Quality Control Plan will adhere to the Quality Management Accord as agreed to between the Ministry of Transportation and the Consulting Engineers of British Columbia.

***Evidence of Implementation of the Quality Control Plan***

Evidence that the Consultant's Quality Control Plan is functioning effectively will be provided by the submission, with all deliverables, of Quality Control Reports and check sheets. Failure to submit an acceptable Quality Control Report at the agreed point in the process may result in subsequent submissions of work being returned to the Consultant without review.

**APPENDIX B: DESIGN DEFINITIONS AND REQUIREMENTS****DESIGN DEFINITIONS****PRELIMINARY DESIGN**

**Definition:** To determine the ability of selected locations and configurations to meet the needs and requirements established in the previous stages, and recommend one for successive design stages.

Preliminary drawings are developed at a scale of 1:1000 (for interchanges & intersections) or 1:2000 (for highways) using accurate base mapping with maximum 2-meter contours. The drawings are suitable for communicating the project intent at public information sessions. These drawings will include the following information:

**Design Parameters.**

- curb lines, edge of pavement, medians, nose and gore points.
- radii, spiral information, critical dimensions.
- intersection movements, signal installations.
- proposed centerline and original ground profiles.
- developmental phasing options (based on need and fiscal funding.)
- construction staging if critical to project.
- drainage proposals.
- utility and rail conflicts.
- access provisions.

Preliminary design will usually include the following levels of detail:

- construction staging is considered for feasibility, but not detailed at this time.
- geotechnical field data is considered for natural hazards and foundation material competency. This may require drilling, sampling, and testing.
- vertical clearances are analyzed for verifying functionality.
- original terrain data is taken from mapping information, as detailed field surveys are not usually carried out for preliminary design.
- Class "C" cost estimates.

If more than one alignment or configuration option is being considered, one will be selected as "preferred" through the preliminary design process, based on its operational efficiency, construction feasibility, social, economic and environmental impacts, cost estimates, public input, and other parameters appropriate for the project. The lower-rated options may be re-considered in later design stages, if problems arise with the selected option.

**FUNCTIONAL DESIGN**

**Definition:** The horizontal and vertical geometric design for the phase preceding the development of the final detailed design drawing.

Functional design drawings are developed at a scale of 1:500 or 1:1000, using detailed field survey information, or accurate and field-verified orthophoto mapping. These drawings include the following information:

Project 7187X-0001  
 :D:\NAIP\CD\CSVD\DO\_DCS\14985041

Page 22

Terms of Reference

February 15, 2006

- all items listed under the Preliminary Design selection and recommendations.
- all horizontal geometric design details.
- profiles, with vertical geometric design details.
- control lines with stationing.
- design vehicle turning templates superimposed at critical locations.
- survey Control information.
- preliminary Right-of-Way requirements.
- drainage details
- signing information details and locations.

The following parameters are considered in functional design;

- geotechnical design information with respect to earth slopes, overburden removal limits, and necessary mitigative measures required for foundation and embankment stability, erosion control, and other special concerns.
- profiles are set using earth balance techniques, although the pavement structure design may not yet be available.
- structures conceptual designs
- consideration of guide, warning, regulatory, and informational signs.
- Class "B" cost estimates for use in construction budgets.

**DETAILED DESIGN**

**Definition:** The development of construction (contract) drawings and technical specifications for construction, including the completed geometric and geotechnical design, special site considerations and construction details.

Detailed design drawings are developed at a scale of 1:1000/1:500. Geotechnical information is incorporated, pavement design is produced, and cross sections are finalized. These drawings included the following information:

1. All items in Functional Design above except technical information, which is not required for construction.
2. Clearing and grubbing limits.
3. All drainage works.
4. Lighting, signals and conduit (duct) locations.
5. Utility locations and relocations requirements.
6. Warning, guide and regulatory sign locations.
7. Pavement markings.
8. Final Right-of-Way requirements.
9. Construction staging and traffic accommodation provisions.
10. Landscaping details.
11. Borrow and disposal areas.
12. Special geotechnical requirements (surcharging, compaction, etc.)
13. Estimated quantities of materials.
14. Mass-haul information including earth balance points.
15. Survey control and layout information.
16. Typical and specific significant cross-sections.
17. Professional Engineer's stamp.

Project 7797X-0001  
 ::ODMAPCBOCCSYDO\_DOC\$14986041

Page 23

Terms of Reference

February 15, 2006

Final quantity estimates and Class "B" cost estimates are produced at this time, along with general specifications and Special Provisions.

DESIGN MILESTONE DELIVERABLESConcept Confirmation Submission:

- Traffic Operations Report complete
- Survey and Base Plans complete, including underground utilities, cadastral information, planimetric and topographic features, and survey control information
- Plans showing alignments with curve data
- Profiles showing the original ground lines and proposed grade
- Typical Sections
- Geometrics and Lining, including accesses, with truck turning templates superimposed
- Proposed structures, including overpass and retaining walls.

30% Detailed Design Submission:

- All revisions that were identified at the Concept Confirmation submission complete.
- All design drawings complete.
- Utility relocation drawings complete (paper copies of complete set ready for submission to utility companies).
- Design cross sections complete.
- Final quantities and construction cost estimates, including quantity estimate with neat-line, best case and worst case scenarios.
- Final Design Criteria Sheets.
- Geotechnical Investigations and Recommendations Report.
- Archaeological Investigation and Resolution Report.
- Drainage Design Report
- Constructability Report

30% Detailed Design Report and Performance Specifications Submission:

- Compilation of all project correspondence, meeting notes, etc.
- Identification of outstanding design and/or construction issues to be resolved in subsequent stage of design;
- CAICE design archive and AutoCAD drawings (on CD)
- Identification of Performance Specifications for subsequent design and construction stages.

Cost Estimates (Taken from the Ministry's Project Management Manual)

Class D estimates are a basic type of planning study estimate prepared during the pre-project Corridor Management Plans. Class D estimates assist in the selection of the most suitable and economic alternative and serve as a focus for more detailed investigations. They are based on a minimum of planning information and on sketches of major project features and/or only general definition of requirements. Depending on the size and type of project and the information available Class D estimates may differ from the final project cost by - 30% to + 100%.

Project 7787X-0001  
 ::ODMAP\CDCCSWDO\_DPCS\14906041

Page 24

Terms of Reference

February 15, 2006

**Class C** estimates are more advanced planning study estimates prepared during the Planning and Evaluation Phase after enough engineering work has been done so that sketches, plans and drawings showing some project details and dimensions are available. Environmental and social impacts are studied but not in exhaustive detail. A recommended alternative is selected and the project enters the Design and Engineering phase if approved. Class C estimates may differ from the final project cost by - 25% to + 50%.

**Class B** estimates are prepared during Design and Engineering, which involves refinement and further studies and selection of the approved alternative. Site specific field investigations are undertaken, major material costs are obtained and detailed construction planning studies are prepared. Costs of environmental mitigation or compensation are included. Class B estimates may differ from the final project cost by - 10% to + 25%.

**Class A** estimates are prepared as required during the final stages of Design and Engineering and are based on construction drawings. The variation and accuracy of Class A estimates would initially be similar to those for Class B estimates but would improve as more prices and information becomes available. Once a significant amount of contractual pricing is available, the process changes from estimating to forecasting.



**APPENDIX C: DRAFTING STANDARDS**

- C.1 Drafting standards for detailed roadway and drainage design drawings will be the same as those of the Ministry in accordance with the BC Supplement to TAC Geomatic Design Guide. All Ministry standard symbols, line styles, line types, fonts and drawing shell are obtainable from the internet at: <http://www.th.gov.bc.ca/bchighways/operations/hwyeng/geomat/geomathome.htm>
- C.2 Drafting standards for electrical design drawings will be the same as those of the Ministry in accordance with the Electrical and Traffic Engineering Manual. The traffic signal and lighting design will include site plans at scales of 1:500 and 1:250; pole, conduit and junction box locations; wiring, elevations, wiring diagrams, colour coding and any other details. All existing electrical equipment to be reused, relocated or removed must be shown on the contract drawings. Drafting will be checked for conformance with Ministry standards. In particular, CAD drawings will be examined on a computer for conformance to standards such as layering, line types, text font, and text size, etc. Any work not done to Ministry standards will be corrected by the Consultant at the Consultant's expense.
- C.3 Drafting standards for structure design drawings will be in accordance with the Manual of Bridge Standards and Procedures.
- C.4 All drawings will be submitted as a hard copy and in digital format (AutoCAD version 2002). The original Project drawings are to be signed and sealed by the supervising Design Engineer.





**APPENDIX D: GEOTECHNICAL DESIGN CRITERIA**

D.1 The geotechnical design will follow applicable sections of the following documents:

- Ministry Technical Circular T-2/92, "Seismic Design and Rehabilitation Criteria" dated February 14, 1992 and the amendment dated March 11, 1994.
- Publication No. FHWA-SA-97-076 " Geotechnical Engineering Circular No. 3 - Design Guidance: Geotechnical Earthquake Engineering for Highways" – Vol. I and II, May 1997.
- CSA S6-00 (Canadian Highway Bridge Design Code, CHBDC)
- B.C. Ministry of Transportation Supplement to S6-00 (Draft - [http://www.th.gov.bc.ca/publications/eng\\_publications/eng\\_pubs.htm#Bridge\\_Engineering\\_Section\\_Publications](http://www.th.gov.bc.ca/publications/eng_publications/eng_pubs.htm#Bridge_Engineering_Section_Publications))
- B.C. Ministry of Transportation Seismic Retrofit Criteria (June 2005)
- ATC-49 "Recommendations LRFD Guidelines for the Seismic Design of Highway Bridges"
- AASHTO "Standard Specifications for Highway Bridges", Seventeenth Edition, 2002.
- Proceedings of the National Center for Earthquake Engineering Workshop on Evaluation of Liquefaction Resistance of Soils Jan. 5-6, 1996.

Ministry technical circulars are available on the web at:  
[http://www.th.gov.bc.ca/publications/Circulars/technical\\_circulars.asp](http://www.th.gov.bc.ca/publications/Circulars/technical_circulars.asp)

D.2 Seismic Design

- Seismic Zoning for the Project area will be as defined in the National Building Code of Canada (NBCC, 1995) and British Columbia Code (BCBC, 1992) or through a seismic site response analysis undertaken by the Geological Survey of Canada. This Project will be designed to remain functional following an earthquake having a 10 percent risk of exceedence in 50 years (equivalent to a 1 in 475 year return period). For site specific numerical analyses of site response and soil-structure interaction, the Ministry will provide the acceleration time histories.
- Liquefaction potential of the subsoils will be evaluated for structures, walls and embankments, and the design will incorporate ground improvements and other methods of addressing potential liquefaction in accordance with ATC-49 "Recommendations LRFD Guidelines for the Seismic Design of Highway Bridges".
- Seismic design of the stability of any retaining walls will be done in accordance with AASHTO, Standard Specifications for Highway Bridges, Seventeenth Edition, 2002.

Terms of Reference

February 15, 2006

**D.3 Soil Slope and Rock Slope Design**

- The Consultant will conduct state of the practice field investigation to satisfy design requirements; conduct an overall stability assessment; and provide an economic cut/fill slope design including any support measures that may be necessary to ensure stability for the design life of the project.
- The rock cut design will include a practical ditch design based on geometric criteria proposed for the project. Recommendations for the rock cut at the detailed design stage will be based on a site specific investigation and will take priority over the requirements outlined in Technical Bulletin GM2001 Rock Slope Design. The rockfall containment strategies outlined in the Technical Bulletin may be incorporated in the detailed design if the site specific stability assessment allows and if it is cost effective to do so.
- Where the failure of a slope would affect highway operation (i.e. failure envelope encroaches the paved surface, failure causes lane closures for repairs or failure necessitates excessive maintenance):
- The minimum Factor of Safety for slope stability under static conditions will be 1.5 for soil slopes and 1.3 for rock slopes.
- The Factor of Safety for existing (already constructed) soil and rock slopes under pseudo-static seismic analysis is not to be less than 1.
- The Factor of Safety for planned new soil and rock slopes under pseudo-static seismic analysis is not to be less than 1.1.

**D.4 Foundation Design**

- Both shallow and deep foundations design must be completed in accordance with CSA S6-00 and B.C. Ministry of Transportation Supplement to S6-00.

**D.5 Settlement Analysis**

- Settlement analysis of pre-existing and new structures/embankments will be performed. Foundations will be designed such that differential settlement are limited to tolerable amounts as specified by the structural design, geometric design and utility considerations. Settlement analysis must consider and separately tabulate expected static settlement and any seismic induced settlement under the specified earthquake loading conditions.
- Embankment settlement will be predicted, and appropriate means to minimize the impacts, such as surcharging, overbuilding, use of lightweight fills and special construction requirements, will be evaluated.

**D.6 Retaining Wall Design**

- Slope angles steeper than 45 degrees will be designed as walls. Wall foundation design must follow the allowable stress method outlined in UAASTO Standard Specifications for Highway Bridges, Seventeenth Edition, 2002, Section 5. Retaining Walls and must incorporate the Factors of Safety defined in Section 1.2.6 for external and internal stability.

Project 7767X-0001  
 :ODNAP\CDocs\SVDO\_DOC\814998041

Page 26

## Terms of Reference

February 15, 2008

- For the design life of components, wherever there is time dependent calculations, use 100 years. Examples would be for corrosion and creep calculations.

## D.7 MSE Wall Design – External Stability

- The following Factors of Safety will be used for external stability of MSE wall design:

Condition	Minimum Factor of Safety
Bearing Capacity	2.5
Sliding	1.5
Overtopping	2.0
Global Stability	1.5

- Wall heights, proprietary wall systems and geosynthetic materials are restricted to those shown in the MoT Recognized Products Book (under R In <http://www.th.gov.bc.ca/siteindex.htm>)

## D.8 Polymeric Reinforcement Specification for MSE Wall Design – Internal Stability

- The Factor of Safety for Polymeric Reinforcement Pullout is 1.5
- The allowable reinforcement tension  $T_a$  will be the lesser of the following two determinations:

$$\bullet T_{a1} = \frac{T_i}{FD \cdot FC \cdot FS}$$

$$\bullet T_{a2} = \frac{T_w}{FD \cdot FC}$$

Where:

 $T_i$  is $T_{ult}$ 

is the ultimate tensile strength (kN/m) as per ASTM D6637-01

 $FS_{creep}$  is the Partial Factor of Safety for Creep $T_w$  is the Tensile Strength at 5 % Strain (kN/m) as per ASTM D6637-01 or GG1:GG1

FC is the Partial Factor of Safety for Construction Damage

FD is the Durability Partial Factor of Safety for Environmental and ageing losses

FS is the Partial Factor of Safety for Uncertainties

And

- The Partial Factors of Safety are determined by reference to the Table below.

Project 7787X-0001  
 :ODM\IP\CCCCSVDO\_DOOS\149804\1

Page 29

Uniaxial Geogrid Specifications Revised February 2004										
Partial Factors of Safety										
Polymer Type	With Testing and Mill Certificates					Without Testing and Mill Certificates				
	F <sub>Scpe</sub>	FC#	FC#	Gravel	FD	FS*	F <sub>Scpe</sub> <sup>A</sup>	FC	FD <sub>0</sub>	FS <sup>B</sup>
HDPE	Min. 3.1	Min. 1.15	Min. 1.25	Min. 1.1	Min. 1.1	1.5	5.0	3.0	2.0	1.5
Polyester	Min. 2.0	Min. 1.15	Min. 1.25	Min. 1.1	Min. 1.1	1.5	2.5	3.0	2.0	1.5
Acrylic Coated	Min. 2.0	Min. 1.15	Min. 1.25	Min. 1.1	Min. 1.1	1.5	2.5	3.0	2.0	1.5
PVC Coated	Min. 2.0	Min. 1.15	Min. 1.25	Min. 1.1	Min. 1.1	1.5	2.5	3.0	2.0	1.5
Polypropylene	Min. 4.0	Min. 1.15	Min. 1.25	Min. 1.1	Min. 1.1	1.5	5.0	3.0	2.0	1.5

#MOT 2003

\* Reference AASHTO Standard Specifications for Highway Bridges 17th Edition 2002 Pg. 158

^Reference Task Force 27 Page 34.

Note: For instantaneous loads lasting less than 60 seconds creep can be ignored. Lo. F<sub>Scpe</sub> = 1.0

SIR 277

**SCHEDULE B**

**Budget**

YDO\_OCS #149144 v. 3.8

2



DESCRIPTION	URBAN SYSTEMS PERSONNEL										USL Dist.	USL TOTAL	SUB-CONSULTANTS						FEE TOTAL
	DF	TR	KG	TY	AC	104	JD	JR	JW	Chr.			Survey	Safety Audit	Roadway Lightline	Structural	Geotech.	Sub-Cons	
	\$150	\$140	\$120	\$95	\$80	\$80	\$80	\$117	\$55	\$55									
<b>Project Management</b>																			
Development of Terms of Reference	22	30	0	0	0	0	0	0	0	0									
Project management / Sub-consultant coordination	40	100	0	0	0	0	0	0	0	0									
<b>Sub-Total</b>																			
<b>Project Initiation / Pre-Design</b>																			
Detailed topographic survey	0	2	0	0	12	4	0	0	4	0									
Geotechnical consultation	1	8	0	0	0	2	0	0	4	0									
Environmental consultation	2	12	0	0	0	0	0	0	0	24									
Design / Update Design Criteria	0	8	0	0	0	8	0	0	0	4									
Road safety audit	0	4	0	0	0	0	0	0	0	4									
Conceptual assessment and report	0	0	15	0	0	0	0	32	0	0									
<b>Sub-Total</b>																			
<b>Highway Design</b>																			
Concept finalization / Project definition	4	24	0	24	20	10	0	0	10	0									
Horizontal alignment	0	2	0	8	10	20	0	0	20	0									
Vertical alignment	0	2	0	4	10	20	0	0	20	0									
Intersection / Roundabout design	0	5	4	8	10	20	8	0	20	0									
Cross section design	0	2	0	4	10	20	0	0	10	0									
Construction staging	0	10	0	10	40	20	0	0	40	0									
Traffic Management Report	0	20	0	12	0	0	0	0	4	8									
Utility coordination	0	6	0	0	48	0	0	0	0	0									
Street light design / report	0	2	0	0	0	0	0	0	6	0									
Drainage design	0	2	0	0	0	0	0	0	57	20									
Landscaping design	0	0	0	0	0	0	0	0	0	0									
Structural design	0	8	0	0	0	0	0	0	16	0									
<b>Sub-Total</b>																			
<b>Drawing Preparation and Production</b>																			
Plan and drainage / Utilities	0	0	0	0	40	10	0	0	30	0									
Grading and paving	0	0	0	0	0	20	0	0	40	0									
Profiles	0	0	0	0	0	20	0	0	20	0									
Typical sections	0	0	0	0	10	0	0	0	10	0									
Pavement markings and guide signage	0	4	0	0	10	0	0	0	20	0									
<b>Sub-Total</b>																			
<b>Reporting</b>																			
30% Design Report	6	24	0	0	0	8	0	0	0	8									
Presentations to WFN Council and Membership	8	6	0	0	0	8	0	0	0	2									
Development of Project Specifications	0	30	0	0	0	0	0	0	0	16									
Quantities and Cost Estimate	0	10	0	0	40	40	0	0	0	0									
<b>Sub-Total</b>																			
<b>Total Hours</b>	61	294	70	58	272	280	40	57	112	78									
<b>Subtotal Fees</b>																			
<b>WFN Administration Fee</b>																			
<b>Total Budget</b>																			

S21



SIR 279

SCHEDULE C

Invoicing

VDO\_DOCX #1491444 v. 3 #

D



## ANTICIPATED INVOICING SCHEDULE

Task No.	Milestone Deliverable	Scheduled Completion	Lump Sum Value	Anticipated Invoicing Schedule						Totals
				February	March	April	May	June	July	
1	Revise and Submit Interchange Concept	Feb. 14, 2006								
2	Topographic Survey and Base Plans	Mar. 15, 2006								
3	Drainage Design Report	Feb. 28, 2006								
4	Geotechnical Investigation and Report	Feb. 28, 2006								
5	Structures Conceptual Design Report	Apr. 30, 2006								
6	Interim Design Submission	Apr. 30, 2006								
7	Formal Presentations to WFN	May 19, 2006								
8	Final 30% Detailed Design Report	Jun. 15, 2006								
		<b>Sub Totals</b>								
9	WFN Administration Fee	June 15, 2006								
		<b>Totals</b>								

S21

## Notes:

Task 6 includes a road safety audit, an "in-progress" drawing package and Design Progress Meeting No.s 2 and 3

**AMENDMENT TO  
MEMORANDUM OF UNDERSTANDING**

This Amendment is dated the 23rd day of April, 2007, and amends the Memorandum of Understanding ("MOU") dated the 1<sup>st</sup> day of August, 2005.

**BETWEEN:**

Westbank First Nation, as represented by an authorized representative ("Westbank")

**AND:**

Her Majesty the Queen in Right of the Province of British Columbia, as represented by an authorized representative of the Minister of Transportation (the "Province")  
(collectively, the "Parties")


**WHEREAS:**

- A. The Westbank and the Province entered into an MOU dated August 1, 2005 that is attached hereto as Appendix 1;
- B. The Province and the First Nation wish to increase the maximum amount of funds for which the Province will reimburse Westbank for those matters set forth in Schedule A b) of the MOU;

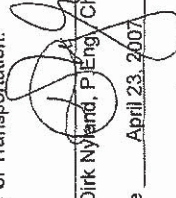
**NOW THEREFOR** the parties acknowledge and agree as follows:

- 1. The funding amount of ~~£16,000,000~~ in section 2(a) of the MOU is hereby deleted and replaced with the amount of ~~£16,000,000~~ of ~~£16,000,000~~
- 2. This amendment is effective as of April 23, 2007.
- 3. All other terms and conditions of the MOU will remain unchanged.

Executed for and on behalf of Westbank First Nation,  
As represented by its Chief and Council, by it's authorized  
Representative:

  
P. Feather, P. Eng. Railways  
Date 26/04/07

Executed for and on behalf of Her Majesty the  
Queen in Right of the Province of British Columbia,  
as represented by an authorized representative of the  
Minister of Transportation:

  
Dirk Nyland, P. Eng. Chief Engineer  
Date April 23, 2007

SIR 203

Pages 189 through 190 redacted for the following reasons:

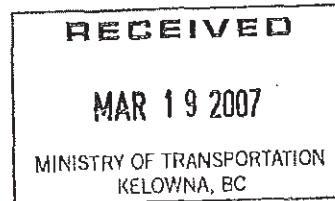
-----

S14

**FAXED**

March 5, 2007

Cliff# 154452



Chief Robert Louie  
Westbank First Nation  
#301-515 Highway 97 South  
Kelowna BC V1Z 3J2

Dear Chief Robert Louie:

**Re: Campbell Road Interchange Scope and Budget**

I am writing to confirm that, in accordance with Project Agreement Clause 6.2, funds will be allocated by the Ministry of Transportation to accommodate the award amount for the preferred proponent.

I can also confirm that the preferred proponent's technical proposal is acceptable to the Province and specifically that the capacity considerations for Campbell Road Interchange are acceptable subject to the preferred proponent proving out all other detailed requirements through the project's design review process.

Yours truly,



Dirk Nyland, P. Eng.  
Chief Engineer

copy Jon Buckle, Project Director

W:\ENG\CE\CHIEF\_ENGINEER\WR BENNETT BRIDGE\WestBankFirstNations\_scope and budget\_03.05.07.doc



**FAXED**

March 5, 2007

Cliff: 154451



Westbank First Nation  
#301-515 Highway 97 South  
Kelowna BC V1Z 3J2

Attention: Chief Robert Louie

**Re: Campbell Road Interchange Project**

I am very pleased to confirm that the Ministry of Transportation supports the results of the joint evaluation team in their selection of Emil Anderson Construction as the preferred proponent for the above noted design-build project.

I look forward to seeing the Ministry working closely with you as the Westbank First Nation undertakes this vital project through our jointly developed and historic new delivery model.

Yours truly,

  
FOR: John Dyble  
Deputy Minister

copy: Dirk Nyland, Chief Engineer, Ministry of Transportation  
Jon Buckle, Project Director, William R Bennett Bridge



April 20, 2007

Westbank First Nation

c/o Dick Fletcher  
Urban Systems Ltd.  
500 – 1708 Dolphin Av.  
Kelowna BC V1Y 9S4

**Re: Westbank First Nation's cemetery access**

This is to confirm arrangements between the Ministry of Transportation and Westbank First Nation with respect to facilitating cemetery access from Highway 97 on bridge hill in the event of a funeral. The arrangement is being initiated as a result of the construction of the Campbell Road Interchange and the limitation of free left turn movements to the cemetery.

Upon notification of a funeral event, the undersigned will authorize appropriate traffic control at the Ministry's cost, to allow left turn movements from Highway east bound into the cemetery. A minimum of 24 hours and preferably 48 hours notice will be needed to ensure the traffic control resources can be provided.

Sincerely,

Bill Smith,  
A/District Manager, Transportation  
Okanagan – Shuswap District

**SCHEDULE L**  
**FORM OF AMENDMENT AGREEMENT TO ATTACH EXECUTED**  
**DESIGN/BUILD AGREEMENT**

**AGREEMENT TO AMEND THE**  
**CAMPBELL ROAD INTERCHANGE AND**  
**ASSOCIATED HIGHWAY 97 IMPROVEMENTS**  
**PROJECT AGREEMENT**  
dated as of March 5, 2007,

**BETWEEN:**

Her Majesty the Queen in Right of the Province of British  
Columbia, as represented by the Minister of Transportation  
("MoT")

**AND:**

Westbank First Nation, of 301-515 Highway 97 South, Kelowna,  
British Columbia, as represented by its duly elected Council  
("WFN")

(together the "Parties")


**WHEREAS:**

- A. The Parties have entered into the Campbell Road Interchange and Associated Highway 97 Improvements Project Agreement on December 18, 2006 (the "Agreement");
- B. Further to section 8.8 of the Agreement, the Parties now wish to amend the Agreement so as to replace the form of Design/Build Agreement, as defined by the Agreement and as attached as Schedule E to the Agreement with the executed Design/Build Agreement

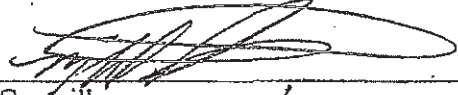
**NOW THEREFORE**, with good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged by each Party, the Parties covenant and agree as follows:

- 1. The form of Design/Build Agreement attached as Schedule E to the Agreement is hereby replaced with the executed Design/Build Agreement, attached to this amendment agreement as Appendix A.
- 2. The Parties acknowledge and agree that the form of Design/Build Agreement has no force or application whatsoever.


Executed for and on behalf of the Westbank  
First Nation, by its duly elected Chief and  
Council:

  
Chief Robert Louie

Apr 7 16/07  
Date

  
Councillor

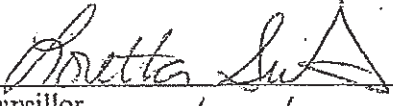
16/04/07  
Date

  
Councillor

April 16/07  
Date

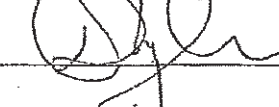
  
Councillor

4/16/07  
Date

  
Councillor

04/16/07  
Date

Executed for and on behalf of the Her  
Majesty the Queen in Right of the Province  
of British Columbia, as represented by the  
Minister of Transportation:

  
Dirk Nyland, P. Eng.  
Chief Engineer

07/03/23  
Date

**APPENDIX A TO SCHEDULE L  
EXECUTED DESIGN/BUILD AGREEMENT**

## SCHEDULE M

### INVOICING, PAYMENTS AND FINANCIAL RECORDS

WFN will establish and maintain, in connection with this Agreement and to the reasonable satisfaction of MoT, accurate books of accounts and records for the Project including supporting documents and will permit MoT and its representatives, servants, designates and agents, at any time during normal business hours, upon reasonable notice, to inspect, review, copy and audit any or all of them.

1. WFN will account for all contributions and expenditures for the Project in accordance with GAAP.
2. WFN will submit to MoT a financial statement at the end of each calendar quarter detailing the total Project Costs and all items comprising the Project Costs incurred in that previous calendar quarter. Each such quarterly financial statement will be signed by the Project Manager certifying that all reported items listed as part of the Project Cost expenditures pertain to the Project and are Project Cost items under this Agreement.
3. WFN will submit a Monthly Payment Application to MoT as set forth in Section 7.2.
4. WFN will send the Monthly Payment Application together with the supporting documentation set forth in subsection 7.4 (a) to MoT's designate in Victoria electronically and by courier and will provide a copy to the MoT Representative either by hand or courier within 15 days of the month-end.
5. MoT will pay amounts due to WFN by electronic funds transfer within 15 business days of receiving the monthly invoice. The Parties agree that MoT will ensure that WFN is paid within the 15 day period by electronic payment, or in the event MoT is delayed or experiences system problems, MoT agrees to issue a manual cheque within 5 days following the 15 day period.
6. WFN will pay the Design-Build the amount of its invoice less any GST amount included in the invoice (which shall be paid pursuant to Section 10 of this Schedule M) and any taxes and other withholdings which the WFN is required by law to deduct before making payment to the Design-Build and any amounts disputed by WFN or MoT in the time set forth in the Design/Build Agreement. Any disputed amount will be referred to the Liaison Committee for resolution failing which it will be referred to the dispute resolution in accordance with the provisions of the Design/Build Agreement.
7. WFN will maintain a complete audit trail, including all the records and accounts of the Project, during the Project and for a period of seven years thereafter to substantiate all contractual and financial transactions and will provide MoT and its representatives, servants, designates and agents with access to such records upon reasonable notice during regular business hours to WFN by MoT.
8. The Parties, in order to satisfy themselves as to the correctness of all payments, will develop an audit strategy that will involve an annual audit and an audit after the Project Completion Date which may involve, on an ongoing basis, random detailed reviews or



audits of a representative sample of the financial and project management record of the Project.

9. Without limiting the generality of this Section, WFN will provide reasonable access to MoT and its respective servants, designates, agents and representatives, upon request, to view the following:
  - (a) all contracts and agreements related to the Project;
  - (b) all Design-Builder's invoices and applications for payments;
  - (c) all receipts and vouchers related to the Project in the possession of the WFN; and
  - (d) all invoices for reimbursable expenses related to the Project.
10. [Deleted].

## SCHEDULE N REIMBURSABLE COSTS

The Parties agree that the following are the Reimbursable Costs before the Assignment and Assumption:

- (a) costs that relate to studies, tests, reports, insurance and bonding costs, consulting work and other actual costs incurred by the Parties related to the development, planning, Design and property acquisition for the Project prior to the execution of this Agreement, including:
  - (i) the work relating to the USL Report;
  - (ii) the survey of the Site;
  - (iii) communications activities;
  - (iv) geotechnical work commissioned by WFN;
  - (v) archaeological work associated with the Project;
  - (vi) MoT and WFN technical work related to preparing the Project including advanced construction work; and
  - (vii) the partnering workshop referenced in section 1.8 of the RFP;
- (b) Project Manager and associated costs, including the Project management trainee, the Parties' Engineers, and the Project office, and related Project staff;
- (c) any utility relocations not paid for by the Design-Builder;
- (d) reasonable costs of and incurred by the Liaison Committee or the Liaison Committee members in carrying out Liaison Committee work;
- (e) a fixed sum, agreed to by the Parties to be S16, S17 , for services provided to the Project by MoT and its representatives, inclusive of all disbursements;
- (f) all third party costs actually and reasonably incurred for the Project that are related to environmental work, professional services, planning and design after execution of this Agreement;
- (g) the actual costs of permits and approvals required for the Project;
- (h) the actual costs of communications and community relations reasonably incurred for the Project;

- (i) all amounts owing by WFN to the Design-Builder under the Design/Build Agreement including, without limitation, the Award Amount and all amendments approved by the Liaison Committee to it, the financial consequences incurred under Section 7.8(a), and any interest on late payments;
- (j) any costs or delays caused by the discovery of any Heritage Object on or under the Site, beyond those previously disclosed or designated in the Design/Build Agreement, but excluding the impact of any work to comply with WFN policies or laws to the extent that such policies or laws exceed both the requirements set forth in the *Heritage Conservation Act*, R.S.B.C. 1996, c. 187 and the requirements set out in WFN Interim Heritage Policy attached to the Design/Build Agreement as Schedule I;
- (k) all actual costs (including referee and legal costs) incurred by MoT or WFN or both to resolve claims of any nature arising from the Project, (including claims related to errors or omissions in the Contract Documents) except for those arising from any negligence, or unlawful act of WFN or its employees or representatives;
- (l) reasonable legal costs specifically required to facilitate the Project, excluding costs incurred by WFN in respect of Disputes that are solely between WFN and MoT in respect of this Agreement;
- (m) Project specific insurance costs;
- (n) insurance deductibles, except those caused by the negligence of WFN;
- (o) any increased costs arising from the termination of the Design/Build Agreement that are not covered by the Bonds;
- (p) any insured costs not paid by an insurer where the applicable exclusion is not triggered by the negligence or wrongful act of WFN; and
- (q) any amounts required to be paid to the Concessionaire pursuant to the WRBB.

The Parties agree that the following are the Reimbursable Costs after the Assignment and Assumption:

- (a) reasonable legal costs, excluding costs incurred by WFN in respect of Disputes that are solely between WFN and MoT in respect of this Agreement;
- (b) all amounts owing by WFN to the Design-Builder under the Design/Build Agreement including, without limitation, the Award Amount and all amendments approved by the Liaison Committee to it, the financial consequences incurred under Section 7.8(a), and any interest on late payments;
- (c) all actual costs (including referee and legal costs) incurred by MoT or WFN or both to resolve claims of any nature arising from the Project, (including claims related to errors or omissions in the Contract Documents) except for those arising from any negligence, or unlawful act of WFN or its employees or representatives; and

(d) any other costs for services requested by MoT.

[illegible]



## **Request for Proposals**

### **Hwy 97, W.R. Bennett Bridge Western Approach and Campbell Road Interchange Project**



## TABLE OF CONTENTS

### **Request for Proposals**

<b>1.0 INSTRUCTIONS TO PROPONENTS.....</b>	<b>1-1</b>
1.1 General.....	1-2
1.1.1 Definitions .....	1-2
1.1.2 Nature of the Project .....	1-2
1.1.3 Purpose.....	1-3
1.1.4 Receipt of Complete RFP.....	1-3
1.1.5 Addenda.....	1-4
1.1.6 Agreement between WFN, MoT and the Proponent .....	1-4
1.1.7 Pre-Submission Briefing .....	1-5
1.1.8 Data Room and Other Information.....	1-5
1.1.9 Proponent's Investigation.....	1-6
1.1.10 Access to the Site .....	1-6
1.1.11 Licenses and Permits .....	1-7
1.1.12 Compliance with the Design/Build Agreement .....	1-7
1.2 Responsibilities of MoT.....	1-7
1.3 Responsibilities of the Design-Builder .....	1-8
1.4 Proposal Process and Schedule.....	1-8
1.4.1 Proposal Schedule .....	1-8
1.4.2 Contact Person.....	1-8
1.4.3 Submission of Proposals.....	1-9
1.4.4 Execution of Proposal .....	1-9
1.4.5 Award Process .....	1-10
1.4.6 Execution of Design/Build Agreement.....	1-10
1.5 Withdrawal of Proposals.....	1-10
1.6 RFP Security and Insurance.....	1-11
1.7 Partnering.....	1-11
1.8 Conflicts of Interest and Restricted Parties.....	1-12
1.8.1 Restricted Parties .....	1-12
1.8.2 Who are Restricted Parties .....	1-12

1.9	Non-Collusion.....	1-12
1.10	No Lobbying.....	1-13
<b>2.0</b>	<b>SCOPE OF WORK .....</b>	<b>2-13</b>
2.1	Project Requirements of Design-Builder.....	2-13
2.1.1	Design-Builder Management Responsibilities.....	2-14
2.1.2	Activities by Others.....	2-14
2.1.3	Final Connection to WR Bennett Bridge Project .....	2-14
2.1.4	WFN Employment, Training and Business Opportunities Plan.....	2-15
<b>3.0</b>	<b>SUBMISSION REQUIREMENTS.....</b>	<b>3-15</b>
3.1	General Submission Requirements.....	3-15
3.2	Financial Proposal.....	3-16
3.3	Technical Proposal.....	3-16
<b>4.0</b>	<b>EVALUATION PROCESS AND CRITERIA.....</b>	<b>4-17</b>
4.1	Evaluation Process.....	4-17
4.1.1	Process.....	4-17

## **APPENDICES**

Appendix A	Glossary of Terms
Appendix B	Proposal Offer Letter
Appendix C	Undertaking to Provide Insurance
Appendix D	Consent of Surety
Appendix E	Form of Design/Build Agreement
Appendix F	Receipt Confirmation Form

## 1.0 INSTRUCTIONS TO PROPONENTS

SUMMARY OF KEY INFORMATION	
<b>RFP Title:</b>	Hwy 97, W.R. Bennett Bridge Western Approach and Campbell Road Interchange Project Use the above RFP title on all correspondence.
<b>Contact Person:</b>	The only authorized Contact Person for this RFP is:  Barrie LeBlond #500 – 1708 Dolphin Avenue, Kelowna, BC V1Y 9S4  Address all correspondence to the Contact Person. E-mail: CampbellRdRFP@urban-systems.com Facsimile: (250) 763-5266 Telephone: (250) 762-2517  Information offered from sources other than the above Contact Person is not official, may be inaccurate, and must not be relied on in any way by any party for any purpose.
<b>Pre-submission Briefing:</b>	A pre-submission briefing meeting has been scheduled for January 11, 2007 at 10:00 A.M. at the address below. All Proponents are strongly encouraged to attend this meeting. #301 – 515 Highway 97 South 3rd Floor Boardroom Kelowna, BC V1Z 3J2
<b>Read all parts of this RFP Carefully:</b>	The recipient is solely responsible for ensuring that they have received and understood the complete RFP as described in the Table of Contents and for ensuring that they have received and understood all Addenda. Reference Documents are provided in the data room.
<b>Closing Time:</b>	No later than 2:00:00 PM, February 2, 2007
<b>Closing Location:</b>	Proposals are to be delivered to: Westbank First Nation #301 – 515 Highway 97 South Kelowna, BC V1Z 3J2 Attention: Barrie LeBlond

## **1.1 General**

### **1.1.1 Definitions**

Any capitalized word or term used in this RFP has the meaning provided in the Design-Build Agreement (a copy of which is attached as Appendix E), unless otherwise defined in the Glossary attached as Appendix A.

### **1.1.2 Nature of the Project**

The Project consists of the design and construction of an interchange on Highway 97 at Campbell Road together with highway and adjoining road improvements including a new climbing lane from the west end of the new WR Bennett Bridge to south of Westside Road.

The British Columbia Ministry of Transportation ("MoT") and the Westbank First Nation ("WFN") have entered into a government-to-government agreement to design and construct the Project. WFN has been granted a direct award of the Project pursuant to a government to government agreement. The procurement process is to be carried out by WFN and MoT together. WFN is solely responsible for execution of the Design/Build Agreement and for the delivery of the Project. MoT will ultimately own the Project.

The Work generally consists of the design and construction of a interchange on Highway 97 at Campbell Road and widening Highway 97 to a five lane cross-section between the west end of the WR Bennett Bridge and a point approximately 300 metres south of Westside Road. Campbell Road will pass under Highway 97 with a two-lane cross-section. Widening of Highway 97 will be accomplished by constructing a new climbing lane from the west end of the WR Bennett Bridge to the south of Westside Road, a distance of approximately 2.1 Km. The Work is generally based on the USL Report.

The objectives of the Project are to ensure the free flow and safe movement to and from the WR Bennett Bridge for vehicle traffic, cyclists and pedestrians, and to ensure safe full movement access at Campbell Road and improved access for WFN lands, including the WFN cemetery.

The other key Project objectives are to:

- deliver the Project in a way which will result in broad public and WFN acceptance of the proposed solution;
- ensure that appropriate and expected standards of safety for the traveling public and the appropriate level of service to accommodate future traffic volumes are provided, and that the interchange will be compatible with and contribute to the safe and efficient operational requirements of Highway 97;
- Construct the Works with minimal disruption to the surrounding neighbourhood(s), and to the operations of Highway 97 and utility networks, including public transit;
- maximize present and future economic development opportunities for WFN and
- have the project in-service by May 1, 2008.

#### **1.1.3 Purpose**

The purpose of this RFP is to solicit Proposals from Proponents to enter into negotiations in respect of an agreement with WFN for construction of the Project as described in this RFP and the terms of the Design/Build Agreement, the form of which is attached to this RFP. The process is set out in Section 1.4.5.

#### **1.1.4 Receipt of Complete RFP**

It is the responsibility of each Proponent to thoroughly examine all instructions and documents provided. Inadequate knowledge will not be accepted as justification for errors or omissions in the Proposal or the Work.

The submission of a Proposal constitutes a representation by a Proponent that it has verified receipt of a complete set of the RFP Documents including any and all Schedules, Appendices and Addenda. Each and every Proposal will be deemed to have been made on the basis of the entire RFP, including any and all Addenda and clarifications issued prior to the Closing Time and posted in the Data Room. The Proponent must review the entire RFP prior to submitting a Proposal. Any requests for clarification of issues related to the RFP must be transmitted in writing to the Contact Person no later than ten (10) days before the Closing

Time. The Contact Person will post on BC Bid and in the Data Room all RFP clarification requests and the corresponding responses to such requests.

By submitting a Proposal, the Proponent indicates acceptance of the entire RFP and waives any further right to rectify, clarify, or qualify any aspect of the RFP after the Closing Time.

Each Proponent should complete and submit a Receipt Confirmation Form attached as Appendix F. Proponents acknowledge that they will be responsible for obtaining all information posted in the Data Room and that they will not rely on MoT or WFN to provide such information irrespective of the submission of a Receipt Confirmation Form.

#### **1.1.5 Addenda**

Written Addenda are the only means of changing, amending or correcting this RFP. The Contact Person may change, amend or correct this RFP by issuing an Addendum and posting such in the Data Room and on BC Bid. No employee or agent of WFN or MoT, other than the Contact Person, is authorized to change, amend or correct the RFP or issue any Addenda.

Information pertaining to this RFP that is offered by, or obtained from, sources other than the Contact Person is not official, may not be accurate, and must not be relied on in any way by any Proponent for any purpose associated with this RFP.

#### **1.1.6 Agreement between WFN, MoT and the Proponent**

The Proponent agrees that the sole obligation of WFN and MoT, in return for the Proponent's preparation and submission of its Proposal, is to give consideration to the Proposal in accordance with this RFP. The Proponent hereby waives any claim for damages or costs of any nature against WFN, MoT and their respective consultants, if any (including, without limitation, the cost of preparing and submitting the Proposal, and any anticipated profits and contributions to overhead) arising out of WFN or MoT's use of their discretion under the RFP or the consultant's advice to WFN and MoT.

Proposals shall be irrevocable, valid and remain open to acceptance for a period of 90 Days after the Closing Time should WFN and MoT choose to accept the Proposal in the form submitted. If WFN and MoT choose to negotiate in accordance with this RFP, the Proponent agrees not to take any position in the



negotiations that is less favourable to WFN and MoT than such position in the Proposal, and the Proposal shall remain capable of acceptance. -

WFN and MoT are not under any obligation to award the Design/Build Agreement, and reserve the right in their sole discretion to cancel the RFP at any time for any reason or without reason. Award of the Design/Build Agreement may be contingent upon budget approval or other governmental, regulatory or other pre-conditions. WFN and MoT may in their sole discretion issue a new RFP, tender, or negotiate with any party (including a Proponent) the same or similar project at any time after cancellation of this RFP.

This RFP does not obligate WFN or MoT to pay any costs the Proponent may incur in the preparation of its Proposal. All costs for the preparation of the Proposal will be borne solely by the Proponent.

WFN and MoT may, in their sole discretion before the Closing Time, amend any part of this RFP including, without limitation, the Closing Time.

#### **1.1.7 Pre-Submission Briefing**

A pre-submission briefing meeting has been scheduled as noted in Section 1.0. The Proponents and their Team Members are strongly encouraged to attend this briefing meeting. Written questions may be submitted to the Contact Person in advance of the pre-submission briefing meeting.

Additional briefing meetings may be scheduled at the sole discretion of the Contact Person. Minutes of the briefing meeting will be prepared by the Contact Person and will be the official record of the meeting. Notwithstanding any verbal responses to questions or written minutes of the briefing meeting, the only method of amending of the RFP is through written addenda described in Section 1.1.5.

#### **1.1.8 Data Room and Other Information**

WFN and MoT have established the Data Rooms where all available background materials for the Project are available for viewing by Proponents.

Arrangements for a password to view the Data Rooms can be made by contacting the Contact Person.

DB2 of the Design-Build Agreement is hereby incorporated by reference and all representations, warranties, acknowledgments and agreements therein are deemed to be repeated herein.

#### **1.1.9 Proponent's Investigation**

By submitting a Proposal, a Proponent is deemed to have:

- Investigated and satisfied itself of every condition affecting the Work, including but not limited to the Site conditions, equipment, labour supply conditions, materials, and other resources to be provided;
- Based its investigation on its own examination, knowledge, information, and judgement, and not upon any statement, representation, or information made or given by or on behalf of WFN or MoT other than information contained in this RFP; and
- Subject to DB 2.01(o), assumed all risks regarding conditions affecting the Work, including but not limited to all risks associated with sub-surface geotechnical conditions, whether or not those conditions are revealed by any information available to, or investigations undertaken by, the Proponent.

#### **1.1.10 Access to the Site**

For the purposes of conducting inspection, testing, or investigations of the Site prior to the Closing Time, WFN and MoT will, to the best of their ability, allow Proponents to have access to those portions of the Site owned either by WFN or MoT or other governments and public agencies, subject to environmental and time constraints.

Proponents must not enter the Site without the prior written approval of the Contact Person. Written requests for Site access must be received by the Contact Person a minimum of seven (7) days prior to the requested Site visit date stating the purpose of the requested access.

As a condition of entering the Site, Proponents irrevocably accept full responsibility for any and all events arising from the Proponent's access to the Site and the Proponent will be solely liable for any injury or damage caused to any person or property arising out of the Proponent's Site access.

#### **1.1.11 Licenses and Permits**

The Proponent assumes full responsibility for obtaining and holding any and all rights, permits, licences, consents, approvals, and authorities issued by any level or agency of government or private party required to conduct any investigations prior to the Closing Time.

#### **1.1.12 Compliance with the Design/Build Agreement**

Proponents acknowledge that by submitting a Proposal, the Proponent who is selected to be the Preferred Proponent will, after negotiations are successful, be required to enter into a Design/Build Agreement as amended through such negotiations (see Appendix E) and to perform the Work in strict accordance with such Design/Build Agreement.

### **1.2 Responsibilities of MoT**

MoT will retain responsibility for Federal Department of Fisheries and Oceans' approval for all Work within Okanagan Lake necessary to perform the Work.

MoT may, in conjunction with WFN, conduct quality audits of the Work.

The Proponent is advised that the MoT has:

- Prepared a 30% design referred to in this RFP as the USL Report;
- Obtained approval from the Federal Department of Fisheries and Oceans, as described above;
- Relocated the existing Terasen high pressure gas line;
- Pre-loaded a portion of the embankment fill;
- Conducted an archaeological investigation of a substantial portion of the Site,
- Conducted a geotechnical investigation of a portion of the Site; and
- Stripped and pre-graded sections of the Site.

Notwithstanding such work, the Design-Builder shall be responsible for the design of the Project, complying with all approvals and permits, and ensuring that it is satisfied with and taking responsibility for the pre-loading.

### 1.3 Responsibilities of the Design-BUILDER

Responsibilities of the Design-BUILDER include, but are not limited to, all engineering, Design, Construction, environmental protection, traffic management, quality management, commissioning required and all other matters to deliver the Project in accordance with the requirements of the Design/Build Agreement.

The Design-BUILDER shall be responsible for dealing with all agencies having jurisdiction over the Design-BUILDER and the Project, with the general public, and for resolving all issues related to the Work.

The Design-BUILDER shall be responsible for securing all Governmental Approvals required for the Project from those agencies having jurisdiction over the Project, unless noted otherwise in the Design/Build Agreement or the RFP Documents.

### 1.4 Proposal Process and Schedule

#### 1.4.1 Proposal Schedule

The anticipated schedule for the Request for Proposal phase of the Project is as follows:

Anticipated Date	Action
<b>As stated in Section 1.0 of the RFP</b>	<b>Pre-Submission Briefing Meeting</b>
<b>As stated in Section 1.0 of the RFP</b>	<b>RFP Closing Time</b>
<b>February 12, 2007</b>	<b>Selection of Preferred Proponent</b>
<b>March 1, 2007</b>	<b>Award of Contract</b>

#### 1.4.2 Contact Person

Information provided verbally by WFN, MoT, or by WFN or MoT staff members or representatives will not be binding on WFN or MoT and will not be considered in any form or manner in the evaluation of the Proposals. Information offered from sources other than the above Contact Person is not official, may be inaccurate, and must not be relied on in any way by any party for any purpose.

Information from the Contact Person is only official and can only be relied upon if posted in the Data Room.

### 1.4.3 Submission of Proposals

All requirements that use the word "shall" or "must" are mandatory and the Proposal "must" substantially comply or fulfil such requirements or the Proposal shall be rejected as non-compliant. All requirements that use the term "should" are desired and the Proponent's response to such requirements will be considered in analysing the Proposals.

Proposals should contain only relevant information that is presented in a clear and concise manner and in a way that addresses the specific information requirements of the RFP. The inclusion of unnecessary and irrelevant information should be avoided.

During the Evaluation Process, WFN/MoT may require additional information from, or clarification by the Proponent.

The Proposals must be delivered to WFN at the Closing Location no later than the Closing Time.

The Proponent should ensure that the Proposal is complete, clearly labelled and securely sealed. WFN and MoT will assume no responsibility for timely delivery of any Proposal. It is the Proponent's sole responsibility to ensure that its Proposal is delivered on time. Each Proposal should be clearly marked on the outside as follows:

"Proposal: Highway 97, WR Bennett Bridge Western Approach and  
Campbell Road Interchange Project "

---

**Westbank First Nation**

**#301 – 515 Highway 97 South**

**Kelowna, BC V1Z 3J2**

**Attention: Barrie LeBlond**

CONFIDENTIAL - DO NOT OPEN

Proposals should be identified by an accompanying transmittal form clearly listing the number and description of each item contained in the Proposal package.

### 1.4.4 Execution of Proposal

The Proponent is deemed to represent and warrant that its Proposal has been duly authorized and validly executed and is intended to create a binding obligation of the Proponent.

#### **1.4.5 Award Process**

The Preferred Proponent will be determined in accordance with Section 4 of the RFP.

WFN and MoT reserve the right to negotiate changes to the Proposal and the Design/Build Agreement with the Preferred Proponent.

If negotiations are not successfully concluded with the Preferred Proponent, WFN and MoT may, at their sole discretion, commence negotiations with the other Proponents in the order of their ranking and award the Design/Build Agreement or may terminate the RFP process.

#### **1.4.6 Execution of Design/Build Agreement**

Upon successful negotiation of the terms of the Design/Build Agreement, WFN will provide the Preferred Proponent with five (5) copies of the Design/Build Agreement required for execution by the Preferred Proponent.

Within fourteen (14) days of the Preferred Proponent's receipt of the five (5) copies of the Design/Build Agreement and prior to the Design/Build Agreement coming into force, the Preferred Proponent must: (a) return all copies of the Design/Build Agreement to WFN, fully executed; (b) deliver the Bonds and the insurance as described in the Design/Build Agreement; (c) deliver to WFN a valid and current WorkSafe BC registration number and clearance letter. If the Preferred Proponent has not provided such within fourteen (14) days, at the sole discretion of WFN and MoT the Proponent shall forfeit all or a portion of its Bid Bond and, if within the irrevocability period specified in Section 1.5 of this RFP, WFN and MoT may commence negotiations with another Proponent in accordance with Section 1.4.5 of this RFP.

### **1.5 Withdrawal of Proposals**

All Proposals are irrevocable at the Closing Time, and remain irrevocable for a period of ninety (90) days following the Closing Time. Proposals may not be altered or withdrawn during this ninety (90) day period for any cause without the written permission of WFN and MoT, which permission is in the sole discretion of WFN and MoT.

A Proponent may withdraw its Proposal at any time prior to Closing Time, by submission of a written notice, delivered to the Contact Person at the Closing Location, that clearly and unequivocally states that it is the Proponent's intention to withdraw its Proposal. Withdrawn Proposals will not be returned to the Proponent until after Closing Time.



## **1.6 RFP Security and Insurance**

- 1.6.1 Each Proposal should be accompanied by a bid bond in an amount equal to 10% of the total amount of the Proposal Price (the "Bid Bond"), showing WFN and MoT as joint obligees.
- 1.6.2 All Bid Bonds should be issued on CCDC 220 - 2002 and issued by a surety acceptable to WFN and MoT and licenced to carry on business in the Province of British Columbia.
- 1.6.3 A Proponent's costs in providing a Bid Bond shall be for the account of the Proponent.
- 1.6.4 If a successful Proponent fails to fulfill the requirements of Section 1.4.6 of this RFP, then the successful Proponent and the surety will be required jointly and severally to pay to WFN and MoT the sum equal to the difference between the successful Proponent's Proposal Price and the Proposal price accepted by WFN in lieu thereof or 10% of the successful Proponent's Proposal Prices whichever is the greater.
- 1.6.5 Subject to Section 1.6.4, Bid Bonds will be returned to Proponents:
  - (a) upon the expiration of the period of time with respect to which a Proposal is open for acceptance and not extended;
  - (b) if WFN and MoT refuse to accept any Proposals; or
  - (c) if the Design/Build Agreement is executed by WFN with a Proponent and the Proponent fulfills the requirements of Section 1.4.6 of this RFP.
- 1.6.6 In addition to its Bid Bond, the Proponent should provide an agreement to bond, a consent of surety from its surety in the form attached as Appendix D to this RFP (the "Consent of Surety").
- 1.6.7 Each Proposal should be accompanied by the undertakings of insurance in the forms attached as Appendix C.

## **1.7 Partnering**

WFN and the Design-Builder will use "partnering" on this Project. Partnering will be utilized in accordance with DB 28.03 and DB 28.04.

## **1.8 Conflicts of Interest and Restricted Parties**

Any Proposal may be disqualified, at the sole discretion of WFN and MoT, if the current or past corporate or other interests of any person named in the Proposal might, in the sole opinion of WFN and MoT, give rise to an actual, potential or perceived conflict of interest.

### **1.8.1 Restricted Parties**

Restricted Parties:

- Are not eligible to advise a Proponent in regards to this RFP;
- Must not participate as an employee, advisor, consultant or member of any Proponent.

WFN and MoT may, at their sole discretion, disqualify a Proponent who uses in any manner or who includes in their Proposal, a Restricted Party.

The onus is on the Proponent to ensure that it does not use or include any Restricted Party.

### **1.8.2 Who are Restricted Parties**

The following persons and entities are Restricted Parties because of their direct and recent or current involvement in the planning or implementation of the Project:

- Golder Associates Ltd.
- Urban Systems Ltd.
- CWMM Consulting Engineers Ltd.
- Site360 Consulting Inc.
- JCL Consulting
- Westmar Consultants Inc.
- Morrow Environmental Inc.
- Evelyn Lube
- Borden Ladner Gervais LLP
- Ashcroft and Company

## **1.9 Non-Collusion**

Proponents will not discuss or communicate with one another in the preparation of their Proposals. Each Proponent will ensure that its participation, and that of its Team Members, in the RFP process is conducted without collusion or fraud.

### **1.10 No Lobbying**

All Proponents are forbidden from lobbying any agent, servant or employee of WFN or MoT, the Council members of WFN, and any Ministers of the Provincial Government regarding this RFP. Failure to comply with this requirement may lead to disqualification without notice or warning.

## **2.0 SCOPE OF WORK**

This section of the RFP describes the scope of the Project which the Design-Builder, unless identified otherwise in the Design-Build Agreement, shall be solely responsible for achieving.

The key elements of the Project include:

- Project management.
- Quality management.
- Environmental management.
- Roadway and drainage Design and Construction.
- Structural Design and Construction for an overpass at Campbell Road, retaining walls and sign structures within the Project.
- Geotechnical engineering and Design in support of the Project.
- Traffic engineering and management.
- Sundry ancillary Design and Construction, including, but not limited to, signing and pavement marking, electrical systems and landscaping as required.

The present status of the Project's development is documented in the USL Report attached as Schedule J to Appendix E – the form of Design/Build Agreement.

Proponents are required to restrict their highway and interchange layout to that shown in the USL Report.

### **2.1 Project Requirements of Design-Builder**

The Design-Builder shall be responsible for meeting all Project requirements as described in Appendix E – the form of Design/Build Agreement.

The Proponent shall read these Project requirements in conjunction with the Design and Construction Requirements as presented in Schedule B of Appendix E – the form of Design/Build Agreement and the USL Report Schedule J of Appendix E. The Proponent shall immediately bring to the attention of the Contact Person any conflicts in the Project requirements that it becomes aware of. The Proponent's compliant design must meet the intent of the Project's requirements and must meet or exceed the Design and

Construction Requirements specified in Schedule B of Appendix E – the form of Design/Build Agreement. Without limiting the generality of the foregoing, the following are highlights of the Design/Build Agreement:

#### **2.1.1 Design-Builder Management Responsibilities**

The Design-Builder shall be responsible for all activities required for the Project including a suitable project management regime which ensures:

- delivery of the Project, on schedule, and to the standards specified in Appendix E – the form of Design/Build Agreement ensuring all laws, bylaws and regulations are adhered to;
- cooperation with the concessionaire involved in the construction of the WR Bennett Bridge; and
- assuring that all direct public communication will be conducted in accordance with Schedule G to Appendix E – the form of Design/Build Agreement.

#### **2.1.2 Activities by Others**

Activities may be performed by others within or near the Limits of Construction. This activity may include, but will not be limited to performance of work by the following:

- ♦ BC Hydro;
- ♦ Terasen;
- ♦ Telus;
- ♦ WRBB Group;
- ♦ Shaw Cable;
- ♦ Regional District of Central Okanagan;
- ♦ WFN Utilities; and
- ♦ Argo Road Maintenance.

#### **2.1.3 Final Connection to WR Bennett Bridge Project**

The Design-Builder may be required to construct a final connection between the Project and the WR Bennett Bridge for completion by July 1, 2008 but such work would be the subject of a Work Order and is not currently part of the scope of the Project. The Proponent should provide an Item Price for the connection. If WFN chooses to have the Design Builder complete such connection, WFN shall issue a Work Order utilizing such Item Price as the cost of such Work Order. The

Item Price may identify an additional cost if the connection work occurs after the issuance of the Certificate of Final Completion.

#### **2.1.4 WFN Employment, Training and Business Opportunities Plan**

WFN and MoT have as a key objective of the Project the creation of employment, training and business opportunities for WFN members and WFN member-owned businesses. To achieve this key objective, the Proponent must prepare a WFN Employment, Training and Business Opportunities Plan which should, both quantitatively and qualitatively, demonstrate in detail how the Proponent proposes to perform the Work, in whole or in part, by:

- a) employing WFN members;
- b) training WFN members; and
- c) utilizing WFN member-owned businesses.

### **3.0 SUBMISSION REQUIREMENTS**

The following delivery, format and content requirements should be followed for all Proposals in order to allow for consistency in proposal evaluation and to facilitate consideration of each Proposal.

#### **3.1 General Submission Requirements**

The Proposal to be submitted in response to this RFP should be submitted as two separately sealed items as detailed below.

**Package A: Technical Proposal** (five copies should be submitted in three ring binders, one of which should be unbound and one of which should be reproducible digital copy in a separately sealed envelope):

- WFN Employment and Training Opportunities Plan
- Management Plan;
- Time Schedule;
- Aesthetics Plan;
- The information requested pursuant to Section 3.3 of this RFP;
- The RFP security and insurance as required by Section 1.6 of this RFP; and
- The Item Price for the interconnection as required by Section 2.1.3 of this RFP.

**Package B: Financial Proposal** (two copies should be submitted in a separate sealed envelope. Note: This information should **NOT** be included in the digital copy):

- Proposal Offer Letter, including the Schedule of Lump Sum Prices;
- Arrangements among Proponent Team Members; and
- Demonstration of financial capacity and ability to meet the bonding and insurance requirements.

Information presented in one or more of the sections of Package A, the Technical Proposal, which is related to another section of the Technical Proposal should be clearly cross-referenced in the latter section to facilitate Proposal evaluation.

### **3.2 Financial Proposal**

The Financial Proposal should consist of the following:

A signed Proposal in the form provided in Appendix B (Proposal Offer Letter) should be included in this section of the Financial Proposal.

A completed Schedule of Lump Sum Prices in the form attached to Appendix B should be attached to the Proposal Offer Letter.

A provisional sum for final connection of the Project to the WR Bennett Bridge should be provided by the Proponent in the Schedule of Lump Sum Prices as described in Section 2.1.3 of this RFP.

### **3.3 Technical Proposal**

The Proponent's Technical Proposal submission should provide WFN and MoT with sufficient information to demonstrate to the reasonable satisfaction of WFN and MoT that:

- the Proponent has a good and clear understanding of the functional objectives and purpose that WFN and MoT wishes to achieve by undertaking this Project;
- the Proponent has a good and clear understanding of the nature of the Design-Builder's obligations arising in the Design/Build Agreement, and
- the project management, communications, quality management, design, and construction activities described by the Proponent will result in a finished Project that will meet or exceed WFN' and MoT's functional objectives and purpose in undertaking the Project.



The Proponent should submit a draft Time Schedule, Aesthetic Plan and Management Plan, as described in the Design/Build Agreement and shall submit a draft of the WFN Employment, Training and Business Opportunities Plan, in accordance with Section 2.1.4 of this RFP.

#### 4.0 EVALUATION PROCESS AND CRITERIA

##### 4.1 Evaluation Process

###### 4.1.1 Process

WFN and MoT will evaluate the proposals in the manner described below. The criteria described below and shown on the following evaluation matrix (the "Evaluation Matrix") are the only factors that will be used to evaluate proposals.

EVALUATION MATRIX	MAXIMUM POINTS TO BE AWARDED
<b>Rated Criteria Evaluation</b>	
WFN Employment, Training and Business Opportunities Plan	13
Design and Construction Staging	8
Contractor Demonstrated Abilities	6
Completeness and Quality of Proposal	5
Aesthetics	3
<b>Maximum Available Earned Points</b>	<b>35</b>
<b>Contract Price Evaluation</b>	
<b>Maximum Available Earned Points</b>	<b>65</b>
<b>Maximum Available Total Proposal Score</b>	<b>100</b>

#### • WFN EMPLOYMENT, TRAINING AND BUSINESS OPPORTUNITIES PLAN

The WFN Employment, Training and Business Opportunities Plan is described in Section 2.1.4 of this RFP. The following will be considered in applying the evaluation criteria and allocating the available points in the Evaluation Matrix:

- ♦ Thoroughness and clarity in demonstrating an understanding of a key objective of the Project to create employment, training and business opportunities for WFN members and WFN member-owned businesses;

- ♦ Methodology, approach, reasonableness, achievability of the WFN Employment, Training and Business Opportunities Plan and proposed opportunities; and
- ♦ Integration and compatibility of the training and employment components of the WFN Employment, Training and Business Opportunities Plan.

- **DESIGN AND CONSTRUCTION STAGING**

The Construction staging will be set out in the draft Management Plan and Time Schedule. The quality of the draft Management Plan and Time Schedule will be considered in applying the evaluation criteria and allocating the available points in the Evaluation Matrix.

- **CONTRACTOR DEMONSTRATED ABILITIES**

The Contractor Demonstrated Abilities will be set out in the Technical Proposal. Proponents will be evaluated in accordance with how well the Proponent and the Proponent's proposed Team Members meet or exceed the following criteria:

- ♦ Highway experience in BC:
  - Experience on Design-Build projects of similar scope, and preferably similar size and complexity;
  - Demonstrated ability to successfully complete Design/Build projects on time and on budget;
  - Demonstrated ability to construct highway works with effective traffic management in a high volume urban environment, and
  - Demonstrate ability of successfully working in a multiple concurrent projects environment.
- ♦ First Nation Relationships:
  - Demonstrated ability for building and maintaining good working relationships with First Nations including the creation of training and employment opportunities, and
  - Demonstrated commitment to work under the direction of First Nations in BC, in particular, to establish a good working relationship with WFN on this Project and potential future Projects.
- ♦ Corporate Resources:
  - Demonstrated access to resources (equipment and personnel) to quickly respond to Project challenges;
  - Proven availability of backup for equipment that is critical to maintaining the Project schedule;

- Identity of key personnel to be assigned to the Project;
- Team Member qualifications and previous collaboration; and
- Full and complete documentation of the operational and decision-making relationships among all Team Members.

- **COMPLETENESS AND QUALITY OF PROPOSAL**

Proposals will be evaluated on their completeness and quality.

- **AESTHETICS**

Proposals will be evaluated on the degree to which the Proposal exhibits sensitivity to the aesthetics of the region.

- **CONTRACT PRICE EVALUATION**

Points for price are calculated by the following formula:

$$65 - 2 \times (65 \times \frac{(\text{Proponent's Price} - \text{Lowest Proponent's Price})}{\text{Lowest Proponent's Price}}) = \text{Price Score}$$

# **APPENDIX A**

**to RFP**

## **GLOSSARY OF TERMS**

## GLOSSARY OF TERMS

The following provisions are incorporated into and form a part of the RFP, including all Schedules and appendices, unless the context otherwise requires:

**"Bid Bond"** has the meaning set out in section 1.6.1 of this RFP;

**"Closing Location"** means the location identified as such in Section 1.0 of this RFP;

**"Consent of Surety"** has the meaning set out in section 1.6.6 of this RFP;

**"Contact Person"** means the person identified as such in Section 1.0 of this RFP;

**"Data Room"** means either the BC Bid Project website or the MoT Project data room, as the context requires.

**"Design-Build Agreement"** means the agreement to be entered into between the Successful Proponent and WFN for the design and construction of the Project;

**"Evaluation Matrix"** means matrix used for evaluating Proposals as set out in Section 4.1.1 of this RFP;

**"Evaluation Process"** means the process set out in Section 4.0 of this RFP;

**"Financial Proposal"** means that portion of each Proponent's Proposal containing the information described in Section 3.2 of this RFP;

**"Preferred Proponent"** means the Proponent identified as such by WFN and MoT;

**"Proponent"** means a person (including a partnership, joint venture or company) who submits a Proposal to WFN and MoT in response to the RFP;

**"Proposal"** means a written proposal submitted by a Proponent in response to the RFP;

**"Proposal Offer Letter"** means the form of offer letter attached to this RFP as Appendix B;

**"Proposal Price"** means the Proponent's total price for performance of the Work as shown in the Proposal Offer Letter submitted by the Proponent;

**"Restricted Parties"** means those parties described in section 1.8.1 and listed in section 1.8.2 of this RFP;

**"RFP Documents"** means the complete package of documents comprising this RFP, including all schedules, appendices and addenda;

**"Schedule of Lump Sum Prices"** means the schedule of lump sum prices attached to the Proposal Offer Letter submitted by the Proponent;

**"Team Members"** means each person, company or firm comprising part of a Proponent;

**"Technical Proposal"** means that portion of each Proponent's Proposal containing the information described in Section 3.3 of this RFP;

**"WR Bennett Bridge"** means new bridge being constructed across Lake Okanagan pursuant to an agreement between MoT and Okanagan Lake Concession Limited Partner;



# **APPENDIX B**

**to RFP**

**PROPOSAL OFFER LETTER**

### **Proposal Offer Letter**

{Proponent's Letterhead or name and address}

{Date}

To: Westbank First Nation  
#301 – 515 Highway 97 South,  
Kelowna, BC. V1Z 3J2

Attention: Barrie LeBlond

**RE: Highway 97, W.R. Bennett Bridge Western Approach and Campbell Road Interchange Project**

I, the undersigned, acting as agent for the Proponent named below, declare the following to be true:

- 1) I/we have obtained, carefully read, and understood the entire RFP, including any and all Addenda and Appendices.
- 2) I/we agree to all the terms and conditions of the RFP, including any and all Addenda issued by WFN through your office.
- 3) The enclosed Proposal is submitted in response to the RFP.
- 4) I have full authority to represent the Proponent in any and all matters related to this Proposal, including but not limited to providing clarifications, rectifications, and additional information that may be requested in association with this Proposal.
- 5) I/we agree to be irrevocably bound by all offers, statements, and representations made in this Proposal, including any and all clarifications, rectifications, and additional information that may be requested in association with this Proposal.
- 6) Having full knowledge and understanding of the nature and scope of the Work and having fully investigated and satisfied ourselves of all conditions relating to, affecting, or that may affect the Work, including but not limited to, the Site conditions, and the labour, equipment, material, and other resources that may be necessary to the performance of the Work; I/we hereby submit our offer to:
  - a) Execute an Agreement with WFN substantially in the form anticipated by the RFP;
  - b) Accept all risk of completing the design and construction of the Work in a manner that will meet or exceed all requirements of the Design/Build Agreement, to the satisfaction of WFN;
  - c) Supply all labour, tools, materials, and other resources as necessary to complete and perform the Work described in the Design/Build Agreement between WFN and the Contractor, except such materials as may be expressly specified in the Design/Build Agreement as to be furnished by WFN; and
  - d) Provide the performance securities and insurance in accordance with the Design/Build Agreement



for the Contract Price of \$\_\_\_\_\_ in accordance with the RFP. In the attached Schedule of Lump Sum Prices, in case of conflict between the sum of the line totals and the Contract Price, the Contract Price shall govern.

I/We acknowledge and irrevocably agree that;

- 1) The Contract Price includes full and final payment for any and all costs related to the completion of the Work, including but not limited to all fees, cash allowances, contingencies, and taxes, except as otherwise expressly provided in the Agreement. This project is GST exempt.
- 2) The Proposal Security may be forfeit in whole or in part if, in the opinion of WFN, I/we fail or refuse to negotiate in good faith or I/we fail or refuse to enter into the Agreement.
- 3) This offer is irrevocable for ninety (90) days from the Closing Time.

Capitalized terms used herein have the meaning given to them in the RFP.

Name of Proponent \_\_\_\_\_

Business Address \_\_\_\_\_  
\_\_\_\_\_

This \_\_\_\_ day of \_\_\_\_\_, 2007.

\_\_\_\_\_  
Signature of Authorized Representative

\_\_\_\_\_  
Name of Authorized Representative

Email Address \_\_\_\_\_

Phone No. \_\_\_\_\_ Fax No. \_\_\_\_\_

Schedule of Lump Sum Prices for  
**Highway 97, W.R. Bennett Bridge Western Approach and Campbell Road Interchange**  
**Project – Base Case Proposal**

ITEM NO.	DESCRIPTION OF ITEM	PROPOSED PRICE
	<b>GENERAL</b>	
1	Mobilization to Site [Maximum 4% of Contract Price]	
2	Traffic Management	
3	Quality Management	
4	Environmental Management	
5	Utilities	
6	Demobilization [Minimum 2% of Contract Price]	
7	Bonds and Insurance	
	<b>DESIGN</b>	
8	Structural	
9	Highway / Road	
10	All Other Design Work	
	<b>CONSTRUCTION – HIGHWAY / ROAD FACILITIES</b>	
11	Grading to Sub-grade	
12	Granular Materials	
13	Asphalt Pavement	
14	Drainage:	
	a) Highway Drainage Systems	
	b) WFN Drainage Systems	
15	All Other Highway/Road Facilities Work	
	<b>CONSTRUCTION- STRUCTURES</b>	
16	Overpass – Foundations and substructure	
17	Overpass – Superstructure and Deck	
18	Overpass – Abutment Retaining Walls	
19	All Other Retaining Walls	
20	All Other Structures Work	
	<b>CONSTRUCTION - OTHER</b>	
21	All Other Work	
	<b>PROPOSER'S PRICE</b>	
	<b>Final Connection to WR Bennett Bridge Project</b>	



# **APPENDIX C**

**to RFP**

**Undertaking to provide  
INSURANCE**



SPECIMEN

TO: WESTBANK FIRST NATION ("WFN")

**UNDERTAKING OF GENERAL LIABILITY INSURANCE**

We, the undersigned, as authorized representatives on behalf of \_\_\_\_\_ (NAME OF INSURANCE COMPANY) \_\_\_\_\_, do hereby undertake and agree to provide Wrap Up Commercial General Liability insurance in the amount of **TWENTY MILLION DOLLARS (\$20,000,000.00)** if a design-build agreement (the "Contract") for the Highway 97, W.R. Bennett Bridge Western Approach and Campbell Road Interchange Project (the "Project") is awarded to \_\_\_\_\_ (NAME OF CONTRACTOR) \_\_\_\_\_. This insurance will provide coverage, terms and conditions that comply with the insurance terms and conditions as set out in Schedule E, entitled "Insurance Requirements", contained in the form of Contract as attached to the RFP that was issued by WFN in respect of the Project.

We further undertake to provide to WFN signed, certified copies of such policy or policies and attached endorsements within fourteen (14) days after the award of the Contract and prior to commencement of any work on the Project.

Dated at \_\_\_\_\_

This \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_.

SIGNED: \_\_\_\_\_

Duly Authorized Representative of Insurance Company





SPECIMEN

TO: WESTBANK FIRST NATION ("WFN")

**UNDERTAKING OF PROFESSIONAL LIABILITY INSURANCE**

We, the undersigned, as authorized representatives on behalf of \_\_\_\_\_  
\_\_\_\_\_  
(NAME OF INSURANCE COMPANY), do  
hereby undertake and agree to provide Single Project Specific Professional Liability insurance in  
the amount of five million dollars (\$5,000,000.00) if a design-build agreement (the "Contract")  
for the Highway 97, W.R. Bennett Bridge Western Approach and Campbell Road Interchange  
Project (the "Project") is awarded to \_\_\_\_\_  
(NAME OF  
DESIGN BUILDER). This insurance will provide coverage, terms and conditions  
that comply with the insurance terms and conditions as set out in Schedule E, entitled "Insurance  
Requirements", contained in the form of Contract as attached to the Request for Proposals that  
was issued by WFN in respect of the Project.

We further undertake to provide to WFN signed, certified copies of such policies and attached  
endorsements within fourteen (14) days after the award of the Contract and prior to  
commencement of any work on the Project.

Dated at \_\_\_\_\_

This \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

SIGNED:

\_\_\_\_\_  
Duly Authorized Representative of Insurance Company



# **APPENDIX D**

**to RFP**

**CONSENT OF SURETY**

## SPECIMEN

## CONSENT OF SURETY

DATE: \_\_\_\_\_ NO.: \_\_\_\_\_

**WHEREAS** \_\_\_\_\_ (NAME OF PROPONENT) as Principal has submitted a written proposal to WESTBANK FIRST NATION WHERE WESTBANK FIRST NATION AND HER MAJESTY THE QUEEN IN RIGHT OF THE PROVINCE OF BRITISH COLUMBIA AS REPRESENTED BY THE MINISTER OF TRANSPORTATION as Obligee, comprising a Proposal dated \_\_\_\_\_, 20\_\_\_\_, <and a Price Proposal dated \_\_\_\_\_, 20\_\_\_\_, > (herein, <collectively,> the "Proposal") in response to the request for proposals (the "Request for Proposals") issued by the Obligee concerning the Highway 97, W.R. Bennett Bridge Western Approach and Campbell Road Interchange Project (the "Project") and the condition of this obligation being such that if the Principal shall have its Proposal accepted by the Obligee, we, \_\_\_\_\_ (NAME OF SURETY), a corporation created and existing under the laws of Canada and duly authorized to transact the business of Suretyship in Canada as Surety, agree to issue as Surety for the Principal the following bonds with respect to the Principal's obligations in connection with the design-build agreement with the Obligee for the Project:

1. a performance bond for \$\_\_\_\_\_ (\_\_\_\_\_ Canadian Dollars) <50% of contract price> containing the same terms and conditions as the specimen performance bond included in the schedules to the form of design-build agreement; and
2. a labour and material payment bond for \$\_\_\_\_\_ (\_\_\_\_\_ Canadian Dollars) <50% of contract price> containing the same terms and conditions as the specimen labour and material payment bond included in the schedules to the form of design-build agreement.

This Consent of Surety shall be null and void unless an application for the said bonds is made within thirty (30) days following the acceptance of the Proposal by the Obligee.

(Name of Surety)

\_\_\_\_\_  
(Seal)

\_\_\_\_\_  
Attorney - In - Fact

# **APPENDIX E**

**to RFP**

**FORM OF DESIGN/BUILD AGREEMENT**

# APPENDIX F

to RFP

## RECEIPT CONFIRMATION FORM



## RECEIPT CONFIRMATION FORM

HWY 97, W.R. BENNETT BRIDGE WESTERN APPROACH  
AND CAMPBELL ROAD INTERCHANGE PROJECT

Barrie LeBlond, Project Manager

Fax: 250-763-5266

COMPANY: \_\_\_\_\_

STREET ADDRESS: \_\_\_\_\_

CITY: \_\_\_\_\_ POSTAL/ZIP CODE: \_\_\_\_\_

PROVINCE/STATE: \_\_\_\_\_ COUNTRY: \_\_\_\_\_

MAILING ADDRESS, IF DIFFERENT: \_\_\_\_\_

FAX NUMBER: ( \_\_\_\_ ) \_\_\_\_\_ PHONE NUMBER: ( \_\_\_\_ ) \_\_\_\_\_

CONTACT PERSON: \_\_\_\_\_

TITLE: \_\_\_\_\_

E-MAIL ADDRESS: \_\_\_\_\_

Please note all subsequent information will ONLY be posted on BC Bid

### Proponents Meeting Response:

- ☐ We will be sending \_\_\_\_\_ (number) representatives to the Proponents' meeting.
- ☐ We will not be attending but will probably be submitting a proposal.



## **Request for Proposal**

**Solicitation Number: WFN/MOT-HWY 97**

**Hwy 97, W.R. Bennett Western Approach  
and Campbell Road Interchange Project**

### **Addendum #1**

The Documents are revised as follows:

1. Section 1.0 and 1.1.7; Pre Submission Briefing:

The meeting date and time is revised to Wednesday, January 10, 2007, at 1:00 PM. There is **no change to the location of the meeting**, please refer to the address in the RFP Document.

2. Data Room Drawings:

The Access Link to the AutoCAD drawings pertaining to the 30% Detailed Design Report (USL Report) has been updated in the Data Room

January 8, 2007

## **Request for Proposal**

**Solicitation Number: WFN/MOT-HWY 97**

**Hwy 97, W.R. Bennett Western Approach  
and Campbell Road Interchange Project**

### **Addendum #2**

The Documents are revised as follows:

#### **Data Room:**

##### **Minutes of Pre-submission Meeting held on January 10, 2007**

The minutes of the meeting held on January 10, 2007, at the Westbank First Nations Office are posted in the Data Room. The minutes include a list of participants and post meeting clarifications.

##### **The 30% Detailed Design Report**

The 30% Detailed Design Report has been updated in the Data Room under heading of Addendum No 2. Changes relate to posting design cross-sections in .pdf format to supplement Appendix B and revised drawings for Appendix E.

#### **Section 1.0 Instructions to Proponents**

**Closing Time – Changed to no later than 2:00:00 PM, February 9, 2007**

#### **Section 2.1.3 Final Connection to WR Bennett Bridge Project:**

The sentence, *“The Proponent should provide an Item Price for the connection.”* is deleted and replaced by *“A provisional sum of \$ 375,000.00 has been included in the schedule of lump sum prices for this work”.*

### **Archaeological Monitoring**

A “Draft” drawing, issued for information, detailing additional areas requiring archaeological monitoring (Sketch Addendum 2-001) is included with this Addendum. Be advised that historical estimates for a qualified WFN archaeological monitor are approximately \$ 350.00/day.

### **Section 3.1 General Submission Requirements - Package A: Technical Proposal**

The final bullet, which reads: “*The Item Price for the interconnection as required by Section 2.1.3 of this RFP*” is deleted.

### **Section 2.1.4 WFN Employment, Training and Business Opportunities Plan**

A “WFN Employment Opportunities Meeting” will be held and Proponents are strongly encouraged to attend. This meeting is to provide an opportunity for proponents to gain information to assist them in the development of their employment proposal. WFN members have been asked to provide information about their business, skills and equipment to the proponents in attendance.

Date: January 23, 2007

Time: 2:00-4:00 pm

Where: WFN Health Centre  
Salmon Room Quail Lane  
Westbank, BC

Telephone: (250)-7688-0227

### **Appendix B to RFP – Proposal Offer Letter**

Cancel and replace Schedule of Lump Sum Prices for Highway 97, W.R. Bennett Bridge Western Approach and Campbell Road Interchange Project – Base Case Proposal with attached “Revision A dated January 19, 2007.

All proposal offer letters must have the revised Schedule of Lump Sum Prices.

Revision A

Dated: January 19,2007

Schedule of Lump Sum Prices for  
**Highway 97, W.R. Bennett Bridge Western Approach and Campbell Road Interchange**  
**Project – Base Case Proposal**

ITEM NO.	DESCRIPTION OF ITEM	PROPOSED PRICE
	<b>GENERAL</b>	
1	Mobilization to Site [Maximum 4% of Contract Price]	
2	Traffic Management	
3	Quality Management	
4	Environmental Management	
5	Utilities	
6	Demobilization [Minimum 2% of Contract Price]	
7	Bonds and Insurance	
	<b>DESIGN</b>	
8	Structural	
9	Highway / Road	
10	All Other Design Work	
	<b>CONSTRUCTION – HIGHWAY / ROAD FACILITIES</b>	
11	Grading to Sub-grade	
12	Granular Materials	
13	Asphalt Pavement	
14	Drainage:	
	a) Highway Drainage	
	b) WFN Drainage Systems	
15	All Other Highway/Road Facilities Work	
	<b>CONSTRUCTION- STRUCTURES</b>	
16	Overpass – Foundations and substructure	
17	Overpass – Superstructure and Deck	
18	Overpass – Abutment Retaining Walls	
19	All Other Retaining Walls	
20	All Other Structures Work	
	<b>CONSTRUCTION - OTHER</b>	
21	All Other Work	
	<b>PROPONENT'S PRICE</b>	
22	Provisional Sum for final connection to WR Bennett Bridge Project	\$375,000
	<b>TOTAL PROJECT PRICE</b>	



## **Request for Proposal**

**Solicitation Number: WFN/MOT-HWY 97**

**Hwy 97, W.R. Bennett Western Approach  
and Campbell Road Interchange Project**

### **Addendum #3**

The Documents are revised as follows:

#### **Data Room:**

##### **Summary of Questions and Answers**

A summary of Questions received prior to 10:00 a.m. January 25, 2007, with the corresponding answers are posted in the Data Room.

##### **Design Cross-Sections**

AutoCAD versions of the design cross-sections have been posted to the Data Room to complement the pdf versions that were added to the Data Room as part of Addendum 2.

##### **Instrumentation for Campbell Road Project**

Instrumentation readings from January 4, 2007 have been posted to the Data Room

##### **30% Detailed Design Report**

Addendum 1 to the 30% Detailed Design Report noted the following:

*“.... However, given the critical timelines for this Project and the sensitive soils in the foreshore area, some “preparatory work” has already been completed. This work primarily consisted of the placement of embankment material and preload within Okanagan Lake and the foreshore area to accommodate the southbound off-ramp and portions of the realigned highway.....”.*

Be advised that, additionally and subsequently, the Westbank First Nation will supply 7,500 m<sup>3</sup> of granular material to the project that will be deemed acceptable for use as bridge end fill. This material will be stockpiled on the L100 Line between approximate



stations 124+20 and 125+20. **The provision of this material should be reflected in the Proponent's Price.**

Addendum 1 to the 30% Detailed Design Report also noted the following:

*"The roundabout infield areas will also accommodate commemorative cairns to celebrate the collaboration between the WFN and MoT. Conceptual designs for the commemorative cairns are currently being considered by WFN, all of which will required a foundation constructed at the centre of each roundabout. The placement of other planned infrastructure in the roundabout infields must therefore be located to avoid encroaching into, or passing, through the centre of the roundabouts."*

The 30% Detailed Design for commemorative cairn foundations are attached. The design, and construction of these foundations, including coordination with the commemorative cairn designer to confirm anchor bolt requirements, must be included in the Proponent's Scope and Price.

January 26, 2007

# GENERAL NOTES

1. THESE DRAWINGS ARE PROVIDED FOR BIDDING PURPOSE. THE FINAL DESIGN RESPONSIBILITY INCLUDING ENGINEERING CERTIFICATION OF THE CAIRN FOUNDATION RESTS WITH CONTRACTOR.
2. THIS STRUCTURE SHELL BE DESIGNED FOR WIND LOADS IN ACCORDANCE WITH THE PROVISIONS SET FORTH IN THE BRITISH COLUMBIA BUILDING CODE 2006 EDITION.

WIND LOAD PARAMETER :  $q_{50} = 0.47 \text{ kPa}$

3. DESIGN BEARING VALUES: (ASSUMED) 100 kPa ALLOWABLE


NO FOUNDATIONS MAY BE POURED BEFORE THE BEARING MATERIAL HAS BEEN APPROVED BY THE GEOTECHNICAL ENGINEER. NOTIFY THE GEOTECHNICAL ENGINEER MINIMUM 24 HOURS BEFORE INTENDED CONCRETE POUR.

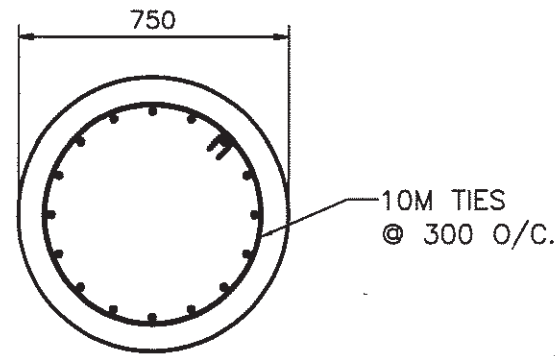
4. CEMENT SHALL BE TYPE 10 TO CAN/CSA-A5, U.N.O.. ALL CONCRETE WORK SHALL CONFORM TO CAN/CSA-A23.1 AND BE PROPORTIONED AS FOLLOWS:

MEMBER	MINIMUM 28 DAY STRENGTH (MPa)	SLUMP AT POINT OF DISCHARGE (mm)	AIR CONT. (%)	MAX. AGG. (mm)	EXPO- SURE CLASS
FOUNDATIONS	30	80 ± 20	4 - 7	20	F-2

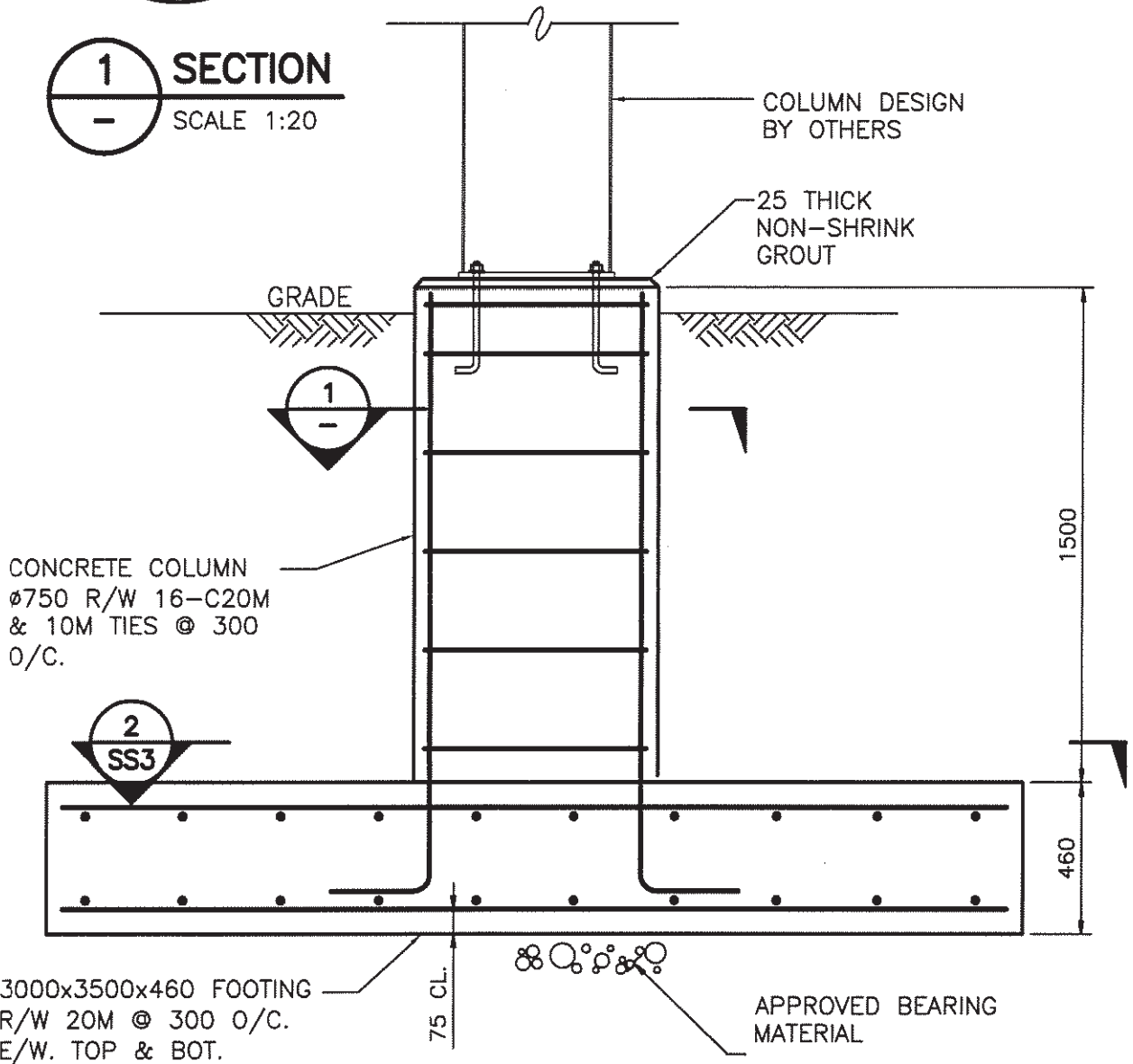
CONCRETE SUPPLIER SHALL COMPLY WITH REQUIREMENTS IN ALTERNATIVE 1 IN TABLE 11 IN CAN/CSA-A23.1.

5. REINFORCING BARS WITH 'C' DESIGNATION REFERS TO STANDARD HOOK LENGTH AS 15 x THE BAR DIAMETER.
6. REINFORCING STEEL SHALL CONFORM TO CAN/CSA-G30.18-M92 GRADE 400R.

 <b>CWMM</b> CONSULTING ENGINEERS LTD. 200-1854 Kitchener Rd. Kelowna, B. C. Canada, V1Y 4N6 Tel: (250) 868-2308 Fax: (250) 868-2374		TITLE: GENERAL NOTES		SCALE: AS SHOWN		REV.: 30% DESIGN	
		REF. DRAWING:		DATE: DEC 18, 05		DWG. NO.:	
		PROJECT: CAMPBELL ROAD INTERCHANGE		DRAWN: M.C.		<b>SS1</b> 1 OF 3	
		COMMEMORATIVE CAIRN		PROJ. NO.: K2807			



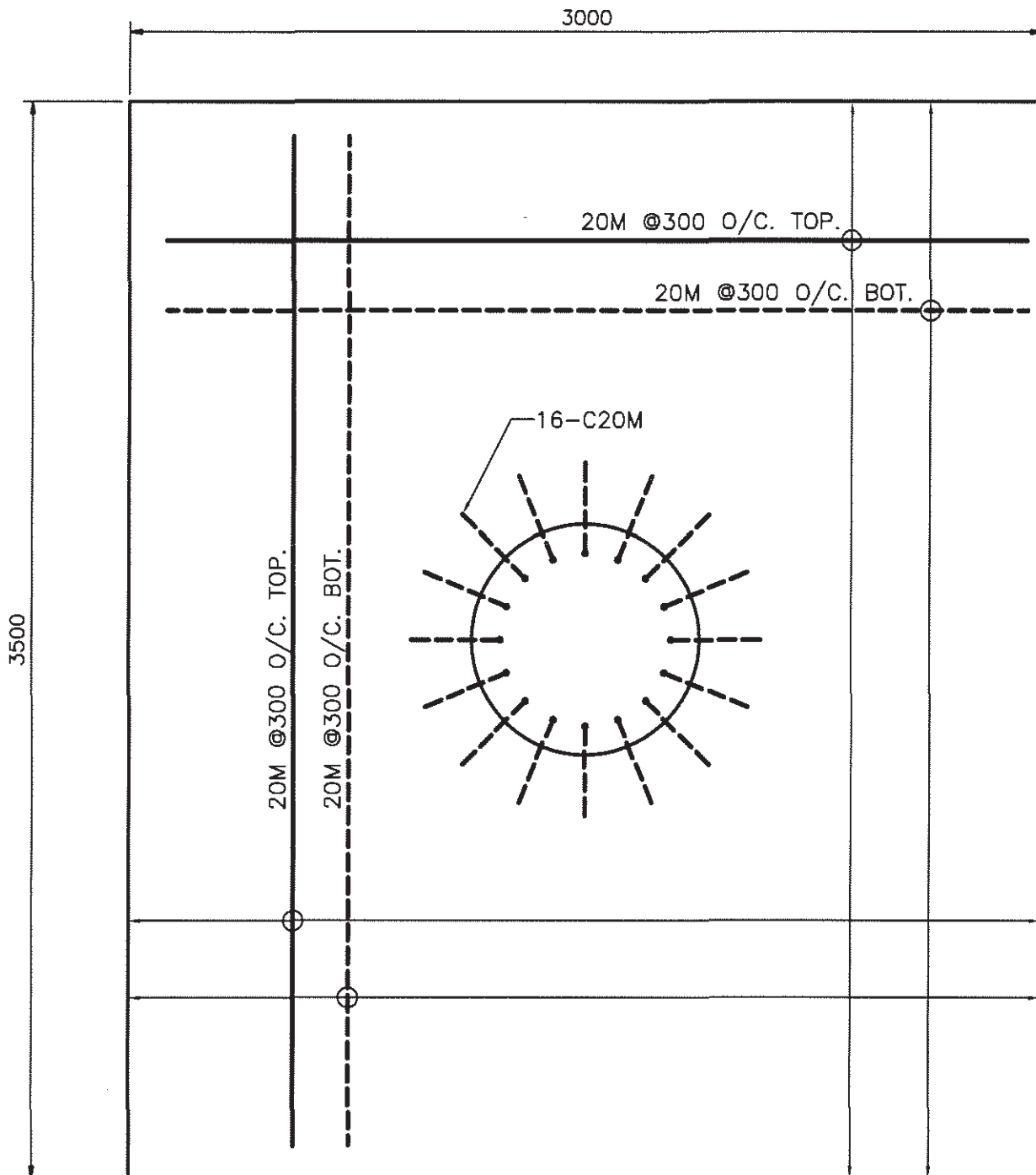
**1 SECTION**  
SCALE 1:20



**SECTION**  
SCALE 1:20

30% DESIGN

	TITLE: SECTION		SCALE: AS SHOWN	REV.:
	REF. DRAWING:		DATE: DEC 18, 05	DWG. NO.:
	PROJECT CAMPBELL ROAD INTERCHANGE COMMEMORATIVE CAIRN		DRAWN: M.C.	<b>SS2</b> 2 OF 3
			PROJ. NO.: K2807	



**2**  
**SS2**
**SECTION**  
 SCALE 1:20

<div style="display: flex; align-items: center;"> <div style="text-align: center; margin-right: 10px;"> <div style="border: 1px solid black; padding: 2px; margin: 2px;">C</div> <div style="border: 1px solid black; padding: 2px; margin: 2px;">W</div> <div style="border: 1px solid black; padding: 2px; margin: 2px;">M</div> <div style="border: 1px solid black; padding: 2px; margin: 2px;">M</div> </div> <div> <b>CWMM</b>            CONSULTING            ENGINEERS LTD.            200-1854 Kirschner Rd.            Kelowna, B. C.            Canada, V1Y 4N6            Tel: (250) 868-2308            Fax: (250) 868-2374         </div> </div>		<b>30% DESIGN</b>	
		TITLE: FOUNDATION PLAN REF. DRAWING: PROJECT: CAMPBELL ROAD INTERCHANGE COMMEMORATIVE CAIRN	SCALE: AS SHOWN DATE: DEC 18, 05 DRAWN: M.C. PROJ. NO.: K2807
			REV.: DWG. NO.: <div style="font-size: 2em; font-weight: bold;">SS3</div> 3 OF 3

## **Request for Proposal**

**Solicitation Number: WFN/MOT-HWY 97**

**Hwy 97, W.R. Bennett Western Approach  
and Campbell Road Interchange Project**

### **Addendum #4**

The Documents are revised as follows:

#### **Data Room:**

##### **Summary of Questions and Answers**

A summary of Questions received by the Contact Person prior to 5:00 p.m. January 30, 2007 and answers corresponding thereto, is posted in the Data Room.

##### **Existing Bridge and Roadway Assets**

Record drawings for the sanitary sewer system located within the highway right-of-way have been posted to the Data Room on page 0200 – “Existing Bridge and Roadway Assets”.

#### **Design Build Agreement, Schedule E 2– Insurance Specifications**

Clause 9.1 is deleted in its entirety and replaced with the following:

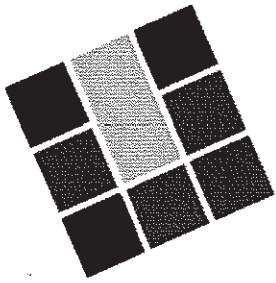
Single Project Specific Professional Liability Insurance with minimum limits of **FIVE MILLION DOLLARS (\$5,000,000.00)** per claim, and **FIVE MILLION DOLLARS (\$5,000,000.00) annual aggregate** covering all insured loss or damage including coverage for third party property damage, bodily injury or death, arising out of the professional services rendered by any engineers, architects, applied science technologists, land surveyors, or quantity surveyors and any of their servants or employees. The named insured shall include all engineers, architects, applied science technologists, land surveyors, or quantity surveyors engaged in providing professional services to the Campbell Road Interchange Design-Build Project.

A maximum deductible of **TWO HUNDRED FIFTY THOUSAND DOLLARS (\$250,000.00)** will be allowed.

Exclusions for design/build or joint ventures projects will not be permitted.

Coverage will be maintained for a period of 24 months following the Actual Final Completion of the Hwy 97, W.R. Bennett Bridge Western Approach and Campbell Road Interchange Design-Build Project.

February 1, 2007



**WESTBANK FIRST NATION**

**In collaboration with the  
MINISTRY OF TRANSPORTATION**

# **Campbell Road Interchange**

## **FINAL CONNECTION TO WR BENNETT BRIDGE PROJECT**

**The attached drawing and Schedule of Items and Quantities generally describes the scope of work involved with the Final Connection between the completed Campbell Road Interchange project and the completed WR Bennett Bridge project.**



**Ministry of  
Transportation**

**URBANSYSTEMS.**

2215.0002.01 / November 2006  
Page (1)



**CAMPBELL ROAD INTERCHANGE****CLASS B CONSTRUCTION COST ESTIMATE****30% DETAILED DESIGN****SCHEDULE OF ITEMS AND QUANTITIES****FINAL CONSTRUCTION COMPLETION (Tie-In Between Projects)**

Item No.	Item Description	Unit of Measure	Quantity
<b>1.0</b>	<b>Section 1 - GENERAL</b>		
1.1	Mobilization	LS	1
1.2	Quality Management	LS	1
1.3	Traffic Management	LS	1
1.4	Site Modifications (Grading and Structures)	PS	1
<b>2.0</b>	<b>Section 2 - GRADING</b>		
2.1	Clearing and Grubbing	Ha.	0.00
2.2	<b>Removal, Abandonment and Disposal of Existing Works</b>		
2.2.1	Removal and disposal of CRB	Each	120
2.2.2	Removal of impact attenuator	Each	1
2.2.3	Removal and relocation of impact attenuator	Each	1
2.3	<b>Pavement Removal</b>		
2.3.1	Saw cut pavement	m	100
2.3.2	Removal and disposal of pavement, regardless of thickness	m <sup>2</sup>	3,530
2.4	<b>Roadway Excavation</b>		
2.4.1	Type D Excavation to on-site re-use	m <sup>3</sup>	70
2.4.2	Type D Excavation to off-site disposal	m <sup>3</sup>	3,250
2.5	<b>Granular Aggregates</b>		
2.5.1	Select Granular Sub-Base	m <sup>3</sup>	1,125
2.5.2	Well Graded Base Course (75mm)	m <sup>3</sup>	555
2.5.3	Well Graded Base Course (25mm)	m <sup>3</sup>	550
<b>3.0</b>	<b>Section 3 - PAVING</b>		
3.1	<b>Primer</b>		
3.1.1	Primer coat (supply and place)	Litre	5,140
3.1.2	Tack coat (supply and place)	Litre	1,075
3.2	<b>Asphalt Pavement</b>		
3.2.1	Asphalt aggregate in stockpile	tonne	1,230
3.2.2	Supply and install 16mm Superpave asphalt	tonne	1,230
3.2.3	Permanent pavement marking	LS	1
3.3	<b>Precast Concrete Barriers</b>		
3.3.1	Concrete median barrier	m	80
3.3.2	Concrete roadside barrier	m	230



2008-03-03

## AMENDMENT AND RELEASE

THIS AGREEMENT is made as of the Third day of March, 2008

BETWEEN:

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

("British Columbia")

AND:

**WESTBANK FIRST NATION**, of 301-515 Highway 97 South,  
Kelowna, British Columbia, as represented by its Council

("Westbank")

(together, the "Parties")

WHEREAS:

- A. An Agreement made as of the 18<sup>th</sup> day of April, 2005 (the "Original Agreement") set forth the terms and conditions pursuant to which certain Improvements and Land Exchanges were to be enabled in connection with the construction of the Replacement Bridge and the Western Approach, as defined therein;
- B. Pursuant to section 8 of the Original Agreement, the Parties made certain agreements relating to improvements for the Cemetery, being the Westbank cemetery located on L.R. 10;
- C. Pursuant to section 23.1 of the Original Agreement, the Parties may amend the Original Agreement from time to time by an instrument in writing;
- D. Westbank has requested that the Original Agreement be amended so as to provide Westbank with greater flexibility as to how certain moneys designated for improvements to the Cemetery will be used; and
- E. British Columbia is prepared to amend the Original Agreement by an instrument in writing, such instrument being this Amendment and Release, as contemplated in section 23.1 of the Original Agreement on the terms and conditions set out herein, including, without limitation, the condition that the Westbank release British Columbia on the terms and conditions set out herein;

**THEREFORE** in consideration of the amount of \$1.00 now paid by each Party to the other and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by each party, the Parties agree as follows:

## 1. Interpretation

- 1.1 All capitalized terms not otherwise defined in this Amendment and Release have the meanings ascribed thereto in the Original Agreement.
- 1.2 The Parties agree that this Amendment and Release will, from the date hereof, be read and construed along with the Original Agreement and be treated as part thereof and for such purposes and so far as may be necessary to effectuate these presents, the Original Agreement will be regarded as being hereby amended, and the Original Agreement as so amended together with all terms and conditions thereof will remain in full force and effect and time remains of the essence.
- 1.3 In the case of any conflict between the terms and conditions of the Original Agreement and the terms or conditions of this Amendment and Release, the terms and conditions of this Amendment and Release will prevail.
- 1.4 In this Amendment and Release, words importing gender shall include all genders; words importing the singular include the plural and vice versa, and words importing persons include individuals, partnerships, associations, trusts, unincorporated organizations, corporations and government authorities.
- 1.5 The captions and headings contained in this Amendment and Release are for convenience only and do not define or limit the scope or intent of this Amendment and Release.

## 2. Amendment to Original Agreement

- 2.1 The Parties agree that the Original Agreement is amended as follows:

- (a) by adding the following definition to section 1.1:

**"Westbank Lands"** has the meaning ascribed thereto in the Westbank First Nation Self-Government Agreement between Her Majesty The Queen in Right of Canada and Westbank; and

- (b) by deleting section 8.1 from the Original Agreement (the **"Former Section 8.1"**) in its entirety and replacing it with the following (the **"New Section 8.1"**):

8.1 British Columbia will reimburse Westbank for invoices submitted for costs attributed to improvements to cemetery sites located on Westbank Lands. This reimbursement from British Columbia to Westbank shall not exceed a total aggregate sum of \$16, \$17

## 3. Release and Acknowledgement

- 3.1 In return for the consideration set out in the Amendment and Release, Westbank, on its own behalf, and on behalf of its members, and their respective heirs, executors, administrators, assigns and successors, hereby releases and forever discharges British Columbia of and from all actions, causes of action, claims, proceedings, debts, duties,

demands, damages, interest, fines and costs, expenses and compensation of whatsoever amount, nature and kind and howsoever arising from the Former Section 8.1.

- 3.2 Without restricting the generality of section 3.1, Westbank, on its own behalf, and on behalf of its members, covenants not to bring or continue any action or other proceeding, at law or in equity, on its own behalf and on behalf of its members, against British Columbia in relation to the subject matter of the release in section 3.1.

#### **4. Acknowledgement**

- 4.1 Westbank specifically acknowledges and agrees that, except as specifically contemplated herein, nothing in this Amendment and Release affects the obligations of the Parties pursuant to the Original Agreement, including, without limitation, the acknowledgement and agreement of the Westbank in section 14.1 of the Original Agreement.

#### **5. Representations and Warranties**

- 5.1 Westbank warrants and represents to British Columbia that:

- (a) it has sought and received independent legal advice with respect to the legal nature and effect of this Amendment and Release and that it has the full legal authority to sign this Amendment and Release;
- (b) it enters into this Amendment and Release for, and on behalf of, itself, its band members, and their respective heirs, executors, administrators, assigns and successors; and
- (c) it has the legal power, capacity and authority to enter into this Amendment and Release and carry out its obligations set out in this Amendment and Release.

- 5.2 British Columbia represents and warrants to Westbank that it has the legal power, capacity and authority to enter into this Amendment and Release and carry out the obligations hereunder set out in this Amendment and Release.

#### **6. Severability**

- 6.1 If any section of this Amendment and Release or any part of a section is found to be illegal or unenforceable, that part or section, as the case may be, will be considered separate and severable and the remaining parts or sections, as the case may be, will not be affected and will be enforceable to the fullest extent permitted by law; provided, however, that if the release in section 3 of this Amendment and Release is found to be illegal or unenforceable, the obligation of British Columbia under the New Section 8.1 will also be deemed to be illegal or unenforceable and will suffer the same implications on enforceability as does the release in section 3 of the Amendment and Release.

#### **7. General**

- 7.1 Each of the Parties will at all times and from time to time and upon reasonable request do, execute and deliver all further assurances, acts and documents for the purpose of




evidencing and giving full force and effect to the covenants, agreements and provisions in this Amendment and Release.


- 7.2 This Amendment and Release and the promises and the obligations herein set out shall enure to the benefit of and be binding upon British Columbia, Westbank and their respective descendants, and their respective heirs, executors, administrators, successors and assigns.
- 7.3 No term, condition, covenant or other provision of this Amendment and Release will be considered to have been waived by a Party unless such waiver is expressed in writing by the Party. The waiver by a Party of any breach by the other Party of any term, condition, covenant or other provision of Amendment and Release will not be construed as or constitute a waiver of any further or other breach of the same or any other term, condition, covenant or other provision and the consent or approval of a Party to any act by the other Party requiring the consent or approval of the Party will not be considered to waive or render unnecessary such consents or approvals to any subsequent same or similar act by the other Party.
- 7.4 Time is of the essence in relation to this Amendment and Release and all the matters set forth herein, including the respective obligations of the Parties.
- 7.5 This Amendment and Release may be executed in counterparts.
- 7.6 This Amendment and Release may be executed by the Parties and transmitted by fax and if so executed and transmitted this Amendment and Release will be for all purposes as effective as if the Parties had executed and delivered an original Amendment and Release.

IN WITNESS WHEREOF the Parties have caused this Amendment and Release to be executed by their duly authorized representatives.

Signed on behalf of  
WESTBANK FIRST NATION

Dated:


  
Chief

  
Witness DELLA ELLIOTT  
AS TO THE SIGNATURES OF CHIEF AND  
COUNCIL

  
Councillor

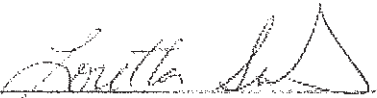
Witness

Dated:

  
Councillor


Witness

Dated:

  
Councillor

Witness

Dated:

  
Councillor

Witness

Dated:

Signed on behalf of  
MINISTER OF TRANSPORTATION

Dated:



Witness





June 23, 2008

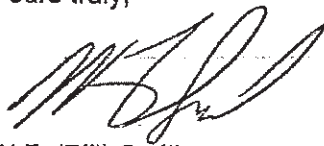
Our File: 25010-65-22402 (9.00)

Westbank First Nation  
101 - 515 Highway 97 S  
Kelowna, B.C. V1Y 3J2

Re: **Westside Interchange Project No.22402**  
**April 18, 2005 Agreement with Westbank First Nation**  
**Land Assembly Payment Per Clause 3.2 (b)**

In accordance with the April 18, 2005 Agreement with Westbank First Nation a cheque is prepared in the amount of £15 '915 for the Westbank First Nation dated June 30, 2008.

Yours truly,

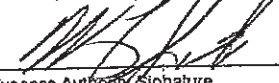
  
W.F. (Bill) Smith  
Project Director

WFS

Date Goods / Services Rec'd <u>JUNE 23 08</u>	
Qualified Receiver <u>[Signature]</u> Signature (for non-electronic receipt of goods)	
Print Name <u>J M Gilow</u>	
PO / Contract # <u>WPN Agreement</u> Final Payment	
IP Receipt # <u>                    </u> YES <u>1</u> NO	
C 55 <u>254</u>	Service Line <u>62368</u>
Stop <u>6001</u>	Project 55 <u>22402</u>

CFS                       
INFO 1 - PRODUCT 22402  
BUS FUNCT PROP ACC  
INFO 2 - WORK ACT ACC PROC  
INFO 3 - COST TYPE                     

Certified correct pursuant to Sections 32 & 33 of the Financial Administration Act and related policies & procedures (FSA Policy - Core Policy Manual 4.3 - Nov 03)

 June 23, 2008  
Expense Authority Signature Date  
Print Name W. F. Smith

Ministry of  
Transportation

Okanagan Corridor Projects  
Southern Interior Region

Mailing Address:  
#300 - 1358 St. Paul Street  
Kelowna, BC V1Y 2E1

Telephone: (250) 712-3663  
Facsimile: (250) 712-3624  
Web Address:

**From:** Evelyn Lube [elube@shaw.ca]  
**Sent:** November 25, 2008 10:24 PM  
**To:** Nyland, Dirk TRAN:EX; Lincoln, Darren J TRAN:EX; Mattes, Julie AG:EX; 'Isaac, Thomas F.'; Smith, Bill F TRAN:EX  
**Cc:** 'Dick Fletcher'; 'Stan Ashcroft'; 'Rob Richardson'  
**Subject:** RE: WFN Land replacement  
Thanks, Dirk

Evelyn

---

**From:** Nyland, Dirk TRAN:EX [mailto:Dirk.Nyland@gov.bc.ca]  
**Sent:** Tuesday, November 25, 2008 4:16 PM  
**To:** Evelyn Lube; Lincoln, Darren J TRAN:EX; Mattes, Julie AG:EX; Isaac, Thomas F.; Smith, Bill F TRAN:EX  
**Cc:** Dick Fletcher; Stan Ashcroft; Rob Richardson  
**Subject:** RE: WFN Land replacement

Evelyn;

I'm given to understand the Crown land has not been valued and still needs to be appraised. So it would seem logical to have Rod do that while he's in the area.

I suggest you call Darren and see what can be worked out on this.

Dirk

Dirk Nyland P.Eng.,  
Chief Engineer  
British Columbia Ministry of Transportation and Infrastructure,  
Victoria

phone: (250) 387-2310 fax: (250) 387-7735  
cell: (250) 812-6645  
<mailto:dirk.nyland@gov.bc.ca>  
[www.gov.bc.ca/tran](http://www.gov.bc.ca/tran)

---

**From:** Evelyn Lube [mailto:elube@shaw.ca]  
**Sent:** November 25, 2008 10:44 AM  
**To:** Nyland, Dirk TRAN:EX; Lincoln, Darren J TRAN:EX; Mattes, Julie AG:EX; 'Isaac, Thomas F.'; Smith, Bill F TRAN:EX  
**Cc:** 'Dick Fletcher'; 'Stan Ashcroft'; 'Rob Richardson'  
**Subject:** RE: WFN Land replacement

Dirk:

There are three Crown parcels that have been identified as possible Replacement/Exchange Lands. We are in the process of obtaining a preliminary estimate of value on one privately held property. Another privately held property is listed for sale so we are aware of that asking price.

I would think that the Crown, as the property owner, would be able to provide an indication of the property value before WFN committed funds to appraisals and other due diligence activities on those lands.

On December 8<sup>th</sup>, Darren and I will attend WFN Council to provide an update on the Replacement Lands and I am hoping to be in a position to provide property values to WFN Council and to get their approval to bring the properties forward to our Membership at the quarterly General Membership Meeting on December 11.

I'm not sure when your next meeting is – it would be good to get this ironed out sooner rather than later so that we maintain momentum and focus on these properties.

Thanks



---

**From:** Nyland, Dirk TRAN:EX [mailto:Dirk.Nyland@gov.bc.ca]  
**Sent:** Tuesday, November 25, 2008 8:45 AM  
**To:** Lincoln, Darren J TRAN:EX; Mattes, Julie AG:EX; Isaac, Thomas F.; Smith, Bill F TRAN:EX  
**Cc:** Evelyn Lube; Dick Fletcher; Stan Ashcroft; Rob Richardson  
**Subject:** RE: WFN Land replacement

Darren;

S16

Dirk

Dirk Nyland P.Eng.,

Chief Engineer

British Columbia Ministry of Transportation and Infrastructure,

Victoria

phone: (250) 387-2310 fax: (250) 387-7735

cell: (250) 812-6645

<mailto:dirk.nyland@gov.bc.ca>

[www.gov.bc.ca/tran](http://www.gov.bc.ca/tran)

---

**From:** Lincoln, Darren J TRAN:EX  
**Sent:** November 25, 2008 7:34 AM  
**To:** Nyland, Dirk TRAN:EX; Mattes, Julie AG:EX; 'Isaac, Thomas F.'; Smith, Bill F TRAN:EX  
**Cc:** 'Evelyn Lube'; Dick Fletcher ; Stan Ashcroft; Rob Richardson  
**Subject:** WFN Land replacement

We have had some recent discussions with Evelyn in regard to determining the market value of the Crown District Lots of interest to WFN. The question came up as to who should pay for the cost of the prelim assessments (3). If you could direct me on this from the 2005 agreement and the assembly of exchange lands as I am not aware as to who's responsibility this should be.

My suggestion would be to get Rod Cook's group to provide a very preliminary assessment of the value of the lands that are of interest.

Look forward to some direction on this matter.

Thanks,

Darren Lincoln, RI(BC)

Manager, Property Services

Ministry of Transportation

Southern Interior Region

342 - 447 Columbia Street

Kamloops, B.C. V2C 2T3

Phone (250) 371-3864

Fax (250) 828-4229

## IMPLEMENTATION AGREEMENT

**THIS IMPLEMENTATION AGREEMENT** is made as of the 20<sup>th</sup> day of August, 2009

**BETWEEN:**

Her Majesty the Queen in Right of the Province of British Columbia as represented by  
the Minister of Transportation and Infrastructure

(**"British Columbia"**)

**AND:**

Westbank First Nation, as represented by its Council

(**"Westbank"**)

**AND:**

BC Transportation Financing Authority, a body corporate continued under the  
*Transportation Act*

(**"BCTFA"**)

(together the **"Parties"**)

**WHEREAS:**

- A.** British Columbia and Westbank have agreed to work together to enable the construction of the new bridge crossing of Lake Okanagan and the portion of the Highway 97 corridor that runs through I.R. #10, and the Parties have, to that end, entered into an agreement dated April 18, 2005 (the "2005 Agreement").
- B.** The Parties wish to facilitate the acquisition of Replacement Lands by doing such things contemplated by this Agreement.

**NOW THEREFORE**, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged by each Party, the Parties covenant and agree as follows:

- 1. Where words and expressions contained in this Agreement are given defined meanings in the 2005 Agreement, these words and expressions shall have the meanings given to them in the 2005 Agreement.
- 2. Westbank, British Columbia and BCTFA agree that:
  - (a) the S16, S17 advanced by British Columbia and currently held by Westbank's solicitor in trust in accordance with the undertakings set out in letters dated September 11, September 26, 2006 and May 20, 2009 (the "Undertaking Letters")

from British Columbia's solicitor for purchase of the Replacement Lands, plus any accrued interest, (the "Trust Funds") may be utilized to purchase the lands legally described as PID 010-347-593 Lot 98, District Lot 2189, Osoyoos Division Yale District, Plan 5381 except Plan 30793 with a civic address of 990 Devon Road, Kelowna, B.C. (the "Devon Road Property");

- (b) British Columbia is under no obligation to pay more than S16, S17 (together with the interest amount accrued while held in trust by Westbank's solicitor) on account of the Purchase Price for the Devon Road Property;
  - (c) Westbank's solicitor will pay the Purchase Price for the Devon Road Property to the solicitor for the vendor on behalf of the BCTFA;
  - (d) Westbank will pay any amount over and above the Trust Funds required for the BCTFA to purchase the Devon Road Property;
  - (e) Notwithstanding Section 3.7 of the 2005 Agreement, Westbank must direct the owner of the Devon Road Property, B.D.J. Holdings Ltd., to transfer the fee simple interest in the Devon Road Property to the BCTFA subject to the following liens, charges and encumbrances:
    - (i) all subsisting exceptions and reservations of interests, rights, privileges and titles contained in any previous Crown grant of the Devon Road Property, and
    - (ii) the agricultural land reserve designation pursuant to the *Agricultural Land Commission Act*.
  - (f) In the event the purchase of the Devon Road Property does not complete, the Trust Funds will continue to be held in trust by Westbank's solicitor pursuant to the Undertaking Letters and Westbank will forthwith recommence activities to enable Westbank to contractually secure and investigate for its use Replacement Lands pursuant to the 2005 Agreement.
3. If, upon the successful conveyance of the Devon Road Property to the BCTFA, and upon Westbank receiving approval of the membership of Westbank, by referendum, of the Devon Road Property for the purposes of the 2005 Agreement, BCTFA will provide a lease to Westbank of the Devon Road Property pursuant to Section 3.7 of the 2005 Agreement.
4. Westbank will, forthwith upon written notice from the BCTFA, engage an independent professional consulting firm and at Westbank's expense conduct a phase 2 environmental site assessment of the Devon Road Property, and conduct any and all further tests and studies reasonably required by the BCTFA or by any provincial or federal authority to confirm that the Devon Road Property is not Contaminated or to identify any Contamination in, on, under or migrating to or from the Devon Road Property. Westbank

will forward the results of such completed environmental assessments, tests and studies to the BCTFA and British Columbia forthwith upon Westbank's receipt.

5. In the event such assessments, tests and studies described in Section 4 have identified that the Devon Road Property indicates the presence of Contaminants, Westbank will complete Remediation of the Devon Road Property at its expense.
6. Westbank hereby releases British Columbia and BCTFA and their respective servants, directors, officers, employees, deputies delegates, representatives and agents from and will indemnify, defend and hold British Columbia and BCTFA and their respective servants, directors, officers, employees, deputies delegates, representatives and agents harmless in respect of any and all costs, expenses, damages, losses or liabilities that may be incurred or suffered by Westbank by reason of or resulting from or in connection with or arising in any manner whatsoever out of:
  - (a) the Devon Road Property not being suitable for use by Westbank;
  - (b) the Contamination of the Devon Road Property or of any adjacent lands, groundwater or adjacent bodies of water migrating from the Devon Road Property; and
  - (c) the requirement to undertake any Remediation as a result of Contamination described in subsection (b).
7. Westbank indemnifies, defends and saves harmless British Columbia and BCTFA and their respective servants, directors, officers, employees, deputies delegates, representatives and agents in respect of all claims for bodily injury (including death), property damage or other loss or damage, including damage to property outside the Devon Road Property, arising out of or in any way connected with Contamination of the Devon Road Property.
8. Provided that Canada is prepared to accept the transfer of the Devon Road Property for inclusion to reserve notwithstanding its inclusion within the agricultural land reserve, as that term is defined in the *Agricultural Land Commission Act*, British Columbia and BCTFA acknowledge and agree herein that the Devon Road Property may be released from agricultural land reserve by Canada without objection from British Columbia and BCTFA.
9. In the event Canada will not agree to accept the transfer of the Devon Road Property for inclusion to reserve with its inclusion within the agricultural land reserve, the BCTFA will appoint Westbank or Canada, as applicable, to act on its behalf to apply for the removal of the Devon Road Property from the agricultural land reserve, including satisfying all conditions attached to the approval from the Provincial Agricultural Land Commission.
10. Each of the Parties will perform such further acts and execute such further agreements as may be required from time to time to give proper effect to the intent of this Agreement.



11. Should any provision in this Agreement be illegal or not enforceable, it shall be considered separate and severable from this Agreement and the remaining provisions shall remain in force and be binding upon the Parties as though the said provision had never been included.
12. Notwithstanding the date of execution of this Agreement, it is deemed to take effect on June 25, 2009.
13. Time is of the essence.
14. In this Agreement,

**"Canada"** means Her Majesty the Queen in right of Canada

**"Contamination"** includes any contaminant, toxic substance, hazardous substance, hazardous waste, hazardous recyclable, ozone-depleting substance, halocarbon, pesticide, waste, or any similar substance, and any substance defined or referred to as such under any environmental laws or other provincial legislation, and "Contaminant(s)" and "Contaminated" shall have a corresponding meaning.

**"Devon Road Property"** has the meaning ascribed to it in section 2(a) herein.

**"Purchase Price"** means the purchase price of the Devon Road Property as adjusted as to taxes and all matters normally adjusted between a vendor and purchaser on the sale of real property in British Columbia. Without restricting the generality of the foregoing, the Purchase Price shall include all costs and expenses related to the purchase of the Devon Road Property, including all registration charges, Property Transfer Tax pursuant to the *Property Transfer Tax Act*, GST, if applicable, and all other taxes and charges payable upon the transfer and legal fees and disbursements.

**"Remediation"** means action to prevent, eliminate, limit, correct, counteract, mitigate, remove or dispose of any Contamination or the negative effects on the environment or human health of any Contamination, and includes, but is not limited to, the following:

- (a) site investigations of any kind, including preliminary site investigations, detailed site investigations including tests, sampling, surveys, data evaluation, risk assessment and environmental impact assessment;
- (b) evaluation of alternative methods of remediation;
- (c) preparation of a remediation plan, satisfactory to the BCTFA, British Columbia and Canada, including a plan for any consequential or associated removal of soil or soil relocation from the affected site;
- (d) implementation of a remediation plan;

(e) monitoring, verification and confirmation of whether the Remediation complies with the remediation plan, applicable standards and requirements imposed by BCTFA or Canada under any environmental law; and

(f) other action that is imposed under any environmental law.

15. This Agreement may be entered into by each party signing a separate copy of it (including a photocopy or facsimile copy) and delivering it to the other party by facsimile with an originally executed copy of it to follow by mail.

**IN WITNESS WHEREOF** the Parties have caused this Implementation Agreement to be executed by their duly authorized representatives.

Signed on behalf of  
**WESTBANK FIRST NATION**

\_\_\_\_\_  
Chief

August 11, 2009  
(date)

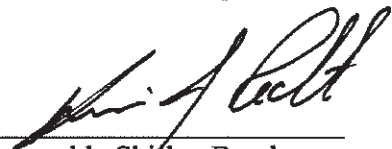
  
Councillor

  
Councillor

  
Councillor

\_\_\_\_\_  
Councillor

Signed on behalf of **HER MAJESTY  
THE QUEEN IN RIGHT OF THE  
PROVINCE OF BRITISH COLUMBIA,**  
By the Minister of Transportation and Infrastructure  
or her Authorized Representative

  
Honourable Shirley Bond  
or her Authorized Representative

Aug 10, 2009  
(date)

Signed on behalf of **BC TRANSPORTATION  
FINANCING AUTHORITY**

  
Authorized Representative

August 13, 2009  
(date)

TERMS OF INSTRUMENT PART 2

LEASE

THIS LEASE OF PID 010-347-593 LOT 98, DISTRICT LOT 2189 OSOYOOS DIVISION YALE DISTRICT PLAN 5381 EXCEPT PLAN 3093

THIS LEASE IS MADE AS OF THE 30<sup>th</sup> DAY OF SEPTEMBER, 2009

**BETWEEN:**

**BC TRANSPORTATION FINANCING AUTHORITY**, a  
corporation continued under the *Transportation Act*

(the "Lessor")

**OF THE FIRST PART**

**AND:**

**WESTBANK FIRST NATION**, of 301-515 Highway 97 South,  
Kelowna, B.C. V1Z 3J2

(the "Lessee")

**OF THE SECOND PART**

In consideration of the rents, covenants and agreements reserved and contained in this Lease, the Parties covenant and agree as follows:

**PART 1 - DEFINITIONS**

- 1.1 In this Lease,
- (a) "Additional Rent" means all amounts payable by the Lessee to the Lessor pursuant to Sections 4.3 and 4.4 herein.
  - (b) "Agreement" means the Agreement made as of the 18<sup>th</sup> day of April 2005, between Her Majesty the Queen in right of the Province of British Columbia as represented by the Minister of Transportation and the Lessee.
  - (c) "Alterations" means any substantial alterations, restorations, renovations, relocations, reductions, additions, expansions, reconstructions, removals, replacements, modifications, or improvements to the Premises.
  - (d) "Authority" means any one, or any combination of, federal, provincial, municipal, local, first nations and other governmental and quasi-governmental authorities, departments, commissions, and boards having jurisdiction.
  - (e) "BCICAC" means British Columbia International Commercial Arbitration Centre.
  - (f) "Commencement Date" means the 30<sup>th</sup> day of September.

- (g) **"Contaminant(s)"** includes any contaminant, toxic substance, hazardous substance, hazardous waste, hazardous recyclable, ozone-depleting substance, halocarbon, pesticide, waste, or any similar substance, and any substance defined or referred to as such under any Environmental Laws or other provincial legislation.
- (h) **"Environment"** means the components of the earth and includes:
- (a) air, land, and water;
  - (b) all layers of the atmosphere;
  - (c) all organic and inorganic matter and living organisms; and
  - (d) the interacting natural systems that include components referred to in paragraphs (a) to (c).
- (i) **"Environmental Laws"** mean any laws, statutes, regulations, orders, bylaws, permits, codes of practice or lawful requirements of any governmental authority relating, in whole or in part, to the protection and enhancement of the Environment, public health, public safety, occupational health and safety and the transportation of dangerous goods or regulating, controlling, licensing, or prohibiting Contaminants.
- (j) **"Improvements"** means all buildings, structures, works, facilities, services, landscaping and other improvements by whomsoever made and which are at any time and from time to time situate in, on, under or above the Lands including all equipment, machinery, apparatus and fixtures forming part of or attached to the Improvements and all alterations, removals, additions to, replacements and substitutions of the Improvements.
- (k) **"Land Exchange"** has the same meaning as defined in the Agreement.
- (l) **"Lands"** means PID 010-347-593 Lot 98, District Lot 2189, Osoyoos Division, Yale District Plan 5381 except Plan 30793 that has a municipal address of 990 Devon Road, Kelowna, British Columbia.
- (m) **"Laws"** means all laws, statutes, regulations, by-laws, rules, codes, guidelines, approvals, permits, licenses, or other authorizations, standards, declarations, notices, ordinances, requirements, and directions of any Authority in force from time to time.
- (n) **"Lease"** means this Indenture of Lease and any Schedules attached hereto.
- (o) **"Lease Year"** means each consecutive twelve-month period comprising the Term of this Lease, with the First Lease Year being the first period of twelve months commencing on the Commencement Date and ending on the day immediately preceding the first anniversary of the Commencement Date.

- (p) **"Lessee"** means the Party of the second part and its agents, servants, employees, contractors, and those for whom it is responsible at law.
- (q) **"Lessor"** means the Party of the first part and its agents, servants, employees, contractors, and those for whom it is responsible at law.
- (r) **"Minerals"** means ore of metal and every natural substance that can be mined and that:
  - (i) occurs in fragments or particles lying on or above or adjacent to the bedrock source from which it is derived, and commonly described as talus, or
  - (ii) is in the place or position in which it was originally formed or deposited, as distinguished from loose, fragmentary or broken rock or float which by decomposition or erosion of rock, is found in wash, loose earth, gravel or sand,
  - (iii) and includes coal, petroleum and all other hydrocarbons, regardless of gravity and howsoever and wheresoever recovered, natural gas, building and construction stone, limestone, dolomite, marble, shale, clay, sand and gravel.
- (s) **"Party"** means a party to this Lease and "Parties" means all of them.
- (t) **"Person"** includes any natural person, partnership, association or corporation.
- (u) **"Premises"** means the Lands and the Improvements and every reference in this Lease to the "Premises" includes a reference to every part of the Premises.
- (v) **"Rent"** means the rent set forth in Part 4 hereof.
- (w) **"Replacement Lands"** has the meaning ascribed to it under the Agreement.
- (x) **"Spill"** includes discharge, dispose, spray, inject, inoculate, abandon, deposit, spill, leak, pump, pour, leach, seep, pour, emit, empty, throw, dump, place, exhaust and migrate.
- (y) **"Taxes"** means the aggregate of all taxes, local improvements or similar rates, duties, assessments or charges, municipal realty taxes, water taxes, school taxes, separate school taxes, goods and services taxes, value added or multi-staged taxes, business taxes (other than business taxes charged directly by the taxing authority to the Lessee) and any other taxes, rates, duties or assessments lawfully levied or imposed upon or in respect of the Premises or any portion thereof by any Authority.
- (z) **"Term"** means that forty-nine year period of time commencing on the Commencement Date and terminating on the Termination Date unless earlier terminated pursuant to this Lease.
- (aa) **"Termination Date"** means the 29<sup>th</sup> day of September, 2058.

## **PART 2 - THE DEMISE**

- 2.1 The Lessor hereby leases to the Lessee the Premises, excepting and reserving unto the Lessor any air space rights or subsurface rights appurtenant to the Lands including all Minerals upon or under the Lands, **TO HAVE AND TO HOLD** the Premises unto the Lessee for the Term, yielding and paying Rent as hereinafter provided, and subject to the terms, conditions, provisos, exceptions and reservations contained in this Lease and the prior termination as herein set forth.
- 2.2 This Lease shall terminate prior to the end of the Term upon the completion of the Land Exchange as set forth in Subsection 3.7 of the Agreement.

## **PART 3 - PERMITTED USE**

- 3.1 The Lessee will not use the Premises, or any part thereof, or suffer or permit the Premises, or any part thereof, to be used, for any purpose other than a purpose in accordance with all applicable Laws.
- 3.2 As the Premises are subject to an agricultural land reserve designation, the Lessee may apply to the Provincial Agricultural Land Commission, on behalf of the Lessor, for the exclusion of the Premises from the agricultural land reserve. The Lessor agrees to cooperate in providing such consents, approvals and cooperation as the Lessee may reasonably require in order to obtain the said exclusion.

## **PART 4 - RENT**

- 4.1 The Lessee will pay as Rent for the Term to the Lessor in lawful money of Canada the sum of one dollar (\$1.00) and other good and valuable consideration, payable in advance on the Commencement Date.
- 4.2 No additional rent, charges or fees, will be payable by the Lessee under this Lease except as specified herein.
- 4.3 This Lease is intended to be absolutely net to the Lessor and all expenses, costs, payments, taxes and outgoings pertaining to the Premises of whatsoever nature during the Term will be borne and paid for by the Lessee.
- 4.4 Any unpaid and overdue amounts payable pursuant to Section 4.3 herein may be paid by the Lessor and recovered by the Lessor from the Lessee as Additional Rent in the same manner as recovery for rent in arrears. If no specific time is provided for the payment of Additional Rent in a notice of Additional Rent from the Lessor to the Lessee, such Additional Rent shall be payable by the Lessee to the Lessor forthwith on demand.



### **PART 5 - UTILITIES**

- 5.1** The Lessee is responsible for providing at its expense all services and facilities required by it for use of the Premises. The Lessor agrees to cooperate in providing all necessary consents, approvals and cooperation as the Lessee may reasonably require in order to obtain such services and facilities.
- 5.2** Without limiting the generality of the foregoing, the Lessee will pay for all water, gas, telephone, light, power, heat, air-conditioning, sewer and garbage disposal services and facilities for use of the Premises.
- 5.3** No interruption of any service or facility provided to the Premises, except those caused by the Lessor will be deemed to be a disturbance of the Lessee's enjoyment of the Premises or render the Lessor liable for injury to or in damages to the Lessee or relieve the Parties from their obligations under this Lease.

### **PART 6 - COMPLIANCE WITH LAWS**

- 6.1** The Lessee will at its expense observe and perform all of its obligations under, and all matters and things necessary or expedient to be observed or performed by it, by virtue of any applicable Laws.

### **PART 7 - NUISANCE**

- 7.1** The Lessee will not cause, permit or suffer any nuisance in, on, or about the Premises.
- 7.2** Without limiting Section 7.1, the Lessee will, upon written notice from the Lessor, abate any nuisance arising directly or indirectly out of the use or occupation of the Premises by the Lessee or someone else.

### **PART 8 - WASTE**

- 8.1** The Lessee will not cause, permit or suffer the commission of any waste of the Premises.

### **PART 9 - RUBBISH**

- 9.1** Without limiting Part 7, the Lessee will not cause, permit or suffer any refuse, rubbish or debris to be placed or left in, on or about the Premises except as is reasonably necessary in accordance with the uses permitted by Part 3 or as permitted in writing by the Lessor, and will take all necessary, reasonable, precautions to protect the Premises against fire.

## PART 10 - ENVIRONMENT

### 10.1 CONTAMINANTS

The Lessee will not use the Premises to generate, manufacture, refine, treat, transport, store, handle, dispose of, transfer, produce, Spill, or process any Contaminants, except as may be reasonably required for uses permitted under Part 3 and in strict compliance with Environmental Laws, and with the prior written consent of the Lessor, which consent may be unreasonably and arbitrarily withheld.

### 10.2 REMOVAL OF CONTAMINANTS

- (a) Without limiting Section 10.3, if requested by the Lessor or any Authority, the Lessee will, at its own expense, from time to time during the Term obtain a report from an independent consultant designated or approved by the Lessor verifying compliance with Environmental Laws and this Lease by the Lessee or the extent of any non-compliance therewith and promptly remove from the Premises any Contaminants that are, or have been, located, stored, or incorporated in, on, or under the Premises in a manner prohibited under Section 10.1 and, upon the removal, will immediately provide the Lessor with documentation satisfactory to the Lessor confirming the completion of the removal satisfactory to the Lessor and any Authority. This Section shall survive the expiration or earlier termination of this Lease.
- (b) Notwithstanding the generality of Section 10.2(a), prior to the end of the Term, the Lessee will, at its own expense, remove from the Premises any Contaminants that are, or have been, located, stored, or incorporated in, on, or under the Premises.

### 10.3 REPORT OF SPILL

Upon the Spill of any Contaminants, or discovery of a Spill of any Contaminants, by the Lessee in, on, above, or under the Premises, the Lessee will:

- (a) immediately deliver written notice to the Lessor and any appropriate Authority of the occurrence of the Spill and details relating to the Spill, including, the time and extent of the Spill, the estimated amount of Contaminants involved, the remedial action taken prior to the delivery of the notice, the remedial action that the Lessee intends to take in order to contain or rectify the Spill, and any Persons observed who appeared to have caused or who were in the vicinity of the Spill;
- (b) at its own expense, immediately take all remedial action necessary to fully rectify the effects of the Spill in compliance with all Environmental Laws;

- (c) provide the Lessor with an independently-prepared report, satisfactory to the Lessor, of the Lessee's activities under Subsection 10.3(b) and the state of the Premises after such activities compared with the state of the Premises prior to the Spill, if known; and
- (d) do such further activities as the Lessor may reasonably require, based on the report referred to in Subsection 10.3(c), to rectify the Spill.

#### 10.4 INCREASED RISKS

The Lessee will not construct any Improvements or carry out any Alterations that materially increase the risk of liability to the Lessor (whether direct or indirect) as a result of the application of Environmental Laws (as determined by the Lessor acting reasonably).

#### 10.5 TITLE TO CONTAMINANTS

Notwithstanding any rule of law to the contrary, any Contaminants that are located, stored, Spilled, or incorporated in, on, or under the Premises remain the sole and exclusive property of the Lessee and will not become the property of the Lessor, regardless of any degree of affixation of the Contaminants to the Premises.

#### 10.6 AUDIT AND ENVIRONMENTAL SITE ASSESSMENT

- (a) The Lessee will have an independent consultant undertake an environmental site assessment to the reasonable satisfaction of the Lessor, immediately prior to the Commencement Date and the Lessee will promptly provide the Lessor with a copy of any and all environmental assessment reports produced by the consultant.
- (b) Within 8 months before the expiration of this Lease, the Lessee will undertake to the reasonable satisfaction of the Lessor, and at the Lessee's own expense, an environmental site assessment and provide to the Lessor, any and all environmental site assessment reports conducted by an independent consultant designated or approved by the Lessor.
- (c) In preparing the reports referred to in Subsections 10.6(a) and 10.6(b), the environmental consultant was, or will be, as the case may be, required to review the site history and inspect the Premises to identify portions of the Premises with indicators of contamination and to conduct appropriate testing to assess suspect soil and, if practical, water. In identifying such portions of the Premises, the consultant relied, or will rely, as the case may be, at least on historical information and instances of visually apparent unusual soil, water, or vegetation conditions.

- (d) The reports referred to in Subsections 10.6(a) and 10.6(b) will be *prima facie* evidence between the Parties of the respective environmental condition of the Premises immediately prior to the Commencement Date and at the termination of this Lease.
  - (e) At the expiration or earlier termination of this Lease, the Lessee will remediate the Premises to the environmental condition of the Premises identified in the report referred to in Subsection 10.6(a), or the environmental condition acceptable to the Lessor.
- 10.7 The provisions of this Part 10 will be reasonably interpreted and enforced and will not apply to:
- (a) Spills of Contaminants that are not contrary to Environmental Laws;
  - (b) Minor or negligible Spills of Contaminants that do not constitute a significant threat to the Environment provided the Lessee takes reasonable steps to effect a timely clean up of such Spills after the Lessee knows or has reasonable grounds to know of them, or
  - (c) Spills of Contaminants by the Lessor or those for whom it is responsible at law.

#### **PART 11 - IMPROVEMENTS**

- 11.1 Subject to the provisions of Part 12, the Lessee may, at its own expense, construct any Improvements on the Lands. For the purposes of this Section, changes made by the Lessee to Improvements, which are non-structural, have minimal external impact and are either in the ordinary course of business or part of an ongoing maintenance program of the Lessee or required as a result of the maintenance obligations of the Lessee under this Lease shall not require the Lessor's consent.

#### **PART 12 - REPAIR OF PREMISES**

- 12.1
- (a) The Lessee will at its own expense at all times during the Term, keep in good order and condition the Premises, and repair, renew, replace and maintain all Improvements in a proper, professional and workmanlike manner excepting reasonable wear and tear only as is not inconsistent with the foregoing.
  - (b) Without limiting the generality of Subsection 12.1(a), the maintenance, repair, replacement and renewal of the Improvements will include any defects to the Improvements, including all work of a structural nature.
  - (c) The Lessee will take reasonable steps, to keep all roadways and sidewalks on the Premises free and clear of all snow, ice and other obstructions.

- (d) The Lessor may upon reasonable notice enter the Premises and view the state of repair and maintenance, and direct the Lessee to repair in accordance with the direction of the Lessor, save and except as otherwise agreed to in this Lease.

### **PART 13 - INSURANCE**

- 13.1** The Lessee covenants and agrees with the Lessor to obtain, maintain and pay for, during the Term, and during such other time as the Lessee occupies, suffers, permits or allows any person to occupy the Premises, insurance or insurance policies as listed in Schedule "A" against all risks as specified in Schedule "A".
- 13.2** All insurance will be in form and amounts specified in Schedule "A" and issued by an insurance carrier licensed to conduct business in the province of British Columbia. If the Lessee fails to obtain, maintain, or pay for any insurance as required herein, the Lessor may do so after notifying the Lessee and the Lessee will, upon demand, reimburse the Lessor for any costs incurred as a result thereof and such cost incurred by the Lessor shall constitute, for purposes of this Lease, Rent due from the Lessee and in arrears.
- 13.3** Notwithstanding any of the terms, conditions and provisions of Schedule "A", the insurance policies obtained and maintained by the Lessee pursuant to this Section 13 will, in addition to and not in substitution for Schedule "A", contain the following terms and conditions:
- (a) all property loss policies shall contain an endorsement that the proceeds of any loss shall be made payable to the Lessor and the Lessee, as the respective interests of the Lessor and the Lessee may appear. All such insurance proceeds will be held by the loss payees aforesaid or by any one of them or by any third party, as mutually agreed, in trust for both and such proceeds will be used and applied in the restoration, reconstruction or replacement of the loss or damage in respect of which such insurance moneys are payable.
- 13.4** Notwithstanding the terms, conditions and provisions of Schedule "A", the Lessee covenants and agrees with the Lessor to obtain, maintain and pay for during the Term, workers' compensation coverage in respect of all Lessee's employees, workers and servants engaged in any work in or upon the Premises or in the event workers' compensation coverage is not available under the applicable legislation, employer's liability insurance in lieu thereof.
- 13.5** The Lessee will deliver, prior to the Commencement Date, evidence of all insurance policies described herein to the satisfaction of the Lessor. Evidence of subsequent policy renewals will be delivered forthwith following receipt of renewal documents by the Lessee and in any event prior to the expiry of the prior policy. Acceptance by the Lessor of such evidence of insurance will not constitute agreement by the Lessor that the policy or policies are in compliance with this provision of this Lease.

- 13.6 The Lessee agrees that failure to deliver satisfactory evidence of insurance required herein constitutes a default under this Lease.
- 13.7 In the event that the Lessee fails to maintain insurance as stipulated, or if the Lessee's insurance policy or policies prove to be defective in any form, the Lessee will be held liable to the same extent as if it were the underwriter of insurance policy or policies.

#### **PART 14 - REMOVAL OF IMPROVEMENTS, FIXTURES AND CHATTELS**

- 14.1 At any time during the Term or within NINETY (90) days after the expiration of this Lease, if the Lessee is not in default under this Lease it may at its expense remove all of its moveable goods and chattels from the Premises, provided that any and all damage caused by such removal is repaired to the reasonable satisfaction of the Lessor.
- 14.2 Provided that this Lease is not terminated pursuant to Section 2.2, the Lessee will at the Lessee's own expense, upon written demand by the Lessor given on or before the 90th day after the expiration of this Lease, forthwith remove from the Premises any or all of the Improvements made by the Lessee during the Term of this Lease, movable goods and chattels as the Lessor requires and leave the remainder of the Premises in good and substantial repair and condition and free from all debris to the reasonable satisfaction of the Lessor.
- 14.3 If the Lessee does not remove its moveable goods and chattels from the Premises as provided in Section 14.2, then the Lessor may remove them and dispose of them as it sees fit at the expense of the Lessee. The Lessee will pay to the Lessor, forthwith upon demand, all costs and expenses incurred in the removal and disposal of the moveable goods and chattels and in making good all damage caused to the Premises by the removal. The Lessor will not be responsible to the Lessee for any loss suffered by the Lessee as a result of the removal or the disposal of moveable goods and chattels.
- 14.4 This Part 14 shall survive the expiration or earlier termination of this Lease.

#### **PART 15 - INDEMNITY**

- 15.1 The Lessee will indemnify and save harmless the Lessor and Her Majesty the Queen in right of the Province of British Columbia against and from all loss, costs (including legal costs), damages, liabilities and expenses arising out of or related to any breach of a Lessee's covenant and all claims, demands, actions, suits and other proceedings for personal injury, death or property damage or loss arising out of or related to any act or omission of the Lessee or any act or omission of a sublessee under this Lease, its officials, employees or agents, and this indemnity shall survive the expiration or earlier termination of this Lease.



- 15.2** Notwithstanding Section 15.1, the Lessee's covenant to indemnify and save harmless will not apply to any claim, demand, loss, cost, damage, action, suit or other proceeding to the extent that same is occasioned or contributed to by the negligence or wilful act or omission of the Lessor.
- 15.3** Notwithstanding Section 15.2, the Lessee will indemnify and save harmless the Lessor and Her Majesty the Queen in right of the Province of British Columbia against and from all loss, costs (including legal costs), damages, liabilities and expenses arising out of or related to all claims, demands, actions, suits and other proceedings for personal injury, death or property damage or loss arising out of or related to construction of any Improvements on the Lands or any defect or want of repair therein, or any want of maintenance thereof, and this indemnity shall survive the expiration or earlier termination of this Lease.

#### **PART 16 - QUIET ENJOYMENT**

- 16.1** The Lessee by paying the Rent and observing and performing the covenants in this Lease may peaceably and quietly possess, hold and enjoy the Premises during the Term without any interruption or disturbance by the Lessor.

#### **PART 17 - PAYMENTS BY THE LESSOR REGARDED AS RENT**

- 17.1** If at any time before or after the expiration or earlier termination of this Lease the Lessor suffers or incurs any damage, loss or expense by reason of any failure of the Lessee to perform or observe any of the Lessee's covenants or makes any payment for which the Lessee is liable under this Lease, or if the Lessor is compelled or elects to incur any expense including legal fees in instituting, prosecuting or defending any action or proceeding instituted by reason of any default of the Lessee under this Lease (including any action or proceeding against the Lessee), then in every such case the amount of damage, loss, expense or payment (including legal fees of the Lessor on a special costs or solicitor and own client basis), together with interest as provided in Section 18.1, will be paid by the Lessee to the Lessor forthwith on demand by the Lessor. This Section will survive the expiration or earlier termination of this Lease.
- 17.2** The amount of any damage, loss, expense or payment referred to in Section 17.1 will be added to or deemed to be Rent due under this Lease, and be recoverable in the manner provided by law for the recovery of Rent in arrears.

#### **PART 18 - ARREARS TO BEAR INTEREST**

- 18.1** If the Rent, Additional Rent or any other sum owing by the Lessee to the Lessor under this Lease is not paid within thirty (30) days from the date on which it is due then it will bear interest at the Prime Rate in effect from time to time plus four percent (4%) per annum from the date the Rent or the sum is due until the date of the payment by the Lessee, but this stipulation for interest will not prejudice or affect any other remedies of the Lessor



under this Lease or otherwise, or be construed to relieve the Lessee from any default in making the Rent payment at the time and in the manner specified in this Lease.

#### **PART 19 - REMEDIES CUMULATIVE**

- 19.1** All rights and remedies of the Lessor are cumulative and are in addition to and do not exclude any other right or remedy provided in this Lease or otherwise allowed by law.
- 19.2** All rights and remedies of the Lessor may be exercised concurrently.

#### **PART 20 - SURRENDER OF POSSESSION**

- 20.1** Subject to Section 2.2 and Part 14, when the Term expires, the Lessee will peaceably surrender the Premises to the Lessor maintained, repaired and renewed as provided in Part 12.

#### **PART 21 - TAXES**

- 21.1** The Lessee will pay as and when they fall due all Taxes and any and all levies, rates and charges assessed or levied in respect of any business or other activity carried on, in or in connection with the Premises by the Lessee and all taxes, rates, charges, levies of whatever description assessed in respect of any fixtures, machinery and equipment installed or maintained on the Premises by the Lessee and all business taxes and licence fees assessed or levied in respect of the business of the Lessee at the Premises. If the Lessee wishes at any time to dispute the lawfulness, applicability or amount of any Taxes or other of the foregoing levies, the Lessee shall notify the Lessor prior to doing so and shall comply with all lawful requirements of any such appeal and shall post and maintain such security in respect of the Taxes or other levies appealed as the Lessor may reasonably require from time to time.

#### **PART 22 - NO WARRANTIES**

- 22.1** No representations, warranties or conditions have been made to the Lessee in respect of the Premises by the Lessor.
- 22.2** The Lessee is fully familiar with the Premises and every part and aspect of the Premises and, without limiting the generality of the foregoing, the Lessee acknowledges that it has carried out a full inspection of the Premises and takes the Premises as is in reliance of its own inspection and not relying on any representations or warranties of the Lessor.

#### **PART 23 - HEADINGS**

- 23.1** All headings in this Lease have been inserted as a matter of convenience and for reference only and in no way define, limit, enlarge, modify or explain the scope or meaning of this Lease or any of its provisions.

- 23.2** Any reference in this Lease to a Part, Section, Subsection or Paragraph will mean a Part, Section, Subsection or Paragraph of this Lease unless otherwise expressly provided.
- 23.3** Any reference in this Lease to Lessee's covenants will be deemed to include all terms and conditions to be performed or observed by the Lessee under this Lease.

#### **PART 24 - AMENDMENTS**

- 24.1** Subject to the provisions of the Agreement, this Lease constitutes the entire agreement between the Parties, and no modification of this Lease will be inferred from anything done or omitted to be done by either of the Parties except pursuant to an agreement in writing duly executed by the Parties.
- 24.2** This Lease, together with the Agreement, constitutes the entire agreement between the Parties with respect to the subject matter of this Lease and no waiver of any provision of this Lease will be inferred from anything done or omitted by either of the Parties except by an express waiver in writing duly executed by the respective Party.
- 24.3** No condoning, excusing or overlooking by the Lessor of any default by the Lessee at any time or times in performing or observing any of the Lessee's covenants will operate as a waiver of or otherwise affect the rights of the Lessor in respect of any continuing or subsequent default and no waiver of these rights will be inferred from anything done or omitted by the Lessor except by an express waiver in writing.

#### **PART 25 - GOVERNING LAW**

- 25.1** This Lease will be governed by and construed in accordance with the applicable laws of the Province of British Columbia.

#### **PART 26 - DISPUTE RESOLUTION**

- 26.1** The Parties agree that any dispute, controversy or claim arising out of or relating to this Lease or the interpretation of any of its provisions will be resolved in the following manner and in the following order:
- (a) First, by good faith discussions between the representatives of the Parties on a timely basis;
  - (b) Failing good faith discussions between representatives of the Parties, then through discussion as between the Senior Vice President, BC Transportation Financing Authority and the Director of Operations, Westbank First Nation;
  - (c) Failing discussions between the Senior Vice President, BC Transportation Financing Authority and the Director of Operations, Westbank First Nation, then through mediation by a mediator jointly chosen by the Parties, with such costs of

mediation to be paid by the Lessee and the Lessor in equal parts, during the course of the mediation; and

- (d) Failing mediation, then through binding arbitration in accordance with the Arbitration Rules of the BCICAC in effect on the date of such dispute. The Parties further agree that in such case:
  - (i) the appointing authority will be the BCICAC;
  - (ii) the case will be administered by the BCICAC in accordance with its "Procedures for Cases under the BCICAC Arbitration Rules";
  - (iii) the place of arbitration will be Vancouver, British Columbia;
  - (iv) the number of arbitrators will be one (1);
  - (v) the language used in the proceedings will be English; and
  - (vi) the arbitrator's fees will be paid by the Lessee and the Lessor in equal parts, during the course of the arbitration. The arbitrator's fees will, unless otherwise determined by the arbitrator, be borne equally by the Parties.

#### **PART 27 - NOTICES**

- 27.1** All notices under this Lease must be given in writing and delivered in accordance with this Part.
- 27.2** All notices will be delivered to the other Party and no notice will be effective until such delivery has been made.

The addresses for delivery are:

To the Lessee:

Westbank First Nation  
301-515 Highway 97 South  
Kelowna, British Columbia  
V1Z 3J2

To the Lessor at:

BC Transportation Financing Authority  
Suite 5A – 940 Blanshard Street  
Victoria, British Columbia  
V8W 9T5  
Attn: Property Administrator

**27.3** Notice will be deemed to have been delivered:

- (a) if delivered by hand, upon receipt; or
- (b) if sent by registered mail, four (4) days after the mailing thereof, provided that if there is a postal strike or other disruption such notice will be delivered by hand or electronic transmission.

**27.4** The Parties may change their respective addresses for delivery by delivering notice of change as provided in this Part.

#### **PART 28 - TIME OF THE ESSENCE**

**28.1** Time is of the essence in this Lease and each of its terms and conditions.

#### **PART 29 - SEVERABILITY**

**29.1** If any part of this Lease is declared or held invalid for any reason, the invalidity of that part will not affect the validity of the remainder which will continue in full force and effect and be construed as if this Lease had been executed without the invalid portion. The intention of the Parties is that this Lease would have been executed without reference to any portion which may, for any reason, be declared or held invalid.

#### **PART 30 - PLURALITY AND GENDER**

**30.1** This Lease will be for the benefit of and be binding upon the contractors, administrators, successors, assigns and other legal representatives, as the case may be, of each of the Parties.

**30.2** Reference to a Party will be read as if all required changes in the singular and plural and all grammatical changes rendered necessary by gender had been made.

**30.3** If a Party is comprised of more than one Person then all covenants and agreements of that Party will be deemed joint and several.

#### **PART 31 - REGISTRATION**

**31.1** Upon full execution, the Lessor will arrange for this Lease to be registered in the Land Title Office.

**PART 32 – ASSIGNMENT**

**32.1** The Lessee will not, without the prior written consent of the Lessor, which consent will not be unreasonably withheld or delayed:

- (a) directly or indirectly assign or sublet this Lease or any interest therein or otherwise part with possession of all or any part of the Premises; or
- (b) grant any licence or concession within or relating to the Premises.

**PART 33 – COUNTERPARTS**

**33.1** This Lease may be signed in counterparts.

**PART 34 – FURTHER ACTS**

**34.1** Each of the Parties will perform such further acts and execute such further agreements as may be required from time to time to give proper effect to the intent of this Lease.

**IN WITNESS WHEREOF** the Parties have caused this Lease to be signed by their duly authorized representatives.

SIGNED, SEALED AND DELIVERED  
in the presence of:

SIGNATURE

STAN H. ASHCROFT

BARISTER & SOLICITOR  
Suite 200, 1544 Marine Drive  
West Vancouver, B.C. V7V 1H8  
Telephone: 604-913-1611  
Fax: 604-913-1622

ADDRESS

OCCUPATION

WESTBANK FIRST NATION  
by its Director of Lands


SIGNED, SEALED AND DELIVERED  
in the presence of:

  
SIGNATURE

**JULIE MATTES**  
~~Barister & Solicitor~~  
PRINT NAME of Attorney General  
Suite 508, 1175 Douglas Street  
Victoria BC V8W 2E1

ADDRESS

OCCUPATION

  
BC TRANSPORTATION FINANCING  
AUTHORITY  
**MICHAEL F. MCGRENERE**

**SCHEDULE "A"****INSURANCE:**

**Section I** Comprehensive General Liability Insurance in an amount not less than \$5,000,000 per occurrence, to cover all operations of the Lessee at or about the Premises. Such insurance shall include the following endorsements:

- (a) Contractual Liability (including this Lease);
- (b) Non-owned Automobiles;
- (c) Products and Completed Operations;
- (d) Broad Form Property Damage;
- (e) Cross Liability;
- (f) Employees as Additional Insureds;
- (g) Contingent Employer's Liability;
- (h) Personal Injury; and
- (i) Lessee's Legal Liability (if applicable).

**Section II** Property Insurance on an "all risk" basis in an amount not less than the full replacement cost of such property, which shall include, but not be limited to the following: Improvements, buildings, fixtures and appurtenances, installations, situated on the Premises; and

General (Applicable to Sections I and II)

- (a) The insurance specified in Sections I and II hereunder shall name the BCTFA as an Additional Insured;
- (b) Evidence of the insurance specified hereunder (and subsequent renewals thereof) shall be delivered to the BCTFA prior to the Commencement Date and subsequent insurance policy renewals shall be delivered forthwith following receipt of renewal documents by the Lessee;
- (c) Deductibles, if any, which are applicable to the insurance specified hereunder, shall be borne by the Lessee;
- (f) All insurance policies shall be issued by insurers licensed to do business in the Province of British Columbia;
- (g) Every policy of insurance shall contain a provision that the insurers shall provide the BCTFA with THIRTY (30) days written notice of cancellation of or material change to the policy;



- (h) Additional insurance and/or increased coverage minimums, if deemed necessary by the BCTFA, shall be provided by the Lessee, at the sole cost of the Lessee. If requested by the Lessee, the BCTFA shall provide an explanation as to the reasons for such additional insurance; and
- (i) The limits of insurance specified in this Schedule "A" in no way define or limit the obligation of the Lessee to indemnify the BCTFA in the event of a loss.

END OF DOCUMENT

## LEASE

THIS LEASE OF PID 010-347-593 LOT 98, DISTRICT LOT 2189 OSOYOOS DIVISION YALE DISTRICT PLAN 5381 EXCEPT PLAN 3093

THIS LEASE IS MADE AS OF THE 30<sup>th</sup> DAY OF SEPTEMBER, 2009

### BETWEEN:

**BC TRANSPORTATION FINANCING AUTHORITY**, a  
corporation continued under the *Transportation Act*

(the "Lessor")

### OF THE FIRST PART

### AND:

**WESTBANK FIRST NATION**, of 301-515 Highway 97 South,  
Kelowna, B.C. V1Z 3J2

(the "Lessee")

### OF THE SECOND PART

In consideration of the rents, covenants and agreements reserved and contained in this Lease, the Parties covenant and agree as follows:

## PART 1 - DEFINITIONS

- 1.1 In this Lease,
- (a) **"Additional Rent"** means all amounts payable by the Lessee to the Lessor pursuant to Sections 4.3 and 4.4 herein.
  - (b) **"Agreement"** means the Agreement made as of the 18<sup>th</sup> day of April 2005, between Her Majesty the Queen in right of the Province of British Columbia as represented by the Minister of Transportation and the Lessee.
  - (c) **"Alterations"** means any substantial alterations, restorations, renovations, relocations, reductions, additions, expansions, reconstructions, removals, replacements, modifications, or improvements to the Premises.
  - (d) **"Authority"** means any one, or any combination of, federal, provincial, municipal, local, first nations and other governmental and quasi-governmental authorities, departments, commissions, and boards having jurisdiction.
  - (e) **"BCICAC"** means British Columbia International Commercial Arbitration Centre.
  - (f) **"Commencement Date"** means the 30<sup>th</sup> day of September.

- (g) **"Contaminant(s)"** includes any contaminant, toxic substance, hazardous substance, hazardous waste, hazardous recyclable, ozone-depleting substance, halocarbon, pesticide, waste, or any similar substance, and any substance defined or referred to as such under any Environmental Laws or other provincial legislation.
- (h) **"Environment"** means the components of the earth and includes:
  - (a) air, land, and water;
  - (b) all layers of the atmosphere;
  - (c) all organic and inorganic matter and living organisms; and
  - (d) the interacting natural systems that include components referred to in paragraphs (a) to (c).
- (i) **"Environmental Laws"** mean any laws, statutes, regulations, orders, bylaws, permits, codes of practice or lawful requirements of any governmental authority relating, in whole or in part, to the protection and enhancement of the Environment, public health, public safety, occupational health and safety and the transportation of dangerous goods or regulating, controlling, licensing, or prohibiting Contaminants.
- (j) **"Improvements"** means all buildings, structures, works, facilities, services, landscaping and other improvements by whomsoever made and which are at any time and from time to time situate in, on, under or above the Lands including all equipment, machinery, apparatus and fixtures forming part of or attached to the Improvements and all alterations, removals, additions to, replacements and substitutions of the Improvements.
- (k) **"Land Exchange"** has the same meaning as defined in the Agreement.
- (l) **"Lands"** means PID 010-347-593 Lot 98, District Lot 2189, Osoyoos Division, Yale District Plan 5381 except Plan 30793 that has a municipal address of 990 Devon Road, Kelowna, British Columbia.
- (m) **"Laws"** means all laws, statutes, regulations, by-laws, rules, codes, guidelines, approvals, permits, licenses, or other authorizations, standards, declarations, notices, ordinances, requirements, and directions of any Authority in force from time to time.
- (n) **"Lease"** means this Indenture of Lease and any Schedules attached hereto.
- (o) **"Lease Year"** means each consecutive twelve-month period comprising the Term of this Lease, with the First Lease Year being the first period of twelve months commencing on the Commencement Date and ending on the day immediately preceding the first anniversary of the Commencement Date.

- (p) **"Lessee"** means the Party of the second part and its agents, servants, employees, contractors, and those for whom it is responsible at law.
- (q) **"Lessor"** means the Party of the first part and its agents, servants, employees, contractors, and those for whom it is responsible at law.
- (r) **"Minerals"** means ore of metal and every natural substance that can be mined and that:
  - (i) occurs in fragments or particles lying on or above or adjacent to the bedrock source from which it is derived, and commonly described as talus, or
  - (ii) is in the place or position in which it was originally formed or deposited, as distinguished from loose, fragmentary or broken rock or float which by decomposition or erosion of rock, is found in wash, loose earth, gravel or sand,
  - (iii) and includes coal, petroleum and all other hydrocarbons, regardless of gravity and howsoever and wheresoever recovered, natural gas, building and construction stone, limestone, dolomite, marble, shale, clay, sand and gravel.
- (s) **"Party"** means a party to this Lease and "Parties" means all of them.
- (t) **"Person"** includes any natural person, partnership, association or corporation.
- (u) **"Premises"** means the Lands and the Improvements and every reference in this Lease to the "Premises" includes a reference to every part of the Premises.
- (v) **"Rent"** means the rent set forth in Part 4 hereof.
- (w) **"Replacement Lands"** has the meaning ascribed to it under the Agreement.
- (x) **"Spill"** includes discharge, dispose, spray, inject, inoculate, abandon, deposit, spill, leak, pump, pour, leach, seep, pour, emit, empty, throw, dump, place, exhaust and migrate.
- (y) **"Taxes"** means the aggregate of all taxes, local improvements or similar rates, duties, assessments or charges, municipal realty taxes, water taxes, school taxes, separate school taxes, goods and services taxes, value added or multi-staged taxes, business taxes (other than business taxes charged directly by the taxing authority to the Lessee) and any other taxes, rates, duties or assessments lawfully levied or imposed upon or in respect of the Premises or any portion thereof by any Authority.
- (z) **"Term"** means that forty-nine year period of time commencing on the Commencement Date and terminating on the Termination Date unless earlier terminated pursuant to this Lease.
- (aa) **"Termination Date"** means the 29<sup>th</sup> day of September, 2058.

## **PART 2 - THE DEMISE**

- 2.1** The Lessor hereby leases to the Lessee the Premises, excepting and reserving unto the Lessor any air space rights or subsurface rights appurtenant to the Lands including all Minerals upon or under the Lands, **TO HAVE AND TO HOLD** the Premises unto the Lessee for the Term, yielding and paying Rent as hereinafter provided, and subject to the terms, conditions, provisos, exceptions and reservations contained in this Lease and the prior termination as herein set forth.
- 2.2** This Lease shall terminate prior to the end of the Term upon the completion of the Land Exchange as set forth in Subsection 3.7 of the Agreement.

## **PART 3 - PERMITTED USE**

- 3.1** The Lessee will not use the Premises, or any part thereof, or suffer or permit the Premises, or any part thereof, to be used, for any purpose other than a purpose in accordance with all applicable Laws.
- 3.2** As the Premises are subject to an agricultural land reserve designation, the Lessee may apply to the Provincial Agricultural Land Commission, on behalf of the Lessor, for the exclusion of the Premises from the agricultural land reserve. The Lessor agrees to cooperate in providing such consents, approvals and cooperation as the Lessee may reasonably require in order to obtain the said exclusion.

## **PART 4 - RENT**

- 4.1** The Lessee will pay as Rent for the Term to the Lessor in lawful money of Canada the sum of one dollar (\$1.00) and other good and valuable consideration, payable in advance on the Commencement Date.
- 4.2** No additional rent, charges or fees, will be payable by the Lessee under this Lease except as specified herein.
- 4.3** This Lease is intended to be absolutely net to the Lessor and all expenses, costs, payments, taxes and outgoings pertaining to the Premises of whatsoever nature during the Term will be borne and paid for by the Lessee.
- 4.4** Any unpaid and overdue amounts payable pursuant to Section 4.3 herein may be paid by the Lessor and recovered by the Lessor from the Lessee as Additional Rent in the same manner as recovery for rent in arrears. If no specific time is provided for the payment of Additional Rent in a notice of Additional Rent from the Lessor to the Lessee, such Additional Rent shall be payable by the Lessee to the Lessor forthwith on demand.

### **PART 5 - UTILITIES**

- 5.1 The Lessee is responsible for providing at its expense all services and facilities required by it for use of the Premises. The Lessor agrees to cooperate in providing all necessary consents, approvals and cooperation as the Lessee may reasonably require in order to obtain such services and facilities.
- 5.2 Without limiting the generality of the foregoing, the Lessee will pay for all water, gas, telephone, light, power, heat, air-conditioning, sewer and garbage disposal services and facilities for use of the Premises.
- 5.3 No interruption of any service or facility provided to the Premises, except those caused by the Lessor will be deemed to be a disturbance of the Lessee's enjoyment of the Premises or render the Lessor liable for injury to or in damages to the Lessee or relieve the Parties from their obligations under this Lease.

### **PART 6 - COMPLIANCE WITH LAWS**

- 6.1 The Lessee will at its expense observe and perform all of its obligations under, and all matters and things necessary or expedient to be observed or performed by it, by virtue of any applicable Laws.

### **PART 7 - NUISANCE**

- 7.1 The Lessee will not cause, permit or suffer any nuisance in, on, or about the Premises.
- 7.2 Without limiting Section 7.1, the Lessee will, upon written notice from the Lessor, abate any nuisance arising directly or indirectly out of the use or occupation of the Premises by the Lessee or someone else.

### **PART 8 - WASTE**

- 8.1 The Lessee will not cause, permit or suffer the commission of any waste of the Premises.

### **PART 9 - RUBBISH**

- 9.1 Without limiting Part 7, the Lessee will not cause, permit or suffer any refuse, rubbish or debris to be placed or left in, on or about the Premises except as is reasonably necessary in accordance with the uses permitted by Part 3 or as permitted in writing by the Lessor, and will take all necessary, reasonable, precautions to protect the Premises against fire.

## PART 10 - ENVIRONMENT

### 10.1 CONTAMINANTS

The Lessee will not use the Premises to generate, manufacture, refine, treat, transport, store, handle, dispose of, transfer, produce, Spill, or process any Contaminants, except as may be reasonably required for uses permitted under Part 3 and in strict compliance with Environmental Laws, and with the prior written consent of the Lessor, which consent may be unreasonably and arbitrarily withheld.

### 10.2 REMOVAL OF CONTAMINANTS

- (a) Without limiting Section 10.3, if requested by the Lessor or any Authority, the Lessee will, at its own expense, from time to time during the Term obtain a report from an independent consultant designated or approved by the Lessor verifying compliance with Environmental Laws and this Lease by the Lessee or the extent of any non-compliance therewith and promptly remove from the Premises any Contaminants that are, or have been, located, stored, or incorporated in, on, or under the Premises in a manner prohibited under Section 10.1 and, upon the removal, will immediately provide the Lessor with documentation satisfactory to the Lessor confirming the completion of the removal satisfactory to the Lessor and any Authority. This Section shall survive the expiration or earlier termination of this Lease.
- (b) Notwithstanding the generality of Section 10.2(a), prior to the end of the Term, the Lessee will, at its own expense, remove from the Premises any Contaminants that are, or have been, located, stored, or incorporated in, on, or under the Premises.

### 10.3 REPORT OF SPILL

Upon the Spill of any Contaminants, or discovery of a Spill of any Contaminants, by the Lessee in, on, above, or under the Premises, the Lessee will:

- (a) immediately deliver written notice to the Lessor and any appropriate Authority of the occurrence of the Spill and details relating to the Spill, including, the time and extent of the Spill, the estimated amount of Contaminants involved, the remedial action taken prior to the delivery of the notice, the remedial action that the Lessee intends to take in order to contain or rectify the Spill, and any Persons observed who appeared to have caused or who were in the vicinity of the Spill;
- (b) at its own expense, immediately take all remedial action necessary to fully rectify the effects of the Spill in compliance with all Environmental Laws;



- (c) provide the Lessor with an independently-prepared report, satisfactory to the Lessor, of the Lessee's activities under Subsection 10.3(b) and the state of the Premises after such activities compared with the state of the Premises prior to the Spill, if known; and
- (d) do such further activities as the Lessor may reasonably require, based on the report referred to in Subsection 10.3(c), to rectify the Spill.

#### 10.4 INCREASED RISKS

The Lessee will not construct any Improvements or carry out any Alterations that materially increase the risk of liability to the Lessor (whether direct or indirect) as a result of the application of Environmental Laws (as determined by the Lessor acting reasonably).

#### 10.5 TITLE TO CONTAMINANTS

Notwithstanding any rule of law to the contrary, any Contaminants that are located, stored, Spilled, or incorporated in, on, or under the Premises remain the sole and exclusive property of the Lessee and will not become the property of the Lessor, regardless of any degree of affixation of the Contaminants to the Premises.

#### 10.6 AUDIT AND ENVIRONMENTAL SITE ASSESSMENT

- (a) The Lessee will have an independent consultant undertake an environmental site assessment to the reasonable satisfaction of the Lessor, immediately prior to the Commencement Date and the Lessee will promptly provide the Lessor with a copy of any and all environmental assessment reports produced by the consultant.
- (b) Within 8 months before the expiration of this Lease, the Lessee will undertake to the reasonable satisfaction of the Lessor, and at the Lessee's own expense, an environmental site assessment and provide to the Lessor, any and all environmental site assessment reports conducted by an independent consultant designated or approved by the Lessor.
- (c) In preparing the reports referred to in Subsections 10.6(a) and 10.6(b), the environmental consultant was, or will be, as the case may be, required to review the site history and inspect the Premises to identify portions of the Premises with indicators of contamination and to conduct appropriate testing to assess suspect soil and, if practical, water. In identifying such portions of the Premises, the consultant relied, or will rely, as the case may be, at least on historical information and instances of visually apparent unusual soil, water, or vegetation conditions.

- (d) The reports referred to in Subsections 10.6(a) and 10.6(b) will be *prima facie* evidence between the Parties of the respective environmental condition of the Premises immediately prior to the Commencement Date and at the termination of this Lease.
- (e) At the expiration or earlier termination of this Lease, the Lessee will remediate the Premises to the environmental condition of the Premises identified in the report referred to in Subsection 10.6(a), or the environmental condition acceptable to the Lessor.

**10.7** The provisions of this Part 10 will be reasonably interpreted and enforced and will not apply to:

- (a) Spills of Contaminants that are not contrary to Environmental Laws;
- (b) Minor or negligible Spills of Contaminants that do not constitute a significant threat to the Environment provided the Lessee takes reasonable steps to effect a timely clean up of such Spills after the Lessee knows or has reasonable grounds to know of them, or
- (c) Spills of Contaminants by the Lessor or those for whom it is responsible at law.

#### **PART 11 - IMPROVEMENTS**

**11.1** Subject to the provisions of Part 12, the Lessee may, at its own expense, construct any Improvements on the Lands. For the purposes of this Section, changes made by the Lessee to Improvements, which are non-structural, have minimal external impact and are either in the ordinary course of business or part of an ongoing maintenance program of the Lessee or required as a result of the maintenance obligations of the Lessee under this Lease shall not require the Lessor's consent.

#### **PART 12 - REPAIR OF PREMISES**

- 12.1** (a) The Lessee will at its own expense at all times during the Term, keep in good order and condition the Premises, and repair, renew, replace and maintain all Improvements in a proper, professional and workmanlike manner excepting reasonable wear and tear only as is not inconsistent with the foregoing.
- (b) Without limiting the generality of Subsection 12.1(a), the maintenance, repair, replacement and renewal of the Improvements will include any defects to the Improvements, including all work of a structural nature.
- (c) The Lessee will take reasonable steps, to keep all roadways and sidewalks on the Premises free and clear of all snow, ice and other obstructions.

- (d) The Lessor may upon reasonable notice enter the Premises and view the state of repair and maintenance, and direct the Lessee to repair in accordance with the direction of the Lessor, save and except as otherwise agreed to in this Lease.

### **PART 13 - INSURANCE**

- 13.1** The Lessee covenants and agrees with the Lessor to obtain, maintain and pay for, during the Term, and during such other time as the Lessee occupies, suffers, permits or allows any person to occupy the Premises, insurance or insurance policies as listed in Schedule "A" against all risks as specified in Schedule "A".
- 13.2** All insurance will be in form and amounts specified in Schedule "A" and issued by an insurance carrier licensed to conduct business in the province of British Columbia. If the Lessee fails to obtain, maintain, or pay for any insurance as required herein, the Lessor may do so after notifying the Lessee and the Lessee will, upon demand, reimburse the Lessor for any costs incurred as a result thereof and such cost incurred by the Lessor shall constitute, for purposes of this Lease, Rent due from the Lessee and in arrears.
- 13.3** Notwithstanding any of the terms, conditions and provisions of Schedule "A", the insurance policies obtained and maintained by the Lessee pursuant to this Section 13 will, in addition to and not in substitution for Schedule "A", contain the following terms and conditions:
- (a) all property loss policies shall contain an endorsement that the proceeds of any loss shall be made payable to the Lessor and the Lessee, as the respective interests of the Lessor and the Lessee may appear. All such insurance proceeds will be held by the loss payees aforesaid or by any one of them or by any third party, as mutually agreed, in trust for both and such proceeds will be used and applied in the restoration, reconstruction or replacement of the loss or damage in respect of which such insurance moneys are payable.
- 13.4** Notwithstanding the terms, conditions and provisions of Schedule "A", the Lessee covenants and agrees with the Lessor to obtain, maintain and pay for during the Term, workers' compensation coverage in respect of all Lessee's employees, workers and servants engaged in any work in or upon the Premises or in the event workers' compensation coverage is not available under the applicable legislation, employer's liability insurance in lieu thereof.
- 13.5** The Lessee will deliver, prior to the Commencement Date, evidence of all insurance policies described herein to the satisfaction of the Lessor. Evidence of subsequent policy renewals will be delivered forthwith following receipt of renewal documents by the Lessee and in any event prior to the expiry of the prior policy. Acceptance by the Lessor of such evidence of insurance will not constitute agreement by the Lessor that the policy or policies are in compliance with this provision of this Lease.

- 13.6 The Lessee agrees that failure to deliver satisfactory evidence of insurance required herein constitutes a default under this Lease.
- 13.7 In the event that the Lessee fails to maintain insurance as stipulated, or if the Lessee's insurance policy or policies prove to be defective in any form, the Lessee will be held liable to the same extent as if it were the underwriter of insurance policy or policies.

#### **PART 14 - REMOVAL OF IMPROVEMENTS, FIXTURES AND CHATTELS**

- 14.1 At any time during the Term or within NINETY (90) days after the expiration of this Lease, if the Lessee is not in default under this Lease it may at its expense remove all of its moveable goods and chattels from the Premises, provided that any and all damage caused by such removal is repaired to the reasonable satisfaction of the Lessor.
- 14.2 Provided that this Lease is not terminated pursuant to Section 2.2, the Lessee will at the Lessee's own expense, upon written demand by the Lessor given on or before the 90th day after the expiration of this Lease, forthwith remove from the Premises any or all of the Improvements made by the Lessee during the Term of this Lease, movable goods and chattels as the Lessor requires and leave the remainder of the Premises in good and substantial repair and condition and free from all debris to the reasonable satisfaction of the Lessor.
- 14.3 If the Lessee does not remove its moveable goods and chattels from the Premises as provided in Section 14.2, then the Lessor may remove them and dispose of them as it sees fit at the expense of the Lessee. The Lessee will pay to the Lessor, forthwith upon demand, all costs and expenses incurred in the removal and disposal of the moveable goods and chattels and in making good all damage caused to the Premises by the removal. The Lessor will not be responsible to the Lessee for any loss suffered by the Lessee as a result of the removal or the disposal of moveable goods and chattels.
- 14.4 This Part 14 shall survive the expiration or earlier termination of this Lease.

#### **PART 15 - INDEMNITY**

- 15.1 The Lessee will indemnify and save harmless the Lessor and Her Majesty the Queen in right of the Province of British Columbia against and from all loss, costs (including legal costs), damages, liabilities and expenses arising out of or related to any breach of a Lessee's covenant and all claims, demands, actions, suits and other proceedings for personal injury, death or property damage or loss arising out of or related to any act or omission of the Lessee or any act or omission of a sublessee under this Lease, its officials, employees or agents, and this indemnity shall survive the expiration or earlier termination of this Lease.

- 15.2** Notwithstanding Section 15.1, the Lessee's covenant to indemnify and save harmless will not apply to any claim, demand, loss, cost, damage, action, suit or other proceeding to the extent that same is occasioned or contributed to by the negligence or wilful act or omission of the Lessor.
- 15.3** Notwithstanding Section 15.2, the Lessee will indemnify and save harmless the Lessor and Her Majesty the Queen in right of the Province of British Columbia against and from all loss, costs (including legal costs), damages, liabilities and expenses arising out of or related to all claims, demands, actions, suits and other proceedings for personal injury, death or property damage or loss arising out of or related to construction of any Improvements on the Lands or any defect or want of repair therein, or any want of maintenance thereof, and this indemnity shall survive the expiration or earlier termination of this Lease.

#### **PART 16 - QUIET ENJOYMENT**

- 16.1** The Lessee by paying the Rent and observing and performing the covenants in this Lease may peaceably and quietly possess, hold and enjoy the Premises during the Term without any interruption or disturbance by the Lessor.

#### **PART 17 - PAYMENTS BY THE LESSOR REGARDED AS RENT**

- 17.1** If at any time before or after the expiration or earlier termination of this Lease the Lessor suffers or incurs any damage, loss or expense by reason of any failure of the Lessee to perform or observe any of the Lessee's covenants or makes any payment for which the Lessee is liable under this Lease, or if the Lessor is compelled or elects to incur any expense including legal fees in instituting, prosecuting or defending any action or proceeding instituted by reason of any default of the Lessee under this Lease (including any action or proceeding against the Lessee), then in every such case the amount of damage, loss, expense or payment (including legal fees of the Lessor on a special costs or solicitor and own client basis), together with interest as provided in Section 18.1, will be paid by the Lessee to the Lessor forthwith on demand by the Lessor. This Section will survive the expiration or earlier termination of this Lease.
- 17.2** The amount of any damage, loss, expense or payment referred to in Section 17.1 will be added to or deemed to be Rent due under this Lease, and be recoverable in the manner provided by law for the recovery of Rent in arrears.

#### **PART 18 - ARREARS TO BEAR INTEREST**

- 18.1** If the Rent, Additional Rent or any other sum owing by the Lessee to the Lessor under this Lease is not paid within thirty (30) days from the date on which it is due then it will bear interest at the Prime Rate in effect from time to time plus four percent (4%) per annum from the date the Rent or the sum is due until the date of the payment by the Lessee, but this stipulation for interest will not prejudice or affect any other remedies of the Lessor

under this Lease or otherwise, or be construed to relieve the Lessee from any default in making the Rent payment at the time and in the manner specified in this Lease.

#### **PART 19 - REMEDIES CUMULATIVE**

- 19.1** All rights and remedies of the Lessor are cumulative and are in addition to and do not exclude any other right or remedy provided in this Lease or otherwise allowed by law.
- 19.2** All rights and remedies of the Lessor may be exercised concurrently.

#### **PART 20 - SURRENDER OF POSSESSION**

- 20.1** Subject to Section 2.2 and Part 14, when the Term expires, the Lessee will peaceably surrender the Premises to the Lessor maintained, repaired and renewed as provided in Part 12.

#### **PART 21 - TAXES**

- 21.1** The Lessee will pay as and when they fall due all Taxes and any and all levies, rates and charges assessed or levied in respect of any business or other activity carried on, in or in connection with the Premises by the Lessee and all taxes, rates, charges, levies of whatever description assessed in respect of any fixtures, machinery and equipment installed or maintained on the Premises by the Lessee and all business taxes and licence fees assessed or levied in respect of the business of the Lessee at the Premises. If the Lessee wishes at any time to dispute the lawfulness, applicability or amount of any Taxes or other of the foregoing levies, the Lessee shall notify the Lessor prior to doing so and shall comply with all lawful requirements of any such appeal and shall post and maintain such security in respect of the Taxes or other levies appealed as the Lessor may reasonably require from time to time.

#### **PART 22 - NO WARRANTIES**

- 22.1** No representations, warranties or conditions have been made to the Lessee in respect of the Premises by the Lessor.
- 22.2** The Lessee is fully familiar with the Premises and every part and aspect of the Premises and, without limiting the generality of the foregoing, the Lessee acknowledges that it has carried out a full inspection of the Premises and takes the Premises as is in reliance of its own inspection and not relying on any representations or warranties of the Lessor.

#### **PART 23 - HEADINGS**

- 23.1** All headings in this Lease have been inserted as a matter of convenience and for reference only and in no way define, limit, enlarge, modify or explain the scope or meaning of this Lease or any of its provisions.



- 23.2** Any reference in this Lease to a Part, Section, Subsection or Paragraph will mean a Part, Section, Subsection or Paragraph of this Lease unless otherwise expressly provided.
- 23.3** Any reference in this Lease to Lessee's covenants will be deemed to include all terms and conditions to be performed or observed by the Lessee under this Lease.

#### **PART 24 - AMENDMENTS**

- 24.1** Subject to the provisions of the Agreement, this Lease constitutes the entire agreement between the Parties, and no modification of this Lease will be inferred from anything done or omitted to be done by either of the Parties except pursuant to an agreement in writing duly executed by the Parties.
- 24.2** This Lease, together with the Agreement, constitutes the entire agreement between the Parties with respect to the subject matter of this Lease and no waiver of any provision of this Lease will be inferred from anything done or omitted by either of the Parties except by an express waiver in writing duly executed by the respective Party.
- 24.3** No condoning, excusing or overlooking by the Lessor of any default by the Lessee at any time or times in performing or observing any of the Lessee's covenants will operate as a waiver of or otherwise affect the rights of the Lessor in respect of any continuing or subsequent default and no waiver of these rights will be inferred from anything done or omitted by the Lessor except by an express waiver in writing.

#### **PART 25 - GOVERNING LAW**

- 25.1** This Lease will be governed by and construed in accordance with the applicable laws of the Province of British Columbia.

#### **PART 26 - DISPUTE RESOLUTION**

- 26.1** The Parties agree that any dispute, controversy or claim arising out of or relating to this Lease or the interpretation of any of its provisions will be resolved in the following manner and in the following order:
- (a) First, by good faith discussions between the representatives of the Parties on a timely basis;
  - (b) Failing good faith discussions between representatives of the Parties, then through discussion as between the Senior Vice President, BC Transportation Financing Authority and the Director of Operations, Westbank First Nation;
  - (c) Failing discussions between the Senior Vice President, BC Transportation Financing Authority and the Director of Operations, Westbank First Nation, then through mediation by a mediator jointly chosen by the Parties, with such costs of



mediation to be paid by the Lessee and the Lessor in equal parts, during the course of the mediation; and

- (d) Failing mediation, then through binding arbitration in accordance with the Arbitration Rules of the BCICAC in effect on the date of such dispute. The Parties further agree that in such case:
  - (i) the appointing authority will be the BCICAC;
  - (ii) the case will be administered by the BCICAC in accordance with its "Procedures for Cases under the BCICAC Arbitration Rules";
  - (iii) the place of arbitration will be Vancouver, British Columbia;
  - (iv) the number of arbitrators will be one (1);
  - (v) the language used in the proceedings will be English; and
  - (vi) the arbitrator's fees will be paid by the Lessee and the Lessor in equal parts, during the course of the arbitration. The arbitrator's fees will, unless otherwise determined by the arbitrator, be borne equally by the Parties.

#### PART 27 - NOTICES

- 27.1 All notices under this Lease must be given in writing and delivered in accordance with this Part.
- 27.2 All notices will be delivered to the other Party and no notice will be effective until such delivery has been made.

The addresses for delivery are:

To the Lessee:

Westbank First Nation  
301-515 Highway 97 South  
Kelowna, British Columbia  
V1Z 3J2

To the Lessor at:

BC Transportation Financing Authority  
Suite 5A – 940 Blanshard Street  
Victoria, British Columbia  
V8W 9T5  
Attn: Property Administrator

**27.3** Notice will be deemed to have been delivered:

- (a) if delivered by hand, upon receipt; or
- (b) if sent by registered mail, four (4) days after the mailing thereof, provided that if there is a postal strike or other disruption such notice will be delivered by hand or electronic transmission.

**27.4** The Parties may change their respective addresses for delivery by delivering notice of change as provided in this Part.

#### **PART 28 - TIME OF THE ESSENCE**

**28.1** Time is of the essence in this Lease and each of its terms and conditions.

#### **PART 29 - SEVERABILITY**

**29.1** If any part of this Lease is declared or held invalid for any reason, the invalidity of that part will not affect the validity of the remainder which will continue in full force and effect and be construed as if this Lease had been executed without the invalid portion. The intention of the Parties is that this Lease would have been executed without reference to any portion which may, for any reason, be declared or held invalid.

#### **PART 30 - PLURALITY AND GENDER**

**30.1** This Lease will be for the benefit of and be binding upon the contractors, administrators, successors, assigns and other legal representatives, as the case may be, of each of the Parties.

**30.2** Reference to a Party will be read as if all required changes in the singular and plural and all grammatical changes rendered necessary by gender had been made.

**30.3** If a Party is comprised of more than one Person then all covenants and agreements of that Party will be deemed joint and several.

#### **PART 31 - REGISTRATION**

**31.1** Upon full execution, the Lessor will arrange for this Lease to be registered in the Land Title Office.

**PART 32 – ASSIGNMENT**

**32.1** The Lessee will not, without the prior written consent of the Lessor, which consent will not be unreasonably withheld or delayed:

- (a) directly or indirectly assign or sublet this Lease or any interest therein or otherwise part with possession of all or any part of the Premises; or
- (b) grant any licence or concession within or relating to the Premises.

**PART 33 – COUNTERPARTS**

**33.1** This Lease may be signed in counterparts.

**PART 34 – FURTHER ACTS**

**34.1** Each of the Parties will perform such further acts and execute such further agreements as may be required from time to time to give proper effect to the intent of this Lease.

**IN WITNESS WHEREOF** the Parties have caused this Lease to be signed by their duly authorized representatives.

SIGNED, SEALED AND DELIVERED  
in the presence of:

SIGNATURE

STAN H. ASHCROFT  
BARRISTER & SOLICITOR

Suite 205 - 1544 Marine Drive  
PRINCE GEORGE, B.C. V7V 1H8  
Telephone: 604-913-1611  
Fax: 604-913-1622

ADDRESS

OCCUPATION

WESTBANK FIRST NATION  
by its Director of Lands

SIGNED, SEALED AND DELIVERED  
in the presence of:

  
SIGNATURE

JULIE MATTES  
Barrister & Solicitor  
Ministry of Attorney General  
Suite 508, 1175 Douglas Street  
Victoria BC V8W 2E1

ADDRESS

OCCUPATION

  
BC TRANSPORTATION FINANCING  
AUTHORITY

MICHAEL F. MCGRENERE

**SCHEDULE "A"**

**INSURANCE:**

**Section I** Comprehensive General Liability Insurance in an amount not less than \$5,000,000 per occurrence, to cover all operations of the Lessee at or about the Premises. Such insurance shall include the following endorsements:

- (a) Contractual Liability (including this Lease);
- (b) Non-owned Automobiles;
- (c) Products and Completed Operations;
- (d) Broad Form Property Damage;
- (e) Cross Liability;
- (f) Employees as Additional Insureds;
- (g) Contingent Employer's Liability;
- (h) Personal Injury; and
- (i) Lessee's Legal Liability (if applicable).

**Section II** Property Insurance on an "all risk" basis in an amount not less than the full replacement cost of such property, which shall include, but not be limited to the following: Improvements, buildings, fixtures and appurtenances, installations, situated on the Premises; and

General (Applicable to Sections I and II)

- (a) The insurance specified in Sections I and II hereunder shall name the BCTFA as an Additional Insured;
- (b) Evidence of the insurance specified hereunder (and subsequent renewals thereof) shall be delivered to the BCTFA prior to the Commencement Date and subsequent insurance policy renewals shall be delivered forthwith following receipt of renewal documents by the Lessee;
- (c) Deductibles, if any, which are applicable to the insurance specified hereunder, shall be borne by the Lessee;
- (f) All insurance policies shall be issued by insurers licensed to do business in the Province of British Columbia;
- (g) Every policy of insurance shall contain a provision that the insurers shall provide the BCTFA with THIRTY (30) days written notice of cancellation of or material change to the policy;

- (h) Additional insurance and/or increased coverage minimums, if deemed necessary by the BCTFA, shall be provided by the Lessee, at the sole cost of the Lessee. If requested by the Lessee, the BCTFA shall provide an explanation as to the reasons for such additional insurance; and
- (j) The limits of insurance specified in this Schedule "A" in no way define or limit the obligation of the Lessee to indemnify the BCTFA in the event of a loss.

**THIS DETOUR ROADS, INTERNAL IR #10 ROADS AND PRELIMINARY SITE  
PREPARATION FOR HIGHWAY 97 AND WESTSIDE ROAD INTERSECTION  
AGREEMENT** dated for reference September \_\_\_\_, 2009

**BETWEEN:**

**WESTBANK FIRST NATION**, of 301 – 515 Highway 97 South,  
Kelowna, British Columbia, as represented by its duly elected  
Council

(“WFN”)

**AND:**

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

(“BC MoT”)

(together, the “Parties”)

**WHEREAS:**

- A. WFN has the responsibility for the design and development of the internal road network on I.R. #10; and
- B. WFN and BC MoT have agreed to work together to enable the development and delivery to the Project in which WFN and BC MoT wish to provide upgrades to certain internal roads on I.R. #10 that will be used during the course of construction of the Westside Road Project as Highway 97 construction detour roads that will be legacy upgrades for WFN, always in accordance with the WFN Interim Heritage Policy attached as Schedule “A” hereto.
- C. WFN wishes to include other internal road improvements that are to its sole benefit and cost, which will be economized by inclusion with the Detour Roads improvements.

**NOW THEREFORE** in consideration of the premises and the mutual covenants and agreements contained herein and the sum of \$1.00 now paid by each Party to the other, the receipt and sufficiency of which is hereby acknowledged by the Province, the Parties agree as follows:

**1.00 DEFINITIONS**

**1.01** In this Agreement,

- (a) “Actual Completion Date” means “Actual Completion Date” as defined in the Construction Contract.

August 31/09



- (b) **"Builder"** means the contractor engaged to perform the Construction of the Project pursuant to the Construction Contract.
- (c) **"Change Request"** means a request by either Party to amend the Construction Contract, the Design, the Project Budget or the Scope of Work in accordance with Section 8.36.
- (d) **"Communications Plan"** means the plan for communications agreed upon by the Parties and as set out in Schedule "F" of this Agreement. **"Compliance Reviews"** means the review, evaluation and certification by the Parties' engineer, including reports, plans, specifications and any other documents related to one or more components of the Project or the Work for compliance with the Construction Contract.
- (e) **"Construction Contract"** means the agreement for the Construction of the Project executed by WFN and the Builder, being in a form prepared by the Master Municipal Construction Documents Association and any day labour contract, as the case may be and as the context requires.
- (f) **"Costs"** mean the actual Detour Roads and Preliminary Westside Road Project Improvements expenses incurred by WFN for which BC MoT will provide a financial reimbursement as shown in the cost allocation schedule attached hereto as Schedule "C" but that will not include a mark up for WFN's overhead and profit nor WFN's costs of administering the Project, nor include the Reimbursable Costs as defined in the Interim Westside Road Agreement.
- (g) **"Decisions"** means any decision required to be made by WFN or BC MoT in respect of the Project, including any decision to resolve any Dispute.
- (h) **"Design"** means the design prepared by a design team made up of design professionals from each of the Parties and mutually agreed in writing by the Parties.
- (i) **"Lands"** mean those I.R. #10 premises that will be used as the construction of Detour Roads and Preliminary Site Preparation for Highway 97 Westside Road Project Improvements and WFN Improvements for the Project and lands the use of which will be obtained by WFN and approved by BC MoT for the construction laydown and stockpiling for duration of the Works.
- (j) **"Detour Roads"** means those I.R. #10 roads identified as Road A, Sneena Road, Spland Road South and Nancee Way in Schedule "B".
- (k) **"Detour Roads and Preliminary Site Preparation for Highway 97 Westside Road Project Improvements"** means those improvements and preliminary works

for the Highway 97 and Westside Road Project that are Costs for BC MoT as shown in the cost allocation schedule attached hereto as Schedule "C."

(l) **"Dispute"** means any disagreement or difference of opinion between BC MoT and WFN regarding the interpretation of, or compliance or non-compliance with the terms of this Agreement.

(m) **"Execution Date"** means the date of execution of this Agreement.

(n) **"Funds"** mean the monies advanced by BC MoT to WFN for Costs under the terms of this Agreement that will not exceed the sum of S16, S17 and itemized as follows:

- (1) Construction S16, S17 and
- (2) contingency

or such amounts as may be amended in writing by the Liaison Committee upon the review of the submitted tenders for the Project, or from time to time as the Parties may otherwise agree in writing.

(o) **"I.R. # 10"** means WFN's Tsinstikeptum Indian Reserve No. 10.

(p) **"Laws"** means all applicable federal, provincial, regional, municipal, first nations or local laws, statutes, ordinances, rules, regulations, by-laws and enforceable orders, decisions or directives including any permits or authorizations required under any of the foregoing.

(q) **"Liaison Committee"** means the liaison committee established under Sections 8.18 – 8.22.

(r) **"Notice of Completion"** means the written notice issued by WFN to BC MoT advising BC MoT of the completion of the Works under this Agreement.

(s) **"Parties' Engineers"** means the engineer appointed by WFN and the engineer appointed by BC MoT for the Project.

(t) **"Project Budget"** means the award amount of the Construction Contract plus the contingency at set forth in Section 1.01(o)(1) and (2) and any other amounts as may be expressly agreed in writing by the Parties from time to time.

(u) **"Project Scope"** S16, S17

S16, S17

- (v) **"Project Schedule"** means the schedule for detailing the dates on which various components of the Works will be effected and completed by WFN that will all be confirmed in writing between the Parties hereto. Once confirmed in writing by both Parties, the Project Schedule may be amended only in writing by mutual agreement.
  - (w) **"Protocol Agreements"** means the protocol agreements between BC MoT and utility companies as defined in the Construction Contract.
  - (x) **"Reimbursable Costs"** means those costs defined as such in the Interim Westside Road Agreement, payable by BC MoT to WFN.
  - (y) **"Reimbursable Delay"** means "Reimbursable Delay as defined in GC 13.2 in the Construction Contract, as amended by the Supplementary General conditions for this Project.
  - (z) **"Scope of Work"** means "Scope of Work" as defined in the Construction Contract.
  - (aa) **"Westside Road Project"** and "Project" mean the improvements to the interchange at Highway 97 South and Westside Road for which the Parties will be working together to develop and deliver.
  - (bb) **WFN Improvements"** means those improvements identified as WFN costs and WFN shared costs with BC MoT in Schedule "C".
  - (cc) **"WFN Optional Works"** means those improvements at the discretion of WFN to add as provisional items to the procurement and resulting contracts that shall be at WFN's sole cost and expense.
  - (dd) **"Work Standards"** mean the specifications for the Works that will conform with and be defined by the specifications attached to the tender for the Works as approved by the Parties.
  - (ee) **"Works"** mean the works and activities proposed to be carried out on the Lands as detailed in the Project Scope to this Agreement and WFN Optional Works.
- 1.02** Unless the context otherwise requires, any reference to "this Agreement" means this instrument and all of the Schedules attached to it, and any reference to any article, section, sub-section or paragraph by number is a reference to the appropriate article, section, sub-section or paragraph in this Agreement.

## **2.00 REPRESENTATIONS AND WARRANTIES**

### **BC MoT**

- 2.01** BC MoT represents and warrants to WFN that the representations and warranties of BC MoT made in or pursuant to, this Section will be true and correct in all material respects at the Execution Date:
- (a) this Agreement has been duly authorized, executed and delivered by BC MoT and constitutes valid and legally binding obligations of BC MoT enforceable against BC MoT in accordance with the terms of this Agreement; and
  - (b) nothing in this Agreement constitutes an indemnity or guarantee of performance of an obligation as such terms are used in s.72 of the *Financial Administration Act*, and that this Agreement and all of its provisions are in compliance with all provisions of the *Financial Administration Act*.
- 2.02** BC MoT recognizes and agrees that WFN would not have entered into this Agreement, without the representations and warranties as set out in Section 2.01, and that WFN is expressly relying on such representations and warranties.

### **WFN**

- 2.03** WFN represents and warrants to BC MoT that the representations and warranties of WFN made in, or pursuant to, this Section will be true and correct in all material respects at the Execution Date:
- (a) WFN is an aboriginal government established under the *Westbank First Nation Self-Government Act*, S.C. 2004, c.17;
  - (b) WFN has all necessary power and capacity to enter into this Agreement and to carry out the transactions contemplated herein and the execution of this Agreement has been duly and validly authorized by all necessary proceedings required under the *Westbank First Nation Self-Government Act*, S.C. 2004, c.17; and
  - (c) the making and performance of this Agreement by WFN has been duly authorized and approved by the duly elected Council of WFN.
- 2.04** WFN recognizes and agrees that BC MoT would not have entered into this Agreement, without the representations and warranties as set out in Section 2.03, and that BC MoT is expressly relying on such representations and warranties.

### **3.00 THE PROJECT**

#### **Scope of Work**

- 3.01 The Project Scope is set out in Schedule "D" to this Agreement.
- 3.02 WFN may, in its sole discretion include those work items as WFN Optional Works as provision sum items within the Construction Contract for which WFN will bear the sole cost and expense.
- 3.02 The Parties agree that the Construction Contract represents the agreement of the Parties respecting the functional objectives of the Project and the Project Scope.
- 3.03 As between BC MoT and WFN only, the Parties agree that WFN is responsible for sufficiency and accuracy of those improvements that are identified in Schedule "C" as being a cost to WFN.
- 3.04 Each Party agrees to co-operate with the other to ensure the ability to seek compensation for errors or omissions in the design requirements and Construction requirements caused by third parties.
- 3.05 WFN shall provide to BC MoT the Project's quality management plan and traffic management plan that will all be preapproved in writing by BC MoT. BC MoT will not unreasonably withhold its approval.

#### **Amendments to Scope of Work**

- 3.06 The Parties agree that it is their mutual desire to complete the Project in a way that provides the best value within the Project Budget. The Parties may jointly agree to amend the Scope of Work from time to time, in accordance with Section 3.07.
- 3.07 Either Party may request an amendment to the Design, the Construction Contract, the Project Budget or the Scope of Work by making a Change Request to the Liaison Committee, with sufficient detail so as to permit the Liaison Committee to consider the proposed amendment.
- 3.08 Within 5 days, or such longer time as the Parties may agree, after receipt of a Change Request, the Liaison Committee shall meet to determine whether to accept or reject the proposed amendment to the Design, the Construction Contract, the Project Budget or the Scope of the Work.
- 3.9 Whether the Liaison Committee rejects a proposed amendment to the Implementation Plan, the Design, the Construction Contract, the Project Budget or the Scope of Work, the Decision of the Liaison Committee shall be recorded and in the circumstance of a change affecting construction, WFN shall issue a work order pursuant to Construction Contract.

- 3.10** Where the Liaison Committee approves a proposed amendment to the Construction Contract for the Detour Roads and Preliminary Site Preparation for Highway 97 Westside Road Project Improvements, WFN shall issue a work order setting out the proposed amendment in accordance with the Construction Contract and any extension of time and additional compensation that becomes payable to the Builder as a result thereof shall be deemed to be a relief event.
- 3.11** Unless otherwise agreed to by the Liaison Committee, additions to the Scope of Work that solely benefit one Party will be paid for by the Party so benefiting.

#### **4.00 TERM**

- 4.01** This Agreement shall be effective as of the date first above written and shall terminate on the scheduled date of final completion of the Project unless otherwise amended by the Parties in writing.

#### **5.00 PROJECT CONTRIBUTION PAYMENTS BY BC MoT**

- 5.01** Upon commencement of Construction of the Works, BC MoT will advance a payment of \$16, \$17 to WFN. This advance payment shall be set-off by BC MoT from the subsequent WFN invoices referred to in Section 5.02.
- 5.02** Subject to Section 5.01 and 18.02 ("Insurance"), BC MoT will make payment to WFN within fourteen (14) days after receipt of invoice prepared by WFN for the Costs of the Detour Roads and Preliminary Site Preparation for Highway 97 Westside Road Project Improvements and Reimbursable Costs which will describe:
- (a) progress of Works in accordance with the Project Schedule;
  - (b) details on the utilization of Funds;
  - (c) details setting out Reimbursable Costs;
  - (d) environment and archaeological impacts; and
  - (e) other details reasonably required by BC MoT.
- 5.03** The Funds being forwarded by BC MoT to WFN shall be used exclusively in the carrying out of the Detour Roads and Preliminary Site Preparation for Highway 97 Westside Road Project Improvements. Access to and the use of the contingency in Paragraph 1.01(o)(2) shall require the Construction Project Manager to first obtain the pre-approval of the Liaison Committee for any amount exceeding \$25,000.

- 5.04** If Costs to complete the Detour Roads and Preliminary Site Preparation for Highway 97 Westside Road Project Improvements are forecasted to exceed the remaining Funds, the Liaison Committee will ask BC MoT to seek an increase in the Funds. If such increase is not, in whole or in part, obtained, the Liaison Committee will determine whether to reduce scope or to take any other action it deems appropriate.
- 5.05** The actual costs to bring the WFN Improvements to final completion in accordance with the description of Works shall be borne by WFN.
- 5.06** Each representation in the invoices made by WFN pursuant to section 5.02 shall be true and correct as of the date of application for payment.
- 5.07** BC MoT will review the invoices in relation to Costs of the Detour Roads and Preliminary Site Preparation for Highway 97 Westside Road Project Improvements incurred to ascertain their eligibility for payment by BC MoT pursuant to the terms of this Agreement and compliance with the stated Works.
- 5.08** BC MoT will provide WFN written notice of any disputed costs pursuant to a WFN application for payment and BC MoT will advise of those invoiced items that are not in dispute. BC MoT will provide a payment of the undisputed sum to WFN within fourteen (14) days of the date of the aforementioned notice. The Parties will thereafter proceed with the process in Section 14 to resolve the dispute.
- 5.09** In the event that WFN is required to cease work on the Works due to an imminent or actual cost overrun during the course of construction, the Parties hereto may mutually elect to reduce the scope of work or find additional sources of funds.
- 5.10** Notwithstanding the contribution of the Funds or portions thereof made by BC MoT to WFN pursuant to this Agreement, WFN is responsible for performance of its obligations in this Agreement and it acknowledges that payment by BC MoT does not constitute acceptance on the part of BC MoT of the Works or WFN's performance of its obligations under this Agreement.
- 5.11** Notwithstanding any other provision of this Agreement the payment of money by BC MOT to WFN pursuant to this Agreement is subject to:
- (a) there being sufficient monies available in an appropriation, as defined in the *Financial Administration Act*, S.B.C. 1981, c. 15 (the Financial Administration Act, inclusive of every amendment made thereto and in force being herein collectively called the "Act"), to enable BC MoT, in any fiscal year or part thereof when any payment of money by BC MoT to WFN falls due pursuant to this Agreement, to make that payment; and
  - (b) Treasury Board, as defined in the Act, not having controlled or limited, pursuant to the Act, expenditure under any appropriation referred to in Section 5.11(a) herein.



## **6.00 PROJECT PROCUREMENT PROCESS AND PROJECT BUDGET PROCESS**

- 6.01 WFN, with the assistance of BC MoT, will manage the procurement process in accordance with the process prescribed in the tender package WFN prepares.
- 6.02 If the cost for the Design and the Construction of the Project, as detailed in the tenders received by WFN, exceed the Project Budget, the Parties may: terminate the tender process and either retender the Project with a reduced Scope of Work or delay the project for such time the Parties may mutually agree or consider such other options to deliver the Project, including seeking an increase in the Funds.

### **Procurement Litigation**

- 6.03 The Parties agree that, subject to Section 6.04, any loss, cost, or expense arising from third-party claims occasioned by the procurement process shall be deemed to be reimbursable Costs as divided equally by the Parties, except to the extent that such claims are caused by the negligence or unlawful act of one Party or its employees, in such event said reimbursement Costs shall be borne solely by that Party.
- 6.04 In the event of any third party claims referred to in Section 6.03, WFN may assume control of the negotiation, settlement or defence of such a claim. BC MoT shall cooperate in good faith in respect of any such third-party claim and may participate in such negotiation, settlement or defence. BC MoT may, at its own cost, retain counsel to act on its behalf if there is a conflict between the interests or defences of WFN and BC MoT. This clause will survive after the termination of this Agreement.

## **7.00 RELIEF EVENTS**

- 7.01 In this Agreement, a Relief Event means any of the following events or circumstances directly relating to the Detour Roads and Preliminary Site Preparation for Highway 97 Westside Road Project Improvements:
- (a) any breach of any provision of this Agreement by BC MoT;
  - (b) if applicable, any breach of any of the Protocol Agreements by BC MoT or any of the utility owners;
  - (c) the occurrence of a Reimbursable Delay;
  - (d) the issuance of a work order;
  - (e) any factual inaccuracies in the geotechnical data in the reference documents reviewed and agree to by the Parties to be included as part of the procurement process;

- (f) the occurrence of an event of default;
- (g) the occurrence of an emergency, the work as a result WFN classifies as emergency work pursuant to the Construction Contract;
- (h) any delay in review or processing of an application for permits, licences approvals or certificates which are not the responsibility of WFN;
- (i) any other event or circumstance which would entitle the Builder to claim additional compensation, an extension of time or damages from WFN pursuant to the Construction Contract,

but excluding any event, to the extent caused by the negligence or unlawful act of WFN.

**7.02** Upon the occurrence of a Relief Event:

- (a) WFN shall be entitled to include the financial consequences of the Relief Event in the applicable invoices pursuant to Section 5.02 of this Agreement, which consequences are any increase in the Contract Price and any direct losses, costs, damages and expenses claimed by the Builder or any other person; and
- (b) the time schedule, substantial completion date, final completion date and milestones in the Construction Contract shall be adjusted commensurately to the period during which the progress of the Work was impacted by the Relief Event, provided that the Builder materially complies with the "Extension of Time" provisions of the Construction Contract.

**8.00 PROJECT DELIVERY AND GOVERNANCE ARRANGEMENTS**

**WFN as Deliveror of the Project**

- 8.01** Except to the extent that WFN's ability to manage and deliver the Project is constrained by a Decision, review, approval or direction, or a lack thereof as the case may be, from the Liaison Committee or BC MoT, WFN will, and is solely responsible to, manage and deliver the Project in accordance with this Agreement, the Construction Contract and the Implementation Plan.
- 8.02** The Parties agree to cooperate fully in all aspects of the management and delivery of the Project.
- 8.03** The relationship between the Parties respecting the Project is attached as Schedule "G"
- 8.04** Except to the extent that WFN's ability to implement, manage or enforce the Construction Contract or any other contracts, including any terms or conditions related to damages or injury caused by the acts and omissions of the designer, the Builder or other contractors retained by WFN and their employees, agents and representatives, is constrained by the

need to obtain a Decision, review, approval or direction from the Liaison Committee or BC MoT, WFN is solely responsible for implementing, managing and enforcing the supervision of the Construction Contract and such other contracts. No agreement or contract entered into by WFN will impose any obligation or liability whatsoever directly between BC MoT and any contractor or the Builder or any of their employees, agents or representatives, except as expressly set out in the Construction Contract or otherwise expressly agreed to in writing by BC MoT.

- 8.05 Nothing in this Agreement will create or constitute any contractual relationship, partnership, joint venture, joint enterprise, principal-agency or employer-employee relationship between BC MoT and the Builder or any other contractor of WFN.

#### **Construction Contract**

- 8.06 WFN, in conjunction with BC MoT, will within the process prescribed by the tender referred to in Section 6.01, award to the selected bidder the Construction Contract.
- 8.07 Prior to the inclusion of the form of the Construction Contract by WFN into the tender package, the Liaison Committee will review and mutually approve of the proposed form of Construction Contract.
- 8.08 The Parties agree that upon execution of the Construction Contract it shall be attached hereto as Schedule "E" and shall thereafter form part of this Agreement.
- 8.09 If and whenever WFN breaches or fails to observe or perform any of its material covenants or agreements contained in the Construction Contract on the part of WFN to be observed or performed, whether of a positive or negative nature, then and in every such case, WFN shall be in default under this Agreement.

#### **Responsibilities of WFN**

- 8.10 WFN will be responsible for the performance of all of its obligations pursuant to this Agreement and the Major Works Contract.
- 8.11 WFN shall provide the Liaison Committee with timely access to all Project records.
- 8.12 WFN shall develop, in consultation with the Liaison Committee, a financial audit process that will involve random detailed audits of a representative sample of the financial and Project management records of the Builder.
- 8.13 WFN shall take all reasonable steps to cause the Builder to perform and fulfill all of its respective obligations pursuant to the Construction Contract including but not limited to the obligation:
- (a) by the Builder to implement the quality management plan and a safety audit plan for the Project;

- (b) to obtain all required consents, permits, licences, certificates, approvals and environmental permits of any government authority having jurisdiction that are necessary for the completion of the Project;
- (c) by the Builder not to commence construction of any portion of the Project until all required consents, permits, licences, certificates, approvals and environmental permits of any government authority having jurisdiction that are necessary for the completion of the Project have been obtained;
- (d) to maintain and comply with, throughout the Project, all insurance required by the Construction Contract and in the case of the Builder to maintain and comply with the bonds in forms and amounts required by the Construction Contract; and
- (e) by the Builder to provide the Liaison Committee with written notice at least 30 days prior to the substantial completion date.

**8.14** WFN will submit on a monthly basis, to the Liaison Committee a monthly progress report together with each WFN invoice referred to in Section 5.02. Each monthly progress report shall include:

- (a) a statement of the progress of the of the Project to date;
- (b) a statement setting out the reimbursable Costs incurred to end of the immediately preceding month together with the updated Project Budget and a forecast of the estimated cost to complete the Works;
- (c) a summary log of all material communications to date;
- (d) a summary of all regulatory and other approvals received to date;
- (e) a summary log of quality management issues encountered to date, including but not limited to audits and Compliance Reviews conducted;
- (f) a summary log of risk management issues encountered to date; and
- (g) such other information as may be reasonably requested by the Liaison Committee.

**WFN Obligation to Preserve Bonds**

**8.15** WFN shall take all reasonable steps so as to avoid prejudicing the surety of the performance bond and labour and material payment bond issued in respect of the Project and the Construction Contract in any way which may result in obviating such performance bond or labour and material payment bond. WFN shall thereby, without limitation:

- (a) perform all of its material obligations set out in the Construction Contract;

- (b) notify the surety and the Liaison Committee of any material Builder default under the Construction Contract, promptly upon becoming aware of such default; and
- (c) promptly notify and obtain the consent of the surety of any proposed material change to the Construction Contract that may prejudice the surety, including without limitation; making payments contrary to the terms of the Construction Contract.

#### **BC MoT Obligation to Preserve Bonds**

8.16 BC MoT shall take all reasonable steps so as to avoid prejudicing the surety of the performance bond and labour and material payment bond issued in respect of the Project and the Construction Contract in any way which may result in obviating such performance bond or labour and material payment bond. BC MoT shall thereby, without limitation:

- (a) perform all of its material obligations set out in this Agreement;
- (b) notify the surety and the Liaison Committee of any material Builder default under the Construction Contract, promptly upon becoming aware of such default; and
- (c) promptly notify and obtain the consent of the surety of any proposed material change to the Construction Contract that may prejudice the surety, including without limitation:
  - (i) making payments contrary to the terms of the Construction Contract, and
  - (ii) varying the final completion date without the pre-approval of the surety.

#### **Liquidated Damages**

8.17 To the extent that WFN receives payment of any liquidated damages from the Builder pursuant to the Construction Contract that are attributable to the Detour Roads and Preliminary Site Preparation for Highway 97 Westside Road Project Improvements, such liquidated damages shall be deemed to be a credit against the Costs.

#### **Liaison Committee**

8.18 This Agreement establishes the Liaison Committee which will serve as the Decision-making body for the Parties in respect of all matters requiring Decisions, reviews, approvals or direction of the Parties in respect of the subject matter of this Agreement.

8.19 The Liaison Committee will act in accordance with the Liaison Committee's Terms of Reference attached as Schedule "H"

8.20 To the extent that they may materially and substantially impact the Scope of Work, the time schedule or the Costs, the following matters may only be implemented following approval of the Liaison Committee:

- (a) amendments to the implementation plan;
- (b) amendments to the design;
- (c) finalizing the form of the Construction Contract prior to tendering and amendments to the Construction Contract;
- (d) changes in the Works or the Scope of Work;
- (e) variances to design and construction requirements;
- (f) recommendations by the Parties' Engineers for technical compliance;
- (g) amendments to the traffic management plan;
- (h) the quality management plan;
- (i) subject to the limit of \$25,000.00, and except in the case of an emergency (as defined in the Construction Contract), expenditure of the contingency;
- (j) amendments to the Communications Plan;
- (k) termination of the Construction Contract; and
- (l) design review; and
- (m) any other matters to which the Liaison Committee agrees to provide a Decision or direction.

#### **Liaison Committee Unanimity**

- 8.21 The Liaison Committee must be unanimous when making any Decision or providing any direction.
- 8.22 Any Decision that the Liaison Committee cannot resolve through amicable negotiation or any failure to achieve unanimity will be resolved in accordance with Section 14 – Decision Making Process.

#### **Construction Project Manager**

- 8.23 The Construction Project Manager has been appointed by WFN and BC MoT has approved the appointment. The Construction Project Manager will be paid out of the Funds.
- 8.24 WFN shall cause the Construction Project Manager to act in accordance with the terms of reference set out in Schedule "I"



- 8.25 Any change to the Construction Project Manager will be made by WFN only upon written agreement of the Liaison Committee. The Liaison Committee shall not unreasonably withhold or delay its agreement to a change of the Construction Project Manager proposed by WFN.

**WFN Engineer and BC MoT Engineer and Engineer of Record**

- 8.26 WFN and BC MoT will each procure the services of a professional engineer currently licensed to practice within the Province of British Columbia.
- 8.27 WFN shall cause the WFN engineer and BC MoT shall cause the BC MoT engineer to assist the Construction Project Manager with the following:
- (a) development and implementation of a quality audit plan for the Project, including design reviews for technical compliance at all stages of construction of the Project;
  - (b) advice and assistance, as and when required; and
  - (c) other services as are determined to be appropriate by the Construction Project Manager, in consultation with WFN and BC MoT.
- 8.28 WFN shall cause the WFN engineer and BC MoT shall cause the BC MoT engineer to provide their respective advice and assistance to the Construction Project Manager and as requested by the Liaison Committee.
- 8.29 WFN shall procure the services of the Engineer of Record for the Design.

**Construction Schedule**

- 8.30 WFN will provide to BC MoT the construction schedule, as soon as reasonably possible following the execution of the Construction Contract, to the satisfaction of, and for the approval by, the Liaison Committee.

**Changes to Design and Construction Requirements**

- 8.31 WFN shall cause the Construction Project Manager to submit any request for a variance to the design and construction requirements to the Liaison Committee for consideration and recommendation to BC MoT. Any request for a variance to the design and construction requirements shall be accompanied by a detailed description of the proposed variance, the reasons for the proposed variance and an estimate of the cost and schedule impact of the proposed variance.
- 8.32 Upon receipt of a request for a variance to the design and construction requirements, the Liaison Committee shall consider the request and within 5 days after receipt of the request, shall either reject the proposed variance or recommend the proposed variance to BC MoT



and BC MoT shall consider the request and, within 30 days after receipt of the request, may approve the proposed variance at its sole discretion and on such conditions as it deems appropriate and if so approved WFN shall direct the Construction Project Manager to issue a work order or change order in accordance with the terms of the Construction Contract.

### **Laws**

- 8.33 BC MoT and WFN shall comply with all applicable Laws.

### **Permits and Approvals**

- 8.34 Both Parties will make reasonable efforts to ensure that the review and processing of applications for permits, licences, approvals, and certificates, which must be obtained from each of them, are reviewed and processed in a timely manner.

### **Project Change Management**

- 8.35 WFN shall cause the Construction Project Manager to submit any proposed amendments (a "Change Request") to the Design, the implementation plan, the Construction Contract, the Project Budget or changes in the Scope of Work to the Liaison Committee for consideration.
- 8.36 Where a proposed amendment to the design, the implementation plan, the Construction Contract, the Project Budget or changes in the Scope of Work is submitted to the Liaison Committee, the Construction Project Manager shall cause the person initiating the proposal to include with the proposal a description of the proposed change, the reasons for the proposed change, the steps that any person will have to take to mitigate any impacts of the proposed change, the options available to mitigate such impacts and the estimated cost of the proposed change.
- 8.37 Within 5 days after receipt of a proposed amendment, or change in accordance with Section 8.35, the Liaison Committee shall either approve or reject the proposal. Where the Liaison Committee approves a proposal submitted pursuant to Section 8.36, it shall confirm its approval along with any conditions imposed by the Liaison Committee in writing and where such change shall impact construction, WFN shall direct the Construction Project Manager to issue a work order or change order in accordance with the terms of the Construction Contract.
- 8.38 If within 5 days after receipt of a proposed amendment or change, in accordance with Section 8.36 and 8.37, the Liaison Committee does not provide a written approval with respect to the proposed amendment, change or variance, it shall be deemed to have been rejected by the Liaison Committee.

### **Changes or Errors in Design**

- 8.39 BC MoT and WFN will provide notice to the Liaison Committee immediately upon becoming aware of any error, omission, deficiency or non-conformance in the Design, the Construction or the Works.

### **9.00 INTENTIONALLY DELETED**

### **10.00 PROJECT SCHEDULE AND COMPLETION**

#### **Actual Final Completion Date and Actual Substantial Completion Date**

- 10.01 Subject to any extensions of time permitted by virtue of the occurrence of one or more relief events pursuant to the terms of the Construction Contract, WFN shall use reasonable best efforts to cause the Builder to achieve final completion (as defined in the Construction Contract) that is by no later than June 30, 2010.
- 10.02 WFN shall use reasonable best efforts to cause the Builder to do the following, on or before the final completion date:
- (a) provide all plans, including all required documentation referred to in the Construction Contract to BC MoT that relate to the Detour Roads and Preliminary Site Preparation for Highway 97 Westside Road Project Improvements and in a format acceptable to BC MoT;
  - (b) rectify any defects, deficiencies and Unacceptable Work in the Detour Roads (except for warranty obligations under the Construction Contract);
  - (c) cause the Detour Roads and Preliminary Site Preparation for Highway 97 Westside Road Project Improvements to be available for safe, unobstructed and uninterrupted use by the public as Highway 97 construction detour roads until such time as the Highway 97 and Westside Road intersection improvements have reached final completion.

all in accordance with the terms of the Construction Contract.

### **11.00 CONFIDENTIALITY**

#### **Confidentiality and Release of Information**

- 11.01 All of the information, materials and documentation relating to the Project is and will be confidential among the Parties. A party will only disclose information relating to the Project or to this Agreement with the prior written consent of the other party except for disclosure that is required for purposes of the Project or as required by Law. In addition,

WFN may disclose information relating to the Project or to this Agreement to its membership pursuant to its governmental policy or policies, provided there will be no disclosure of financially sensitive information, the disclosure of which could reasonably be expected to harm the financial or economic interest of either Party or the Project.

### **Freedom of Information**

- 11.02 Any documentation relating to the Project that is in the custody or control of BC MoT is subject to the *Freedom of Information and Protection of Privacy Act* (B.C.). BC MoT will provide WFN with notice pursuant to the *Freedom of Information and Protection of Privacy Act* (B.C.) prior to any proposed release of any such documentation.

### **12.00 INDEMNITY**

- 12.00 WFN indemnifies and saves harmless BC MoT and its representatives, servants, employees, agents and contractors from and against all claims, liabilities and demands of any kind arising out of or attributable to WFN'S failure to perform under this Agreement, negligence or unlawful act.

### **13.00 PROVISOS**

- 13.01 Provided always and it is agreed as follows that other than as expressly set out in this Agreement, WFN has examined the Work Standards and has satisfied itself of the works and activities that will be necessary to carry out and execute the Works, and that its investigation and examination has been based on its own examination, knowledge, information and judgment and not upon any statement, representation, or information made or given by BC MoT.
- 13.02 BC MoT may inspect the construction of the Works at any time.

### **14.00 DECISION MAKING PROCESS**

#### **Efforts to Make Decisions**

- 14.01 The Parties, including their representatives on the Liaison Committee, as the case may be, agree that they will make *bona fide* efforts to each any Decision that they are required to make under this Agreement through amicable discussion and negotiation and will use reasonable efforts to make a Decision as efficiently, quickly and cost-effectively as practical by following the decision making process in this Section 14.
- 14.02 If any Decision is not made by the Liaison Committee within five business days of it being referred to the Liaison Committee, then either Party's Liaison Committee representative may:
- (a) refer the matter to the BC MoT Regional Director, Southern Interior Region and

Director of Operations, WFN for resolution; and

- (b) failing the resolution of the matter by the BC MoT Regional Director, Southern Interior Region and Director of Operations, WFN within 7 days of the dispute being referred to them under subsection (a), by referring the matter to the following representatives of the Parties for resolution or such other representatives as may be appointed by the Parties from time to time:

- (i) the Chief of the WFN, and
- (ii) the Minister of BC MoT ,

and, subject to Laws, the Parties will provide candid and timely disclosure to each other of all relevant facts, information and documents to facilitate the resolution of the dispute.

- 14.03 Subject to Section 14.05, if a dispute under this Agreement is not resolved under Section 14.02 (b) within 7 days of the dispute being referred to the persons identified in Section 14.02 (b), or within such other time period agreed to in writing by the Parties, a Party may refer the dispute to arbitration in Victoria, British Columbia to be conducted by a sole arbitrator appointed under the *Commercial Arbitration Act*.
- 14.04 The cost of the arbitration referred to in Section 14.03 will be shared equally by the Parties and the arbitration will be governed by the laws of the Province of British Columbia.
- 14.05 A dispute under this Agreement in respect of a matter within the sole discretion of a Party cannot, unless the other Party agrees, be referred to arbitration as set out in Section 14.03.

## **15.00 ASSIGNMENT**

- 15.01 WFN must not assign, mortgage or transfer this Agreement. BC MoT may, in its sole discretion, assign this Agreement or any right or obligation under this Agreement to any corporation or agency of the Province of British Columbia. BC MoT will promptly notify WFN of any such assignment.

## **16.00 NOTICE**

- 16.01 Subject to Section 16.02, any notice, document or communication required or permitted to be given under this Agreement must be in writing and will be deemed to have been given if delivered by hand, courier, or double-registered mail or by facsimile to the Party to whom it is to be given as follows:

to BC MoT:

Ministry of Transportation and Infrastructure

940 Blanshard Street  
Victoria, British Columbia  
V8W 9T5

**Attention: Mr. Dirk Nyland, Chief Engineer**

Phone: (250) 387-2310  
Facsimile: (250) 387-7735

to WFN:

Westbank First Nation  
c/o Urban Systems  
No. 500 – 1708 Dolphin Avenue  
Kelowna, British Columbia  
V1Y 9S4

**Attention: Mr. Dick Fletcher**

Phone: (250) 762-2517  
Facsimile: (250) 763-5266

- 16.02** Either Party may, from time to time, advise the other by notice in writing of any change of address or facsimile number of the Party giving such notice and, from and after the giving of such notice, the address or facsimile number therein specified will, for purposes of this Agreement, be deemed to be the address or facsimile number of the Party giving such notice.

#### **17.00 AUDIT**

- 17.01** BC MoT shall have the right to audit and examine the records and accounts of WFN related to this Project.

#### **18.00 INSURANCE**

- 18.01** WFN shall obtain and maintain insurance against such risks and in such amounts as shall be consistent with sound business practice. The insurance premiums will be paid out of the Funds.
- 18.02** In the event insurance proceeds are obtained by WFN from an insurance compensation event for the Detour Roads and Preliminary Site Preparation for Highway 97 Westside Road Project Improvements, BC MoT may in its sole discretion, suspend payments of WFN invoices until WFN provides satisfactory evidence that all insurance payments have been applied exclusively to the Detour Roads Improvements.

## **19.0 MISCELLANEOUS**

### **Gender and Number**

- 19.01 In this Agreement, "person" includes a corporation, firm, association and any other legal entity and works in one gender include all genders, and works in singular include the plural and vice versa.

### **Headings**

- 19.02 In this Agreement, using separate parts and inserting headings are for convenience of reference only, and will not affect the interpretation of this Agreement.

### **Severability**

- 19.03 If any provision of this Agreement is found to be illegal or unenforceable, it will be considered separate and severable from this Agreement and the remaining provisions of this Agreement and remain in force and be binding upon the Parties as though the illegal or unenforceable provision had never been included.

### **Enurement**

- 19.04 This Agreement enures to the benefit and is binding on the Parties and their successors and permitted assigns.

### **Further Assurances**

- 19.05 Upon the request of the other, each of the Parties will make do, execute or deliver to each other any other reasonable deeds, documents, instruments and assurances and do any other reasonable acts required to carry out the true intent and meaning of this Agreement.

### **Counterparts**

- 19.06 This Agreement may be executed in two or more counterparts by each Party signing a separate copy of it (including a photocopy or facsimile copy) and delivering it to the other Party by facsimile with an originally executed copy of it to follow by mail or courier.

### **Time**

- 19.07 When a time limitation under this Agreement for the performance of an obligation expires on a Saturday, Sunday or a statutory holiday, the time for the performance of that obligation governed by the time limitation is extended to the next day that is not a Saturday, Sunday or statutory holiday.

### **Discretionary Authority**

- 19.08 Nothing in this Agreement fetters or limits the exercise of discretionary authority as set out in applicable Laws.

### **Waiver**

- 19.09 No waiver by either Party of a breach or default by the other Party in the observance, performance or compliance of any of its obligations under this Agreement will be effective unless it is in writing and no such waiver will be deemed or construed to be a waiver of any other breach or default and failure or delay on the part of either Party to complain of an act or failure of the other Party or to declare such other Party in default, irrespective of how long such failure or delay continues, will not constitute a waiver by such Party of any of its rights against the other Party.

### **This Agreement**

- 19.10 Unless the context otherwise requires, any reference to "this Agreement" means this instrument and all of the Schedules attached to it and any reference to any Section, Subsection or Paragraph by number is a reference to the appropriate Section, Subsection or Paragraph in this Agreement. Each Schedule attached to this Agreement is an integral part of this Agreement as if set out at length in the body of this Agreement.

### **Amendments or Modifications**

- 19.11 Any modification or amendment of this Agreement must be in writing and approved by both Parties.

### **"Including"**

- 19.12 In this Agreement, the words "include", "includes" or "including" mean "include without limitation", "includes without limitation" and "including without limitation" respectively, and the words following "include", "includes" or "including" shall not be considered to set forth an exhaustive list.
- 19.13 As between the Parties, in the case of a conflict or inconsistency between this Agreement and the Construction Contract, this Agreement will take precedence.

### **Currency**

- 19.14 All dollar amounts expressed in this Agreement refer to lawful currency of Canada.
- 19.15 The Parties have executed this Agreement as of the date set forth at the beginning of this Agreement.



**No Condoning**

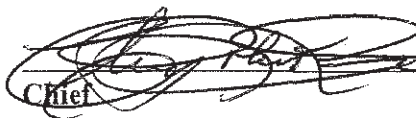
19.16 No condoning, excusing or overlooking by BC MoT or WFN of any default, breach or non-observance at any time by BC MoT or WFN shall operate as a waiver of BC MoT's or WFN's rights under this Agreement in respect of any continuing or subsequent default, breach or non-observance, or so as to defeat or affect the rights of BC MoT or WFN in respect of any such continuing or subsequent default or breach.

19.17 All rights and remedies of the Parties contained in this Agreement shall be cumulative and not alternative.

IN WITNESS WHEREOF the Parties have executed this Agreement as follows:

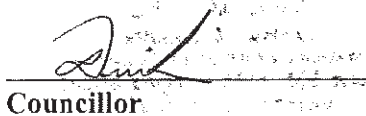
Signed on behalf of  
WESTBANK FIRST NATION

Dated: \_\_\_\_\_

  
Chief

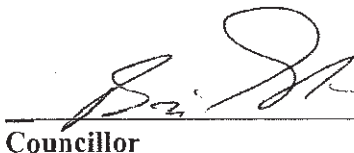
**MARCUS HADLEY**  
BARRISTER & SOLICITOR, NOTARY PUBLIC  
255 LINDEN AVE  
VICTORIA BC V8V 4E6  
TEL: 250-884-4703 Witness

Dated: 01/09/09

  
Councillor

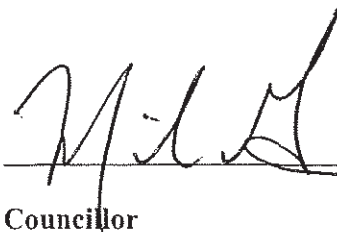
**MARCUS HADLEY**  
BARRISTER & SOLICITOR, NOTARY PUBLIC  
255 LINDEN AVE  
VICTORIA BC V8V 4E6  
TEL: 250-884-4703 Witness

Dated: 01/09/09

  
Councillor

**MARCUS HADLEY**  
BARRISTER & SOLICITOR, NOTARY PUBLIC  
255 LINDEN AVE  
VICTORIA BC V8V 4E6  
TEL: 250-884-4703 Witness

Dated: 01/09/09

  
Councillor


**MARCUS HADLEY**  
BARRISTER & SOLICITOR, NOTARY PUBLIC  
255 LINDEN AVE  
VICTORIA BC V8V 4E6  
TEL: 250-884-4703 Witness

Witness

Dated: 01/09/09

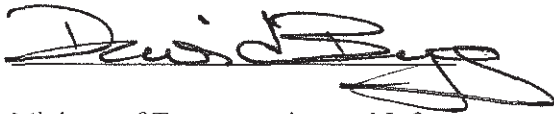


Councillor

  
**MARCUS HADLEY**  
 BARRISTER & SOLICITOR, NOTARY PUBLIC  
 255 LINDEN AVE  
 VICTORIA BC V8Y 4E6  
 TEL: 250-884-4700


Dated: 01/09/09

Signed on behalf of  
**MINISTRY OF TRANSPORTATION  
 AND INFRASTRUCTURE**



Minister of Transportation and Infrastructure

Dated: Sept 3, 2009

  
 Witness

**JULIE MATTES**  
 Barrister & Solicitor  
 Ministry of Attorney General  
 Suite 508, 1175 Douglas Street  
 Victoria BC V8W 2E1

## SCHEDULE "A"

August 31, 2009

### Westbank First Nation ("WFN") Interim Heritage Policy, Westside Road Interchange Project

#### Purpose

This policy has been created specifically for the investigative archaeological work planned for the Westside Road Interchange project (the "Project"). The purpose of this policy is to ensure that the requisite archaeological work is undertaken with respect to the Project and reduce, where possible, delays which may occur as a result of the discovery of ancestral remains, significant heritage objects or funerary objects and to provide for the respectful handling of the remains and/or funerary objects during the excavation and relocation process.

#### Definitions

For the purpose of this policy,

- "Archaeology Liaison" means the person appointed by WFN Council to review, suggest modification to and approve the work plan and budget on behalf of WFN, and liaise with the WRI Authorized Representative, the Archaeologist and WFN archaeology staff.
- "archaeology team" means the Archaeologist, WFN monitors, WFN field workers and the Archaeology Liaison.
- "impact area" is defined as any area where the ground will be disturbed by any part of construction activities.
- "funerary objects" are any artifacts found which are found in proximity to ancestral remains and are deemed by the archaeology team to be a part of an ancestral burial.
- "significant heritage object" is an object which has cultural significance to WFN as determined by the Archaeology Liaison.
- "WRI Authorized Representative" is the person on the WRI delivery team appointed by WFN Council to liaise with the WRI project delivery team, the archaeology team and WFN Council.

#### Archaeological Investigative Work

WRI on behalf of WFN will undertake the following:

1. Direct that an archaeological impact assessment be conducted of the areas that will, or are likely to be, impacted by the Project by a qualified archaeologist chosen by the WFN (the "Archaeologist"). The terms of reference for the archaeological overview shall be agreed to by WFN and the Ministry of Transportation ("MOT") prior to work commencing.
2. All archaeological work shall meet, as a minimum, the standards of the Heritage Conservation Act of British Columbia.

3. Should the Archaeologist and the Archaeology Liaison conclude, as a result of the archaeological impact assessment, that further archaeological work is required to be undertaken by the Archaeologist prior to construction on the Project proceeding, they will prepare a proposed work plan and budget for the consideration of the WRI Authorized Representative, including any monitoring and/or field work that may be required to be undertaken by WFN members. Any monitoring shall be charged at the rates agreed to by the Project.
4. The WRI Authorized Representative will review the work plan and budget and approve same, request that modifications be made or reject either the work plan or budget, or both. If the WFN's Authorized Representative approves of the work plan and budget the required archaeological work will proceed subject to the requisite funding being secured.

Archaeological work shall not proceed until a work plan and budget, or any amendments thereto, are authorized by the WRI Authorized Representative.

5. Any field workers or monitors that the Archaeologist deems necessary shall be WFN members solicited by the WFN unless WFN members are not available to undertake the tasks required.
6. Upon the archaeological work being completed the Archaeologist will forthwith prepare a report and present it to the WRI Authorized Representative. The WRI Authorized Representative will review the report with the Archaeology Liaison and present it to WFN Council. WFN may direct the WRI Authorized Representative that construction may proceed on the Project prior to receipt and approval of the archaeological report if it deems that to be appropriate, or resolve that no construction commence on the Project until it has approved the archaeological report.

#### Procedure on the Discovery of a Significant Heritage Object

For the purposes of this policy, on the discovery of a Significant Heritage Object, the following procedures will apply:

1. The find shall be immediately reported to the Archaeologist and to the WFN Archaeology Liaison who shall determine whether the find warrants an amendment to the work plan and/or budget.
2. Should the Archaeologist and Archaeology Liaison determine that the find warrants an amendment to the work plan and/or budget, they will prepare an amendment for the consideration of the WRI Authorized Representative.
3. The WRI Authorized Representative will review the amended work plan and budget and approve same, request that modifications be made or reject either the amended work plan or budget, or both. If the WFN's Authorized

Representative approves of the amended work plan and budget the required archaeological work will proceed subject to the requisite funding being secured.

Archaeological work shall not proceed until the amended work plan and budget are authorized by the WRI Authorized Representative.

**Procedure on the Discovery of Ancestral Remains, and/or Funerary Objects**

On the discovery of Ancestral Remains and/or funerary objects, the following procedures will apply:

1. All construction activities or any activity which, in the opinion of the archaeology team, could damage or disrupt the impact area will cease immediately.
2. The Archaeologist shall immediately report the find to the WFN Archaeology Liaison and to the WRI Authorized Representative and advise whether, in his or her opinion, the find is of an isolated nature (i.e. one ancestor or one mother with child). WRI Authorized Representative will immediately convey the information to WFN Council and the WRI project delivery team.
3. WFN Council will, within five (5) business days of being made aware of the discovery of remains and/or funerary objects, make a decision with respect to whether or not the remains and funerary objects will be relocated to a WFN cemetery. If the decision is made to relocate the remains and/or funerary objects that will be done as soon as is possible. If the decision is made not to relocate the remains and/or funerary objects, then discussions will ensue as between the WFN Council and representatives of MoT with respect to considering alternatives to relocation that will not unduly impede the Project.
4. No disclosure of any find will be made to the media or any third parties, other than to authorized representatives of MoT, until such disclosure is approved by the Archaeology Liaison.
5. The Archaeologist will contact the RCMP, the coroner and/or another qualified person to determine whether or not the find is of forensic concern.
6. If the find is not of forensic concern and is of an isolated nature and no other burial is found within the area which may indicate mass burials on the site, the archaeology team may begin excavation of the remains together with any funerary objects. Only persons authorized by the Archaeology Liaison and/or the WRI Authorized Representative may be present during any excavation and/or relocation activities.
7. If it is determined by the Archaeologist that the burial may not be of an isolated nature, all construction/disruption activities in the area of the find will cease pending community consultation and/or discussion with WFN Chief and Council.

8. 24 hour security will be employed at the site to ensure that remains are protected if a delay in reburial is necessary. A WFN Member of the archaeology team will, if possible, be present at all times.
9. The Project will be responsible for all costs for this policy including any excavation of remains and reburial activities including costs for the reburial site itself, on site security costs, and any spiritual/ceremonial activities which are deemed necessary by the WFN.

-2 NOV 2009 11 26

LB349086

LAND TITLE ACT  
FORM C  
(Section 233)

Province of  
British Columbia

GENERAL INSTRUMENT-PART 1

(This area for Land Title Office use)

PAGE 1 of 21 pages

1. APPLICATION: (Name, address, phone number and signature of applicant, applicant's solicitor or agent)

ASHCROFT & COMPANY  
Barristers and Solicitors  
#205 - 1544 Marine Drive  
West Vancouver, BC V7V 1H8

  
Signature of applicant, applicant's solicitor or agent

2. PARCEL IDENTIFIER(S) AND LEGAL DESCRIPTION(S) OF LAND:\*

010-347-593

Lot 98 District Lot 2189 Osoyoos Division Yale District Plan  
5381 except Plan 30793

3. NATURE OF INTEREST:\*

DESCRIPTION

DOCUMENT REFERENCE

PERSON ENTITLED TO INTEREST

Lease Agreement

Entire Instrument

Transferee

4. TERMS. Part 2 of this instrument consists of (select one only)

(a) Filed Standard Charge Terms

☐ D.F. No.

(b) Express Charge Terms

☒ Annexed as Part 2

(c) Release

☐ There is no Part 2 of this instrument

A selection of (a) includes any additional or modified terms referred to in Item 7 or in a schedule annexed to this instrument. If (c) is selected, the charge described in Item 3 is released or discharged as a charge on the land described in Item 2.

5. TRANSFEROR(S):\*

BC TRANSPORTATION FINANCING AUTHORITY, a corporation continued under the  
Transportation Act

6. TRANSFEREE(S): (including postal address(es) and postal code(s))\*

WESTBANK FIRST NATION, of 301 - 515 Highway 97 South, Kelowna, BC V1Z 3J2

7. ADDITIONAL OR MODIFIED TERMS:\*

N/A

ABSTRACT REGISTRY  
10330



LAND TITLE ACT  
FORM D

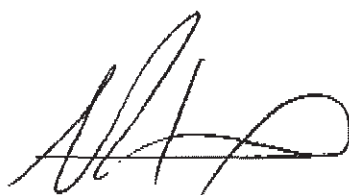
EXECUTIONS CONTINUED

Page 2 of 21 pages

8. EXECUTION(S). \*\* This instrument creates, assigns, modifies, enlarges, discharges or governs the priority of the interest(s) described in Item 3 and the Transferor(s) and every other signatory agree to be bound by this instrument, and acknowledge(s) receipt of a true copy of the filed standard charge terms, if any.

Execution Date

Officer Signature(s)



**MARCUS HADLEY**  
BARRISTER & SOLICITOR, NOTARY PUBLIC  
255 LINDEN AVE  
VICTORIA BC V8V 4E6  
TEL: 250-884-4703



Laura Jean Fernyhough  
Commissioner for Taking Affidavits  
for British Columbia  
Ministry of Transportation and Infrastructure  
5A - 940 Blanshard Street  
Victoria BC V8W 3E6

Y	M	D
2009	10	28
2009	10	16

Party(ies) Signature(s)

Westbank First Nation, by its  
authorized signatory:



Print Name:  
Lynn Vanderburg.

BC Transportation Financing  
Authority, by its authorized  
signatory (ies):



Print Name:  
Mike McGrenere

OFFICER CERTIFICATION:

Your signature constitutes a representation that you are a solicitor, notary public or other person authorized by the *Evidence Act*, R.S.B.C. 1996, c. 124, to take affidavits for use in British Columbia and certifies the matters set out in Part 5 of the *Land Title Act* as they pertain to the execution of this instrument.

**From:** Lincoln, Darren J TRAN:EX  
**Sent:** Tuesday, March 23, 2010 1:42 PM  
**To:** 'Dick Fletcher'; Lachmuth, Grant A TRAN:EX; Evans, Helen TRAN:EX  
**Cc:** 'Stan Ashcroft'; Nyland, Dirk TRAN:EX; Mattes, Julie AG:EX; Hutchings, Geraldine J AG:EX; Braithwaite, Dawn B TRAN:EX; 'robrichardson@shaw.ca'  
**Subject:** RE: Proposed Meeting wiht ILMB, RDCO, RDCO and WFN re Exchange Crown Lands

Just an update, we are canvassing the Municipality and the RDCO for dates and will have something back to WFN reps shortly.

Thanks,

Darren Lincoln, RI(BC)  
Manager, Property Services  
Ministry of Transportation  
Southern Interior Region  
342 - 447 Columbia Street  
Kamloops, B.C. V2C 2T3  
Phone (250) 371-3864  
Fax (250) 828-4229

---

**From:** Dick Fletcher [mailto:dfletcher@urban-systems.com]  
**Sent:** Friday, March 12, 2010 4:36 PM  
**To:** Lachmuth, Grant A TRAN:EX; Evans, Helen TRAN:EX  
**Cc:** Lincoln, Darren J TRAN:EX; Stan Ashcroft  
**Subject:** Proposed Meeting wiht ILMB, RDCO, RDCO and WFN re Exchange Crown Lands

Hi All;

Bill Smith had asked to have 2 or 3 representatives for WFN identified for a proposed meeting with the above parties to discuss the issues related to the proposed Crown Lands for Exchange.

WFN have directed that Stan Ashcroft, Jim Montain CEO of WFN and me be the WFN representatives for such a meeting.

It was my understanding from the discussion with Bill that Darren was going to arrange the meeting- if that is correct will you please advise of some possible meeting dates for consideration.

Regards;  
Dick

***Richard Fletcher, P.Eng.***  
***Principal***  
***Urban Systems Ltd.***  
***Tel. (250) 762-2517/ Fax. (250) 763-5266***  
***E-Mail- [dfletcher@urban-systems.com](mailto:dfletcher@urban-systems.com)***

---

Disclaimer :

The information transmitted is intended only for the person or entity to which it is addressed and may contain confidential and/or privileged material. Any review, transmission, dissemination or other use of, or taking of any action in reliance upon, this information by persons or entities other than the intended recipient is prohibited. If you received this in error, please contact the sender and delete the material from any computers.

S14

---

**From:** Lincoln, Darren J TRAN:EX [mailto:Darren.Lincoln@gov.bc.ca]  
**Sent:** Tuesday, March 23, 2010 1:42 PM  
**To:** Dick Fletcher; Lachmuth, Grant A TRAN:EX; Evans, Helen TRAN:EX  
**Cc:** Stan Ashcroft; Nyland, Dirk TRAN:EX; Mattes, Julie AG:EX; Hutchings, Geraldine J AG:EX; Braithwaite, Dawn B TRAN:EX; robrichardson@shaw.ca  
**Subject:** RE: Proposed Meeting wiht ILMB, RDCO, RDCO and WFN re Exchange Crown Lands

Just an update, we are canvassing the Municipality and the RDCO for dates and will have something back to WFN reps shortly.

Thanks,

Darren Lincoln, RI(BC)  
Manager, Property Services  
Ministry of Transportation  
Southern Interior Region  
342 - 447 Columbia Street  
Kamloops, B.C. V2C 2T3  
Phone (250) 371-3864  
Fax (250) 828-4229

---

**From:** Dick Fletcher [mailto:dfletcher@urban-systems.com]  
**Sent:** Friday, March 12, 2010 4:36 PM  
**To:** Lachmuth, Grant A TRAN:EX; Evans, Helen TRAN:EX  
**Cc:** Lincoln, Darren J TRAN:EX; Stan Ashcroft  
**Subject:** Proposed Meeting wiht ILMB, RDCO, RDCO and WFN re Exchange Crown Lands

Hi All;

Bill Smith had asked to have 2 or 3 representatives for WFN identified for a proposed meeting with the above parties to discuss the issues related to the proposed Crown Lands for Exchange.

WFN have directed that Stan Ashcroft, Jim Montain CEO of WFN and me be the WFN representatives for such a meeting.

It was my understanding from the discussion with Bill that Darren was going to arrange the meeting- if that is correct will you please advise of some possible meeting dates for consideration.

Regards;

Dick

DN 708

Page 339

***Richard Fletcher, P.Eng.***  
***Principal***  
***Urban Systems Ltd.***  
***Tel. (250) 762-2517/ Fax. (250) 763-5266***  
***E-Mail- [dfletcher@urban-systems.com](mailto:dfletcher@urban-systems.com)***

---

**Disclaimer :**

The information transmitted is intended only for the person or entity to which it is addressed and may contain confidential and/or privileged material. Any review, transmission, dissemination or other use of, or taking of any action in reliance upon, this information by persons or entities other than the intended recipient is prohibited. If you received this in error, please contact the sender and delete the material from any computers.

Not Responsive

**From:** Evelyn Lube [mailto:[elube@shaw.ca](mailto:elube@shaw.ca)]  
**Sent:** Wednesday, August 3, 2011 5:48 PM  
**To:** Knight, Jeff J GCPE:EX; Nyland, Dirk TRAN:EX; 'Dick Fletcher'  
**Cc:** Evans, Helen TRAN:EX  
**Subject:** Westside Road Interchange Project ; Proposed Exchange Lands media releases from WFN and from D of West Kelowna

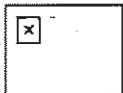
Hi, Jeff:

I am forwarding you a copy of the District of West Kelowna media release opposing the transfer of lands to the Westbank First Nation, as well as the Westbank First Nation's response to the release.

S16

S22 If there are media concerns that arise from your end during that time, please direct them to Dick Fletcher in my absence. Dick can be reached on his cell phone at S22 and by email as above.

Thanks!



**Evelyn Lube**  
Project Communications  
Westside Road Interchange  
phone: (250) 864-7395  
fax: (250) 768-7050  
email: [elube@shaw.ca](mailto:elube@shaw.ca)

DN 485

Page 341

## AGREEMENT

THIS AGREEMENT is made as of the 18th day April, 2005.

### BETWEEN:

Her Majesty the Queen in Right of the Province of British  
Columbia as represented by the Minister of Transportation

("British Columbia")

### AND:

Westbank First Nation, of 301-515 Highway 97 South,  
Kelowna, British Columbia, as represented by its Council

("Westbank")

(together the "Parties")

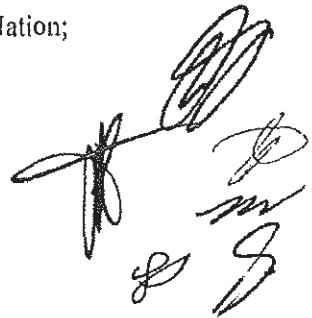
### WHEREAS:

- A. British Columbia and Westbank have agreed to work together to enable the construction of the Replacement Bridge and the Western Approach; and
- B. The Parties wish to enter into this Agreement to provide for and set forth the terms and conditions to enable the Improvements and Land Exchanges.

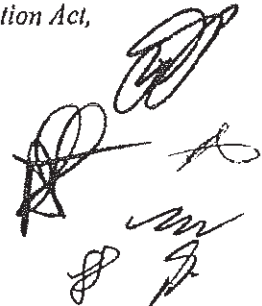
NOW THEREFORE, with good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged by each Party, the Parties covenant and agree as follows:

#### 1. Definitions

- 1.1 In this Agreement and in the Schedules attached hereto, the following terms and expressions have the following meanings:
  - (a) "Agreement" means this Agreement and any and all schedules, appendices, amendments or extensions negotiated in furtherance of this Agreement;
  - (b) "Causeway" means the causeway at the west end of the Existing Bridge;
  - (c) "Cemetery" means the Cemetery located on I.R. 10;
  - (d) "Council" means the governing council of Westbank First Nation;



- (e) **"District Lot 522"** means Parcel Identifier: 011-516-402  
All that portion of District Lot 522, Group 1, Osoyoos Division Yale District, more particularly described as follows:
- Commencing at the north west corner of said District Lot; thence south 11 chains 61 links more or less along the westerly boundary; thence easterly parallel to the Northerly boundary to Okanagan Lake; thence following the shore line of said lake in a north easterly direction to the north east corner of said district Lot 522; thence westerly along the north boundary to the point of commencement and containing by admeasurement 16 acres more or less.
- (f) **"Existing Bridge"** means the existing Lake Okanagan Bridge that will be replaced by the Replacement Bridge;
- (g) **"Fiscal Year"** means the annual period commencing April 1 and terminating March 31;
- (h) **"Improvements"** means those highway and road improvements contemplated by Section 4 of this Agreement relating to the Western Approach;
- (i) **"I.R. 10"** means Westbank's Tsinstikeptum Indian Reserve No. 10;
- (j) **"Land Exchange"** means the alienation of Westbank reserve lands and the addition of Replacement Lands in accordance with sections 92 and 93 of the Westbank First Nation Self-Government Agreement with the result that the alienated lands cease to be "Lands reserved for the Indians" under subsection 91(24) of the *Constitution Act, 1867*;
- (k) **"Minister"** means the Minister of Transportation of the Province of British Columbia;
- (l) **"Replacement Bridge"** means the new bridge crossing of Lake Okanagan to be procured, constructed, operated and maintained, as determined by British Columbia;
- (m) **"Parcels C, N, O"**, respectively, mean those parcels of land on I.R. 10 as described (or marked) in Schedule A;
- (n) **"Replacement Lands"** means lands that are acquired or received by Westbank to fulfill subsection 92(a) of the Westbank First Nation Self-Government Agreement and, if all terms of the Westbank First Nation Self-Government Agreement are satisfied, become lands that are "Lands reserved for the Indians" under subsection 91(24) of the *Constitution Act, 1867*;





- (o) "1983 Agreement" means the agreement among the British Columbia, Westbank and Canada dated April 15, 1983 respecting lands within I.R. 10 to be used for highway purposes; and
- (p) "Western Approach" means that portion of the Highway 97 corridor that runs through I.R.10.

## 2. Lease and Transfer

2.1 British Columbia will pay to Westbank the sum of S16, S17 for the following:

(a) S16, S17

(b) S16, S17

(c) The transfer of the portion of Parcel O required for highway purposes and public utilities (in the case of public utilities the area to not exceed three metres in width in addition to the area required for highway purposes) and those portions of Parcels N and C as identified on Schedule A.

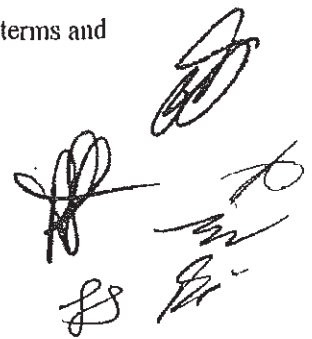
2.2 British Columbia will make the payment referred to in section 2.1 upon entering into the S16, S17 with Westbank.

2.3 S16, S17

2.4 Westbank will take all steps required to ensure the land leased in accordance with 2.1(b) reasonably required by British Columbia for highway purposes and public utilities (in the case of public utilities the area to not exceed three metres in width in addition to the area required for highway purposes), will be alienated in a Land Exchange, including, but not limited to;

- (i) Acquiring or receiving Replacement Lands that Canada will set apart as lands received in exchange as a reserve, in the event DL522 is not available or suitable,
- (ii) Full disclosure to and approval by Westbank's members, and
- (iii) Provision of an authorization and direction to Canada to exchange lands that is consistent with this Agreement.

2.5 Westbank will grant to British Columbia the leases on the following terms and conditions:

A collection of handwritten signatures and initials in black ink, located in the bottom right corner of the page. There are approximately six distinct marks, including what appear to be full names and initials.

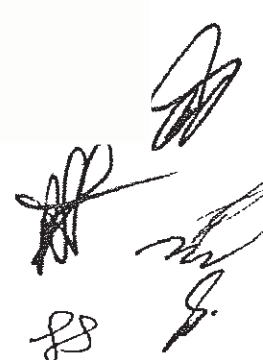
- (a) The lease referred to in section 2.1(a) is subject to termination upon the completion of the construction of the full interchange at Campbell Road referred to in section 4.1;
- (b) The lease referred to in section 2.1(b) is subject to termination upon completion of the Land Exchange involving those leased lands;
- (c) Subject to an earlier termination under (a) or (b), a term of 49 years;
- (d) For both leases, the only rent will be the S16, S17 paid in section 2.1;
- (e) no other rents, charges or fees will be payable under the terms of either lease;
- (f) British Columbia will be granted the right and responsibility to operate, maintain and construct the improvements referred to in section 4.1 as if the improvements were located on provincial crown land;
- (g) in the event Westbank enacts a law that is inconsistent with, in conflict or restricts the rights of the British Columbia under either lease or rights of public passage on the highway Westbank will pay to British Columbia S16, S17 forthwith;
- (h) Westbank will not have the right to terminate either lease; and
- (i) British Columbia will have unrestricted exclusive use, occupation and possession of the leased land during the term of each lease.

### 3. Land Exchange

- 3.1 British Columbia will make reasonable best efforts, in the context of this Agreement, up to May 15, 2005 to purchase DL522 for use as Replacement Lands. In the event British Columbia acquires DL522, the use of DL522 as Replacement Lands will be subject to the following conditions:

- (a)
- (b)
- (c)

S16, S17

A collection of handwritten signatures and initials in black ink, located in the bottom right corner of the page. There are approximately six distinct marks, including what appear to be full names and initials.

- (d) Pending the completion of the Land Exchange, British Columbia will provide to Westbank a lease of Part A of DL522 on the following terms and conditions:
  - (i) The lease will be subject to termination upon the completion of the Land Exchange;
  - (ii) the rent will be \$1.00;
  - (iii) no other rents, charges or fees will be payable under the terms of the lease;
  - (iv) British Columbia will not have the right to terminate the lease; and
  - (v) Westbank will have unrestricted exclusive use, occupation and possession of the land during the term of the lease.
- (e) British Columbia will transfer the remainder of DL522 after it has finally determined what portion of DL522 is not reasonably required for the highway purposes and public utilities (in the case of public utilities the area to not exceed three metres in width in addition to the area required for highway purposes), but in any event on June 30, 2008; and
- (f) Prior to British Columbia transferring the remainder of DL522, it will remain under the administration of the Minister of Transportation.

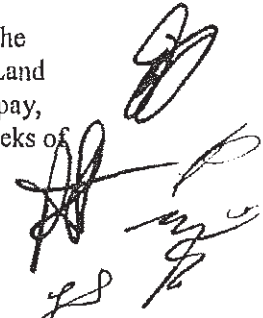
3.2 If, and only, in the event that British Columbia does not acquire DL522, after making reasonable best efforts, in the context of this Agreement, British Columbia will provide, instead of DL522, to Westbank the following:

- (a) In accordance with sections 3.3 to 3.6, S16, S17 for acquiring the Replacement Lands under section 2.1(c);
- (b)

S16, S17

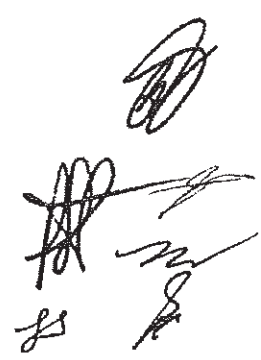
3.3 On May 16<sup>th</sup>, 2005, unless the purchase of DL522 has been secured, British Columbia will pay S16, S17 to Westbank to enable Westbank to contractually secure and investigate lands for use as Replacement Lands.

3.4 After Westbank has removed all conditions precedent for the purchase of the Replacement Lands, including approval by Westbank membership of the Land Exchange for the lands leased under section 2.1(b), British Columbia will pay, subject to appropriate undertakings, to Westbank's solicitor within two weeks of

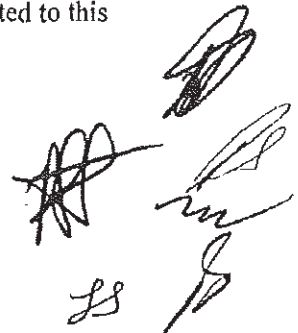


the closing date, the balance of funds required to complete the purchase, up to a maximum of S16, S17

- 3.5 Westbank will contract with the vendor of the Replacement Lands for British Columbia to be the transferee.
- 3.6 In the event the total amount payable under sections 3.3 and 3.4 is less than S16, S17 British Columbia will pay to Westbank the difference on the closing date.
- 3.7 Pending the completion of the Land Exchange, British Columbia will hold title to the Replacement Lands and will grant a lease to Westbank on the following terms and conditions;
- (a) The lease will be subject to termination upon the completion of the Land Exchange;
  - (b) The lease will have a term of S16, S17
  - (c) the rent will be \$1.00;
  - (d) no other rents, charges or fees will be payable under the terms of the lease;
  - (e) British Columbia will not have the right to terminate the lease; and
  - (f) Westbank will have unrestricted exclusive use, occupation and possession of the land during the term of the lease.
- 3.8 If taxes are payable by Westbank on the lands leased under sections 3.1(d) or 3.7, Westbank will pay the amount due to the taxing authority and British Columbia will immediately reimburse Westbank the amount paid.
4. Improvements
- 4.1 British Columbia and Westbank agree to the construction of a full interchange at Campbell Road consistent with the Plan attached as Schedule F.
- 4.2 Understanding there is not an obligation on either Party to conclude an agreement, British Columbia and Westbank agree to continue to negotiate in good faith to determine the Improvements, building from the conceptual plan attached as Schedule G, in relation to the following;
- (a) Westside Road interchange improvements;
  - (b)
  - (c)
- S16, S17

A collection of handwritten signatures and initials in black ink, located in the bottom right corner of the page. There are approximately five distinct marks, including what appear to be full names and initials.

- (d) Underpass at Spland Road in conjunction with the Westside Road interchange improvements;
  - (e) Regional road network improvements; and
  - (f) Timing of the Improvements.
- 4.3 In addition to the assembly of Parcels O and portions of N and C, Westbank will, subject to 4.12, be responsible for the assembly of all other reserve land required by British Columbia for highway purposes and public utilities for the Improvements and the identification and acquisition or receipt of suitable Replacement Lands for a Land Exchange involving those reserve lands.
- 4.4 Prior to Westbank acquiring an interest or the right to acquire an interest in reserve land under section 4.3, Westbank and British Columbia will agree on:
- (a) the need for the reserve land in relation to the agreed upon Improvements; and
  - (b) the valuation of the reserve land.
- 4.5 British Columbia and Westbank agree that the Westside Road interchange Improvements will begin in the Fiscal Year 2008-2009 and construction in the Fiscal Year 2009-2010, subject to property assembly and agreement on final design.
- 4.6 British Columbia acknowledges that the construction of the Westside Road interchange Improvements may include the replacement of the existing fire hall, depending on the property assembled and the final design. Westbank confirms the access and functioning of the fire hall will be significant considerations for Westbank in the design of the Westside Road interchange.
- 4.7 S16, S17
- 4.8 Westbank agrees to grant the necessary access and other rights on assembled reserve lands to enable agreed construction to proceed prior to the finalization of a further Land Exchange.
- 4.9 Subject to prior approval by British Columbia, British Columbia will pay Westbank's external costs related to Highway 97 and the Westside Road Interchange Improvements.
- 4.10 Westbank will be responsible for their internal administrative costs related to this Agreement.

A collection of handwritten signatures and initials in black ink, located in the bottom right corner of the page. There are approximately six distinct marks, including what appear to be full signatures and some initials.

- 4.11 British Columbia will be responsible for legal, surveying and related costs associated with improvements to the Highway 97 right of way, including those related to the Westside Road Interchange Improvements.
- 4.12 Understanding there is not an obligation on either Party to conclude an agreement, Westbank and British Columbia will continue to negotiate in good faith and attempt to reach agreement on the Improvements referred to in section 4.2, including what reasonable costs, not otherwise identified under this Agreement, for which British Columbia may reimburse Westbank.

**5. Internal Road Network**

- 5.1 Westbank has the responsibility for the design and development of the internal road network on I.R. 10.

5.2

6.

6.1

S16, S17

6.2

6.3

Handwritten signatures and initials in black ink, located in the bottom right corner of the page. There are several distinct marks, including what appears to be a large signature and several smaller initials or marks.

**7. Willow Spurs**

- 7.1 Subject to the approval of the Department of Fisheries and Oceans, British Columbia will not place Willow Spurs on the north side of the Replacement Bridge's causeway.
- 7.2 If British Columbia does place the Willow Spurs, irrespective of the reason, British Columbia will pay Westbank S16, S17 within 30 days of the commencement of installation.

**8. Cemetery**

- 8.1 British Columbia will reimburse Westbank for invoices submitted, up to a maximum of S16, S17 for improvements to the Cemetery.
- 8.2 British Columbia and Westbank will enter into a protocol for left turn access to the Cemetery for special occasions prior to S16, S17  
S16, S17
- 8.3 After the Improvements have been constructed, British Columbia will transfer to Westbank, concurrent with the Land Exchange, any lands proximate to the Cemetery that it determines are no longer required for highway purposes and public utilities, and support the return of the lands to reserve.

**9.**

9.1

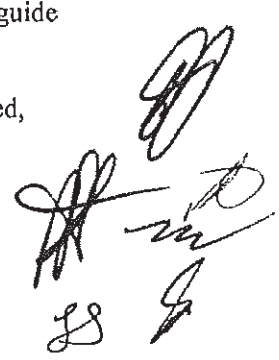
9.2

S16, S17

9.3

**10. Other Issues**

- 10.1 British Columbia, in conjunction with Westbank, will develop and install guide signing for the Replacement Bridge.
- 10.2 British Columbia will provide carrier pipes, suitable for use, where required, within the area shown on Schedule H.

Handwritten signatures and initials, including a large signature at the top, a signature with 'in' written next to it, and initials 'LS' and 'S' at the bottom.



10.3 British Columbia and Westbank will use best efforts to develop a joint system for storm water drainage where improvements are required to the current system resulting from Highway 97 Improvements. Matters to be considered, but not necessarily limited to, are:

- (a) Capacity of current system and current needs as well as foreseeable future capacity needs;
- (b) An operating agreement to make Westbank a responsible party in controlling source drainage (to deal with, among other things, potential liability issues arising from potential pollutants entering the system from Westbank lands); and
- (c) Should there be additional works required due to the requirements of Westbank with respect to the capacity or quality Westbank will bear the incremental costs.

10.4 British Columbia will, at a minimum, maintain the existing level of noise attenuation infrastructure located within the highway right of way adjacent to I.R. 10 by ensuring the existing berm will not be changed in height or extent by the proposed widening of Highway 97. In the event the removal of a minor amount of berm material on the roadway side is required to accommodate the highway widening, British Columbia will provide some form of retaining structure or re-sloping to ensure the general height and extent of the existing noise attenuation structure is not affected.

#### 11. Replacement Bridge and existing Causeway

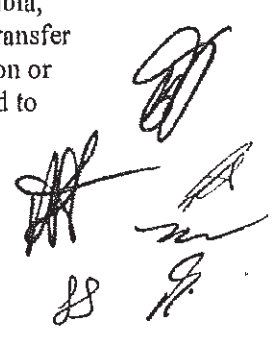
- 11.1 In return for the consideration set out in this Agreement, Westbank agrees to not obstruct, directly or indirectly, British Columbia proceeding with the procurement, construction, maintenance and operation of the Replacement Bridge.
- 11.2 Subject to section 14.6(b), Westbank agrees to relinquish all of its proprietary claims respecting or relating to the Causeway.

#### 12. Old Ferry Wharf Road and Lands

12.1

S16, S17

- 12.2 Subject to Westbank providing an indemnity satisfactory to British Columbia, acting reasonably, in relation to the transfer, British Columbia agrees to transfer to Westbank DL 1209, Crown Land Registry, PIN 3967160 to Westbank on or before September 1, 2005 and support Westbank in having the lands added to reserve.

Handwritten signatures and initials in the bottom right corner of the page, including a large signature and several smaller initials.

- 12.3 Westbank releases and discharges British Columbia from any obligation that may exist in relation to section 14(4) of the 1983 Agreement.

**13. Litigation**

- 13.1 The Parties agree that the Parties will execute a Consent Dismissal Order dismissing the Action No S034350 in the Supreme Court of British Columbia, Vancouver Registry against Her Majesty the Queen in right of British Columbia without costs to any Party within 30 days of the completion of the full interchange at Campbell Road.

**14. Certainty**

- 14.1 Westbank acknowledges and agrees as follows:

(a)

(b)

S16, S17

(c)

- 14.2 Westbank acknowledges that it has entered into this Agreement on its own behalf and on behalf of its members.

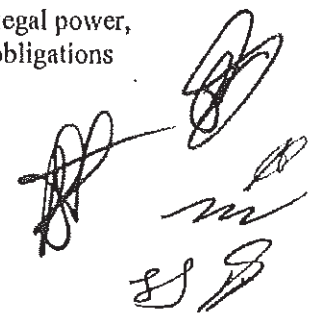
14.3

S16, S17

- 14.4 Without restricting the generality of section 14.3, Westbank, on its own behalf, and on behalf of its members, covenants not to bring or continue any action or other proceeding, at law or in equity, on its own behalf and on behalf of its members, against British Columbia, in relation to the subject matter of the release in section 14.3.
- 14.5 Westbank indemnifies British Columbia, for all claims made against the British Columbia, its employees, servants, agents, successors, and assigns respecting:
- (a) the subject matter of the release in section 14.3; and
  - (b) the covenant by Westbank in section 14.4.
- 14.6 This Agreement does not:
- (a) constitute a treaty or land claims agreement within the meaning of sections 25 or 35 of the *Constitution Act, 1982*;
  - (b) abrogate or derogate from the aboriginal rights and aboriginal title of the Westbank, and in particular Westbank's claim to the Okanagan Lake bed, except as contemplated by this Agreement;
  - (c) create, recognize, define, deny, limit or amend any of the rights and responsibilities of the Parties except as contemplated by this Agreement; or
  - (d) limit any position either Party may take in present or future negotiations or any legal proceedings, except as contemplated by this Agreement.

## 15. Representations and Warranties

- 15.1 Westbank warrants and represents to British Columbia that:
- (a) it has sought and received independent legal advice with respect to the legal nature and effect of this Agreement and that it has the full legal authority to sign this Agreement;
  - (b) it enters into this Agreement for, and on behalf of, itself, its band members, and their respective heirs, executors, administrators, assigns and successors; and
  - (c) it has the legal power, capacity and authority to enter into this Agreement and carry out its obligations set out in this Agreement.
- 15.2 British Columbia represents and warrants to Westbank that it has the legal power, capacity and authority to enter into this Agreement and carry out the obligations hereunder set out in this Agreement.

The block contains several handwritten signatures in black ink. There are approximately five distinct signatures, some appearing to be initials or full names, written in a cursive or stylized manner. They are located in the bottom right corner of the page, overlapping the footer area.

**16. Miscellaneous Issues**

**16.1 Interpretation and Extended Meanings:**

- (a) Nothing in this Agreement fetters or limits the exercise of discretionary authority as set out in applicable legislation.
- (b) In this Agreement, words importing gender shall include all genders, words importing the singular include the plural and vice versa, and words importing persons include individuals, partnerships, associations, trusts, unincorporated organizations, corporations and government authorities.
- (c) The several articles of this Agreement and its Schedules will be read together and interpreted as one Agreement.
- (d) The captions and headings contained in this Agreement are for convenience only and do not define or limit the scope or intent of this Agreement.
- (e) 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 any subsequent enactment of the Province of British Columbia or Canada, as the case may be, of like effect and, unless the context otherwise requires, all statutes referred to in this Agreement are enactments of the Province of British Columbia.
- (f) If any section of this Agreement or any part of a section is found to be illegal or unenforceable, that part or section, as the case may be, will be considered separate and severable and the remaining parts or sections, as the case may be, will not be affected and will be enforceable to the fullest extent permitted by law.

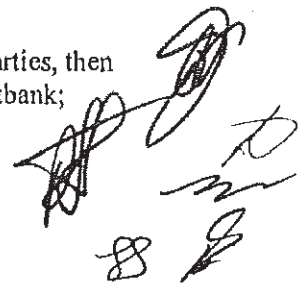
**17. Approval Process**

- 17.1 This Agreement is subject to the approval by the Westbank membership in accordance with the Westbank Constitution.

**18. Dispute Resolution**

- 18.1 The parties agree that any dispute, controversy or claim arising out of or relating to this Agreement or the interpretation of any of its provisions will be resolved in the following manner and in the following order:

- (a) First, by good faith discussions between the representatives of the Parties on a timely basis;
- (b) Failing good faith discussions between representatives of the Parties, then through discussions between the Minister and the Chief of Westbank;

A cluster of handwritten signatures and initials in black ink, located in the bottom right corner of the page. The signatures are stylized and overlapping.

- (c) Failing discussions between the Minister and the Chief of Westbank, then through mediation by a mediator jointly chosen by the Parties, with such costs of mediation to be paid by British Columbia and Westbank, in equal parts, during the course of the mediation.; and
- (d) Failing mediation, then through binding arbitration in accordance with the Arbitration Rules of the BCICAC in effect on the date of such dispute. The Parties further agree that in such cases:
  - (i) the appointing authority will be the BCICAC;
  - (ii) the case will be administered by the BCICAC in accordance with its "Procedures for Cases under the BCICAC Arbitration Rules";
  - (iii) the place of arbitration will be Vancouver, British Columbia;
  - (iv) the number of arbitrators will be one (1);
  - (v) the language used in the proceedings will be English; and
  - (vi) the arbitrator's fees will be paid by British Columbia and Westbank, in equal parts, during the course of the arbitration. The arbitrator's fees will, unless otherwise determined by the arbitrator, be borne equally by the Parties.

**19. Further Acts**

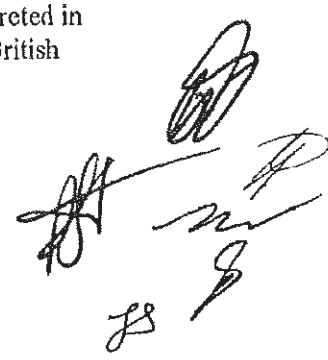
- 19.1 The Parties will perform such further acts and execute and deliver such further documents and instruments as may reasonably be required to give effect to this Agreement.

**20. Appropriations**

- 20.1 Any payment of money by British Columbia under this Agreement is subject to there being an appropriation by the Legislature of British Columbia for the payment for the fiscal year in which the payment becomes due.
- 20.2 British Columbia confirms that an appropriation by the Legislature for British Columbia has been made for the amounts in section 2, 3, 7 or 8 that may become payable in the 2005-2006 Fiscal Year.

**21. Applicable Laws**

- 21.1 This Agreement is legally binding and will be governed by and interpreted in accordance with the laws of Westbank First Nation, the Province of British Columbia and Canada applicable therein.



**22. Notices**

22.1 Any notices or communications required or permitted to be given pursuant to this Agreement will be in writing and shall be delivered to, or sent by prepaid courier or confirmed facsimile, addressed as follows:

(a) in the case of communication to British Columbia:

Ministry of Transportation

940 Blanshard Street,

Victoria, British Columbia, V8W 3E6

Attention: Assistant Deputy Minister

(b) in the case of communication to Westbank:

Westbank First Nation

301-515 Highway 97 South

Kelowna, British Columbia,

Attention: Chief and Council

or to such other address as either Party may notify the other in accordance with this section, and if so delivered shall be deemed to have been given when delivered, or at the time of confirmation of electronic transmission if sent by facsimile if such day is a business day, otherwise the next business day following, and if mailed shall be deemed to have been given on the seventh business day after the date of mailing.

**23. Amendment**

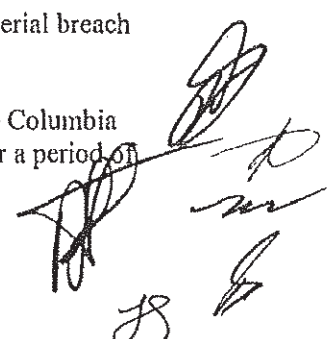
23.1 This Agreement may be amended from time to time by the Parties by an instrument in writing. No term set out in this Agreement may be changed or waived except by written instrument.

**24. Term**

24.1 This Agreement shall come into effect on the date of approval under section 17 of this Agreement.

24.2 Either party may by written notice terminate this Agreement for a material breach by the other party.

24.3 If Westbank has terminated the Agreement under section 24.2, British Columbia shall pay all of Westbank's costs, if any, related to this Agreement, for a period of

Handwritten signatures and initials in black ink, including a large signature at the top right and several initials below it.

one year following the termination, to a maximum of S16, S17 which Westbank agrees is a reasonable estimate of the damages that Westbank will suffer as a result of such breach by and termination by Westbank and is not a penalty.

24.4 If British Columbia has terminated the Agreement under section 24.2, Westbank shall pay all of British Columbia's costs, if any, related to this Agreement, for a period of one year following the termination, to a maximum of S16, S17 which Westbank agrees is a reasonable estimate of the damages that British Columbia will suffer as a result of such breach and termination by British Columbia and is not a penalty.

24.5 Sections 24.3 and 24.4 do not apply to a termination in accordance with section 2.3.

**25. Enurement**

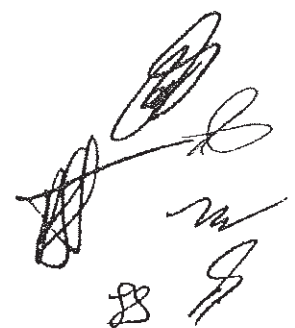
25.1 This Agreement and the promises and the obligations herein set out shall enure to the benefit of and be binding upon British Columbia, Westbank and their respective descendants, and their respective heirs, executors, administrators, successors and assigns.

**26. Waiver**

26.1 No term, condition, covenant or other provision of this Agreement will be considered to have been waived by a party unless such waiver is expressed in writing by the party. The waiver by a party of any breach by the other party of any term, condition, covenant or other 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 term, condition, covenant or other provision and the consent or approval of a party to any act by the other party requiring the consent or approval of the party will not be considered to waive or render unnecessary such consents or approvals to any subsequent same or similar act by the other party.

**27. Time**

27.1 Time is of the essence in relation to this Agreement and all the matters set forth herein, including the respective obligations of the Parties.

Handwritten signatures and initials in black ink, including a large signature at the top, a signature below it, and several initials at the bottom.



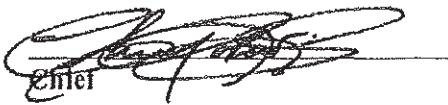
28. Counterparts

28.1 This Agreement may be signed in counterparts.

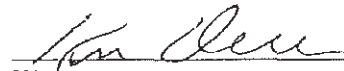
IN WITNESS WHEREOF the Parties have caused this Agreement to be executed by their duly authorized representatives.

Signed in British Columbia as of the date shown on page one of this Agreement.

Signed on behalf of  
WESTBANK FIRST NATION

  
Chief

Dated: APRIL 18/05

  
Witness


Dated: APRIL 18/05

\_\_\_\_\_  
Councillor


\_\_\_\_\_  
Witness

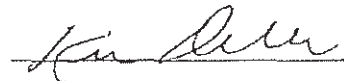
Dated: \_\_\_\_\_

  
Councillor

  
Witness

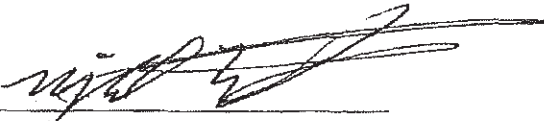
Dated: APRIL 18/05


  
Councillor

  
Witness

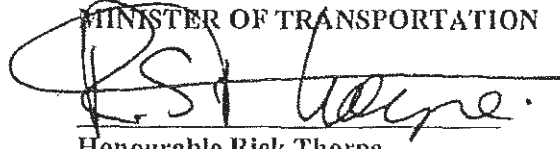
\_\_\_\_\_  
Witness

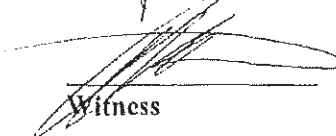
Dated: APRIL 18/05

  
Councillor

  
Witness

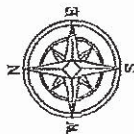
Dated: April 18/05

Signed on behalf of  
MINISTER OF TRANSPORTATION  
  
Honourable Rick Thorpe  
Acting Minister of Transportation

Dated: April 18/05  
  
Witness

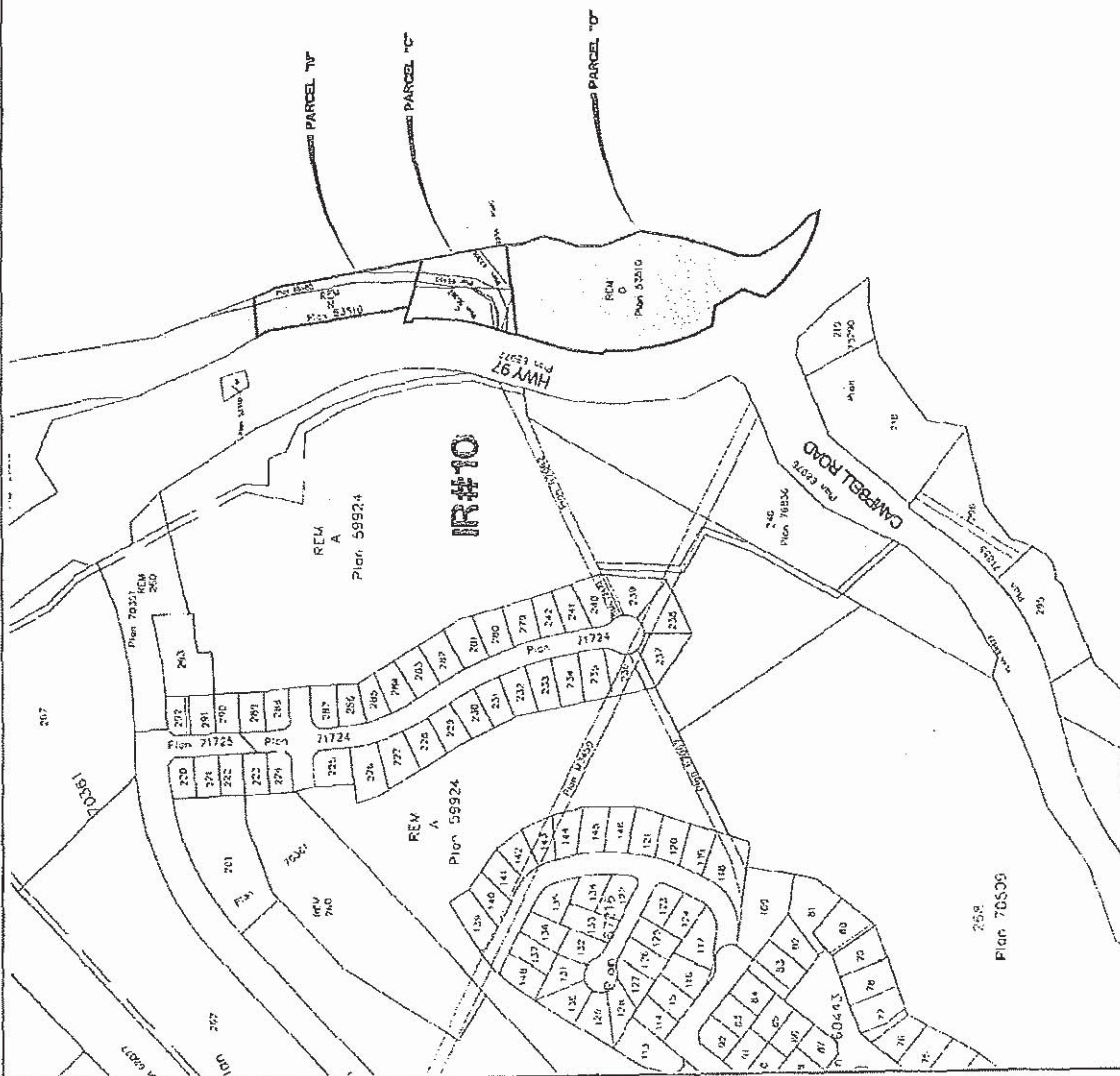


WESTBANK  
FIRST NATION



APRIL 2005

OKANAGAN LAKE



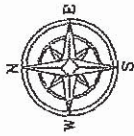
WFN - MOT  
HIGHWAY NO. 97 WEST APPROACH  
AGREEMENT  
APRIL 2005

SCHEDULE A

URBAN SYSTEMS

N.T.S. 2710,000:05 SCHEDULES: APRIL 18, 2005

*Handwritten initials and signature*



**WESTBANK  
FIRST NATION**

APRIL 2005

OXANAGAN LAKE

PARCEL REMINDER  
AREA = 0.8000 / 192 ACRES

○  
丁  
未  
年

REM  
A  
Pion 55924

REM  
A  
Pion 5665 uoid

## SCHEDULE B

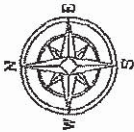
WFN - MoT  
HIGHWAY No. 97 WEST APPROACH  
AGREEMENT  
APRIL 2005

URBANSYSTEMS.

[illegible]

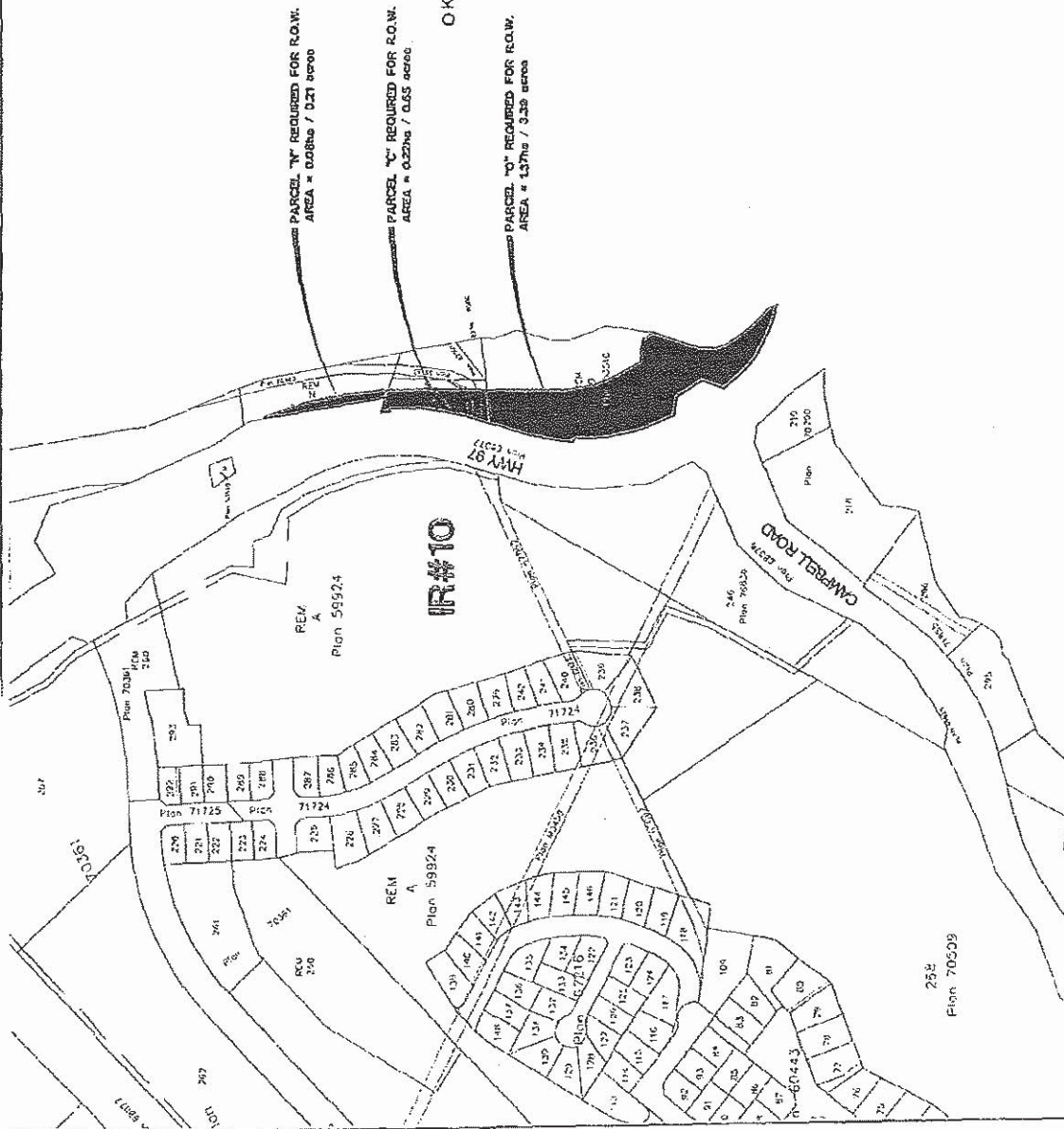


WESTBANK  
FIRST NATION



APRIL 2005

OKANAGAN LAKE



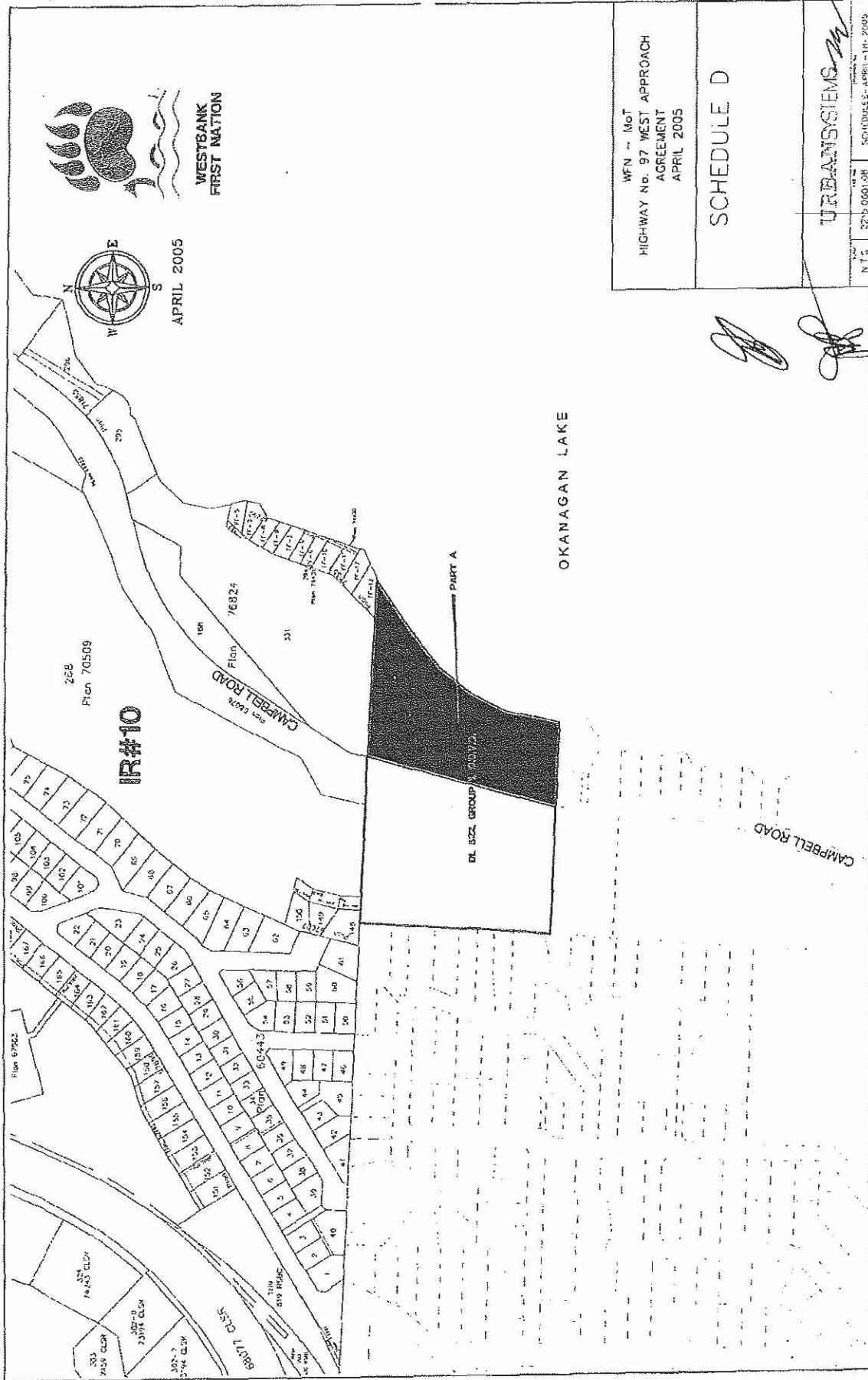
MFN - MoT  
HIGHWAY NO. 97 WEST APPROACH  
AGREEMENT  
APRIL 2005

SCHEDULE C

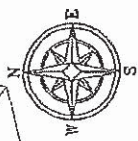
URBAN SYSTEMS.

N.T.S. 2215 000 08 SCHEDULES - APRIL - 12-2005





WESTBANK  
FIRST NATION



APRIL 2005

WFN ~ MoT	URBANSYSTEMS
HIGHWAY No. 97 WEST APPROACH	
AGREEMENT	
APRIL 2005	
SCHEDULE D	
NTS	
2212 000108	
SCHEDULES - APRIL - 1M - 2005	

Pages 364 through 367 redacted for the following reasons:

-----  
S16, S17





Westbank  
First Nation

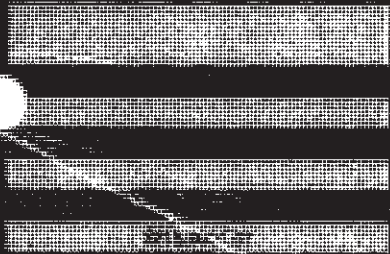


Ministry of  
Transportation

Hwy 97,  
W.R. Bennett Bridge  
Western Approach  
&  
Campbell Road  
Interchange Project

Project  
Agreement

December 2006



**HWY 97, W.R. BENNETT BRIDGE WESTERN APPROACH  
AND CAMPBELL ROAD INTERCHANGE  
PROJECT AGREEMENT  
dated as of December 18, 2006**

**BETWEEN:**

Her Majesty the Queen in Right of the Province of British  
Columbia, as represented by the Minister of Transportation  
("MoT")

**AND:**

Westbank First Nation, of 301-515 Highway 97 South, Kelowna,  
British Columbia, as represented by its duly elected Council  
("WFN")

(together the "Parties")

**WHEREAS:**

- A. MoT and WFN wish to improve the safety and capacity of the Campbell Road intersection at Highway 97;
- B. MoT and WFN have signed the April 2005 Agreement, wherein the Parties agreed to the Construction of a full interchange at Campbell Road and other associated improvements in and around Campbell Road, described as the Project in this Agreement, and have agreed to negotiate the involvement of WFN in the delivery of the Project;
- C. MoT and WFN have agreed to work together to enable the development and delivery of the Project, with WFN responsible for delivering the Project; and
- D. MoT and WFN have agreed to cooperate fully in all aspects of the development and delivery of the Project and to foster a working relationship based on shared sense of purpose, mutual respect and trust between them.

**NOW THEREFORE**, with good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged by each Party, the Parties covenant and agree as follows:

**1. DEFINITIONS**

- 1.1 In this Agreement, and in the Schedules and Appendices attached hereto unless otherwise provided, the following terms and expressions have the following meanings:
  - (a) "Actual Final Completion Date" means "Actual Final Completion Date" as defined in the Design/Build Agreement, but does not include completion of the Interconnection Work;

- (b) **"Actual Substantial Completion Date"** means "Actual Substantial Completion Date" as defined in the Design/Build Agreement;
- (c) **"Agreement"** means this Agreement and any and all recitals, schedules, appendices, amendments or extensions negotiated and agreed upon in furtherance of this Agreement;
- (d) **"April 2005 Agreement"** means the April 18, 2005 agreement signed between WFN and MoT, a copy of which is attached at Schedule A;
- (e) **"Assignment and Assumption"** means the assignment and assumption of the Design/Build Agreement from WFN to MoT as set out in Sections 8.18 inclusive;
- (f) **"Award Amount"** means the fixed price for which the Design/Build Agreement is awarded as approved by MoT;
- (g) **"Certificate of Substantial Completion"** means the "Certificate of Substantial Completion" as defined in the Design/Build Agreement;
- (h) **"Certificate of Final Completion"** means the "Certificate of Final Completion" as defined in the Design/Build Agreement;
- (i) **"Change Request"** means a request by either Party to amend the Implementation Plan, the Design/Build Agreement, the design set forth in the USL Report, the Project Budget or the Scope of Work in accordance with Section 8.40;
- (j) **"Communications Strategy"** means the strategy for communications agreed upon by the Parties, and as may be amended by the Parties, as set out in Schedule C;
- (k) **"Completion of the Agreement"** means the date on which the Parties agree that their respective obligations under this Agreement have been fulfilled;
- (l) **"Compliance Reviews"** means the review, evaluation and certification by the Parties' Engineers, including reports, plans, specifications and any other documents related to one or more components of the Project or the Work for compliance with the Design/Build Agreement;
- (m) **"Construction"** means "Construction" as defined in the Design/Build Agreement;
- (n) **"Contaminant"** means "Contaminant" as defined in the Design/Build Agreement;
- (o) **"Contract Price"** means "Contract Price" as defined in the Design/Build Agreement;
- (p) **"Design"** means "Design" as defined in the Design/Build Agreement;
- (q) **"Design and Construction Requirements"** means the "Design and Construction Requirements" as defined in the Design/Build Agreement;



- (r) **"Design/Build Agreement"** means the agreement for the Design and Construction of the Project executed by WFN and the Design-Builder in the form attached hereto as Schedule L and as approved by MoT in writing prior to execution by WFN and Design-Builder;
- (s) **"Design-Builder"** means the contractor engaged to perform the Design and Construction of the Project pursuant to the Design/Build Agreement;
- (t) **"Decision"** means any decision required to be made by WFN or MoT in respect to the Project, including any decision to resolve any Dispute;
- (u) **"Dispute"** means any disagreement or difference of opinion between MoT and WFN regarding the interpretation of, or compliance or non-compliance (including determinations of material breach in Section 17) with, the terms of this Agreement;
- (v) **"Emergency"** means "Emergency" as defined in the Design/Build Agreement;
- (w) **"Event of Default"** means "Event of Default" as defined in the Design/Build Agreement;
- (x) **"Execution Date"** means the date of execution of this Agreement;
- (y) **"Extension of Time"** means "Extension of Time" as defined in the Design/Build Agreement;
- (z) **"Fee for Service"** is the amount of \_\_\_\_\_ inclusive of all disbursements, to be paid to WFN by MoT for performance of its obligations pursuant to this Agreement;
- (aa) **"Final Completion Date"** means "Final Completion Date" as defined in the Design/Build Agreement;
- (bb) **"GAAP"** means generally accepted accounting principles as defined by the Accounting Standards Board of the Canadian Institute of Chartered Accountants in the Handbook of the Canadian Institute of Chartered Accountants as amended from time to time;
- (cc) **"Heritage Object"** means "Heritage Object" as defined in the Design/Build Agreement;
- (dd) **"Implementation Plan"** means the plan for implementation of the Project that conforms with the general headings set out in Schedule D;
- (ee) **"Interconnection Work"** means the transition connection between the Project and the WRBB from approximately station 26+60 to station 27+60 complete with all grading, paving, concrete barrier, signing and centreline marking necessary to complete the work as specified in the design;

- (ff) **"Laws"** means all applicable federal, provincial, regional, municipal or local laws, statutes, ordinances, rules, regulations, by-laws and enforceable orders, decisions or directives including any permits or authorizations required under any of the foregoing;
- (gg) **"Liaison Committee"** means the liaison committee established under Section 8.22;
- (hh) **"Site Licence"** means the licence provided under Section 8.45;
- (ii) **"Monthly Payment Application"** means an application for payment submitted by WFN to MoT in accordance with Section 7.2;
- (jj) **"MoT Engineer"** means the engineer appointed by MoT for the Project;
- (kk) **"MoT Liaison Committee Representative"** means the representative of MoT responsible for monitoring and managing the implementation of the Agreement and who sits on the Liaison Committee for MoT;
- (ll) **"PAB"** means the Public Affairs Bureau of the Government of British Columbia;
- (mm) **"Parties' Engineers"** means the WFN Engineer and the MoT Engineer together;
- (nn) **"Preferred Proponent"** means the "Preferred Proponent" as defined in the RFP;
- (oo) **"Preliminary Project Budget"** means the estimated budget for the Project as set out in Schedule B;
- (pp) **"Project"** means the "Project" as defined in the Design/Build Agreement;
- (qq) **"Project Budget"** means the Award Amount, plus the Fee for Service, plus all Reimbursable Costs and any other amounts as may be expressly agreed in writing by the Parties from time to time.
- (rr) **"Project Manager"** means the project manager as described in Sections 8.27 to 8.29 inclusive;
- (ss) **"Project Schedule"** means the "Time Schedule" as defined in the Design/Build Agreement;
- (tt) **"Protocol Agreements"** means the "Protocol Agreements" as defined in the Design/Build Agreement;
- (uu) **"Quality Management Plan"** means "Quality Management Plan" as defined in the Design/Build Agreement;
- (vv) **"Reference Documents"** means the "Reference Documents" as defined in the Design/Build Agreement;

- (ww) **"Reimbursable Costs"** means the aggregate of the actual costs, accounts receivable and expenditures incurred in relation to the Project, as more particularly described in Schedule N;
- (xx) **"Reimbursable Delay"** means "Reimbursable Delay" as defined in the Design/Build Agreement;
- (yy) **"Relief Event"** means an event or circumstance set out in Section 7.7;
- (zz) **"RFP"** means the Request For Proposals for the Project, including all of its attachments and schedules, attached to this Agreement as Schedule F;
- (aaa) **"Scope of Work"** means "Scope of Work" as defined in the Design/Build Agreement;
- (bbb) **"Section", "Subsection", or "Schedule"** followed by a number or a letter refer to the specified section, subsection or schedule of the Agreement, unless otherwise noted;
- (ccc) **"Site"** means "Site" as defined in the Design/Build Agreement;
- (ddd) **"Site Occupation Date"** means "Site Occupation Date" as defined in the Design/Build Agreement;
- (eee) **"Time Schedule"** means "Time Schedule" as defined in the Design/Build Agreement;
- (fff) **"Traffic Management Plan"** means the "Traffic Management Plan" as defined in the Design/Build Agreement;
- (ggg) **"Unacceptable Work"** means "Unacceptable Work" as defined in the Design/Build Agreement;
- (hhh) **"USL Report"** means the report entitled "Campbell Road Interchange 30% Detailed Design Report" dated September 2006, and addenda thereto, prepared by Urban Systems Ltd. for WFN and MoT;
- (iii) **"Utilities"** means the "Utilities" as defined in the Design/Build Agreement;
- (jjj) **"Variance"** means "Variance" as defined in the Design/Build Agreement;
- (kkk) **"WFN Engineer"** means the engineer appointed by WFN for the Project;
- (lll) **"WFN Liaison Committee Representative"** means the representative of WFN responsible for monitoring and managing the implementation of the Agreement and who sits on the Liaison Committee for WFN;
- (mmm) **"WFN Releasees"** means the releasees in accordance with Section 8.20;

- (nnn) "WFN Site" means the site as shown in Schedule "Q"
- (ooo) "Work" means "Work" as defined in the Design/Build Agreement, and does not include the Interconnection Work;
- (ppp) "Work Order" means a "Work Order" as defined in the Design/Build Agreement; and
- (qqq) "WRBB" means "WRBB" as defined in the Design/Build Agreement.

## 2. SCHEDULES

2.1 The following Schedules are attached to, and form part of, this Agreement:

Schedule A	April 2005 Agreement
Schedule B	Preliminary Project Budget
Schedule C	Communications Strategy
Schedule D	Implementation Plan
Schedule E	Proposed Form of Design/Build Agreement
Schedule F	RFP
Schedule G	Release – April 2005 Agreement
Schedule H	Liaison Committee Terms of Reference
Schedule I	Approval Matrix
Schedule J	Project Manager Terms of Reference
Schedule K	Parties' Engineers Terms of Reference
Schedule L	Form of Amendment Agreement to Attach Executed Design/Build Agreement
Schedule M	Invoicing, Payments and Financial Records
Schedule N	Reimbursable Costs
Schedule O	MoT-WFN Relationship Flow Chart
Schedule P	Intellectual Property Licence
Schedule Q	WFN Site

## 3. REPRESENTATIONS AND WARRANTIES

### *MoT*

3.1 MoT represents and warrants to WFN that the representations and warranties of MoT made in, or pursuant to, this Section will be true and correct in all material respects at the Execution Date:



- (a) this Agreement has been duly authorized, executed and delivered by MoT and constitutes valid and legally binding obligations of MoT enforceable against MoT in accordance with the terms of this Agreement; and
- (b) nothing in this Agreement constitutes an indemnity or guarantee of performance of an obligation as such terms are used in S. 72 of the *Financial Administration Act*, and that this Agreement and all of its provisions are in compliance with all provisions of the *Financial Administration Act*.

3.2 MoT recognizes and agrees that WFN would not have entered into this Agreement, without the representations and warranties set out in Section 3.1, and that WFN is expressly relying on such representations and warranties.

#### **WFN**

3.3 WFN represents and warrants to MoT that the representations and warranties of WFN made in, or pursuant to, this Section will be true and correct in all material respects at the Execution Date:

- (a) WFN is an aboriginal government established under the *Westbank First Nation Self-Government Act*, S.C. 2004, c. 17;
- (b) WFN has all necessary power and capacity to enter into this Agreement and to carry out the transactions contemplated herein and the execution of this Agreement has been duly and validly authorized by all necessary proceedings required under the *Westbank First Nation Self-Government Act*, S.C. 2004, c. 17; and
- (c) the making and performance of this Agreement by WFN has been duly authorized and approved by the duly elected Council of WFN.

3.4 WFN recognizes and agrees that MoT would not have entered into this Agreement, without the representations and warranties set out in Section 3.3, and that MoT is expressly relying on such representations and warranties.

## **4. THE PROJECT**

### ***Scope of Work***

- 4.1 The Scope of Work is set out in Schedule B to the Design/Build Agreement.
- 4.2 The Parties agree that the Design/Build Agreement represents the agreement of the Parties respecting the design and functional objectives of the Project and the Scope of Work.
- 4.3 As between MoT and WFN only, the Parties agree that MoT has prepared and is responsible for sufficiency and accuracy of the Design and Construction Requirements. Each Party agrees to cooperate with the other to ensure the ability to seek compensation for errors or omissions in the Design and Construction Requirements caused by third parties including, after the Assignment and Assumption, the assignment of any such contracts to MoT.

#### *Amendments to Scope of Work*

- 4.4 The Parties agree that it is their mutual desire to complete the Project in a way that provides the best value within the Preliminary Project Budget. The Parties may jointly agree to amend the Scope of Work from time to time, in accordance with Section 8.40.
- 4.5 Either Party may request an amendment to the Implementation Plan, the Design/Build Agreement, the design set forth in the USL Report, the Project Budget or the Scope of Work by making a Change Request to the Liaison Committee, with sufficient detail so as to permit the Liaison Committee to consider the proposed amendment.
- 4.6 Within 5 days, or such longer time as the Parties may agree, after receipt of a Change Request, the Liaison Committee shall meet to determine whether to accept or reject the proposed amendment to the Implementation Plan, the Design/Build Agreement, the design set forth in the USL Report, the Project Budget or the Scope of the Work.
- 4.7 Where the Liaison Committee rejects a proposed amendment to the Implementation Plan, the Design/Build Agreement, the design set forth in the USL Report, the Project Budget or the Scope of Work, the Decision of the Liaison Committee shall be recorded and WFN shall not issue a Work Order pursuant to DB 33 of the Design/Build Agreement.
- 4.8 Where the Liaison Committee approves a proposed amendment to the Implementation Plan, the Design/Build Agreement, the design set forth in the USL Report or the Scope of Work, WFN shall issue a Work Order setting out the proposed amendment in accordance with DB 34 of the Design/Build Agreement, and any Extension of Time and additional compensation that becomes payable to the Design-Builder as a result thereof shall be deemed to be a Relief Event.
- 4.9 Unless otherwise agreed to by the Liaison Committee, additions to the Scope of Work that solely benefit one Party will be paid for by the Party so benefiting.

#### *Project Budget*

- 4.10 The Parties agree that the Preliminary Project Budget is as set forth in the table attached at Schedule B.
- 4.11 WFN will update the Project Budget to include all Reimbursable Costs and an updated forecast of the estimated cost to complete the Work on a monthly basis in accordance with Section 8.15. Any Reimbursable Costs that exceed the Project Budget will not be the responsibility of WFN. If the Reimbursable Costs are forecast to exceed the Project Budget, the Liaison Committee will ask MoT to seek an increase in the Project Budget. If such increase is not, in whole or in part, obtained, the Liaison Committee will determine whether to reduce scope or to take any other action it deems appropriate. In making such determination, the Liaison Committee will have regard to Section 5.1.
- 4.12 The Parties agree that the Project Manager is permitted to authorize specific expenditures in the event of an Emergency or where the amount required is under \$25,000.00 per occurrence. In the event of an Emergency that requires the Project Manager to authorize specific

expenditures, the Project Manager shall provide verbal notice to the Liaison Committee as soon as practicable, and shall provide notice in writing to the Liaison Committee within 24 hours after providing verbal notice to the MoT Representative.

- 4.13 Except in the case of an Emergency, any accessing of the Contingency for greater than \$25,000.00 per occurrence requires the written approval of the Liaison Committee.

#### ***RFP Litigation***

- 4.14 The Parties agree that, subject to Section 4.15, any loss, cost, or expense arising from third party claims occasioned by the RFP and RFP process shall be deemed to be Reimbursable Costs, except to the extent that such claims are caused by the negligence or unlawful act of WFN or its employees.
- 4.15 In the event of any third party claims referred to in Section 4.14, WFN may assume control of the negotiation, settlement or defence of such a claim. MoT shall cooperate in good faith in respect of any such third party claim and may participate in such negotiation, settlement or defence. MoT may, at its own cost, retain counsel to act on its behalf if there is a conflict between the interests or defences of WFN and MoT. This clause will survive after the termination of this Agreement.

#### **5. APRIL 2005 AGREEMENT**

- 5.1 Provided that the Project is designed and constructed in general conformance with the USL Report and unless the Parties agree otherwise, the Parties agree that MoT is released from its obligations set out in Section 9.2 of the April 2005 Agreement as that section relates to the subject matter of this Agreement and as further confirmed in the release attached at Schedule G.

#### **6. FUNDING ARRANGEMENTS**

##### ***Project Contributions***

- 6.1 MoT has established a Preliminary Project Budget of \$23,000,000.00, as detailed in Schedule B.

##### ***Project Procurement Process and Project Budget Process***

- 6.2 If the cost for the Design and Construction of the Project, as detailed in the responses received by WFN pursuant to the RFP, exceed the Preliminary Project Budget, the Parties may negotiate with the Preferred Proponent in accordance with the process prescribed in the RFP in an effort to bring the Award Amount within the Preliminary Project Budget.
- 6.3 If WFN, with the assistance of MoT, cannot successfully conclude negotiations with the Preferred Proponent leading to execution of the Design/Build Agreement, the Parties may, to the extent permitted by the RFP, negotiate, with other ranked Proponents or may terminate the RFP process and consider other options to deliver the Project.

## **7. REIMBURSABLE COSTS AND FEE FOR SERVICE**

### ***Reimbursable Costs and Fee for Service***

- 7.1 MoT shall, in accordance with Schedule M, pay to WFN the aggregate sum of the Reimbursable Costs incurred in respect of the Project plus the Fee for Service in accordance with this Section 7.
- 7.2 In respect of each month:
- (a) WFN will prepare and submit to MoT a payment application setting out the Fee for Service which is due and owing for the applicable month;
  - (b) the Project Manager will prepare and submit to MoT a payment application setting out the Reimbursable Costs, excluding any fees and disbursements payable to the Project Manager, incurred during the applicable month; and
  - (c) the WFN Liaison Committee Representative will prepare and submit to MoT a payment application setting out any fees and disbursements payable to the Project Manager and WFN Liaison Committee costs for the applicable month,
- (collectively, a "Monthly Payment Application").
- 7.3 Each Monthly Payment Application will be dated as of the last day of the month to which it relates.
- 7.4 The Monthly Payment Application submitted in respect of a particular month shall contain the following information:
- (a) a summary of the Reimbursable Costs incurred to the date of the Monthly Payment Application, together with sufficient backup documentation to permit MoT to approve the Monthly Payment Application and a statement bearing the following language: "This statement is delivered to MoT pursuant to an agreement between MoT and WFN which is dated for reference [include date]. I certify that this is a true and correct statement of the Reimbursable Costs which have been incurred during the statement period on account of the Project and are net of all goods and services tax.";
  - (b)

S16, S17

7.5

S16, S17

7.6 Notwithstanding payments made pursuant to Subsection 7.1, WFN is responsible for performance of its obligations in this Agreement and it acknowledges that payment by MoT does not constitute acceptance on the part of MoT of the Design-Builder's Work or WFN's performance of its obligations under this Agreement.

***Relief Events***

7.7 In this Agreement, a Relief Event means any of the following events or circumstances:

- (a) any breach of any provision of this Agreement by MoT;
- (b) any breach of any of the Protocol Agreements by MoT or any of the Utility owners;
- (c) the occurrence of a Reimbursable Delay;
- (d) the issuance of a Work Order;
- (e) any factual inaccuracies in the geotechnical data in the Reference Documents;
- (f) the occurrence of an Event of Default;
- (g) the occurrence of an Emergency;
- (h) any delay in review or processing of an application for permits, licences approvals or certificates which are not the responsibility of WFN;
- (i) the discovery of Contaminants at the Site, beyond those previously disclosed or designated in the Design/Build Agreement;
- (j) the discovery of any Heritage Object on or under the Site, beyond those previously disclosed or designated in the Design/Build Agreement, but excluding the impact of any work to comply with WFN policies or laws to the extent that such policies or laws exceed both the requirements set forth in the *Heritage Conservation Act*, R.S.B.C. 1996, c. 187 and the requirements set out in WFN's Interim Heritage Policy attached to the Design/Build Agreement as Schedule I; and

- (k) any other event or circumstance which would entitle the Design-Builder to claim additional compensation, an Extension of Time or damages from WFN,

but excluding any event, to the extent caused by the negligence or unlawful act of WFN.

7.8 Upon the occurrence of a Relief Event:

- (a) WFN shall be entitled to include the financial consequences of the Relief Event in the applicable Monthly Payment Application(s), which consequences are any increase in the Contract Price and any direct losses, costs, damages and expenses claimed by the Design-Builder or any other person; and
- (b) the Time Schedule, Substantial Completion Date, Final Completion Date and milestones in the Design/Build Agreement shall be adjusted commensurately to the period during which the progress of the Work was impacted by the Relief Event, provided that the Design-Builder materially complies with DB 42 ("Extension of Time") of the Design/Build Agreement.

## 8. PROJECT DELIVERY AND GOVERNANCE ARRANGEMENTS

### *WFN as Deliveror of the Project*

- 8.1 Except to the extent that WFN's ability to manage and deliver the Project is constrained by a Decision, review, approval or direction, or a lack thereof as the case may be, from the Liaison Committee or MoT, WFN will, and is solely responsible to, manage and deliver the Project in accordance with this Agreement, the Design/Build Agreement and the Implementation Plan.
- 8.2 The Parties agree to cooperate fully in all aspects of the management and delivery of the Project.
- 8.3 The relationship between the Parties respecting the Project is attached as Schedule O.
- 8.4 Except to the extent that WFN's ability to implement, manage or enforce the Design/Build Agreement or any other contracts, including any terms or conditions related to damages or injury caused by the acts and omissions of the Design-Builder or other contractors retained by WFN and their employees, agents and representatives, is constrained by the need to obtain a Decision, review, approval or direction from the Liaison Committee or MoT, WFN is solely responsible for implementing, managing and enforcing the Design/Build Agreement and such other contracts. No agreement or contract entered into by WFN will impose any obligation or liability whatsoever directly between MoT any contractor or the Design-Builder or any of their employees, agents or representatives, except as expressly set out in the Design/Build Agreement or otherwise expressly agreed to in writing by MoT.
- 8.5 Nothing in this Agreement will create or constitute any contractual relationship, partnership, joint venture, joint enterprise, principal-agency or employer-employee relationship between MoT and the Design-Builder or any other contractor of WFN.



### ***Design/Build Agreement***

- 8.6 WFN, in conjunction with MoT, will within the process prescribed by the RFP, negotiate the Design/Build Agreement with the Preferred Proponent using the form of Design/Build Agreement attached as Schedule E to this Agreement as the basis for such negotiations.
- 8.7 Prior to execution of the negotiated form of Design/Build Agreement by WFN and the Preferred Proponent, the Parties will forward a copy of the proposed form of Design/Build Agreement to MoT and to WFN Council for review and approval of any amendments to the proposed form of Design/Build Agreement attached as Schedule E. If approved, WFN and the Preferred Proponent will execute the negotiated form of Design/Build Agreement. For greater certainty, the Parties agree that any amendments to the proposed form of Design/Build Agreement attached as Schedule E must be acceptable in their entirety to MoT and WFN Council and the Parties further agree that WFN will not execute the Design/Build Agreement unless MoT and WFN Council have expressly approved in writing any amendments to the proposed form of Design/Build Agreement attached as Schedule E.
- 8.8 The Parties agree that upon execution of the Design/Build Agreement, it shall be attached hereto as Schedule L and shall thereafter form part of this Agreement. The Parties further agree to amend this Agreement by means of the form of amendment agreement attached to this Agreement at Schedule L.
- 8.9 If and whenever WFN breaches or fails to observe or perform any of its material covenants or agreements contained in the Design/Build Agreement on the part of WFN to be observed or performed, whether of a positive or negative nature, then and in every such case, WFN shall be in default under this Agreement.

### ***Responsibilities of WFN***

- 8.10 WFN will be responsible for the performance of all of its obligations pursuant to this Agreement, and the Design/Build Agreement.
- 8.11 WFN shall deliver to the Liaison Committee in a timely manner, copies of all pertinent information received from the Design-Builder with respect to the Project.
- 8.12 WFN shall provide the Liaison Committee with timely access to all Project records.
- 8.13 WFN shall develop, in consultation with the Liaison Committee, a financial audit process that will involve random detailed audits of a representative sample of the financial and Project management records of the Design-Builder.
- 8.14 WFN shall take all reasonable steps to cause the Design-Builder to perform and fulfill all of its obligations pursuant to the Design/Build Agreement, including but not limited to the obligation to:
- (a) implement the Quality Management Plan and a safety audit plan for the Project;



- (b) obtain all required consents, permits, licences, certificates, approvals and environmental permits of any government authority having jurisdiction that are necessary for the completion of the Project;
  - (c) not commence Construction of any portion of the Project until all required consents, permits, licences, certificates, approvals and environmental permits of any government authority having jurisdiction that are necessary for the completion of the Project have been obtained;
  - (d) maintain and comply with, throughout the Project, all insurance and bonds in forms and amounts required by the Design/Build Agreement; and
  - (e) provide the Liaison Committee with written notice at least 30 days prior to the Actual Substantial Completion Date.
- 8.15 WFN will submit to the Liaison Committee a monthly progress report together with each Monthly Payment Application. Each monthly progress report shall include:
- (a) a statement of the progress of the Design and Construction of the Project to date;
  - (b) a statement setting out the Reimbursable Costs incurred to end of the immediately preceding month together with the updated Project Budget and a forecast of the estimated cost to complete the Work;
  - (c) a summary log of all material communications to date;
  - (d) a summary of all regulatory and other approvals received to date;
  - (e) a summary log of quality management issues encountered to date, including but not limited to audits and Compliance Reviews conducted;
  - (f) a summary log of risk management issues encountered to date; and
  - (g) such other information as may be reasonably requested by the Liaison Committee.

***WFN Obligation to Preserve Bonds***

- 8.16 WFN shall take all reasonable steps so as to avoid prejudicing the surety of the performance bond and labour and material payment bond issued in respect of the Project and the Design/Build Agreement in any way which may result in obviating such performance bond or labour and material payment bond. WFN shall thereby, without limitation:
- (a) perform all of its material obligations set out in the Design/Build Agreement;
  - (b) notify the surety and the Liaison Committee of any material Design-Builder default under the Design/Build Agreement, promptly upon becoming aware of such default; and

- (c) promptly notify and obtain the consent of the surety of any proposed material change to the Design/Build Agreement that may prejudice the surety, including without limitation; making payments contrary to DB 51 ("Payment") of the Design/Build Agreement.

#### ***MoT Obligation to Preserve Bonds***

8.17 MoT shall take all reasonable steps so as to avoid prejudicing the surety of the performance bond and labour and material payment bond issued in respect of the Project and the Design/Build Agreement in any way which may result in obviating such performance bond or labour and material payment bond. MoT shall thereby, without limitation:

- (a) perform all of its material obligations set out in this Agreement;
- (b) notify the surety and the Liaison Committee of any material Design-Builder default under the Design/Build Agreement, promptly upon becoming aware of such default; and
- (c) promptly notify and obtain the consent of the surety of any proposed material change to the Design/Build Agreement that may prejudice the surety, including without limitation:
  - (i) making payments contrary to DB 51 ("Payment") of the Design/Build Agreement, and
  - (ii) varying the Final Completion Date without the pre-approval of the surety.

#### ***Assignment of Rights and Obligations***

8.18 Upon the earlier of termination of this Agreement in accordance with Section 17.3 or the issuance of the Certificate of Final Completion, WFN shall be deemed to have automatically, and without further action, transferred and assigned the following to MoT, and MoT shall be deemed to have accepted such transfer and assignment:

- (a) the Design/Build Agreement, including but not limited to all rights and entitlements to the benefit of all of the Design-Builder's covenants, obligations and liabilities to WFN and all of WFN's obligations and liabilities to the Design-Builder;
- (b) all rights and obligations and other duties of WFN with respect to the Project;
- (c) all WFN's interest in any warranties provided by the Design-Builder respecting the Project; and
- (d) all Work constructed and all ownership rights, including copyright and the moral rights in the Design-Builder's findings, data, specifications, drawings, working papers, reports, documents, and other materials, whether complete or otherwise, that have been produced, received or acquired by the Design-Builder as a result of the Design/Build Agreement,

(collectively, the "Assignment and Assumption").

8.19 Concurrent with the Assignment and Assumption, WFN shall release and pay to MoT the holdback held pursuant to DB 7 of the Design/Build Agreement. MoT acknowledges that it will become a trustee of the holdback upon receipt.

8.20 With effect from the date of the Assignment and Assumption, MoT hereby remises, releases and forever discharges WFN and its Chief and Council, servants, agents, employees (including contract employees), advisors, consultants, insurers, sureties, predecessors, successors, assigns, representatives and the members of WFN, but excluding the Design-Builder and its subcontractors and suppliers and the Project Manager (collectively, the "WFN Releasees"), and each of them, from any and all actions, manner of actions, causes of action, claims, suits, debts, demands, liens, damages, interests, costs, grievances, obligations or liabilities of every nature and kind whatsoever, and howsoever arising, whether known or unknown, whether at law, in equity or by statute, or otherwise, which MoT ever had, then has, or may in the future have against the WFN Releasees, or any of them, as a result of, arising out of, or in any way related to any cause, matter or thing, whatsoever, arising directly or indirectly from this Agreement or the Project, except:

- (a) Surviving Claims; and
- (b) any claim for funds which were paid to WFN by MoT on account of the Contract Price, but which were not remitted to the Design-Builder pursuant to the Design/Build Agreement.

Surviving Claims are claims which:

- (a) MoT:
  - (i) did not know, or could not reasonably have known, about prior to the Assignment and Assumption; or
  - (ii) provided written notice to WFN of prior to the Assignment and Assumption;
- (b) were caused by the negligence or unlawful act of WFN or its employees, but excluding such claims to the extent that they were caused by the negligence or unlawful act of WFN's contractors and consultants (including without limitation, the Design-Builder and the Project Manager); and
- (c) MoT provides notice to WFN of within 2 years after the Assignment and Assumption.

#### ***Liquidated Damages***

8.21 To the extent that WFN receives payment of any liquidated damages from the Design-Builder pursuant to DB 43 of the Design/Build Agreement, such liquidated damages shall be deemed to be a credit against the Reimbursable Costs.

### *Liaison Committee*

- 8.22 This Agreement establishes the Liaison Committee which will serve as the Decision-making body for the Parties in respect of all matters requiring Decisions, reviews, approvals or direction of the Parties in respect of the subject matter of this Agreement.
- 8.23 The Liaison Committee will act in accordance with the Liaison Committee's Terms of Reference attached as Schedule H.
- 8.24 To the extent that they may materially and substantially impact the Scope of Work, the Time Schedule or the Reimbursable Costs, the following matters may only be implemented following approval of the Liaison Committee:
- (a) amendments to the Implementation Plan;
  - (b) amendments to the Design/Build Agreement;
  - (c) changes in the Work or the Scope of Work;
  - (d) Variances to the Design and Construction Requirements;
  - (e) recommendations by the Parties' Engineers for technical compliance;
  - (f) recommendations by the Parties' Engineers at the appropriate stages of the Design-Builder's preliminary design and final designs;
  - (g) amendments to the Traffic Management Plan;
  - (h) the Quality Management Plan;
  - (i) subject to the limit of \$25,000.00 as set out in the Agreement, and except in the case of an Emergency, expenditure of the Contingency;
  - (j) amendments to the Communications Strategy;
  - (k) termination of the Design/Build Agreement; and
  - (l) Design review pursuant to DB 21 of the Design/Build Agreement; and
  - (m) any other matters to which the Liaison Committee agrees to provide a Decision or Direction.

### *Liaison Committee Unanimity*

- 8.25 The Liaison Committee must be unanimous when making any Decision or providing any direction.

- 8.26 Any Decision that the Liaison Committee cannot resolve through amicable negotiation or any failure to achieve unanimity will be resolved in accordance with Section 14 – Decision Making Process.

#### ***Project Manager***

- 8.27 The Project Manager shall be appointed by WFN within 10 days after advertising the Project on BCBid. WFN shall provide notice to MoT of the appointment of the Project Manager promptly after having made the appointment.
- 8.28 WFN shall cause the Project Manager to act in accordance with the terms of reference set out in Schedule J.
- 8.29 Any change to the Project Manager will be made by WFN only upon prior written agreement of the Liaison Committee. The Liaison Committee shall not unreasonably withhold or delay its agreement to a change of the Project Manager proposed by WFN.

#### ***WFN Engineer and MoT Engineer***

- 8.30 WFN and MoT will each procure the services of a professional engineer currently licenced to practice within the Province of British Columbia.
- 8.31 WFN shall cause the WFN Engineer and MoT shall cause the MoT Engineer to assist the Project Manager with the following:
- (a) development and implementation of a quality audit plan for the Project, including design reviews for technical compliance at all stages of Design and Construction of the Project;
  - (b) advice and assistance, as and when required; and
  - (c) other services as are determined to be appropriate by the Project Manager, in consultation with WFN and MoT.
- 8.32 WFN shall cause the WFN Engineer and MoT shall cause the MoT Engineer to provide their respective advice and assistance to the Project Manager and as requested by the Liaison Committee.
- 8.33 The terms of reference for the WFN Engineer and the MoT Engineer and how they will work together cooperatively is set out in Schedule K.

#### ***Implementation Plan***

- 8.34 WFN will prepare the Implementation Plan, generally in the form attached as Schedule D as soon as reasonably possible following the execution of the Design/Build Agreement, to the satisfaction of, and for the approval by, the Liaison Committee.

### ***Changes to Design and Construction Requirements***

- 8.35 WFN shall cause the Project Manager to submit any request for a Variance to the Design and Construction Requirements to the Liaison Committee for consideration and recommendation to MoT. Any request for a Variance to the Design and Construction Requirements shall be accompanied by a detailed description of the proposed Variance, the reasons for the proposed Variance and an estimate of the cost and schedule impact of the proposed Variance.
- 8.36 Upon receipt of a request for a Variance to the Design and Construction Requirements, the Liaison Committee shall consider the request and within 5 days after receipt of the request, shall either reject the proposed Variance or recommend the proposed Variance to MoT and MoT shall consider the request and, within 30 days after receipt of the request, may approve the proposed Variance at its sole discretion and on such conditions as it deems appropriate and if so approved WFN shall direct the Project Manager to issue a Work Order in accordance with DB 34.
- 8.37 Notwithstanding Section 8.35 and 8.36, the Parties acknowledge and agree that a proposed change to the design set forth in the USL Report shall not be considered a Variance to the Design and Construction Requirements. Any proposed change to the design set forth in the USL Report shall be managed in accordance with Section 8.40 through 8.43, below.

### ***Laws***

- 8.38 MoT and WFN shall comply with all applicable Laws.

### ***Permits and Approvals***

- 8.39 Both Parties will make reasonable efforts to ensure that the review and processing of applications for permits, licences, approvals, and certificates, which must be obtained from each of them, are reviewed and processed in a timely manner.

### ***Project Change Management***

- 8.40 WFN shall cause the Project Manager to submit any proposed amendments (a "Change Request") to the Implementation Plan, the Design/Build Agreement, the design set forth in the USL Report, the Project Budget or changes in the Scope of Work to the Liaison Committee for consideration.
- 8.41 Where a proposed amendment to the Implementation Plan, the Design/Build Agreement, the design set forth in the USL Report, the Project Budget or changes in the Scope of Work is submitted to the Liaison Committee, the Project Manager shall cause the person initiating the proposal to include with the proposal a description of the proposed change, the reasons for the proposed change, the steps that any person will have to take to mitigate any impacts of the proposed change, the options available to mitigate such impacts and the estimated cost of the proposed change.
- 8.42 Within 5 days after receipt of a proposed amendment, or change in accordance with Section 8.40, the Liaison Committee shall either approve or reject the proposal. Where the Liaison Committee approves a proposal submitted pursuant to Section 8.40, it shall confirm its



approval along with any conditions imposed by the Liaison Committee in writing and WFN shall direct the Project Manager to issue a Work Order in accordance with DB 34.

- 8.43 If within 5 days after receipt of a proposed amendment or change, in accordance with Section 8.40, the Liaison Committee does not provide a written approval with respect to the proposed amendment, change or Variance, it shall be deemed to have been rejected by the Liaison Committee.

#### ***Changes or Errors in Design***

- 8.44 MoT and WFN will provide notice to the Liaison Committee immediately upon becoming aware of any error, omission, deficiency or non-conformance in the Design, Construction or the Work.

#### ***Site Licence***

- 8.45 MoT grants WFN, together with machinery, vehicles, supplies, and equipment, a non-exclusive right to enter upon and occupy the WFN Site and to conduct the Work (the "Site Licence") on the following terms and conditions:
- (a) the Site Licence commences on the date that the Design-Builder provides evidence of the "Wrap up" Commercial General Liability policy in accordance with Section 3.1 of Schedule E2 to the Design/Build Agreement and terminates on Assignment and Assumption;
  - (b) WFN is entitled to sub-licence the Site Licence on the same terms and conditions as the Site Licence.

### **9. INVOICING, PAYMENTS AND FINANCIAL RECORDS**

- 9.1 WFN will establish and maintain invoicing, payments and financial records in accordance with Schedule M.

### **10. COMMUNICATIONS STRATEGY**

- 10.1 The Parties agree to undertake joint public communications activities related to this Agreement and the Project in accordance with the Communications Strategy attached as Schedule C.
- 10.2 The Parties agree that the Communications Strategy is intended to enhance opportunities for open, transparent, effective and pro-active communications with the public through appropriate, timely and consistent public information activities that recognize the contributions of MoT and WFN.
- 10.3 The Parties agree that all public communication and information material in relation to the Project shall comply with the provisions of the Communications Strategy.



- 10.4 The WFN Liaison Committee Representative will prepare a written monthly report to the Liaison Committee respecting all communications activities relating to the Project for the previous month and outlining communications activities planned for the upcoming month.

## **11. PROJECT SCHEDULE AND COMPLETION**

### ***Actual Final Completion Date and Actual Substantial Completion Date***

- 11.1 Subject to any Extensions of Time permitted by virtue of the occurrence of one or more Relief Events, WFN shall use reasonable best efforts to cause the Design-Builder to achieve the Actual Substantial Completion Date by no later than May 31, 2008.
- 11.2 Subject to any Extensions of Time permitted by virtue of the occurrence of one or more Relief Events, WFN shall use reasonable best efforts to cause the Design-Builder to achieve a Final Completion Date that is no later than July 31, 2008.
- 11.3 WFN shall use reasonable best efforts to cause the Design-Builder to do the following, on or before the Actual Final Completion Date:
- (a) provide all plans, including all required documentation referred to in DB 37 of the Design/Build Agreement to MoT and in a format acceptable to MoT;
  - (b) rectify any defects, deficiencies and Unacceptable Work in the Project (except for warranty obligations under the Design/Build Agreement);
  - (c) assign all warranties from WFN to MoT; and
  - (d) cause the Project to be available for safe, unobstructed and uninterrupted use by the public,

all in accordance with the terms of the Design/Build Agreement.

### ***Project Acceptance Process***

- 11.4 Upon the issuance of the Certificate of Final Completion, WFN shall be deemed to have automatically, and without further action, transferred and assigned the following to MoT, and MoT shall be deemed to have accepted such transfer and assignment:
- (a) the Design/Build Agreement, including but not limited to all rights and entitlements to the benefit of all of the Design-Builder's covenants, obligations and liabilities to WFN and all of WFN's obligations and liabilities to the Design-Builder;
  - (b) all rights and obligations and other duties of WFN with respect to the Project;
  - (c) all WFN's interest in any warranties provided by the Design-Builder respecting the Project; and
  - (d) all Work constructed and all ownership rights, including copyright and the moral rights in the Design-Builder's findings, data, specifications, drawings, working

papers, reports, documents, and other materials, whether complete or otherwise, that have been produced, received or acquired by the Design-Builder as a result of the Design/Build Agreement.

- 11.5 Subject to the exceptions set out in Section 8.20, upon the issuance of the Certificate of Final Completion or the earlier termination of this Agreement pursuant to Section 17.3, MoT will be responsible for all aspects of the Project, including any defects in the Design or Construction, whether latent or patent, as well as the operation and maintenance of the Project.
- 11.6 Notwithstanding the issuance of the Certificate of Final Completion pursuant to Subsection 11.4, WFN is responsible for performance of its obligations in this Agreement and it acknowledges that issuance of the Certificate of Final Completion does not constitute acceptance on the part of MoT of the Design-Builder's Work or WFN's performance of its obligations under this Agreement.
- 11.7 Effective upon the issuance of the Certificate of Final Completion, MoT grants to WFN a licence to use the information set out in Section 11.4(d) in accordance with the form attached as Schedule P.

## **12. CONFIDENTIALITY**

### ***Confidentiality and Release of Information***

- 12.1 All of the information, materials and documentation relating to the Project is and will be confidential among the Parties. A Party will only disclose information relating to the Project or to this Agreement with the prior written consent of the other Party except for disclosure that is required for purposes of the Project or as required by Law.

### ***Freedom of Information***

- 12.2 Any documentation relating to the Project that is in the custody or control of MoT is subject to the *Freedom of Information and Protection of Privacy Act* (B.C.). MoT will provide WFN with notice pursuant to the *Freedom of Information and Protection of Privacy Act* (B.C.) prior to any proposed release of any such documentation.

## **13. INDEMNITY**

- 13.1 Subject to Section 8.20, WFN indemnifies and saves harmless MoT and its representatives, employees, agents and contractors from and against all claims, liabilities and demands of any kind arising out of or attributable to WFN's failure to perform under this Agreement, negligence or unlawful act.
- 13.2 Notwithstanding anything else contained in this Agreement, WFN is not responsible for claims, liabilities and demands with respect to any injury to any persons (including, without limitation, death), damage to or loss or destruction of property, economic loss or infringement of rights caused by or arising directly or indirectly from:

- (a) MoT's work on the geotechnical, archaeological, environmental and fisheries issues relating to work undertaken in advance of the execution of the Design/Build Agreement;
- (b) the Federal Department of Fisheries and Oceans' approval of the Work to be done within Okanagan Lake;
- (c) the USL Report;
- (d) the relocation of the existing Terasen high pressure gas line;
- (e) the pre-loading of that portion of the embankment fill as has been performed by MoT;
- (f) the stripping and pre-grading of such sections of the Site as has been performed by MoT;
- (g) the sufficiency or accuracy of the Design and Construction Requirements;
- (h) Golder Associates geotechnical data; and
- (i) Golder Associates archaeological report.

#### **14. DECISION MAKING PROCESS**

##### ***Efforts to Make Decisions***

- 14.1 The Parties, including their representatives on the Liaison Committee, as the case may be, agree that they will make *bona fide* efforts to reach any Decision that they are required to make under this Agreement through amicable discussion and negotiation and will use reasonable efforts to make a Decision as efficiently, quickly and cost effectively as practical by following the decision making process in this Section 14.

##### ***Dispute Resolution***

- 14.2 If any Decision is not made by the Liaison Committee within five Business Days of it being referred to the Liaison Committee, then either of the MoT Liaison Committee Representative or the WFN Liaison Committee Representative may refer the matter to the Deputy Minister of Transportation and the Chief of the Westbank First Nation who will then jointly endeavour to resolve any Dispute and make a Decision. The Deputy Minister, MoT and the Chief, WFN may choose mediation as a means to settle any Dispute.

##### ***Arbitration***

- 14.3 If any Dispute, which does not relate to the same or substantially the same subject matter as a dispute between WFN and the Design-Builder under the Design/Build Agreement, is not resolved by the Deputy Minister of Transportation and the Chief of the Westbank First Nation within ten Business Days of the Dispute being referred to them, or such longer time as they may agree, then, subject to Section 14.4, either Party may refer the Dispute to

arbitration in which case the Dispute will be finally determined by arbitration in Kelowna, British Columbia under the British Columbia *Commercial Arbitration Act*.

- 14.4 Notwithstanding any other provision of this Agreement, the Parties agree that if the subject matter of any Dispute relates to the same or substantially the same subject matter as a dispute between WFN and the Design-Builder under the Design/Build Agreement, then the Parties agree that, to the extent that the Dispute is dealt with pursuant to the Design/Build Agreement, they will participate in and be bound by any decision reached pursuant to such dispute resolution procedure. Subject to Section 14.5, the Parties agree that, to the extent that a Dispute is being pursued under the Design/Build Agreement, they may not pursue their Dispute under this Agreement or in any other forum, until such time as the dispute under the Design/Build Agreement is resolved.
- 14.5 The Parties agree that nothing contained in this Agreement will constitute a precondition so as to preclude either Party from commencing legal proceedings in the Courts of British Columbia where such proceedings are necessary to preserve any applicable limitation period.
- 14.6 The Parties agree that Design and Construction of the Work will continue while a Dispute is ongoing to the extent reasonably possible.
- 14.7 In the event of any Disputes (including those in respect of the Design/Build Agreement) referred to in this section that occur prior to the Assignment and Assumption, WFN may assume control of the negotiation, settlement or defence of such Dispute. MoT shall cooperate in good faith in respect of any such Dispute and may participate in such negotiation, settlement or defence. MoT may, at its own cost, retain counsel to act on its behalf if there is a conflict between the interests or defences of WFN and MoT.
- 14.8 In the event of any Disputes (including those in respect of the Design/Build Agreement) referred to in this section that occur after the Assignment and Assumption, MoT may assume control of the negotiation, settlement or defence of such Dispute. WFN shall cooperate in good faith in respect of any such Dispute and may participate in such negotiation, settlement or defence. WFN may retain counsel to act on its behalf if there is a conflict between the interests or defences of WFN and MoT.

## **15. APPROPRIATION**

- 15.1 MoT's funding in this Agreement for the Project is conditional upon an appropriation, as defined by, and pursuant to, the *Financial Administration Act*.

## **16. NOTICE**

- 16.1 The following person from each Party will be the primary contact for each Party in respect of notifications required pursuant to this Agreement:

**For MoT:**

Mr. Dirk Nyland  
Chief Engineer

B.C. Ministry of Transportation  
940 Blanchard Street  
Victoria, British Columbia  
V8W 9T5

Phone: (250) 387-2310  
Facsimile: (250) 387-7735

**For WFN:**

Westbank First Nation  
c/o Urban Systems  
No. 500 - 1708 Dolphin Avenue  
Kelowna, British Columbia  
V1Y 9S4  
Attention: Mr. Dick Fletcher

Phone: (250) 762-2517  
Facsimile: (250) 763-5266

## **17. TERMINATION**

### ***Termination***

- 17.1 Upon the occurrence of a material breach of any of its obligations, whether positive or negative in nature, pursuant to this Agreement, MoT may notify WFN that it is in default of its obligations and instruct WFN to correct the material breach within 10 Business Days following receipt of such notice.
- 17.2 If the material breach referred to in Section 17.1 cannot be corrected in the 10 Business Days specified, WFN shall be in compliance with MoT's instructions if WFN:
- (a) commences the correction of the material default within the specified time;
  - (b) provides MoT with a reasonable schedule for such correction; and
  - (c) corrects the material default in accordance with such schedule.
- 17.3 If WFN fails to correct the material default in the time specified or subsequently agreed upon, without prejudice to MoT's remedies herein or at law, MoT may terminate this Agreement.

## **18. MISCELLANEOUS**

### ***Gender and Number***

- 18.4 In this Agreement, "person" includes a corporation, firm, association and any other legal entity and words in one gender include all genders, and words in singular include the plural and vice versa.

### *Headings*

- 18.5 In this Agreement, using separate parts and inserting headings are for convenience of reference only, and will not affect the interpretation of this Agreement.

### *Prior Agreements*

- 18.6 This Agreement constitutes the entire agreement between the Parties in respect of the subject matter of this Agreement and supersedes all other understandings, representations or agreements, oral or otherwise, as between the Parties with respect to the subject matter of this Agreement existing prior to the execution of this Agreement.

### *Assignment*

- 18.7 MoT may, in its sole discretion, assign this Agreement or any right or obligation under this Agreement to any corporation or agency of the Province of British Columbia and, with the prior written consent of WFN, to any other person provide that such corporation or agency of the Province of British Columbia or other person agrees in writing to be bound by the terms of this Agreement and perform all obligations of MoT under this Agreement prior to such assignment taking place. MoT will promptly notify WFN of any such assignment and provide a copy of the written agreement of the assignee confirming that it is bound by the terms of, and will perform all of the obligations of MoT under, this Agreement. WFN will not, except as expressly set out in this Agreement, assign, either directly or indirectly, this Agreement or any right or obligation of WFN under this Agreement without the prior written consent of MoT.

### *Severability*

- 18.8 If any provision of this Agreement is found to be illegal or unenforceable, it will be considered separate and severable from this Agreement and the remaining provisions of this Agreement will remain in force and be binding upon the Parties as though the illegal or unenforceable provision had never been included.

### *Enurement*

- 18.9 This Agreement enures to the benefit of and is binding on the Parties and their successors and permitted assigns.

### *Further Assurances*

- 18.10 Upon the request of the other, each of the Parties will make, do, execute or deliver to each other any other reasonable deeds, documents, instruments and assurances and do any other reasonable acts required to carry out the true intent and meaning of this Agreement.

### *Counterparts*

- 18.11 This Agreement may be executed in two or more counterparts by each Party signing a separate copy of it (including a photocopy or facsimile copy) and delivering it to the other Party by facsimile with an originally executed copy of it to follow by mail or courier.



#### *Time*

- 18.12 When a time limitation under this Agreement for the performance on an obligation expires on a Saturday, Sunday, or a statutory holiday, the time for the performance of that obligation governed by the time limitation is extended to the next day that is not a Saturday, Sunday or statutory holiday.

#### *Discretionary Authority*

- 18.13 Nothing in this Agreement fetters or limits the exercise of discretionary authority as set out in applicable Laws.

#### *Waiver*

- 18.14 No waiver by either Party of a breach or default by the other Party in the observance, performance or compliance of any of its obligations under this Agreement will be effective unless it is in writing and no such waiver will be deemed or construed to be a waiver of any other breach or default and failure or delay on the part of either Party to complain of an act or failure of the other Party or to declare such other Party in default, irrespective of how long such failure or delay continues, will not constitute a waiver by such Party of any of its rights against the other Party.

#### *This Agreement*

- 18.15 Unless the context otherwise requires, any reference to "this Agreement" means this instrument and all of the Schedules attached to it and any reference to any Section, Subsection or Paragraph by number is a reference to the appropriate Section, Subsection or Paragraph in this Agreement. Each Schedule attached to this Agreement is an integral part of this Agreement as if set out at length in the body of this Agreement.

#### *Amendments or Modifications*

- 18.16 Any modification or amendment of this Agreement must be in writing and approved by both Parties.

#### *"Including"*

- 18.17 In this Agreement, the words "include", "includes" or "including" mean "include without limitation", "includes without limitation" and "including without limitation" respectively, and the words following "include", "includes" or "including" shall not be considered to set forth an exhaustive list.

- 18.18 In the case of a conflict or inconsistency between this Agreement and the Design/Build Agreement, this Agreement will take precedence.

#### *Currency*

- 18.19 All dollar amounts expressed in this Agreement refer to lawful currency of Canada.



18.20 The Parties have executed this Agreement as of the date set forth at the beginning of this Agreement.

### *No Condoning*

18.21 No condoning, excusing or overlooking by MoT or WFN of any default, breach or non-observance at any time by MoT or WFN shall operate as a waiver of MoT's or WFN's rights under this Agreement in respect of any continuing or subsequent default, breach or non-observance, or so as to defeat or affect the rights of MoT or WFN in respect of any such continuing or subsequent default or breach.

### *Remedies*

18.22 All rights and remedies of the Parties contained in this Agreement shall be cumulative and not alternative.


Executed for and on behalf of the Westbank  
First Nation, by its duly elected Chief and  
Council:

  
Chief Robert Louie

Dec. 18, 2006  
Date

  
Councillor

Dec. 18, 2006  
Date

  
Councillor

Dec. 18, 2006  
Date


  
Councillor

Dec. 18, 2006  
Date

  
Councillor

Dec. 18, 2006  
Date

Executed for and on behalf of the Her Majesty  
the Queen in Right of the Province of British  
Columbia, as represented by the Minister of  
Transportation:

  
John Dyble, P.Eng.

Deputy Minister of Transportation  
Dec 20/06  
Date

**SCHEDULE A  
APRIL 2005 AGREEMENT**

A-1

VAN01: 2308097: v7

**SCHEDULE B  
PRELIMINARY PROJECT BUDGET**

Budget Item	Budget Amount
Project Development	S17
Fee for Service	
Pre Design-Build Construction	
Project Management	
Award Amount	
Contingency	
<b>TOTAL BUDGET</b>	<b>\$23,000,000.00</b>

## SCHEDULE C COMMUNICATIONS STRATEGY

### 1. Background

The Parties have determined that effective Project communications are a critical component of delivering the Project. The Site is in a high visibility location immediately adjacent to downtown Kelowna. The WRBB adjoins the Project and the two projects will be under Construction concurrently. This strategy sets out the framework within which specific Communications Plans need to be developed.

### 2. Project Communications

For the purposes of this Schedule, "Project Communications" includes communications with the public, road users, communities, media, agencies and groups, elected officials, public events, project signage and other related activities.

For the purposes of this Schedule, "Project Communications" does not include strictly internal communications among the various entities directly involved in delivering the Project, including the Parties, and does not include internal communications within WFN or MoT.

### 3. Roles and Responsibilities

Agency/Official	Role/Responsibility
WFN	Authorizes WFN Communications policies and requirements
MoT	Authorizes MoT Communications policies and requirements
Public Affairs Bureau (PAB)	Develop/Approve Province communications, media releases/events
Project Manager	Signs off on all Project specific communications
WFN WRBB Communications Officer	Facilitates WFN project communications
MoT Community Relations Officer	Facilitates local MoT project communications
MoT Bridge Traffic Co-ordinator	Approves all traffic impact activities Boucherie Road to Harvey Avenue
WRBB Group	Facilitates WRBB project communications re traffic impacts, etc.
Kelowna City Communications Officer	Facilitates City of Kelowna communications
McLean Group	Communications consultants for MoT and WRBB Group

### 4. Communications Categories

- (a) Traffic Advisories (media)
- (b) Project Status Updates (media)
- (c) Project Signage (on Highway No. 97)
- (d) Events/Tours (Dignitaries, elected officials)
- (e) Internal communications

- (f) Web site (Project communications/updates)
- (g) Public (direct requests and complaints)
- (h) Public Meetings/Open Houses
- (i) Proactive Public Messages

## 5. Communications Protocol

I = Initiates
R = Recommends
A = Approves
Imp = Implements
C = Copied

Category	Proj Mgr	WFN liaison	MoT liaison	WFN/WRBB	MoT Comm Off	Public Affairs Bureau	D/B contractor	City comm. off	Br Traf Co-Ord	WRBB Group Co-ord	Media
Traffic Advisory	A	C	C	C	C	C	I	C	R	C	Imp
Project status	I	A	A	R	R	A	C	C	C	C	Imp
Project signs	I	A	A				Imp			C	
Events/ Tours	R	R	R	I	I	I / A	Imp	C	C	C	C
Web site	R	R	R		Imp	A	I				C
Public Requests	Imp			Imp	Imp		Imp				
Public Meetings	C	I	I	I/Imp	Imp	A	Imp				C
Proactive Messages	C	R	R	I/Imp	Imp	I / A	I	C	C	C	Imp

## 6. Communications Plans

Communications plans will be developed based on this Schedule and the Communications Protocol set out in Section 5 of this Schedule by the applicable individuals or agencies as set out below :

• WFN member communications	WFN – WRBB Communications Officers
• Casa Loma community communications	MoT & WFN Communications Officers
• Highway users - general hwy communications	PAB/MoT
• Highway users – Project traffic communications	Design-Builder/Project Manager
• Elected Officials – updates/ tours	PAB/Project Manager/ Liaison Committee
• Interface with WRBB	Design-Builder/ Project Manager
• WRBB Communications .....	SNC Lavalin (contractor)
• WRBB & Marine users	SNC Lavalin/ McLean Group

The Design-Builder will prepare a detailed communications plan that sets out specific communications activities, procedures and actions, as set out in this Schedule. The Design-Builder's communications plan will be approved by the Project Manager, WFN and PAB.

## **SCHEDULE D IMPLEMENTATION PLAN**

The Parties agree that the Implementation Plan should include at least the following subject matters:

- 1. Introduction**
  - (a) General
  - (b) Project Description
  - (c) Project Governance
- 2. Scope**
  - (a) Objectives
  - (b) Background
  - (c) Project Requirements
- 3. Workplan**
  - (a) Description of each task/step
- 4. Quality Assurance**
- 5. Schedule**
  - (a) General
  - (b) Constraints, Controls and Risks
  - (c) Milestones
- 6. Budget**
  - (a) General (Cost Codes, Descriptions, Detailed Budget)
  - (b) Accounting Procedures
  - (c) Cash Flow
- 7. Project Organization**
  - (a) Project Organization (including chart setting out roles and responsibilities of Design-Builder, WFN, MoT, etc.)

(b) Contacts

(c) Communications Plan/Process



Pages 403 through 417 redacted for the following reasons:

-----

S16, S17

**SCHEDULE I  
APPROVAL MATRIX**

	Document or Event	Lead	Approval/Action Required
<b>1</b>	<b>Selection of Project Manager</b>	WFN	Liaison Committee to recommend candidate(s) to WFN Chief and Council for selection (selection to be restricted from candidate(s) put forward to WFN by the Liaison Committee)
	Project Manager - Criteria	WFN	Liaison Committee
<b>2</b>	<b>Engineers</b>	WFN/MoT	
	WFN and MoT to each have their own Engineer – coordination to be discussed		WFN Engineer – primary contact with DB MoT & WFN Engineers – to work cooperatively together
<b>3</b>	<b>DB – RFP</b>		
	Evaluation (composition of panel, criteria, and procedures)	WFN	MoT-WFN
	Selection of Preferred Proponent	WFN	MoT-WFN
	Negotiation	WFN, working with MoT in cooperative approach	Liaison Committee to approve negotiation mandates and parameters
	Design/Build Agreement Execution	WFN	MoT-WFN to approve DB contract - WFN to execute DB contract
<b>4</b>	<b>Implementation Plan – Not finalized until Design-Build (DB) Design/Build Agreement in place</b>	Project Manager	Approved and, where necessary, amended by Liaison Committee - Implemented by Project Manager
	Any Material (scope, schedule, budget) Change to Scope of Work (e.g. archaeological issues)	Project Manager	Liaison Committee
<b>5</b>	<b>All Other Contracts (within Parameters of Implementation Plan &amp; Public Procurement Process)</b>	WFN	\$25,000 & under = Project Manager Over \$25,000 = WFN Outside of scope of Implementation Plan or Public Procurement Process = Liaison Committee

	Documentation (RFP or tender, Design/Build Agreement)	WFN	Public procurement process must be followed, unless otherwise agreed to by the Liaison Committee
	Evaluation (composition of panel, criteria, and procedures)	WFN	WFN
	Award	WFN	WFN
6	<b>All Other Matters, re: project management &amp; performance of delivery services</b>	Project Manager	Within Implementation Plan – WFN Outside terms of Implementation Plan – Liaison Committee
7	<b>Traffic Management Strategy Traffic Management Plan</b>	WFN-MoT D/B	WFN-MoT MoT Regional Traffic Engineer and District Manager approval required Amendments to the Plan must be approved by the Liaison Committee
8	<b>Quality Management Plan</b>		
	Development and Implementation of Plan (RFP requirement)	DB	WFN-MoT, amendments or issues to Liaison Committee for action/approval, as appropriate
	Quality Audits	Project Manager	To be approved by MoT-WFN Engineers
	Acceptance of Certification for Technical Compliance	Project Manager	MoT-WFN Engineers
	Acceptance of Certification for all phases of design to DB	Project Manager	Reviewed and Recommended by MoT-WFN Engineers; approval by Project Manager
9	<b>Expenditure for Emergencies</b>	Project Manager	Project Manager
11	<b>Monthly Invoices for Payment</b>		
	Funds Transfer (MoT to WFN)	WFN to provide invoices	MoT to pay
12	<b>Communication Plan &amp; Activities</b>	WFN-MoT	Liaison Committee
	Information Provision	DB	Project Manager/ Liaison Committee as may be appropriate
	Project Communication	Project Manager	Liaison Committee
13	<b>Project Acceptance</b>		



	Final Acceptance of Project from Design Builder	WFN	Approval by Liaison Committee
	Final Acceptance of Project	MoT	MoT
14	<b>Reporting</b>	Project Manager	Liaison Committee
	Monthly reports respecting Project	Project Manager	Liaison Committee to review
15	<b>Insurance and Bonding</b>	WFN; with MoT providing advice	Liaison Committee

**SCHEDULE J**  
**PROJECT MANAGER TERMS OF REFERENCE**

1. The Project Manager is retained by, and is accountable to, WFN and reports to the Liaison Committee. The Project Manager will ensure that the Project is delivered in accordance with this Agreement including the Scope of Work, the Design/Build Agreement and the Implementation Plan and that any proposed changes to the Scope of Work are referred to the Liaison Committee for a Decision.
2. The Project Manager may retain expert advice as required during delivery of the Project.
3. The Project Manager will deliver to the Liaison Committee a monthly report within 15 days of the end of each calendar month, commencing upon execution of this Agreement, detailing to the satisfaction of the Liaison Committee, the status of the Project as at the end of the applicable calendar month, including without limitation, the status of the following:
  - (a) Milestone Dates;
  - (b) Project Schedule;
  - (c) concerns respecting Scope of Work;
  - (d) communications;
  - (e) approvals;
  - (f) safety;
  - (g) cost and budget control with forecasts and actual expenditures;
  - (h) Project risks; and
  - (i) any other issues that are relevant to the Project.
4. Fulfilling the requirements of sections 8.15 and 8.16 of this Agreement.



## **SCHEDULE K**

### **PARTIES' ENGINEERS TERMS OF REFERENCE**

#### **Background**

The Parties each have a unique and significant interests in ensuring that the Project is delivered in accordance with this Agreement and the Design/Build Agreement.

The Parties' Engineers duties will include: developing a quality audit plan, reviewing design submissions from the Design-Builder, referring designs to the MoT review team, conducting quality audits, accepting completed Work, receiving and signing-off on all required Project documentation, and all ancillary matters related thereto.

#### **Quality Management**

The RFP sets out the Quality Management process to be followed and the respective roles of the Parties for Quality Control, Quality Assurance, and Quality Audit. The Design-Builder will be responsible for quality control as well as independent quality assurance inspection, testing and documentation.

The Parties' Engineers will be responsible for undertaking the quality audit of the deliverables including end product items as well as some critical in process phases. WFN and MoT engineering and technical specialists will be used throughout the Project to review and recommend deliverables acceptance to the Parties' Engineers.

#### **Documentation**

The Design-Builder is responsible for retaining all records of design, procurement, and Construction quality as set out in the RFP. These records will be made available electronically and in writing to the Parties' Engineers as may be requested.

Each of the Parties' Engineers will perform quality audit checks and tests as warranted. All Quality Audit records obtained by either Party will be shared with the other Party. Responsibility for retention of such Quality Audit records will rest with both WFN and MoT.

#### **Parties' Engineers**

To ensure a well co-ordinated and value-added process of Quality Audits, the Parties' Engineers will work as a team in undertaking quality audit and oversight. In order to make this function smoothly, the Parties' Engineers will jointly develop a Quality Audit Plan after Design/Build Agreement award, and will assign responsibilities for its implementation. The Quality Audit Plan will be adjusted as warranted during the Project to ensure it is practical, timely and consistent with the requirements of the Project and the Project Manager.

#### **Disputes**

If the Parties' Engineers are not able to resolve a disagreement respecting Project Quality Audit and acceptance processes, they will refer the matter to the Project Manager for resolution. If the Project Manager is unable to resolve the disagreement, the matter will be referred by the Project Manager to the Liaison Committee for a final decision.

Pages 423 through 425 redacted for the following reasons:

-----

S16, S17



## **SCHEDULE M**

### **INVOICING, PAYMENTS AND FINANCIAL RECORDS**

WFN will establish and maintain, in connection with this Agreement and to the reasonable satisfaction of MoT, accurate books of accounts and records for the Project including supporting documents and will permit MoT and its representatives, servants, designates and agents, at any time during normal business hours, upon reasonable notice, to inspect, review, copy and audit any or all of them.

1. WFN will account for all contributions and expenditures for the Project in accordance with GAAP.
2. WFN will submit to MoT a financial statement at the end of each calendar quarter detailing the total Project Costs and all items comprising the Project Costs incurred in that previous calendar quarter. Each such quarterly financial statement will be signed by the Project Manager certifying that all reported items listed as part of the Project Cost expenditures pertain to the Project and are Project Cost items under this Agreement.
3. WFN will submit a Monthly Payment Application to MoT as set forth in Section 7.2.
4. WFN will send the Monthly Payment Application together with the supporting documentation set forth in subsection 7.4 (a) to MoT's designate in Victoria electronically and by courier and will provide a copy to the MoT Representative either by hand or courier within 15 days of the month-end.
5. MoT will pay amounts due to WFN by electronic funds transfer within 15 business days of receiving the monthly invoice. The Parties agree that MoT will ensure that WFN is paid within the 15 day period by electronic payment, or in the event MoT is delayed or experiences system problems, MoT agrees to issue a manual cheque within 5 days following the 15 day period.
6. WFN will pay the Design-Builder the amount of its invoice less any GST amount included in the invoice (which shall be paid pursuant to Section 10 of this Schedule M) and any taxes and other withholdings which the WFN is required by law to deduct before making payment to the Design-Builder and any amounts disputed by WFN or MoT in the time set forth in the Design/Build Agreement. Any disputed amount will be referred to the Liaison Committee for resolution failing which it will be referred to the dispute resolution in accordance with the provisions of the Design/Build Agreement.
7. WFN will maintain a complete audit trail, including all the records and accounts of the Project, during the Project and for a period of seven years thereafter to substantiate all contractual and financial transactions and will provide MoT and its representatives, servants, designates and agents with access to such records upon reasonable notice during regular business hours to WFN by MoT.
8. The Parties, in order to satisfy themselves as to the correctness of all payments, will develop an audit strategy that will involve an annual audit and an audit after the Project Completion Date which may involve, on an ongoing basis, random detailed reviews or

audits of a representative sample of the financial and project management record of the Project.

9. Without limiting the generality of this Section, WFN will provide reasonable access to MoT and its respective servants, designates, agents and representatives, upon request, to view the following:
  - (a) all contracts and agreements related to the Project;
  - (b) all Design-Builder's invoices and applications for payments;
  - (c) all receipts and vouchers related to the Project in the possession of the WFN; and
  - (d) all invoices for reimbursable expenses related to the Project.
10. MoT shall fund an account to fund the payment of any GST payable by WFN to the Design-Builder. The Parties believe that GST will only be payable on the portion of the Work that is not on WFN lands. Upon reimbursement by Canada Revenue Agency of such GST, WFN shall repay such to the account.



## **SCHEDULE N REIMBURSABLE COSTS**

The Parties agree that the following are the Reimbursable Costs before the Assignment and Assumption:

- (a) costs that relate to studies, tests, reports, insurance and bonding costs, consulting work and other actual costs incurred by the Parties related to the development, planning, Design and property acquisition for the Project prior to the execution of this Agreement, including:
  - (i) the work relating to the USL Report;
  - (ii) the survey of the Site;
  - (iii) communications activities;
  - (iv) geotechnical work commissioned by WFN;
  - (v) archaeological work associated with the Project;
  - (vi) MoT and WFN technical work related to preparing the Project including advanced construction work; and
  - (vii) the partnering workshop referenced in section 1.8 of the RFP;
- (b) Project Manager and associated costs, including the Project management trainee, the Parties' Engineers, and the Project office, and related Project staff;
- (c) any utility relocations not paid for by the Design-Builder;
- (d) reasonable costs of and incurred by the Liaison Committee or the Liaison Committee members in carrying out Liaison Committee work;
- (e) a fixed sum, agreed to by the Parties to be S16, S17 for services provided to the Project by MoT and its representatives, inclusive of all disbursements;
- (f) all third party costs actually and reasonably incurred for the Project that are related to environmental work, professional services, planning and design after execution of this Agreement;
- (g) the actual costs of permits and approvals required for the Project;
- (h) the actual costs of communications and community relations reasonably incurred for the Project;



- (i) all amounts owing by WFN to the Design-Builder under the Design/Build Agreement including, without limitation, the Award Amount and all amendments approved by the Liaison Committee to it, the financial consequences incurred under Section 7.8(a), and any interest on late payments;
- (j) any costs or delays caused by the discovery of any Heritage Object on or under the Site, beyond those previously disclosed or designated in the Design/Build Agreement, but excluding the impact of any work to comply with WFN policies or laws to the extent that such policies or laws exceed both the requirements set forth in the *Heritage Conservation Act*, R.S.B.C. 1996, c. 187 and the requirements set out in WFN Interim Heritage Policy attached to the Design/Build Agreement as Schedule I;
- (k) all actual costs (including referee and legal costs) incurred by MoT or WFN or both to resolve claims of any nature arising from the Project, (including claims related to errors or omissions in the Contract Documents) except for those arising from any negligence, or unlawful act of WFN or its employees or representatives;
- (l) reasonable legal costs specifically required to facilitate the Project, excluding costs incurred by WFN in respect of Disputes that are solely between WFN and MoT in respect of this Agreement;
- (m) Project specific insurance costs;
- (n) insurance deductibles, except those caused by the negligence of WFN;
- (o) any increased costs arising from the termination of the Design/Build Agreement that are not covered by the Bonds;
- (p) any insured costs not paid by an insurer where the applicable exclusion is not triggered by the negligence or wrongful act of WFN; and
- (q) any amounts required to be paid to the Concessionaire pursuant to the WRBB.

The Parties agree that the following are the Reimbursable Costs after the Assignment and Assumption:

- (a) reasonable legal costs, excluding costs incurred by WFN in respect of Disputes that are solely between WFN and MoT in respect of this Agreement;
- (b) all amounts owing by WFN to the Design-Builder under the Design/Build Agreement including, without limitation, the Award Amount and all amendments approved by the Liaison Committee to it, the financial consequences incurred under Section 7.8(a), and any interest on late payments;
- (c) all actual costs (including referee and legal costs) incurred by MoT or WFN or both to resolve claims of any nature arising from the Project, (including claims related to errors or omissions in the Contract Documents) except for those arising from any negligence, or unlawful act of WFN or its employees or representatives; and

(d) any other costs for services requested by MoT.

N-3

VAN01: 2308097: v7

Page 431 redacted for the following reason:

-----

S16, S17

**SCHEDULE P  
INTELLECTUAL PROPERTY LICENCE**

THIS LICENSE IS MADE AS OF THE \_\_\_\_ DAY OF \_\_\_\_\_, 2006

**BETWEEN:**

Her Majesty the Queen in Right of the Province of British Columbia as represented by the  
Minister of Transportation

**("British Columbia")**

**AND:**

Westbank First Nation, as represented by its Council

**("WFN")**

Definitions

1. In this Schedule, the following definitions apply:
  - (a) "Assignment Date" means the day of the assignment of the Design Build Agreement from WFN to the Province pursuant to DB 67.02 and of the assignment of copyright and waiver of moral rights in and to the Design Drawings from WFN to the Province,;
  - (b) "Design Build Agreement" means the design-build agreement for the Hwy 97, W.R. Bennett Bridge Western Approach and Campbell Road Interchange entered into by WFN and the design-build contractor;
  - (c) "Design Drawings" means the "as built" drawings done, furnished or prepared by the design-build contractor pursuant to the Design-Build Agreement;
  - (d) "License" means the license granted under this Schedule;
  - (e) "Modifications" means any modification, update or enhancement of the Design Drawings, including any customizations;
  - (f) "Permitted Purposes" means for internal use by WFN including for the purpose of retaining complete records of the Project and for use by WFN on behalf of a commercial client where WFN will be providing the design and/or construction services in respect of highway infrastructure projects;



2. Subject to paragraph 3 of this Schedule, the Province grants to WFN a non-exclusive, perpetual, non-assignable, royalty-free, worldwide license to use, reproduce and modify the Design Drawings for the Permitted Purposes on the Assignment Date.
3. The Province retains full rights to license, sublicense, use for its own purposes, reproduce, distribute and sell copies of the Design Drawings.
4. WFN acknowledges that from the Assignment Date,
  - (a) the Province is the owner of all proprietary rights to the Design Drawings, including without limitation copyright;
  - (b) the Province is the exclusive owner of all proprietary rights in and to the Modifications developed by WFN or any of its employees or contractors in relation to the Design Drawings;
  - (c) any proprietary rights not specifically granted by the Province in this License remain with the Province including without limitation copyright and trademark protection; and
  - (d) there is no assignment or waiver of moral rights to the Design Drawings in favour of WFN;
  - (e) WFN will provide an acknowledgement of assignment to the Province, at the Province's request, of the copyright in any Modifications created by WFN, its employees or contractors; and
  - (f) WFN will obtain waivers in favour of the Province, at the Province's request, of moral rights in any Modifications that any of WFN's employees or contractors may have.
5. Notwithstanding any other provisions of this Schedule, nothing in this Schedule will serve to obligate the Province to commence or maintain any legal proceedings against a third party for infringement of any proprietary rights of the Province or of WFN under this Schedule.
6. WFN may, at its expense, commence legal proceedings in its own name for the infringement of the rights of the Province in and to the Design Drawings, or any of the rights of WFN under this Schedule.
7. WFN acknowledges that the Design Drawings are being provided to WFN by the Province "as is", without warranties or representations of any kind whatsoever, express or implied, with respect to the Design Drawings, and the Province expressly disclaims any warranty of merchantability or fitness for a particular purpose of the Design Drawings.
8. WFN will indemnify and save harmless and forever releases and discharges the Province from and against any and all claims, demands, damages, causes of action, losses, costs and expenses

of any kind and every nature which can or may arise from or by reason of the use of the Design Drawings.

9. WFN acknowledges that in no event will the Province be liable to WFN or any other party for damages, including any loss of profits, loss of savings, personal injury, property damage or any incidental or consequential damages arising out of WFN's use or inability to use the Design Drawings or any Modifications thereof.
10. WFN will not use the name of the Province in any manner in connection with the Design Drawings without the prior written consent of the Province.
11. WFN will not distribute, sell, loan, rent, grant sublicenses to use, copy or distribute or otherwise dispose of the Design Drawings for use by a third party, or assign, either directly or indirectly, this License or any right of WFN under this Schedule except in accordance with the Permitted Purposes.
12. WFN will, in a timely manner, provide the Province with any Modifications.
13. If WFN fails to observe, perform or comply with any provision of this Schedule ("License Default"), or at any time thereafter, the Province may do any one or more of the following:
  - i. pursue any remedy available to it at law or in equity;
  - ii. waive the License Default; and
  - iii. deliver written notice to WFN specifying the License Default and requiring rectification within 30 days of the date of delivery of such notice.
14. Where a License Default is not remedied within 30 days of delivery of notice under paragraph 13 of this Schedule, the Province, in its sole discretion, may terminate the license rights granted to WFN under this Schedule by notice in writing to WFN.
15. Within 30 days after the date of termination of this Agreement, WFN will cease using, reproducing and modifying the Design Drawings and will deliver all copies thereof to the Province.
16. WFN will not, without the prior written consent of the Province, assign, either directly or indirectly, the rights granted under this Schedule.
17. Provision of the Modifications from WFN to the Province under paragraph 12 and any notice requirements in this Schedule are effected in the manner set out in Section 16.1 ("Notice") of the Project Agreement.
18. This Schedule will survive the expiry of the Project Agreement.



IN WITNESS WHEREOF the Parties have caused this Lease to be signed by their duly authorized representatives.

SIGNED, SEALED AND DELIVERED  
in the presence of:

\_\_\_\_\_  
SIGNATURE

\_\_\_\_\_  
PRINT NAME

\_\_\_\_\_  
ADDRESS

\_\_\_\_\_  
OCCUPATION

\_\_\_\_\_  
WESTBANK FIRST NATION

SIGNED, SEALED AND DELIVERED  
in the presence of:

\_\_\_\_\_  
SIGNATURE

\_\_\_\_\_  
PRINT NAME

\_\_\_\_\_  
ADDRESS

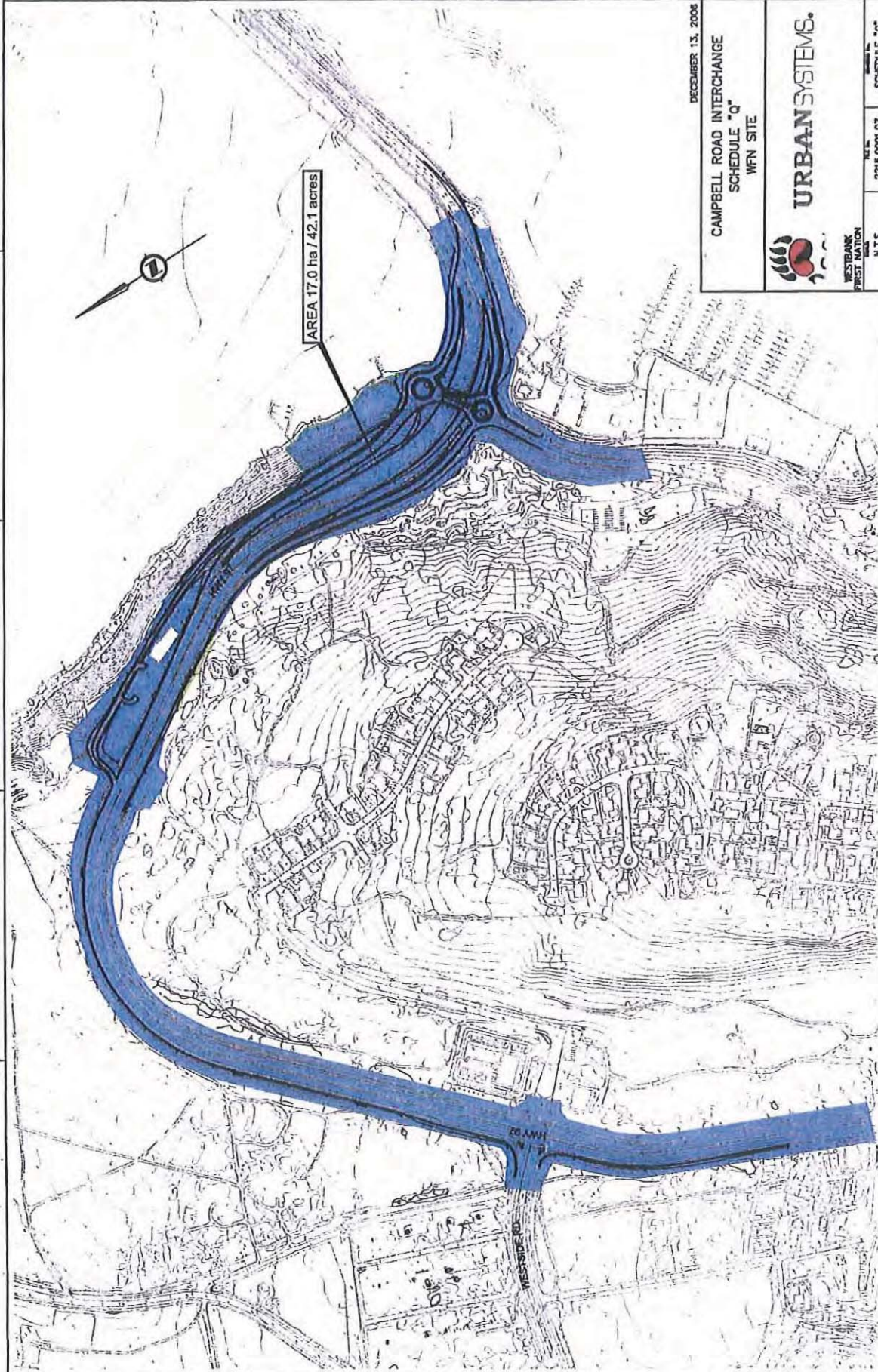
\_\_\_\_\_  
OCCUPATION

\_\_\_\_\_  
Her Majesty the Queen in Right of  
the Province of British Columbia a  
represented by the Minister of  
Transportation

**Schedule Q**  
**WFN SITE**

Q-1

VAN01:2308097: v7



DECEMBER 13, 2006

CAMPBELL ROAD INTERCHANGE  
SCHEDULE "Q"  
WPN SITE



URBAN SYSTEMS.

WESTBANK  
PROJECT NO.  
N.T.S.

2215.0001.07

SCHEDULE "Q"