



File: 11250-85/EN24PGN340

Date: November 23, 2023

*Kyah Resources Inc
732 Mount Paul Road
Kamloops, BC, V2H 1B5*

Hello [s.19](#); [s.22](#)

We are pleased to advise that you have been awarded the contract for **R3-200 Bulkley River Crossing Right-of-Way Clearing Project** for the amount of \$167,283.00.

Despite any clauses in the Agreement to the contrary and as required by the Invitation to Tender, please complete the following within the next 7 calendar days:

1. Sign, or seal if required by company articles, and return the executed contract, including where applicable the Prime Contractor Agreement, to this office. Do not alter the contract(s) in any way. The ministry will accept contract documents executed and then scanned and returned electronically to the Ministry Representative; however, this is not acceptable where a corporate seal is used. A copy of the contract(s) will be returned to you following countersigning by the ministry.
2. Our records indicate your WorkSafeBC account number or Personal Optional Protection number is [s.21](#). If this is incorrect or if the space provided is blank or if your registration has lapsed or been cancelled, please advise the ministry immediately. If you do not have a valid registration number, you must submit to the ministry proof of an application for registration. You must have a valid WorkSafeBC account number or, if applicable, Personal Optional Protection account number before work may commence.
3. Submit a Certificate of Insurance (copy attached) as proof of insurance coverage of the type and amount required by the contract. (It is the contractor's responsibility to provide their insurance agent/broker with a copy of the insurance schedule.)
4. Submit ICBC's Confirmation of Automobile Insurance form (APV47) as proof of automobile insurance coverage in the amount required by the contract.
5. Submit a Statement of Work Schedule.
6. Submit a List of Construction Machinery and Equipment to be used in the work.

7. As a condition of Contract finalization, you are required to provide the Ministry with a valid Tax Verification Letter. The letter can be obtained:

- a) By mail: contacting the Ministry of Finance at +1 (877) 387-3332 and requesting a paper application be mailed to you or;
- b) Online: through [ETaxBC](#)

Failure to undertake all of the preceding requirements to the satisfaction of the ministry within the time allowed may result in one or more of the following:

- 1. Cancellation of the contract award;
- 2. If the contract is awarded to another bidder, you may be held liable for any increased cost to the ministry;
- 3. Your eligibility to bid or for contract award on future ministry contracts.

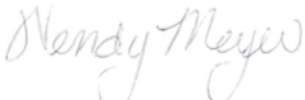
It is your responsibility to ensure compliance with the WorkSafe BC regulation requiring you to submit a Notice of Project for certain forestry operations or construction projects to the nearest WorkSafe BC office prior to starting the work.

This will also serve to bring to your attention that if you fall within the parameters of the *Lobbyists Registration Act*, then it is your responsibility to make this determination and register as necessary.

Do not commence work until you are in receipt of your copy of the countersigned contract.

The ministry representative for this contract is **s.19; s.22** telephone number:
s.19; s.22 Please direct any inquiries to this person.

Yours truly,



Wendy Meyer, Contract and Administrative Clerk

Enclosures: Contract documents and Schedules
Certificate of Insurance
Tax Verification
Maps – sent previously by **s.19; s.22**



Natural Resource Ministries

CONTRACT APPROVAL REQUEST

MINISTRY IDENTIFICATION

Ministry:	Forests		
Branch / Division:	Northern Engineering Group	Region / City:	Smithers, BC
Project Title:	R3-200 Bulkley River Crossing Right of Way Clearing Project		
Expense Authority:	Name: Jason Olmsted Phone: 250-961-9073	Qualified Receiver:	Name: s.19; s.22 Phone

PROJECT DETAILS

Contract Number (if known):	11250-85/EN24PGN340		
Privacy Impact Assessment Number (PIA) contact NRM.Privacy@gov.bc.ca to determine if required	Not Required		
Description of Work	Cut, skid, and deck the merchantable timber for future use by the MoF. Non-merchantable timber will be piled for future burning by the MoF.		
What are the Intended Outcomes?			
Describe the Impact on Program Delivery if Not Approved:			
Ministry Cost Estimate:	\$172,000	Cost Recoverable:	☐ Yes ☒ No
	Recovery Source: Amount of Recovery \$	Recovery Percentage:	%
Funding Source	Base \$172,000 Other \$ Specify: Capital		
Include Option to Renew?	☐ Yes ☒ No	Number of renewals and duration - month(s), year(s)	
Anticipated Term	Start: 2023-11-20 End: 2024-03-15		

If Competitive Process	Provide details of your procurement approach. Will the opportunity be posted on BC Bid, Select Invitation, etc. Capture the solicitation type, will it be a Request for Proposals (RFP), Invitation to Quote (ITQ), etc.
If Direct Award	Contractor's Legal Name: Detailed justification for direct award. Include all details to support your decision, including any market research performed, strict proof, whether a Notice of Intent (NOI) will be posted, etc. Please see the attached document, which describes the Rationale for Direct Awarding the R3-200 Right-of-Way Timber Clearing.
Potential, perceived or actual Conflict of Interest	Provide details of any actual, perceived, or potential conflict of interest, if any .

ACCOUNT & PROCUREMENT CODING

Account Coding (STOBS: See Master STOB List & Description)					
Client #	Response Centre #	Service Line #	STOB #	Project #	AMOUNT
s.17	71475	40138	2000	71HC710	\$200,000.00
					\$

Procurement Process Code : Direct Awards must match the justification above
100
PO Class Code :
C

APPROVAL E-mail approval is acceptable provided the completed version of this form is included in the e-mail string. Expense Authorities must approve the maximum amount of a proposed Procurement including all potential options for extending or renewing a contract. CPPM Policy Chapter 6.3.2.33 - Expense Authority Matrices can be found here.	
CONTRACT MANAGER / QUALIFIED RECEIVER - optional	
s.19; s.22 Signature 2023-11-20 Print Name: s.19; s.22 Date	
PROGRAM MANAGER / EXPENSE AUTHORITY - required	
s.19; s.22 2023-11-20 Date	

Print Name: Jason Olmsted

ADDITIONAL APPROVAL (ADM. CFO, etc.) – as required

Signature

Date

Print Name:

PO SET UP (To be completed after contract award)

Full Legal Name and Address of Contractor

Start Date and End Date

Start: Click or tap to enter a date.

End: Click or tap to enter a date.

Will taxes apply to any fees
or expenses?

☐ Yes ☐ No

GST Number
(if known)

Additional Comments for Accounts Payable



Natural Resource Ministries

Major Works Contract

Contract/File No:
11250-85/EN24PGN340

THIS AGREEMENT DATED FOR REFERENCE THE
23th DAY OF November, 2023.

BETWEEN:

HIS MAJESTY THE KING IN RIGHT OF THE PROVINCE OF BRITISH COLUMBIA, as
represented by the MINISTER OF FORESTS

Engineering Branch, Northern Engineering Group
153 – 1011 4th Avenue Prince George, BC V2L 3H9

s.19; s.22

(the "Province")

AND:

Kyah Resources Inc.
732 Mount Paul Road Kamloops, BC, V2H 1B5

s.19; s.22

Business Number: BC1003742
WorkSafe BC and/or Personal Optional Protection Number:
s.21

(the "Contractor")

referred herein to as "the Parties".

WHEREAS:

- A. The Province requires the following Work to be carried out for its benefit:
R3-200 Bulkley River Crossing Right-of-Way Clearing Project.
- B. The Contractor is in the business of carrying out the kind of work required by the Province.
- C. The Province and the Contractor have agreed that the Work shall be carried out in accordance with certain contract documents as hereinafter set out.

Accordingly, the Parties agree as follows:

ARTICLE 1 DEFINITIONS

1.01 In this document, the following words shall have the following meanings:

- (a) **"Agreement"** means the agreement between the Parties as set out in the Contract Documents;
- (b) **"Amending Documents"** means those documents described in Section 2.02;
- (c) **"Changed Conditions"** means those changes described in Article 14;
- (d) **"Changes in the Work"** means that work described in Article 13;
- (e) **"Contract Documents"** means those documents described in Section 2.01;
- (f) **"Contract Security"** means any financial performance guarantee given by the Contractor to the Province in accordance with Article 4;
- (g) **"Deficiencies"** mean the minor defects in the Work, minor portions of incomplete work and minor items required, but not yet supplied, at the time of Substantial Performance; none of which substantially prevent or impair the proper operation or occupancy of the Work;
- (h) **"Event of Default"** means any of the following:
 - i) failure to perform any of the Contractor's obligations under this Agreement, or
 - ii) any representation or warranty made by the Contractor in this Agreement (including as part of any competitive process resulting in this Agreement being entered into) is untrue or incorrect, or
 - iii) an Insolvency Event, which means any of the following:
 - A. an order is made, a resolution is passed or a petition is filed, for the Contractor's liquidation or winding up,
 - B. the Contractor commits an act of bankruptcy, makes an assignment for the benefit of its creditors or otherwise acknowledge its insolvency,
 - C. a bankruptcy petition is filed or presented against the Contractor or a proposal under the *Bankruptcy and Insolvency Act* (Canada) is made by the Contractor,
 - D. a compromise or arrangement is proposed in respect of the Contractor under the *Companies' Creditors Arrangement Act* (Canada),
 - E. a receiver or receiver-manager is appointed for any of the Contractor's property, or
 - F. the Contractor ceases, in our reasonable opinion, to carry on business as a going concern.
- (i) **"Inspector"** means a person or persons appointed by the Ministry Representative whose duties include inspection of the Work done and materials furnished. An Inspector is not authorized, in carrying out his/her duties, to commit the Province to a financial expenditure;
- (j) **"Ministry Representative"** means a person appointed pursuant to Article 6;
- (k) **"Other Contractor"** means a person, firm or corporation having a separate contract directly or indirectly with the Province for work other than that required by the Contract Documents;
- (l) **"Place of Work"** is the designated site or location where the Work will be performed;
- (m) **"Plans and Specifications"** means the plans (including notes and schedules), profiles, drawings and specifications prepared and designed to be used for the Agreement and includes any general conditions or requirements contained therein;
- (n) **"Subcontractor"** means a person, firm or corporation having a direct contract with the Contractor to perform a part or parts of the Work, or to supply products worked to a special design according to the Contract Documents, but does not include one who merely supplies products not so worked;
- (o) **"Substantial Performance"** has the meaning ascribed to it in Section 16.02;
- (p) **"Superintendent"** means the employee of the Contractor who is designated by the Contractor to act pursuant to Section 6.06;

(q) **"Total Performance of the Work"** means when the entire Work, except those items arising from the provisions of Section 19.01, has been performed to the requirements of the Contract Documents and is so certified by the Ministry Representative;

(r) **"Work"** means all activities carried out under this Agreement, and the results of those activities.

1.02 If any of the words in Section 1.01 are used in any other Contract Document, they shall have the same meaning as in this document unless the context dictates otherwise.

1.03 Words or abbreviations which have well known technical or trade meanings are used in the Contract Documents in accordance with such recognized meanings.

1.04 References to the masculine or the singular shall be considered to include the feminine and the plural as the context requires.

1.05 The headings of the clauses of this Agreement have been inserted for reference only and do not define, limit, alter or enlarge the meaning of any provision of this Agreement.

ARTICLE 2 CONTRACT DOCUMENTS AND AMENDMENTS

Contract Documents

2.01 The agreement between the Parties shall be contained in the following Contract Documents and no others:

- (a) this document and any schedules attached;
- (b) the Plans and Specifications;
- (c) any Amending Documents.

The attached schedules are applicable to and form part of this Agreement:

Schedule	Title
Schedule "A"	Schedule of Approximate Quantities and Unit Price Table
Schedule "B"	Insurance Requirements
Schedule "C"	Project Specifications
Schedule "D"	Safety Conditions Schedule
Schedule "E"	Prime Contractor Agreement
Schedule "F"	Subcontracting
Schedule "G"	SAFE Certification Requirements Schedule
Appendix "A"	Kyah Hourly Rate Sheets
Project maps	

Amending Documents

2.02 No modification to this Agreement shall be effective unless it is in writing and signed by, or on behalf of, the Parties and is in the form of an Amending Document, namely, a Contract Modification Agreement (NRS600) form, or in such other standard form of a similar nature for which the Province may provide from time to time.

Conflicts

2.03 In the event of conflicts between Contract Documents the following shall apply:

- (a) figured dimensions shown on a drawing shall govern even though they may differ from dimensions scaled on the same drawing;
- (b) drawings of larger scale shall govern over those of smaller scale;
- (c) Specifications shall govern over notes and schedules shown on plans and drawings;
- (d) material and finishing schedules shall govern over other drawings;

- (e) the special provisions or general requirements shall govern over technical specifications; and
- (f) the terms of this document supersede all other Contract Documents.

2.04 In the event of conflicts between alike Contract Documents of different dates, the document of later date shall prevail.

Additional Copies of Contract Documents

2.05 The Contractor shall be provided with sufficient copies of the Contract Documents or parts thereof as are necessary for the performance of the Work.

ARTICLE 3 CONTRACT PRICE

3.01 The contract price is based on unit price as set out in Schedule "A" of this Agreement.

3.02 Unless provided otherwise, prices for items constitute full payment for all labour, materials, equipment, overhead, profit, taxes (including taxes paid or payable by the Contractor to a supplier during the performance of the Work) and other things required to completely incorporate the item into the Work, excluding Goods and Services Tax (GST) and any Provincial Sales Tax (PST) that the Contractor is required to charge the Province as a taxable transaction.

ARTICLE 4 CONTRACT SECURITY - NOT APPLICABLE

4.01 To secure fulfillment of the Contractor's obligations in the Agreement, the Contractor shall provide to the Province, before commencement of the Work, Contract Security as hereinafter set out.

4.02 Unless the Province otherwise provides, the Contractor shall have the choice of providing either cash security or security in the form of a performance bond.

4.03 If a cash form of Contract Security is used, the following shall apply:

- (a) it shall be of a type acceptable to the Province;
- (b) it shall be in an amount equal to at least 10% of the total contract price; and
- (c) it shall be released to the Contractor after certification of Substantial Performance of the Work, if such certification is provided, or certification of Total Performance of the Work otherwise.

4.04 If the form of Contract Security is a performance bond, the following shall apply:

- (a) it shall be in an amount equal to at least 50% of the total contract price;
- (b) it shall be issued by a duly licensed surety company authorized to transact a business of suretyship in Canada and shall otherwise be in a type acceptable to the Province;
- (c) it shall be accompanied by a labour and material payment bond which shall be in an amount equal to at least 50% of the total contract price and, a copy of which, shall be posted at the Place of Work.

ARTICLE 5 COMMENCEMENT AND COMPLETION

5.01 The Contractor shall commence the Work: on or before the 23rd day of November 2023.

5.02 The Contractor shall attain Total Performance of the Work, as certified by the Ministry Representative, on or before the 15th day of March 2024.

ARTICLE 6 PARTY REPRESENTATIVES

Ministry Representative

6.01 The Province shall appoint a Ministry Representative who shall be the sole judge of the Work as to quantity, quality, suitability and progress and, unless the Province agrees to follow dispute resolution through arbitration as set out in Article 25, his/her decision, on all matters in disagreement with regard to the Work or this Agreement, shall be final.

6.02 The Ministry Representative shall have the right to inspect the Work, the manner of construction and the materials furnished in respect thereof.

- 6.03 Upon contract award, the Province shall notify the Contractor of the name, address and telephone number of the Ministry Representative appointed pursuant to Section 6.01.
- 6.04 The Province may substitute a Ministry Representative at any time, and shall so notify the Contractor of the change.
- 6.05 The Ministry Representative may require the Contractor to do anything necessary to satisfy the Ministry Representative that the Work is being constructed in accordance with the Contract Documents.

Contractor's Representative

- 6.06 The Contractor shall designate a Superintendent, who shall have full authority to act on behalf of the Contractor in connection with the Work and the Agreement and who shall be available at all times to the Ministry Representative.
- 6.07 Upon contract award, the Contractor shall notify the Ministry Representative of the name, address and telephone number of the Superintendent designated pursuant to Section 6.06.
- 6.08 Subject to Section 6.09, the Contractor shall not substitute a Superintendent without the written consent of the Ministry Representative.
- 6.09 If, in the reasonable opinion of the Ministry Representative, the Superintendent appointed by the Contractor is not suitably experienced or is unable to properly supervise the Work, then the Contractor shall, upon receipt of written notice from the Ministry Representative, replace that Superintendent forthwith.

ARTICLE 7 CONSTRUCTION SCHEDULE AND EQUIPMENT LIST

- 7.01 The Contractor shall carry out the Work according to:
- (a) the construction schedule indicating the timing of the major activities of the Work designed to ensure conformance with the commencement and completion requirements; and
 - (b) if required, the list of the construction machinery and equipment to be used in the Work;
- submitted to and approved by the Ministry Representative upon acceptance of the Contractor's tender.
- 7.02 Where, in the opinion of the Ministry Representative, the rate of progress of the Work is insufficient to enable the Work to be completed in the manner and by the dates specified under the Agreement, the Contractor shall take whatever steps that the Ministry Representative requires in writing to expedite the progress of the Work.

ARTICLE 8 INDEMNIFICATION AND INSURANCE

- 8.01 The Contractor shall indemnify and save harmless the Province, its employees and agents from any loss, claim, (including any claim of infringement of third party intellectual property rights), damage award, action, cause of action, cost or expense that the Province or any of its employees or agents may sustain, incur, suffer or be put to at any time, either before or after this Agreement ends, (each a "Loss") to the extent the Loss is directly or indirectly caused or contributed to by:
- (a) any act or omission of the Contractor's or its Subcontractors' agents, employees, officers, directors or Subcontractors in connection with this Agreement, or
 - (b) any representation or warranty of the Contractor being or becoming untrue or incorrect.
- 8.02 The Contractor shall, at the Contractor's own expense, carry and maintain insurance coverage as specified in Schedule "B" - Insurance Requirements or as specified in writing by the Province, as those terms may be modified from time to time in accordance with our directions.

ARTICLE 9 PROTECTION OF WORK AND PROPERTY

- 9.01 The Contractor shall protect the Work, the Province's property and property adjacent to the Place of Work, from damage and shall be responsible for damage which may arise as the result of the Contractor's operations under the Agreement, except damage which occurs as a result of:
- (a) errors in the Contract Documents; or

- (b) acts or omissions of the Province, the Inspector, Other Contractors, their agents and employees.

Fire Protection

- 9.02 The Contractor shall take every precaution to prevent unintentional fire from occurring on or about the Place of Work.
- 9.03 The Contractor who lights, fuels or uses an open fire must comply with the provisions required for the relevant open fire category in accordance with the Wildfire Regulation made under the *Wildfire Act*, and the Open Burning Smoke Control Regulation made under the *Environmental Management Act*.

ARTICLE 10 SUBCONTRACTING

- 10.01 The Contractor agrees to employ only those Subcontractors designated by the Contractor in writing, as an attachment to the Contractor's tender form, and accepted by the Province at the signing of this document, subject to Section 10.02.
- 10.02 The Province may, for reasonable cause, object to the use of a designated Subcontractor and require the Contractor to employ another qualified Subcontractor.
- 10.03 The Contractor shall not use any subcontractors other than those identified on the accepted subcontractor list, unless the Province directs or agrees otherwise.
- 10.04 The Contractor agrees to preserve and protect the rights and obligations of the Parties in the Agreement with respect to work to be performed by Subcontractors.
- 10.05 The Contractor agrees to incorporate, where reasonably possible, the applicable terms and conditions of the Contract Documents into all agreements with Subcontractors.
- 10.06 The appointment of any Subcontractors does not relieve the Contractor of its responsibility under the Agreement or for the quality of work, materials and services provided by it.
- 10.07 Nothing contained in the Contract Documents shall create a contractual relationship between a Subcontractor and the Province.

ARTICLE 11 COOPERATION WITH OTHER CONTRACTORS

- 11.01 The Province reserves the right to award separate contracts in connection with other portions of the Work to Other Contractors and to perform work with own forces.
- 11.02 Where, in the reasonable opinion of the Ministry Representative, it is necessary that an Other Contractor be sent into or adjacent to the Place of Work, the Contractor shall cooperate with the Other Contractor.
- 11.03 The Contractor, forthwith upon becoming aware of any apparent deficiencies in the Other Contractor's work which would affect the Work, shall report such deficiencies in writing to the Ministry Representative.
- 11.04 Except with respect to deficiencies which the Contractor was not aware of, failure by the Contractor to report as required in Section 11.03 shall invalidate any claims against the Province by reason of the deficiencies.

ARTICLE 12 COMPLIANCE WITH THE LAW

- 12.01 This Agreement shall be governed by, and is to be interpreted and construed in accordance with, the laws applicable in British Columbia.

The Contractor shall:

- (a) comply with all laws affecting the Work;
- (b) obtain all licences and permits (unless obtained by the Province) required by law to carry out the Work.

Compliance with the Workers' Compensation Act

- 12.02 The Contractor shall:
- (a) be solely responsible for construction safety at the Place of Work;

- (b) at its own expense, provide the necessary WorkSafe BC compensation coverage for itself, all workers and any shareholders, directors, partners or other individuals employed or engaged in the performance of the Work and shall ensure all approved Subcontractors obtain WorkSafe BC coverage;
- (c) if the Contractor or its Subcontractors do not have the benefit of mandatory workers compensation coverage under the *Workers Compensation Act* in British Columbia, then the Contractor shall ensure that it and its Subcontractors apply for and maintain Personal Optional Protection under the *Workers Compensation Act*;
- (d) comply with, and ensure all Subcontractors comply with, all applicable occupational health and safety laws in relation to the performance of the Contractor's obligations under this Agreement, including the *Workers' Compensation Act* in British Columbia or similar laws in other jurisdictions;
- (e) be responsible for and pay for all fines, assessments, penalties and levies made or imposed under the *Workers' Compensation Act* and regulations relating in any way to the Work; and
- (f) upon request, provide the Province with proof of such compliance.

12.03 For the purposes of the *Workers' Compensation Act*, the Contractor may be considered the "Prime Contractor" for the Work, as described in the attached Safety Conditions Schedule, and as such shall enter into a Prime Contractor Agreement and carry out the duties as described therein.

Compliance of Plans and Specifications with Law

12.04 The Contractor is not responsible for verifying that the Plans and Specifications comply with any law. If the Plans and Specifications do not comply with law, either at the time this Agreement is executed or as a result of a subsequent modification in law, the Contractor shall advise the Ministry Representative in writing and, the Province may modify the Plans and Specifications to comply. The Contractor will complete the Work on the basis of the modified Plans and Specifications and the contract price may be modified in accordance with this Agreement.

ARTICLE 13 CHANGES IN THE WORK

13.01 "**Changes in the Work**" means additions, deletions or other revisions to the Work, within the intent of the Agreement, but are not Changed Conditions (see Section 14.01).

13.02 The Ministry Representative may, at any time before certifying Total Performance of the Work, do any of the following:

- (a) order additional work or material; or
- (b) order work or material to be deleted or changed;

from that provided for in the Plans and Specifications if the additional work or material, deletion or change is consistent with the general intent of the Agreement.

13.03 For changes to the Work ordered by the Ministry Representative:

- (a) the Contractor shall prepare and present to the Ministry Representative the Contractor's claim for a resulting change in the contract price or in the date of contract completion (or both), which claim shall be supported by appropriate documents acceptable to the Ministry Representative;
- (b) the Ministry Representative shall consider the claim by the Contractor with a view to becoming satisfied that the claim is appropriate; and
- (c) upon becoming satisfied as to the appropriateness of the claim, the Ministry Representative shall refer the matter to the Province for final approval.

13.04 The Contractor shall perform the Changes in the Work that are ordered by the Ministry Representative as if they had appeared in and been part of the Plans and Specifications.

13.05 Where a change is ordered by the Ministry Representative, the value of a change shall be determined in one or more of the following methods:

- (a) by estimate and acceptance in a lump sum;
- (b) by unit prices set out in this Agreement or subsequently agreed upon;

- (c) by actual cost of labour and materials and a fixed fee or percentage fee of 10 percent;
- (d) by cost for all found equipment in accordance with rates established in the current edition of the 'Province of British Columbia, Equipment Rental Rate Guide'.

13.06 In the case of changes in the Work to be paid for under methods (b), (c) and (d) of Section 13.05:

- (a) the change shall not proceed unless and until the Ministry Representative and the Contractor have agreed on the form of presentation of costs and methods of measurement; and
- (b) the Contractor shall keep accurate and complete records of quantities or costs and shall present an account of the cost of the change in the Work, together with vouchers where applicable, at intervals requested by the Ministry Representative.

13.07 When a change in the Work is proposed by the Contractor, the following procedure shall be carried out:

- (a) the Contractor shall prepare and present to the Ministry Representative the Contractor's proposal for changed Work together with any claim or credit, if applicable, for a resulting change in the contract price or in the date of contract completion (or both), which claim shall be supported by appropriate documents acceptable to the Ministry Representative;
- (b) the Ministry Representative shall consider the proposal and claim by the Contractor with a view to becoming satisfied that the proposal and claim are appropriate; and
- (c) upon becoming satisfied as to the appropriateness of the proposal and claim, the Ministry Representative shall refer the matter to the Province for final approval.

13.08 Changes in the Work shall not proceed without a written Amending Document signed by the Province and the Contractor.

13.09 Payment for Changes in the Work shall be made in accordance with Article 15.

13.10 If there is a change in the Work done by the Contractor pursuant to this Agreement, the Contractor shall ensure the surety companies named in the Performance Bond and the Labour and Material Payment Bond, if applicable, are advised and consent to the change.

ARTICLE 14 CHANGED CONDITIONS

14.01 "**Changed Conditions**" means physical conditions at the Place of Work which were not foreseen by the Contractor and which would not have been reasonably foreseen by a reasonable contractor who, prior to submitting its tender, conducted a thorough investigation of the work to be done to complete the Work, including thoroughly inspecting the Place of Work and reviewing all information available from the Province to persons wishing to submit tenders, but does not include any weather or natural event.

14.02 When the Contractor observes a Changed Condition, the Contractor shall advise the Ministry Representative or Inspector prior to proceeding with the Work. Should the Ministry Representative determine that conditions do differ materially, the Ministry Representative will issue appropriate instructions.

14.03 The Ministry Representative and the Contractor shall agree on the quantities and price of the work resulting from the Changed Condition, prior to certification of Total Performance of the Work, determined by any of the following methods:

- (a) by estimate and acceptance in a lump sum;
- (b) by unit prices set out in this Agreement or subsequently agreed upon;
- (c) by actual cost of labour and materials and a fixed fee or percentage fee; or
- (d) by cost for all found equipment in accordance with rates established in the current edition of the 'Province of British Columbia, Equipment Rental Rate Guide'.

ARTICLE 15 PAYMENT

15.01 Applications for payment on account may be made monthly as the Work progresses, in a form acceptable to the Ministry Representative.

- 15.02 The Province will pay any applicable taxes payable under law or agreement with the relevant taxation authorities. Invoices must show the calculation of any applicable taxes (excluding taxes paid directly by the Contractor to a supplier and which are inclusive in the bid price) payable by the Province in relation to the Work as a separate line item.
- 15.03 Applications for payment shall be dated the last day of the agreed payment period and the amount claimed shall be either:
- (a) if based on unit price, at the applicable rates set out in Schedule "A" Unit Price Table, based upon the amounts of Work done by the Contractor, as estimated from progress measurements prepared by the Contractor and certified by the Ministry Representative; or
 - (b) if based on lump sum contract price, for the value, proportionate to the amount of the Agreement, of work performed and products delivered to the Place of Work at that date.

Terms of Payment

- 15.04 The Ministry Representative shall, no later than ten (10) days after the receipt of an application for payment from the Contractor submitted in accordance with Section 15.02 and 15.03, certify the application for payment in the amount applied for or in such other amount the Ministry Representative determines is properly due. If the Ministry Representative amends the application, the Ministry Representative shall promptly advise the Contractor in writing giving reasons for amendment.
- 15.05 The Province will make progress payments pursuant to Section 15.03 and subject to the holdback provisions of Section 15.09, in accordance with the Province's payment practices and the *Financial Administration Act*.
- 15.06 Regulations pursuant to the *Financial Administration Act* do not permit interest payments unless the account is overdue by at least sixty-one (61) days. The overdue period is calculated from the date the Ministry Representative authorizes payment, or the date the invoice is received, whichever is the latter, to the date the cheque is printed by the Ministry of Finance.

Appropriation

- 15.07 Despite any other provision of this Agreement, the obligation for payment of money by the Province to the Contractor, pursuant to this Agreement, is subject to:
- (a) the Legislative Assembly of the Province of British Columbia having provided sufficient funds to enable the Province, in any fiscal year or part thereof, to make payment pursuant to this Agreement when it is due; and,
 - (b) Treasury Board not having controlled or limited expenditure of any funds referred to in subparagraph (a).
- 15.08 No payment by the Province under this Agreement, or partial or entire use or occupancy of the Work by the Province, shall constitute an acceptance of work or products which are not in accordance with the Contract Documents, or a release of the Contractor from any responsibility under this Agreement.

Holdback

- 15.09 Progress payments approved under Section 15.04 shall be subject to a holdback of:
- (a) ten percent (10%) of the value of the Work performed and the materials supplied under the terms of the Contract; and
 - (b) where a cash Contract Security has been provided (no performance bond): an additional five percent (5%) of the value of the Work performed and the materials supplied, to be held for the warranty period specified in Article 19 or such longer period as may be specified by the Province in the case of a warranty claim.
- 15.10 No interest or other charges shall accrue on any amounts retained pursuant to Section 15.09.
- 15.11 Holdback funds shall be applied as follows:
- (a) firstly, to any unpaid government agencies;
 - (b) secondly, to the Contractor's workers, direct Subcontractors and material suppliers; and
 - (c) thirdly, as security for the correction of any breach of a provision of the Agreement.

Holdback Release

- 15.12 The Province shall approve release of the 10% holdback referred to in Section 15.09(a) to the Contractor no sooner than fifty-five (55) days following satisfaction of **ALL** of the following conditions:
- (a) the Ministry Representative certifies the date of Substantial Performance of the Work, if such certification is provided, or Total Performance otherwise;
 - (b) the Contractor provides to the Province a clearance letter from WorkSafe BC indicating all current assessments due from the Contractor have been paid;
 - (c) the Contractor provides to the Province an NRS263 Statutory Declaration (supplied by the Province) attesting that all monies owing to the Contractor's workers, Subcontractors, material and equipment suppliers and government agencies have been paid; and
 - (d) the Contractor provides to the Province written confirmation and acceptance of measurement quantities, if requested by the Ministry Representative.

ARTICLE 16 SUBSTANTIAL PERFORMANCE

- 16.01 Upon request by the Contractor for certification of substantial performance of the Work, the Ministry Representative or Inspector shall inspect the Work.
- 16.02 The Ministry Representative shall, upon inspection, issue a certificate for substantial performance of the Work if **ALL** the following conditions are met:
- (a) the Work is being used for the purpose intended or is ready for use without any deficiencies affecting the safety of those using or likely to use the Work; and
 - (b) the Contractor is not in breach of any term of the Agreement.
- 16.03 The certification of substantial performance of the Work shall describe the parts of the Work not completed to the satisfaction of the Ministry Representative and all things that must be done before the Ministry Representative will certify Total Performance of the Work.
- 16.04 If because of climatic or other conditions reasonably beyond the control of the Contractor there are items of the Work that cannot be performed, payment in full for work which has been performed as certified by the Ministry Representative shall not be withheld or delayed by the Province on account thereof, but the Province may withhold until the remaining work is finished, such monies as the Ministry Representative determines are sufficient and reasonable to cover the cost of performing such remaining work and to adequately protect the Province from claims.

ARTICLE 17 TOTAL PERFORMANCE

- 17.01 After the Province receives a written request for final inspection from the Contractor, if, in the opinion of the Ministry Representative, the Work has been completed and has satisfactorily passed all final tests prescribed by the Plans and Specifications, the Ministry Representative shall establish the date of Total Performance of the Work and certify for payment the remaining monies due to the Contractor under the Agreement.
- 17.02 If after the Contractor's request for final inspection, the Work is not completely acceptable to the Province, then the Ministry Representative will advise the Contractor of particular defects in the Work and the Contractor shall immediately rectify the defects to the satisfaction of the Ministry Representative.

ARTICLE 18 TAXES AND DUTIES

- 18.01 The Contractor shall pay any applicable taxes, customs duties and excise taxes in respect of the Agreement.
- 18.02 Any increase or decrease in costs to the Contractor due to changes in such taxes and duties after the date of the tender opening shall increase or decrease the contract price accordingly.
- 18.03 A Contractor who has neither residence nor place of business in the Province of British Columbia shall, upon request, provide the Province with proof of registration with the provincial sales tax authorities.

ARTICLE 19 WARRANTY

- 19.01 Notwithstanding any other provision of this Agreement, or the expiration or sooner termination of this Agreement, the Contractor agrees to correct promptly, at the Contractor's expense, defects or deficiencies in the Work which appear prior to and during the period of **one year** from the date of certification of Total Performance of the Work, or such longer periods as may be specified for certain products or work.
- 19.02 The Province shall promptly give the Contractor written notice of observed defects and deficiencies that occur during the warranty period.
- 19.03 The Contractor shall correct or pay for damage resulting from corrections made under the requirements of Section 19.01.

ARTICLE 20 PROVINCIAL PROPERTY

- 20.01 Any materials, equipment or property supplied by or on behalf of the Province to the Contractor as a result of this Agreement shall be the exclusive property of the Province.
- 20.02 The Contractor shall deliver the property to the Province immediately following the expiration or sooner termination of this Agreement. The Ministry Representative may, before the expiration or sooner termination of this Agreement, give written notice to the Contractor requesting the Contractor to return to the Ministry Representative any part of the property, in which event the Contractor shall comply with the request.
- 20.03 The Contractor is liable to the Province for any loss or damage to materials, equipment or property that is supplied or placed in the care, custody and control of the Contractor by the Province, for use in connection with the Agreement, excepting always loss or damage attributable to reasonable wear and tear.

ARTICLE 21 CLEANUP

- 21.01 The Contractor and its Subcontractors shall maintain the Place of Work in a tidy condition and free from accumulation of waste products and debris, other than that caused by the Province, Other Contractors or their employees.
- 21.02 Upon attaining Substantial Performance of the Work, the Contractor shall remove the Contractor's surplus products, tools, construction machinery and equipment not required for the performance of the remaining work. The Contractor shall also remove waste products and debris other than that caused by the Province, Other Contractors or their employees, and leave the Place of Work clean and suitable for occupancy or use by the Province, unless otherwise specified.
- 21.03 Total Performance of the Work shall not be attained until the Contractor has removed his surplus products, tools, construction machinery and equipment. The Contractor shall also have removed waste products and debris, other than that caused by the Province, Other Contractors or their employees.

ARTICLE 22 LAYOUT

- 22.01 The Contractor shall, at the Contractor's own expense:
- (a) layout the Work and, if requested by the Province, give the Ministry Representative or the Inspector such facilities and assistance in establishing lines, grades and points, and measure up the Work, as the Ministry Representative or the Inspector directs; and
 - (b) do whatever is necessary to ensure that all marks and stakes placed on the Work or Place of Work by or under the authority of the Ministry Representative or the Inspector, are protected and are not removed, defaced, altered or destroyed.
- 22.02 Before the commencement of the Work, the Contractor shall satisfy itself as to the meaning and correctness of all marks and stakes, as no claim will be accepted thereafter. If the Contractor determines or has reason to suspect any errors in the marks and stakes, he shall stop work and advise the Ministry Representative or the Inspector, who shall investigate and provide additional instructions for rectification, if necessary. No claim for delay or additional costs shall be permitted under this Section.

ARTICLE 23 DELAYS

- 23.01 If the Contractor is delayed in the performance of the Work by act or omission of the Province, Inspector, Other Contractor, or anyone employed or engaged by them directly or indirectly, contrary to the provisions of the Contract Documents, then the completion date specified in Section 5.02 shall be extended for such reasonable time as the Province may decide in consultation with the Contractor. The Contractor shall be reimbursed for reasonable costs incurred by the Contractor as the result of such delay.
- 23.02 If the Contractor is delayed in the performance of the Work by a stop work order issued by a court or other public authority, and if the order is issued because of an act of fault by the Province, (or any person employed or engaged directly or indirectly by the Province) and not an act of fault by the Contractor (or anyone employed or engaged directly or indirectly by the Contractor), then the contract completion date shall be extended for such reasonable time as the Province may decide in consultation with the Contractor. The Contractor shall be reimbursed for reasonable costs incurred by the Contractor as a result of such delay.
- 23.03 If the Contractor is delayed in the performance of the Work by labour disputes, strikes, lock-outs (including lock-outs decreed or recommended for its members by a recognized contractors' association, of which the Contractor is a member or to which the Contractor is otherwise bound), fire, unusual delay by common carriers or unavoidable casualties or, without limit to any of the foregoing, by a cause beyond the Contractor's control, then the contract completion date shall be extended for such reasonable time as the Province may decide in consultation with the Contractor. The extension of time shall not be less than the time lost as the result of the event causing the delay, unless the Contractor agrees to a shorter extension. Subject to Section 23.05, the Contractor shall not be entitled to payment for costs incurred as a result of such delays.
- 23.04 No extension to the contract completion date shall be made for delay unless written notice of claim is given to the Ministry Representative not later than fourteen (14) days after the commencement of delay, providing, however, that in the case of a continuing cause of delay only one notice of claim shall be necessary.
- 23.05 Compensation is payable to the Contractor for delays under Section 23.03 only where such delay was caused by the Province, other than as a reasonable response to an event or situation beyond the Province's control.

ARTICLE 24 PROVINCE'S RIGHT TO PERFORM WORK OR STOP THE WORK OR TERMINATE CONTRACT

- 24.01 If the Contractor should neglect to prosecute the Work or on the happening of an Event of Default, or at any time thereafter, the Ministry Representative or Inspector may notify the Contractor in writing that the Contractor is in default and instruct the Contractor to correct the default in the five (5) days immediately following the receipt of such notice.
- 24.02 If the Contractor receives such notice pursuant to Section 24.01, the Contractor, subject to Section 24.03, shall correct the default immediately.
- 24.03 If the correction of the default cannot be completed in the five (5) days specified, the Contractor shall be in compliance with the Province's instructions if the Contractor:
- (a) commences the correction of the default within the specified time; and
 - (b) provides the Province with an acceptable schedule for such correction; and
 - (c) completes the correction in accordance with such schedule.
- 24.04 If the Contractor fails to correct the default in the time specified or subsequently agreed upon, the Province, without prejudice to any other right or remedy it may have, may, in its sole discretion do one or more of the following:
- (a) correct such default and deduct the actual cost thereof from any payment then or thereafter due the Contractor;
 - (b) terminate the Contractor's right to continue with the Work in whole or part.
 - (c) waive the default in a Notice and on such conditions as the Ministry Representative may determine; or

- (d) terminate this Agreement with immediate effect or on a future date specified by the Province.
- 24.05 If the Province terminates the Contractor's right to continue with the Work under the conditions set out in Section 24.04 (b) or (d), the Province shall be entitled to do any one or more of the following:
- (a) take possession of the Work and products and utilize all construction machinery and equipment, subject to the rights of third Parties, and finish the Work by whatever method it may consider expedient but without undue delay or expense;
 - (b) withhold further payments to the Contractor until the Work is finished, and
 - (c) upon Total Performance of the Work, charge the Contractor the full cost of finishing the Work (as certified by the Ministry Representative), which cost shall include compensation for any additional services of the Ministry Representative required to complete the Work.
- 24.06 No failure or delay on the Province's part to exercise its rights in relation to an Event of Default will constitute a waiver of such rights.
- 24.07 If the Contractor becomes aware that an Event of Default has occurred or anticipates that an Event of Default is likely to occur, the Contractor must promptly notify the Province of the particulars of the Event of Default or anticipated Event of Default. A notice under this section as to the occurrence of an Event of Default must also specify the steps the Contractor proposes to take to address, or prevent recurrence of, the Event of Default. A notice under this section as to an anticipated Event of Default must specify the steps the Contractor proposes to take to prevent the occurrence of the anticipated Event of Default.
- 24.08 The Contractor's obligations under the Agreement as to quality, correction and warranty of the work performed by the Contractor up to the time of termination shall continue in force after such termination.
- 24.09 The rights, powers, and remedies conferred upon the Province under this Article are not intended to be exclusive and each such right, power, and remedy referred to therein shall be cumulative and in addition to and not in substitution for every other right, power or remedy existing or available to the Province under the Agreement, at law or in equity, and the exercise by the Province of any right, power, or remedy shall not preclude the simultaneous or later exercise by the Province of any other right, power or remedy.
- 24.10 Notwithstanding any other provision of the Agreement, the Province may at any time and for any reason, upon giving thirty (30) days prior Notice to the contractor, terminate the Agreement.
- 24.11 Subsequent to receipt of Notice from the Province pursuant to Section 24.10, the Contractor shall only proceed with those portions of the Work specifically authorized in a Notice by the Ministry Representative to be completed prior to termination.
- 24.12 Upon termination of the Agreement in accordance with this Agreement, the Province shall have no further obligation to the Contractor save and except to pay to the Contractor:
- (a) The amount the Contractor is entitled to for Work completed to the Province's satisfaction prior to the date of termination after any deductions made in accordance with this Agreement; and
 - (b) Other actual expenses actually incurred by the Contractor, such as demobilization and compensation for unrecovered actual fixed expenses which are, in the sole opinion of the Province, reasonable in the circumstances.

ARTICLE 25 DISPUTE RESOLUTION

- 25.01 If a dispute occurs between the Parties concerning any matter under this Agreement, the disputing Party shall promptly advise the other Party and the Parties together shall use all reasonable efforts to resolve the dispute informally.
- 25.02 If the Parties are unable to resolve the dispute informally, within fourteen (14) days, the Contractor shall then give Notice, within fourteen (14) days, of the complaint to the Ministry Representative, which particulars shall include the following:
- (a) a detailed description of the nature of the complaint;
 - (b) a list of the relevant provisions of the Contract Documents; and
 - (c) a valuation by the Contractor of the matters in dispute.

- 25.03 The Province shall, within thirty (30) days of receipt by the Ministry Representative of the written particulars, give to the Contractor a decision, in writing, of one of the following:
- (a) that the Province accepts the position of the Contractor; or
 - (b) that the Province rejects the position of the Contractor.
- 25.04 If the Province accepts the position of the Contractor, the Parties shall enter into an Amending Document to reflect the agreement.
- 25.05 If the Province rejects the position of the Contractor, the Parties shall, if they both agree, have the matters resolved by arbitration, in accordance with the *Commercial Arbitration Act*.
- 25.06 If the matter in dispute is not resolved promptly pursuant to Section 25.01, the Ministry Representative may give to the Contractor such instructions as in the Ministry Representative's opinion are necessary to provide for the proper performance of the Work and to prevent delays.
- 25.07 If the Contractor receives instructions pursuant to Section 25.06, the Contractor shall act immediately to carry out the work pursuant to the instructions, but any work performed by the Contractor in this respect shall be without prejudice to any claim the Contractor may have concerning the dispute.
- 25.08 Nothing in this Article shall preclude either Party from having a dispute resolved by a court of competent jurisdiction.

ARTICLE 26 DAMAGES AND MUTUAL RESPONSIBILITY

- 26.01 If either Party to this Agreement should suffer damage in any manner due to a breach of the obligations of the other Party, then that Party shall be reimbursed by the other Party for such damage.
- 26.02 Claims for damage under Section 26.01 shall be made in writing to the Party liable within reasonable time after the first observance of such damage and if undisputed shall be confirmed by an Amending Document. Disputed claims shall be resolved as set out in Article 25.
- 26.03 If the Contractor has caused damage to the work of an Other Contractor at the Place of Work, the Contractor agrees upon due notice to settle with the Other Contractor by negotiation or arbitration. If the Other Contractor makes a claim against the Province on account of damage alleged to have been so sustained, the Province shall notify the Contractor and may require the Contractor to defend the action at the Contractor's expense. The Contractor shall satisfy a final order or judgment against the Province and pay the costs incurred by the Province arising from such action.
- 26.04 If the Contractor becomes liable to pay or satisfy a final order, judgment, or award against the Province, then the Contractor, upon undertaking to indemnify the Province against any and all liability for costs, shall have the right to appeal in the name of the Province such final order or judgment to any and all courts of competent jurisdiction.

ARTICLE 27 MISCELLANEOUS

Confidentiality

- 27.01 The Contractor will treat as confidential and will not, without the prior written consent of the Province, disclose or permit to be disclosed or used, either before or after the expiration or sooner termination of this Agreement, any information supplied to, obtained by, or which comes to the knowledge of the Contractor or its Subcontractor (whether verbally, electronically or otherwise) as a result of this Agreement except if the disclosure is necessary to enable the Contractor to fulfill its obligations under this Agreement or to comply with applicable laws or if it is information that is generally known to the public other than as a result of a breach of this Agreement.

Records to be Kept by Contractor

- 27.02 The Contractor shall:
- (a) maintain full records of his estimated and actual cost of the Work together with all tender calls, quotations, contracts, material cost distribution worksheets, equipment records (including, without limitation, hours of use and distribution), correspondence, invoices, receipts and vouchers relating thereto;
 - (b) when requested, make all records and material referred to in subsection (a), available for audit and inspection by the Ministry Representative, or by other persons acting on the Province's behalf;

- (c) allow any of the persons referred to in subsection (b) to make copies of and to take extracts from any of the records and material referred to in subsection (a); and
- (d) furnish any person referred to in subsection (b) with any information they may require from time to time in connection with such records and material.

The records maintained by the Contractor pursuant to this Section shall be kept intact by the Contractor until the expiration of seven (7) years after the date of Substantial Performance, if given, or Total Performance otherwise, or until the expiration of such other period of time as the Province may direct.

The Contractor shall permit the Province, at all reasonable times, to inspect and copy any findings, data, specifications, drawings, working papers, reports, documents and material whether complete or otherwise that have been produced, received or acquired by, or provided by or on behalf of the Province to the Contractor, as a result of this Agreement.

Samples and Testing

- 27.03 The Ministry Representative or the Inspector may, at the expense of the Province, take samples, and test and inspect materials that are incorporated or are intended to be incorporated into the Work. The Contractor shall cooperate with the Ministry Representative or the Inspector in providing every necessary facility for sampling, testing and inspecting.

The Contractor shall furnish to the Ministry Representative, if requested, a complete written statement of the origin, composition and manufacture of any materials supplied by the Contractor that are incorporated or are intended to be incorporated in the Work.

Defective Work

- 27.04 Defective work, whether the result of poor workmanship, use of defective products or damage through carelessness or other act or omission of the Contractor, and whether incorporated in the Work or not, which has been rejected by the Ministry Representative or Inspector as failing to conform to the Plans and Specifications shall be removed promptly from the Place of Work by the Contractor and replaced or re-executed promptly in accordance with the Plans and Specifications at the Contractor's expense.

The Contractor shall make good promptly Other Contractors' work destroyed or damaged by such removals or replacements, at the Contractor's expense.

If, in the opinion of the Ministry Representative, it is not expedient to correct defective work or work not performed in accordance with the Plans and Specifications, the Province may deduct from monies otherwise due to the Contractor, the difference in value between the work as performed and that called for by the Plans and Specifications, the amount of which will be determined in the first instance by the Ministry Representative.

Notice

- 27.05 Any notice or document required to be given under this Agreement shall be conclusively deemed to be validly given or delivered to and received by the Parties at the work site or at the address, facsimile, or email address specified on the first page of this Agreement (or at such other address as either Party may from time to time designate by notice in writing to the other):

- (a) if hand delivered to the Party or the specified Party representative, on the date of that personal delivery; or
- (b) if pre-paid post and if mailed during any period when normal postal services prevail, on the fifth business day after its mailing; or
- (c) if delivered by courier service, on the fifth business day after collection by the courier service; or
- (d) if sent by facsimile or electronic transmission, on the day of transmittal unless transmitted after the normal business hours of the addressee or on a day that is not a business day, in which case it will be deemed to be received on the next following business day.

Agreement Execution

- 27.06 This Agreement may be entered into by a separate copy of this Agreement being executed by, or on behalf of, each Party and that executed copy being delivered to the other Party by a method provided for in Section 27.05 or any other method agreed to by the Parties.

Survival of Terms

- 27.07 All terms of this Agreement in favour of the Province and all rights and remedies of the Province, either at law or in equity, survive the expiration or sooner termination of this Agreement subject to any applicable limitation period prescribed by law.

Successors and Assigns

- 27.08 This Agreement enures to the benefit of and binds the Province and its assigns and the Contractor and its successors and permitted assigns.

The Contractor must not assign its rights or obligations under this Agreement, either in whole or in part, without the prior written consent of the Province. Upon providing written notice to the Contractor, the Province may assign to any person any of the Province's rights under this Agreement and may assign to any "government corporation", as defined in the *Financial Administration Act*, any of the Province's obligations under this Agreement.

Use of the Work

- 27.09 The Contractor shall confine construction machinery and equipment, storage of products and the operations of employees to limits indicated by laws, ordinances, permits or the Contract Documents and shall not unreasonably encumber the Place of Work with products.

The Contractor shall not load, or permit to be loaded, any part of the Work with a weight or force that will endanger the safety of the workers or the Work.

The Contractor shall not erect or permit the erection of any sign or advertising on the Work or the Place of Work without the prior written consent of the Province.

Contractor Status

- 27.10 In relation to the performance of the Contractor's obligations under this Agreement, the Contractor is an independent contractor and not our:

- (a) employee or partner; or
- (b) agent except as may be expressly provided for in this Agreement.

You must not act or purport to act contrary to this section.

The Contractor will not purport to commit the Province to the payment of any money to any person.

All personnel hired or used by the Contractor to perform the Work are at all times the employees of the Contractor and not of the Province. The Contractor is solely responsible for arranging reliefs and substitutions, pay, supervision, discipline, unemployment insurance, leave and all other matters arising out of the relationship of employer and employee.

Unsuitable Workers

- 27.11 The Contractor must provide a sufficient number of persons to perform the Work and shall ensure all persons are fully instructed and supervised, legally entitled to work in Canada, competent, English literate, efficient, qualified by education, adequately trained, and experienced to carry out the tasks to which each is assigned.
- 27.12 The Contractor shall, upon request of the Ministry Representative, remove any person employed by the Contractor for purposes of this Agreement who, in the opinion of the Province, is incompetent or has exhibited improper conduct and the Contractor shall not permit a person who has been removed to return to the Place of Work.

Terms of Tender

- 27.13 The Contractor represents to the Province that the Contractor has complied with any investigative requirements in the Conditions of Tender and has fully advised Subcontractors of the results of investigation where appropriate.

Non-Waiver

- 27.14 A waiver of any term or breach of this Agreement is effective only if it is in writing and signed by, or on behalf of, the waiving Party and is not a waiver of any other term or breach.

Time of Essence

- 27.15 Time shall be of the essence in this Agreement, and, without limitation, will remain of the essence after any modification or extension of this Agreement, whether or not expressly restated in the document effecting the modification or extension.

Representations and Warranties

- 27.16 As at the date this Agreement is executed and delivered by, or on behalf of, the Parties, the Contractor represents and warrants, except to the extent it has previously disclosed otherwise in writing to the Province:
- (a) all information, statements, documents and reports furnished or submitted by it to the Province in connection with this Agreement (including as part of any competitive process resulting in this Agreement being entered into) are in all material respects true and correct; and
 - (b) if the Contractor is not an individual:
 - i) it has the power and capacity to enter into this Agreement and to observe, perform and comply with the terms of this Agreement and all necessary corporate or other proceedings have been taken and done to authorize the execution and delivery of this Agreement by, or on its behalf, and
 - ii) this Agreement has been legally and properly executed by the Contractor, or on its behalf, and is legally binding upon and enforceable against the Contractor in accordance with its terms.

The Parties hereto have duly executed this Agreement.

SIGNED AND DELIVERED on behalf of the Province by an authorized representative of the Province	SIGNED AND DELIVERED by or on behalf of the Contractor (or by an authorized signatory of the Contractor if a corporation)
(Authorized Ministry Expense Authority)	(Contractor or Authorized Signatory)
Jason Olmsted	s.19; s.22
Dated this ____ day of _____, 20__	Dated this ____ day of _____, 20__

MAJOR WORKS CONTRACT
(CONSTRUCTION AGREEMENT)
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Natural Resource Sector

**MAJOR WORKS CONTRACT
SCHEDULE "A" – SCHEDULE OF
APPROXIMATE QUANTITIES AND
UNIT PRICE TABLE**

R3-200 Bulkley River Crossing Right-of-Way Clearing Project

Item No.	Item or Description of Work	Estimated Total Price (Excluding GST and PST as a taxable transaction charged to Province)
1.0	Traffic Management Plan	s.21
2.0	Mobilization and Demobilization	
3.0	Construction of Site Access	
4.0	Right-of-Way Clearing	
5.0	Construction Materials – Culverts, Aggregates	
Total		\$167,283.00

Note: The estimated total price listed shall be billed as time and materials based on the actual hours worked and invoiced amounts for materials and subcontractors. Fees to include the applicable markup of 10% on labour and equipment and 15% on materials and subcontractors. The applicable rates are listed on the Appendix A - Kyah Resources Proposal.



Natural Resource Sector

MAJOR WORKS CONTRACT SCHEDULE "B" – INSURANCE REQUIREMENTS

1. The Contractor shall, without limiting its obligations or liabilities or restricting the generality of the indemnification provisions contained in the Agreement, at its own expense, provide and maintain, the following insurance(s) coverage as fully specified in Paragraph 14 and any additional insurance which it is required by law to carry or which it considers necessary to cover risks not otherwise covered by insurance specified in this Schedule in its sole discretion.
2. Unless otherwise specified, the duration of each coverage and insurance policy shall be from the date of commencement of Work and shall remain in full force and effect until all conditions of the Agreement have been fully complied with and until acceptance by the Ministry of all Works and appurtenances pertaining to the Agreement.
3. Insurance shall be placed with Insurers licensed to underwrite such insurance in Canada and in forms and amounts acceptable to the Province. All such insurance shall be at no expense to the Province. If the Province requires additional Insurance Coverage to be obtained by the Contractor, the additional expense of such additional insurance shall be borne by the Province.
4. All insurance shall be primary and not require the sharing of any loss by any insurer of the Province.
5. The Contractor hereby waives all rights of recourse against the Province with regard to damage to the Contractor's property.
6. Notwithstanding Paragraph 7, the Contractor shall, prior to the commencement of the Work and before any payments are made under the Agreement, file with the Ministry Representative evidence of insurance coverage in the form of a completed Province of British Columbia Certificate of Insurance (Form FIN 173). When requested by the Province, the Contractor shall provide certified copies of required insurance policies.
7. ICBC's Confirmation of Automobile Insurance Coverage (Form APV 47) or Confirmation of Unlicensed Vehicle Coverage (Form APV 45) shall be used when applicable as evidence of Automobile Liability Insurance for vehicles or off-road vehicles used during the performance of the work.
8. The insurance policies, except for ICBC Automobile Liability Insurance, shall provide that the insurance shall not be canceled or materially changed so as to affect the coverage provided under the Agreement, without the Insurer giving at least thirty (30) days prior written notice to the Province.
9. Failure to provide the required insurance documentation shall result in termination of the Agreement.
10. If the insurance policies expire prior to the end of the Agreement Term, the Contractor shall provide the ministry evidence of renewal or new policy meeting the requirements of the expired insurance in the form of a completed Province of British Columbia Certificate of Insurance and ICBC's Form APV 47 or APV 45, if applicable, at least ten (10) days prior to the expiry date of the policies listed in this Schedule.
11. The payment of any deductible shall be the responsibility of the Contractor, except for flood and earthquake which will be the responsibility of the Province.

12. The Contractor shall ensure that all its subcontractors performing Services under the Agreement carry insurance in the form and limits specified in Paragraph 14.
13. Unless stated otherwise under any subsection of Paragraph 14, where the Province is to be added as an Additional Insured or otherwise to be identified on the policy, it shall be written as follows: "His Majesty the King in right of the Province of British Columbia as represented by the Minister of Forests and any of its employees, servants or agents".
14. The following forms of insurance and specified minimum limits are required.

- a) **Commercial General Liability** insurance in an amount not less than \$2 million inclusive per occurrence against bodily injury, personal injury, and damage to property including loss of use thereof arising out of or resulting from the Work and including liability assumed under the Agreement.

Such policy(s) of insurance shall include, but not be limited to:

- i) Products and Completed Operations Liability;
- ii) Owner's and Contractor's Protective Liability;
- iii) Contingent Employer's Liability;
- iv) Blanket Written Contractual Liability;
- v) Personal Injury Liability;
- vi) Non-Owned Automobile Liability;
- vii) Cross Liability;
- viii) Employees as Additional Insureds;
- ix) Broad Form Property Damage;
- x) Sudden and Accidental Pollution endorsement on the Commercial General Liability insurance policy with a limit of liability not less than the amount indicated below per occurrence insuring against bodily injury, property damage and cleanup expenses arising from new pollution conditions arising from the Contractor's performance of the Agreement, or if such endorsement is unavailable on the Commercial General Liability insurance policy, a Sudden and Accidental Pollution insurance policy insuring against same and with same limits of liability indicated below, and this insurance shall include the Province as an additional insured as stated below:

and where such further risk exists:

- xi) Including but not limited to shoring, blasting, excavating, underpinning, demolition, hot roof application, crane operations and removal, piledriving and caisson work, work below ground surface, tunnelling and grading;
- xii) Elevator and Hoist Liability;
- xiii) Operation of Attached Machinery;
- xiv) Forest Fire Fighting Expense Coverage in the amount of:
 - ☐ \$1 million (*activity taking place during fire season*)
- xv) Construction activities occurring at airport facilities. Alternatively, coverage may have to be provided under an aviation liability policy.
 - ☒ Not applicable
- xvi) Where the Contractor's performance of the work is associated with hazardous materials clean-up, removal and/or containment, transit and disposal, Contractor's Pollution Liability insurance policy with a limit of liability not less than \$2 million inclusive per occurrence insuring against bodily injury and property damage. This insurance must include the Province as an additional insured for its vicarious liability as land owner, project owner, or party to this Agreement. Such insurance shall not be impaired by any time element limitations, biological contaminants (without limitation, mould and bacteria), asbestos, or lead based paint exclusions. Any "insured vs. insured" exclusion shall not prejudice coverage for the Province and shall not affect the Province's ability to bring suit against the Contractor as a third party.

Such insurance must:

- i) Include as a protected entity the Province and each Contractor, Subcontractor, Architect, Engineer, Consultant and anyone employed by them to perform a part or parts of the Work, but excluding suppliers whose only function is to supply and/or transport products to the work site;
- ii) as per Paragraph 13 above, identify the Province on the policy;
- iii) preclude subrogation claims by the insurer against anyone insured by the policy; and
- iv) provide, where a warranty period is required by the Province under this Agreement, Products and Completed operations coverage, as applicable, in force for the duration of the warranty period.

b) Automobile Liability

Third Party Automobile Liability on all vehicles or off-road vehicles owned, leased, rented or used in the performance of this Agreement, in an amount not less than \$2 million inclusive per occurrence must be provided for any such vehicle.

c) Aviation Liability

Where any aircraft (including helicopters) are operated or used in the performance of this Agreement, the Contractor will obtain and maintain, or will cause to be obtained and maintained and will provide evidence to the Province of a Subcontractor's compliance with this requirement, Aviation Liability Insurance insuring against bodily injury, property damage, and passenger liability, in an amount not less than the limits of liability imposed by any *Canadian Aviation Regulation* and in any event not less than a per occurrence combined single limit of:

- i) \$3 million for aircraft up to 5 passenger seats, or
- ii) \$3 million plus \$1 million for each additional passenger seat for aircraft up to 10 passenger seats, or
- iii) \$10 million for aircraft over 10 passenger seats;

Such insurance shall include a cross liability clause.

As per Paragraph 13 above, the Province is to be added as an "Additional Insured" under this policy.

d) Watercraft Liability

Where any watercraft are operated or used (including rented watercraft) in the performance of this Agreement, the Contractor will obtain and maintain, or will cause to be obtained and maintained and will provide evidence to the Province of a Subcontractor's compliance with this requirement, Watercraft liability insurance in an amount not less than the limits of liability imposed by the *Marine Liability Act* and in any event not less than \$2 million inclusive per occurrence.

Such insurance shall include:

- i) a cross liability clause
- ii) Sudden and Accidental Pollution endorsement on the Watercraft liability insurance policy with a limit of liability not less than the amount indicated below per occurrence insuring against bodily injury, property damage and cleanup expenses arising from new pollution conditions arising from the Contractor's performance of the Agreement, or if such endorsement is unavailable on the Watercraft Liability insurance policy, a Sudden and Accidental Pollution insurance policy insuring against same and with same limits of liability indicated below, and this insurance shall include the Province as an additional insured as stated below:

☒ Not Applicable

Where applicable, such policy will also include coverage for marine towing operations.

As per Paragraph 13 above, the Province is to be added as an "Additional Insured" under this policy.

Builder's All-risk

Property insurance in the form of an "all-risks" builder's risk policy including but not limited to coverage for structural collapse, flood and earthquake. Such policy must insure the Work to the total of the full value of the contract price including the value of any labour and materials and/or structures and/or property and/or equipment destined for or entering into or forming part of the Work and must extend to cover property at any other location, awaiting and/or during construction or erection, while in transit and during installation and testing occurring anywhere within Canada or the continental United States of America.

Such insurance must:

- i) preclude subrogation claims by the insurer against anyone insured by the policy except where a loss is deemed to have been caused by or resulting from any error in design or any other professional error or omission;
- ii) include as a protected entity the Province and each of the Contractor, the Sub-contractors, Architect or Engineer and all others having an insurable interest in the Work;
- iii) identify the Province as "His Majesty the King in right of the Province of British Columbia as represented by the Minister of Forests";
- iv) permit that use and occupancy of the Work or any part thereof prior to Substantial Performance will not be cause for any termination of coverage; and
- v) automatically include any changes in design or method of construction.

Deductibles per Occurrence:

- i) Flood - \$25,000.00 maximum;
- ii) Earthquake – up to 10% of the actual value at the time of loss;
- iii) All other losses up to \$5,000.00 or one percent (1%) of the contract amount, whichever is greater.

The Contractor shall, at its own expense, take special precaution to prevent fires occurring in or about the Work and shall observe and comply with all insurance policy warranties and all laws and regulations in force respecting fires.

Where, due to the nature of the work the full insurable value of the work is substantially less than the full value of the contract price, the Province shall, at its sole discretion, reduce the amount of insurance required or waive the Builder's All-risk insurance requirement.

e) Contractor's Construction Equipment

Contractor's construction Equipment insurance covering construction machinery and equipment used by the Contractor for performance of the Work in such forms and amounts as will enable prompt replacement and repair of the equipment.

SCHEDULE C: SPECIAL PROVISIONS

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1. **GENERAL ITEMS**

1.1. **Introduction**

These Special Provisions shall be read and construed in conjunction with and shall take precedence over the Forest Service Bridge Design and Construction Manual (most recent edition)", referred to in this document as 'Bridge Manual'.

Payment for work will be made at the stipulated prices bid for the items appearing in the Major Works Contract Schedule A. Any work called for which is not listed as an item in Schedule 'A' will not be paid for separately.

1.2. **Prime Contractor Identification**

In addition to Article 12.02 of the Major Works Contract, Safety Conditions and Prime Contractor Agreement, the contractor must supply and erect a sign at either end of the construction site, identifying the prime contractor information. This information must be consistent with the criteria as stated in the BC Catalogue of Standard Traffic Signs. This document can be found at:

[CONSTRUCTION SIGNS -Updated July 2021 \(gov.bc.ca\)](https://www2.gov.bc.ca/gov/content/safety/traffic-signs/standard-traffic-signs)

1.3. **Subcontractor and Supplier Identification**

If the Contractor requires Subcontractors and/or Suppliers, The **Contractor shall submit a list of Subcontractors and/or Suppliers to the Ministry for approval** prior to any works being performed by the subcontractor.

After award, the successful Contractor shall contract out the specified works to the identified subcontractors and suppliers. The Contractor shall notify the Ministry if there are any changes to the list of subcontractors and suppliers.

It is recommended that the list of Subcontractor and/or Suppliers be supplied to the ministry with the appropriate Schedule as listed in the Invitation to Tender Table of Contents.

Work submitted by non-approved subcontractors may not be accepted until they are approved.

1.4. **Access to Site(s)**

The Contractor shall be fully responsible for access to the works. The Contractor shall satisfy that access to the works is adequate to get equipment and materials to the work site(s). The Contractor shall be responsible for the cost of any temporary access works and road maintenance that may be required.

The Contractor shall provide 72 hours of notice to the persons who are the designated maintainers of the roads before using the applicable roads that access the work site(s).

The Contractor must ensure that the equipment working on or hauling material to and from the site(s) does not damage or deposit material onto any existing roadway. Any material spilled on roadways open to public traffic or on driveways must be cleaned up immediately. It will be the Contractor's responsibility to repair any damage to roads and driveways cause by construction equipment and/or operations.

Upon completion of the hauling portion of the contract, the Contractor must grade and repair the haul roads to the satisfaction the Ministry Representative.

Accesses to the sites are gained over the highway and Forest Service Roads. Transport vehicle(s) shall take into consideration travel on gravel resource roads.

No separate payment will be made for the above items.

1.5. **Adherence to Drawings**

The various parts of the work shall be built in strict accordance with the drawings and with any supplementary drawings that may be furnished during the progress of the work as occasion requires.

1.6. Layout of Work

The centreline, right of way boundaries and Cultural Areas of Potential have been marked. The extents of the clearing which is **30 metres horizontal distance** either side of the centreline. The Contractor must be satisfied before commencing any work, as to the meaning and correctness of all marks and stakes, as no claim will be entertained for any alleged inaccuracies. Should the Contractor discover or suspect any errors in the marks, the Contractor shall at once discontinue the affected work until such errors are investigated and, if necessary, rectified.

1.7. Construction Schedule

In accordance with Article 7 of the Agreement, the Contractor must submit to the Ministry Representative the Construction Schedule and a list of equipment prior to the pre-construction meeting or within seven days of acceptance of the Tender, whichever is sooner.

This Construction Schedule must meet all the contract milestone dates and also address all items of the Work that require approval or certification by the Ministry. The Ministry will require at least **72 hours'** notice for any changes to the Construction Schedule.

The costs for completing the Construction Schedule are considered **incidental**.

1.8. Time Schedule

The Contractor shall complete and submit a Time Schedule showing dates related to the works and milestones.

The Contractor will schedule and carry out the construction work so as to comply with work site conditions specified by the province to be in place on the following dates in chronological order:

November 23, 2023	Start of Contract, on or before
March 15, 2024	Completion of Contract, on or before

The Contractor at all times shall notify the Ministry of any delays or gains on the schedule. The costs for completing the Work Time Schedule are considered **incidental**.

1.9. Pre-construction Deliverables

The following documents must be provided to the Ministry for review and approval prior to mobilization to site and the start of any construction. The Ministry may take up to two weeks to review the documents.

- Traffic Management Plan;
- List of subcontractors;
- List of suppliers;
- List of key personnel
- Construction schedule; and
- List of equipment.

1.10. Industrial Health and Safety Regulations

The Contractor must observe and enforce the construction safety measures required by the Canadian Safety Code (NRCC15562), Provincial Government, and Work Safe BC.

In the event of conflict between any provisions of the above authorities, the Contractor must apply the most stringent.

Prior to start of construction, the Contractor must give notice in writing to Work Safe BC as required in Section 20.2 of the "Occupational Health and Safety Regulations"

1.11. Inquiries

Requests for clarification of the contract documents during the bid preparation period shall be made to:

Site & Project Information
s.19; s.22

2. SITE SPECIFIC PROVISIONS

2.1. Location of Work

2.1.1. Site: 20+000 to 21+000 of the Proposed Suskwa FSR

The work begins at 48.3km west of Smithers on Highway 16 is located at approximately:

- > Latitude: 55.1528°N
- > Longitude: - 127.3823°W



The red line is the Right-of-Way centreline

2.2. Scope of Work

The work to be carried out under this contract consists of the following:

- Prior to construction, prepare:
 - > Traffic Management Plan
 - > **ALL OF THE ABOVE ITEMS TO BE SUBMITTED TO THE MINISTRY FOR ACCEPTANCE**
- Construction
 - > Mobilization and Demobilization
 - > Loading and Unloading on Highway 16 and constructing access to the Right-of-Way
 - > Fell, skid and deck merchantable timber (approximately 6 hectares) The deck areas are shown on the map R3-200 Right-of-Way Clearing. The west deck is by Highway 16 and Right-of-Way Clearing, and the east deck is at 10.2 km of the Suskwa -Morisetown FSR. Additional deck locations may also be approved by the Ministry Representative.

- Site Cleanup.
- Protection of cultural areas of potential
 - › There are Cultural Areas of Potential within the right-of-way that have cultural significance. These areas are marked with ribbons on the ground and displayed on the drawings. These areas are to be preserved and NO CLEARING is to occur within these areas.
- Where the right-of-way crosses the Bulkley River, a portion of the right-of-way has no timber.

2.3. Availability of Site(s)

The west site is available for immediate clearing.

2.4. Camp Facilities

The Contractor may establish a temporary construction camp and shall obtain all necessary building and operating permits for the camp facility.

Ministry Representative shall approve any camp location prior to any preparatory work being carried out.

2.5. Drawings, Appendices and Technical Reports

The following tables contain a list of Drawings, Appendices and Technical reports that form part of this contract. The Contractor shall ensure that the correct versions of all items listed are included in the contract packages.

DESIGN DRAWINGS:				
Description	Number	Revision	Date	Pages
Allnorth-Suskwa Proposed Right of Way	Allnorth Consultants Ltd. Drawings No: 2301386- 100-1920-201	A	2023/09/01	1
Map R3-200 Right-of- Way Clearing	1		2023-09-07	1

2.6. Supply of Certain Materials by the Contractor

The Contractor is responsible to provide all materials to complete the work.

2.7. Potential Gravel and Rock Sources

Not Applicable

2.8. Traffic Management

Traffic Management Plan (TMP) is required to be submitted to the Ministry for review prior to any clearing activities. Below are some key elements that must be addressed/considered within each TMP:

- While operations are within 50m of the existing Highway 16 corridor, the contractor shall follow BC Ministry of Transportation and Infrastructure (MoTI) ["Traffic Management Manual for Work on Roadways"](#). Including a traffic control diagram, an approved H1080 "Work Notification/Lane Closure Request and Approval and a TMP.
- The District Manager notified a minimum of 72 hours before the disruption of traffic,
- Primary Road Users are notified 72 hours prior to any disruption,

Forest operations MAY be occurring along the Moricetown-Suskwa FSR. The Contractor must accommodate the access requirements of the forest operations. If no forest operations are occurring, the clearing area may be closed to the public.

Any amendments and/or requirements needed to meet the TMP shall be considered incidental to the stipulated price bid, and no other compensation shall be made to the contractor, unless

otherwise approved by the Ministry Representative.

2.8.1. Payment with item 1.0

Section 2.8 will be paid at the **Lump Sum** under **payment with Item 1.0** in **Schedule A** of the major works contract.

Any additional costs for maintenance, traffic control or other items to keep the Temporary Access adequate for the traffic will be considered **incidental** to the works and at no extra cost to the Ministry.

2.9. Protection of Utilities

The Contractor shall preserve any utility properties that are located within their work site(s). Any relocation of the utilities to facilitate the construction work will be the responsibility of the Contractor. The Contractor shall also be responsible for any damage caused by construction operations to any utility properties.

The Ministry is not aware of any known utilities at the work site(s), but the Contractor should verify the presence of any utilities prior to commencing the Works.

2.10. Protection of the Environment

2.10.1. General

The work to be completed does not involve in-stream or wet work. The contractor shall comply with the Rules, Legislation and Regulations pursuant to the work, and the following requirements:

- Operations shall be altered or suspended immediately upon the request of an Enforcement Officer from the Ministry of Forests (FOR) or Ministry of Environment (MOE), or a Department of Fisheries and Oceans (DFO) Officer.
- Disturbed areas shall be revegetated, by seeding with an approved grass/clover mix, mulching with hay/straw bales and the planting of willow shoots, as directed by the Ministry Representative.
- Any other conditions required by FOR, DFO or MOE.

2.10.2. Maintaining Water Quality

Erosion and sedimentation are major concerns with respect to their potential impact on water quality and fish habitat. The Contractor is responsible for:

- Maintaining conditions, which protect the environment not only during active construction on the Site, but also during periods when the Contractor has suspended its construction activity for any reason.

2.11. Disposal Site

Waste or other materials specified or designated by the Ministry Representative are to be disposed of at designated sites. All designated disposal site(s) are to be identified by the contractor and accepted by a Ministry Representative.

The Contractor must ensure that the disposal site complies with all Federal, Provincial, Municipal and Regional by-laws and regulations prior to disposing of the material. The Contractor will pay any fees incurred.

2.12. Quality Control

Not applicable

3. **CONSTRUCTION SPECIFIC PROVISIONS**

3.1. **Mobilization and Demobilizations**

Mobilization and Demobilization shall be for all costs which are independent of the quantities of work done and which are not paid for under other items.

3.1.1. **Payment with Item 2.0**

Section 3.1 will be paid at the **Invoice Cost + 15%** under **payment with Item 2.0** in **Schedule A** of the major works contract.

3.2. **Construction of Site Access**

3.2.1. **Heavy Equipment Access to the Right-of-Way**

Access will need to be constructed from Highway 16 to Station 20+000 (the Point of Commencement) of the Right-of-Way clearing.

The contractor is responsible for all construction and deactivation to safely move equipment from Highway 16 to the Suskwa FSR right of way. This includes the management of water in the highway ditch line, moving material and supplies into place and all other activities required.

3.2.2. **Payment with item 3.0**

Section 3.2 will be paid at the **BCWS rates + 10%** under **payment with Item 3.0** in **Schedule A** of the major works contract.

Any additional costs for maintenance, traffic control or other items to keep the Temporary Access adequate for the traffic will be considered **incidental** to the works and at no extra cost to the Ministry.

3.3. **Right-of-way Clearing**

The Contractor must clear all merchantable and non-merchantable timber from the right-of-way as required to conform to the Contract drawings except for Cultural Archaeological Feature Areas or, unless otherwise directed by the Ministry Representative. The extent of clearing is **30 metres horizontal distance** either side of the centre-line.

There are Cultural Archaeological Feature Areas within the right-of-way. These areas are marked with ribbons on the ground and displayed on the drawings. These areas are to be preserved, and NO DISTURBANCE or CLEARING will occur within these areas.

Non-Merchantable timber is to be piled for future burning, by the Ministry, within the right of way. Any other required disposal site(s) are to be identified by the Contractor and accepted by the Ministry Representative.

Burn Piles must be constructed in such a manner and of a mix of material that they can be successfully ignited and burned. No soils or non-combustible materials are to be included in the piles. Piles must be located so that there will be no adverse impact on forest and other resources, including standing timber. Piles must also be located such that public access will not be impacted.

All Merchantable timber must be decked within the identified areas on the map R3-200 Right-of-Way Clearing or sites identified by the contractor and accepted by the Ministry Representative.

Clearing within the machine free zones along streams must be completed by hand if a machine cannot reach. No material shall be skidded across the streams.

The Contractor must ensure that the disposal site complies with all Federal, Provincial, Municipal and Regional by-laws and regulations prior to disposing of the material. The Contractor will pay any fees incurred.

Piles must be placed away from the road surface to ensure sight distance is not impeded and to allow for efficient snow removal.

3.3.1. Payment with Item 4.0

Section 3.3 will be paid at the **BCWS rates + 10%** under **payment with Item 4.0** in **Schedule A** of the major works contract.

3.4. Site Cleanup

At the conclusion of the works, the Contractor must remove the Contractor's surplus products, tools, construction machinery and equipment not required for the performance of the remaining work.

The Contractor must also remove waste products and debris other than that caused by the Ministry, other Contractors or their employees, and leaves the work site clean and suitable for occupancy or use by the Ministry, unless otherwise specified.

The Right-of-Way and Waste Areas must be properly cleaned up to the satisfaction of the Ministry Representative.

Site/Pit Cleanup includes but is not limited to cleanup of slopes, waste piles, gravel pits, quarries, contractor camp "if applicable" and the supply and installation of signs.

The costs for completing the Site Cleanup are considered **incidental**.

3.5. Construction Materials

The Contractor may request to purchase construction materials. The Ministry Representative must approve the purchase and delivery of construction materials. Construction materials may include but is not limited to culverts, aggregates, and geotextiles.

3.5.1. Payment for Item 5.0

Section 3.5 will be paid at the **Invoice Cost + 15%** under **payment with Item 5.0** in **Schedule A** of the major works contract.

4. **APPENDIX A: Interior Timber Merchantability Specifications**

The following standard timber merchantability specifications must be used for determining Merchantable	
Stumps (Measured on the side of the stump adjacent to the highest ground.) no higher than	30.0 cm
Diameter (outside bark) at stump height	
lodgepole pine: all timber that meets or exceeds	15.0 cm
all other species: all timber that meets or exceeds	20.0 cm
Minimum length log or slab	3.0 m



Schedule D Safety Conditions

File: 11250-85/EN24PGN340

Attachment to the Agreement with Kyah Resources Inc. for **R3-200 Bulkley River Crossing Right-of-Way Clearing Project..**

Terms such as “employer”, “supervisor”, “multiple employer workplace”, “owner”, “prime contractor”, and “worker” have the meanings given those terms under the *Workers’ Compensation Act (WC Act)* and its regulation.

ARTICLE 1 OTHER SAFETY CONSIDERATIONS

Notice of Project

- 1.01 Where a Notice of Project is required as set out in the *WC Act* and its regulations, the Contractor, unless otherwise notified in writing by the Province or the Prime Contractor, must submit the Notice of Project in a format acceptable to WorkSafe BC.
- 1.02 Where the Contractor submits the Notice of Project, a copy must be provided to the Province. Where the Province or Prime Contractor will submit the Notice of Project, the Contractor must provide, upon request, all information necessary to support the Notice of Project and the Contractor will be provided with a copy of the Notice of Project.
- 1.03 The Contractor will commence and conduct all operations consistently with the Notice of Project.

Reporting

- 1.04 The Contractor must immediately submit written notice to the Province on all matters reported to WorkSafe BC by the Contractor or the Contractor’s Subcontractors. The written notice must include all information necessary to allow the Province to adequately collect and address safety or other related incidences, and will be anonymized so as not to include personal information about an identifiable individual including their name, address, telephone number, age, sex, race, religion, sexual orientation, disability, fingerprints, or blood type, health care, educational, financial or employment history and anyone else’s opinion about the individual. This scope does not include business contact information (e.g., name, title, address, telephone or fax numbers or email address used for business contact purposes).
- 1.05 Where a Party brings safety concerns to the attention of the other Party, the Party will give full consideration to the issues raised. Where the Contractor receives safety concerns from the Province, the Contractor will provide the Province with a considered response, including any information necessary to demonstrate that the Contractor is in compliance with *WC Act* and its regulations.
- 1.06 Upon the Province’s request, the Contractor or any of its Subcontractors must provide evidence to the satisfaction of the Province that the Contractor or its Subcontractor(s) has:
 - (a) an effective business process in place to:
 - i) remedy any workplace conditions that are hazardous to the health or safety of the employer’s workers including safe work practices and procedures;
 - ii) ensure that the employer’s workers:
 - A. are made aware of all known or reasonably foreseeable health or safety hazards to which they are likely to be exposed by their work;

- B. are made aware of their rights and duties under the *WC Act* and its regulations.
- (b) established occupational health and safety policies and programs in accordance with the regulations, which includes:
- i) first aid assessment and provision services and equipment;
 - ii) an employee monitoring system that will periodically ensure the well being of all workers working alone or in isolation;
 - iii) accident injury reporting and investigation;
 - iv) an emergency response plan and employee understanding of said plan that will ensure adequate and timely response to any emergency that can be reasonably expected to occur in relation to the Works or Services being performed;
 - v) evidence of training and any required certifications required under *WC Act* or its regulations;
 - vi) evidence of a maintenance program for all equipment and vehicles owned or operated by the Contractor or its Subcontractors commensurate with the risks associated with such equipment and vehicles;
 - vii) provision for the regular inspection of premises, work methods and work practices; and
 - viii) provision by the employer for the instruction and supervision of workers including orientation of workers in the safe performance of their work.
- (c) provided and maintained in good condition protective equipment, devices, and clothing as required by the *Occupational Health and Safety Regulation* and ensure that these are used by the employer's workers;
- (d) provided the employer's workers all information, instruction, training, and supervision necessary to ensure the health and safety of those workers in carrying out their work and to ensure the health and safety of other workers at the workplace;
- (e) a copy of the *WC Act* and its regulations readily available for review by the employer's workers and, at each workplace where workers of the employer are regularly employed, post and keep posted a notice advising where the copy is available for review.

ARTICLE 2 PRIME CONTRACTOR PROVISIONS

2.01 The Contractor acknowledges, agrees, and warrants that:

- (a) The Contractor will be considered to be the Prime Contractor and shall enter into a Prime Contractor Agreement with the Province and shall carry out the duties described therein, where any of the following conditions exist:
- (i) the Province gave notice that the Successful Bidder would be the Prime Contractor;
 - (ii) the Province designates the Contractor to be the Prime Contractor at any time during the performance of the Work or Services;
 - (iii) the Contractor creates a multiple employer workplace through subcontracting any of the Work or Service at any time.

2.02 Where the Contractor is being considered as the Prime Contractor as per clause 2.01, the following is applicable:

- (a) upon request, the Contractor must satisfy the Province that the Contractor has the experience and capacity to address Prime Contractor responsibilities in accordance with the Agreement and the *WC Act* and its regulations; and
- (b) the Province provides written acknowledgement of the Contractor's experience and capacity to function as Prime Contractor; and
- (c) where the Contractor creates a multiple employer workplace, the Contractor will provide or acquire at their own expense all resources necessary to discharge the Prime Contractor responsibilities; or
- (d) the Province may, in its sole discretion, give consideration for compensation related to any

additional costs where, after commencement of the work, the Province creates a multiple employer workplace and designates the Contractor to be the Prime Contractor.

- 2.03 The Province may from time to time give prior written notice that a person other than the Contractor is designated as the Prime Contractor. The Contractor agrees that on receiving such written notice, the Contractor will cooperate with the Prime Contractor and shall coordinate health and safety activities and ensure compliance with the Prime Contractor's safety program.
- 2.04 The Contractor shall, upon becoming aware of any apparent deficiencies in the Prime Contractor's work which would affect the Work or Services, shall report such deficiencies in writing to the Ministry Representative.

ARTICLE 3 HAND FALLING

- 3.01 Where hand falling activity will be taking place under the Agreement and without limiting any other provision of the Agreement or the Contract Documents, the Contractor shall comply with the following safety requirements.
- 3.02 Hand falling means the falling of trees by any means with at least one person at or near the base of the tree during falling and not inside a protected cab, where the trees are greater than 6 inches diameter at 12 inch stump height, or as may be determined by WorkSafe BC.
- 3.03 The Contractor must ensure that:
 - (a) all hand falling is undertaken by fallers certified by BC Forest Safety Council (BCFSC) or ENFORM and are qualified for the slope and timber conditions being addressed;
 - (b) a qualified Falling Supervisor satisfactory to the Province is designated for all forestry related hand falling activities and for all non-forestry related hand falling activities taking place.
- 3.04 A Falling Supervisor will be deemed qualified where:
 - (a) it has satisfactorily completed the BCFSC Falling Supervisor Training course; or
 - (b) it is BCFSC Falling Supervisor Certified; or
 - (c) in the Province's sole opinion, evidence of qualifications/certifications and proficiency for the timber and slope for the Work Area and competency to discharge the expectations of a falling supervisor is satisfactory.
- 3.05 No hand falling operations will commence without the Province's prior satisfaction of acceptable proof of qualification/certification and of the Falling Supervisor's ability and competence.
- 3.06 The Contractor must, at least five Work Days prior to commencement of any hand falling operations, notify the Ministry Representative of the name of the designated Falling Supervisor or substitution thereof.
- 3.07 A Falling Plan must be developed with full engagement by the Falling Supervisor in collaboration with Hand Falling personnel and others responsible to discharge aspects of the falling plan.
- 3.08 The Contractor must ensure:
 - (a) no work will commence prior to all considerations of the Falling Plan being implemented as established by the designated Falling Supervisor;
 - (b) all hand falling operations performed occur and are supported in accordance with the Falling Plan; and
 - (c) upon request of the Ministry representative, provide any documents and evidence to verify adherence to the Falling Plan.
- 3.09 If the Contractor engages a subcontractor as its Falling Supervisor, the Contractor shall not be relieved from the subcontracted obligations or any obligations under this Agreement.



Natural Resource
Ministries

Schedule E - PRIME CONTRACTOR AGREEMENT

CONTRACT/FILE NO: 11250-85/EN24PGN340	THIS AGREEMENT DATED FOR REFERENCE THE 23rd DAY OF NOVEMBER 2023.
FOR: R3-200 Bulkley River Crossing Right-of-Way Clearing Project. The "Activity / Treatment" and the "Work Location"	

BETWEEN:

HIS MAJESTY THE KING IN RIGHT OF THE PROVINCE OF BRITISH COLUMBIA,
as represented by the MINISTER OF FORESTS

Engineering Branch, Northern Engineering Group
153 – 1011 4th Avenue, Prince George, BC V2L 3H9

Phone Number: s.19; s.22

FAX Number: NOT APPLICABLE

E-mail Address:

(the "Province")

AND:

Kyah Resources Inc.
732 Mount Paul Road, Kamloops, BC, V2H 1B5

s.19; s.22

Business Number: BC1003742

WorkSafe BC and/or Personal Optional Protection Number:

s.21

(the "Prime Contractor")

referred herein to as "the Parties".

WHEREAS:

- A. The Province and the Prime Contractor have agreed that a Multiple Employer Workplace is anticipated and expected at the Work Location and have duly executed this Agreement.
- B. The Province and the Prime Contractor have agreed that the *Workers Compensation Act* (WC Act) and its regulations allow the Province to establish Prime Contractor responsibilities.
- C. The Prime Contractor agrees to be the prime contractor at the Multiple Employer Workplace for the Work or Services being performed.
- D. The Prime Contractor has the required knowledge and control of the Multiple Employer Workplace to execute the responsibilities of a prime contractor as described in the WC Act and its regulations.

- E. The Province and the Prime Contractor have agreed that the prime contractor functions shall be carried out in accordance with this Agreement and any Contract Documents or other agreements between the Parties.

Accordingly, the Parties agree as follows:

ARTICLE 1. DEFINITIONS

- 1.01 In this document, the following words have the following meanings:
- (a) **"Affected Parties"** means independent firms described in Article 2 that create a multiple employer workplace;
 - (b) **"Affected Persons"** includes the Prime Contractor and Affected Parties and their visitors to the workplace, employees, officers, directors, agents, or subcontractors entering the Multiple Employer Workplace;
 - (c) **"Agreement"** means this Prime Contractor Agreement between the Parties;
 - (d) **"Amending Document"** means an FS600 Contract Amendment form or another standard form of similar nature specified by the Province;
 - (e) **"Contract Documents"** means those documents described in section 3.01.
 - (f) **"Multiple Employer Workplace"** means a workplace where workers of two or more employers are working at the same time where the work being carried out "overlaps".
 - (g) **"Principal Contractor"** means a party who holds a contract for service or works with the Province and does not include any tenures or authorizations under the *Forest Act*.
 - (h) **"Term"** means the period of time this Agreement is in force pursuant to Article 3.
- 1.02 If any of the words in section 1.01 are used in any other Contract Document, they have the same meaning as in this document unless the context dictates otherwise.

ARTICLE 2. AFFECTED PARTIES

The following other parties are a party to the creation of a Multiple Employer Workplace and are affected by this Agreement and the responsibilities of the Prime Contractor as laid out herein:

Firm Name	Address	File#

ARTICLE 3. CONTRACT DOCUMENTS AND AMENDMENTS

Contract Documents

- 3.01 The Parties entered into the agreement dated for reference the 23rd November 2023, identified as Agreement Number EN24PGN340 that is applicable to and forms part of this Agreement.

Amending Documents

- 3.02 No change to the Agreement is effective unless the change is in the form of an Amending Document signed by both Parties.

ARTICLE 4. TERM OF AGREEMENT

- 4.01 Subject to Clause 3.02, the Term of this Agreement is from November 23rd, 2023, to March 15th, 2024 inclusive.
- 4.02 Time is of the essence in this Agreement.

ARTICLE 5. PRIME CONTRACTOR RESPONSIBILITIES

- 5.01 The Prime Contractor shall:
- (a) familiarize itself with the Multiple Employer Workplace;

- (b) immediately notify the Ministry Representative should there be any circumstance arising which another party claims or purports to be the prime contractor at the Multiple Employer Workplace. There can be only one prime contractor on any one Multiple Employer Workplace;
- (c) coordinate safety activities and ensure compliance with the *WC Act* and the *Occupational Health & Safety Regulations* by all Affected Parties and act to protect any other workers entering the Multiple Employer Workplace;
- (d) when requested, provide the following to the Ministry Representative:
 - i. up-to-date written information of the Prime Contractor's systems or processes related to the discharge of prime contractor duties;
 - ii. inspection results, safety meeting minutes, accident investigation findings for Prime Contractor's own workers and for the Affected Parties;

Coordination and Compliance

- 5.02 The Prime Contractor shall ensure that its systems or processes eliminates or minimizes risk of injuries and will adequately monitor and coordinate Affected Parties' activities to ensure compliance with the *WC Act* and the *Occupational Health & Safety Regulation*, which includes, but is not limited to:
- (a) ensuring an Affected Party does not expose any Affected Person, or any person, entering the Multiple Employer Workplace to uncontrolled hazards;
 - (b) ensuring Affected Parties adequately supervise their workers relating to occupational health and safety at the Multiple Employer Workplace;
 - (c) conducting safety meetings with all Affected Parties and recording minutes of meetings;
 - (d) ensure all parties conduct ongoing Workplace inspections;
 - (e) ensuring all Affected Parties at the Multiple Employer Workplace are given any information necessary to identify and eliminate or control hazards and ensure the health or safety of all Affected Persons;
 - (f) coordination and planning of work activities with participation by all Affected Parties that will ensure work is carried out safely and that work of one employer will not create uncontrolled hazard for another;
 - (g) maintaining a list of individuals designated by an Affected Party as supervisor of its workers at the Multiple Employer Workplace;
 - (h) establishing, maintaining and communicating emergency response and evacuation procedures;
 - (i) providing, where needed, information to all Affected Persons about the safe use of resource roads and other access, including but not limited to the "rules of the road", other road use traffic, and road use radio frequencies;
 - (j) carrying out a workplace first aid assessment and ensuring first aid coverage at the Multiple Employer Workplace is adequate and appropriate and coordinated with all Affected Parties, including but not limited to emergency transportation provisions for injured workers for the number of workers present;
 - (k) orientation of all Affected Parties and Affected Persons, or any person, entering the Multiple Employer Workplace to the site, workplace hazards and appropriate responses;
 - (l) ensuring Affected Persons at the Multi Employer Workplace know their rights and responsibilities to report unsafe acts/conditions, how to refuse to perform work that is unsafe, how to seek first aid, how to report injuries;
 - (m) promoting a positive safety culture by encouraging workers to discuss safety concerns/issues;
 - (n) ensuring a Notice of Project is delivered to WorkSafe BC for itself and all Affected Parties in accordance with the *WC Act* and its regulation.

- 5.03 The Prime Contractor shall not assign this Agreement or in any way create another Prime Contractor.
- 5.04 Where the Prime Contractor or Affected Parties identified in this Agreement are Principal Contractors for the Province, this Agreement forms the written notice of Prime Contractor.

The Work Location is a Multi Employer Workplace and as such the Parties hereto duly execute this Agreement.

SIGNED AND DELIVERED on behalf of the Province by an authorized representative of the Province	SIGNED AND DELIVERED by or on behalf of the Prime Contractor (or by an authorized signatory of the Prime Contractor if a corporation)
(Authorized Ministry Contract Officer/Expense Authority) Jason Olmsted	(Prime Contractor or Authorized Signatory) s.19; s.22
Dated this _____ day of _____, 20__	Dated this _____ day of _____, 20__



SCHEDULE "F"— Subcontracting Schedule

File: 11250-85/EN24PGN340

Attachment to the Agreement with Kyah Resources Inc. for **R3-200 Bulkley River Crossing Right-of-Way Clearing Project..**

ARTICLE 1 GENERAL PROVISIONS

- 1.01 If the Contractor engages a Subcontractor, the Contractor shall not be relieved from the subcontracted obligations or any obligations under this Agreement.
- 1.02 The actions of any Subcontractor engaged to carry out any of the work shall be deemed to be the actions of the Contractor.
- 1.03 If the Contractor engages a Subcontractor to carry out any of the work, any provision in this Agreement requiring the Contractor to meet an obligation associated with the Subcontractor's work shall be deemed to mean the Contractor shall ensure the Subcontractor meets that obligation.
- 1.04 The Province may, for a reasonable cause, object to the use of an intended Subcontractor and require the Contractor to employ another qualified Subcontractor.
- 1.05 The Contractor acknowledges and agrees that the Subcontractor or any of the Subcontractors' directors, officers or members is not an Associated Person of the Contractor as that term is referenced in the tendering documents and as defined in the federal *Income Tax Act* or related Canada Revenue Agency's interpretation bulletins.
- 1.06 Nothing in this Agreement will create any direct or indirect contractual relationship between the Province and any Subcontractor or impose any obligation or liability upon the Province to any Subcontractor.
- 1.07 The Contractor must ensure all approved Subcontractors obtain WorkSafe BC coverage and comply with all conditions of the *Workers Compensation Act* and regulations thereunder and where general Worksafe BC coverage is not obtainable, the Contractor will ensure all Subcontractors obtain Personal Optional Protection under the *Workers' compensation Act*, and upon request must provide us with proof of such compliance.
- 1.08 The Contractor shall ensure that all its Subcontractors performing work under this Agreement carry insurance in the form and limits as specified in the insurance schedule, and upon request must provide us with proof of such compliance.

ARTICLE 2 INSPECTION BY THE CONTRACTOR

- 2.01 The Contractor is not entitled to subcontract any obligations with respect to inspection to the Subcontractor whose work is being inspected. Any inspection must be done by the Contractor, or by a different Subcontractor approved by the Province.
- 2.02 The Contractor shall inspect the work performed and/or each area of payment or part thereof for the purposes of determining the quality of work.
- 2.03 The Contractor shall inspect the work in the following manner: Routine inspections
- 2.04 The Contractor shall provide the Province with a written statement of the work quality achieved, supported by inspection data and a map of the work area and/or area of payment (or portions thereof).

The Province may examine such portion or portions of the work performed and/or area of payment as it considers appropriate to verify the quality of the work.

- 2.05 If the Province determines the inspection carried out by the Contractor does not correctly indicate the quality of the work, the Province may require the Contractor to carry out additional inspection(s).

ARTICLE 3 APPROVED SUBCONTRACTORS

- 3.01 Before the commencement of any work, and by the date requested, the Contractor must provide a list of subcontractors and the phase or portion of work to be performed by each of them to the Province for approval.
- 3.02 There shall be no substitution of the Subcontractor(s) without the prior consent of the Province.



Natural Resource Ministries

Schedule G SAFE Certification Requirements

File: 11250-85/EN24PGN340

Attachment to the Agreement with Kyah Resources Inc. for **R3-200 Bulkley River Crossing Right-of-Way Clearing Project..**

1. Prior to commencement of the Work or Services under the Agreement, the Contractor must ensure that all of the Contractor's Subcontractors are:
 - (a) Certified in the BC Forest Safety Council SAFE Company Program; or
 - (b) Certified under another safety scheme recognized by BC Forest Safety Council, and that certification or endorsement is maintained in good standing while working or providing direction on the Place of Work or Work Area.
2. The Contractor may apply in writing to the Province for exemption of the requirement for certification in the SAFE Companies Program of its Subcontractors under the following situations:
 - (a) where the Work or Services is not normally performed by persons working in the forest industry;
 - (b) where, by requiring SAFE Company certification, the Contractor would put an undue hardship on its Subcontractors performing the work or might prevent required work from being done under the Contract.
3. The Province must provide exemption approval in writing. Where approval or conditional approval is given, the Contractor must ensure its Subcontractors comply with the terms and conditions of the approval.
4. The Contractor's and its Subcontractor's good standing in the SAFE Company Program or other recognized program will be a factor of consideration for contract extensions or renewals under an option-to-renew contract.
5. Should the Contractor or its Subcontractors no longer be in good standing in the SAFE Company Program or other recognized program at any time during the Term of the Agreement, the Contractor shall immediately advise the Province and shall submit to the Province, within five (5) days, evidence satisfactory to the Province that the Contractor or its Subcontractors are actively engaged with the BC Forest Safety Council or other applicable organization in obtaining re-certification.

The Contractor or its Subcontractors must achieve re-certification within a reasonable period of time, and the reasonable period of time will be determined by the Province in its sole opinion.

When re-certification is obtained, the Contractor shall promptly submit proof of re-certification to the Province.



Natural Resource
Ministries

Schedule E - PRIME CONTRACTOR AGREEMENT

CONTRACT/FILE NO: 11250-85/EN24PGN340	THIS AGREEMENT DATED FOR REFERENCE THE 23rd DAY OF NOVEMBER 2023.
FOR: R3-200 Bulkley River Crossing Right-of-Way Clearing Project. The "Activity / Treatment" and the "Work Location"	

BETWEEN:

HIS MAJESTY THE KING IN RIGHT OF THE PROVINCE OF BRITISH COLUMBIA,
as represented by the MINISTER OF FORESTS

Engineering Branch, Northern Engineering Group
153 – 1011 4th Avenue, Prince George, BC V2L 3H9

Phone Number: s.19; s.22
E-mail Address:

FAX Number: NOT APPLICABLE

(the "Province")

AND:

Kyah Resources Inc.
732 Mount Paul Road, Kamloops, BC, V2H 1B5

Phone Number: (250) 851-3676
s.19; s.22

Business Number: BC1003742
WorkSafe BC and/or Personal Optional Protection Number:
s.21

(the "Prime Contractor")

referred herein to as "the Parties".

WHEREAS:

- A.** The Province and the Prime Contractor have agreed that a Multiple Employer Workplace is anticipated and expected at the Work Location and have duly executed this Agreement.
- B.** The Province and the Prime Contractor have agreed that the *Workers Compensation Act* (WC Act) and its regulations allow the Province to establish Prime Contractor responsibilities.
- C.** The Prime Contractor agrees to be the prime contractor at the Multiple Employer Workplace for the Work or Services being performed.
- D.** The Prime Contractor has the required knowledge and control of the Multiple Employer Workplace to execute the responsibilities of a prime contractor as described in the WC Act and its regulations.

- E. The Province and the Prime Contractor have agreed that the prime contractor functions shall be carried out in accordance with this Agreement and any Contract Documents or other agreements between the Parties.

Accordingly, the Parties agree as follows:

ARTICLE 1. DEFINITIONS

- 1.01 In this document, the following words have the following meanings:
- (a) **"Affected Parties"** means independent firms described in Article 2 that create a multiple employer workplace;
 - (b) **"Affected Persons"** includes the Prime Contractor and Affected Parties and their visitors to the workplace, employees, officers, directors, agents, or subcontractors entering the Multiple Employer Workplace;
 - (c) **"Agreement"** means this Prime Contractor Agreement between the Parties;
 - (d) **"Amending Document"** means an FS600 Contract Amendment form or another standard form of similar nature specified by the Province;
 - (e) **"Contract Documents"** means those documents described in section 3.01.
 - (f) **"Multiple Employer Workplace"** means a workplace where workers of two or more employers are working at the same time where the work being carried out "overlaps".
 - (g) **"Principal Contractor"** means a party who holds a contract for service or works with the Province and does not include any tenures or authorizations under the *Forest Act*.
 - (h) **"Term"** means the period of time this Agreement is in force pursuant to Article 3.
- 1.02 If any of the words in section 1.01 are used in any other Contract Document, they have the same meaning as in this document unless the context dictates otherwise.

ARTICLE 2. AFFECTED PARTIES

The following other parties are a party to the creation of a Multiple Employer Workplace and are affected by this Agreement and the responsibilities of the Prime Contractor as laid out herein:

Firm Name	Address	File#

ARTICLE 3. CONTRACT DOCUMENTS AND AMENDMENTS

Contract Documents

- 3.01 The Parties entered into the agreement dated for reference the 23rd November 2023, identified as Agreement Number EN24PGN340 that is applicable to and forms part of this Agreement.

Amending Documents

- 3.02 No change to the Agreement is effective unless the change is in the form of an Amending Document signed by both Parties.

ARTICLE 4. TERM OF AGREEMENT

- 4.01 Subject to Clause 3.02, the Term of this Agreement is from November 23rd, 2023, to March 15th, 2024 inclusive.
- 4.02 Time is of the essence in this Agreement.

ARTICLE 5. PRIME CONTRACTOR RESPONSIBILITIES

- 5.01 The Prime Contractor shall:
- (a) familiarize itself with the Multiple Employer Workplace;

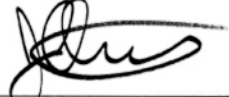
- (b) immediately notify the Ministry Representative should there be any circumstance arising which another party claims or purports to be the prime contractor at the Multiple Employer Workplace. There can be only one prime contractor on any one Multiple Employer Workplace;
- (c) coordinate safety activities and ensure compliance with the *WC Act* and the *Occupational Health & Safety Regulations* by all Affected Parties and act to protect any other workers entering the Multiple Employer Workplace;
- (d) when requested, provide the following to the Ministry Representative:
 - i. up-to-date written information of the Prime Contractor's systems or processes related to the discharge of prime contractor duties;
 - ii. inspection results, safety meeting minutes, accident investigation findings for Prime Contractor's own workers and for the Affected Parties;

Coordination and Compliance

- 5.02 The Prime Contractor shall ensure that its systems or processes eliminates or minimizes risk of injuries and will adequately monitor and coordinate Affected Parties' activities to ensure compliance with the *WC Act* and the *Occupational Health & Safety Regulation*, which includes, but is not limited to:
- (a) ensuring an Affected Party does not expose any Affected Person, or any person, entering the Multiple Employer Workplace to uncontrolled hazards;
 - (b) ensuring Affected Parties adequately supervise their workers relating to occupational health and safety at the Multiple Employer Workplace;
 - (c) conducting safety meetings with all Affected Parties and recording minutes of meetings;
 - (d) ensure all parties conduct ongoing Workplace inspections;
 - (e) ensuring all Affected Parties at the Multiple Employer Workplace are given any information necessary to identify and eliminate or control hazards and ensure the health or safety of all Affected Persons;
 - (f) coordination and planning of work activities with participation by all Affected Parties that will ensure work is carried out safely and that work of one employer will not create uncontrolled hazard for another;
 - (g) maintaining a list of individuals designated by an Affected Party as supervisor of its workers at the Multiple Employer Workplace;
 - (h) establishing, maintaining and communicating emergency response and evacuation procedures;
 - (i) providing, where needed, information to all Affected Persons about the safe use of resource roads and other access, including but not limited to the "rules of the road", other road use traffic, and road use radio frequencies;
 - (j) carrying out a workplace first aid assessment and ensuring first aid coverage at the Multiple Employer Workplace is adequate and appropriate and coordinated with all Affected Parties, including but not limited to emergency transportation provisions for injured workers for the number of workers present;
 - (k) orientation of all Affected Parties and Affected Persons, or any person, entering the Multiple Employer Workplace to the site, workplace hazards and appropriate responses;
 - (l) ensuring Affected Persons at the Multi Employer Workplace know their rights and responsibilities to report unsafe acts/conditions, how to refuse to perform work that is unsafe, how to seek first aid, how to report injuries;
 - (m) promoting a positive safety culture by encouraging workers to discuss safety concerns/issues;
 - (n) ensuring a Notice of Project is delivered to WorkSafe BC for itself and all Affected Parties in accordance with the *WC Act* and its regulation.

- 5.03 The Prime Contractor shall not assign this Agreement or in any way create another Prime Contractor.
- 5.04 Where the Prime Contractor or Affected Parties identified in this Agreement are Principal Contractors for the Province, this Agreement forms the written notice of Prime Contractor.

The Work Location is a Multi Employer Workplace and as such the Parties hereto duly execute this Agreement.

SIGNED AND DELIVERED on behalf of the Province by an authorized representative of the Province	SIGNED AND DELIVERED by or on behalf of the s.19; s.22 ized signatory of (ion)
	
(Authorized Ministry Contract Officer/Expense Authority) Jason Olmsted	
Dated this <u>4</u> day of <u>December</u> , 20 <u>23</u>	Dated this <u>30th</u> day of <u>NOVEMBER</u> , 20 <u>23</u>

R3-200 Bulkley River Crossing Right-of-Way Clearing Project

Ministry of Forests

November 06, 2023



KVAH
Resources Inc
A Wet'suwet'en Company

November 6, 2023

RE: Bulkley River Crossing Clearing Project

To: s.19; s.22

I am writing on behalf of Kyah Resources, a fully Indigenous-owned company, representing a 50/50 partnership between Roga Group and Witset First Nation. Our operations stem from our commitment to the community, and we take pride in being a community-focused business. We have successfully onboarded more than 100 First Nations individuals from Witset First Nation and its neighbouring communities. Our overarching mission is to pave the way for a robust local economy that benefits both the current and future generations.

Our dedication goes beyond mere business transactions. At Kyah Resources, we endeavor to bridge individuals with valuable resource sector opportunities right in the Territory they call home.

The current estimate is crafted based on the detailed information provided by the Ministry of Forests. With our broad expertise in Forestry, Civil Construction, In-Water Works, and Utilities Construction, Kyah Resources stands as a seasoned contractor. Personally, as an Indigenous individual, I deeply cherish and prioritize partnerships with First Nations that empower communities and enhance their capacity.

Should you have any queries about the schedule or the estimate, please do not hesitate to contact me directly at the number listed below. For detailed discussions, our Estimating Manager, s.19; s.19; is also available at s.19; s.22

We are genuinely excited about the possibility of working alongside you and your esteemed team, aiming for a project that is both safe and triumphant.

Warm regards,

s.19; s.22

Confidential | 2

Introduction

This proposal is for the Bulkley River Crossing Right of Way Clearing as part of the construction of the new Suskwa FSR. These works are for preparing the site for the future road. The area of the clearing is approximately 6 hectares. The site is located 48.3km west of Smithers, BC, on Highway 16.

Kyah Resources Inc (Kyah) will be responsible for felling all timber within the site. All Merchantable timber will be decked at an agreed-upon location. All Non-Merchantable timber will be piled for future burning by the Ministry. Access through the site on the existing Road shall remain open for public travel.

Contract Model and Estimate

s.21

Page 057 of 108 to/à Page 067 of 108

Withheld pursuant to/removed as

s.21



Natural Resource Ministries

Major Works Contract

Contract/File No:
11250-85/EN24PGN340

THIS AGREEMENT DATED FOR REFERENCE THE
23th DAY OF November, 2023.

BETWEEN:

HIS MAJESTY THE KING IN RIGHT OF THE PROVINCE OF BRITISH COLUMBIA, as
represented by the MINISTER OF FORESTS

Engineering Branch, Northern Engineering Group
153 – 1011 4th Avenue Prince George, BC V2L 3H9

s.19; s.22

(the "Province")

AND:

Kyah Resources Inc.
732 Mount Paul Road Kamloops, BC, V2H 1B5

s.19; s.22

Business Number: BC1003742
WorkSafe BC and/or Personal Optional Protection Number:

s.21

(the "Contractor")

referred herein to as "the Parties".

WHEREAS:

- A. The Province requires the following Work to be carried out for its benefit:
R3-200 Bulkley River Crossing Right-of-Way Clearing Project.
- B. The Contractor is in the business of carrying out the kind of work required by the Province.
- C. The Province and the Contractor have agreed that the Work shall be carried out in accordance with certain contract documents as hereinafter set out.

Accordingly, the Parties agree as follows:

ARTICLE 1 DEFINITIONS

1.01 In this document, the following words shall have the following meanings:

- (a) **"Agreement"** means the agreement between the Parties as set out in the Contract Documents;
- (b) **"Amending Documents"** means those documents described in Section 2.02;
- (c) **"Changed Conditions"** means those changes described in Article 14;
- (d) **"Changes in the Work"** means that work described in Article 13;
- (e) **"Contract Documents"** means those documents described in Section 2.01;
- (f) **"Contract Security"** means any financial performance guarantee given by the Contractor to the Province in accordance with Article 4;
- (g) **"Deficiencies"** mean the minor defects in the Work, minor portions of incomplete work and minor items required, but not yet supplied, at the time of Substantial Performance; none of which substantially prevent or impair the proper operation or occupancy of the Work;
- (h) **"Event of Default"** means any of the following:
 - i) failure to perform any of the Contractor's obligations under this Agreement, or
 - ii) any representation or warranty made by the Contractor in this Agreement (including as part of any competitive process resulting in this Agreement being entered into) is untrue or incorrect, or
 - iii) an Insolvency Event, which means any of the following:
 - A. an order is made, a resolution is passed or a petition is filed, for the Contractor's liquidation or winding up,
 - B. the Contractor commits an act of bankruptcy, makes an assignment for the benefit of its creditors or otherwise acknowledge its insolvency,
 - C. a bankruptcy petition is filed or presented against the Contractor or a proposal under the *Bankruptcy and Insolvency Act* (Canada) is made by the Contractor,
 - D. a compromise or arrangement is proposed in respect of the Contractor under the *Companies' Creditors Arrangement Act* (Canada),
 - E. a receiver or receiver-manager is appointed for any of the Contractor's property, or
 - F. the Contractor ceases, in our reasonable opinion, to carry on business as a going concern.
- (i) **"Inspector"** means a person or persons appointed by the Ministry Representative whose duties include inspection of the Work done and materials furnished. An Inspector is not authorized, in carrying out his/her duties, to commit the Province to a financial expenditure;
- (j) **"Ministry Representative"** means a person appointed pursuant to Article 6;
- (k) **"Other Contractor"** means a person, firm or corporation having a separate contract directly or indirectly with the Province for work other than that required by the Contract Documents;
- (l) **"Place of Work"** is the designated site or location where the Work will be performed;
- (m) **"Plans and Specifications"** means the plans (including notes and schedules), profiles, drawings and specifications prepared and designed to be used for the Agreement and includes any general conditions or requirements contained therein;
- (n) **"Subcontractor"** means a person, firm or corporation having a direct contract with the Contractor to perform a part or parts of the Work, or to supply products worked to a special design according to the Contract Documents, but does not include one who merely supplies products not so worked;
- (o) **"Substantial Performance"** has the meaning ascribed to it in Section 16.02;
- (p) **"Superintendent"** means the employee of the Contractor who is designated by the Contractor to act pursuant to Section 6.06;

- (q) **"Total Performance of the Work"** means when the entire Work, except those items arising from the provisions of Section 19.01, has been performed to the requirements of the Contract Documents and is so certified by the Ministry Representative;
- (r) **"Work"** means all activities carried out under this Agreement, and the results of those activities.
- 1.02 If any of the words in Section 1.01 are used in any other Contract Document, they shall have the same meaning as in this document unless the context dictates otherwise.
- 1.03 Words or abbreviations which have well known technical or trade meanings are used in the Contract Documents in accordance with such recognized meanings.
- 1.04 References to the masculine or the singular shall be considered to include the feminine and the plural as the context requires.
- 1.05 The headings of the clauses of this Agreement have been inserted for reference only and do not define, limit, alter or enlarge the meaning of any provision of this Agreement.

ARTICLE 2 CONTRACT DOCUMENTS AND AMENDMENTS

Contract Documents

- 2.01 The agreement between the Parties shall be contained in the following Contract Documents and no others:
- (a) this document and any schedules attached;
 - (b) the Plans and Specifications;
 - (c) any Amending Documents.

The attached schedules are applicable to and form part of this Agreement:

Schedule	Title
Schedule "A"	Schedule of Approximate Quantities and Unit Price Table
Schedule "B"	Insurance Requirements
Schedule "C"	Project Specifications
Schedule "D"	Safety Conditions Schedule
Schedule "E"	Prime Contractor Agreement
Schedule "F"	Subcontracting
Schedule "G"	SAFE Certification Requirements Schedule
Appendix "A"	Kyah Hourly Rate Sheets
Project maps	

Amending Documents

- 2.02 No modification to this Agreement shall be effective unless it is in writing and signed by, or on behalf of, the Parties and is in the form of an Amending Document, namely, a Contract Modification Agreement (NRS600) form, or in such other standard form of a similar nature for which the Province may provide from time to time.

Conflicts

- 2.03 In the event of conflicts between Contract Documents the following shall apply:
- (a) figured dimensions shown on a drawing shall govern even though they may differ from dimensions scaled on the same drawing;
 - (b) drawings of larger scale shall govern over those of smaller scale;
 - (c) Specifications shall govern over notes and schedules shown on plans and drawings;
 - (d) material and finishing schedules shall govern over other drawings;

- (e) the special provisions or general requirements shall govern over technical specifications; and
- (f) the terms of this document supersede all other Contract Documents.

2.04 In the event of conflicts between alike Contract Documents of different dates, the document of later date shall prevail.

Additional Copies of Contract Documents

2.05 The Contractor shall be provided with sufficient copies of the Contract Documents or parts thereof as are necessary for the performance of the Work.

ARTICLE 3 CONTRACT PRICE

3.01 The contract price is based on unit price as set out in Schedule "A" of this Agreement.

3.02 Unless provided otherwise, prices for items constitute full payment for all labour, materials, equipment, overhead, profit, taxes (including taxes paid or payable by the Contractor to a supplier during the performance of the Work) and other things required to completely incorporate the item into the Work, excluding Goods and Services Tax (GST) and any Provincial Sales Tax (PST) that the Contractor is required to charge the Province as a taxable transaction.

ARTICLE 4 CONTRACT SECURITY - NOT APPLICABLE

4.01 To secure fulfillment of the Contractor's obligations in the Agreement, the Contractor shall provide to the Province, before commencement of the Work, Contract Security as hereinafter set out.

4.02 Unless the Province otherwise provides, the Contractor shall have the choice of providing either cash security or security in the form of a performance bond.

4.03 If a cash form of Contract Security is used, the following shall apply:

- (a) it shall be of a type acceptable to the Province;
- (b) it shall be in an amount equal to at least 10% of the total contract price; and
- (c) it shall be released to the Contractor after certification of Substantial Performance of the Work, if such certification is provided, or certification of Total Performance of the Work otherwise.

4.04 If the form of Contract Security is a performance bond, the following shall apply:

- (a) it shall be in an amount equal to at least 50% of the total contract price;
- (b) it shall be issued by a duly licensed surety company authorized to transact a business of suretyship in Canada and shall otherwise be in a type acceptable to the Province;
- (c) it shall be accompanied by a labour and material payment bond which shall be in an amount equal to at least 50% of the total contract price and, a copy of which, shall be posted at the Place of Work.

ARTICLE 5 COMMENCEMENT AND COMPLETION

5.01 The Contractor shall commence the Work: on or before the 23rd day of November 2023.

5.02 The Contractor shall attain Total Performance of the Work, as certified by the Ministry Representative, on or before the 15th day of March 2024.

ARTICLE 6 PARTY REPRESENTATIVES

Ministry Representative

6.01 The Province shall appoint a Ministry Representative who shall be the sole judge of the Work as to quantity, quality, suitability and progress and, unless the Province agrees to follow dispute resolution through arbitration as set out in Article 25, his/her decision, on all matters in disagreement with regard to the Work or this Agreement, shall be final.

6.02 The Ministry Representative shall have the right to inspect the Work, the manner of construction and the materials furnished in respect thereof.

- 6.03 Upon contract award, the Province shall notify the Contractor of the name, address and telephone number of the Ministry Representative appointed pursuant to Section 6.01.
- 6.04 The Province may substitute a Ministry Representative at any time, and shall so notify the Contractor of the change.
- 6.05 The Ministry Representative may require the Contractor to do anything necessary to satisfy the Ministry Representative that the Work is being constructed in accordance with the Contract Documents.

Contractor's Representative

- 6.06 The Contractor shall designate a Superintendent, who shall have full authority to act on behalf of the Contractor in connection with the Work and the Agreement and who shall be available at all times to the Ministry Representative.
- 6.07 Upon contract award, the Contractor shall notify the Ministry Representative of the name, address and telephone number of the Superintendent designated pursuant to Section 6.06.
- 6.08 Subject to Section 6.09, the Contractor shall not substitute a Superintendent without the written consent of the Ministry Representative.
- 6.09 If, in the reasonable opinion of the Ministry Representative, the Superintendent appointed by the Contractor is not suitably experienced or is unable to properly supervise the Work, then the Contractor shall, upon receipt of written notice from the Ministry Representative, replace that Superintendent forthwith.

ARTICLE 7 CONSTRUCTION SCHEDULE AND EQUIPMENT LIST

- 7.01 The Contractor shall carry out the Work according to:
- (a) the construction schedule indicating the timing of the major activities of the Work designed to ensure conformance with the commencement and completion requirements; and
 - (b) if required, the list of the construction machinery and equipment to be used in the Work;
- submitted to and approved by the Ministry Representative upon acceptance of the Contractor's tender.
- 7.02 Where, in the opinion of the Ministry Representative, the rate of progress of the Work is insufficient to enable the Work to be completed in the manner and by the dates specified under the Agreement, the Contractor shall take whatever steps that the Ministry Representative requires in writing to expedite the progress of the Work.

ARTICLE 8 INDEMNIFICATION AND INSURANCE

- 8.01 The Contractor shall indemnify and save harmless the Province, its employees and agents from any loss, claim, (including any claim of infringement of third party intellectual property rights), damage award, action, cause of action, cost or expense that the Province or any of its employees or agents may sustain, incur, suffer or be put to at any time, either before or after this Agreement ends, (each a "Loss") to the extent the Loss is directly or indirectly caused or contributed to by:
- (a) any act or omission of the Contractor's or its Subcontractors' agents, employees, officers, directors or Subcontractors in connection with this Agreement, or
 - (b) any representation or warranty of the Contractor being or becoming untrue or incorrect.
- 8.02 The Contractor shall, at the Contractor's own expense, carry and maintain insurance coverage as specified in Schedule "B" - Insurance Requirements or as specified in writing by the Province, as those terms may be modified from time to time in accordance with our directions.

ARTICLE 9 PROTECTION OF WORK AND PROPERTY

- 9.01 The Contractor shall protect the Work, the Province's property and property adjacent to the Place of Work, from damage and shall be responsible for damage which may arise as the result of the Contractor's operations under the Agreement, except damage which occurs as a result of:
- (a) errors in the Contract Documents; or

- (b) acts or omissions of the Province, the Inspector, Other Contractors, their agents and employees.

Fire Protection

- 9.02 The Contractor shall take every precaution to prevent unintentional fire from occurring on or about the Place of Work.
- 9.03 The Contractor who lights, fuels or uses an open fire must comply with the provisions required for the relevant open fire category in accordance with the Wildfire Regulation made under the *Wildfire Act*, and the Open Burning Smoke Control Regulation made under the *Environmental Management Act*.

ARTICLE 10 SUBCONTRACTING

- 10.01 The Contractor agrees to employ only those Subcontractors designated by the Contractor in writing, as an attachment to the Contractor's tender form, and accepted by the Province at the signing of this document, subject to Section 10.02.
- 10.02 The Province may, for reasonable cause, object to the use of a designated Subcontractor and require the Contractor to employ another qualified Subcontractor.
- 10.03 The Contractor shall not use any subcontractors other than those identified on the accepted subcontractor list, unless the Province directs or agrees otherwise.
- 10.04 The Contractor agrees to preserve and protect the rights and obligations of the Parties in the Agreement with respect to work to be performed by Subcontractors.
- 10.05 The Contractor agrees to incorporate, where reasonably possible, the applicable terms and conditions of the Contract Documents into all agreements with Subcontractors.
- 10.06 The appointment of any Subcontractors does not relieve the Contractor of its responsibility under the Agreement or for the quality of work, materials and services provided by it.
- 10.07 Nothing contained in the Contract Documents shall create a contractual relationship between a Subcontractor and the Province.

ARTICLE 11 COOPERATION WITH OTHER CONTRACTORS

- 11.01 The Province reserves the right to award separate contracts in connection with other portions of the Work to Other Contractors and to perform work with own forces.
- 11.02 Where, in the reasonable opinion of the Ministry Representative, it is necessary that an Other Contractor be sent into or adjacent to the Place of Work, the Contractor shall cooperate with the Other Contractor.
- 11.03 The Contractor, forthwith upon becoming aware of any apparent deficiencies in the Other Contractor's work which would affect the Work, shall report such deficiencies in writing to the Ministry Representative.
- 11.04 Except with respect to deficiencies which the Contractor was not aware of, failure by the Contractor to report as required in Section 11.03 shall invalidate any claims against the Province by reason of the deficiencies.

ARTICLE 12 COMPLIANCE WITH THE LAW

- 12.01 This Agreement shall be governed by, and is to be interpreted and construed in accordance with, the laws applicable in British Columbia.

The Contractor shall:

- (a) comply with all laws affecting the Work;
- (b) obtain all licences and permits (unless obtained by the Province) required by law to carry out the Work.

Compliance with the Workers' Compensation Act

- 12.02 The Contractor shall:
 - (a) be solely responsible for construction safety at the Place of Work;

- (b) at its own expense, provide the necessary WorkSafe BC compensation coverage for itself, all workers and any shareholders, directors, partners or other individuals employed or engaged in the performance of the Work and shall ensure all approved Subcontractors obtain WorkSafe BC coverage;
- (c) if the Contractor or its Subcontractors do not have the benefit of mandatory workers compensation coverage under the *Workers Compensation Act* in British Columbia, then the Contractor shall ensure that it and its Subcontractors apply for and maintain Personal Optional Protection under the *Workers Compensation Act*;
- (d) comply with, and ensure all Subcontractors comply with, all applicable occupational health and safety laws in relation to the performance of the Contractor's obligations under this Agreement, including the *Workers' Compensation Act* in British Columbia or similar laws in other jurisdictions;
- (e) be responsible for and pay for all fines, assessments, penalties and levies made or imposed under the *Workers' Compensation Act* and regulations relating in any way to the Work; and
- (f) upon request, provide the Province with proof of such compliance.

12.03 For the purposes of the *Workers' Compensation Act*, the Contractor may be considered the "Prime Contractor" for the Work, as described in the attached Safety Conditions Schedule, and as such shall enter into a Prime Contractor Agreement and carry out the duties as described therein.

Compliance of Plans and Specifications with Law

12.04 The Contractor is not responsible for verifying that the Plans and Specifications comply with any law. If the Plans and Specifications do not comply with law, either at the time this Agreement is executed or as a result of a subsequent modification in law, the Contractor shall advise the Ministry Representative in writing and, the Province may modify the Plans and Specifications to comply. The Contractor will complete the Work on the basis of the modified Plans and Specifications and the contract price may be modified in accordance with this Agreement.

ARTICLE 13 CHANGES IN THE WORK

13.01 "**Changes in the Work**" means additions, deletions or other revisions to the Work, within the intent of the Agreement, but are not Changed Conditions (see Section 14.01).

13.02 The Ministry Representative may, at any time before certifying Total Performance of the Work, do any of the following:

- (a) order additional work or material; or
- (b) order work or material to be deleted or changed;

from that provided for in the Plans and Specifications if the additional work or material, deletion or change is consistent with the general intent of the Agreement.

13.03 For changes to the Work ordered by the Ministry Representative:

- (a) the Contractor shall prepare and present to the Ministry Representative the Contractor's claim for a resulting change in the contract price or in the date of contract completion (or both), which claim shall be supported by appropriate documents acceptable to the Ministry Representative;
- (b) the Ministry Representative shall consider the claim by the Contractor with a view to becoming satisfied that the claim is appropriate; and
- (c) upon becoming satisfied as to the appropriateness of the claim, the Ministry Representative shall refer the matter to the Province for final approval.

13.04 The Contractor shall perform the Changes in the Work that are ordered by the Ministry Representative as if they had appeared in and been part of the Plans and Specifications.

13.05 Where a change is ordered by the Ministry Representative, the value of a change shall be determined in one or more of the following methods:

- (a) by estimate and acceptance in a lump sum;
- (b) by unit prices set out in this Agreement or subsequently agreed upon;

- (c) by actual cost of labour and materials and a fixed fee or percentage fee of 10 percent;
- (d) by cost for all found equipment in accordance with rates established in the current edition of the 'Province of British Columbia, Equipment Rental Rate Guide'.

13.06 In the case of changes in the Work to be paid for under methods (b), (c) and (d) of Section 13.05:

- (a) the change shall not proceed unless and until the Ministry Representative and the Contractor have agreed on the form of presentation of costs and methods of measurement; and
- (b) the Contractor shall keep accurate and complete records of quantities or costs and shall present an account of the cost of the change in the Work, together with vouchers where applicable, at intervals requested by the Ministry Representative.

13.07 When a change in the Work is proposed by the Contractor, the following procedure shall be carried out:

- (a) the Contractor shall prepare and present to the Ministry Representative the Contractor's proposal for changed Work together with any claim or credit, if applicable, for a resulting change in the contract price or in the date of contract completion (or both), which claim shall be supported by appropriate documents acceptable to the Ministry Representative;
- (b) the Ministry Representative shall consider the proposal and claim by the Contractor with a view to becoming satisfied that the proposal and claim are appropriate; and
- (c) upon becoming satisfied as to the appropriateness of the proposal and claim, the Ministry Representative shall refer the matter to the Province for final approval.

13.08 Changes in the Work shall not proceed without a written Amending Document signed by the Province and the Contractor.

13.09 Payment for Changes in the Work shall be made in accordance with Article 15.

13.10 If there is a change in the Work done by the Contractor pursuant to this Agreement, the Contractor shall ensure the surety companies named in the Performance Bond and the Labour and Material Payment Bond, if applicable, are advised and consent to the change.

ARTICLE 14 CHANGED CONDITIONS

14.01 "**Changed Conditions**" means physical conditions at the Place of Work which were not foreseen by the Contractor and which would not have been reasonably foreseen by a reasonable contractor who, prior to submitting its tender, conducted a thorough investigation of the work to be done to complete the Work, including thoroughly inspecting the Place of Work and reviewing all information available from the Province to persons wishing to submit tenders, but does not include any weather or natural event.

14.02 When the Contractor observes a Changed Condition, the Contractor shall advise the Ministry Representative or Inspector prior to proceeding with the Work. Should the Ministry Representative determine that conditions do differ materially, the Ministry Representative will issue appropriate instructions.

14.03 The Ministry Representative and the Contractor shall agree on the quantities and price of the work resulting from the Changed Condition, prior to certification of Total Performance of the Work, determined by any of the following methods:

- (a) by estimate and acceptance in a lump sum;
- (b) by unit prices set out in this Agreement or subsequently agreed upon;
- (c) by actual cost of labour and materials and a fixed fee or percentage fee; or
- (d) by cost for all found equipment in accordance with rates established in the current edition of the 'Province of British Columbia, Equipment Rental Rate Guide'.

ARTICLE 15 PAYMENT

15.01 Applications for payment on account may be made monthly as the Work progresses, in a form acceptable to the Ministry Representative.

- 15.02 The Province will pay any applicable taxes payable under law or agreement with the relevant taxation authorities. Invoices must show the calculation of any applicable taxes (excluding taxes paid directly by the Contractor to a supplier and which are inclusive in the bid price) payable by the Province in relation to the Work as a separate line item.
- 15.03 Applications for payment shall be dated the last day of the agreed payment period and the amount claimed shall be either:
- (a) if based on unit price, at the applicable rates set out in Schedule "A" Unit Price Table, based upon the amounts of Work done by the Contractor, as estimated from progress measurements prepared by the Contractor and certified by the Ministry Representative; or
 - (b) if based on lump sum contract price, for the value, proportionate to the amount of the Agreement, of work performed and products delivered to the Place of Work at that date.

Terms of Payment

- 15.04 The Ministry Representative shall, no later than ten (10) days after the receipt of an application for payment from the Contractor submitted in accordance with Section 15.02 and 15.03, certify the application for payment in the amount applied for or in such other amount the Ministry Representative determines is properly due. If the Ministry Representative amends the application, the Ministry Representative shall promptly advise the Contractor in writing giving reasons for amendment.
- 15.05 The Province will make progress payments pursuant to Section 15.03 and subject to the holdback provisions of Section 15.09, in accordance with the Province's payment practices and the *Financial Administration Act*.
- 15.06 Regulations pursuant to the *Financial Administration Act* do not permit interest payments unless the account is overdue by at least sixty-one (61) days. The overdue period is calculated from the date the Ministry Representative authorizes payment, or the date the invoice is received, whichever is the latter, to the date the cheque is printed by the Ministry of Finance.

Appropriation

- 15.07 Despite any other provision of this Agreement, the obligation for payment of money by the Province to the Contractor, pursuant to this Agreement, is subject to:
- (a) the Legislative Assembly of the Province of British Columbia having provided sufficient funds to enable the Province, in any fiscal year or part thereof, to make payment pursuant to this Agreement when it is due; and,
 - (b) Treasury Board not having controlled or limited expenditure of any funds referred to in subparagraph (a).
- 15.08 No payment by the Province under this Agreement, or partial or entire use or occupancy of the Work by the Province, shall constitute an acceptance of work or products which are not in accordance with the Contract Documents, or a release of the Contractor from any responsibility under this Agreement.

Holdback

- 15.09 Progress payments approved under Section 15.04 shall be subject to a holdback of:
- (a) ten percent (10%) of the value of the Work performed and the materials supplied under the terms of the Contract; and
 - (b) where a cash Contract Security has been provided (no performance bond): an additional five percent (5%) of the value of the Work performed and the materials supplied, to be held for the warranty period specified in Article 19 or such longer period as may be specified by the Province in the case of a warranty claim.
- 15.10 No interest or other charges shall accrue on any amounts retained pursuant to Section 15.09.
- 15.11 Holdback funds shall be applied as follows:
- (a) firstly, to any unpaid government agencies;
 - (b) secondly, to the Contractor's workers, direct Subcontractors and material suppliers; and
 - (c) thirdly, as security for the correction of any breach of a provision of the Agreement.

Holdback Release

- 15.12 The Province shall approve release of the 10% holdback referred to in Section 15.09(a) to the Contractor no sooner than fifty-five (55) days following satisfaction of **ALL** of the following conditions:
- (a) the Ministry Representative certifies the date of Substantial Performance of the Work, if such certification is provided, or Total Performance otherwise;
 - (b) the Contractor provides to the Province a clearance letter from WorkSafe BC indicating all current assessments due from the Contractor have been paid;
 - (c) the Contractor provides to the Province an NRS263 Statutory Declaration (supplied by the Province) attesting that all monies owing to the Contractor's workers, Subcontractors, material and equipment suppliers and government agencies have been paid; and
 - (d) the Contractor provides to the Province written confirmation and acceptance of measurement quantities, if requested by the Ministry Representative.

ARTICLE 16 SUBSTANTIAL PERFORMANCE

- 16.01 Upon request by the Contractor for certification of substantial performance of the Work, the Ministry Representative or Inspector shall inspect the Work.
- 16.02 The Ministry Representative shall, upon inspection, issue a certificate for substantial performance of the Work if **ALL** the following conditions are met:
- (a) the Work is being used for the purpose intended or is ready for use without any deficiencies affecting the safety of those using or likely to use the Work; and
 - (b) the Contractor is not in breach of any term of the Agreement.
- 16.03 The certification of substantial performance of the Work shall describe the parts of the Work not completed to the satisfaction of the Ministry Representative and all things that must be done before the Ministry Representative will certify Total Performance of the Work.
- 16.04 If because of climatic or other conditions reasonably beyond the control of the Contractor there are items of the Work that cannot be performed, payment in full for work which has been performed as certified by the Ministry Representative shall not be withheld or delayed by the Province on account thereof, but the Province may withhold until the remaining work is finished, such monies as the Ministry Representative determines are sufficient and reasonable to cover the cost of performing such remaining work and to adequately protect the Province from claims.

ARTICLE 17 TOTAL PERFORMANCE

- 17.01 After the Province receives a written request for final inspection from the Contractor, if, in the opinion of the Ministry Representative, the Work has been completed and has satisfactorily passed all final tests prescribed by the Plans and Specifications, the Ministry Representative shall establish the date of Total Performance of the Work and certify for payment the remaining monies due to the Contractor under the Agreement.
- 17.02 If after the Contractor's request for final inspection, the Work is not completely acceptable to the Province, then the Ministry Representative will advise the Contractor of particular defects in the Work and the Contractor shall immediately rectify the defects to the satisfaction of the Ministry Representative.

ARTICLE 18 TAXES AND DUTIES

- 18.01 The Contractor shall pay any applicable taxes, customs duties and excise taxes in respect of the Agreement.
- 18.02 Any increase or decrease in costs to the Contractor due to changes in such taxes and duties after the date of the tender opening shall increase or decrease the contract price accordingly.
- 18.03 A Contractor who has neither residence nor place of business in the Province of British Columbia shall, upon request, provide the Province with proof of registration with the provincial sales tax authorities.

ARTICLE 19 WARRANTY

- 19.01 Notwithstanding any other provision of this Agreement, or the expiration or sooner termination of this Agreement, the Contractor agrees to correct promptly, at the Contractor's expense, defects or deficiencies in the Work which appear prior to and during the period of **one year** from the date of certification of Total Performance of the Work, or such longer periods as may be specified for certain products or work.
- 19.02 The Province shall promptly give the Contractor written notice of observed defects and deficiencies that occur during the warranty period.
- 19.03 The Contractor shall correct or pay for damage resulting from corrections made under the requirements of Section 19.01.

ARTICLE 20 PROVINCIAL PROPERTY

- 20.01 Any materials, equipment or property supplied by or on behalf of the Province to the Contractor as a result of this Agreement shall be the exclusive property of the Province.
- 20.02 The Contractor shall deliver the property to the Province immediately following the expiration or sooner termination of this Agreement. The Ministry Representative may, before the expiration or sooner termination of this Agreement, give written notice to the Contractor requesting the Contractor to return to the Ministry Representative any part of the property, in which event the Contractor shall comply with the request.
- 20.03 The Contractor is liable to the Province for any loss or damage to materials, equipment or property that is supplied or placed in the care, custody and control of the Contractor by the Province, for use in connection with the Agreement, excepting always loss or damage attributable to reasonable wear and tear.

ARTICLE 21 CLEANUP

- 21.01 The Contractor and its Subcontractors shall maintain the Place of Work in a tidy condition and free from accumulation of waste products and debris, other than that caused by the Province, Other Contractors or their employees.
- 21.02 Upon attaining Substantial Performance of the Work, the Contractor shall remove the Contractor's surplus products, tools, construction machinery and equipment not required for the performance of the remaining work. The Contractor shall also remove waste products and debris other than that caused by the Province, Other Contractors or their employees, and leave the Place of Work clean and suitable for occupancy or use by the Province, unless otherwise specified.
- 21.03 Total Performance of the Work shall not be attained until the Contractor has removed his surplus products, tools, construction machinery and equipment. The Contractor shall also have removed waste products and debris, other than that caused by the Province, Other Contractors or their employees.

ARTICLE 22 LAYOUT

- 22.01 The Contractor shall, at the Contractor's own expense:
- (a) layout the Work and, if requested by the Province, give the Ministry Representative or the Inspector such facilities and assistance in establishing lines, grades and points, and measure up the Work, as the Ministry Representative or the Inspector directs; and
 - (b) do whatever is necessary to ensure that all marks and stakes placed on the Work or Place of Work by or under the authority of the Ministry Representative or the Inspector, are protected and are not removed, defaced, altered or destroyed.
- 22.02 Before the commencement of the Work, the Contractor shall satisfy itself as to the meaning and correctness of all marks and stakes, as no claim will be accepted thereafter. If the Contractor determines or has reason to suspect any errors in the marks and stakes, he shall stop work and advise the Ministry Representative or the Inspector, who shall investigate and provide additional instructions for rectification, if necessary. No claim for delay or additional costs shall be permitted under this Section.

ARTICLE 23 DELAYS

- 23.01 If the Contractor is delayed in the performance of the Work by act or omission of the Province, Inspector, Other Contractor, or anyone employed or engaged by them directly or indirectly, contrary to the provisions of the Contract Documents, then the completion date specified in Section 5.02 shall be extended for such reasonable time as the Province may decide in consultation with the Contractor. The Contractor shall be reimbursed for reasonable costs incurred by the Contractor as the result of such delay.
- 23.02 If the Contractor is delayed in the performance of the Work by a stop work order issued by a court or other public authority, and if the order is issued because of an act of fault by the Province, (or any person employed or engaged directly or indirectly by the Province) and not an act of fault by the Contractor (or anyone employed or engaged directly or indirectly by the Contractor), then the contract completion date shall be extended for such reasonable time as the Province may decide in consultation with the Contractor. The Contractor shall be reimbursed for reasonable costs incurred by the Contractor as a result of such delay.
- 23.03 If the Contractor is delayed in the performance of the Work by labour disputes, strikes, lock-outs (including lock-outs decreed or recommended for its members by a recognized contractors' association, of which the Contractor is a member or to which the Contractor is otherwise bound), fire, unusual delay by common carriers or unavoidable casualties or, without limit to any of the foregoing, by a cause beyond the Contractor's control, then the contract completion date shall be extended for such reasonable time as the Province may decide in consultation with the Contractor. The extension of time shall not be less than the time lost as the result of the event causing the delay, unless the Contractor agrees to a shorter extension. Subject to Section 23.05, the Contractor shall not be entitled to payment for costs incurred as a result of such delays.
- 23.04 No extension to the contract completion date shall be made for delay unless written notice of claim is given to the Ministry Representative not later than fourteen (14) days after the commencement of delay, providing, however, that in the case of a continuing cause of delay only one notice of claim shall be necessary.
- 23.05 Compensation is payable to the Contractor for delays under Section 23.03 only where such delay was caused by the Province, other than as a reasonable response to an event or situation beyond the Province's control.

ARTICLE 24 PROVINCE'S RIGHT TO PERFORM WORK OR STOP THE WORK OR TERMINATE CONTRACT

- 24.01 If the Contractor should neglect to prosecute the Work or on the happening of an Event of Default, or at any time thereafter, the Ministry Representative or Inspector may notify the Contractor in writing that the Contractor is in default and instruct the Contractor to correct the default in the five (5) days immediately following the receipt of such notice.
- 24.02 If the Contractor receives such notice pursuant to Section 24.01, the Contractor, subject to Section 24.03, shall correct the default immediately.
- 24.03 If the correction of the default cannot be completed in the five (5) days specified, the Contractor shall be in compliance with the Province's instructions if the Contractor:
- (a) commences the correction of the default within the specified time; and
 - (b) provides the Province with an acceptable schedule for such correction; and
 - (c) completes the correction in accordance with such schedule.
- 24.04 If the Contractor fails to correct the default in the time specified or subsequently agreed upon, the Province, without prejudice to any other right or remedy it may have, may, in its sole discretion do one or more of the following:
- (a) correct such default and deduct the actual cost thereof from any payment then or thereafter due the Contractor;
 - (b) terminate the Contractor's right to continue with the Work in whole or part.
 - (c) waive the default in a Notice and on such conditions as the Ministry Representative may determine; or

- (d) terminate this Agreement with immediate effect or on a future date specified by the Province.
- 24.05 If the Province terminates the Contractor's right to continue with the Work under the conditions set out in Section 24.04 (b) or (d), the Province shall be entitled to do any one or more of the following:
- (a) take possession of the Work and products and utilize all construction machinery and equipment, subject to the rights of third Parties, and finish the Work by whatever method it may consider expedient but without undue delay or expense;
 - (b) withhold further payments to the Contractor until the Work is finished, and
 - (c) upon Total Performance of the Work, charge the Contractor the full cost of finishing the Work (as certified by the Ministry Representative), which cost shall include compensation for any additional services of the Ministry Representative required to complete the Work.
- 24.06 No failure or delay on the Province's part to exercise its rights in relation to an Event of Default will constitute a waiver of such rights.
- 24.07 If the Contractor becomes aware that an Event of Default has occurred or anticipates that an Event of Default is likely to occur, the Contractor must promptly notify the Province of the particulars of the Event of Default or anticipated Event of Default. A notice under this section as to the occurrence of an Event of Default must also specify the steps the Contractor proposes to take to address, or prevent recurrence of, the Event of Default. A notice under this section as to an anticipated Event of Default must specify the steps the Contractor proposes to take to prevent the occurrence of the anticipated Event of Default.
- 24.08 The Contractor's obligations under the Agreement as to quality, correction and warranty of the work performed by the Contractor up to the time of termination shall continue in force after such termination.
- 24.09 The rights, powers, and remedies conferred upon the Province under this Article are not intended to be exclusive and each such right, power, and remedy referred to therein shall be cumulative and in addition to and not in substitution for every other right, power or remedy existing or available to the Province under the Agreement, at law or in equity, and the exercise by the Province of any right, power, or remedy shall not preclude the simultaneous or later exercise by the Province of any other right, power or remedy.
- 24.10 Notwithstanding any other provision of the Agreement, the Province may at any time and for any reason, upon giving thirty (30) days prior Notice to the contractor, terminate the Agreement.
- 24.11 Subsequent to receipt of Notice from the Province pursuant to Section 24.10, the Contractor shall only proceed with those portions of the Work specifically authorized in a Notice by the Ministry Representative to be completed prior to termination.
- 24.12 Upon termination of the Agreement in accordance with this Agreement, the Province shall have no further obligation to the Contractor save and except to pay to the Contractor:
- (a) The amount the Contractor is entitled to for Work completed to the Province's satisfaction prior to the date of termination after any deductions made in accordance with this Agreement; and
 - (b) Other actual expenses actually incurred by the Contractor, such as demobilization and compensation for unrecovered actual fixed expenses which are, in the sole opinion of the Province, reasonable in the circumstances.

ARTICLE 25 DISPUTE RESOLUTION

- 25.01 If a dispute occurs between the Parties concerning any matter under this Agreement, the disputing Party shall promptly advise the other Party and the Parties together shall use all reasonable efforts to resolve the dispute informally.
- 25.02 If the Parties are unable to resolve the dispute informally, within fourteen (14) days, the Contractor shall then give Notice, within fourteen (14) days, of the complaint to the Ministry Representative, which particulars shall include the following:
- (a) a detailed description of the nature of the complaint;
 - (b) a list of the relevant provisions of the Contract Documents; and
 - (c) a valuation by the Contractor of the matters in dispute.

- 25.03 The Province shall, within thirty (30) days of receipt by the Ministry Representative of the written particulars, give to the Contractor a decision, in writing, of one of the following:
- (a) that the Province accepts the position of the Contractor; or
 - (b) that the Province rejects the position of the Contractor.
- 25.04 If the Province accepts the position of the Contractor, the Parties shall enter into an Amending Document to reflect the agreement.
- 25.05 If the Province rejects the position of the Contractor, the Parties shall, if they both agree, have the matters resolved by arbitration, in accordance with the *Commercial Arbitration Act*.
- 25.06 If the matter in dispute is not resolved promptly pursuant to Section 25.01, the Ministry Representative may give to the Contractor such instructions as in the Ministry Representative's opinion are necessary to provide for the proper performance of the Work and to prevent delays.
- 25.07 If the Contractor receives instructions pursuant to Section 25.06, the Contractor shall act immediately to carry out the work pursuant to the instructions, but any work performed by the Contractor in this respect shall be without prejudice to any claim the Contractor may have concerning the dispute.
- 25.08 Nothing in this Article shall preclude either Party from having a dispute resolved by a court of competent jurisdiction.

ARTICLE 26 DAMAGES AND MUTUAL RESPONSIBILITY

- 26.01 If either Party to this Agreement should suffer damage in any manner due to a breach of the obligations of the other Party, then that Party shall be reimbursed by the other Party for such damage.
- 26.02 Claims for damage under Section 26.01 shall be made in writing to the Party liable within reasonable time after the first observance of such damage and if undisputed shall be confirmed by an Amending Document. Disputed claims shall be resolved as set out in Article 25.
- 26.03 If the Contractor has caused damage to the work of an Other Contractor at the Place of Work, the Contractor agrees upon due notice to settle with the Other Contractor by negotiation or arbitration. If the Other Contractor makes a claim against the Province on account of damage alleged to have been so sustained, the Province shall notify the Contractor and may require the Contractor to defend the action at the Contractor's expense. The Contractor shall satisfy a final order or judgment against the Province and pay the costs incurred by the Province arising from such action.
- 26.04 If the Contractor becomes liable to pay or satisfy a final order, judgment, or award against the Province, then the Contractor, upon undertaking to indemnify the Province against any and all liability for costs, shall have the right to appeal in the name of the Province such final order or judgment to any and all courts of competent jurisdiction.

ARTICLE 27 MISCELLANEOUS

Confidentiality

- 27.01 The Contractor will treat as confidential and will not, without the prior written consent of the Province, disclose or permit to be disclosed or used, either before or after the expiration or sooner termination of this Agreement, any information supplied to, obtained by, or which comes to the knowledge of the Contractor or its Subcontractor (whether verbally, electronically or otherwise) as a result of this Agreement except if the disclosure is necessary to enable the Contractor to fulfill its obligations under this Agreement or to comply with applicable laws or if it is information that is generally known to the public other than as a result of a breach of this Agreement.

Records to be Kept by Contractor

- 27.02 The Contractor shall:
- (a) maintain full records of his estimated and actual cost of the Work together with all tender calls, quotations, contracts, material cost distribution worksheets, equipment records (including, without limitation, hours of use and distribution), correspondence, invoices, receipts and vouchers relating thereto;
 - (b) when requested, make all records and material referred to in subsection (a), available for audit and inspection by the Ministry Representative, or by other persons acting on the Province's behalf;

- (c) allow any of the persons referred to in subsection (b) to make copies of and to take extracts from any of the records and material referred to in subsection (a); and
- (d) furnish any person referred to in subsection (b) with any information they may require from time to time in connection with such records and material.

The records maintained by the Contractor pursuant to this Section shall be kept intact by the Contractor until the expiration of seven (7) years after the date of Substantial Performance, if given, or Total Performance otherwise, or until the expiration of such other period of time as the Province may direct.

The Contractor shall permit the Province, at all reasonable times, to inspect and copy any findings, data, specifications, drawings, working papers, reports, documents and material whether complete or otherwise that have been produced, received or acquired by, or provided by or on behalf of the Province to the Contractor, as a result of this Agreement.

Samples and Testing

- 27.03 The Ministry Representative or the Inspector may, at the expense of the Province, take samples, and test and inspect materials that are incorporated or are intended to be incorporated into the Work. The Contractor shall cooperate with the Ministry Representative or the Inspector in providing every necessary facility for sampling, testing and inspecting.

The Contractor shall furnish to the Ministry Representative, if requested, a complete written statement of the origin, composition and manufacture of any materials supplied by the Contractor that are incorporated or are intended to be incorporated in the Work.

Defective Work

- 27.04 Defective work, whether the result of poor workmanship, use of defective products or damage through carelessness or other act or omission of the Contractor, and whether incorporated in the Work or not, which has been rejected by the Ministry Representative or Inspector as failing to conform to the Plans and Specifications shall be removed promptly from the Place of Work by the Contractor and replaced or re-executed promptly in accordance with the Plans and Specifications at the Contractor's expense.

The Contractor shall make good promptly Other Contractors' work destroyed or damaged by such removals or replacements, at the Contractor's expense.

If, in the opinion of the Ministry Representative, it is not expedient to correct defective work or work not performed in accordance with the Plans and Specifications, the Province may deduct from monies otherwise due to the Contractor, the difference in value between the work as performed and that called for by the Plans and Specifications, the amount of which will be determined in the first instance by the Ministry Representative.

Notice

- 27.05 Any notice or document required to be given under this Agreement shall be conclusively deemed to be validly given or delivered to and received by the Parties at the work site or at the address, facsimile, or email address specified on the first page of this Agreement (or at such other address as either Party may from time to time designate by notice in writing to the other):

- (a) if hand delivered to the Party or the specified Party representative, on the date of that personal delivery; or
- (b) if pre-paid post and if mailed during any period when normal postal services prevail, on the fifth business day after its mailing; or
- (c) if delivered by courier service, on the fifth business day after collection by the courier service; or
- (d) if sent by facsimile or electronic transmission, on the day of transmittal unless transmitted after the normal business hours of the addressee or on a day that is not a business day, in which case it will be deemed to be received on the next following business day.

Agreement Execution

- 27.06 This Agreement may be entered into by a separate copy of this Agreement being executed by, or on behalf of, each Party and that executed copy being delivered to the other Party by a method provided for in Section 27.05 or any other method agreed to by the Parties.

Survival of Terms

- 27.07 All terms of this Agreement in favour of the Province and all rights and remedies of the Province, either at law or in equity, survive the expiration or sooner termination of this Agreement subject to any applicable limitation period prescribed by law.

Successors and Assigns

- 27.08 This Agreement enures to the benefit of and binds the Province and its assigns and the Contractor and its successors and permitted assigns.

The Contractor must not assign its rights or obligations under this Agreement, either in whole or in part, without the prior written consent of the Province. Upon providing written notice to the Contractor, the Province may assign to any person any of the Province's rights under this Agreement and may assign to any "government corporation", as defined in the *Financial Administration Act*, any of the Province's obligations under this Agreement.

Use of the Work

- 27.09 The Contractor shall confine construction machinery and equipment, storage of products and the operations of employees to limits indicated by laws, ordinances, permits or the Contract Documents and shall not unreasonably encumber the Place of Work with products.

The Contractor shall not load, or permit to be loaded, any part of the Work with a weight or force that will endanger the safety of the workers or the Work.

The Contractor shall not erect or permit the erection of any sign or advertising on the Work or the Place of Work without the prior written consent of the Province.

Contractor Status

- 27.10 In relation to the performance of the Contractor's obligations under this Agreement, the Contractor is an independent contractor and not our:

- (a) employee or partner; or
- (b) agent except as may be expressly provided for in this Agreement.

You must not act or purport to act contrary to this section.

The Contractor will not purport to commit the Province to the payment of any money to any person.

All personnel hired or used by the Contractor to perform the Work are at all times the employees of the Contractor and not of the Province. The Contractor is solely responsible for arranging reliefs and substitutions, pay, supervision, discipline, unemployment insurance, leave and all other matters arising out of the relationship of employer and employee.

Unsuitable Workers

- 27.11 The Contractor must provide a sufficient number of persons to perform the Work and shall ensure all persons are fully instructed and supervised, legally entitled to work in Canada, competent, English literate, efficient, qualified by education, adequately trained, and experienced to carry out the tasks to which each is assigned.
- 27.12 The Contractor shall, upon request of the Ministry Representative, remove any person employed by the Contractor for purposes of this Agreement who, in the opinion of the Province, is incompetent or has exhibited improper conduct and the Contractor shall not permit a person who has been removed to return to the Place of Work.

Terms of Tender

- 27.13 The Contractor represents to the Province that the Contractor has complied with any investigative requirements in the Conditions of Tender and has fully advised Subcontractors of the results of investigation where appropriate.

Non-Waiver

- 27.14 A waiver of any term or breach of this Agreement is effective only if it is in writing and signed by, or on behalf of, the waiving Party and is not a waiver of any other term or breach.

Time of Essence

- 27.15 Time shall be of the essence in this Agreement, and, without limitation, will remain of the essence after any modification or extension of this Agreement, whether or not expressly restated in the document effecting the modification or extension.

Representations and Warranties

- 27.16 As at the date this Agreement is executed and delivered by, or on behalf of, the Parties, the Contractor represents and warrants, except to the extent it has previously disclosed otherwise in writing to the Province:
- (a) all information, statements, documents and reports furnished or submitted by it to the Province in connection with this Agreement (including as part of any competitive process resulting in this Agreement being entered into) are in all material respects true and correct; and
 - (b) if the Contractor is not an individual:
 - i) it has the power and capacity to enter into this Agreement and to observe, perform and comply with the terms of this Agreement and all necessary corporate or other proceedings have been taken and done to authorize the execution and delivery of this Agreement by, or on its behalf, and
 - ii) this Agreement has been legally and properly executed by the Contractor, or on its behalf, and is legally binding upon and enforceable against the Contractor in accordance with its terms.

The Parties hereto have duly executed this Agreement.

SIGNED AND DELIVERED on behalf of the Province by an authorized representative of the Province	SIGNED AND DELIVERED by or on behalf of the Contractor (or by an authorized signatory of the Contractor if a corporation) s.19; s.22
(Authorized Ministry Expense Authority)	
Jason Olmsted	
Dated this _____ day of _____, 20____	Dated this <u>30TH</u> day of <u>NOVEMBER</u> , 20 <u>23</u>



**Natural Resource
Ministries**

Schedule E - PRIME CONTRACTOR AGREEMENT

CONTRACT/FILE NO: 11250-85/EN24PGN340	THIS AGREEMENT DATED FOR REFERENCE THE 23rd DAY OF NOVEMBER 2023.
FOR: R3-200 Bulkley River Crossing Right-of-Way Clearing Project. The "Activity / Treatment" and the "Work Location"	

BETWEEN:

HIS MAJESTY THE KING IN RIGHT OF THE PROVINCE OF BRITISH COLUMBIA,
as represented by the MINISTER OF FORESTS

Engineering Branch, Northern Engineering Group
153 – 1011 4th Avenue, Prince George, BC V2L 3H9

Phone Number: s.19; s.22

FAX Number: NOT APPLICABLE

E-mail Address:

(the "Province")

AND:

Kyah Resources Inc.
732 Mount Paul Road, Kamloops, BC, V2H 1B5

s.19; s.22

Business Number: BC1003742

WorkSafe BC and/or Personal Optional Protection Number:

s.21

(the "Prime Contractor")

referred herein to as "the Parties".

WHEREAS:

- A.** The Province and the Prime Contractor have agreed that a Multiple Employer Workplace is anticipated and expected at the Work Location and have duly executed this Agreement.
- B.** The Province and the Prime Contractor have agreed that the *Workers Compensation Act* (WC Act) and its regulations allow the Province to establish Prime Contractor responsibilities.
- C.** The Prime Contractor agrees to be the prime contractor at the Multiple Employer Workplace for the Work or Services being performed.
- D.** The Prime Contractor has the required knowledge and control of the Multiple Employer Workplace to execute the responsibilities of a prime contractor as described in the WC Act and its regulations.

- E. The Province and the Prime Contractor have agreed that the prime contractor functions shall be carried out in accordance with this Agreement and any Contract Documents or other agreements between the Parties.

Accordingly, the Parties agree as follows:

ARTICLE 1. DEFINITIONS

- 1.01 In this document, the following words have the following meanings:
- (a) **"Affected Parties"** means independent firms described in Article 2 that create a multiple employer workplace;
 - (b) **"Affected Persons"** includes the Prime Contractor and Affected Parties and their visitors to the workplace, employees, officers, directors, agents, or subcontractors entering the Multiple Employer Workplace;
 - (c) **"Agreement"** means this Prime Contractor Agreement between the Parties;
 - (d) **"Amending Document"** means an FS600 Contract Amendment form or another standard form of similar nature specified by the Province;
 - (e) **"Contract Documents"** means those documents described in section 3.01.
 - (f) **"Multiple Employer Workplace"** means a workplace where workers of two or more employers are working at the same time where the work being carried out "overlaps".
 - (g) **"Principal Contractor"** means a party who holds a contract for service or works with the Province and does not include any tenures or authorizations under the *Forest Act*.
 - (h) **"Term"** means the period of time this Agreement is in force pursuant to Article 3.
- 1.02 If any of the words in section 1.01 are used in any other Contract Document, they have the same meaning as in this document unless the context dictates otherwise.

ARTICLE 2. AFFECTED PARTIES

The following other parties are a party to the creation of a Multiple Employer Workplace and are affected by this Agreement and the responsibilities of the Prime Contractor as laid out herein:

Firm Name	Address	File#

ARTICLE 3. CONTRACT DOCUMENTS AND AMENDMENTS

Contract Documents

- 3.01 The Parties entered into the agreement dated for reference the 23rd November 2023, identified as Agreement Number EN24PGN340 that is applicable to and forms part of this Agreement.

Amending Documents

- 3.02 No change to the Agreement is effective unless the change is in the form of an Amending Document signed by both Parties.

ARTICLE 4. TERM OF AGREEMENT

- 4.01 Subject to Clause 3.02, the Term of this Agreement is from November 23rd, 2023, to March 15th, 2024 inclusive.
- 4.02 Time is of the essence in this Agreement.

ARTICLE 5. PRIME CONTRACTOR RESPONSIBILITIES

- 5.01 The Prime Contractor shall:
- (a) familiarize itself with the Multiple Employer Workplace;

- (b) immediately notify the Ministry Representative should there be any circumstance arising which another party claims or purports to be the prime contractor at the Multiple Employer Workplace. There can be only one prime contractor on any one Multiple Employer Workplace;
- (c) coordinate safety activities and ensure compliance with the *WC Act* and the *Occupational Health & Safety Regulations* by all Affected Parties and act to protect any other workers entering the Multiple Employer Workplace;
- (d) when requested, provide the following to the Ministry Representative:
 - i. up-to-date written information of the Prime Contractor's systems or processes related to the discharge of prime contractor duties;
 - ii. inspection results, safety meeting minutes, accident investigation findings for Prime Contractor's own workers and for the Affected Parties;

Coordination and Compliance

- 5.02 The Prime Contractor shall ensure that its systems or processes eliminates or minimizes risk of injuries and will adequately monitor and coordinate Affected Parties' activities to ensure compliance with the *WC Act* and the *Occupational Health & Safety Regulation*, which includes, but is not limited to:
- (a) ensuring an Affected Party does not expose any Affected Person, or any person, entering the Multiple Employer Workplace to uncontrolled hazards;
 - (b) ensuring Affected Parties adequately supervise their workers relating to occupational health and safety at the Multiple Employer Workplace;
 - (c) conducting safety meetings with all Affected Parties and recording minutes of meetings;
 - (d) ensure all parties conduct ongoing Workplace inspections;
 - (e) ensuring all Affected Parties at the Multiple Employer Workplace are given any information necessary to identify and eliminate or control hazards and ensure the health or safety of all Affected Persons;
 - (f) coordination and planning of work activities with participation by all Affected Parties that will ensure work is carried out safely and that work of one employer will not create uncontrolled hazard for another;
 - (g) maintaining a list of individuals designated by an Affected Party as supervisor of its workers at the Multiple Employer Workplace;
 - (h) establishing, maintaining and communicating emergency response and evacuation procedures;
 - (i) providing, where needed, information to all Affected Persons about the safe use of resource roads and other access, including but not limited to the "rules of the road", other road use traffic, and road use radio frequencies;
 - (j) carrying out a workplace first aid assessment and ensuring first aid coverage at the Multiple Employer Workplace is adequate and appropriate and coordinated with all Affected Parties, including but not limited to emergency transportation provisions for injured workers for the number of workers present;
 - (k) orientation of all Affected Parties and Affected Persons, or any person, entering the Multiple Employer Workplace to the site, workplace hazards and appropriate responses;
 - (l) ensuring Affected Persons at the Multi Employer Workplace know their rights and responsibilities to report unsafe acts/conditions, how to refuse to perform work that is unsafe, how to seek first aid, how to report injuries;
 - (m) promoting a positive safety culture by encouraging workers to discuss safety concerns/issues;
 - (n) ensuring a Notice of Project is delivered to WorkSafe BC for itself and all Affected Parties in accordance with the *WC Act* and its regulation.

- 5.03 The Prime Contractor shall not assign this Agreement or in any way create another Prime Contractor.
- 5.04 Where the Prime Contractor or Affected Parties identified in this Agreement are Principal Contractors for the Province, this Agreement forms the written notice of Prime Contractor.

The Work Location is a Multi Employer Workplace and as such the Parties hereto duly execute this Agreement.

SIGNED AND DELIVERED on behalf of the Province by an authorized representative of the Province	SIGNED AND DELIVERED by or on behalf of the s.19; s.22 d signatory of)
(Authorized Ministry Contract Officer/Expense Authority) Jason Olmsted	
Dated this _____ day of _____, 20__	Dated this 30 TH day of NOVEMBER, 2023

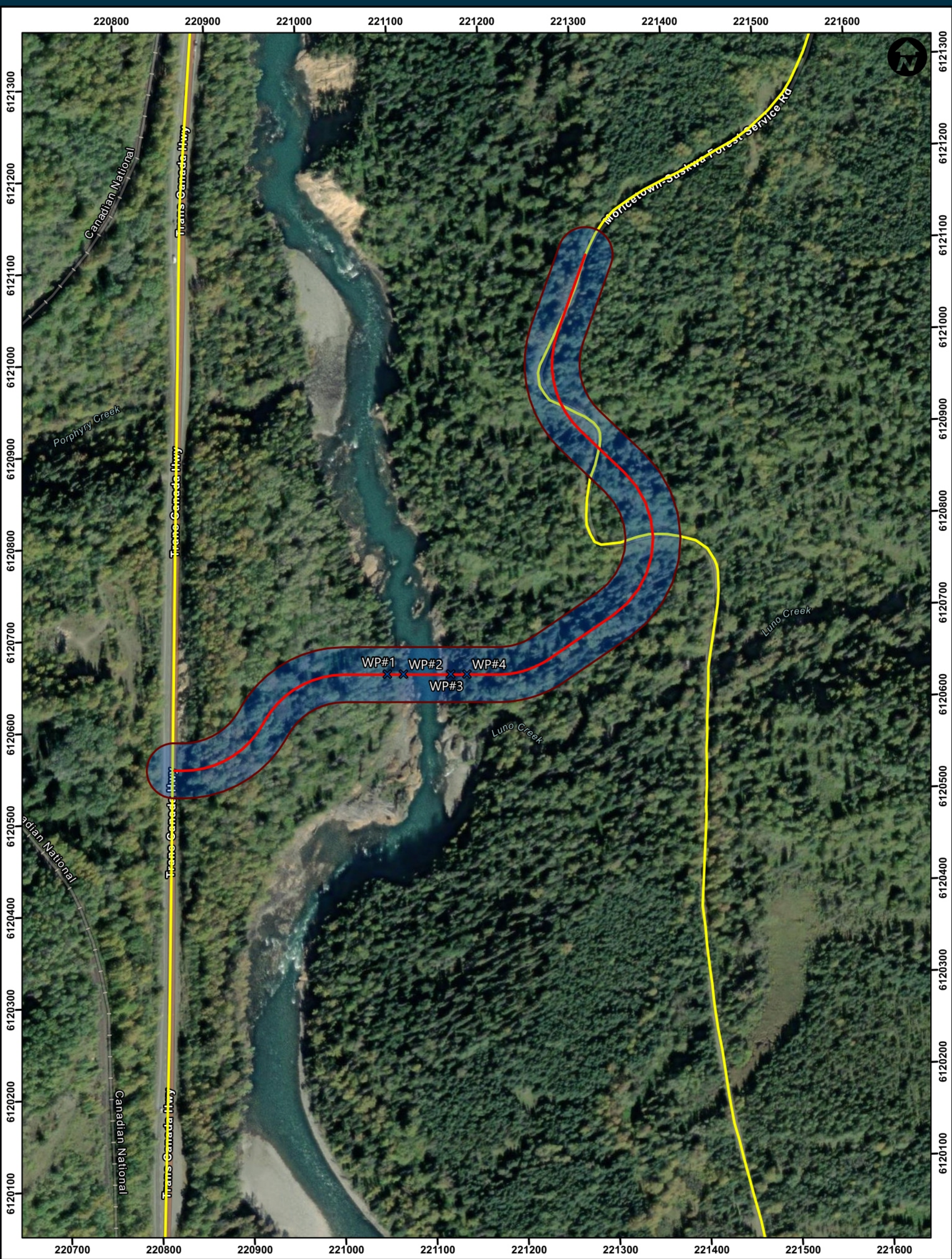
R3-200 Right-of-Way Clearing

Legend

 Log Decks

 R3-200 Road Centreline



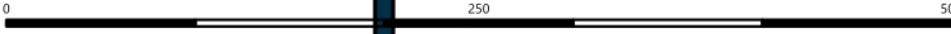




Suskwa FSR Abutment and Pier Locations

Date: 10/6/2023
Projection: NAD 1983 BC Environment Albers
Scale: 1:4,000
Author: tkendall
Last Modified By: tkendall
Checked By:
Revision #:

-  Approx Abutment and Pier Locations
-  230828-Suskwa FSR Road
-  Existing Roads
-  60m RoW Boundary



0 250 500
Metres



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Withheld pursuant to/removed as

s.21



November 30, 2023

File Number: 13480112
Business Number: 80211 0239
Letter Id: L0788983232



KYAH RESOURCES INC.
732 MT PAUL WAY
KAMLOOPS BC V2H 1B5

Dear Sir/Madam:

Re: Provincial Tax Verification for Contracts

This letter confirms that KYAH RESOURCES INC. meets its applicable B.C. corporate income tax filing obligations and provincial sales tax filing and payment obligations for the purpose of entering into, extending or renewing, an applicable contract with the Province of British Columbia.

This letter is valid for one year, until 30-Nov-2024.

If you have any questions or need more information, please contact us.

Yours truly,

Tax Verification for Procurement Team

Page 096 of 108 to/à Page 097 of 108

Withheld pursuant to/removed as

s.3

Page 098 of 108

Withheld pursuant to/removal as

s.21



WORKING TO MAKE A DIFFERENCE

Assessment Department Location

Mailing Address

PO Box 5350
Station Terminal
Vancouver BC V6B 5L5

6951 Westminster Highway
Richmond BC
V7C 1C6
www.worksafebc.com

Clearance Section

Telephone 604 244 6380
Toll Free within Canada
1 888 922 2768
Fax 604 244 6390

Ministry of Forests
153-1011 4th Avenue
PRINCE GEORGE, BC V2L 3H9

November 16, 2023

Person/Business : KYAH RESOURCES INC.

Account number : s.21

This letter provides clearance information for the purposes of Section 258 of the *Workers Compensation Act*.

We confirm that the above-referenced firm is active, in good standing, and has met WorkSafeBC's criteria for advance clearance. Accordingly, if the addressee on this letter is the prime contractor, the addressee will not be held liable for the amount of any assessment payable for work undertaken by the above-referenced firm to **January 01, 2024**.

This firm has had continuous coverage with us since July 01, 2014.

Employer Service Centre
Assessment Department

Clearance Reference # : s.21

CLRAAA

For more information about Section 258 and clearance letters visit WorkSafeBC.com

Please refer to your account number in your correspondence or when contacting the Assessment Department.

To alter this document constitutes fraud.

Notice of Project: 984713
Forestry

Submitted: Thursday, November 30, 2023 at 12:57 p.m. Pacific Time

Except as permitted by OHS regulation 26.4(3), WorkSafeBC must be provided with at least 24-hour written notice prior to the start of forestry activities expected to last more than 5 days. If the forestry activity includes the aerial transport of wood products, then WorkSafeBC must be notified at least 2 weeks in advance of the project start date, as per the requirements of OHS regulation 29.16.

Worksite details

Worksite Location			
City	Location	Planned start date	Duration
1 Smithers	The site is located 48.3km west of Smithers, BC, on Highway 16.	12/4/2023	4 Months

Owner or agent representative of this worksite:

WorkSafeBC Account Number: [s.21](#)
Kyah Resources Inc
732 Mt Paul Way
Kamloops, British Columbia
Canada, V2H1B5

Project information

Tree licensee:

Ministry of Forests - Engineering Branch
153-1011 4th Avenue
Prince George, British Columbia
Canada, V2L 3H9

Forestry equipment:

Possible equipment as needed for site - skidder, forwarder, harvester, loaders logging trucks

Work activities and procedures that will be performed:

Right of way clearing as part of the construction for the new Suskwa FSR. Felling timber within site to prepare site for future road, approx 6 hectares.

Person in charge of the planned activity:

[s.19](#); [s.22](#)

General contractor:

WorkSafeBC Account Number: s.21

Kyah Resources Inc
732 Mt Paul Way
Kamloops, British Columbia
Canada, V2H 1B5

Scope of work**Construction:**

Road construction

Harvesting:

Falling
Ground skidding
Load and haul

Other information**Submitted by:**

s.19; s.22

Limitations

Neither the issuance of a Notice of Project number, nor the absence of follow-up action by WorkSafeBC indicates acceptance or approval of the information provided. If you have any safety concerns regarding this project, contact the person in charge of this project or WorkSafeBC prevention information line at 604.276.3100 or 1.888.621.7233.

Significant changes

If the information on the Notice of Project significantly changes, the new information must be submitted to WorkSafeBC as soon as possible and posted at the worksite.

To update the information, provide WorkSafeBC with the Notice of Project number, the worksite address, and a summary of the changes you want to make by either:

Email: prevnop@worksafebc.com**Fax:** 604.276.3247

From: Olmsted, Jason FOR:EX(Jason.Olmsted@gov.bc.ca)
To: Jackson, Charlean FOR:EX (Charlean.Jackson@gov.bc.ca); Wyatt, Peter FOR:EX (Peter.Wyatt@gov.bc.ca)
Subject: EN24PGN340 - Rationale for Direct Award
Sent: 11/23/2023 18:28:22
Attachments: EN24PGN340 - Rationale for Direct Award.docx

Hi Peter/Charli,

Attached is the rationale I am putting on our contract file for the direct award to Kyah Resources. Let me know if you have any concerns or think we should add or change anything. I am the EA on this contract. **s.13**
s.13

Thanks

Jason

Rationale for Direct Award for the R3-200 Right-of-Way Clearing

Date: 2023-11-20

Contract: 11250-85/EN24PGN340

The first phase of the project to replace the failing bridge across the Bulkley River on the Suskwa FSR requires the clearing of timber at the new crossing location approximately 9km downstream from the existing bridge. The project is located on the traditional lands of the Wet'suwet'en and the Gitksan First Nations.

FOR Engineering Branch has been working diligently to engage with the local residents and relevant First Nations since the initial planning of the project. During the tendering process for the RoW clearing the Witset First Nation and the Wet'suwet'en came forward with a proposal to work in partnership on the project. The two groups have not historically worked together, so this proposal was seen as a good opportunity to promote the relationships and grow the capacity in both First Nation groups.

NEG would like to direct award the RoW clearing to Kyah Resources, which is a 50/50 joint venture partnership between Witset and the Roga Group. Kyah is committed to using as many local workers and resources as possible to add capacity, skills and experience to the First Nations.

Some other key benefits from directing awarding this portion of the project to Kyah are:

1. Reconciliation and Acknowledgment of Indigenous Rights:

Directly awarding contracts to First Nations reflects a commitment to reconciliation and acknowledgment of Indigenous rights on their traditional territory. It recognizes the historical injustices, dispossession, and marginalization experienced by Indigenous communities.

2. Promotion of Economic Empowerment:

Supporting economic empowerment within First Nations contributes to breaking the cycle of poverty and dependence. Indigenous communities can build sustainable economies by providing opportunities for business development and employment.

3. Capacity Building and Skill Development:

Directly involving First Nations in contracts fosters capacity building and skill development within these communities. This helps create a skilled workforce that can contribute to the specific project and future economic activities which can create a more inclusive and diverse business landscape, fostering innovation and economic resilience.

4. Enhanced Community-BC Government Relations:

By engaging First Nations directly in project development, there is an opportunity to build positive and mutually beneficial relationships between the BC Government and Indigenous communities. This can lead to smoother project implementation and a reduction in conflicts.

In closing, please consider this direct award as the best path forward for the Suskwa Bridge Right of way clearing Project.

Page 105 of 108 to/à Page 107 of 108

Withheld pursuant to/removed as

s.21

From: Wyatt, Peter FOR:EX(Peter.Wyatt@gov.bc.ca)
To: Olmsted, Jason FOR:EX (Jason.Olmsted@gov.bc.ca); Jackson, Charlean FOR:EX (Charlean.Jackson@gov.bc.ca)
Subject: RE: EN24PGN340 - Rationale for Direct Award
Sent: 11/23/2023 18:35:55

I support the direct award. **s.13**
s.13

Likely come together early next week.

Peter

From: Olmsted, Jason FOR:EX <Jason.Olmsted@gov.bc.ca>
Sent: Thursday, November 23, 2023 10:28 AM
To: Jackson, Charlean FOR:EX <Charlean.Jackson@gov.bc.ca>; Wyatt, Peter FOR:EX <Peter.Wyatt@gov.bc.ca>
Subject: EN24PGN340 - Rationale for Direct Award

Hi Peter/Charli,

Attached is the rationale I am putting on our contract file for the direct award to Kyah Resources. Let me know if you have any concerns or think we should add or change anything. I am the EA on this contract. **s.13**
s.13

Thanks

Jason