Ministry of
Forests, Lands and
Natural Resource Operations

MAJOR WORKS CONTRACT
FOREST ROAD CONSTRUCTION

Contract/File No:	THIS AGREEMENT DATED FOR REFERENCE THE
10005-40/EN22TFH003	DAY (including 'nd' 'rd' or 'th' as applicable) DAY OF Month, 20YR.

BETWEEN:

HER MAJESTY THE QUEEN IN RIGHT OF THE PROVINCE OF BRITISH COLUMBIA, as represented by the MINISTER OF FORESTS, LANDS, NATURAL RESOURCE OPERATIONS, and RURAL DEVELOPMENT

BC Timber Sales, Kootenay Business Area
1907 Ridgewood Road, Nelson, British Columbia V1L 6K1

Phone Number: (250) 421-9555 **FAX Number: (250) 825-3411**
E-mail Address: Mark.Serediuk@gov.bc.ca

(the "Province")

AND:

Contractor/Company Name
Physical & Mailing Address (including Postal Code)

Phone Number: (Area Code) Phone No **FAX Number: (Area Code) Fax No**
E-mail Address: Contractor Representative's Email Address
Business Number: Contractor's Business Number for taxation purposes
WorkSafe BC and/or Personal Optional Protection Number: WCB / POP No.

(the "Contractor")

referred herein to as "the Parties".

WHEREAS:

A. The Province requires road construction Work to be carried out for its benefit at or near: Wardner South Forest Service Road, ~ 70 kilometers south east of Cranbrook BC in the vicinity of Lake Koocanusa.

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 Contractor will carry out the Work in accordance with certain contract documents as hereinafter set out.

Accordingly, the Parties agree as follows:

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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 described in Section 2.01;

(b) **"Amending Document"** means an FS600 Modification Agreement form or another standard form which the Province may provide that describes changes which the Parties have agreed should be made to the Agreement and which is signed by the Parties;

(c) **"Assessment"** means an estimate of damages incurred by the Province as a result of the Contractor's failure to perform, unsatisfactory performance, or other non-compliance with the provisions of this Agreement;

(d) **"Completion Date"** means the date by which Total Performance of the Work must be achieved to the satisfaction of the "Ministry Representative";

(e) **"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;

(f) **"Drawing(s)"** means the Drawing(s) as defined in Schedule D and I, if attached, and shown in Schedule C;

(g) **"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.

(h) **"Inspector"** means a person or persons appointed by the "Ministry Representative" whose duties include inspection of the Work done and materials furnished. An Inspector may not, in carrying out his/her duties, commit the Province to a financial expenditure;

(i) **"Milestone Date"** means the date by which an identified activity; the provision of labour, equipment or material; or a phase of the Work must be commenced, or completed, as the case might be, to the satisfaction of the "Ministry Representative";

(j) **"Ministry Representative"** means the person designated by the Province as the person who determines whether the quality, quantity, suitability, and progress of the Work is satisfactory to the Province;

(k) **"Notice"** means notification in writing given by one party to this Agreement to the other party to this Agreement;

(l) **"Other Contractor"** means a person, firm, or corporation having a separate contract directly with the Province for work other than that required by the Contract Documents;

(m) **"Place of Work"** is the designated site or location where the Work will be performed;

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(n) **"Substantial Performance"** means when the Ministry Representative has determined that:

i) 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

ii) the Contractor is not in breach of any term of the Agreement.

(o) **"Total Performance of the Work"** means when the entire Work, except those items arising from the provisions of Section 15.02, has been performed to the requirements of the Contract Documents and is so certified by the Ministry Representative;

(p) **"Work"** means all activities, and the results of those activities, planned and carried out under this Agreement, as well as the provision of all labour, services, material, and equipment necessary for the Contractor to perform and complete its obligations under this Agreement.

1.02 If any of the words in Section 1.01 are used in any other Contract Documents, 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 Parties agree that the following are the Contract Documents and no others:

(a) this document and any schedules attached;

(b) any Drawings;

(c) any Amending Document.

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

Schedule	Title
Schedule "A"	Linear Unit Price
Schedule "B"	Insurance
Schedule "C"	Project Specifications
Schedule "D"	General Specifications
Schedule "E"	Environmental Management System
Schedule "F"	Works Completion
Schedule "G"	Safety Conditions
Schedule "H"	SAFE Certification
Schedule "K"	Subcontractor
Schedule "L"	Tax Verification
Appendices I - VI	

2.02 Any Amending Documents to this Agreement form an integral part of this Agreement.

Amending Documents

2.03 No modification of this Agreement is effective unless it is in writing and signed by, or on behalf of, the Parties.

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Conflicts

2.04 In the event of a conflict within the 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) the specifications in Schedules “C”, “D”, or “I”, if attached, shall govern over any other Drawing, specifications or notes; and

(d) this document supersedes all other Contract Documents.

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

ARTICLE 3 CONTRACT PRICE

3.01 The contract price is the total amount as indicated in Schedule “A” *Linear Unit Price*

3.02 Unless provided otherwise, unit 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), and other things required to completely incorporate the item into the Work, excluding Goods and Services Tax (GST) and any applicable Provincial Sales Tax (PST) that the Contractor is required to charge the Province as a taxable transaction.

ARTICLE 4 CONTRACT SECURITY

4.01 To secure the Contractor's obligations to fulfill this Agreement, the Contractor shall provide to the Province, before commencement of the Work, contract security (the “Contract Security”) either in the form of cash or in the form of a performance bond

4.02 Where the Contractor provides Contract Security in the form of cash then:

(a) the Contract Security must be in an amount not less than 10% of the first $100,000 of contract amount and not less than 5% of the balance thereof;

(b) the Contract Security must be in one of the following forms:

i) cash;

ii) bank draft, certified cheque or personal money order issued by a financial institution or postal money order issued by Canada Post Corporation, payable to the "Minister of Finance ";

iii) irrevocable letter of credit issued by a financial institution, payable to the "Minister of Finance ", having a termination date at least 90 days after the Contract completion date. If a Letter of Credit is required for a contract with a term greater than one year, it must contain a verbatim "Evergreen Clause”, as provided by the Ministry, allowing for automatic extension or renewal on an annual basis until the Contract is complete;

iv) treasury bill notes issued by the Government of Canada or the government of any Province of Canada and covered by a duly executed ‘Safekeeping Agreement’, in the form set out in the Tender Documents;

v) marketable bonds in fully registered form issued and guaranteed by the Government of Canada or the government of any Province of Canada with a maturity date of not longer than three years, together with a duly executed ‘Safekeeping Agreement’, in the form set out in the Tender Documents; or

vi) short term deposits registered in the name of the "Minister of Finance" issued by a financial institution and covered by a duly executed ‘Safekeeping Agreement’, in the form set out in the Tender Documents.

4.03 Where the Contractor provides Contract Security in the form of a performance bond, then:

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(a) the performance bond must be in an amount not less than 50% of the total contract price;

(b) the performance bond shall be accompanied by a labour and material payment bond which shall be in an amount not less than 50% of the total contract price and a copy of which shall be posted at the Place of Work;

(c) the performance bond and labour and material payment bond must be issued by a duly licensed surety company authorized to transact a business of suretyship in Canada and shall otherwise be in a form acceptable to the Province;

(d) the obligee named on the performance bond and labour and material payment bond shall be "Her Majesty the Queen in the right of the Province of British Columbia as represented by the Minister of Forests, Lands and Natural Resource Operations"; and

(e) the performance bond and labour and material payment bond shall be in effect until no sooner than sixty (60) days following the completion of the following conditions:

i) the Ministry Representative has certified Total Performance of the Work;

ii) the Contractor has provided a clearance letter from the Worker's Compensation Board indicating that all current Assessments due from the Contractor have been paid;

iii) the Contractor has provided to the Province a NRS263 Statutory Declaration attesting that the Contractor has paid in full in connection with this Agreement all of its workers, subcontractors, material and equipment suppliers, and any government agencies; and

iv) the Contractor has provided the Province with written confirmation that it has accepted the final measurement quantities.

4.04 Where the Contract Security is in the form of cash the Contract Security shall be used as follows:

(a) firstly, to correct any breach of, or to pay any Assessment provided for in, this Agreement;

(b) secondly, to pay unpaid government agencies (includes WorkSafe BC, etc);.and

(c) thirdly, to pay up to 50% of the Contract Security to the Contractor's and subcontractor's unpaid workers, subcontractors, and material suppliers.

4.05 Where the Contract Security is in the form of cash then subject to the terms and conditions of the Agreement, the Province will release to the Contractor the Contract Security or the remaining balance thereof no sooner than sixty (60) days following completion of all of the following conditions:

(a) the Ministry Representative has certified Total Performance of the Work;

(b) the Contractor has provided a clearance letter from the Worker's Compensation Board indicating that all current Assessments due from the Contractor have been paid;

(c) the Contractor has provided to the Province an FS263 Statutory Declaration attesting that the Contractor has paid in full in connection with this Agreement all of its workers, subcontractors, material and equipment suppliers, and any government agencies; and

(d) the Contractor has provided the Province with written confirmation that it has accepted the final measurement quantities.

4.06 When the Contract Security is in the form of cash then despite Section 4.05 and subject to the terms and conditions of this Agreement the Province may, in its sole discretion, release to the Contractor up to 75% of the Contract Security or the remaining balance thereof no sooner than sixty (60) days after the Ministry Representative has issued a certificate of Substantial Performance in accordance with Section 14.02.

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ARTICLE 5 COMMENCEMENT AND COMPLETION

5.01 The Contractor shall commence the Work immediately upon execution of this Agreement, and will proceed to complete the Work in accordance with this Agreement.

5.02 If the Contractor fails to achieve completion of any specified portion of the Work on or before the corresponding Milestone Date or Completion Date set out in Schedule "F", then without limiting any other remedy available to the Province under the Agreement, the Province may elect to proceed with one or more of the following:

(a) terminate the Agreement in accordance with Article 19;

(b) extend a Milestone Date or the Completion Date resulting from a delay pursuant to Sections 18.01, 18.02 and 18.03; or

(c) extend a Milestone Date or the Completion Date if the delay was the result of an event that was within the control of the Contractor, and deduct from any payment due under Article 13 to the Contractor as consideration for late completion the applicable amount as described in the following Table for each day or part thereof between the originally specified Milestone Date or Completion Date and the date the Work is completed.

CONTRACT VALUE	***AMOUNT DEDUCTED BY MINISTRY***
$0 TO $250,000	$250/DAY
$250,001 TO $500,000	$500/DAY
GREATER THAN $500,000	$1,000/DAY

5.03 If the Province elects to extend a Milestone Date or the Completion Date pursuant to Article 18, and the Contractor does not complete the Work on or before such extended Milestone Date or Completion Date then, upon written Notice by the Province to the Contractor, the Province may avail itself of any remedy available to the Province at law or under the Agreement, including without limitation one or more of the remedies specified in Section 5.02.

5.04 It is a condition of any extension to a Milestone Date or the Completion Date that the Contractor shall proceed diligently to complete the Work.

5.05 Any payment to be made by the Contractor pursuant to Article 5 relates directly to the performance by the Contractor of a condition, covenant, or promise in the Agreement and shall not be construed by the Parties as punitive but as importing a reasonable measure by mutual consent of the minimum damages caused to the Province by the Contractor's failure or neglect.

ARTICLE 6 PARTY REPRESENTATIVES

Ministry Representative

6.01 The Ministry Representative or Inspector shall have the right to inspect the Work done and the materials furnished in respect thereof.

6.02 Upon acceptance of the Contractor's bid, the Province shall notify the Contractor of the name, address and telephone number of the Ministry Representative appointed pursuant to Section 6.01.

6.03 The Province may substitute a Ministry Representative at any time, and shall so notify the Contractor of the change.

6.04 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.

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Contractor's Representative

6.05 The Contractor shall designate a representative, 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.

6.06 Upon contract award, the Contractor shall notify the Ministry Representative of the name, address and telephone number of the representative designated pursuant to Section 6.05.

6.07 The Contractor shall not substitute a representative without the written consent of the Ministry Representative.

6.08 If, in the reasonable opinion of the Ministry Representative, the representative 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 representative forthwith.

ARTICLE 7 INDEMNIFICATION AND INSURANCE

7.01 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 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.

7.02 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 from time to time by the Province.

ARTICLE 8 PROTECTION OF WORK AND PROPERTY

8.01 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.

ARTICLE 9 COOPERATION WITH OTHER CONTRACTORS

9.01 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.

9.02 The Contractor, forthwith upon becoming aware of any apparent adverse impacts caused by the Other Contractor's Work which would affect the Work, shall give Notice of such impacts to the Ministry Representative.

9.03 Except with respect to impacts of which the Contractor was not aware, failure by the Contractor to give Notice to the Ministry Representative in accordance with Section 9.02 shall invalidate any claims against the Province by reason of the impacts.

ARTICLE 10 COMPLIANCE WITH THE LAW

10.01 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:

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(a) comply with all laws affecting the Work; and

(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

10.02 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 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.

10.03 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 Drawings with Law

10.04 The Contractor is not responsible for verifying that the Drawings comply with the applicable laws. If the Drawings do not comply with the applicable laws, either at the time this Agreement is executed or as a result of a subsequent modification in the applicable laws, the Province may modify the Drawings to comply. The Contractor will complete the Work on the basis of the modified Drawings and the total estimated contract price may be modified in accordance with this Agreement.

ARTICLE 11 CHANGES IN THE WORK

11.01 "**Change(s) 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 12.01).

11.02 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 Drawings if the additional Work or material, deletion or change is consistent with the general intent of the Agreement.

11.03 For Changes in 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;

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(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.

11.04 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 Drawings.

11.05 Where the Ministry Representative orders a Change in the Work, the Ministry Representative will, in his sole discretion, determine the value of the change by using 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 “Equipment Rental Rate Guide authorized by the Government of British Columbia”.

11.06 In the case of Changes in the Work to be paid for under methods (b), (c) and (d) of Section 11.05:

(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, together with vouchers where applicable, at intervals requested by the Ministry Representative.

11.07 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.

11.08 Changes in the Work shall not proceed without an Amending Document.

11.09 Payment for Changes in the Work shall be made in accordance with Article 13.

ARTICLE 12 CHANGED CONDITIONS

12.01 "**Changed Conditions**" are defined as surficial or subsurface materials or conditions at the Place of Work:

(a) that are materially different from those indicated in the information provided by the Province at the closing time of tender,

(b) which were not foreseen by the Contractor, and which would not have been reasonably foreseen by a reasonably experienced contractor who, prior to submitting its tender, conducted a thorough investigation of the site and 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,

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(c) which will result in an increased or decreased cost to the Contractor, or in the time required to perform the Work, and

(d) that are not caused by weather events.

Changed Conditions do not include any weather or natural event that prevents or delays the Contractor in the performance of the Work.

12.02 When the Contractor observes a Changed Condition, the Contractor shall give Notice to the Ministry Representative or Inspector prior to proceeding with the Work. If the Ministry Representative determines that a Changed Condition has arisen which the Ministry Representative determines will result in an increased or decreased cost to the Contractor to perform the Work, the Province may apply existing prices defined in the Agreement or

(a) negotiate applicable prices,

(b) apply a fixed fee or percentage fee of 10% of the actual cost of labour and materials,

(c) to apply the cost of all found equipment in accordance with rates established in the current edition of the “Equipment Rental Rate Guide authorized by the Government of British Columbia”

12.03 In respect of the Changed Conditions the Contractor shall not claim for any portion of the costs which the Contractor incurs as a result of a Changed Condition where the Contractor could have avoided such costs.

ARTICLE 13 PAYMENT

13.01 Invoices for payment must be in a form acceptable to the Ministry Representative and may be submitted monthly as the Work progresses. Invoices shall be at the applicable rates set out in Schedule "A" - Approximate Quantities and Unit Price Table, based upon the amounts of Work done by the Contractor, and measured in a manner acceptable to the Ministry Representative.

13.02 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) to be paid as a separate line item.

Terms of Payment

13.03 The Ministry Representative shall, after the receipt of an invoice from the Contractor submitted in accordance with Section 13.01, certify the invoice in the amount applied for or in such other amount the Ministry Representative determines is properly due. If the Ministry Representative amends the invoice, the Ministry Representative shall promptly give notice to the Contractor of the reasons for the amendment.

13.04 The Province will make progress payments pursuant to Section 13.01 in accordance with the Province's payment practices.

13.05 Interest Payments will not be made unless the account is overdue by at least sixty-one (61) days. The overdue period is calculated from the date the invoice is received and certified by the Ministry Representative, to the date the cheque is printed by the Ministry of Finance.

Appropriation

13.06 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).

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13.07 No payment by the Province under this Agreement, nor 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.

ARTICLE 14 SUBSTANTIAL PERFORMANCE

14.01 Upon Notice by the Contractor requesting certification of substantial performance of the Work, the Ministry Representative or Inspector shall inspect the Work.

14.02 The Ministry Representative shall, upon inspection, issue a certificate for Substantial Performance of the Work if **ALL** of the conditions are met.

14.03 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.

14.04 If the Contractor fails to perform any of the Work due to climatic or other conditions that are reasonably beyond the control of the Contractor, the Province will process payments due to the Contractor but 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 15 TOTAL PERFORMANCE

15.01 After the Province receives a Notice from the Contractor requesting final inspection, if in the opinion of the Ministry Representative, the Work has been completed in accordance with this Agreement, the Ministry Representative shall establish the date of Total Performance of the Work and certify for payment (see Article 4) the remaining monies due to the Contractor under the Agreement.

15.02 If after the Contractor gives Notice in accordance with Section 15.01, the Work is not completely acceptable to the Province, then the Ministry Representative will give Notice to the Contractor of particular defects in the Work and the Contractor shall immediately rectify the defects to the satisfaction of the Ministry Representative.

ARTICLE 16 TAXES AND DUTIES

16.01 The Contractor shall pay any applicable taxes, customs duties and excise taxes in respect of the Agreement.

16.02 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 17 PROVINCIAL PROPERTY

17.01 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.

17.02 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 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.

17.03 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.

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ARTICLE 18 DELAYS

18.01 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 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.

18.02 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.

18.03 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 18.05, the Contractor shall not be entitled to payment for costs incurred as a result of such delays.

18.04 If the Province reasonably decides that inclement weather or other conditions, including an outbreak of Covid-19 at the Contractor's work camp or other accommodation where the Contractor's personnel are located, as indicated by the Contractor to the Province, make it unsuitable for Work to proceed, the Province may suspend operations for a specified or an indefinite period, and may require the Contractor to remain available for up to five (5) consecutive Work Days to resume Work as specified by the Province. If the suspension exceeds twenty-four (24) hours the Parties shall negotiate an Equitable Adjustment to the Contract Price to compensate the Contractor for reasonable and substantiated out-of-pocket costs incurred during the suspension.

18.05 Compensation is payable to the Contractor for delays under Section 18.03 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 19 PROVINCE'S RIGHT TO PERFORM WORK OR STOP THE WORK OR TERMINATE CONTRACT

19.01 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 may give Notice to the Contractor 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.

19.02 If the Contractor receives such Notice pursuant to Section 19.01, the Contractor, subject to Section 19.03, shall correct the default immediately.

19.03 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.

19.04 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:

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(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.

19.05 If the Province terminates the Contractor's right to continue with the Work under the conditions set out in Section 19.04 (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.

19.06 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.

19.07 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.

19.08 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.

19.09 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.

19.10 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.

19.11 Subsequent to receipt of Notice from the Province pursuant to Section 19.10, 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.

19.12 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.

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ARTICLE 20 DISPUTE RESOLUTION

20.01 If a dispute occurs between the Parties concerning any matter under this Agreement, the Contractor shall promptly give Notice to the Ministry Representative and the Parties together shall use all reasonable efforts to resolve the dispute informally.

20.02 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 shall include the following particulars:

(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.

20.03 The Province shall, within thirty (30) days of receipt by the Ministry Representative of Notice, 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.

20.04 If the Province accepts the position of the Contractor, the Parties shall enter into an Amending Document to reflect the Agreement.

20.05 If the matter in dispute is not resolved promptly pursuant to Section 20.01, the Ministry Representative may give Notice 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.

20.06 If the Contractor receives instructions pursuant to Section 20.05, 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.

20.07 Nothing in this Article shall preclude either party from having a dispute resolved by a court of competent jurisdiction.

ARTICLE 21 DAMAGES AND MUTUAL RESPONSIBILITY

21.01 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.

21.02 Claims for damage under Section 21.01 shall be made in a Notice 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 20.

21.03 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 give Notice to 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.

21.04 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.

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ARTICLE 22 MISCELLANEOUS

Confidentiality

22.01 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

22.02 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 Article 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

22.03 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 Notice 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

22.04 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 Drawings shall be removed promptly from the Place of Work by the Contractor and replaced or re-executed promptly in accordance with the Drawings 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.

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If, in the opinion of the Ministry Representative, it is not expedient to correct defective Work or Work not performed in accordance with the Drawings, 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 Drawings, the amount of which will be determined in the first instance by the Ministry Representative.

Notice

22.05 Any Notice or document required to be given hereunder 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;

(b) if pre-paid post and if mailed during any period when normal postal services prevail, on the fifth business day after its mailing;

(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

22.06 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 22.05 or any other method agreed to by the Parties.

Survival of Terms

22.07 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

22.08 This Agreement operates 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 it 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.

Contractor Status

22.09 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.

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Unsuitable Workers

22.10 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.

22.11 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

22.12 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

22.13 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

22.14 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

22.15 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) Carolyn Krawchuk	(Contractor or Authorized Signatory) Printed Name
Dated this _____ day of _____, 20___	Dated this _____ day of _____, 20___

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Ministry of
Forests, Lands and
Natural Resource Operations

MAJOR WORKS CONTRACT

FOREST ROAD CONSTRUCTION
BC Timber Sales

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