

**SONGHEES INDIAN BAND**  
**INCREMENTAL TREATY AGREEMENT**

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## SONGHEES INDIAN BAND INCREMENTAL TREATY AGREEMENT

This Agreement is dated for reference \_\_\_\_\_, 2013

### **BETWEEN:**

**Her Majesty the Queen in right of the Province of British Columbia**, as represented by the Minister of Aboriginal Relations and Reconciliation

### **AND:**

**Songhees Indian Band**, on behalf of itself and its Members, as represented by the Chief and Council

(collectively referred to as the “Parties” and individually referred to as a “Party”)

### **WHEREAS:**

- A. The Songhees Indian Band, through its Chief and Council, asserts that it has used, occupied, governed and exercised ownership of its Traditional Territory from time immemorial;
- B. The Songhees Indian Band is engaged with the Province and Canada in negotiating an Agreement-in-Principle in accordance with Stage 4 of the British Columbia Treaty Commission process;
- C. The Parties wish to create momentum in the treaty negotiations in order to conclude a Final Agreement;
- D. British Columbia and the First Nations Leadership Council, representing the Assembly of First Nations – BC Region, First Nations Summit and the Union of BC Indian Chiefs, have entered into a New Relationship; and
- E. This Agreement will provide the Songhees Indian Band with transitional economic benefits in advance of a Final Agreement and is in the spirit and vision of the New Relationship.

**NOW THEREFORE** the Parties agree as follows:

## **ARTICLE 1 - INTERPRETATION**

### **1.1 Definitions.** In this Agreement:

“AIP” means the Te’mexw Member First Nation Agreement-in-Principle being negotiated by the Parties and Canada in accordance with Stage 4 of the British Columbia Treaty Commission process;

“AIP Date” means the date the Parties and Canada initial the AIP as part of completing Stage 4 of the British Columbia Treaty Commission process;

“Chief” means, in respect of the Songhees Indian Band, “chief” within the meaning of the *Indian Act*;

“Closing” means the completion of the transfer of the Lands by the Province to a Designated Company on the Closing Date;

“Closing Date” means the date or dates on which the documents for the transfer of the Lands to a Designated Company under 6.2 are uploaded to the electronic meet and are filed in the Land Title Office;

“Council” and “Band Council” mean, in respect of the Songhees Indian Band, the elected “council” within the meaning of the *Indian Act*;

“Crown Grant” means a grant (as defined in the *Land Act*) of the fee simple title to Land;

“Designated Company” means a company incorporated under federal or provincial law, all the shares of which are wholly owned directly or indirectly, legally and beneficially, by the Songhees Indian Band and which the Songhees Indian Band has designated to take fee simple title to any of the Lands;

“Effective Date” means the date on which the Final Agreement takes effect;

“Existing Legal Proceedings” means the following legal actions:

Gorge Vale Golf Club Litigation: *The Songhees First Nation v. Richard Arthur Mandy, Janet-Anne Mandy, Gareth Alexander Fleice, Rachel Ann Greene, Victoria Lynn Willow, Jean Nerissa Priebe, Jean Emmett Saindon, Kathleen Mary Conlin-Saindon, John Lalotis, Maria Lalotis, Kenneth Ralph Richardson, Joyce Elizabeth Richardson, Simon John Young, Annette Mae Cunningham, Janice Marie Mason, Ian George Hendry, Audrey Martha Hendry, Gary Van Alstyne, Diane Roy- Van Alstyne, Gorge*

*Vale Golf Club, Melrose Lane Developments Ltd., Her Majesty the Queen  
In Right of the Province of British Columbia and Attorney General of  
Canada, Victoria Registry No. 11 3785 (BCSC)*

“Final Agreement” means the Final Agreement to be concluded by the Parties and Canada at the conclusion of Stage 5 of the British Columbia Treaty Commission process;

“Governmental Action” means all processes, decisions, authorizations, permits, licences, approvals, Crown land dispositions, agreements and other actions whatsoever issued, granted, entered into or otherwise taken by a Provincial Official either before or after the date of this Agreement;

“HST” means the harmonized sales tax imposed under the *Excise Tax Act* (Canada) or equivalent tax imposed under federal or provincial law;

“ITA Date” means the date on which this Agreement is executed by the Parties;

“Lands” means any or all of the following:

Lot 174 Suburban Lot 39, Esquimalt District, Plan 2854

“V-Lot” : Lot 7, District Lots 1775 and 1776, Victoria City, Plan 432; the Southerly 1/2 of Lot 21, of Lots 1777 and 1778, Victoria City, Plan 175; and the Northerly 1/2 of Lot 21, of Lots 1777 and 1778, Victoria City, Plan 175 – or legal description based on new survey

Parcel B (DD 1508072I) of Lots 659 and 660, Victoria City

“Member” means any person who is a “member of the band”, as that phrase is defined in the *Indian Act*, of the Songhees Indian Band;

“New Relationship” means the vision developed in March 2005 by the Province and the First Nations Leadership Council, representing the Assembly of First Nations-BC Region, First Nations Summit and Union of BC Indian Chiefs, that resulted in a new relationship founded on principles of mutual respect, recognition and reconciliation of Aboriginal rights;

“Other Songhees First Nation Lands” means those lands identified in the Final Agreement which do not form part of Songhees First Nation Lands;

“Permitted Encumbrances” means the reservations, exceptions, liens, charges, and interests described in Part 1 and 2 of Schedule “2” for each of the Lands or any other Permitted Encumbrances agreed to by the Parties;

“Province” means Her Majesty the Queen in right of the Province of British Columbia;

“Provincial Official” means:

- a) the Province or any minister, public official, employee, contractor or agent of the Province;
- b) any government corporation or any director, officer, employee, contractor or agent of a government corporation; or
- c) any person acting as a decision maker under any enactment of the Province;

“Songhees First Nation Lands” means those lands identified in the Final Agreement which form part of Songhees First Nation Lands”

“Songhees Indian Band” means the “band”, as that term is defined in the *Indian Act*, named the “Songhees Indian Band” and includes all Members; and

“Traditional Territory” means, for the purposes of this Agreement, the statement of intent area filed by the Songhees Indian Band with the British Columbia Treaty Commission.

**1.2 Interpretation.** For purposes of this Agreement:

- a) “this Agreement” means this Incremental Treaty Agreement, including the Schedules and any agreement, document or instrument executed or delivered pursuant to this Agreement;
- b) “including” means “including, but not limited to” and “includes” means “includes, but not limited to”;
- c) the headings are for convenience only, do not form a part of this Agreement and in no way define, limit, alter or enlarge the scope or meaning of any provision of this Agreement;
- d) words importing gender include the masculine, feminine or neuter gender and words in the singular include the plural and vice versa;
- e) any reference to a corporate entity includes and is also a reference to any corporate entity that was a predecessor to, or that is a successor to, such entity;

- f) a reference to a statute includes every amendment to it, every regulation made under it, every amendment made to a regulation made under it and any law enacted in substitution for, or in replacement of, it;
- g) any reference to the delivery on Closing of an agreement, document or instrument “in the form” of a schedule means an agreement, document or instrument substantially in that form with such changes, additions or deletions as may be agreed by the representatives of the Parties;
- h) each and every release, covenant and other agreement given, and action to be taken, by the Songhees Indian Band under this Agreement means the Songhees Indian Band acting by and through its Chief and Council, and will be conclusively deemed to have been given, or taken, by the Songhees Indian Band on its own behalf, and for and on behalf of its Members; and
- i) there will be no presumption that doubtful expressions, terms or provisions in this Agreement are to be resolved in favour of any Party.

1.3 **Schedules.** The following are the Schedules to this Agreement:

- Schedule “1” – Maps of Lands
- Schedule “2” – Permitted Encumbrances
- Schedule “3” – Instruments of Registration (titles, survey plans, charges and other instruments)
- Schedule “4” – Form C Additions to Reserve Restrictive Covenant
- Schedule “5” – Agreement of Designated Company
- Schedule “6” – HST Certificate

## **ARTICLE 2 – RECONCILIATION AND PURPOSE**

2.1 **Reconciliation.** The Songhees Indian Band acknowledges and agrees that, in the spirit of the New Relationship and to advance Final Agreement negotiations, the Lands transferred to the Songhees Indian Band in accordance with this Agreement constitute a contribution by the Province towards the reconciliation of the Province’s and the Songhees Indian Band’s interests and, as such, the benefits provided to the Songhees Indian Band under this Agreement will be counted as a portion of the Province’s contribution towards the Final Agreement settlement.

2.2 **Purpose.** The purpose of this Agreement is to:

- a) demonstrate the commitment of the Parties to concluding a Final Agreement; and

- b) in the spirit of the New Relationship, provide the Songhees Indian Band with land as incremental treaty benefit in advance of a Final Agreement which will be transferred in accordance with this Agreement and will, on the Effective Date, become an element of the Final Agreement.

### **ARTICLE 3 - COMING INTO EFFECT AND TERMINATION**

- 3.1 **Coming into Effect.** This Agreement comes into effect when it has been executed by the Parties.
- 3.2 **Termination.** This Agreement may be terminated in writing:
  - a) by the Parties on a date mutually agreed on by the Parties; or
  - b) by either Party prior to the ministerial order authorizing the disposition of Lands that are subject of the ministerial order under 5.2(g).
- 3.3 **Termination on Litigation.** Notwithstanding 3.2, the Province may terminate this Agreement, including the transfer of any Lands which have not been completed, in the event the Songhees Indian Band commences any action or other proceeding relating to any Governmental Action within the Traditional Territory.
- 3.4 **Survival of Lands Conditions.** Notwithstanding 3.2, and subject to the Final Agreement, where any of the Lands are transferred under this Agreement, Articles 7, 10 and 13 will survive the completion of the transfers or the termination of this Agreement and, for greater certainty, will continue to apply to the Lands.

### **ARTICLE 4 - REPRESENTATIONS AND WARRANTIES**

- 4.1 **Songhees Indian Band Representations.** The Songhees Indian Band represents and warrants to the Province, with the intent and understanding that they will be relied on by the Province in entering into this Agreement, that:
  - a) it enters into this Agreement for, and on behalf of, its Members;
  - b) its Members have provided it with a mandate to negotiate an AIP and a Final Agreement;
  - c) it, as represented by its Chief and Council, has the legal power, capacity and authority to enter into and to carry out its obligations under this Agreement on behalf of the Songhees Indian Band and its Members;



- d) any company designated by the Songhees Indian Band for the purposes of this Agreement will be a Designated Company;
- e) any Designated Company has the legal power, capacity and authority to enter into and to carry out its obligations under each agreement and transaction to which it is a party in accordance with this Agreement; and
- f) the Province has fulfilled its obligation to consult with Songhees Indian Band in relation to:
  - i) the transfer of the Lands to a Designated Company and the Permitted Encumbrances on the Lands; and
  - ii) the transfer of land to other Te'mexw Member First Nations under an incremental treaty agreement, descriptions or maps of which have been provided by the Province to the Songhees Indian Band.

4.2 **Provincial Representations.** The Province represents and warrants to the Songhees Indian Band, with the intent and understanding that they will be relied on by the Songhees Indian Band in entering into this Agreement, that:

- a) it has the legal power, capacity and authority to enter into this Agreement; and
- b) on satisfaction or waiver of the conditions precedent under 5.2, it will have the legal power, capacity and authority to transfer the fee simple title to the Lands to a Designated Company as contemplated by this Agreement.

## **ARTICLE 5 – CONDITIONS PRECEDENT**

5.1 **Band Council Resolution.** Prior to the execution of this Agreement, the Songhees Indian Band will deliver to the Province a resolution made by its elected Council authorizing the Songhees Indian Band's representatives named in the resolution to execute this Agreement on behalf of the Songhees Indian Band.

5.2 **Conditions Precedent to Land Transfers.** The obligation of the Province to transfer any of the Lands to the Songhees Indian Band under this Agreement is subject to:

- a) there being sufficient monies available in an appropriation, as defined in the *Financial Administration Act*, to enable the Province in any fiscal year, when any expenditure in respect of an obligation may be required, to make that expenditure;

- b) the Province and Canada reaching an agreement satisfactory to the Province, in its sole discretion, on or before the applicable ITA Date on cost sharing the value of the Lands for treaty settlement purposes;
- c) the representations and warranties of the Songhees Indian Band under this Agreement being true and correct on the applicable Closing Date;
- d) the Songhees Indian Band having complied with all covenants of the Songhees Indian Band under this Agreement on the applicable Closing Date;
- e) in respect of all previously transferred Lands, all obligations of the Songhees Indian Band and the Designated Company having been fully performed in accordance with this Agreement;
- f) surveys for the Lands having been completed on or before the applicable Closing Date; and
- g) the Province having given notice that the minister responsible has authorized the disposition of the Lands in accordance with Provincial Law.

5.3 **Waiver of Conditions Precedent.** The conditions precedent set out in 5.2 are for the sole benefit of the Province and may be waived by the Province on written notice to the Songhees Indian Band.

## **ARTICLE 6 – TRANSFER OF LANDS**

6.1 **Closing Deliveries by Province.** Subject to the Permitted Encumbrances and the terms of this Agreement, including the satisfaction or waiver of the conditions precedent under 5.1 and 5.2, the Province will provide the Designated Company identified by the Songhees Indian Band within 60 days of written notice under 5.3 with a Crown Grant to the Lands as follows:

- a) Lot 174 Suburban Lot 39, Esquimalt District, Plan 2854, within 120 days after the issuance of a ministerial order under subparagraph 5.2(g) after the ITA Date;
- b) “V Lot,” within 120 days after the issuance of a ministerial order under subparagraph 5.2(g) after the ITA Date; and
- c) Parcel B (DD 1508072I) of Lots 659 and 660, Victoria City within 120 days after the issuance of a ministerial order under subparagraph 5.2(g) after the AIP Date.

- 6.2 **Closing Deliveries by Songhees Indian Band.** Not less than 14 days before the Closing Date the Songhees Indian Band will execute and deliver, or cause to be executed and delivered, or deliver, as the case may be, to the Province:
- a) a restrictive covenant granted by the Designated Company in the form attached as Schedule 4 in relation to the applicable Lands;
  - b) an agreement executed by the Designated Company in the form attached as Schedule 5 in relation to the applicable Lands;
  - c) a certificate signed by an officer of the Designated Company in the form attached as Schedule 6 confirming the Designated Company's HST registration number and registered status; and
  - d) a letter of undertaking signed by the Songhees First Nation's legal counsel undertaking, among other things, that the restrictive covenant (Schedule 4) will be filed concurrently with the Crown Grant and that the Province will be provided with a signed copy of the Designated Company Agreement (Schedule 5) and the HST certificate (Schedule 6); and
  - e) all such other documents that may be necessary or advisable for the Songhees Indian Band or a Designated Company to provide to complete the transactions contemplated under this Agreement.
- 6.3 **Registration of Lands.** Subject to the Final Agreement, all Lands transferred under 6.1 will be registered in the Land Title Office.
- 6.4 **Closing Procedure.** The legal counsel for the Songhees Indian Band and the Province will confirm in writing the manner in which the documents necessary or advisable to transfer and register the Lands will be produced, managed, exchanged and delivered. Without limiting the generality of the foregoing, legal counsel responsible for registering the Lands will:
- a) provide a letter of undertaking to legal counsel for the other Party;
  - b) use the Land Title and Survey Authority electronic filing system; and
  - c) provide all documents filed under 6.4(b) to legal counsel for the other Party.

## **ARTICLE 7 – CONDITION OF LANDS**

- 7.1 **Lands “As Is”.** The Songhees Indian Band acknowledges and agrees that any of the Lands acquired by a Designated Company under this Agreement are acquired “as is”.
- 7.2 **Viability of Lands.** The Songhees Indian Band acknowledges and agrees that the Province has not given any representation or warranty concerning:
- a) physical access to the Lands including, without limitation, overland access;
  - b) the economic feasibility of the development of the Lands;
  - c) the fitness of the Lands for any particular use, including the intended use of it by the Songhees Indian Band or by a Designated Company; and
  - d) the provisions of any enactments or bylaws of any governmental body which relate to the development, use and occupation of the Lands.
- 7.3 **Environmental Condition.** The Songhees Indian Band:
- a) waives the requirement, if any, of the Province to provide a site profile as defined in the *Environmental Management Act* for any of the Lands: and
  - b) acknowledges and agrees that the Province has not given any representation or warranty concerning the condition of the Lands (including surface water and groundwater), environmental or otherwise, including the presence or absence of any toxic, hazardous, dangerous or potentially dangerous substances on or under the Lands and on or under any surrounding or neighbouring land and the current and past uses of the Land and any surrounding or neighbouring land.
- 7.4 **Environmental Remediation.** The Songhees Indian Band will from and after the Closing:
- a) assume all environmental liabilities relating to the Lands including, but not limited to, all liability for the clean-up of any toxic, hazardous, dangerous or potentially dangerous substances or conditions on or under the Lands or migrating from the Lands (including surface water and groundwater);
  - b) indemnify and save harmless the Provincial Officials from and against all claims, demands, liabilities, losses, damages, costs or expenses suffered or incurred by them after the Closing arising out of or in connection with all environmental liabilities relating to the Lands, including, but not limited to,

any contamination or any other toxic, hazardous, dangerous or potentially dangerous substances migrating from the Lands; and

- c) release the Provincial Officials from and against all claims, demands, liabilities, losses, damages, costs, actions, causes of action, suits and proceedings with respect to all environmental liabilities relating to the Lands, including, but not limited to, any contamination or any other toxic, hazardous, dangerous or potentially dangerous substances migrating from the Lands.

### **ARTICLE 8 – ENCUMBRANCES**

- 8.1 **Permitted Encumbrances.** The Songhees Indian Band acknowledges that it is familiar with the Permitted Encumbrances and accepts fee simple title to the Lands subject to the Permitted Encumbrances and covenants not to do, or allow to be done, anything that would interfere with any rights under any of the Permitted Encumbrances or that would otherwise result in any claim against the Province by anyone claiming by, through or under a Permitted Encumbrance.

### **ARTICLE 9 – TRANSACTION COSTS**

- 9.1 **Property Transfer Tax and Other Costs.** The Province is responsible for the following costs in connection with the transfer of the Lands:
  - a) the cost associated with ensuring the Lands have a survey which meets the requirements for registration in the Land Title Office;
  - b) any other costs or fees associated with the preparation of Crown Grants or any other documents required to register the Lands and Permitted Encumbrances including, without limitation, any fees charged by the Land Title and Survey Authority; and
  - c) property transfer tax which, for greater certainty, the Province agrees to either pay or waive the requirement to pay any property transfer tax payable under the *Property Transfer Tax Act*.
- 9.2 **Public Utility Permitted Encumbrances.** Notwithstanding 9.1, all costs associated with the surveying and registration of Permitted Encumbrances held by a public utility will be the responsibility of the public utility.
- 9.3 **HST and Charges.** The Songhees Indian Band is responsible for any federal or provincial sales tax, including HST and any other transfer or registration charges for which the Province has not expressly agreed to accept responsibility under the terms of this Agreement.

- 9.4 **Annual Taxes and Other Costs.** Subject to the Final Agreement, and in accordance with provincial law, the Designated Company is responsible for any and all annual taxes payable in respect of the Lands. For greater certainty, on and after the applicable Closing Date, the Province is not required to assume financial or other obligations with respect to the Lands.

## **ARTICLE 10 - OTHER COVENANTS**

- 10.1 **Other Songhees Indian Band Covenants.** The Songhees Indian Band further acknowledges and covenants that:

- a) in order to preserve the possibility of the Lands becoming “Songhees First Nation Lands” in accordance with the Final Agreement, the Songhees Indian Band will not permit the Designated Company to dispose of its fee simple estate in the Lands for a period of time commencing on the applicable Closing Date and ending on the earlier of:
  - i) the 10 year anniversary of the Closing Date; or
  - ii) the Effective Date;
- b) any of the Lands that may be transferred to a Designated Company in accordance with this Agreement will not be “lands reserved for the Indians” within the meaning of section 91(24) of the *Constitution Act, 1867* or a reserve within the meaning of the *Indian Act* and at no time after Closing will the Songhees Indian Band seek to add any of the Lands to its reserve lands; and
- c) the Lands are subject to provincial laws, including applicable zoning, land use, land development and property tax laws, and at no time after Closing will the Songhees Indian Band challenge the applicability of provincial laws to the Lands.

- 10.2 **Disposition of Interests in Lands.** Notwithstanding 10.1(a), the Songhees Indian Band may charge or encumber the Lands provided that the Songhees Indian Band advises the intended charge or encumbrance holder in writing that the Lands may, on the Effective Date,

- a) be transferred by the Designated Company to the Songhees Indian Band and may become Songhees First Nation Lands; or
- b) be retained by the Designated Company, or transferred by the Designated Company to the Songhees First Nation, and will become Other Songhees First Nation Lands.

- 10.3 **Indemnity for Charges.** The Songhees Indian Band will indemnify and save harmless the Province and all Provincial Officials from any and all damages, losses, liabilities or costs that they may suffer or incur in connection with or as a result of any suit, action, claim, proceeding or demand arising in connection with any Permitted Encumbrance, any charge or encumbrance granted by the Songhees Indian Band, the transfer of the fee simple estate in the Lands to the Songhees Indian Band and the Lands becoming Songhees First Nation Lands or Other Songhees Member First Nation Lands.
- 10.4 **Failure to Ratify.** The restriction on the disposition of the Lands under 10.1(a) will not apply where the Final Agreement is not ratified by the Parties or Canada, or the Final Agreement is not approved, given effect, declared valid and given the force of law under federal and provincial law.
- 10.5 **Registration of Unregistered Interests.** For the purposes of 10.4, the Songhees Indian Band will consent, or will cause the Designated Company to consent, to the registration of any interests identified in Schedule 2 which are not registered against the applicable Lands in the Land Title Office on or after the Closing Date.

#### **ARTICLE 11 – STATUS OF LANDS ON EFFECTIVE DATE**

- 11.1 **Status of Lands on Effective Date.** As part of Final Agreement negotiations, the Parties will negotiate the status of the Lands transferred under this Agreement to the Songhees Indian Band as “Songhees First Nation Lands” or “Other Songhees First Nation Lands” within the meaning of the Final Agreement.

#### **ARTICLE 12 – OVERLAPPING CLAIMS**

- 12.1 **Shared Territories.** The Songhees Indian Band will discuss the issue of overlaps and claimed shared territories with relevant First Nations and will make reasonable efforts to resolve any conflicts with those First Nations prior to the ITA Date.
- 12.2 **Other First Nations’ Litigation.** In the event of any action, proceeding, suit, claim or demand whatsoever, whether known or unknown, and whether in law, in equity or otherwise, brought by any other aboriginal group against the Province or any Provincial Official with respect to the transfer of the Lands to the Designated Company on behalf of the Songhees Indian Band in accordance with this Agreement, the Songhees Indian Band will provide the Province with reasonable assistance, upon request, in support of its defence of the action, proceeding, suit, claim or demand.

## **ARTICLE 13 – EXISTING LITIGATION**

- 13.1 **Existing Legal Proceedings.** On or as soon as practicable after the Closing Date, the Parties will adjourn generally the Existing Legal Proceedings and will file such other documents as may be required to put the Existing Legal Proceedings into abeyance.
- 13.2 **Termination of Abeyance.** The abeyance of the Existing Legal Proceedings under 13.1 will terminate:
- a) where a Final Agreement is concluded, on the Effective Date of the Final Agreement; or
  - b) where a Final Agreement is not concluded, on the date on which the Songhees Indian Band formally withdraws from the treaty negotiation process.
- 13.3 **Termination of Litigation.** For the purposes of subparagraph 13.2(a), and subject to the Final Agreement, the Songhees Indian Band will, without cost to any party to the Existing Legal Proceedings:
- c) terminate the Existing Legal Proceedings;
  - d) file a consent dismissal order dismissing the Existing Legal Proceedings; and
  - e) execute a release in a form agreeable to the parties releasing the Province and all Provincial Officials from all claims, demands, actions, proceedings and damages that the Songhees Indian Band may have against the Province or any Provincial Official by reason of the matters giving rise to the Existing Legal Proceedings.
- 13.4 **Abeyance without Prejudice.** The Parties acknowledge that, for the purposes of subparagraph 13.2(b):
- a) this Agreement is without prejudice to the merits of any positions that the Parties have or may wish to take in the Existing Legal Proceedings; and
  - b) they will not rely on the passage of time from the date this Agreement comes into force to its termination as the basis for any legal or equitable defence in the Existing Legal Proceedings, including defenses of laches, acquiescence, estoppel or limitations.
- 13.5 **New Litigation.** Before commencing any action or other proceeding relating to any Governmental Action within the Traditional Territory, the Songhees Indian Band will:



- a) notify the Province of any interests it may have that may be impacted by the Governmental Action; and
- b) participate in the dispute resolution process set out in 14.1-14.3.

#### **ARTICLE 14 - DISPUTE RESOLUTION**

- 14.1 **Representatives.** If a dispute arises between the Province and the Songhees Indian Band regarding the interpretation of a provision of this Agreement, the Parties or their duly appointed representatives will meet as soon as is practicable to attempt to resolve the dispute.
- 14.2 **Senior Representatives.** If the Parties are unable to resolve differences at the appropriate level, the interpretation issue will be raised to more senior levels of the Province and the Songhees Indian Band.
- 14.3 **Other Means.** The Parties may choose other appropriate approaches to assist in reaching resolution of the interpretation issue.

#### **ARTICLE 15 - NOTICES**

- 15.1 **Notices.** Any notice, document, statement, report, demand or grant that any Party may be required or may desire to give to any other Party under this Agreement must be in writing, unless otherwise specified herein, and will be deemed validly given to and received by the addressee, if served personally, on the date of personal service or, if delivered by mail, e-mail or facsimile copier, when received as follows

if to the **Province**:

Deputy Minister  
Ministry of Aboriginal Relations and Reconciliation  
P.O. Box 9100 Stn Prov Govt  
Victoria, B.C. V8W 9B1  
Fax: (250) 387-6073

and if to the **Songhees Indian Band**:

Songhees First Nation:  
1500 A Admirals Road  
Victoria, BC – V9A 2R1  
Phone: 1-250-386-1043  
Attention: Chief Councillor  
Fax: (250) 386-4161

- 15.2 **Change of Address.** Either Party may, from time to time, give written or e-mail notice to the other Party of any change of address or facsimile number of the Party giving such notice and after the giving of such notice, the address or facsimile number therein specified will, for purposes of this Agreement be conclusively deemed to be the address or facsimile number of the Party giving such notice.

## **ARTICLE 16 - GENERAL**

- 16.1 **Entire Agreement.** This Agreement is the entire agreement between the Parties in respect of the subject matter of this Agreement and, except as set out in this Agreement, there is no representation, warranty, collateral agreement, condition, right or obligation affecting this Agreement. The Schedules and Appendices to this Agreement form part of this Agreement.

- 16.2 **Further Acts and Assurances.** Each of the Parties will, upon the reasonable request of the other, make, do, execute or cause to be made, done or executed all further and other lawful acts, deeds, things, devices, documents, instruments and assurances whatever for the better and absolute performance of the terms and conditions of this Agreement.

- 16.3 **No Implied Waiver.** Any waiver of:

- a) a provision of this Agreement;
- b) the performance by a Party of an obligation under this Agreement; or
- c) a default by a Party of an obligation under this Agreement,

will be in writing and signed by the Party giving the waiver and will not be a waiver of any other provision, obligation or subsequent default.

- 16.4 **Successors.** This Agreement will enure to the benefit of and be binding on the Songhees Indian Band and its successors and the Province.

- 16.5 **No Admissions.** Nothing in this Agreement will be construed as an:

- a) admission by the Province of the validity of any claim by the Songhees Indian Band to a specific treaty or aboriginal right or aboriginal title within the meaning of section 35 of the *Constitution Act, 1982*; or
- b) acknowledgment by the Province that it has an obligation to provide financial or economic accommodation to the Songhees Indian Band.

- 16.6 **Not a Treaty.** This Agreement does not:

- a) constitute a treaty or land claims agreement within the meaning of section 25 or 35 of the *Constitution Act, 1982* (Canada); or
  - b) recognize, affirm, define, deny, limit or amend any aboriginal rights or titles or any responsibilities of the Parties except as set out in this Agreement.
- 16.7 **No Fettering.** Nothing in this Agreement will be interpreted in a way that fetters the discretion given to any Provincial Official in an enactment.
- 16.8 **Amendment.** This Agreement may be amended from time to time by the Parties in writing.
- 16.9 **Governing Law.** This Agreement will be governed by and construed in accordance with the laws of the Province of British Columbia.
- 16.10 **Execution in Counterpart.** This Agreement may be entered into by each Party signing a separate copy of this Agreement (including a photocopy or facsimile copy) and delivering it to the other Party by facsimile transmission.

IN WITNESS WHEREOF the Parties have executed this Agreement on February 26, 2013, as set out below:

**Signed on behalf of the Songhees  
Indian Band by**

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**Councillor Gary Albany**

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**Frank George  
Witness**

**Signed on behalf of Her Majesty the  
Queen In Right of the Province of  
British Columbia by**

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**Honourable Ida Chong, Minister of  
Aboriginal Relations and Reconciliation**

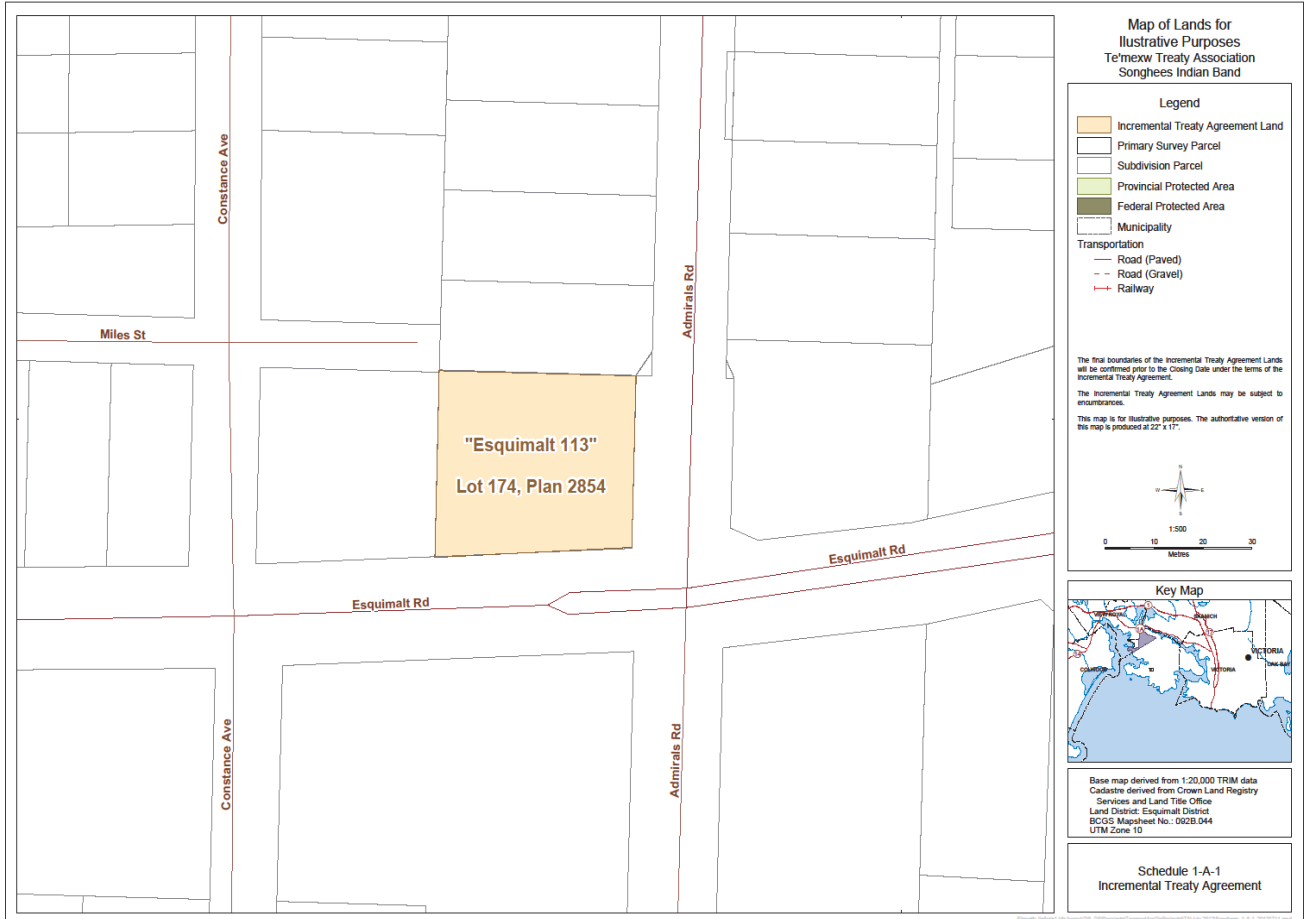
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**Mark Lofthouse, Chief Negotiator  
Witness**

# Schedule "1" – Map of Lands for Illustrative Purposes

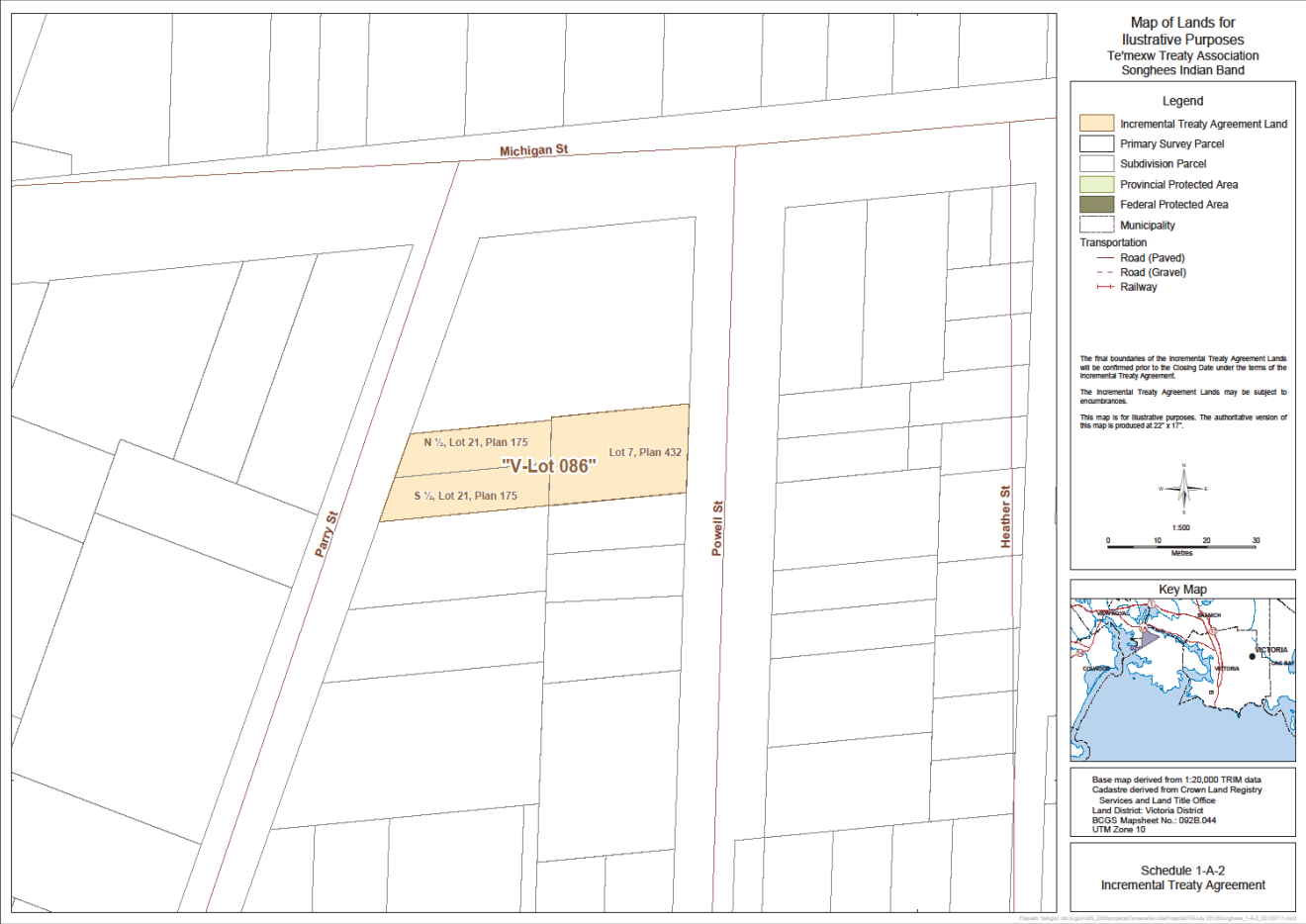
## Schedule 1-A-1: Map of Lands for Illustrative Purposes

Date: July 11, 2012



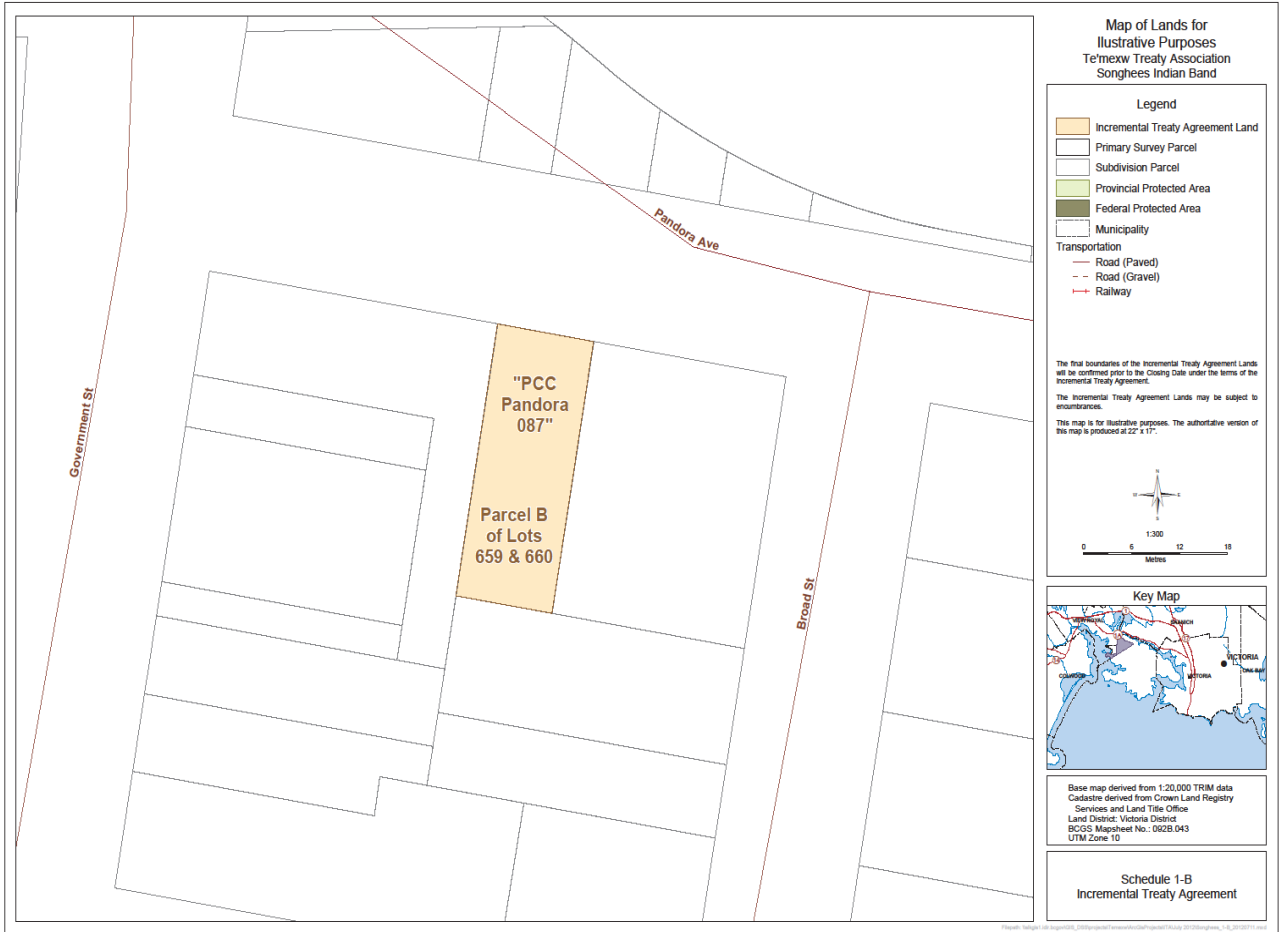
# Schedule 1-A-2: Map of Lands for Illustrative Purposes

Date: July 11, 2012



# Schedule 1-B: Map of Lands for Illustrative Purposes

Date: July 11, 2012



## **Schedule “2” Part 1 – Permitted Encumbrances**

**(For Discussion and Illustrative Purposes Only)**

<b>Permitted Encumbrances</b>
<p>all interests registered on title under the <i>Land Title Act</i> as of the Closing Date</p>
<p>all subsisting exceptions and reservations of interests, rights, privileges and titles contained in any previous Crown grant of the land</p>
<p>all exceptions and reservations contained in section 50(1) of the <i>Land Act</i></p>
<p>any conditional or final water license or substituted water license issued or given under the <i>Water Act</i>, or any prior enactment of the Province of British Columbia of like effect, and to the rights of the holder of it to enter on the land and to maintain, repair and operate any works permitted on the land under the license at the date of the crown grant</p>
<p>all subsisting grants to, or subsisting rights of any person made or acquired under the <i>Mineral Tenure Act</i>, <i>Coal Act</i> or <i>Petroleum and Natural Gas Act</i> or under any prior or subsequent enactment of the Province of British Columbia of like effect</p>
<p>all other liens, charges and encumbrances granted by the Province, with the prior written consent of the Songhees Indian Band prior to the Closing Date</p>
<p>the Songhees Indian Band acknowledges that all existing interest holders and interests on the Lands may not have been identified in this Schedule prior to the execution of this Agreement and that these unidentified interests continue on the Lands</p>
<p>a restrictive covenant in favour of Her Majesty the Queen in right of the Province of British Columbia to be registered against the title to this property in the form of Schedule 4 (Additions to Reserve Restrictive Covenant)</p>

**Schedule “2” Part 2 - Permitted Encumbrances-Interests Not Registered on Title**  
**(For Discussion and Illustrative Purposes Only)**

<b>Interests Not Registered on Title</b>
Utility and local government Interests for hydro, telephone, cablevision, heating/natural gas, water infrastructure, storm drains, dykes and waste disposal/sewer continue on the Lands.



**Schedule “3” – Instruments of Registration (titles, survey plans, charges and other instruments) to be inserted**

**Schedule "4" - Addition to Reserve Restrictive Covenant**

LAND TITLE ACT

**FORM C**

(Section 233)

Province of  
British Columbia

**GENERAL INSTRUMENT-PART 1** (This area for Land Title Office Use)

Page 1 of 4 pages

1. APPLICATION: (Name, address, phone number and signature of applicant, applicant's solicitor or agent)

\_\_\_\_\_  
(Signature of Solicitor or Authorized Agent)

2. PARCEL IDENTIFIER(S) AND LEGAL DESCRIPTION(S) OF LAND:\*

(PID)

(LEGAL DESCRIPTION)

3. NATURE OF INTEREST:\*

Description

Document Reference

Person Entitled to Interest

(Page and paragraph)

Section 219 Covenant

Entire Document

Transferee (Grantee)

4. TERMS: Part 2 of this instrument consist of (select one only)

- |     |                             |                                     |                                       |
|-----|-----------------------------|-------------------------------------|---------------------------------------|
| (a) | Filed Standard Charge Terms | <input type="checkbox"/>            | D.F. No.                              |
| (b) | Express Charge Terms        | <input checked="" type="checkbox"/> | Annexed as Part 2                     |
| (c) | Release                     | <input type="checkbox"/>            | There is no Part 2 of this instrument |

A selection of (a) includes any additional or modified terms referred to in Item 7 or in a schedule annexed to this instrument. If (c) is selected, the charge described in Item 3 is released or discharged as a charge on the land described in Item 2.

3. TRANSFEROR(S):\* (Grantor)

3. TRANSFEREE(S): (Including postal address(es) and postal code(s))\* (Grantee)

**HER MAJESTY THE QUEEN IN RIGHT OF THE PROVINCE OF BRITISH COLUMBIA** as represented by the Minister of Forests, Lands, and Natural Resource Operations, Parliament Buildings, PO Box 9049, STN PROV GOVT, Victoria, British Columbia, V8W 9E2

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7. ADDITIONAL OR MODIFIED TERMS:\*

N/A

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8. EXECUTION(S):\*\* This instrument creates, assigns, modifies, enlarges, discharges or governs the priority of the interest(s) described in Item 3 and the Transferor(s) and every other signatory agree to be bound by this instrument, and acknowledge(s) receipt of a true copy of the filed standard charge terms, if any.

Officer Signature(s)	Execution Date			Party(ies) Signature(s)
	Y	M	D	
				_____ By
				Its authorized signatory(ies):
				_____
				Print Name: _____
				_____
				Print Name: _____

**OFFICER CERTIFICATION:**

Your signature constitutes a representation that you are a solicitor, notary public or other person authorized by the *Evidence Act*, R.S.B.C. 1996, c. 124, to take affidavits for use in British Columbia and certifies the matters set out in Part 5 of the *Land Title Act* as they pertain to the execution of this instrument.

\* If space insufficient, enter "SEE SCHEDULE".  
\*\* If space insufficient, continue executions on additional page(s) in Form D.

TERMS OF INSTRUMENT – PART 2

WHEREAS:

A. The Grantor is the registered owner of:

\_\_\_\_\_

(the “Land”);

B. Under section 219 of the *Land Title Act*, there may be registered against title to any land, conditions or covenants in favour of the Grantee that the land, or any specified portion thereof, is not to be used other than in accordance with the terms of a covenant.

NOW THEREFORE THIS AGREEMENT WITNESSETH that in consideration of the sum of One (\$1.00) Dollar now paid by the Grantee to the Grantor, the receipt and sufficiency of which is hereby acknowledged, and pursuant to section 219 of the *Land Title Act*, the Grantor covenants and agrees with the Grantee as follows:

1. The Grantor covenants and agrees that the Grantor will not, in the absence of consent by the Grantee, transfer, alienate or deal with the Land in any manner which would see it incorporated into or become part of:
  - a. Reserves or special reserves as defined in the *Indian Act*; or
  - b. “Lands reserved for the Indians” under section 91(24) of the *Constitution Act, 1867*.
2. Wherever the singular or masculine are used in this Agreement, they shall be construed as meaning the plural or feminine or body corporate where the context or the parties so require.
3. This Agreement shall enure to the benefit of and be binding upon the parties and their respective heirs, executors, administrators, successors and assigns.
4. The Grantor will indemnify and save harmless the Grantee from all actions, causes of action, claims demands, suits, losses, damages, debts, accounts, liabilities, costs, expenses and compensation of any kind, including fees of solicitors and other professional advisors, arising out of any breach, violation or non-performance by the Grantor of the covenants set out in section 1.
5. No term, condition, covenant or other provision of this Agreement will be considered to have been waived by the Grantee unless such waiver is expressed in writing by the Grantee and the waiver by the Grantee of any such term, condition, covenant or other provision of this Agreement will not be construed as or constitute a waiver of any further or other breach of that or any other term, condition, covenant or other provision of this Agreement.
6. This Agreement will be interpreted according to the laws of the Province of British Columbia.

7. Where there is a reference to an enactment of the Province of British Columbia in this Agreement, that reference includes a reference to any subsequent enactment of the Province of British Columbia of like effect and, unless the context otherwise requires, all enactments referred to in this Agreement are enactments of the Province of British Columbia.
8. If any section of this Agreement, or any part of a section, is found to be illegal or unenforceable, that part or section, as the case may be, will be considered separate and severable and the remaining parts or section, as the case may be, will not be affected and will be enforceable to the fullest extent permitted by law.
9. This Agreement will be registered as a charge against the Land pursuant to section 219 of the *Land Title Act*.

IN WITNESS WHEREOF the Grantor has executed this Agreement on Form C.

**END OF DOCUMENT**

**Schedule “5” - Designated Company Agreement**

This Agreement is dated for reference \_\_\_\_\_, 2013.

**BETWEEN:**

HER MAJESTY THE QUEEN IN RIGHT OF THE PROVINCE OF BRITISH COLUMBIA,  
represented by the Minister of Aboriginal Relations and Reconciliation [address]

(the “Province”)

**AND:**

\_\_\_\_\_, a company incorporated under the laws of British Columbia and  
having its principle place of business at [address]

(the “Designated Company”)

(collectively referred to as the “Parties” and individually referred to as a “Party”)

**WHEREAS:**

- A. The Province and the Songhees Indian Band have entered into an agreement dated \_\_\_\_\_ (the “Incremental Treaty Agreement”) pursuant to which the Province will transfer to the Designated Company fee simple title to those lands legally described as:

[Insert Legal Description of lands]

(the “Lands”)

- B. The Songhees Indian Band and the Designated Company have agreed that, as a condition of the transfer of the Lands, the Designated Company will execute and deliver this Agreement on the terms set out below.

NOW THEREFORE the Province and the Designated Company agree as follows:

1. **Defined Terms.** The terms “Province” and “Songhees Indian Band” and any other capitalized terms used in this Agreement and defined in the Incremental Treaty Agreement will have the meaning given to those terms in the Incremental Treaty Agreement.
2. **Environmental Condition.** The Designated Company waives the requirement, if any, of the Province to provide a site profile as defined in the *Environmental Management Act* in connection with its acquisition of the Lands.
3. **ITA Binding.** Without limiting the generality of the foregoing, the terms of the Incremental Treaty Agreement relating to the Lands which are for the benefit of the

Province are legally binding on the Designated Company as if the Designated Company was a party to the Incremental Treaty Agreement, including, without limitation, 4.1, 10.1-10.3 and 10.5 of the Incremental Treaty Agreement.

4. **Enforcement of ITA.** The Province may, in its sole discretion, enforce any term or condition of the Incremental Treaty Agreement, including any obligation, covenant or indemnity of the Songhees Indian Band, against the Designated Company or the Songhees Indian Band or both of them.
5. **Legal Advice.** The Designated Company acknowledges that it has had full opportunity to review the terms and conditions of this Agreement and the Incremental Treaty Agreement, a copy of which is included as Schedule A, and to seek independent legal advice with respect to their terms and conditions.
6. **Entire Agreement.** This Agreement is the entire agreement between the Parties in respect of the subject matter of this Agreement and, except as set out in this Agreement, there is no representation, warranty, collateral agreement, condition, right or obligation affecting this Agreement. The Schedules and Appendices to this Agreement form part of this Agreement.
7. **Further Acts and Assurances.** The Parties will, upon the reasonable request of the other, make, do, execute or cause to be made, done or executed all further and other lawful acts, deeds, things, devices, documents, instruments and assurances whatever for the better and absolute performance of the terms and conditions of this Agreement.
8. **No Implied Waiver.** Any waiver of:
  - a) a provision of this Agreement;
  - b) the performance by a Party of an obligation under this Agreement; or
  - c) a default by a Party of an obligation under this Agreement,will be in writing and signed by the Party giving the waiver and will not be a waiver of any other provision, obligation or subsequent default.
9. **Successors.** This Agreement will enure to the benefit of and be binding on the Designated Company and its successors and the Province.
10. **No Admissions.** Nothing in this Agreement will be construed as an:
  - a) admission by the Province of the validity of any claim by the X Indian Band to a specific treaty or aboriginal right or aboriginal title within the meaning of section 35 of the *Constitution Act, 1982*; or
  - b) acknowledgment by the Province that it has an obligation to provide financial or economic accommodation to the Songhees Indian Band.
11. **Not a Treaty.** This Agreement does not:

- a) constitute a treaty or land claims agreement within the meaning of section 25 or 35 of the *Constitution Act, 1982* (Canada); or
  - b) recognize, affirm, define, deny, limit or amend any aboriginal rights or titles or any responsibilities of the Parties except as set out in this Agreement.
12. **No Fettering.** Nothing in this Agreement will be interpreted in a way that fetters the discretion given to any Provincial Official in an enactment.
  13. **Amendment.** This Agreement may be amended from time to time by the Parties in writing.
  14. **Governing Law.** This Agreement will be governed by and construed in accordance with the laws of the Province of British Columbia.
  15. **Execution in Counterpart.** This Agreement may be entered into by each Party signing a separate copy of this Agreement (including a photocopy or facsimile copy) and delivering it to the other Party by facsimile transmission.

Signed by the Designated Company as of \_\_\_\_\_, 20\_\_ by:

[Name of Company]

\_\_\_\_\_  
Per: Authorized Signatory

SIGNED on behalf of HER MAJESTY THE QUEEN IN RIGHT OF THE PROVINCE OF BRITISH COLUMBIA by the Minister of Aboriginal Relations and Reconciliation or the Minister's authorized representative as of \_\_\_\_\_, 20\_\_\_\_\_:

\_\_\_\_\_  
Minister of Aboriginal Relations and Reconciliation  
or the Minister's authorized representative



**Schedule "6" – HST Certificate**