Northern Secwepmec te Qelmucw (NStQ)

Incremental Treaty Agreement

Stswecem'c / Xgat'tem

BRITISH COLUMBIA

INCREMENTAL TREATY AGREEMENT

Stswecem'c / Xgat'tem First Nation

This Agreement is dated for reference _____, 2016

BETWEEN:

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

AND:

Stswecem'c / Xgat'tem, on behalf of itself and its Members, as represented by the Chief and Council
(the "Stswecem'c / Xgat'tem")

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

WHEREAS:

A. The Stswecem'c / Xgat'tem, together with the Canim Lake Indian Band (Tsq'escen'), the T'exelc (Williams Lake Indian Band), and the Soda Creek Indian Band (Xat'sull) (known collectively as the Northern Secwepemc te Qelmucw, or NStQ), through its Chief and Council, asserts that it has used, occupied, governed and exercised exclusive ownership of their Traditional Territory from time immemorial;

B. The Stswecem'c / Xgat'tem, as part of the NStQ, the Province and Canada have concluded negotiations of an Agreement-in-Principle (AIP) in accordance with Stage 4 of the British Columbia Treaty Commission process, and have submitted the AIP to their respective principals for approval;

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 Stswecem'c / Xgat'tem 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:

"Aboriginal Rights" means asserted or determined aboriginal rights, including aboriginal title, which are or may be recognized and affirmed by section 35 of the *Constitution Act, 1982*;

"AIP" means the Northern Secwepemc te Qelmucw (NStQ) Agreement-in-Principle being negotiated by the Stswecem'c / Xgat'tem together with the Canim Lake Indian Band (Tsq'escen'), the Williams Lake Indian Band (T'exelc),and the Soda Creek Indian Band (Xat'sull), the Province and Canada in accordance with Stage 4 of the British Columbia Treaty Commission process;

"Chief" means, in respect of the Stswecem'c / Xgat'tem, "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 are uploaded to the electronic meet and are filed in the Land Title Office;

"Community Approval" means that each of the member First Nations of the NStQ have voted in favour of the NStQ Leadership Council recommendation to proceed to Final Agreement negotiations;

"Community Approval Date" means the date of Community Approval;

"Council" and "Band Council" mean, in respect of the Stswecem'c / Xgat'tem, the elected "council" within the meaning of the *Indian Act;*

"Crown Corridor" means a highway (as defined in the *Transportation Act*) and the area of any other road, right-of-way, easement or licence over Crown land that is used for transportation or public utility purposes;
"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 beneficially owned directly or indirectly by the Stswecem'c / Xgat'tem and which the Stswecem'c / Xgat'tem 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:

> Chief Gabriel Roy Christopher, on his own behalf and on behalf of the members of the Canim Lake Indian Band, of the Northern Secwepemc Te Qelmucw Nation, Chief Hillary Andrew Adam, on his own behalf and on behalf of the members of the Canoe Creek Indian Band, of the Northern Secwepemc Te Qelmucw Nation, Chief Dorothy Catherine Phillips, on her own behalf and on behalf of the members of the Soda Creek Indian Band, of the Northern Secwepemc Te Qelmucw Nation, and Chief William Matthew Alphonse, on his own behalf and on behalf of the members of the Williams Lake Indian Band, of the Northern Secwepemc Te Qelmucw Nation V. Her Majesty the Queen in Right of the Province of British Columbia and the Attorney General of Canada, Vancouver Registry No. L033526 (BCSC)
> Filed December 10, 2003;

"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;

"Final Agreement Date" means the date that the Parties and Canada initial the Final Agreement as part of completing Stage 5 of the BC 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;

"GST" means the goods and services tax imposed under the *Excise Tax Act* (Canada);

"Lands" means any or all of the following parcels: Dog Lake Parcel and the Meadow Lake Road Junction Parcel, which are defined as follows:

> "Dog Lake Parcel" means the area of approximately 433.7 hectares, as shown for illustrative purposes in Schedule 1, Map 3, and, following completion and approval of the survey or re-survey of those lands, the area legally described in the survey, which, for greater certainty, will not include any land below the natural boundary (as defined in the *Land Act*) and the area of any Crown Corridor;
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> "Meadow Lake Junction Parcel" means the area of approximately 117.9 hectares, as shown for illustrative purposes in Schedule 1, Map 4, and, following completion and approval of the survey or re-survey of those lands, the area legally described in the survey, which, for greater certainty, will not include any land below the natural boundary (as defined in the *Land Act*) and the area of any Crown Corridor;

and any two of the following: Tinmusket 17 Parcel, Tinmusket 13 Parcel, and the Loch Lomond Parcel, which are defined as follows:

> "Tinmusket 17 Parcel" means the area of approximately 655.3 hectares, as shown for illustrative purposes in Schedule 1, Map 1, and, following completion and approval of the survey or re-survey of those lands, the area legally described in the survey, which, for greater certainty, will not include any land below the natural boundary (as defined in the *Land Act*) and the area of any Crown Corridor;
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> "Tinmusket 13 Parcel" means the area of approximately 129.6 hectares, as shown for illustrative purposes in Schedule 1, Map 2, and, following completion and approval of the survey or re-survey of those lands, the area legally described in the survey, which, for greater certainty, will not include any land below the natural boundary (as defined in the *Land Act*) and the area of any Crown Corridor; and
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> "Loch Lomond Parcel" means the area of approximately 171.9 hectares, as shown for illustrative purposes in Schedule 1, Map 5, and, following completion and approval of the survey or re-survey of those lands, the area legally described in the survey, which, for greater certainty, will not include any land below the natural boundary (as defined in the *Land Act*) and the area of any Crown Corridor.

"Member" means any person who is a "member of the band", as that phrase is defined in the *Indian Act*, of the Stswecem'c / Xgat'tem;

"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;

"Northern Secwepemc te Qelmucw", or "NStQ" means the four member First Nations as follows: the Canim Lake Indian Band (Tsq'escen'), the Stswecem'c/Xgat'tem First Nation (Canoe Creek and Dog Creek Indian Bands), the Soda Creek Indian Band (Xat'sull), and the Williams Lake Indian Band (T'exelc);

"NStQ Leadership Council" means the council established by NStQ to provide direction to the NStQ treaty team, and consisting of representation from each of the NStQ member First Nations;

"NStQ Treaty Settlement Lands" means those lands identified in the Final Agreement which form part of NStQ Treaty Settlement Lands;

"Other NStQ Lands" means the lands owned by NStQ that are not part of NStQ Treaty Settlement Lands;

"Permitted Encumbrances" means the reservations, exceptions, liens, charges, and interests described in 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;

"PST" means the sales tax imposed under the *Provincial Sales Tax Act*;

"Stswecem'c / Xgat'tem" means the "band", as that term is defined in the *Indian Act,* named the "Stswecem'c / Xgat'tem" and includes all Members; and

"Traditional Territory" means, for the purposes of this Agreement, the statement of intent area filed by NStQ 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 an attached 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 Stswecem'c / Xgat'tem under this Agreement means the Stswecem'c / Xgat'tem acting by and through its Chief and Council, and will be conclusively deemed to have been given, or taken, by the Stswecem'c / Xgat'tem on its own behalf, and for and on behalf of its Members;

i) there will be no presumption that doubtful expressions, terms or provisions in this Agreement are to be resolved in favour of any Party;

j) all references in this Agreement to a designated "Article", "section", "subsection" or other subdivision or to a Schedule are to the designated

Article, section, subsection or other subdivision of, or Schedule to, this Agreement;

k) the words "herein", "hereof" and "hereunder" and other words of similar import refer to this Agreement as a whole and not to any particular Article, section, subsection or other subdivision or Schedule; and

l) all reference to currency refer to lawful money of Canada (unless expressed to be in some other currency).

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

- Schedule "1" – Maps of Lands
- Schedule "2" – Permitted Encumbrances
- Schedule "3" – Form C Additions to Reserve Restrictive Covenant
- Schedule "4" – Designated Company Agreement
- Schedule "5" – GST Certificate
- Schedule "6" – Consent of Stswecem'c / Xgat'tem in relation to PTT Matters

ARTICLE 2 – RECONCILIATION AND PURPOSE

2.1 **Reconciliation.** The Stswecem'c / Xgat'tem acknowledges and agrees that, in the spirit of the New Relationship and to advance Final Agreement negotiations, the Lands transferred to the Stswecem'c / Xgat'tem in accordance with this Agreement constitute a contribution by the Province towards the reconciliation of the Province's and the Stswecem'c / Xgat'tem's interests through treaty negotiations and, as such, the benefits provided to the Stswecem'c / Xgat'tem 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 Stswecem'c / Xgat'tem 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 Community Approval Date.

3.3 **Termination on Litigation**. Despite section 3.2, the Province may terminate this Agreement, including the transfer of any Lands which have not been completed, in the event the Stswecem'c / Xgat'tem commences, on its own behalf or as part of NStQ, any action or other proceeding relating to any Governmental Action in relation to the lands and resources within the Traditional Territory.

3.4 **Survival of Lands Conditions.** Despite sections 3.2 and 3.3, and subject to the Final Agreement, where any of the Lands are transferred under this Agreement, Articles 7 (Condition of Lands), 10 (Fencing), 12 (Other Covenants) and 14 (Overlapping Claims) will survive the completion of the transfers or the termination of this Agreement and, for greater certainty, will continue to apply to the Lands.

3.5 **No Further Obligations**. If the Agreement is terminated, the Parties will have no further obligations to the other under this Agreement.

ARTICLE 4 – REPRESENTATIONS AND WARRANTIES

4.1 **Stswecem'c / Xgat'tem Representations.** The Stswecem'c / Xgat'tem 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 engage in treaty negotiations;

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 Stswecem'c / Xgat'tem and its Members;

d) any company designated by the Stswecem'c / Xgat'tem 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 Stswecem'c / Xgat'tem in relation to the transfer of the Lands to a Designated Company and the Permitted Encumbrances on the Lands. For greater certainty, this provision shall not apply to any obligation of the Province to consult in relation to renewals, replacements or assignments of Permittted Encumbrances.

4.2 **Provincial Representations.** The Province represents and warrants to the Stswecem'c / Xgat'tem, with the intent and understanding that they will be relied on by the Stswecem'c / Xgat'tem 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 section 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 Stswecem'c / Xgat'tem will deliver to the Province a resolution made by its elected Council authorizing the Stswecem'c / Xgat'tem*'s* representatives named in the resolution to execute this Agreement on behalf of the Stswecem'c / Xgat'tem.

5.2 **Conditions Precedent to Land Transfers.** The obligation of the Province to transfer to the Stswecem'c / Xgat'tem under this Agreement is, with respect to each parcel of Lands, subject to:

a) the Province having received notice from NStQ, satisfactory to the Province, of the Community Approval;

b) 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;

c) the Province and Canada reaching an agreement satisfactory to the Province, in its sole discretion, on cost sharing the value of the Lands for treaty settlement purposes;

d) the representations and warranties of the Stswecem'c / Xgat'tem under this Agreement being true and correct on the applicable Closing Date;

e) in respect of all previously transferred Lands, all obligations of the Stswecem'c / Xgat'tem and the Designated Company having been fully performed in accordance with this Agreement;

f) the Province being satisfied that it has fulfilled any consultation obligations it may have with respect to assertions of Aboriginal Rights to the Lands by First Nations other than the Stswecem'c / Xgat'tem;

g) surveys for the Lands having been completed and approved by the Surveyor General on or before the applicable Closing Date;

h) the Province having given notice that the minister responsible has authorized the disposition of the Lands in accordance with provincial law;

i) without limiting the generality of section 8.3 the Province having:

i. completed and been satisfied with its investigation of the status of Lands including with respect to:

1. the roads (dirt, paved, legal and otherwise);
2. access to adjacent private lands;
3. range issues, including the animal units months (as defined in the *Range Act*), fencing, livestock water, and livestock access on or across the Lands;
4. the environmental condition of the Lands;
5. Crown Corridors; and
6. utility and local government interests for hydro, telephone, cablevision, heating/natural gas, water infrastructure, storm drains, dykes and waste disposal/sewer;

ii. proposed to the Stswecem'c / Xgat'tem any additional Permitted Encumbrances and Crown Corridors arising from the investigation of the status described in subsection i, including for greater certainty statutory rights of way for distribution works for BC Hydro and Telus, and where applicable, statutory rights of way for access to transmission lines by BC Hydro; and

iii. received agreement in writing from the Stswecem'c / Xgat'tem to any additional Permitted Encumbrances and Crown Corridors proposed by the Province under subsection ii.

5.3 **Satisfaction of Conditions Precedent**. The Province will not be required to satisfy all of the conditions precedent under section 5.2:

(a) for the Lands identified in subsection 6.2(a), until such time as the Parties have satisfied or waived the conditions precedent in subsection 5.2(i) and section 5.5, as applicable, for those Lands, and the Stswecem'c / Xgat'tem has notified the Province in writing that it is prepared to proceed with the transfer of those Lands; and

(b) for the Lands identified in subsections 6.2(b), until such time as the Parties have satisfied or waived the conditions precedent in subsection 5.2(i) and section 5.5, as applicable, for those Lands, and the Stswecem'c / Xgat'tem has notified the Province in writing that it is prepared to proceed with the transfer of two of the parcels of Lands identified in subsection 6.2(b).

5.4 **Waiver of Conditions Precedent**. The conditions precedent set out in section 5.2 are for the sole benefit of the Province and may be waived by the Province on written notice to the Stswecem'c / Xgat'tem.

5.5 **Conditions Precedent to Land Transfers in Favour of Stswecem'c / Xgat'tem**. The obligation of the Stswecem'c / Xgat'tem to accept any of the Lands is subject to the Stswecem'c / Xgat'tem having:

a) completed and been satisfied in its sole discretion with its due diligence on the Lands including without limitation in respect to the roads (dirt, paved, legal and otherwise) on the Lands, Crown Corridors, range issues including animal units months (as defined in the *Range Act*), fencing, livestock water, and livestock access on or across the Lands, access to the Lands, the environmental condition of the Lands, water availability, fire protection, utility and local government interests for hydro, telephone, cablevision, heating/natural gas, water infrastructure, storm drains, dykes and waste disposal/sewer, and any additional reservations, exceptions, liens, charges and interests, or encumbrances on the Lands other than the Permitted Encumbrances listed in Schedule 2; and,

b) completed an agreement with the Province regarding any additional reservations, exceptions, liens, charges and interests proposed as Permitted Encumbrances and Crown Corridors by the Province pursuant to subsection 5.2(i), including for greater certainty statutory rights of way for distribution works for BC Hydro and Telus and where applicable, statutory rights of way for access to transmission lines by BC Hydro.

5.6 **Waiver of Conditions Precedent in Favour of Stswecem'c / Xgat'tem.** The conditions precedent set out in section 5.5 are for the sole benefit of the Stswecem'c / Xgat'tem and may be waived by the Stswecem'c / Xgat'tem on written notice to the Province.

5.7 The conditions precedent set out subsection 5.2(i) and section 5.5 must be satisfied or waived by each of the Province and the Stswecem'c / Xgat'tem, as applicable, on a parcel by parcel basis of the Lands on or before 18 months, or such other period of time as the Parties may agree to, acting reasonably, after:

a) for the Meadow Lake Road Junction Parcel and the Dog Lake Parcel, the Community Approval Date for the parcels of the Lands, or

b) for two parcels to be chosen by the Stswecem'c from Loch Lomond Parcel, Tinmusket 13 Parcel, or Tinmusket 17 Parcel, the date the Chief Negotiators for the Parties and Canada have signed a letter of understanding that sets out that the land selection for the Final Agreement is substantially complete and includes the two parcels chosen;

negotiate the transfer of alternate lands to replace the parcel(s) for which the condition(s) precedent are not satisfied or waived.

5.8 If the Parties negotiate in accordance with section 5.7 and do not reach an agreement within one (1) year of the conditions precedent removal date, or such other date as the Parties may agree to, acting reasonably, then the Parties agree that the parcel(s) will not form part of the Lands.

ARTICLE 6 – TRANSFER OF LANDS

6.1 **Pre-Closing Deliveries by Stswecem'c / Xgat'tem.** Within 60 days of written notice under section 5.3, the Stswecem'c / Xgat'tem will deliver to the Province a direction identifying the Designated Company that will take fee simple title to the Lands under section 6.2.

6.2 **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 sections 5.1, 5.2, and 5.5, the Province will provide the Designated Company identified under section 6.1 with copies of the Crown Grants of the Lands as follows:

a) Meadow Lake Road Junction Parcel and Dog Lake Parcel, within 120 days after the issuance of a ministerial order under subsection 5.2(h) following the Community Approval Date; and

b) two additional parcels, to be chosen by the *Stswecem'c Nation* from Loch Lomond Parcel, Tinmusket 13 Parcel, and the Tinmusket 17 Parcel , within 120 days after the issuance of a ministerial order under subsection 5.2(h) following the Final Agreement Date.

6.3 **Closing Deliveries by Stswecem'c / Xgat'tem.** Not more than 14 days after delivery of the copies of the Crown Grants under section 6.2, the Stswecem'c / Xgat'tem 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 3 in relation to the applicable Lands;

b) an agreement executed by the Designated Company in the form attached as Schedule 4 in relation to the applicable Lands;

c) a certificate signed by an officer of the Designated Company in the form attached as Schedule 5 confirming the Designated Company's GST registration number and registered status;

d) a letter of undertaking signed by the Stswecem'c / Xgat'tem's legal counsel undertaking, among other things, that the restrictive covenant (Schedule 3) 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 4) and the GST Certificate (Schedule 5);

e) a signed consent of Stswecem'c / Xgat'tem in relation to Property Transfer Tax form executed by the Stswecem'c / Xgat'tem. (Schedule 6); and

f) all such other documents that may be necessary or advisable for the Stswecem'c / Xgat'tem or a Designated Company to provide to complete the transactions contemplated under this Agreement.

6.4 **Registration of Lands**. Subject to the Final Agreement, all Lands transferred under this Agreement will be registered in the Land Title Office.

6.5 **Closing Procedure.** The legal counsel for the Stswecem'c / Xgat'tem 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;

c) provide all documents filed under subsection 6.5(b) to legal counsel for the other Party; and

d) agree to the order of the registration of the documents.

ARTICLE 7 – CONDITION OF LANDS

7.1 **Lands "As Is".** The Stswecem'c / Xgat'tem 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 Stswecem'c / Xgat'tem 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 Stswecem'c / Xgat'tem 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 **Lands Working Group.** As soon as practicable after the Community Approval Date, the Parties will establish a lands working group. The purpose of the group will be to facilitate cooperation between the Parties regarding the work to be done towards satisfying the conditions precedent at subsection 5.2(i) and section 5.5.

7.4 **Environmental Condition**. The Stswecem'c / Xgat'tem:

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.

7.5 **Environmental Conditions**. The Stswecem'c / Xgat'tem 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 contamination or any other toxic, hazardous, dangerous or potentially dangerous substances or conditions on or under the Lands or migrating from the Lands (including surface water and groundwater) and any other costs of remediation of the Lands, whether disclosed or undisclosed, known or unknown, created or

existing, that arose before the Closing Date or arose before and continues after the Closing Date;

b) release the Provincial Officials from and against all claims, demands, liabilities, losses, damages, costs, actions, causes of action, suits and proceedings with respect to any and all environmental liabilities described in subsection 7.5(a); and

c) 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 any and all environmental liabilities described in subsection 7.5(a).

7.6 **Post-Closing Date**. Section 7.5 does not apply where the environmental liability relating to the Lands results from the acts or omissions of British Columbia or BC Hydro after the Closing Date.

ARTICLE 8 – ENCUMBRANCES

8.1 **Permitted Encumbrances.** The Stswecem'c / Xgat'tem acknowledges that it is familiar with the terms and existence of the Permitted Encumbrances and accepts fee simple title to the Lands subject to the Permitted Encumbrances. The Stswecem'c / Xgat'tem 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, under or in relation to a Permitted Encumbrance.

8.2 **Form of Permitted Encumbrances.** Subject to section 8.3, the Stswecem'c / Xgat'tem acknowledges that where the form of a Permitted Encumbrance has been attached as a schedule it will be executed by the relevant parties in that form subject to any modifications that the Stswecem'c / Xgat'tem and the holder of the interest have agreed to in writing.

8.3 **Amendments to Permitted Encumbrances.** The Parties acknowledge that between the execution of this Agreement and the Closing, the Province may require that the Permitted Encumbrances be amended to:

a) comply with current Provincial policies and practices;

b) comply with current laws; and

c) correct any errors or omissions to the forms of the Permitted Encumbrances;

subject to the approval of the Stswecem'c / Xgat'tem, such approval not to be unreasonably withheld.

8.4 **Final Agreement.** Notwithstanding any other term of this Agreement, the Permitted Encumbrances and Crown Corridors will be subject to the Final Agreement. For greater certainty, this Agreement will not prejudice the Parties' positions in negotiations regarding treatment of the Permitted Encumbrances, Crown Corridors or other encumbrances under the Final Agreement.

ARTICLE 9 - LAND PROTECTION MEASURES

9.1 The Province confirms that the Lands are subject to a s.17 reserve under the *Land Act,* and the Tinmusket 13 Parcel and the Tinmusket 17 Parcel are subject to a No Registration Reserve (NRR) under the *Mineral Tenure Act*.

9.2 With regards to the Meadow Lake Road Junction Parcel, the Dog Lake Parcel, and the Loch Lomond Parcel, the Province is currently seeking the appropriate authorities to prevent the recording of any further mineral or placer claims in relation to the subsurface resources on or under those lands as part of a broader NRR covering the lands negotiated by NStQ for its AIP.

ARTICLE 10 – FENCING

10.1 The Province and the Stswecem'c / Xgat'tem acknowledge that the configuration of Lands transferred under this Agreement will require discussions regarding the construction and maintenance of range fencing between the Lands, adjacent private and Crown lands, adjacent roads and highways, and adjacent or overlapping range tenures.

ARTICLE 11 – TRANSACTION COSTS

11.1 **Property Transfer Tax and Other Costs.** The Province is responsible for the following costs in connection with the transfer of the Lands:

a) any costs or fees associated with the preparation of Crown Grants (including surveys) 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

b) property transfer tax payable under the *Property Transfer Tax Act* which, for greater certainty, the Province will pay or seek an exemption.

11.2 **Public Utility Permitted Encumbrances.** Notwithstanding section 11.1, all costs associated with the surveying and registration of Permitted Encumbrances held by a public utility will be the responsibility of the public utility.

11.3 **GST, PST and Other Charges.** The Stswecem'c / Xgat'tem is responsible for any applicable GST and PST and any other federal or provincial sales tax, including any other transfer or registration charges for which the Province has not expressly agreed to accept responsibility under the terms of this Agreement.

11.4 **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 12 – OTHER COVENANTS

12.1 **Other Stswecem'c / Xgat'tem Covenants.** The Stswecem'c / Xgat'tem further acknowledges and covenants that:

a) in order to preserve the possibility of the Lands becoming "NStQ Treaty Settlement Lands" in accordance with the Final Agreement, the Stswecem'c / Xgat'tem 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) subject to section 13.1, 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 Stswecem'c / Xgat'tem seek to add any of the Lands to its reserve lands; and

c) subject to section 13.1, the Lands are subject to applicable provincial and local government laws, including applicable zoning, land use, land development and property tax laws, and will continue to be after the Closing.

12.2 **Disposition of Interests in Lands**. Notwithstanding subsection 12.1(a), the Stswecem'c / Xgat'tem may charge or encumber the Lands provided that the Stswecem'c / Xgat'tem advises the intended charge or encumbrance holder in writing that the Lands will, on the Effective Date:

a) be transferred by the Designated Company to the Stswecem'c / Xgat'tem and will become NStQ Lands; or

b) be retained by the Designated Company, or transferred by the Designated Company to the Stswecem'c / Xgat'tem, and will become Other NStQ Lands.

12.3 **Indemnity for Charges**. The Stswecem'c / Xgat'tem 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 or any charge or encumbrance granted by the Stswecem'c / Xgat'tem under section 12.2 where the proceeding is settled or is successful.

12.4 **Failure to Ratify**. Where the Final Agreement is not signed by the authorized representative of NStQ, the Province or Canada, or the Final Agreement is not approved, given effect, declared valid and given the force of law under federal and provincial law:

a) the restriction on the disposition of the Lands under subsection 12.1(a) will not apply; and

b) the Stswecem'c / Xgat'tem will consent, or will cause the Designated Company to consent, to the registration of any Permitted Encumbrances which are not registered against the applicable Lands in the Land Title Office on or after the Closing Date.

12.5 **Failure of Community Approval**. In the event that there is no Community Approval, the Province agrees to consider what options are available for the Province to continue to engage in treaty negotiations with Canada and the member First Nations of the NStQ who did vote in favour of the NStQ Leadership Council recommendation to proceed to Final Agreement negotiations and to complete the transfer of the lands identified in the incremental treaty agreements with those NStQ member First Nations.

ARTICLE 13 – STATUS OF LANDS ON EFFECTIVE DATE

13.1 **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 Stswecem'c / Xgat'tem as "NStQ Treaty Settlement Lands".

ARTICLE 14 – OVERLAPPING CLAIMS

14.1 **Shared Territories.** Prior to the transfer of the Lands to the Designated Company, the Stswecem'c / Xgat'tem will discuss and will make reasonable efforts to resolve any overlap or shared territory claims by other First Nations. In the event any such claims are not resolved to the Province's satisfaction, the Parties agree to negotiate and attempt to reach agreement on an amendment to the boundary of the Lands or, subject to the Province obtaining requisite mandates and a Federal/Provincial cost sharing agreement, to negotiate the transfer of alternate lands.

14.2 **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 Stswecem'c / Xgat'tem in accordance with this Agreement, the Stswecem'c / Xgat'tem will provide the Province with

reasonable assistance, upon request, in support of its defence of the action, proceeding, suit, claim or demand.

ARTICLE 15 – EXISTING AND NEW LITIGATION

15.1 **Existing Legal Proceedings.** On or as soon as practicable after the Closing Date, the Parties will adjourn generally, where not otherwise already so adjourned, the Existing Legal Proceedings and will file such other documents as may be required to put the Existing Legal Proceedings into abeyance.

15.2 **Termination of Abeyance**. The abeyance of the Existing Legal Proceedings under section 15.1 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 Stswecem'c / Xgat'tem formally withdraws from the treaty negotiation process.

15.3 **Termination of Litigation**. For the purposes of subsection 15.2(a), Existing Legal Proceedings will be dealt with in accordance with the terms of the Final Agreement.

15.4 **Abeyance without Prejudice**. The Parties acknowledge that, for the purposes of subsection 15.2(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 Proceeding; 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 Proceeding, including defenses of latches, acquiescence, estoppel or limitations.

15.5 **New Litigation.** Before commencing, on its own behalf or as part of the NStQ, any action or other proceeding relating to any Governmental Action within the Traditional Territory, the Stswecem'c / Xgat'tem will:

a) notify the Province of any interests it may have that may be impacted by the Governmental Action; and

b) except in the case of an injunction or other emergency proceeding, participate in the dispute resolution process set out in sections 16.1-16.2.

15.6 For greater certainty, nothing in sections 3.3 or 15.5 shall be interpreted to derogate from the Province's duty to consult with the Stswecem'c / Xgat'tem_with respect to any Governmental Action that may trigger such a duty.

ARTICLE 16 - DISPUTE RESOLUTION

16.1 **Representatives**. If a dispute arises between the Province and the Stswecem'c / Xgat'tem 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.

16.2 **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 Stswecem'c / Xgat'tem.

16.3 **Other Means**. The Parties may choose other appropriate approaches to assist in reaching resolution of the interpretation issue.

ARTICLE 17 - NOTICES

17.1 **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. Gvt.
Victoria, B.C. V8W 9B1

Fax: (250) 387-6073

and if to the Stswecem'c / Xgat'tem:

Stswecem'c/Xgat'tem First Nation
General Delivery
Dog Creek, BC V0L 1J0

Attention: Chief Councillor

Fax: (250) 440-5679

17.2 **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 18 - GENERAL

18.1 **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.

18.2 **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.

18.3 **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.

18.4 **Successors.** This Agreement will enure to the benefit of and be binding on the Stswecem'c / Xgat'tem and its successors and the Province.

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

a) admission by the Province of the validity of any claim by the Stswecem'c / Xgat'tem 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 Stswecem'c / Xgat'tem.

18.6 **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)*;

b) recognize, affirm, define, deny, limit or amend any responsibilities of the Parties, except as set out in this Agreement, or any aboriginal rights or titles; or

c) limit or amend any obligations of the Province under section 35 of the *Constitution Act, 1982 (Canada),* including any duty to consult, except as set out in subsection 4.1(f) of this Agreement.

18.7 **No Fettering**. Nothing in this Agreement will be interpreted in a way that fetters the discretion given to any Provincial Official in an enactment.

18.8 **Amendment.** This Agreement may be amended from time to time by the Parties in writing.

18.9 **Governing Law.** This Agreement will be governed by and construed in accordance with the laws of the Province of British Columbia.

18.10 **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 as set out below:

Signed on behalf of the Stswecem'c Xgat'tem by

Chief Patrick Harry

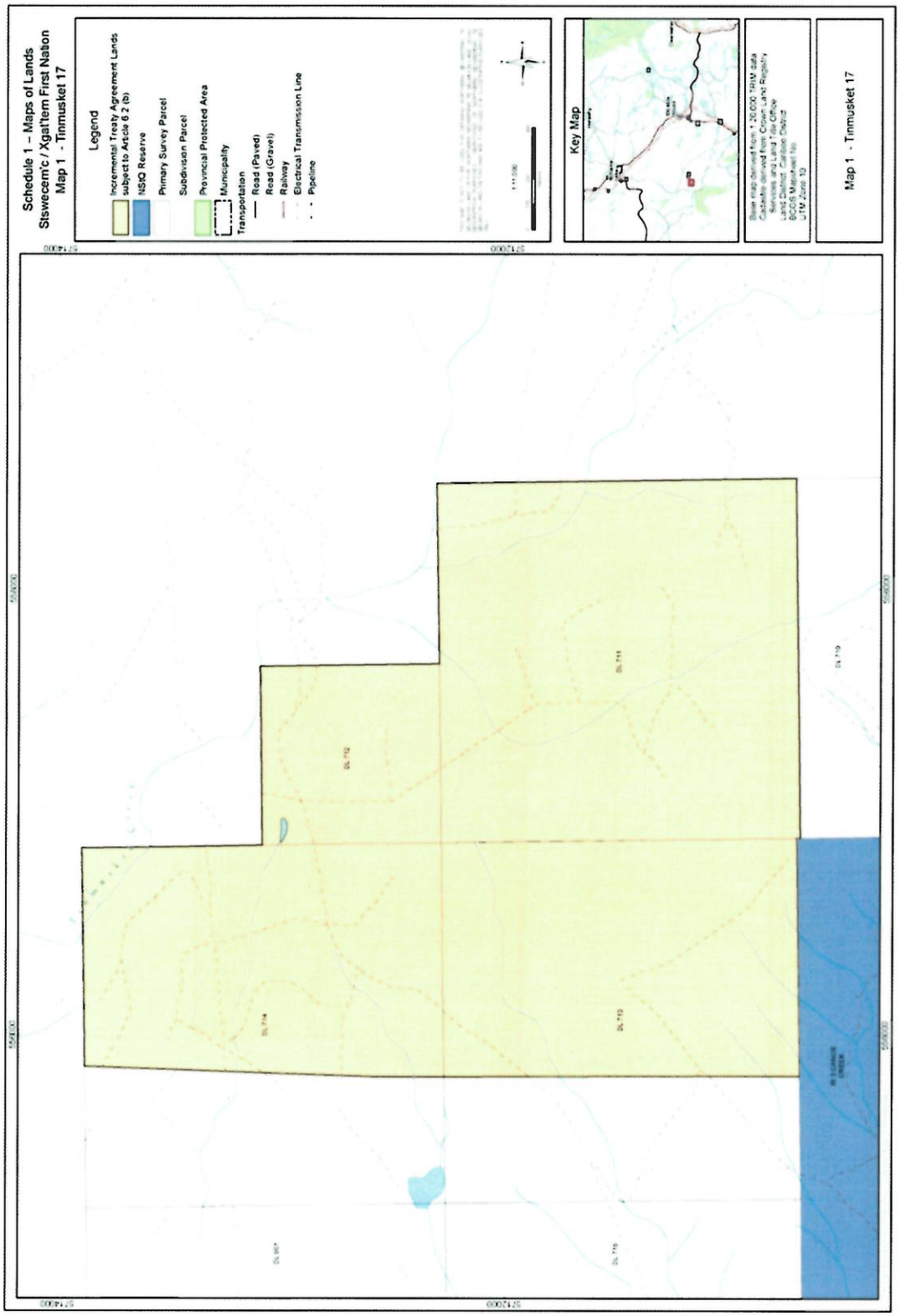
Witnessed by
Print name: _____

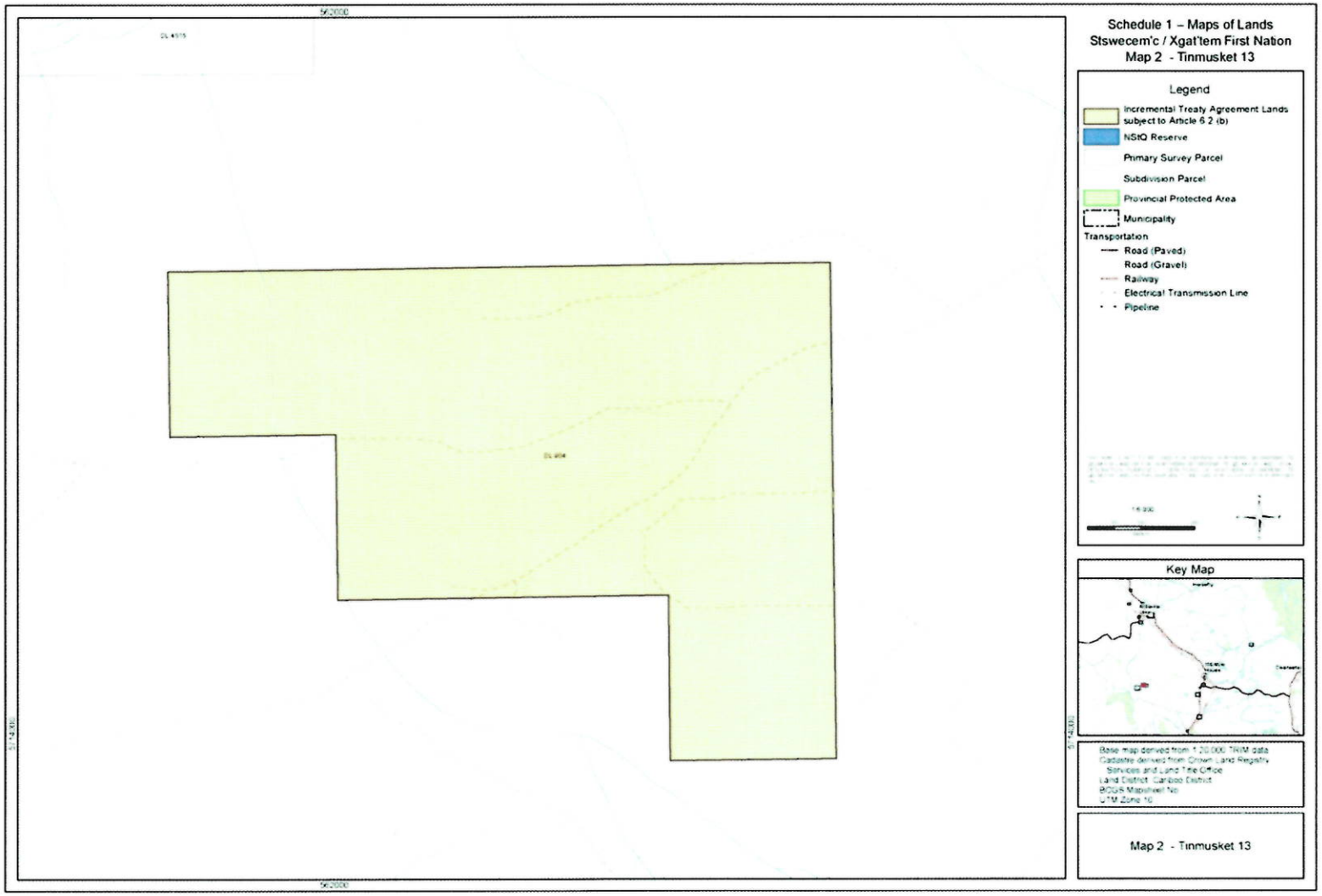
Signed on behalf of Her Majesty the Queen in Right of the Province of British Columbia by

The Honourable John Rustad

Witnessed by
Print name: _____

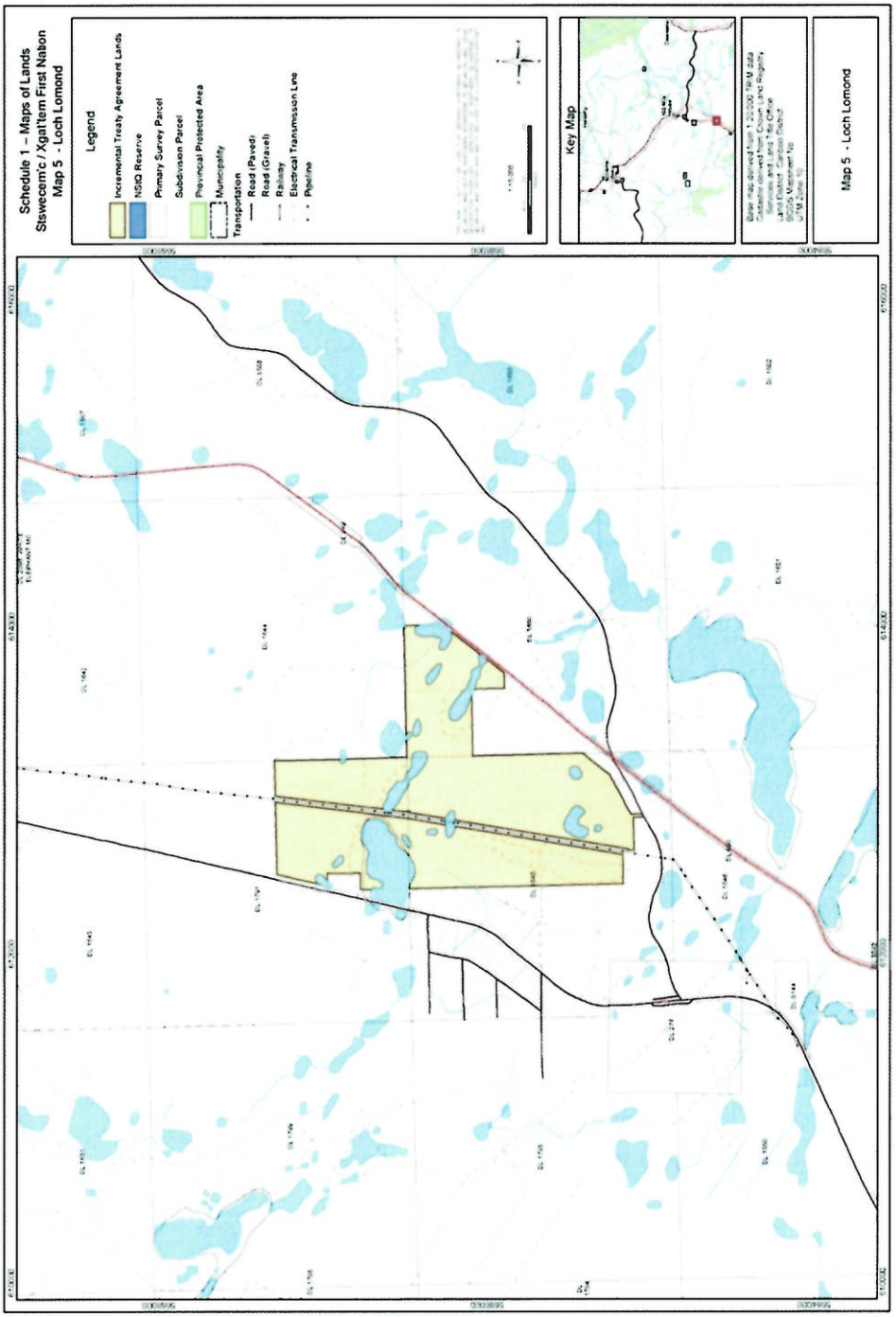
Schedule "1" – Map of Lands for Illustrative Purposes


Schedule 1 – Maps of Lands
Stswecem'c / Xgat'tem First Nation
Map 1 - Tinmusket 17
Legend
Incremental Treaty Agreement Lands subject to Article 6.2 (b)
NSIQ Reserve
Primary Survey Parcel
Subdivision Parcel
Provincial Protected Area
Municipality
Transportation
Road (Paved)
Road (Gravel)
Railway
Electrical Transmission Line
Pipeline
Key Map
Map 1 - Tinmusket 17


Schedule 1 – Maps of Lands
Stswecem'c / Xgat'tem First Nation
Map 2 - Tinmusket 13
Legend
Incremental Treaty Agreement Lands subject to Article 6.2 (b)
NStQ Reserve
Primary Survey Parcel
Subdivision Parcel
Provincial Protected Area
Municipality
Transportation
Road (Paved)
Road (Gravel)
Railway
Electrical Transmission Line
Pipeline
Key Map
Base map derived from 1:20,000 TRIM data
Cadastre derived from Crown Land Registry Services and Land Title Office
Land District: Cariboo District
BCGS Mapsheet No
UTM Zone 10
Map 2 - Tinmusket 13

Schedule 1 – Maps of Lands
Stswecem'c / Xgat'tem First Nation
Map 3 - Dog Lake
Legend
Incremental Treaty Agreement Lands subject to Article 6.2 (b)
NSIQ Reserve
Primary Survey Parcel
Subdivision Parcel
Provincial Protected Area
Municipality
Transportation
Road (Paved)
Road (Gravel)
Railway
Electrical Transmission Line
Pipeline
Key Map
Map 3 - Dog Lake

Schedule 1 – Maps of Lands
Stswecem'c / Xgat'tem First Nation
Map 4 - Meadow Turnoff
Legend
Incremental Treaty Agreement Lands
NSIQ Reserve
Primary Survey Parcel
Subdivision Parcel
Provincial Protected Area
Municipality
Transportation
Road (Paved)
Road (Gravel)
Railway
Electrical Transmission Line
Pipeline
Key Map
Map 4 - Meadow Turnoff


Schedule 1 – Maps of Lands
Stswecem'c / Xgat'tem First Nation
Map 5 - Loch Lomond
Legend
Incremental Treaty Agreement Lands
NSIQ Reserve
Primary Survey Parcel
Subdivision Parcel
Provincial Protected Area
Municipality
Transportation
Road (Paved)
Road (Gravel)
Railway
Electrical Transmission Line
Pipeline
Key Map
Map 5 - Loch Lomond

Schedule "2"– Permitted Encumbrances

Permitted Encumbrances
all interests registered on title under the *Land Title Act* as of the date of this Agreement
all subsisting exceptions and reservations of interests, rights, privileges and titles contained in any previous Crown grant of the land
all exceptions and reservations contained in section 50(1) of the *Land Act*
any conditional or final water license or substituted water license issued or given under the *Water Act*, 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
all subsisting grants to, or subsisting rights of any person made or acquired under the *Mineral Tenure Act*, *Coal Act* or *Petroleum and Natural Gas Act* or under any prior or subsequent enactment of the Province of British Columbia of like effect
all other liens, charges, interests and encumbrances granted by the Province, with the prior written consent of the Stswecem'c / Xgat'tem prior to the Closing Date
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 attached as Schedule 3 (Additions to Reserve Restrictive Covenant)

Schedule "3" - 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 (Page and paragraph)	Person Entitled to Interest
Section 219 Covenant	Entire Document	Transferee (Grantee)

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

(a)	Filed Standard Charge Terms	☐	D.F. No.
(b)	Express Charge Terms	■	Annexed as Part 2
(c)	Release	☐	There is no Part 2 of this instrument

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

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

7. ADDITIONAL OR MODIFIED TERMS:*

N/A

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" and attach schedule in Form E.
** 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 attached.

END OF DOCUMENT

Schedule "4" - Designated Company Agreement

This Agreement is dated for reference _____, 2012.

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 Stswecem'c / Xgat'tem 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 Stswecem'c / Xgat'tem 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 "Stswecem'c / Xgat'tem" 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, 12.1-12.3 and 12.5 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 Stswecem'c / Xgat'tem, against the Designated Company or the Stswecem'c / Xgat'tem 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 attached 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 Stswecem'c / Xgat'tem 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 Stswecem'c / Xgat'tem.

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_____:

_____
The Honourable John Rustad
Minister of Aboriginal Relations and Reconciliation
or the Minister's authorized representative

Schedule "5" – GST Certificate

FORM 221(2)(b) (CERTIFICATE AS TO REGISTRATION STATUS OF PURCHASER)

Certificate as to Registration Status of Purchaser

(Paragraphs 221(2)(b) and (c))

FROM: *[the "Vendor"]*

TO: *[the "Purchaser"]*

RE: *[the "Property"]*

THE PURCHASER HEREBY CERTIFIES TO THE VENDOR PURSUANT TO PARAGRAPHS 221(2)(b) AND (c) OF *THE EXCISE TAX ACT* (THE "ACT") THAT THE PURCHASER:

is a prescribed recipient under the Act.

[OR]

is registered under Part IX of the Act, its registration number is *[number]* and the Purchaser will account for the tax payable in respect of the purchase of the Property in accordance with the Act.

The Purchaser acknowledges that the Vendor is relying on this Certificate in connection with the sale of the Property.

Each term that is used in the Certificate and that is defined in, and for the purposes of, Part IX of the Act has the meaning assigned to it in Part IX of the Act.

DATED *[month, day, year]*.

[Name of Corporate Vendor]

_____ Per: _____

[Name of Individual Vendor]

Schedule 6

Consent of Stswecem'c / Xgat'tem in relation to Property Transfer Tax Matters

TO WHOM IT MAY CONCERN:

1. Article ____ of the Incremental Treaty Agreement (the Agreement) between the Province of British Columbia and the Stswecem'c / Xgat'tem, executed [date of execution], provides that the Province is responsible for property transfer tax payable under the *Property Transfer Tax Act* (RSBC 1996), c. 378 in relation to the transfer of land under the Agreement (the Property Transfer Tax).

2. In the event that:

   a. an exemption from Property Transfer Tax is not enacted prior to the date on which payment of that tax is due, or

   b. the Province pays the Property Transfer Tax,

   then Stswecem'c / Xgat'tem hereby

   c. authorizes the Ministry of Finance and the Ministry of Aboriginal Relations and Reconciliation to deal directly with one another in regard to all matters relating to the Property Transfer Tax, and

   d. agrees that if there is any refund payable in respect of the Property Transfer Tax paid by the Province, then the amount of that refund may be retained by the Province.

Executed on the _____ day of _____, 20__

_____

Signature of the duly authorized signatory for the Stswecem'c / Xgat'tem.

_____

Name and Title (please print)