

TSAWWASSEN FIRST NATION OWN SOURCE REVENUE AGREEMENT

**Canada
British Columbia
Tsawwassen First Nation**

TSAWWASSEN FIRST NATION OWN SOURCE REVENUE AGREEMENT

THIS AGREEMENT made the 3rd day of April, 2009.

BETWEEN:

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

("Canada")

OF THE FIRST PART

AND:

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

("British Columbia")

OF THE SECOND PART

AND:

TSAWWASSEN FIRST NATION, as represented by Tsawwassen Government

("Tsawwassen First Nation")

OF THE THIRD PART

WHEREAS:

- A. Clause 4 of the Fiscal Relations Chapter provides that, from time to time, the Parties will negotiate and attempt to reach agreement on the own source revenue contribution of Tsawwassen First Nation to the funding of Agreed-Upon Programs and Services; and
- B. The Parties agree that this Agreement sets out the amount of the own source revenue of Tsawwassen First Nation to be taken into account in determining the funding provided to Tsawwassen First Nation under a Tsawwassen First Nation Fiscal Financing Agreement.

NOW in consideration of the premises and the covenants and agreements set out below, the sufficiency of which is acknowledged by the Parties, the Parties agree as follows:

1.0 DEFINITIONS

1.1 Words and expressions not defined in this Agreement but defined in the Tsawwassen First Nation Final Agreement have the meanings ascribed to them in the Tsawwassen First Nation Final Agreement.

1.2 In this Agreement the following definitions apply:

"Agreement" means this Tsawwassen Own Source Revenue Agreement and the Schedules;

"Capital Transfer Settlement Trust" means a Tsawwassen Settlement Trust where all of the contributions to the trust can reasonably be considered to have been:

- (a) made from payments received by Tsawwassen First Nation under the Capital Transfer and Negotiation Loan Repayment Chapter; or
- (b) received from another Capital Transfer Settlement Trust;

"Chapter" means a chapter of the Tsawwassen First Nation Final Agreement;

"Federal Block Funding" has the meaning ascribed to it in the Tsawwassen First Nation Fiscal Financing Agreement;

"Federally Supported Programs and Services" has the meaning ascribed to it in the Tsawwassen First Nation Fiscal Financing Agreement;

"Fiscal Year" means the period that commences on April 1st of a year and ends on March 31st of the following year;

"Generally Accepted Accounting Principles" means the accounting principles generally accepted in Canada from time to time and, if the CICA Handbook-Accounting published by

the Canadian Institute of Chartered Accountants or its successor includes relevant statements of a principle or accounting guideline, that statement will be considered conclusively to be an accounting principle or guideline generally accepted in Canada;

"Implementation Activities" has the meaning ascribed to it in the Tsawwassen First Nation Fiscal Financing Agreement;

"Implementation Committee" means the committee established under the Implementation Chapter;

"Parties" means the parties to this Agreement and "Party" means any one of them;

"Property Tax" means a real property tax imposed by Tsawwassen First Nation on owners or occupiers of real property within Tsawwassen Lands, including any fines, interest or penalties thereon and, for greater certainty, does not include a fee or levy for goods or services if only persons who choose to receive the goods or services are obliged to pay the fee or levy;

"Provincially Supported Programs and Services" has the meaning ascribed to it in the Tsawwassen First Nation Fiscal Financing Agreement;

"Public Services" means services provided to, and activities carried on for the benefit of the general public either by governments in Canada or by contractors to governments in Canada, without reasonable expectation of profit to government and which services or activities are not primarily provided to the general public in Canada or carried out for the benefit of the general public in Canada by for-profit entities acting independently of government;

"Review Engagement Report" has the meaning ascribed to it in the CICA Handbook-Assurance published by the Canadian Institute of Chartered Accountants or its successor;

"Specific Claims Policy" means the policy set out in Canada's "Outstanding Business – A Native Claims Policy: Specific Claims (1982)";

"Specific Claim Settlement" means any sum paid as compensation by Canada to Tsawwassen First Nation, which sum represents the amount negotiated by Canada and Tsawwassen First Nation in accordance with the Specific Claims Policy as compensation for a specific claim;

"Tsawwassen First Nation Final Agreement" means the Tsawwassen First Nation Final Agreement signed on behalf of Tsawwassen First Nation and British Columbia and Canada on December 6, 2007, and includes any amendments from time to time;

"Tsawwassen First Nation Fiscal Financing Agreement" means the Tsawwassen Fiscal Financing Agreement signed by the Parties on April 3, 2009, as amended or replaced from time to time;

“Tsawwassen Settlement Trust” means a Tsawwassen Settlement Trust as defined by the Tsawwassen First Nation Tax Treatment Agreement; and

“Tsawwassen First Nation Tax Treatment Agreement” means the Tsawwassen First Nation Tax Treatment Agreement signed by the Parties on December 6, 2007, as amended or replaced from time to time.

2.0 GENERAL

- 2.1 This Agreement is not part of the Tsawwassen First Nation Final Agreement, is not a treaty or land claims agreement and does not recognize or affirm aboriginal or treaty rights within the meaning of sections 25 and 35 of the *Constitution Act, 1982*.

3.0 TERM, RENEGOTIATION AND REPLACEMENT

- 3.1 The term of this Agreement:

- (a) starts on the Effective Date; and
- (b) except if extended in accordance with clause 21.2, will end on March 31 of the Fiscal Year in which the 20th anniversary of the Effective Date occurs.

- 3.2 If Canada or British Columbia enacts legislation within four years from the Effective Date of the Tsawwassen First Nation Final Agreement, giving effect to another land claims agreement in British Columbia that provides in that land claims agreement or in another agreement that is referred to in that land claims agreement, own source revenue terms and conditions that are not available under this Agreement, Canada and British Columbia, at the request of Tsawwassen First Nation, will negotiate and attempt to reach agreement on a one-time basis with Tsawwassen First Nation to provide appropriate adjustments to the own source revenue terms and conditions available to Tsawwassen First Nation, taking into account the particular circumstances of the other land claims agreement.

4.0 TSAWWASSEN FIRST NATION OWN SOURCE REVENUE

- 4.1 Except as otherwise provided in this Agreement, Tsawwassen First Nation own source revenue capacity for a Fiscal Year is the sum of:
- (a) the total Tsawwassen First Nation own source revenues derived from a Capital Transfer Settlement Trust for that Fiscal Year;
 - (b) the total Tsawwassen First Nation own source revenues from taxes for that Fiscal Year;
 - (c) the total Tsawwassen First Nation own source revenues from business and property for that Fiscal Year;

- (d) the total Tsawwassen First Nation own source revenues from fees and charges for that Fiscal Year; and
- (e) the total Tsawwassen First Nation own source revenues from other revenue sources for that Fiscal Year;

determined in accordance with this Agreement.

- 4.2 The categories in subclauses 4.1(a) through 4.1(e) are mutually exclusive categories as determined in accordance with this Agreement.

5.0 **AMOUNTS NOT INCLUDED**

- 5.1 The calculation of own source revenue of Tsawwassen First Nation for a Fiscal Year will not include:

- (a) amounts received or earned before the Effective Date;
- (b) gifts and donations received by Tsawwassen First Nation from an arms length party, and for which a receipt is issued;
- (c) payments received under a Tsawwassen First Nation Fiscal Financing Agreement;
- (d) interest, gains or other income derived by Tsawwassen First Nation within a Fiscal Year from programs and services funding received under a Tsawwassen First Nation Fiscal Financing Agreement by Tsawwassen First Nation in that Fiscal Year from Canada or British Columbia, or their agent, as a lump sum payment;
- (e) programs and services funding received by Tsawwassen First Nation from Canada or British Columbia, directly or through a third party, in respect of programs and services that are not included in a Tsawwassen First Nation Fiscal Financing Agreement;
- (f) proceeds from the sale of Tsawwassen Lands, or other lands transferred to Tsawwassen First Nation in fee simple on the Effective Date as part of the Tsawwassen First Nation Final Agreement;
- (g) proceeds from a claim for loss under a policy of insurance and other amounts received as compensation for specific losses or damages to property or assets, except to the extent included in the own source revenue of Tsawwassen First Nation under clause 8.0 of this Agreement;
- (h) payments received as a result of the settlement in 2004 relating to the Roberts Bank port facility and the Tsawwassen ferry terminal;
- (i) a Specific Claim Settlement;

- (j) the payment received under clause 98 of the Lands Chapter;
 - (k) interest, gains or other income derived from the investment or reinvestment of funds held in a special purpose fund established with funding received by Tsawwassen First Nation from Canada or British Columbia for a purpose related to the Tsawwassen First Nation Final Agreement and described in Schedule B of this Agreement, provided that the interest, gains or income is used for a purpose or activity that is intended by the Parties to be funded from that special purpose fund;
 - (l) Capital Transfer payments received by Tsawwassen First Nation in that Fiscal Year;
 - (m) subject to clause 11.2 and 11.3, proceeds from the issuance of debt;
 - (n) reimbursements of specific expenses incurred by Tsawwassen First Nation for a purpose specified by an arms length party and under an agreement with that party; and
 - (o) any tax revenues, fees, charges or levies collected by Tsawwassen Government on behalf of, and remitted to, another taxing authority that is not associated with Tsawwassen Government.
- 5.2 For greater certainty, each fund described in Schedule B, and referred to in subclause 5.1(k), is a special purpose fund referred to under subclause 5(a)(iv) of the Fiscal Relations Chapter.
- 6.0 TSAWWASSEN FIRST NATION CAPITAL TRANSFER SETTLEMENT TRUST**
- 6.1 Subject to clauses 6.2 and 6.3 of this Agreement, the own source revenue of Tsawwassen First Nation in respect of a Capital Transfer Settlement Trust for a Fiscal Year is the sum of amounts distributed by the Capital Transfer Settlement Trust other than amounts distributed to another Capital Transfer Settlement Trust.
- 6.2 An amount distributed by a Capital Transfer Settlement Trust will not be included in the calculation set out in clause 6.1 if:
- (a) subject to clause 6.3, Tsawwassen First Nation elects to exempt the distributed amount; or
 - (b) the distributed amount out of the Capital Transfer Settlement Trust is in respect of a payment or transfer to a Tsawwassen Member.
- 6.3 For the purposes of clause 6.2 of this Agreement:
- (a) Tsawwassen First Nation will have a total exemption equal to the sum of those Capital Transfer payments deposited to a Capital Transfer Settlement Trust to that point in time; and

- (b) if Tsawwassen First Nation elects to use some portion of the total exemption in respect of a distributed amount, the total exemption in subclause (a) available in respect of subsequent distributed amounts will be reduced by the amount so elected.

7.0 TSAWWASSEN FIRST NATION TAX REVENUE

7.1 The own source revenue of Tsawwassen First Nation from taxes for a Fiscal Year will be calculated as the sum of:

- (a) taxes received in that Fiscal Year by Tsawwassen First Nation pursuant to an agreement with Canada or British Columbia to share tax room or tax revenues;
- (b) taxes other than the taxes referred to in subclause (a) levied and received by Tsawwassen First Nation under any law enacted by Tsawwassen Government; and
- (c) any fines, interest or penalties levied and received by Tsawwassen First Nation in respect of a tax referred to in this clause.

8.0 TSAWWASSEN FIRST NATION BUSINESS AND PROPERTY INCOME

8.1 Subject to clause 6, the own source revenue of Tsawwassen First Nation from business and property for a Fiscal Year will be calculated as the sum of:

- (a) the amount, if any, by which the aggregate of:
 - (i) incomes for the Fiscal Year from each business carried on by Tsawwassen First Nation; and
 - (ii) incomes for the Fiscal Year from each property held by Tsawwassen First Nation;exceeds the aggregate of:
 - (iii) losses for the Fiscal Year from each business carried on by Tsawwassen First Nation, other than businesses providing Public Services; and
 - (iv) losses for the Fiscal Year from each property held by Tsawwassen First Nation, other than properties held for the provision of Public Services;
- (b) subject to clause 11.0, the aggregate of:
 - (i) dividends received from corporations; and

- (ii) distributions from a partnership or trust that is not a Tsawwassen Settlement Trust, other than a return of capital or repayment of a loan. For the purposes of this clause, a return of capital means an amount of capital paid to Tsawwassen First Nation from the partnership or trust that was contributed to the partnership or trust by Tsawwassen First Nation, or by the Tsawwassen First Nation band under the *Indian Act* before the Effective Date, or by a third party where the third party's contribution would have been excluded under clause 5.0 if it had been contributed to Tsawwassen First Nation; and
- (c) the amount by which the aggregate of:
 - (i) net gains realized in the Fiscal Year on the disposition of properties, other than real properties, held on capital account and used or held for the primary purpose of earning income or gains, and real properties held on capital account, other than Tsawwassen Lands, used or held for any purpose;

exceeds the aggregate of:

- (ii) losses realized in the Fiscal Year on the disposition of properties, other than real properties, held on capital account and used or held for the primary purpose of earning income or gains, and real properties held on capital account, other than Tsawwassen Lands, used or held for any purpose; and
 - (iii) losses realized in the previous Fiscal Year on the disposition of properties, other than real properties, held on capital account and used or held for the primary purpose of earning income or gains, and real properties held on capital account, other than Tsawwassen Lands, used or held for any purpose, to the extent that such losses have not been applied to reduce net gains in a previous Fiscal Year.

8.2 For the purposes of clause 8.1:

- (a) any Tsawwassen First Nation interest in a business carried on, or a property held, in a joint venture is a business carried on, or a property held, by Tsawwassen First Nation to the extent of the interest of Tsawwassen First Nation in the joint venture;
- (b) incomes and losses from businesses include net incomes and losses from adventures in the nature of trade;
- (c) incomes from businesses carried on and properties held are determined as the amount by which the revenues earned in the Fiscal Year exceed the reasonably

deductible costs, taking into account reasonable allowances for depreciation and amortization, as determined in accordance with Generally Accepted Accounting Principles;

- (d) for purposes of computing income from a business or property, including a determination of allowances for amortization and depreciation or for purposes of computing a gain or loss on a disposition of property, Tsawwassen First Nation will be deemed to have acquired each of its properties owned on the Effective Date at a cost equal to the fair market value of the property on that date;
- (e) incomes and losses referred to in subclause 8.1(a) do not include any amount in respect of incomes or losses of a corporation, trust or partnership, dividends received from a corporation or distributions from a trust or partnership;
- (f) subject to subclause 8.2(d), income and losses referred to in subclauses 8.1(a)(i) and 8.1(a)(iii) include gains and losses in respect of dispositions of property where such gains and losses would be included in the income of a business under Generally Accepted Accounting Principles;
- (g) incomes and losses referred to in subclauses 8.1(a)(ii) and 8.1(a)(iv) do not include any gains and losses in respect of dispositions of property;
- (h) gains and losses referred to in subclause 8.1(c) do not include gains and losses on the disposition of properties included in income and losses from a business under subclauses 8.1(a)(i) and 8.1(a)(iii); and
- (i) incomes and losses are determined net of associated tax liabilities of Tsawwassen First Nation.

9.0 TSAWWASSEN FIRST NATION FEES AND CHARGES

9.1 The own source revenue of Tsawwassen First Nation from fees and charges for a Fiscal Year will be calculated to include:

- (a) all fees and charges collected in that Fiscal Year in respect of Federally Supported Programs and Services, Implementation Activities, and Provincially Supported Programs and Services; and
- (b) all fees and charges collected in that Fiscal Year in respect of other programs and services, other than user fees constituting a recovery of cost only,

where fees and charges for purposes of this clause include fees and charges levied and collected by Tsawwassen First Nation in the Fiscal Year under a law enacted by the Tsawwassen Government in respect of services provided, permits and authorizations and use of property of Tsawwassen First Nation.

10.0 TSAWWASSEN FIRST NATION OTHER REVENUE

10.1 The own source revenue of Tsawwassen First Nation from other sources for a Fiscal Year will be calculated as the sum of all amounts received by Tsawwassen First Nation from a revenue source that is not included under clauses 6.0 through 9.0 other than:

- (a) an amount expressly excluded from own source revenues under clauses 6.0 through 9.0; or
- (b) an amount recovered as a return of invested capital or in repayment of a loan, except to the extent that the amount represents a gain that is included in own source revenue capacity under clause 8.0.

11.0 OTHER RULES

11.1 For purposes of subclause 8.1(b)(i), where an entity controlled directly or indirectly by Tsawwassen First Nation has provided Public Services, or funded another person to provide those services, to Tsawwassen Members or to residents of Tsawwassen Lands, and the source of funds for the provision of the Public Services is profits of the entity, or can reasonably be expected to come from profits of the entity, the amount expended by the entity in the Fiscal Year for the provision of such Public Services will be deemed to have been received by Tsawwassen First Nation in the Fiscal Year as a dividend from a corporation.

11.2 Where any entity that is controlled directly or indirectly by Tsawwassen First Nation makes a loan to Tsawwassen First Nation or to an entity that provides Public Services on behalf of Tsawwassen First Nation:

- (a) the amount of such loan, for purposes of subclause 8.1(b)(i), will be deemed to have been received by Tsawwassen First Nation as a dividend from a corporation in the Fiscal Year in which the loan is made; and
- (b) any amount paid in repayment of the principal amount of the loan will be deducted in calculating Tsawwassen First Nation own source revenue capacity for the Fiscal Year in which the amount is so paid.

11.3 Notwithstanding clause 11.2, a loan referred to in clause 11.2 is exempt from inclusion as income for purposes of subclause 8.1(b)(i) and the subsequent repayment of such loan does not reduce own source revenue under subclause 11.2(b) where there are *bona fide* repayment terms including:

- (a) interest at market value; and
- (b) repayment of principal within a reasonable period of time given the purpose of the loan,

- except that any amount of interest or principal that has not been repaid within the period of the loan will result in the unpaid principal being considered the own source revenue of Tsawwassen First Nation under subclause 8.1(b)(i).

12.0 OWN SOURCE REVENUE REPORT

12.1 Within 120 calendar days after the end of each Tsawwassen fiscal year during the term of this Agreement, Tsawwassen First Nation will:

- (a) produce an own source revenue annual report substantially in the form of Schedules A1 and A2 for the Fiscal Year setting out the own source revenue of Tsawwassen First Nation for that Fiscal Year in respect of each category of revenue or income for which a calculation is required to be made under this Agreement, and
- (b) provide a copy of the own source revenue annual report to Canada and British Columbia with the audited consolidated financial statements submitted pursuant to the Tsawwassen First Nation Fiscal Financing Agreement for each Tsawwassen fiscal year covered by the auditor's report or a Review Engagement Report, as appropriate.

12.2 At any time within one year after Tsawwassen First Nation provides the own source revenue annual report for a Fiscal Year to Canada and British Columbia under clause 12.1, a Party may notify the other Parties that it disagrees with the determination of an amount reported in that report.

12.3 Notwithstanding clause 12.2, at any time a Party may notify the other Parties that it disagrees with the determination of an amount included in a Tsawwassen First Nation own source revenue annual report for a Fiscal Year:

- (a) in any case where a change in that amount is required to reflect, and reasonably can be considered to be consequential upon, an assessment or reassessment by a taxing authority; or
- (b) if the person filing the report has made any misrepresentation that is attributable to neglect, carelessness or wilful default, or has committed fraud in filing the report or in supplying information required in connection with the report.

12.4 A notice given by a Party under clause 12.2 or 12.3 will:

- (a) identify the relevant Tsawwassen First Nation own source revenue annual report and Fiscal Year;
- (b) set out each determination that the Party disagrees with;
- (c) set out a calculation of each adjustment that the Party proposes be made to an amount included in the report, with detailed reasons; and

- (d) include a proposal for how the adjustment could be made.
- 12.5 Within 45 days of the date of notice given by a Party under clause 12.2 or 12.3, each of the other Parties may respond in writing to the notice, setting out:
- (a) their acceptance of each proposed adjustment; or
 - (b) proposed alternative adjustments with detailed reasons.
- 12.6 If the Parties fail to resolve a matter, in respect of which a notice is given under clause 12.2 or 12.3, by informal discussion within 75 days after the date of that notice, a Party may within 105 days after the date of that notice give another Party a notice of dispute in respect of the matter.
- 13.0 **FEDERAL OWN SOURCE REVENUE INCLUSION AMOUNT**
- 13.1 For purposes of determining the amount of the own source revenue of Tsawwassen First Nation to be taken into account in calculating the Federal Block Funding amounts under a Tsawwassen First Nation Fiscal Financing Agreement for each Fiscal Year, the federal own source revenue inclusion amount will be calculated as the greater of:
- (a) 0 (zero); or
 - (b) $[\text{OSRCF minus BE}] * \text{IR}$
- where,
- OSRCF is that portion of Tsawwassen First Nation own source revenue capacity to be taken into account in calculating the federal own source revenue inclusion amount for the Fiscal Year, determined in accordance with clause 13.2;
- BE is the basic exemption for the Fiscal Year determined in accordance with clause 13.4; and
- IR is the inclusion rate for the Fiscal Year, as set out in Column 3 of Table 1 in clause 13.4.
- 13.2 The portion of Tsawwassen First Nation own source revenue capacity to be taken into account in calculating the federal own source revenue inclusion amount for a Fiscal Year under clause 13.1 is the sum of :
- (a) the revenues received by Tsawwassen First Nation for the Fiscal Year resulting from tax room, tax authorities, or transfer of tax revenues, including any fines, interest or penalties thereon, provided under an agreement between Canada and

Tsawwassen First Nation to share tax room or tax revenues and included in the own source revenue of Tsawwassen First Nation from taxes for the Fiscal Year under clause 7.0 of this Agreement; and

- (b) the percentage, determined in accordance with clause 13.3, of the amount by which Tsawwassen First Nation own source revenue capacity for the Fiscal Year, as determined under clause 4.0 of this agreement, exceeds the sum of:
 - (i) the amount determined under clause 13.2(a);
 - (ii) any revenues, except Property Tax revenues, received by Tsawwassen First Nation for the Fiscal Year resulting from tax room, tax authorities, or transfer of tax revenues, including any fines, interest or penalties thereon, provided under an agreement between British Columbia and Tsawwassen First Nation to share tax room or tax revenues and included in Tsawwassen First Nation own source revenue from taxes revenue for the Fiscal Year under clause 7.0 of this Agreement;
 - (iii) any other provincial transfers not referred to in this clause and included in Tsawwassen First Nation own source revenue capacity for the Fiscal Year that were provided directly, or indirectly through third parties, to Tsawwassen First Nation, including any transfer provided under the *New Relationship Trust Act*;
 - (iv) Property Taxes paid to Tsawwassen First Nation by Tsawwassen Members in the Fiscal Year, to the extent those Property Taxes do not exceed property tax that would have been paid to British Columbia pursuant to the *School Act*, the *Taxation (Rural Area) Act* or any other Provincial legislation in the absence of an agreement between British Columbia and Tsawwassen First Nation to share property tax room or tax revenues; and
 - (v) Property Tax paid to Tsawwassen First Nation in the Fiscal Year by a person who is not a Tsawwassen Member.

13.3 The percentage to be used for the purpose of clause 13.2(b) is determined by the following formula:

$$\text{TFT}/(\text{TPT}+\text{TFT}) * 100$$

where,

TFT is the total transfer payments to be paid by Canada to Tsawwassen First Nation for the Fiscal Year under a Tsawwassen First Nation Fiscal Financing Agreement, as determined before deduction of any amount on account of the federal own source revenue inclusion amount; and

TPT is the total transfer payments to be paid by British Columbia to Tsawwassen First Nation for the Fiscal Year under a Tsawwassen First Nation Fiscal Financing Agreement, as determined before deduction of any amount on account of the provincial own source revenue inclusion amount.

- 13.4 The basic exemption for the Fiscal Year is the product of the amount set out for that Fiscal Year in column 2 of Table 1 multiplied by the price adjustment factor for that Fiscal Year as determined under clause 13.5.

Table 1: Exemptions and Inclusion Rate

Column 1	Column 2	Column 3
Fiscal Year	Annual Exemption (\$2002Q4)	Inclusion Rate %
1	\$1,370,000	0
2	\$1,370,000	0
3	\$1,370,000	0
4	\$1,370,000	0
5	\$1,370,000	0
6	\$1,370,000	3.3
7	\$1,370,000	6.6
8	\$1,370,000	10.0
9	\$1,370,000	13.3
10	\$139,125	16.6
11	\$140,416	20.0
12	\$141,749	23.3
13	\$143,127	26.6
14	\$144,550	30.0
15	\$146,021	33.3
16	\$147,539	36.6
17	\$149,108	40.0
18	\$150,729	43.3
19	\$152,403	46.6
20	\$154,132	50.0

- 13.5 For each Fiscal Year the price adjustment factor will be determined in the following manner:

$$\text{Price Adjustment Factor} = \text{FDDIPI}_{L_Q} / \text{FDDIPI}_{02_Q4}$$

Where

FDDIPI_{L_Q} is the first published value of FDDIPI for the latest quarter available for the Fiscal Year for which the Basic Exemption is being calculated and for which Statistics Canada has published a FDDIPI;

FDDIP_{I02_Q4} is the latest value of FDDIP for the fourth quarter of 2002, published by Statistics Canada at the same time as the value used in FDDIP_{L_Q};

FDDIP is the Canada Final Domestic Demand Implicit Price Index, series D100466, published regularly by Statistics Canada in Matrix 10512: Implicit Price Indexes, Gross Domestic Product, or its replacement series as specified by Statistics Canada.

14.0 PROVINCIAL OWN SOURCE REVENUE INCLUSION AMOUNT

- 14.1 For purposes of determining the amount of Tsawwassen First Nation own source revenue to be taken into account in calculating Provincial Funding amounts under a Tsawwassen First Nation Fiscal Financing Agreement for each Fiscal Year, the provincial own source revenue inclusion amount is zero.

15.0 FINANCIAL RECORDS

- 15.1 All accounts and financial statements of Tsawwassen First Nation concerning own source revenues described in this Agreement will be prepared in accordance with Generally Accepted Accounting Principles.
- 15.2 The financial records of Tsawwassen First Nation for a Fiscal Year will be:
- (a) retained by Tsawwassen First Nation for 10 years; and
 - (b) made available to Canada and British Columbia at the principal administration offices of Tsawwassen First Nation for inspection, on a confidential basis, within 30 days of receipt of a request from Canada or British Columbia to inspect the records.

16.0 INFORMATION EXCHANGE

- 16.1 The Parties will share, at no cost to the Party requesting the information, and in a timely manner, information reasonably required for purposes of implementation, monitoring, and renewal of this Agreement.
- 16.2 The Parties will collect, share and disclose information under this agreement in a manner that ensures the confidentiality of the information.

17.0 DEFAULT AND REMEDIES

- 17.1 Each of the following is a default under this Agreement:
- (a) a Party fails to comply with a provision of this Agreement; or
 - (b) a Party gives or makes a representation, statement or report, required under this Agreement, that it knows or reasonably ought to know is false in a material way.

- 17.2 Where there is an alleged default of this Agreement, the Party alleging the default will notify the other Parties of the alleged default and the circumstances giving rise to the alleged default.
- 17.3 A Party in alleged default that receives a notice of default under clause 17.2 will, within 30 days of receipt of the notice, notify the other Parties, of one of the following:
- (a) that it has remedied the default, including a description of the remedial action taken or being taken; or
 - (b) that it disagrees that a default has occurred, in which case the issue will be referred to the dispute resolution provision set out in clause 18.0

18.0 DISPUTE RESOLUTION

- 18.1 In the event of a dispute respecting the interpretation or implementation of this Agreement, including a breach or anticipated breach of this Agreement, the Parties agree to use the dispute resolution process set out in this Agreement.
- 18.2 The Parties desire and expect that a dispute arising from this Agreement will be resolved by informal discussion between the disputing Parties.
- 18.3 If the dispute is not resolved by informal discussion, a Party directly engaged in the dispute may refer the dispute to the Implementation Committee by delivering written notice to the other Parties providing a concise summary of the matter in dispute.
- 18.4 Upon receiving the notice under clause 18.3, the Parties directly engaged in the dispute will participate in the deliberations of the Implementation Committee.
- 18.5 If the Implementation Committee fails to resolve the dispute within 45 days of the dispute being referred to it, or a longer period if the Parties agree in writing, the dispute will be dealt with in accordance with the Dispute Resolution Chapter, and, for greater certainty, the dispute will be considered to be a dispute for the purposes of that Chapter.
- 18.6 The deliberations of the Implementation Committee in clause 18.4 will be considered to be "collaborative negotiations" for the purpose of the Dispute Resolution Chapter, and will be deemed to fully satisfy the requirements set out in clauses 14 to 18 of that Chapter.
- 18.7 Nothing in this Agreement prevents a Party from commencing judicial proceedings at any time to prevent the loss of a right to commence proceedings due to the expiration of a limitation period, or to obtain interlocutory or interim relief that is otherwise available pending resolution of the dispute under this Agreement.

18.8 Where this Agreement provides that the Parties "will negotiate and attempt to reach agreement", those negotiations will be conducted as set out in the Dispute Resolution Chapter, but none of the parties are obliged to proceed to Stage Three of that Chapter.

18.9 Disputes arising under this Agreement may not be referred to and finally resolved by binding arbitration under the Dispute Resolution Chapter.

19.0 SCHEDULE DESCRIPTION

19.1 The Tsawwassen First Nation Special Purposes Funds are set out in Schedule B which schedule forms part of this Agreement.

19.2 The Tsawwassen First Nation Own Source Revenue Annual Report set out in Schedules A1 and A2 is appended to this Agreement but does not form part of this Agreement, and does not alter any of the provisions of this Agreement.

20.0 AMENDMENT

20.1 No provision of this Agreement shall be deemed waived, amended or modified by any Party unless such waiver, amendment or modification is in writing and signed by the Parties.

21.0 SUBSEQUENT OWN SOURCE REVENUE AGREEMENT

21.1 Not later than eighteen months before the end of the term of this Agreement, or earlier if the Parties agree, the Parties will begin to negotiate and attempt to reach agreement on the own source revenue contribution of Tsawwassen First Nation to the funding of Agreed-Upon Programs and Services, in accordance with the Fiscal Relations Chapter.

21.2 If the Parties do not reach a further own source revenue agreement by the end of the term of this Agreement, this Agreement will continue in effect on the same terms and conditions for the duration of the term of the Tsawwassen First Nation Fiscal Financing Agreement then in effect, including any extension of term of that Tsawwassen First Nation Fiscal Financing Agreement in accordance with the provisions in that Tsawwassen First Nation Fiscal Financing Agreement.

22.0 NO IMPLIED WAIVER

22.1 No term or condition of this agreement, or performance by a Party of a covenant under this Agreement, will be deemed to have been waived unless the waiver is in writing and signed by the Party or Parties giving the waiver.

22.2 No written waiver of a term or condition of this Agreement, of performance by a Party of a covenant under this Agreement, or of default by a Party of a covenant under this Agreement, will be deemed to be a waiver of any other covenant, term or condition, or of any subsequent default.

23.0 FURTHER ASSURANCES

23.1 The Parties will execute any other documents and do any other things that may be necessary to carry out the intent of this Agreement.

24.0 INTERPRETATION

24.1 In this Agreement:

- (a) unless it is otherwise clear from the context, "including" means "including, but not limited to", and "includes" means "includes, but is not limited to";
- (b) the word "will" denotes an obligation that, unless this Agreement provides to the contrary, must be carried out as soon as practicable after the Effective Date or the event that gives rise to the obligation;
- (c) the word "or" is used in its inclusive sense, meaning A or B, or both A and B; and the word "and" is used in its joint sense, meaning A and B, but not either alone;
- (d) a reference to clauses A to B includes both clauses A and B;
- (e) headings and subheadings 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;
- (f) unless otherwise clear in context, a reference to a "clause", "subclause" or "Appendix" means a clause, subclause or appendix, respectively, of this Agreement;
- (g) a reference to a statute includes every amendment to it, whether amended before or after the Effective Date, every regulation made under it and any law enacted in substitution for it or in replacement of it;
- (h) unless it is otherwise clear from the context, a reference to a Schedule means a Schedule to this Agreement;
- (i) unless it is otherwise clear from the context, the use of the singular includes the plural, and the use of the plural includes the singular; and
- (j) all accounting terms have the meanings assigned to them under Generally Accepted Accounting Principles.

25.0 TIME OF THE ESSENCE

25.1 Time is of the essence in this Agreement.

26.0 SEVERABILITY

- 26.1 If any part of this Agreement is declared or held invalid for any reason, the invalidity of that part will not affect the validity of the remainder which will continue in full force and effect and be construed as if this Agreement had been executed without the invalid portion.

27.0 ENUREMENT

- 27.1 This Agreement will enure to the benefit of and be binding upon the Parties and their respective permitted assigns.

28.0 ASSIGNMENT

- 28.1 Unless otherwise agreed by the Parties, this Agreement may not be assigned, either in whole or in part, by any Party to it.

29.0 NOTICES

- 29.1 Unless otherwise agreed, a notice, document, request, approval, authorization, consent or other communication (each a "communication") required or permitted to be given or made under this Agreement must be in writing and may be given or made in one or more of the following ways:

- (a) delivered personally or by courier;
- (b) transmitted by facsimile transmission; or
- (c) mailed by prepaid registered post in Canada.

- 29.2 A communication will be considered to have been given or made, and received:

- (a) if delivered personally or by courier, at the start of business on the next business day after the business day on which it was received by the addressee or a responsible representative of the addressee;
- (b) if sent by facsimile transmission and if the sender receives confirmation of the transmission, at the start of business on the next business day after the business day on which it was transmitted; or
- (c) if mailed by prepaid registered post in Canada.

- 29.3 A communication must be delivered, transmitted to the facsimile number or mailed to the address of the intended recipient set out below:

For: **Canada**
Attention: Director of Funding Services
Indian and Northern Affairs Canada
600-1138 Melville Street
Vancouver, British Columbia V6E 4S3
Fax Number: (604) 775-7149

For: **British Columbia**
Attention: Minister of Aboriginal Relations and Reconciliation
Parliament Buildings
Victoria, British Columbia V8V 1X4
Fax Number: (250) 953-4856

For: **Tsawwassen First Nation**
Attention: Chief
#131 N. Tsawwassen Dr.
Delta, British Columbia, V4M 4G2
Fax Number: (604) 943-9226

29.4 A party may change its address or facsimile number by giving a notice of the change to the other Parties in the manner set out above.

Schedule A1

**Tsawwassen First Nation Own Source Revenue Annual Report
For the Year Ended March 31, 20XX**

This schedule calculates Tsawwassen First Nation's total own source revenues. This schedule excludes "amounts not included" per clause 5.0.

A. REVENUES WHOLLY FOR FEDERAL OSR CALCULATION

	Amount	Reference
Tax Revenues Received Under Tax Administration Agreement (TAA) with Canada		
Personal income tax	1	Clause 7.1(a)
Tsawwassen First Nation goods and services tax	2	Clause 7.1(a)
Other taxes		
(as identified)	3a	Clause 7.1(a)
(as identified)	3b	Clause 7.1(a)
Fines, interest, penalties on above taxes	4	Clause 7.1(a) and (c)
Total Tax Revenues Received Under TAA with Canada	5	Sum lines 1 through 4

TOTAL REVENUES WHOLLY FOR FEDERAL OSR CALCULATION	6		Line 5
--	----------	--	--------

B. REVENUES FOR GENERAL OSR CALCULATION

	Amount	Reference
Tsawwassen First Nation Tax Revenues Received (Other than through TAA with B.C. or Canada and Property Tax)		
Taxes received		
(as identified)	7a	Clause 7.1(b)
(as identified)	7b	Clause 7.1(b)
Fines, interest, penalties on above taxes	8	Clause 7.1(b) and (c)
Total Non-TAA Tax Revenues Received	9	Sum lines 7 through 8
Property Tax Revenue		
Total Property Tax received	10	Clause 7.1(a), 7.1(b) and 7.1(c)
Less payments included in line 10 collected on behalf of other taxing authorities	11	Clause 5.1(o)

Less the amount of Property Tax that would have been paid under the *School Act* by Tsawwassen Members and *Taxation (Rural Area) Act*

Less Property Tax paid by a persons who are not a Tsawwassen Members

TOTAL Net Property Tax

12	()	Clause 13.2(b)(iv)
13	()	Clause 13.2(b)(v)
14		Subtract lines 11 thru 13 from line 10

Capital Transfer Settlement Trust(s)

Aggregate distributions from Capital Transfer Settlement Trusts in the fiscal year

Less amounts elected to be exempt in the fiscal year

Less amounts in respect of transfers to Tsawwassen Members

TOTAL OSR in Respect of Capital Transfer Settlement Trust(s)

15		Clause 6.1
16	()	Clause 6.2(a)
17	()	Clause 6.2(b)
18		Subtract lines 165 and 17 from line 15

For Reference Only:

Capital Transfer exemption available, beginning of year

Capital Transfer payments deposited into the Capital Transfer Settlement Trust in the year

Less amounts distributed from the Capital Transfer Settlement Trust and elected to be exempt in the year

Capital Transfer exemption available, end of the year

a		Clause 6.3 – Line 'd', OSR report previous year
b		Clause 6.3(a)
c	()	Carry forward line 16
d		Subtract line c from the sum of lines a and b

Business and Property Income

Income from businesses and properties in the fiscal year

Business A

Business B

Property C

Property D

Less losses in the fiscal year

Business E

Business F

Property G

Property H

Net Income from businesses and properties

19a		Clause 8.1(a)(i) and 8.2
19b		Clause 8.1(a)(i) and 8.2
19c		Clause 8.1(a)(ii) and 8.2
19d		Clause 8.1(a)(ii) and 8.2
20a	()	Clause 8.1(a)(iii) and 8.2
20b	()	Clause 8.1(a)(iii) and 8.2
20c	()	Clause 8.1(a)(iv) and 8.2
20d	()	Clause 8.1(a)(iv) and 8.2
21		Subtract sum of lines 20 from sum of lines 19

Dispositions of capital property

Gains in the fiscal year

Less losses in the fiscal year

22		Clause 8.1(c)(i) and 8.2
23	()	Clause 8.1(c)(ii) and 8.2

Less unapplied losses from previous year	24	_____	Clause 8.1(c)(iii) and 8.
Total net gains from dispositions of capital property	25	(_____)	Subtract sum of lines 23 and 24 from line 22
For Reference Only:			
Unapplied prior year capital losses at beginning of the year	e	_____	Line 'I', OSR report previous year
Add current year capital loss not applied in the current year	f	_____	Carry forward portion of amount not used in line 23
Total unapplied losses available	g	_____	Add lines e and f
Less amounts applied in the year	h	(_____)	Carry forward line 24
Unapplied capital losses at end of the year	i	_____	Subtract line h from line g
 Dividends received from corporations			
(as identified)	26a	_____	Clause 8.1(b)(i) and 8.2
(as identified)	26b	_____	Clause 8.1(b)(i) and 8.2
 Distributions from trusts less returns of capital/loans			
(as identified)	27a	_____	Clause 8.1(b)(ii) and 8.2
(as identified)	27b	_____	Clause 8.1(b)(ii) and 8.2
 Distributions from partnerships less returns of capital/loans			
(as identified)	28a	_____	Clause 8.1(b)(ii) and 8.2
(as identified)	28b	_____	Clause 8.1(b)(ii) and 8.2
TOTAL Business and Property Income	29	_____	Sum lines 21, 25, and lines 26 through 28.
 Fees and Charges Revenue			
(as identified)	30a	_____	Clause 9.1
(as identified)	30b	_____	Clause 9.1
TOTAL NET Fees and Charges Revenue	31	_____	Sum lines 30
 Other Revenue Sources			
(as identified)	32a	_____	Clause 10.1
(as identified)	32b	_____	Clause 10.1
Less other provincial transfers included in line 32	33	_____	Clause 13.2(c)(iii)
TOTAL OSR from Other Revenue Sources	34	_____	Sum lines 31
 Less repayment of the principal amount of a previously included loan from a Tsawwassen-controlled entity			
	35	(_____)	Clause 11.2(b)
TOTAL REVENUES FOR GENERAL OSR CALCULATION	36	Subtract line 35 from the sum of lines 9, 14, 18, 29, 31 and 34	

Schedule A2

Tsawwassen First Nation's OSR Inclusion - Federal OSR Inclusion Calculation

This schedule serves as a template for calculating Tsawwassen First Nation's total OSR contribution for a given Fiscal Year per clause 13 of this Agreement.

	Amount		Reference
Total revenues wholly for federal OSR calculation	37		Carry forward Schedule A1, line 6
Total revenues for general OSR calculation	38		Carry forward Schedule A1, line 36
Total funding amount for federally supported programs and services	39		Clause 13.3 TFT definition
Total funding amount for provincially supported programs and services	40		Clause 13.3 TPT definition
Total funding	41		Sum lines 39 and 40
Federal portion of total funding	42	%	Divide line 39 by line 41
Federal share of total revenues for general OSR calculation	43		Multiply line 38 by line 42
TOTAL OSR FOR FEDERAL PURPOSES	44		Sum lines 37 and 43
Basic Exemption for Fiscal Year ____	45a	()	Table 1, Column 2, Clause 13.4
Price Adjustment Factor for Fiscal Year	45b	()	Clause 13.5
Adjusted Basic Exemption for Fiscal Year	45c	()	Multiply line 45a by line 45b
TOTAL OSR NET OF BASIC EXEMPTION	46		Subtract line 45c from line 44
Inclusion Rate for Fiscal Year ____	47	%	Table 1, Column 3, Clause 13.4
TOTAL OSR INCLUSION*	48		Multiply line 46 by line 47

* For purposes of calculating net fiscal transfer as per the Fiscal Financing Agreement, subject to transfer floor.

Schedule B

Tsawwassen First Nation Special Purpose Funds

Physical Works – Capital Asset Fund

A Tsawwassen fund, separately accounted for, funded solely with amounts transferred to that Fund by Tsawwassen First Nation pursuant to Table 1 of Schedule B of the initial Tsawwassen First Nation Fiscal Financing Agreement or analogous provision made in a subsequent Tsawwassen First Nation Fiscal Financing Agreement, or with income or gains derived by that fund and held for the purpose maintaining or replacing a defined set of capital assets set out in Schedule C of the initial Tsawwassen First Nation Fiscal Financing Agreement or analogous schedule in a subsequent Tsawwassen First Nation Fiscal Financing Agreement.

Fisheries Fund

The Tsawwassen Fisheries fund, referred to in the Fisheries chapter of the Tsawwassen First Nation Final Agreement, funded solely with funding referred to in Table 2 of Schedule B of the initial Tsawwassen First Nation Fiscal Financing Agreement or with income or gains derived by that fund and held for the purpose of implementing activities described in Schedule G of the initial Tsawwassen First Nation Fiscal Financing Agreement.

Implementation Fund

A Tsawwassen Implementation fund, funded solely with funding referred to in Table 2 Schedule B of the initial Tsawwassen First Nation Fiscal Financing Agreement or with income or gains derived by that fund and held for the purpose of implementing the activities described in Schedule G of the initial Tsawwassen First Nation Fiscal Financing Agreement.

Cultural Purposes Fund

The Tsawwassen Cultural Purposes Fund, referred to in the Culture and Heritage chapter of the Tsawwassen First Nation Final Agreement, funded solely with funding referred to in Schedule E, One Time Funding clause E.4 of the initial Tsawwassen First Nation Fiscal Financing Agreement or with income or gains derived by that fund and held for the purpose of implementing the activities described in Schedule E, One Time Funding clause E.4 of the initial Tsawwassen First Nation Fiscal Financing Agreement.