

INCREMENTAL TREATY AGREEMENT

BETWEEN

HOMALCO INDIAN BAND

AND

THE PROVINCE OF BRITISH COLUMBIA



Incremental Treaty Agreement

This Agreement is dated for reference _____, 2014

BETWEEN:

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

AND:

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

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

WHEREAS:

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

NOW THEREFORE the Parties agree as follows:

Article 1 - Interpretation

1.1 Definitions. In this Agreement:

"AIP" means the Homalco Agreement-in-Principle currently being negotiated by the Parties and Canada in accordance with Stage 4 of the British Columbia Treaty Commission process;

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

“Cameleon Harbour Parcel” means those lands shown for illustrative purposes as “Subject Land” in Map 5 of Schedule 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 Excluded Crown Corridor;

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

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

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

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

“Crawford Anchorage Parcel” means those lands shown for illustrative purposes as “Subject Land” in Map 1 of Schedule 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 Excluded Crown Corridor;

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

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

“Excluded Crown Corridor” means the area shown for illustrative purposes in Schedule 1 as “Excluded Crown Corridor” and, following completion and approval of the survey or re-survey of those lands, the area legally described in the survey, which will not be included in the Lands to be transferred under this Agreement;

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

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

“Hemming Bay Parcel” means those lands shown for illustrative purposes as “Subject Land” in Map 2 of Schedule 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*), the area of any Excluded Crown Corridor and the lands shown as “Excluded Log Sort” on the map attached as Schedule 2;

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

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

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

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

“Lands” means the Cameleon Harbour Parcel, Crawford Anchorage Parcel, Hemming Bay Parcel, Owen Bay Parcel, Thurston Bay Parcel and Young Passage Parcel, or any of them;

“Log Handling and Storage Areas” means those provincial Crown lands below the natural boundary (as defined in the *Land Act*) shown as “Log Booming Ground” on the map attached as Schedule 2;

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

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

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

“Owen Bay Parcel” means those lands shown for illustrative purposes as “Subject Land” in Map 6 of Schedule 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 Excluded Crown Corridor;

“Permitted Encumbrances” means the reservations, exceptions, liens, charges, and interests described in Schedule “9” 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;

“Thurston Bay Parcel” means those lands shown for illustrative purposes as “Subject Land” in Map 4 of Schedule 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 Excluded Crown Corridor;

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

“Young Passage Parcel” means those lands shown for illustrative purposes as “Subject Land” in Map 3 of Schedule 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 Excluded Crown Corridor.

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 Homalco Indian Band under this Agreement means the Homalco Indian Band acting by and through its Chief and Council, and will be conclusively deemed to have been given, or taken, by the Homalco Indian Band on its own behalf, and for and on behalf of its Members; and
- i. there will be no presumption that doubtful expressions, terms or provisions in this Agreement are to be resolved in favour of any Party.

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

Schedule 1: Maps of Lands

Schedule 2: Log Handling and Storage Areas

Schedule 3: Upland Owner Consent

Schedule 4: Statutory Right-of-Way Agreement

Schedule 5: Consent in Relation to Property Transfer Tax Matters

Schedule 6: Distribution Statutory Right of Way

Schedule 7: Agreement Of Designated Company.

Schedule 8: Confirmation of Designated Company's GST registration number and registered status

Schedule 9: Permitted Encumbrances

Article 2 - Reconciliation And Purpose

2.1 Reconciliation. The Homalco Indian Band acknowledges and agrees that, in the spirit of the New Relationship and to advance Final Agreement negotiations, the Lands transferred to the Homalco Indian Band in accordance with this Agreement constitute a contribution by the Province towards the reconciliation of the Province's and the Homalco Indian Band's interests and the settlement of the Homalco Indian Band's aboriginal rights and title claims within the Traditional Territory through treaty negotiations and, as such, the benefits provided to the Homalco Indian Band under this Agreement will be counted as a portion of the Province's contribution towards the Final Agreement settlement.

2.2 Purpose. The purpose of this Agreement is to:

- a. demonstrate the commitment of the Parties to concluding a Final Agreement; and
- b. provide the Homalco Indian Band with incremental treaty benefits in advance of a Final Agreement, in the spirit of the New Relationship, 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 and delivered by the Parties.
- 3.2 Termination.** This Agreement may be terminated in writing:
- a. by the Parties on a date mutually agreed on by the Parties; or
 - b. by either Party prior to the ministerial order authorizing the disposition of the Lands that are the subject of the ministerial order under paragraph 5.2g.
- 3.3 Termination on Litigation.** Notwithstanding paragraph 3.2, the Province may terminate this Agreement, including the transfer of any Lands which have not been completed, in the event the Homalco Indian Band commences any action or appeal of an existing action or other proceeding relating to any Government Action within the Traditional Territory.
- 3.4 Survival of Lands Conditions.** Notwithstanding paragraph 3.2, and subject to the Final Agreement, , Article 7 - (Condition of Lands) , Article 8 (Encumbrances and Excluded Crown Corridors) , Article 10 - (Other Covenants) and Article 12 - (Overlapping Claims) survive the completion of the transfers of any of the Lands and the termination of this Agreement and, for greater certainty, will continue to apply to the Lands.

Article 4 - Representations And Warranties

- 4.1 Homalco Indian Band Representations.** The Homalco Indian Band represents and warrants to the Province, with the intent and understanding that they will be relied on by the Province in entering into this Agreement, that:
- a. it enters into this Agreement for, and on behalf of, its Members;
 - b. its Members have provided it with a mandate to negotiate an AIP and a Final Agreement;
 - c. it, as represented by its Chief and Council, has the legal power, capacity and authority to enter into and to carry out its obligations under this Agreement on behalf of the Homalco Indian Band and its Members;
 - d. any company designated by the Homalco Indian Band for the purposes of this Agreement will be a Designated Company;
 - e. any Designated Company has the legal power, capacity and authority to enter into and to carry out its obligations under each agreement and transaction to which it is a party in accordance with this Agreement; and
 - f. the Province has fulfilled its obligation to consult with Homalco Indian Band in relation to the transfer of the Lands to a Designated Company and the Permitted Encumbrances on the Lands.

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

- a. it has the legal power, capacity and authority to enter into this Agreement; and
- b. on satisfaction or waiver of the conditions precedent under paragraph 5.1, 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 Homalco Indian Band will deliver to the Province a resolution made by its elected Council authorizing the Homalco Indian Band's representatives named in the resolution to execute this Agreement on behalf of the Homalco Indian Band.

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

- a. there being sufficient monies available in an appropriation, as defined in the *Financial Administration Act*, to enable the Province in any fiscal year, when any expenditure in respect of an obligation may be required, to make that expenditure;
- b. the Province and Canada reaching an agreement satisfactory to the Province, in its sole discretion, on or before the applicable Closing Date on cost sharing the value of the Lands for treaty settlement purposes;
- c. the representations and warranties of the Homalco Indian Band under this Agreement being true and correct on the applicable Closing Date;
- d. the Homalco Indian Band having complied with all covenants of the Homalco Indian Band under this Agreement on the applicable Closing Date;
- e. in respect of all previously transferred Lands, all obligations of the Homalco Indian Band and the Designated Company having been fully performed in accordance with this Agreement;
- f. surveys for the Lands having been completed on or before the applicable Closing Date;
- g. the minister responsible for the disposition of the Lands under provincial law having authorized the transfer ; and
- h. the Province having completed required consultation with overlapping First Nations regarding the transfer of the Lands and the results of those consultations being satisfactory to the Province.

5.3 Satisfaction of Conditions Precedent. The Province will not be required to attempt to satisfy the conditions precedent under paragraph 5.2 until such time as the Homalco Indian Band has notified the Province in writing that it is prepared to proceed with the transfer of the Lands under this Agreement.

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

Article 6 - Transfer Of Lands

6.1 Pre-Closing Deliveries by the Homalco Indian Band. The Homalco Indian Band will deliver to the Province a direction identifying the Designated Company that will take fee simple title to the Lands under paragraph 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 paragraphs 5.1 and 5.2, the Province will provide the Designated Company identified under paragraph 6.1 with a Crown Grant transferring the indefeasible title to the Lands as follows:

- a. Cameleon Harbour Parcel, Thurston Bay Parcel and Owen Bay Parcel within 120 days after the satisfaction or waiver of the condition referred to in subparagraph 5.2g in relation to those parcels, which the Province will seek as soon as practicable after the ITA Date;
- b. Crawford Anchorage Parcel, and Hemming Bay Parcel within 120 days after the satisfaction or waiver of the condition referred to in subparagraph 5.2g in relation to those parcels, which the Province will seek as soon as practical after the Chief and Council provides written notice to the Province that Homalco has approved the AIP; and
- c. Young Passage Parcel within 120 days after the satisfaction or waiver of the condition referred to in subparagraph 5.2g in relation to that parcel, which the Province will seek as soon as practicable after initialling of the Final Agreement.

6.3 Closing Deliveries by the Homalco Indian Band. On or before the Closing Date, the Homalco Indian Band will execute and deliver, or cause to be executed and delivered, or deliver, as the case may be, to the Province:

- a. upland owner consent granted by the Designated Company in the form attached as Schedule 3 in relation to the applicable Lands;
- b. a statutory right of way agreement granted by the Designated Company in the form attached as Schedule 4 in relation to Hemming Bay Parcel and Thurston Bay Parcel;
- c. a signed Consent of the Homalco Indian Band in relation to Property Transfer Tax form executed by the Homalco Indian Band, attached as Schedule 5;

- d. a distribution statutory right of way agreement granted by the Designated Company in the form attached as Schedule 6 in relation to the applicable Lands;
- e. an agreement granted by the Designated Company in the form attached as Schedule 7;
- f. a certificate signed by an officer of the Designated Company in the form attached as Schedule 8 confirming the Designated Company's GST registration number and registered status;
- g. a letter of undertaking signed by the Homalco Indian Band's legal counsel undertaking, among other things, that the Statutory Right of Way Agreement (Schedule 4) and Distribution Statutory Right of Way (Schedule 6) will be filed concurrently with the Crown Grant, and that the Province will be provided, as applicable, with signed copies of the Upland Owner Consent (Schedule 3), Consent in relation to Property Tax Matters (Schedule 5), Agreement of Designated Company (Schedule 7) and Confirmation of the Designated Company's GST registration number and registered status (Schedule 8); and
- h. all such other documents that may be necessary or advisable for the Homalco Indian Band 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 paragraph 6.2 will be registered in the Land Title Office.

6.5 Closing Procedure. The legal counsel for the Homalco Indian Band and the Province will confirm in writing the manner in which the documents necessary or advisable to transfer and register the Lands will be produced, managed, exchanged and delivered. Without limiting the generality of the foregoing, legal counsel responsible for registering the Lands will:

- a. provide a letter of undertaking to legal counsel for the other Party;
- b. use of the Land Title and Survey Authority electronic filing system; and
- c. provide all documents filed under 6.5b to legal counsel for the other Party.

Article 7 - Condition Of Lands

7.1 Lands "As Is". The Homalco Indian Band acknowledges and agrees that any of the Lands acquired by a Designated Company under this Agreement are acquired "as is".

7.2 Viability of Lands. The Homalco Indian Band acknowledges and agrees that the Province has not given any representation or warranty concerning:

- a. physical access to the Lands including, without limitation, overland access;
- b. the economic feasibility of the development of the Lands;
- c. the fitness of the Lands for any particular use, including the intended use of it by the Homalco Indian Band or by a Designated Company; and

- d. the provisions of any enactments or bylaws of any governmental body which relate to the development, use and occupation of the Lands.

7.3 Environmental Condition. The Homalco Indian Band:

- a. waives the requirement, if any, of the Province to provide a site profile as defined in the *Environmental Management Act* for any of the Lands; and
- b. acknowledges and agrees that the Province has not given any representation or warranty concerning the condition of the Lands (including surface water and groundwater), environmental or otherwise, including the presence or absence of any toxic, hazardous, dangerous or potentially dangerous substances on or under the Lands and on or under any surrounding or neighbouring land, and the current and past uses of the Lands and any surrounding or neighbouring land.

7.4 Environmental Remediation. The Homalco Indian Band will from and after the Closing:

- a. assume all environmental liabilities relating to the Lands including all liability for the clean-up of any toxic, hazardous, dangerous or potentially dangerous substances or conditions on or under the Lands or migrating from the Lands (including surface water and groundwater);
- b. indemnify and save harmless the Provincial Officials from and against all claims, demands, liabilities, losses, damages, costs or expenses suffered or incurred by them after the Closing arising out of or in connection with all environmental liabilities relating to the Lands, including any contamination or any other toxic, hazardous, dangerous or potentially dangerous substances migrating from the Lands; and
- c. release the Provincial Officials from and against all claims, demands, liabilities, losses, damages, costs, actions, causes of action, suits and proceedings with respect to all environmental liabilities relating to the Lands, including any contamination or any other toxic, hazardous, dangerous or potentially dangerous substances migrating from the Lands.

Article 8 - Encumbrances and Excluded Crown Corridors

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

8.2 Excluded Crown Corridors. Excluded Crown Corridors to be surveyed from the Lands will have a width of 30 meters centered on the centre line of the existing roads as shown approximately in Schedule 1 provided that if, prior to or during the process of surveying the Lands, the Province reasonably determines that more width is required for any portion of a road to deal with:

- a. a risk to the integrity of the existing road bed,
- b. an extraordinary hazard to the safe operation of traffic on the road, or
- c. any required improvement to the road,

then the Province may increase the width of the Excluded Crown Corridor to be surveyed from the Lands to the extent reasonably necessary to deal with the matter.

Article 9 - Transaction Costs

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

- a. the cost associated with ensuring the Lands have a survey which meets the requirements for registration in the Land Title Office;
- b. any other costs or fees associated with the preparation of Crown Grants or any other documents required to register the Lands and Permitted Encumbrances including, without limitation, any fees charged by the Land Title and Survey Authority; and
- c. property transfer tax which, for greater certainty, the Province agrees to either pay or waive the requirement to pay any property transfer tax payable under the *Property Transfer Tax Act*.

9.2 Public Utility Permitted Encumbrances. Notwithstanding paragraph 9.1, all costs associated with the surveying and registration of Permitted Encumbrances held by a public utility will be the responsibility of the public utility.

9.3 GST and Charges. The Homalco Indian Band is responsible for any federal or provincial sales tax, including GST and any other transfer or registration charges for which the Province has not expressly agreed to accept responsibility under the terms of this Agreement.

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

Article 10 - Other Covenants

- 10.1 **Other Homalco Indian Band Covenants.** The Homalco Indian Band further acknowledges and covenants that:
- a. 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 Homalco Indian Band seek to add any of the Lands to its reserve lands; and
 - b. the Lands are subject to provincial laws, including applicable zoning, land use, land development and property tax laws, and at no time after Closing will the Homalco Indian Band challenge the applicability of provincial laws to the Lands.
- 10.2 **Disposition of Interests in Lands.** The Homalco Indian Band may cause the Designated Company may charge or encumber the Lands provided that the Homalco Indian Band or the Designated company advises the intended charge or encumbrance holder in writing that the Lands may, on the Effective Date, be transferred by the Designated Company to the Homalco Indian Band and may become Homalco Lands.
- 10.3 **Indemnity for Charges.** The Homalco Indian Band will indemnify and save harmless the Province and all Provincial Officials from any and all damages, losses, liabilities or costs that they may suffer or incur in connection with or as a result of any suit, action, claim, proceeding or demand arising in connection with any charge or encumbrance of the Lands, the transfer of the fee simple estate in the Lands to the Homalco Indian Band and the Lands becoming Homalco Lands.
- 10.4 **Upland Owner Consent.** Homalco Indian Band acknowledges the Province’s interest in continuing to authorize log handling and storage operations in the Log Handling and Storage Areas after the transfer of the related upland areas to the Designated Company and agrees that if British Columbia has authorized or, for a period of ten years after the date this Agreement takes effect, does authorize the use of the Log Handling and Storage Area, or portions thereof, under a licence of occupation or other tenure for temporary log handling or storage, upon the written request of the Province, it will cause the Designated Company, as owner of the upland, to grant its consent to each such licence of occupation or other tenure by executing and delivering to the Province an Upland Owner Consent Agreement substantially in the form set out as Schedule 3 to this Agreement within ten (10) days of such request.

Article 11 - Status Of Lands On Effective Date

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

Article 12 - Overlapping Claims

- 12.1 Shared Territories.** The Homalco Indian Band will discuss the issue of overlaps and claimed shared territories with relevant First Nations and will make reasonable efforts to resolve any conflicts with those First Nations prior to the ITA Date.
- 12.2 Protocol with Campbell River Indian Band.** The Homalco Indian Band will continue to make best efforts to establish and maintain a protocol with the Campbell River Indian Band regarding territory shared by the two First Nations, including the resolution of any issues relating to the potential transfer of the Lands in accordance with this Agreement.
- 12.3 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 Homalco Indian Band in accordance with this Agreement, the Homalco Indian Band will provide the Province with reasonable assistance, upon request, in support of its defence of the action, proceeding, suit, claim or demand.

Article 13 - Existing Litigation

- 13.1 Legal Proceedings.** The Parties acknowledge that there is no existing litigation which requires abeyance for the purposes of this Agreement.
- 13.2 New Litigation.** Before commencing any action or other proceeding relating to any Government Action within the Traditional Territory, the Homalco Indian Band will
- a. notify the Province of any interests it may have that may be impacted by the Government Action; and
 - b. participate in the dispute resolution process set out in paragraphs 14.1 and 14.2.

Article 14 - Dispute Resolution

- 14.1 Representatives.** If a dispute arises between the Province and the Homalco Indian Band regarding the interpretation of a provision of this Agreement or prior to the Homalco Indian Band bringing any action or other proceeding contemplated by paragraph 13.2, the Parties or their duly appointed representatives will meet as soon as is practicable to attempt to resolve the dispute.
- 14.2 Senior Representatives.** If the Parties are unable to resolve differences at the appropriate level, the interpretation issue or litigation under 13.2 will be raised to more senior levels of the Province and the Homalco Indian Band.
- 14.3 Other Means.** The Parties may choose other appropriate approaches to assist in reaching resolution of the interpretation issue.

Article 15 - Notices

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

if to the Province:

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

and if to the Homalco Indian Band:

The Homalco Indian Band
1218 Bute Crescent
Campbell River, BC V9H 1G5
Attention: Chief Councillor
Fax: (250) 923-4987

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

Article 16 - General

- 16.1 Entire Agreement.** This Agreement is the entire agreement between the Parties in respect of the subject matter of this Agreement and, except as set out in this Agreement, there is no representation, warranty, collateral agreement, condition, right or obligation affecting this Agreement. The Schedules to this Agreement form part of this Agreement.
- 16.2 Further Acts and Assurances.** Each of the Parties will, upon the reasonable request of the other, make, do, execute or cause to be made, done or executed all further and other lawful acts, deeds, things, devices, documents, instruments and assurances whatever for the better and absolute performance of the terms and conditions of this Agreement.
- 16.3 No Implied Waiver.** Any waiver of:
- a. a provision of this Agreement;
 - b. the performance by a Party of an obligation under this Agreement; or
 - c. a default by a Party of an obligation under this Agreement,

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

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

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

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

16.6 Not a Treaty. This Agreement does not:

- a. constitute a treaty or land claims agreement within the meaning of section 25 or 35 of the *Constitution Act, 1982* ; or
- b. recognize, affirm, define, deny, limit or amend any aboriginal rights or titles or any responsibilities of the Parties except as set out in this Agreement.

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

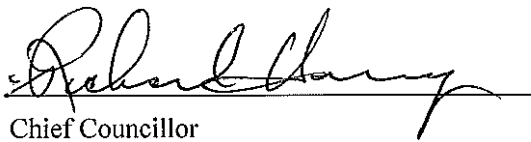
16.8 Amendment. This Agreement may be amended from time to time by the Parties by an instrument in writing. No term of this Agreement may be amended or waived except by written instrument.

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


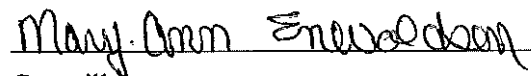
16.10 Execution in Counterpart. This Agreement may be entered into by each Party signing a separate copy of this Agreement (including a photocopy or facsimile copy) and delivering it to the other Party by facsimile transmission.

IN WITNESS WHEREOF the Parties have executed this Agreement as set out below:

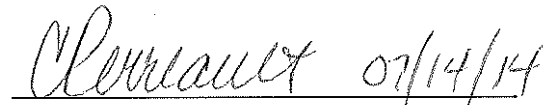
Signed on behalf of the Homalco Indian Band by:




Chief Councillor
Homalco Indian Band


Witness Date

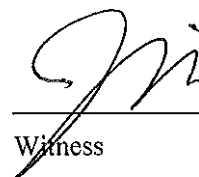
Councillor
Homalco Indian Band


Witness Date

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



Minister John Rustad
Minister of Aboriginal Relations and
Reconciliation


Witness Date

Base map derived from 1:20,000 TRIM data
Cadastral derived from Crown Land Registry
Services and Land Title Office
Land District: Range 1 Coast District
BCGS Mapsheet No.: 092K-043
UTM Zone 10

**Homalco Indian Band
Incremental Treaty Agreement**

Legend

- Subject Land
- Excluded Crown Corridor
- Right of Way
- UTM Coordinate
- Survey Parcel
- Provincial Protected Area
- Provincial Conservancy Area
- Road (Gravel)

Point of Commencement
Southwest corner of DL 1669,
Range 1 Coast District,
thence clockwise.

Key Map

**Map 2
Hemming Bay**

Base map derived from 1:20,000 TRIM data
Cadastral derived from Crown Land Registry
Services and Land Title Office
Land District: Range 1 Coast District
BCGS Mapsheet No.: 092K033 and 092K 034
UTM Zone 10

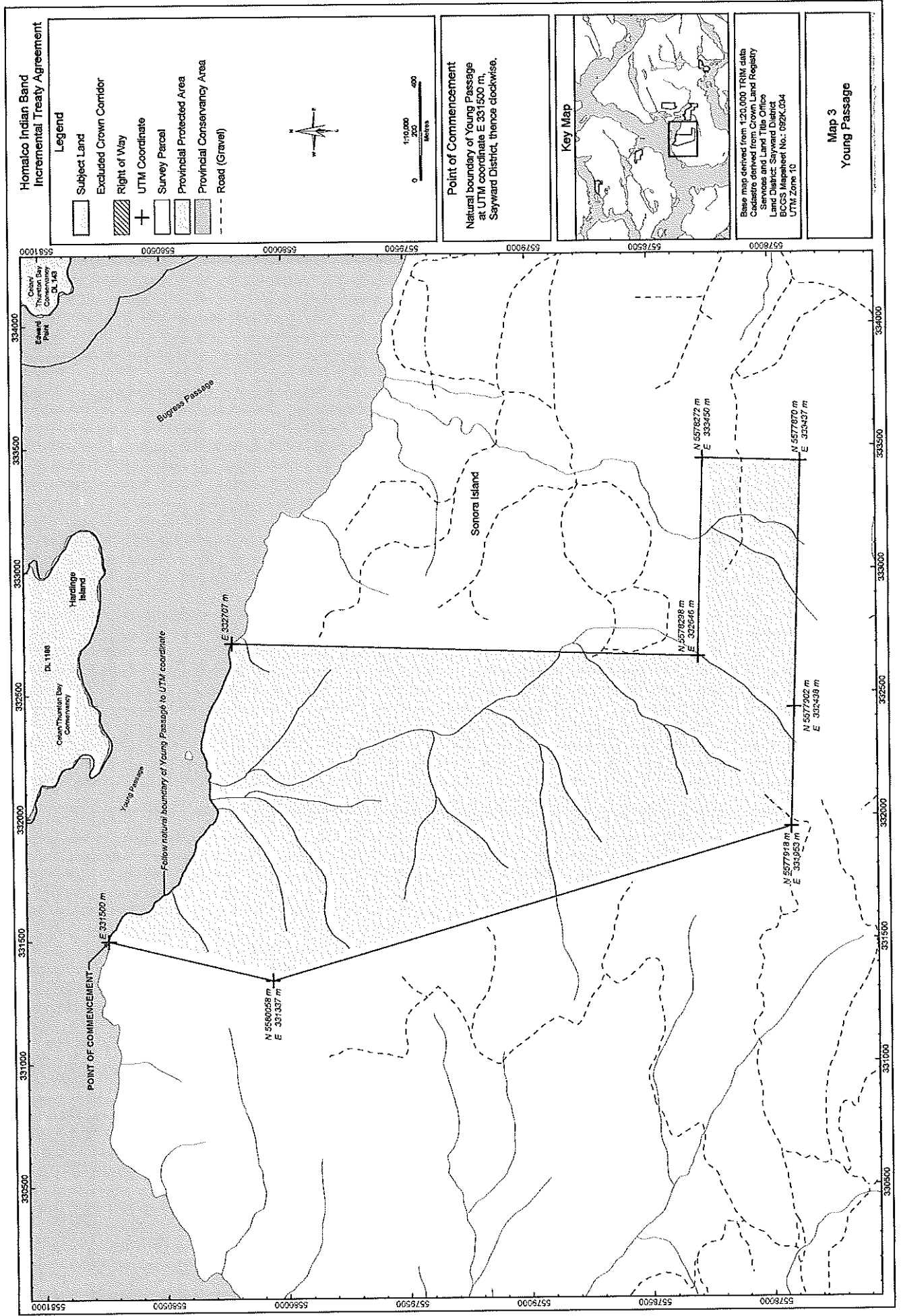
	Point of Commencement
Southwest corner of DL 1669, Range 1 Coast District, thence clockwise.	

Key Map

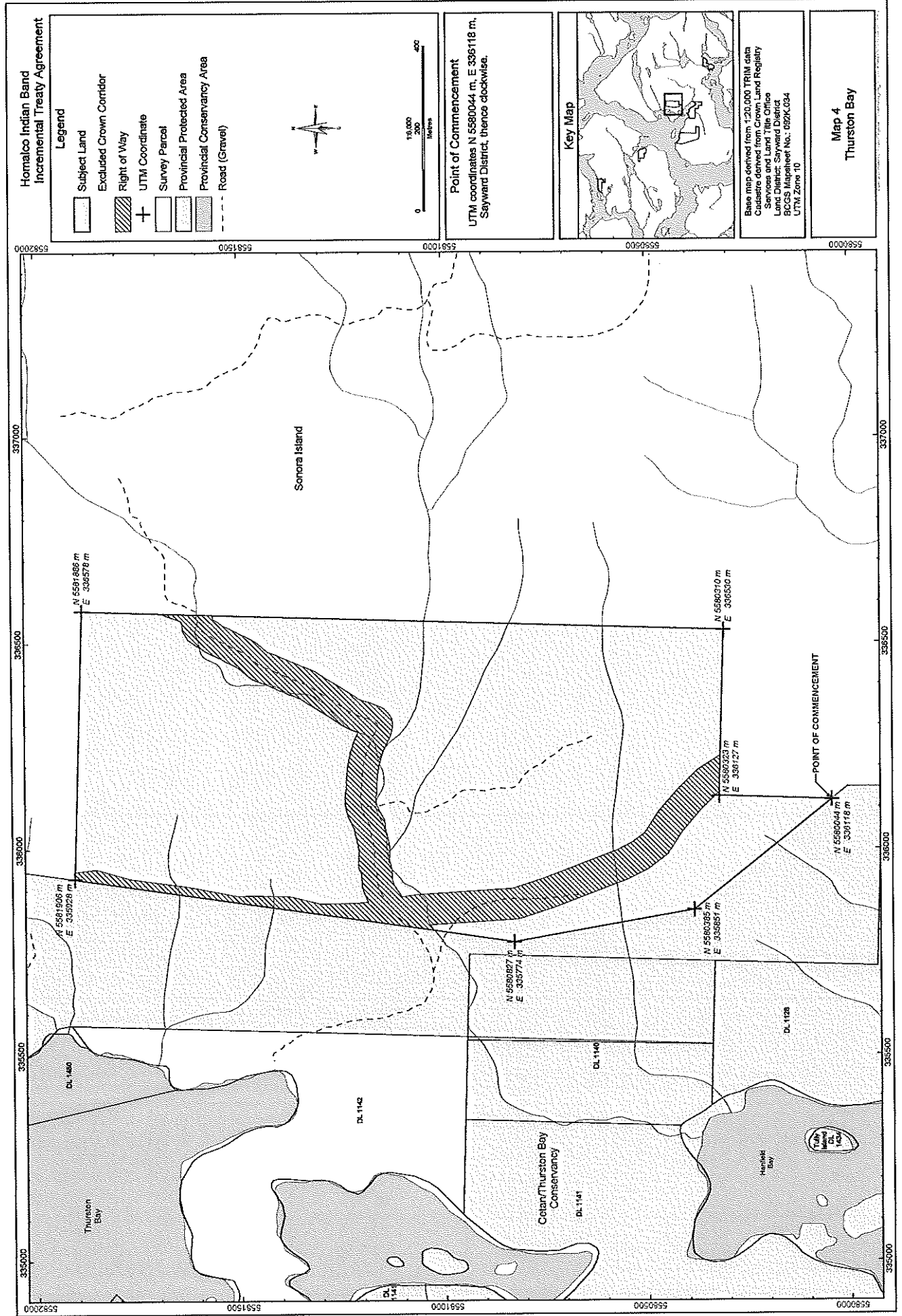
Base map derived from 1:20,000 TRIM data
Cadastral derived from Crown Land Registry
Services and Land Title Office
Land District: Range 1 Coast District
BCGS Mapsheet No.: 092K.033 and 092K.034
UTM Zone 10

Map 2
Hemming Bay

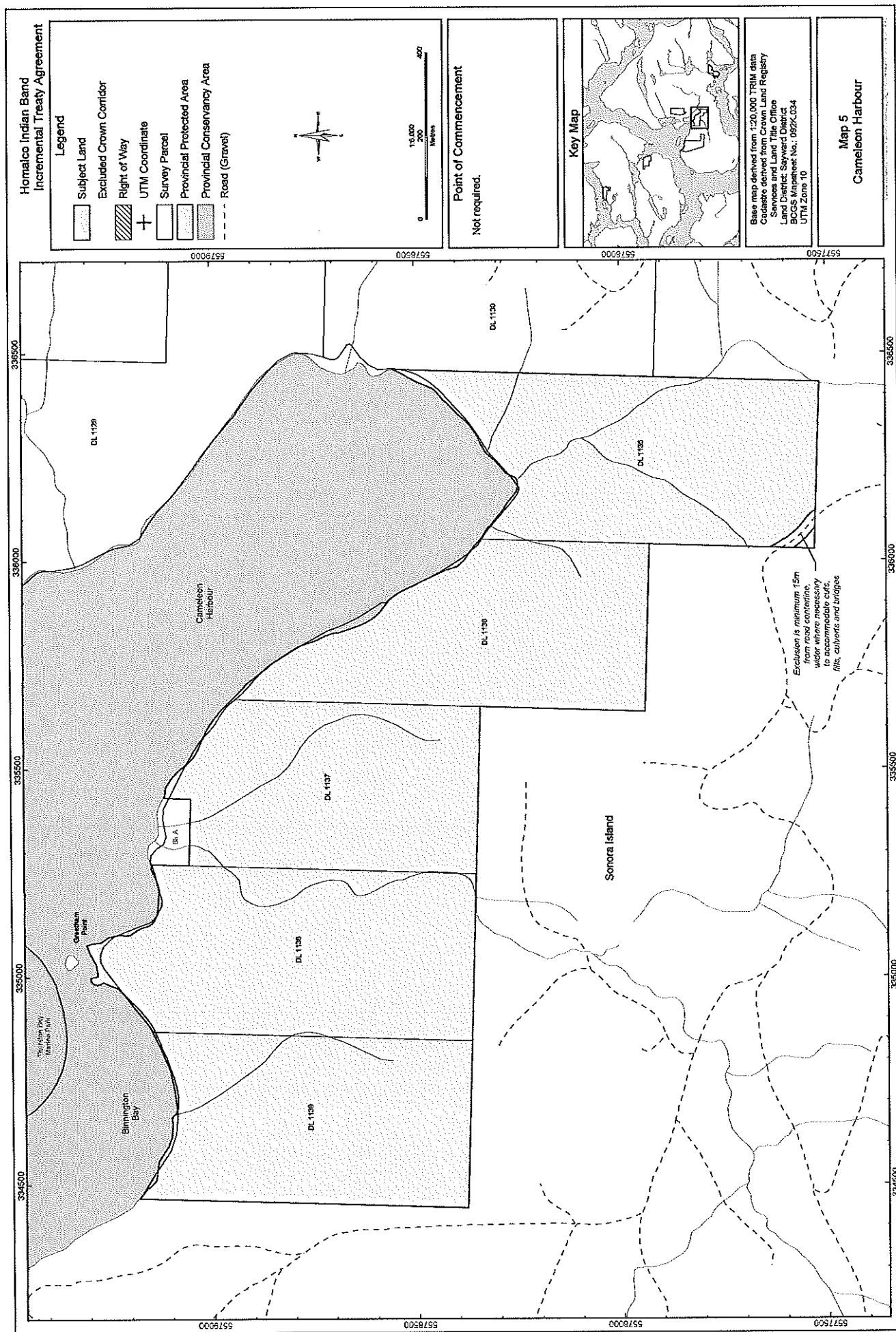
Homalco Incremental Treaty Agreement Schedule 1: Maps of Lands



Homaico Incremental Treaty Agreement Schedule 1: Maps of Lands



Homalco Incremental Treaty Agreement Schedule 1: Maps of Lands



Honolalo Indian Band Incremental Treaty Agreement

Legend

- Subject Land
- Excluded Crown Corridor
- Right of Way
- UTM Coordinate
- Survey Parcel
- Provincial Protected Area
- Provincial Conservancy Area
- Road (Gravel)

Point of Commencement
Northeast corner of DL 1095,
Seward District, thence clockwise.

Key Map

Base map derived from 1:20,000 TRIM data
Cadastral derived from Crown Land Registry
Services and Land Title Office
Land District: Seward District
BCGS Mapsheet No.: 095K-034
UTM Zone 10

Map 6
Owen Bay

Base map derived from 1:20,000 TRIM data
Cadastral derived from Crown Land Registry
Services and Land Title Office
Land District: Sayward District
BCGS Mapsheet No.: 092K.034
UTM Zone 10

Map 6
Owen Bay

**Homalco Indian Band
Incremental Treaty Agreement**

Legend

- Homalco Log Sort Tenure
- Tenure requiring upland owner consent
- Proposed ITA Land
- Right of Way
- Excluded Crown Corridor
- Survey Parcel
- Provincial Protected Area
- Provincial Conservancy Area
- Road (Gravel)

Key Map

Scale

0 100 Meters

Map Information

Base map derived from 1:20,000 TRIM data
Cadastral derived from Crown Land Registry
Services and Land Title Office
Land District:
BCGS Mapsheet No.:
UTM Zone 10

**Log Dump Tenure and
Upland Owner Consent**

Hemling Bay

Pythorn Island

DL 1470

DL 1472

DL 1471

DL 1473

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Log Dump Tenure and Upland Owner Consent

Schedule 3: Upland Owner Consent

TO: Her Majesty the Queen in Right of the Province of British Columbia, as represented by
_____ (**"British Columbia"**)

FROM: (**"the Designated Company"**)

WHEREAS:

- A. Her Majesty the Queen in the Right of the Province of British Columbia as represented by The Minister of Aboriginal Relations and Reconciliation and the Homalco Indian Band have entered into an Agreement date as of _____ (the **"Agreement"**) whereby the **"Designated Company"** is acquiring fee simple title the lands described in the Agreement as Henning Bay Parcel (the **"Upland"**)
- B. British Columbia is the owner in fee simple of the parcel or tract of land being the foreshore fronting on the Upland and all land covered by water adjoining the Upland (the **"Foreshore"**);
- C. The Upland and Foreshore are adjacent to each other and the Designated Company is entitled to exercise its riparian right of access to the Upland by crossing the Foreshore;
- D. British Columbia wishes to interfere with the Designated Company's riparian right of access to the Upland by authorizing, under licence of occupation (the **"Licence"**), the use of the identified portions of the Foreshore for the purpose of log handling and storage operation on the portion of the Foreshore shown outlined in heavy bold on Schedule 2 to the Agreement (**"Log Booming Ground"**) pursuant to a licence dated _____ and numbered _____, which has a term (the **"Term"**) expiring _____; and
- E. The Designated Company is prepared to consent to such interference pursuant to the provisions set out below;

NOW THEREFORE THIS CONSENT WITNESSES that in consideration of the sum of ONE (\$1.00) dollar and other good and valuable consideration, now paid by British Columbia to the Designated Company (the receipt and sufficiency of which is hereby acknowledged), the parties agree as follows:

- 1. The Designated Company, as owner of the Upland, on the terms set forth herein, hereby consents to British Columbia, as owner of the Foreshore, and its servants, employees, agents, contractors, tenants, invitees, licensees and all those claiming through them, interfering, in accordance with the Licence, with the Designated Company's right, as owner of the Upland, to pass and repass over the Log Handling and Storage Area to gain access to and from the Upland.
- 2. The Designated Company acknowledges and agrees that the Consent hereby given entitles British Columbia to authorize its servants, employees, agents, contractors, tenants, invitees, licensees, and all those claiming through them, in accordance with the Licence (collectively, the **"Log Handling and Storage Area Users"**), to:
 - (a) construct, erect, place, install, moor, maintain, replace, renovate and repair buildings, structures, works, improvements and chattels (collectively, the

(b) do all other acts within the Log Handling and Storage Area, reasonably necessary or incidental to the purposes authorized and approved in connection with the Licence.

- IN WITNESS WHEREOF, the Designated Company and British Columbia have duly executed this Agreement as of the ____ day of 20__.

EXECUTED in the presence of:)

) **HER MAJESTY THE QUEEN IN**

) **RIGHT OF THE PROVINCE OF**

) **BRITISH COLUMBIA as represented**

) **by the Minister of ***** or duly authorized**

) **signatory**

)

)

)

)

)

)

As to the authorized signatory for the)
Minister of Aboriginal Relations and)
Reconciliation)

) _____

) Per: Minister of Aboriginal Relations and
Reconciliations

)

As to the authorized signatory for the Minister of Aboriginal Relations and Reconciliation

HER MAJESTY THE QUEEN IN
) RIGHT OF THE PROVINCE OF
) BRITISH COLUMBIA as represented
) by the Minister of ***** or duly authorized
) signatory

Per: Minister of Aboriginal Relations and Reconciliations

EXECUTED in the presence of:)

The Designated Company

)
)
)
)
)
)
)
)
)

As to the authorized signatory for
Homalco Capital Assets Inc.

Authorized Signatory

LAND TITLE ACT
FORM C

(Section 233)

Province of British Columbia

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

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

**Ministry of Forests Lands and
Natural Resource Operations
Forest Tenures Branch
Forest Land Acquisitions
1810 Blanshard Street,
P. O. Box 9510, Stn. Prov. Govt.
Victoria, British Columbia V8W 9C2
Telephone: (250) 387-8649**

Signature

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

(PID) (Legal Description)

NO PID

TBD

3. NATURE OF INTEREST:*

Description

Document Reference
(page and paragraph)

Person Entitled to Interest

Statutory Right-of-Way Agreement

**Her Majesty the Queen in Right of the
Province of British Columbia as
represented by the Minister of Forest
Lands and Natural Resource Operations**

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

- (a) Filed Standard Charge Terms
(b) Express Charge Terms
(c) Release

- ☐ D.F. No.
☒ Annexed as Part 2
☐ 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.

5. TRANSFEROR (GRANTOR):*



Terms of Instrument

STATUTORY RIGHT OF WAY AGREEMENT

This Agreement dated for reference this _____ day of _____, 2013 is made:

BETWEEN:

("the Grantor")

AND: HER MAJESTY THE QUEEN IN RIGHT OF THE PROVINCE OF
BRITISH COLUMBIA, AS REPRESENTED BY THE MINISTER OF
FORESTS, LANDS AND NATURAL RESOURCE OPERATIONS,
c/o FOREST TENURES BRANCH, FOREST LAND
ACQUISITIONS, 1810 BLANSHARD STREET, P.O. BOX 9510,
STATION PROVINCIAL GOVERNMENT, VICTORIA,
BRITISH COLUMBIA, V8W 9C2

(the "Grantee")

WHEREAS:

A. The Grantor is the registered owner of land legally described as

PID – [Legal description to be established on deposit of surveys: vicinity of DL 1140, Sayward District;
DL 1670 Range 1 Coast District; DL 1671, Range 1 Coast District; and vicinity of DL 1670, Range 1
Coast District]

(the "Lands")

- B. The Grantor has agreed to grant to the Grantee on the terms and conditions set out in this Agreement a statutory right-of-way pursuant to Section 218 of the *Land Title Act* (the "Right-of-Way") on the Lands.
- C. The Right-of-Way is necessary for the operation and maintenance of an undertaking of the Grantee.

THE GRANTOR AND THE GRANTEE NOW AGREE AS FOLLOWS:

Now therefore, in consideration of the amount described below and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Grantor and the Grantee now agree as follows:

1. Grant of Right-of-Way

The Grantor grants to the Grantee and to the Grantee's employees, agents, invitees, licensees, permittees and contractors:

- a) a non-exclusive Right-of-Way in common with the Grantor and the Grantor's employees, agents, invitees, licensees, permittees and contractors to pass and repass along, and over the Lands; and
- b) the right to survey, build, upgrade, modify and maintain roads (the "Roadways") within the portion of the Lands indicated by the hatched area shown on the map attached as Schedule "A" to this agreement as "right-of way" (the "Roadway Areas"), for purposes consistent with the *Forest Act*, the *Forest and Range Practices Act* or the *Wildfire Act* (but not for the purpose of parking vehicles or placing any vehicle or equipment so as to block any cross-road, driveway or entrance or exit ramp).

2. Grantee Expenditures

- a) All improvements made to existing roads within the said Lands by the Grantee shall for all purposes be deemed to be the property of the Grantee, notwithstanding any presumption of law to the contrary.
- b) None of the payments made under this Agreement will be considered as toll charges, nor establish any consideration of an income stream for the determination of just compensation.

3. Payment

During the term of this Agreement, the Grantee will pay the Grantor a fee of \$1.00, the receipt and sufficiency of which is hereby acknowledged, for the rights herein granted.

4. Terms of Agreement

- a) The term of this Agreement will be until the Grantee, in its sole discretion, determines that sufficient Roadways exist within the Roadway Areas, at which time the Grantee will apply to have this Right of Way released from the title to the Lands.
- b) It is agreed that, without derogating from the fact that this Right-of-Way is granted over all the Lands, the Grantee agrees, as a personal covenant rather than a modification of the Right-of-Way, that the exercise of the right to pass and repass along, and over Lands granted hereby shall only be exercised by it and by its employees, agents, invitees, contractors and licensees along and over the Roadway Areas.
- c) The Grantee may survey a Roadway at any place in the Roadway Areas, which shall have a width of 30 meters centered on the centre line of the Roadway, provided that if, prior to or during the process of surveying the Roadway, the Grantee reasonably determines that more width is required for any portion of a Roadway to deal with:

- (i) a risk to the integrity of the road bed,
- (ii) an extraordinary hazard to the safe operation of traffic on the road, or
- (iii) any required improvement to the road,

then the Grantee may increase the width of the Roadway to be surveyed to the extent reasonably necessary to deal with the matter.

- d) At the request of the Grantee, the Grantor agrees to sign any document and plan or do any act that is required by the Grantor as owner of the Lands to dedicate the Roadway as public land or otherwise transfer or return the Roadway to the Grantor in fee simple under the *Land Title Act*, provided only that the Grantee shall pay all the fees and costs that may be payable by the Grantor for doing so, and will further pay all the survey costs and related expenses to have the *Land Title Act* plan prepared, executed and submitted for deposit.
- e) Upon the dedication, transfer or return of the Roadway under this Agreement, the Grantee will provide compensation to the Grantor for any improvements that the Grantor had made to the Roadway including any road which forms part of the Roadway and, for greater certainty, such compensation will be consistent with provincial legislation and will account for any previous compensation or payment made by the Grantee to any person for improvement, development or maintenance related to the Roadway.

5. Promises

a) The Grantee will:

- (i) use, and permit the use of, the Right-of-Way only for the purposes set out in article 1 and for no other purpose without the express written consent of the Grantor, which consent shall not be unreasonably withheld;
- (ii) use, and permit the use of, the Right-of-Way so as not to cause any damage or disturbance to the Right-of-Way or the Lands and in particular, but without limitation, to the natural drainage pattern of the Lands;
- (iii) use its best efforts to prevent, control and extinguish any fire on the Roadway Area or any lands immediately adjacent to the Roadway Area which the Grantee, its employees, agents, invitees, licensees, permittees or contractors may cause, and will conform to and observe the provisions of the *Wildfire Act* (as amended or replaced from time to time) and any other statutes and regulations that are in force or may in the future be enacted or made regarding the prevention of fires. The Grantee will reimburse the Grantor for any costs or expenses the Grantor incurs to fight fires for which the Grantee is responsible;
- (iv) indemnify and save harmless the Grantor from and against any and all losses, claims, damages, actions, causes of actions, costs and expenses that the Grantor may sustain, incur, suffer or be put to arising out of the use of the Right-of-Way by the Grantee, its employees, agents, invitees, licensees, permittees or contractors, excepting always liability arising out of the acts or omissions of the Grantor, its employees, agents, invitees, licensees, permittees or contractors;

- (v) comply with any laws, regulations, bylaws, standards, policies, directions, permits or orders of any duly constituted authority governing, affecting, or in any way related to the use of the Right-of-Way;
- (vi) ensure that the use of the Right-of-Way by the Grantee, its employees, agents, invitees, licensees, permittees or contractors does not impair or obstruct the condition of the Right-of-Way;
- (vii) ensure that the Right-of-Way remains in an environmentally sound, clean, safe and orderly condition, and free from all waste, including, without limitation, wood waste relating to the use of the Right-of-Way by the Grantee, its employees, agents, invitees, licensees, permittees or contractors;
- (viii) not claim any indemnity or compensation from the Grantor for any loss, damage, injury or expense (including, without limitation, in respect of bodily injury or death of any person or loss or damage to any property) caused by the condition of the Right-of-Way, except to the extent that such loss, damage, injury or expense arises from the negligent acts or omissions of the Grantor or any party for whom they are responsible;
- (ix) where possible, to exercise its Right-of-Way on existing suitable roads within the Lands rather than constructing new roads, the suitability of such existing roads to be determined by the Grantee in its sole discretion; and
- (x) notify the Grantor seven days in advance of any construction, modification, upgrade or maintenance of a road.

b) The Grantor will:

(i) not do or knowingly permit to be done any act or thing which will interfere with or injure the use, construction or maintenance of the Right-of-Way.

6. Notice

Any notice, document or communication required or permitted to be given under this agreement must be in writing and will be deemed to have been given if delivered by hand, courier, or double-registered mail to the party to whom it is to be given as follows:

To the Province:

Forest Land Acquisitions
Forest Tenures Branch
Ministry of Forests, Lands and Natural Resource Operations
PO Box 9510 Stn Prov Govt
Victoria , British Columbia V8W 9C2

To the Grantor:

or at such other addresses as the parties hereto may from time to time designate in writing.

7. Status of Agreement

This Agreement shall be registered in the Land Title Office and constitutes a charge running with the Lands.

8. Entire Agreement

This Agreement constitutes the entire agreement between the Grantor and the Grantee regarding the Right-of-Way and supersedes all prior agreements and understandings between them. There are no representations, promises, agreements or understandings between the Grantor and the Grantee concerning the Right-of-Way that are not expressly set out in this Agreement.

9. Enurement

This Agreement will enure to the benefit of and be binding upon the Grantor and the Grantee and their respective successors and permitted assigns. The word *Grantor* is deemed to include the heirs, executors, administrators, successors, and assigns, wherever the context so admits.

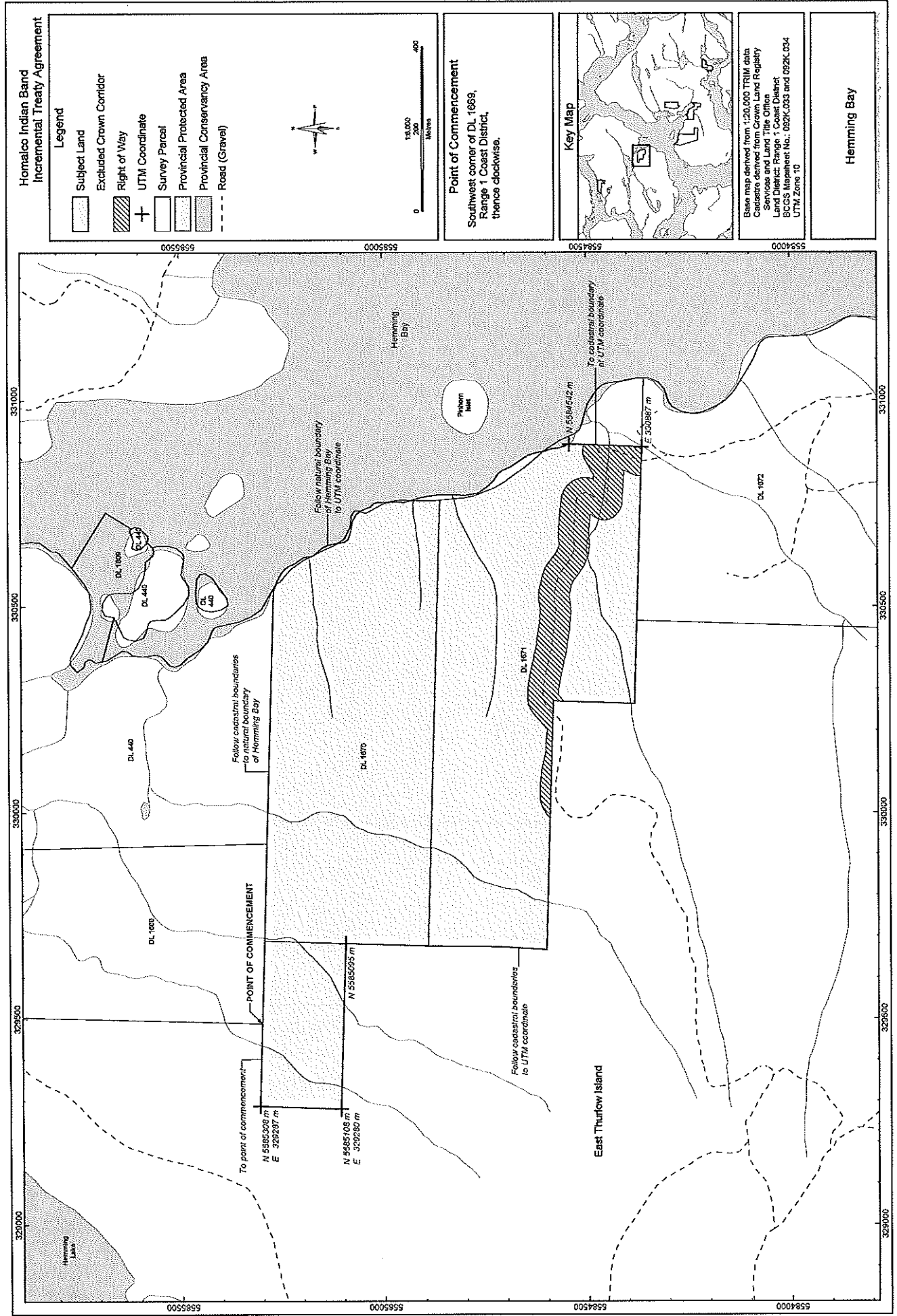
10. Governing Law

This Agreement will be governed by and construed in accordance with the laws in force from time to time in British Columbia.

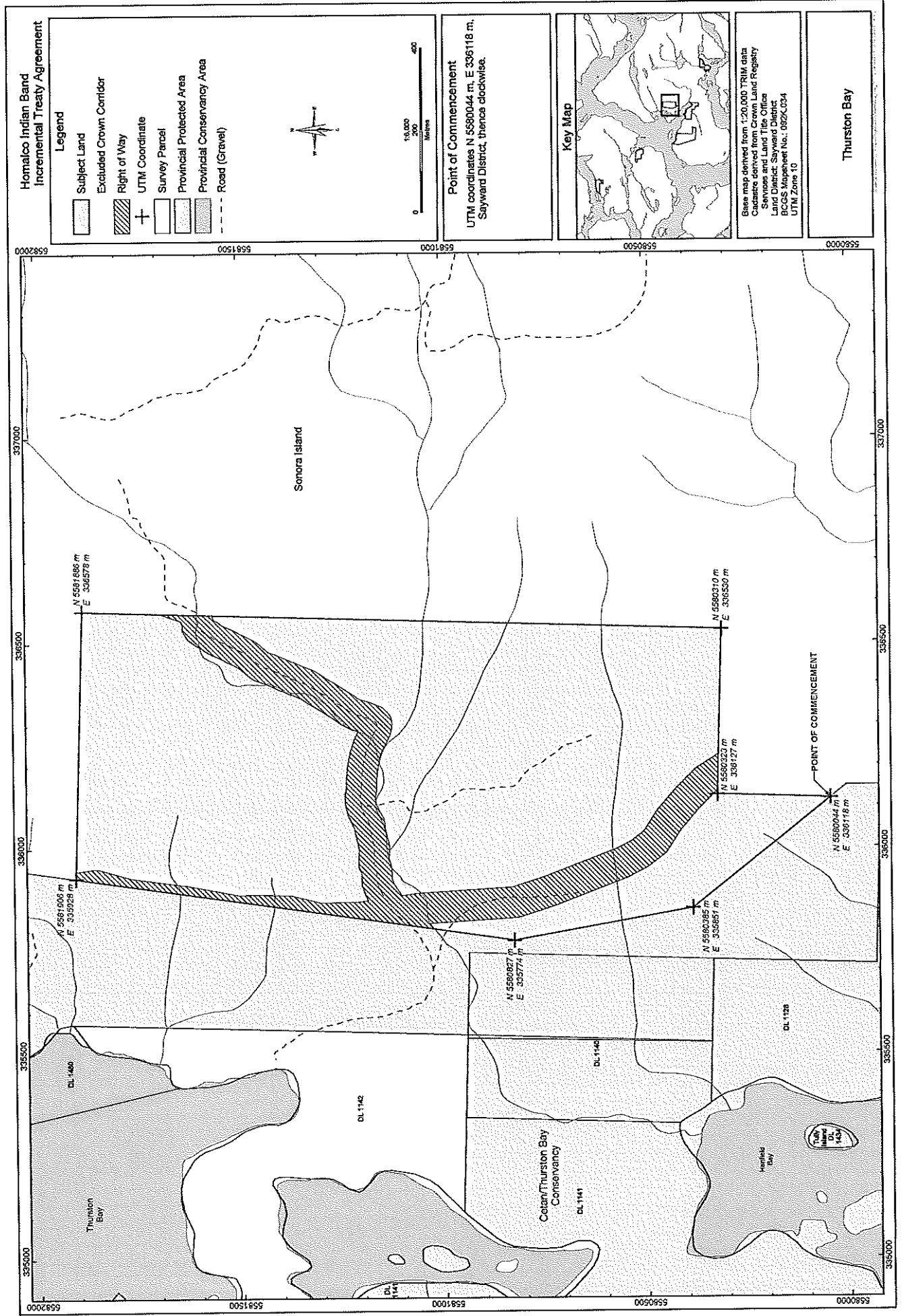
11. Arbitration

If any dispute shall arise between the parties concerning the rights and obligations contained in this Agreement created herein, which dispute cannot be resolved by agreement, then the dispute shall be resolved pursuant to the *Commercial Arbitration Act* of the Province of British Columbia; and the parties agree that in the event of an arbitration under the *Commercial Arbitration Act* costs will be determined in accordance with the tariff of the *Rules of Court* instead of in accordance with the provisions of the *Commercial Arbitration Act*.

Homalco Incremental Treaty Agreement
Schedule 4: Statutory Right of Way Agreement



Homalco Incremental Treaty Agreement
Schedule 4: Statutory Right of Way Agreement





Schedule 5

Consent of Homalco Indian Band in relation to Property Transfer Tax Matters

TO WHOM IT MAY CONCERN:

1. Article 9.1 of the Incremental Treaty Agreement (the Agreement) between the Province of British Columbia and the Homalco Indian Band, executed _____, 2014, 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 the Homalco Indian Band 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 _____, 2014

Signature of the duly authorized signatory for the Homalco Indian Band

Name and Title (please print)

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 19 page(s)

1. APPLICATION: (Name, address, phone number and signature of applicant, applicant's solicitor or agent)
MAI REMPEL, Solicitor for British Columbia Hydro and Power Authority, 8th Floor - 333 Dunsmuir
Street, Vancouver, BC, V6B 5R3, Telephone: 604-623-4132

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
STATUTORY RIGHT OF WAY	ENTIRE INSTRUMENT	TRANSFeree (British Columbia Hydro and Power Authority)
STATUTORY RIGHT OF WAY	ENTIRE INSTRUMENT	TRANSFeree (TELUS Communications Inc.)

4. TERMS: Part 2 of this instrument consists of (select one only)
- (a) Filed Standard Charge Terms ☐ D.F. Number: •
- (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.

5. TRANSFEROR(S): *
- _____ LTD.

6. TRANSFeree(S): (including postal address(es) and postal code(s))*
- BRITISH COLUMBIA HYDRO AND POWER AUTHORITY**, 12th Floor - 333 Dunsmuir Street,
Vancouver, B.C., V6B 5R3 and **TELUS COMMUNICATIONS INC.** 15079 – 64th Avenue, First
Floor, Surrey, B.C., V3S 1X9 (Registration No. A055547),

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

Y

M

D

[Y]

[M]

[D]

Party(ies) Signature(s)

LTD.,

by its authorized signatory(ies):

Name: _____

Name: _____

(as to all signatures for the Transferor
only)

OFFICER CERTIFICATION:

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.

LAND TITLE ACT
FORM D

EXECUTIONS CONTINUED

PAGE 3 of 19 page(s)

Officer Signature(s)

(as to all signatures for British Columbia
Hydro and Power Authority only)

Execution Date

Y	M	D
[Y]	[M]	[D]

Party(ies) Signature(s)

**BRITISH COLUMBIA HYDRO
AND POWER AUTHORITY**, by its
authorized signatory(ies):

Name:

Name:

Officer Signature(s)

(as to all signatures for TELUS
Communications Inc. only)

Execution Date

Y	M	D
[Y]	[M]	[D]

Party(ies) Signature(s)

TELUS COMMUNICATIONS INC.,
by its authorized signatory(ies):

Name:

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.

**EXPRESS CHARGE TERMS
(DISTRIBUTION STATUTORY RIGHT OF WAY)**

WHEREAS:

A Hydro and TELUS wish to obtain from the Grantor a statutory right of way for certain rights on, over and under the Lands, as hereinafter defined;

B The Grantor has agreed to grant to each of Hydro and TELUS a statutory right of way in respect of the Lands; and

C The statutory right of way herein granted is necessary for the operation and maintenance of each of Hydro's and TELUS's undertaking.

NOW THEREFORE THIS AGREEMENT WITNESSES THAT in consideration of the premises and of other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged by each of the parties, the parties hereto covenant and agree as follows:

1.0 Definitions

1.1 In this Agreement:

- (a) **"Affiliate"** has the meaning ascribed to it in the Business Corporations Act, S.B.C. 2002, c. 57, as amended or replaced from time to time and, in the case of TELUS, includes an affiliate (as defined in that Act) of TELUS and any partnership or other unincorporated association in which TELUS or any affiliate (as defined in that Act) of TELUS has a controlling interest;
- (b) **"Agreement"** means the General Instrument and any attached schedule, and includes these Filed Terms;
- (c) **"Area of the Works"** means those portions of the Lands located within 6 metres of either side of the center of the alignment of the Works and includes the Right of Way Area;
- (d) **"Environment"** means all the components of the earth including, without limitation, all layers of the atmosphere, air, land (including, without limitation, all underground spaces and cavities and all lands submerged under water), soil, water (including, without limitation, surface and underground water), organic and inorganic matter and living organisms, the interacting natural systems that include the foregoing and all other external conditions or influences under which humans, animals and plants live or are developed;
- (e) **"Excluded Right of Way Area"** means any right of way area or corridor that is not part of the Lands but in whole or in part passes through the Lands or is adjacent to such Lands;
- (f) **"Filed Terms"** means these filed standard charge terms;

- (g) **“General Instrument”** means the Form C General Instrument – Part 1, which refers to these Filed Terms and any other pages attached thereto;
- (h) **“Grantor”** means the person named as the transferor in Item 5 of the General Instrument;
- (i) **“Hydro”** means British Columbia Hydro and Power Authority;
- (j) **“Lands”** means the lands and premises legally described in Item 2 of the General Instrument;
- (k) **“Right of Way Area”** means those portions of the Lands more particularly described in Section 3 of this Agreement, as may be modified under this Agreement;
- (l) **“TELUS”** means TELUS Communications Inc.; and
- (m) **“Works”** means:
 - (i) as it relates to the rights and responsibilities of Hydro, all things and components, using any type of technology from time to time, necessary or convenient for the purposes of transmitting and distributing electricity and for the purpose of telecommunications related to the business of Hydro, including: poles, towers, antennae (except for monopole free standing antennae), guy wires, brackets, crossarms, insulators, above ground or underground transformers, anchors, attachments, lines, access nodes and cables, including underground or fibre optic cables, underground conduits, lines and pipes of every kind, cabinets, all ancillary appliances and fittings, reasonably required associated protective installations and related works such as fencing for safety or security, devices and identifying colours for aircraft warning, and utility services for the operation of any of the foregoing, but does not include transmission towers or any electrical works operated at a voltage of 69 kV or higher;
 - (ii) as it relates to the rights and responsibilities of TELUS, all things and components, using any type of technology from time to time, necessary or convenient for the purpose of telecommunications, including: poles, towers, guy wires, brackets, crossarms, insulators, transformers, anchors, attachments, lines, access nodes, public pay telephone equipment and enclosures, and cables, including fibre optic cables, in whole or in part and underground conduits, lines and pipes of every kind, underground cables, including fibre optic cables, together with all ancillary appliances, fittings and cabinets and above ground or underground equipment shelters.

1.2 With respect to any obligation on the part of Hydro or TELUS under this Agreement, any reference to Hydro or TELUS includes their respective servants, officers, employees, agents, contractors, sub-contractors, invitees, licensees, successors, permitted assigns, and those for whom either or both of them is responsible in law.

2.0 Grant of Right of Way

2.1 The Grantor grants over the Lands separately to each of Hydro and TELUS and their respective employees, representatives, contractors, agents, licensees, successors and assigns, for so long as required, the uninterrupted right, liberty and right of way to:

(a) use the Right of Way Area as follows:

- (i) excavate for, construct, install, erect, abandon, replace, extend, upgrade, operate, maintain, alter, remove and repair the Works on, over, in, under, across and through the Right of Way Area; and
- (ii) clear the Right of Way Area and keep it cleared (including pruning or removal) of any trees or growth at any time located therein;

(b) use the Area of the Works as follows:

- (i) enter, work, pass and repass upon, on, and along the Area of the Works;
- (ii) construct, maintain, repair, replace and use trails, roads, lanes, and bridges on the Area of the Works including, in addition, any portions reasonably required adjacent to the Area of the Works for the sake of continuity, with or without equipment, machinery and materials to such extent as may reasonably be required by Hydro or TELUS in relation to this Agreement;
- (iii) clear the Area of the Works and keep it cleared of all or any part of any obstruction, improvement or other matter which, in the reasonable opinion of Hydro or TELUS, does or might interfere with or endanger the Works, disrupt service to Hydro's or TELUS's customers, or pose a hazard to persons or property in relation to the Works; and
- (iv) clear the Area of the Works and keep it cleared (including pruning or removal) of all or any part of any trees or growth which do or might, in the opinion of Hydro or TELUS, interfere with or endanger the Works, disrupt service to Hydro's or TELUS's customers, or pose a hazard to persons or property in relation to the Works;

and Hydro or TELUS, as the case may be, must compensate the owner of any obstruction, improvement or other matter removed under paragraph 2.1(b)(iii) above that was in existence before the affected Works were installed;

(c) to enjoy further rights as follows:

- (i) Hydro and TELUS may, with the prior approval of the Grantor and any party with a registered interest in the affected areas, such approval not to be unreasonably withheld, delayed or conditioned, cut trees or growth outside the Area of the Works, if in the opinion of Hydro or TELUS such trees or growth might interfere with or endanger the Works (whether on or

off the Lands) or pose a hazard to persons or property in relation to the Works. Hydro and TELUS, as the case may be, will, except in an emergency, give the Grantor written notice prior to exercising their rights under this Section;

- (ii) Hydro and TELUS may pass and repass over, and maintain, repair, replace and use, all trails, roads, lanes, and bridges on the Lands outside of the Area of the Works with or without equipment, machinery and materials to such extent as may reasonably be required by Hydro or TELUS in relation to this Agreement;
- (iii) if there are no suitable trails, roads, lanes, or bridges under paragraph 2.1(c)(ii), Hydro and TELUS may either:
 - (1) construct, maintain, repair, replace and pass and repass over trails, roads, lanes or bridges on the Lands; or
 - (2) pass and repass over the Lands elsewhere than on trails, roads, lanes and bridges, with or without equipment, machinery and materials to such extent as may reasonably be required by Hydro or TELUS in relation to this Agreement, subject to prior approval of the route by the Grantor, such approval not to be unreasonably withheld, conditioned or delayed. Notwithstanding the foregoing, Hydro and TELUS do not require such approval if there is an emergency or a reasonably apprehended emergency or for the determination of electricity consumption, but will report to the Grantor the purpose and extent of the access as soon as practicable;
- (iv) to conduct vegetation management upon the Area of the Works, such as the planting of vegetation compatible with the undertakings of Hydro or TELUS, and the application of herbicides and pesticides with the consent of the Grantor, provided that Hydro and TELUS will not conduct any aerial application of herbicides or pesticides on the Lands;
- (v) to install, maintain and use gates in all fences which are now or hereafter shall be on the Right of Way Area and in fences affecting access to the Area of the Works;
- (vi) to ground any structures, installation or things, by whomsoever owned, from time to time situated anywhere on the Right of Way Area or adjacent Lands where, in the reasonable opinion of Hydro and TELUS, such grounding will eliminate or reduce hazards to persons or property in relation to the Works;
- (vii) Hydro and TELUS may enter onto the Lands outside the Area of the Works for the purpose of undertaking works to protect any Works located within the Lands or within an Excluded Right of Way Area or to protect persons or property that may be at risk from such Works, provided that:

- (1) Hydro or TELUS will before commencing such works deliver to the Grantor for approval a written work plan describing the proposed work on the Lands;
- (2) the Grantor will not unreasonably withhold, condition or delay approval of such work plan, and shall take into consideration the effect of the proposed work, the cost of the proposed work compared to the cost of alternate solutions and the extent of the risk of not undertaking the work. If Hydro or TELUS, as the case may be, and the Grantor cannot agree on a work plan requested by Hydro or TELUS within 30 days of receipt by the Grantor of the proposed work plan, then either party may refer the disagreement to dispute resolution under Section 18.1 of this Agreement;
- (3) Hydro or TELUS, as the case may be, will pay compensation for any damage to the Lands resulting from the implementation of the work plan;
- (4) if Hydro or TELUS, as the case may be, determines in its reasonable judgment that an emergency situation exists or there are imminent safety concerns, Hydro and TELUS may, without approval of the Grantor, undertake works and take such steps on the Lands as are reasonably required to be taken immediately in order to protect the Works, or to protect persons or property that may be at risk from the Works, and in that event Hydro or TELUS will as soon as reasonably possible thereafter notify the Grantor; and
- (5) generally, do all such other acts or things as may reasonably be necessary or incidental to the business of Hydro or TELUS in connection with any of the above.

3.0 Right of Way Area

3.1 The Right of Way Area consists of:

- (a) all portions of the Lands reasonably required for the following:
 - (i) those Works existing at the date of this Agreement;
 - (ii) any additional Works constructed adjacent to, along the sides of or across any roads, lanes or bridges from time to time existing on or through the Lands;
 - (iii) any additional Works that provide service to any lands adjacent to any roads, lanes, or bridges from time to time existing on or through the Lands;

- (iv) any additional Works that provide service to any lands or customers where the landowners of any intervening parcels consent to the installation of any such Works; and
- (b) any such other portions of the Lands as may from time to time be consented to in writing by the Grantor, or by any delegate appointed by the Grantor.

3.2 The parties agree that the sketch plan attached to this Agreement as Schedule "A" reasonably represents the approximate location of the Works existing as of the date of this Agreement. Hydro and TELUS agree to provide the Grantor on request with an updated sketch of the Works if the Works have been extended in the previous calendar year, unless such information is available to the Grantor on line. The Parties confirm that this Agreement, and all of its terms and provisions, shall apply to such new works in their entirety.

3.3 Nothing in this Article 3 is intended to affect the rights of Hydro or TELUS to make arrangements directly with a person in legal possession of any lands for the construction, operation and maintenance of the Works and all matters incidental thereto.

4.0 Non-Exclusive Use

4.1 Notwithstanding anything else in this Agreement, Hydro and TELUS acknowledge and agree that:

- (a) this Agreement does not grant a fee simple interest in the Lands, but rather grants a non-exclusive use over the Area of the Works; and
- (b) subject to the rights granted to Hydro and TELUS in this Agreement, the Grantor may grant to third parties other interests on the Area of the Works, provided that any such grant or other interests shall not compromise or, by action of the Grantor or the Grantee, damage, disrupt, adversely affect or interfere with the use by Hydro and TELUS of the Works or Area of the Works.

5.0 Protection of the Environment

5.1 Hydro and TELUS will undertake activities permitted under this Agreement having regard for the impact on the Environment, and will take prudent measures to minimize any danger or disruption to the Environment. Hydro and TELUS, as the case may be, will remediate in accordance with applicable provincial or federal environmental legislation any damage they respectively may cause to the Environment.

6.0 Covenants of Hydro and TELUS

6.1 Hydro and TELUS each covenant separately with the Grantor to:

- (a) pay and discharge when due all applicable taxes, levies, charges and assessments now or hereafter assessed, levied or charged to the account of Hydro or TELUS,

as the case may be, which relate to the Right of Way Area and which Hydro or TELUS is liable to pay;

- (b) keep the portions of the Lands used by Hydro or TELUS under this Agreement in a safe, clean and sanitary condition to the extent the condition relates to the use or occupation by Hydro or TELUS of such Lands, as the case may be, provided that Hydro and TELUS have no obligation to keep any roads within the Area of the Works suitable for use by anyone except Hydro and TELUS;
- (c) bury and maintain all underground Works as may be required so as not to unduly interfere with the drainage of the Lands;
- (d) if any human remains, burial pit or grave are unearthed or discovered on the Lands by either Hydro or TELUS, immediately notify the Grantor, cease any further activity that could affect the site until permitted by the Grantor to resume activity and take such reasonable steps and precautions to protect the site as may be directed by the Grantor;
- (e) if any archaeological material is unearthed or discovered on the Lands by either Hydro or TELUS, immediately notify the Grantor, cease any further activity that could affect the site until permitted by the Grantor to resume activity, and take such reasonable steps and precautions to protect the site as may be directed by the Grantor. At the request of the Grantor, Hydro or TELUS, as the case may be, will deliver such artifact to a location on the Lands as directed by the Grantor, at the expense of the Grantor if such expense is significant;
- (f) not bury debris or rubbish of any kind on the Lands in excavations or backfill, and to remove shoring and similar temporary structures as backfilling proceeds; and
- (g) not commit or suffer any willful or voluntary waste, spoil or destruction on the Right of Way Area, or do or suffer to be done thereon anything that may be or become a nuisance to the Grantor, except to the extent required by Hydro or TELUS, acting reasonably, to exercise the rights granted under this Agreement.

7.0 New Works Constructed by Hydro or TELUS

- 7.1 Prior to undertaking construction on the Lands of any new Works which are not alterations, extensions or additions to existing Works, Hydro or TELUS, as the case may be, will deliver to the Grantor, for prior approval, a sketch plan showing with reasonable accuracy the location of such proposed Works, which approval will not be unreasonably withheld, delayed or conditioned.

8.0 Relocation of Hydro and TELUS Works Due to Change

- 8.1 If a material change occurs to the Lands, such as erosion, which for any reason makes the continued use of any portion of the Right of Way Area or an Excluded Right of Way Area unsuitable for any of the Works, then the Grantor will, at no cost to Hydro and

TELUS, consent to the relocation and replacement of such Works to a new location on the Lands, as follows:

- (a) Hydro or TELUS, as the case may be, will, before undertaking any work, deliver a sketch plan to the Grantor indicating the contemplated relocation of the Works for approval by the Grantor, which approval will not be unreasonably withheld, delayed or conditioned;
- (b) Hydro or TELUS, as the case may be, will take into account any likely material effect of the relocated Works on adjacent lands, and the Grantor will take into account the cost efficiencies of the location selected by Hydro or TELUS for the relocated Works in relation to alternative locations;
- (c) the relocated Works will be subject to the terms and conditions of this Agreement; and
- (d) subject to the foregoing, the cost of such relocation will be borne by Hydro or TELUS, as the case may be.

9.0 Relocation of Hydro Works at the Request of the Grantor

9.1 If the Grantor requires a portion of the Right of Way Area for other purposes, then upon written request by the Grantor, Hydro will relocate any Works in the Right of Way Area to a new location on the Lands, provided that:

- (a) the new location is, in the reasonable opinion of Hydro, suitable for use for the relocated Works considering construction, maintenance and operation, and cost factors;
- (b) the Grantor gives Hydro reasonable notice to permit proper design, planning and construction of the Works to be relocated;
- (c) before any relocation, the Grantor has paid the reasonable costs and expenses of the relocation, including costs of design, supervision and construction as estimated by Hydro, with appropriate adjustments based on actuals after the relocation is complete; and
- (d) the relocated Hydro Works will be subject to the terms and conditions of this Agreement.

10.0 Relocation of TELUS Works at the Request of the Grantor

10.1 If the Grantor requires a portion of the Right of Way Area for other purposes, then upon written request by the Grantor, TELUS will relocate any Works in the Right of Way Area to a new location on the Lands, provided that:

- (a) the new location is, in the reasonable opinion of TELUS, suitable for use for the relocated Works considering construction, maintenance and operation, and cost factors;
- (b) the Grantor gives TELUS reasonable notice to permit proper design, planning and construction of the Works to be relocated;
- (c) before any relocation, the Grantor has paid the reasonable costs and expenses of the relocation as estimated by TELUS, including costs of design, supervision and construction with appropriate adjustments based on actuals after the relocation is complete; and
- (d) the relocated TELUS Works will be subject to the terms and conditions of this Agreement.

11.0 Fencing

- 11.1 With the exception of transformer stations and equipment shelters, Hydro and TELUS will not fence the Area of the Works without the prior consent of the Grantor, such consent not to be unreasonably withheld, delayed or conditioned.

12.0 Inspections

- 12.1 It will be lawful for the Grantor at all reasonable times to enter upon the Right of Way Area for the purposes of visually inspecting the Right of Way Area and the Works, or carrying out tests, surveys and inspections at its own expense that do not interfere with the Works. If the Grantor requires access to any Area of the Works that has been fenced off or enclosed, the Grantor will notify Hydro and TELUS, who will provide such safe access as may be reasonably required by the Grantor for visual inspection.

13.0 Restoration

- 13.1 When a portion of the Right of Way Area is no longer required for the Works, Hydro or TELUS, as the case may be, will restore the ground surface of the affected portion of the Right of Way Area, as near as is reasonably practicable to its condition prior to the installation of the Works, including the removal of any above ground Works, underground transformers and, where practicable and at the request of the Grantor, any cables located within underground ducts in such portion of the Right of Way Area.
- 13.2 Sections 13.1 and 13.2 will survive the expiration or any termination of this Agreement.

14.0 Removal of Works

- 14.1 If certain Works are no longer required by Hydro and TELUS under this Agreement:
 - (a) Hydro or TELUS, as the case may be, may, subject to the consent of the Grantor, abandon the Works and transfer to the Grantor all ownership, right and interest in the whole or part of the Works. If the consent of the Grantor is not obtained

within one year after the date of the expiration of the Agreement, Hydro or TELUS, as the case may be, will remove the above ground Works, underground transformers and, where practicable and at the request of the Grantor, any cables located within underground ducts as soon as reasonably possible in the circumstances; and

- (b) Hydro or TELUS, as the case may be, will decommission any roads constructed by either Hydro or TELUS pursuant to paragraph 2.1(c)(iii), which are no longer required in relation to such Works, unless otherwise requested by the Grantor.

14.2 Hydro will remain liable for any damage to the Environment arising from any below ground Works that remain on or in the Right of Way Area after the expiration of this Agreement, except that if the Grantor uses or authorizes the use of the remaining below ground Works for any purpose, then Hydro will not be liable for any damage to the Environment caused by the Grantor's use, or authorized use.

14.3 TELUS will remain liable for any damage to the Environment arising from any below ground Works that remain on or in the Right of Way Area after the expiration of this Agreement, except that if the Grantor uses or authorizes the use of the remaining below ground Works for any purpose, then TELUS will not be liable for any damage to the Environment caused by the Grantor's use, or authorized use.

14.4 Sections 14.1, 14.2, 14.3 and 14.4 will survive the expiration or any termination of this Agreement.

15.0 Covenants of the Grantor

15.1 The Grantor covenants with Hydro and TELUS that:

- (a) Hydro and TELUS shall and may peaceably enjoy and hold the rights granted in this Agreement without interruption, disturbance, molestation or hindrance whatsoever from the Grantor or any other person lawfully claiming from or under the Grantor, provided however that nothing in this section 15.1 shall limit the Grantor's right of inspection pursuant to section 12.1;
- (b) the Grantor will not permit or make, place, erect, operate, use or maintain any building, structure, foundation, pavement, excavation, well, pile of material, fill, obstruction, equipment, thing or inflammable substance, or plant any growth upon the Area of the Works, if any such action or thing, in the reasonable opinion of Hydro or TELUS:
 - (i) may interfere with or endanger the Works or any part thereof or the installation, operation, maintenance, removal or replacement of the Works or any part thereof;
 - (ii) may obstruct access to the Works or any part thereof by those authorized by Hydro or TELUS; or

- (iii) may by its operation, use, maintenance or existence on the Area of the Works create or increase any hazard to persons or property in relation to the Works;
- (c) the Grantor will not carry out blasting or aerial logging operations on or adjacent to the Area of the Works without prior written permission from Hydro and TELUS, which permission will not be unreasonably withheld, conditioned or delayed; and
- (d) the Grantor will not diminish or increase the ground elevation in the Area of the Works by any method, including piling any material or creating any excavation, drain, or ditch in the Area of the Works, unless permission in writing from Hydro and TELUS has first been received, which permission will not be unreasonably withheld, conditioned or delayed.

16.0 Compensation for Damages

16.1 Subject to the rights granted in this Agreement, Hydro and TELUS covenant with the Grantor that if Hydro or TELUS, or their respective contractors, damage any structures, buildings, fixtures, improvements, or chattels outside the Area of the Works, or damage any crops, merchantable timber, livestock, drains, ditches, culverts, fences, trails, bridges, or roads on the Lands, or contaminate the Lands in the exercise of vegetation management rights under paragraph 2.1(c)(iv), and such damage is not caused as a result of the Grantor's breach of the terms of this Agreement, or the negligence or willful act of the Grantor or its contractors, agents or permittees, then Hydro or TELUS, as the case may be, will:

- (a) compensate the Grantor for such damages, to the extent caused by Hydro or TELUS;
- (b) compensate the Grantor for, and remediate the Lands from, such contamination, to the extent caused by Hydro or TELUS; or
- (c) within a reasonable period of time, repair in a good and workman-like manner any damaged structure, building or improvement, as closely as is practicable to its condition immediately prior to the damage.

16.2 Compensation paid to the Grantor for merchantable timber pursuant to Section 16.1 will be in accordance with generally accepted principles of timber valuation and the parties agree that on payment, title to any timber cut on the Lands under this Agreement will vest in Hydro or TELUS, as the case may be.

17.0 Indemnity

17.1 Hydro will at all times save harmless and indemnify the Grantor from and against all claims, demands, actions, suits or other legal proceedings by whomsoever made or brought against the Grantor by reason of or arising out of:

- (a) any breach, violation or non-performance by Hydro of any of Hydro's covenants, conditions or obligations under this Agreement; and
- (b) any act or omission on the part of Hydro in respect of or in relation to its Works including the construction, maintenance, operation or decommissioning of its Works, and the exercise of vegetation management rights pursuant to paragraph 2.1(c)(iv) herein, but only to the extent any such matter is found to be the responsibility of Hydro, and was not contributed to by the negligence, breach, violation or non-performance of the Grantor, and not for any matters based on nuisance or the rule in *Rylands v. Fletcher* unless Hydro was negligent.

17.2 TELUS will at all times save harmless and indemnify the Grantor from and against all claims, demands, actions, suits or other legal proceedings by whomsoever made or brought against the Grantor by reason of or arising out of:

- (a) any breach, violation or non-performance by TELUS of any of TELUS' covenants, conditions or obligations under this Agreement; or
- (b) any act or omission on the part of TELUS in respect of or in relation to its Works including the construction, maintenance, operation or decommissioning of its Works, but only to the extent any such matter is found to be the responsibility of TELUS and was not contributed to by the negligence, breach, violation or non-performance of the Grantor.

18.0 Dispute Resolution

18.1 Any dispute arising out of or in connection with this Agreement will be resolved as follows:

- (a) the parties will attempt to resolve disputes by negotiations, including timely disclosure of all relevant facts, information and documents;
- (b) either party may, at any time, by written notice request that the dispute be referred to mediation, conducted by a mediator, knowledgeable about the matters in dispute;
- (c) if the dispute is not resolved within 30 days of the notice to mediate under subsection (b), or any further period of time agreed to by the parties, then, on the agreement of the parties, the dispute may be referred to a single arbitrator for final resolution in accordance with the British Columbia Commercial Arbitration Act. If the parties do not agree to arbitration, then any party may refer the matter to a court of competent jurisdiction; except that it is not incompatible with this Section 18.1 for a party to apply to a court of competent jurisdiction at any time for interim or conservatory relief and for the court to grant that relief; and
- (d) for the purposes of this Section 18.1, Hydro and TELUS will only be considered as one party where the dispute arises between the Grantor, on the one hand, and Hydro and TELUS jointly, on the other.

19.0 Runs With the Land

- 19.1 This Agreement runs with and binds the Lands to the extent necessary to give full force and effect to this Agreement.

20.0 Assignment

- 20.1 This Agreement:

- (a) may not be assigned in part or in whole or otherwise transferred without the prior written consent of the Grantor, which consent will not be unreasonably withheld, conditioned or delayed; but
- (b) may be assigned or otherwise transferred to an Affiliate without consent.

- 20.2 During any time that TELUS carries on business as a telecommunications services provider in partnership with one or more Affiliates of TELUS, TELUS may allow that partnership and its members to exercise some or all of the rights granted to TELUS in this Agreement, provided that TELUS ensures that the partnership and its members comply with TELUS' obligations in this Agreement. For greater certainty, TELUS shall remain fully liable for all of its obligations under this Agreement in such circumstances.

- 20.3 Hydro and TELUS's rights hereunder may be exercised by their respective employees, officers, representatives, contractors, subcontractors, agents, invitees and licensees. For greater certainty, Hydro or TELUS, as the case may be, remains fully liable for all of its obligations in this Agreement despite the exercise of such rights by such other persons.

21.0 Notice

- 21.1 Whenever it is required or permitted that notice or demand be given by any party to the other, the same will be in writing and will be forwarded to the following addresses:

To the Grantor: _____ Ltd.
c/o _____ First Nation
_____, British Columbia

To Hydro: Manager, Properties
B.C. Hydro
12th Floor - 333 Dunsmuir Street
Vancouver, British Columbia
V6B 5R3

Fax: (604) 623-3951

To TELUS: Manager, Real Estate
 TELUS
 15079 – 64th Avenue, First Floor,
 Surrey, British Columbia
 V3S 1X9

Fax: (604) 599-0396

21.2 If any question arises as to the date on which such notice was communicated to any party, it will be deemed to have been given on the earlier of:

- (a) if it was delivered personally or by courier, on the next business day;
- (b) if it was sent by fax, on the next business day; or
- (c) if it was sent by mail, on the sixth day after the notice was mailed.

In the event of postal disruption or an anticipated postal disruption, notices may not be given by mail.

21.3 A change of address by any party may be given to the others in accordance with this provision.

22.0 General

22.1 A breach of any term, condition, covenant or other provision of this Agreement may only be waived in writing, and any waiver will not be construed as a waiver of any subsequent breach. Consent to or approval of any act, where consent or approval is required under this Agreement, will not be construed as consent to or approval of any subsequent act.

22.2 No remedy set out in this Agreement is exclusive of any other remedy provided by law, but will be in addition to any other remedy existing at law, in equity, or by statute.

22.3 The terms and provisions of this Agreement will extend to, be binding upon and enure to the benefit of the parties and their respective successors and permitted assigns.

22.4 The parties agree that this Agreement will be registered in the provincial Land Title Office. At the request of any party to this Agreement, all parties will cooperate in executing any documents or plans required to accomplish the registration of this Agreement and to preserve the substance and priority of this Agreement in relation to those portions of the Lands affected by this Agreement.

22.5 Hydro or TELUS may grant licences respecting their rights under this Agreement to anyone, in whole or in part, without the prior written consent of the Grantor provided that no licence will act as a release of any of Hydro's or TELUS's obligations set out in this Agreement.

22.6 A delegate appointed by the Grantor may provide Hydro and TELUS with all commentary, authorizations and approvals required pursuant to this Agreement including without limitation, all commentary, authorizations or approvals required in relation to sketch plans, access to the Area of the Works, and relocations or replacements of any Works.

22.7 This Agreement may not be amended except by written agreement signed by all parties to this Agreement.

23.0 Interpretation

23.1 In this Agreement:

- (a) all schedules attached to these Filed Terms or the General Instrument form an integral part of this Agreement;
- (b) the headings are for convenience only and are not to be construed as defining or in any way limiting the scope or intent of this Agreement;
- (c) if any provision is determined by a court or arbitrator of competent jurisdiction to be illegal or unenforceable, that provision will be considered separate and severable, and the legality or enforceability of the remaining provisions will not be affected by that determination; and
- (d) any reference to a statute includes any regulations made pursuant to that statute and, unless otherwise expressly provided herein, includes a reference to all amendments made thereto and in force from time to time and any statute or regulation that may be passed which has the effect of supplementing or superseding that statute or those regulations.

SCHEDULE "A"

(Sketch Plan of Works, pursuant to Section. 3.2 of the Agreement)

Schedule 7: Agreement of Designated Company.

WHEREAS:

- A. Her Majesty the Queen in the Right of the Province of British Columbia as represented by The Minister of Aboriginal Relations and Reconciliation and the Homalco Indian Band have entered into an Agreement date as of _____ (the "Agreement") whereby _____ (the "Designated Company") is acquiring fee simple title the lands described in the Agreement as:
- i. Cameleon Harbour Parcel
 - ii. Thurston Bay Parcel
 - iii. Owen Bay Parcel
 - iv. Hemming Bay Parcel
 - v. Young Passage Parcel
 - vi. Crawford Anchorage Parcel
- (the "Lands")
- B. As a condition of the Designated Company's acquisition of fee simple title to the Lands the Homalco Indian Band and the Designated Company have agreed that the Designated Company grant and enter into this release and waiver on the terms set out below.

NOW THEREFORE in consideration of the premises, and the sum of ONE (\$1.00) DOLLAR and other valuable consideration paid by the Province to the Designated Company, the receipt of which is hereby acknowledged by the Designated Company, the Designated Company hereby release, waives, acknowledges and agrees as follows:

1. The terms "Province" and "The Homalco Indian Band" and any other capitalized terms used herein and defined in the Agreement have the meaning given to those terms in the Agreement.
2. 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. The Designated Company agrees with the Province that each covenant, representation, warranty, acknowledgement and every other term of the Agreement given by the Homalco Indian Band or otherwise set out in the Agreement which is for the benefit of the Province is legally binding on the Designated Company in relation to the Lands as fully and as effectively as if the Designated Company had entered into and executed the Agreement along with the Homalco Indian Band, including, without limitation, each of those representations and acknowledgements set out in paragraphs 7.3 and 7.4 of the Agreement.

4. By executing and delivering this Covenant each of the parties intends to create both a contract and a deed executed and delivered under seal.

Signed, Sealed and Delivered as of _____, 20__ by:

[Name of Designated Company]

Per: Authorized Signatory

Schedule 8: Confirmation of Designated Company's GST registration number and registered status

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]

[Name of Individual Vendor]

Per: _____

Schedule 9 – Permitted Encumbrances

Encumbrances that Apply to All Lands

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 and encumbrances granted by the Province with the prior written consent of the Homalco Indian Band prior to the Closing Date.

A Distribution Statutory Right of Way agreement granted by the Designated Company in the form attached as Schedule 6 in relation to all Lands

Encumbrances that Apply to Specific Lands

An Upland Owner Consent granted by the Designated Company in the form attached as Schedule 3 in relation to the Hemming Bay Parcel

A Statutory Right of Way Agreement granted by the Designated Company in the form attached as Schedule 4 in relation to the Hemming Bay Parcel and Thurston Bay Parcel;