

AMENDING AGREEMENT

TO HOMALCO INDIAN BAND INCREMENTAL TREATY AGREEMENT

THIS AGREEMENT is dated for reference the 23 day of July, 2020.

BETWEEN:

HER MAJESTY THE QUEEN IN RIGHT OF THE PROVINCE OF BRITISH COLUMBIA, as represented by the Minister of Indigenous Relations and Reconciliation, Parliament Buildings, Victoria, British Columbia V8V 1X4 (the "Province")

AND:

HOMALCO INDIAN BAND, on behalf of itself and its Members, as represented by the Chief and Council, having an address at 1218 Bute Crescent, Campbell River, British Columbia V9H 1G5 (the "**Homalco First Nation**")

WHEREAS:

- A. The Homalco First Nation, through its Chief and Council, assert that Homalco First Nation has used, occupied, governed and exercised exclusive ownership of its Traditional Territory from time immemorial, and asserts Homalco First Nation Aboriginal rights, interest and title which are or may be recognized and affirmed by section 35 of the *Constitution Act* of 1982;
- B. The Homalco First Nation and the Province (the "Parties") entered into an Incremental Treaty Agreement dated July 14, 2014 (the "ITA"), which the Parties now wish to amend in accordance with section 16.8 of the ITA;
- C. The Parties wish to amend certain provisions of the ITA, which, in particular, pertain to those parcels of land described and included within the definition of "Lands" under Section 1.1 of the ITA;
- D. Certain parcels of land included in the definition of "Lands" in the ITA are asserted to be within the overlapping claims of the We Wai Kai First Nation (Cape Mudge Indian Band), the We Wai Kum First Nation (the Campbell River Indian Band) and the Kwiakah First Nation (the Kwiakah Indian Band), being the neighbouring Nations of the Homalco First Nation (the "Neighbouring Nations");
- E. The Parties wish to delete those parcels of land described and included in the ITA that are being claimed by the Neighbouring Nations as overlap claim lands in accordance with the Nation-to-Nation Understanding entered into on February 2017 (the "Understanding") between the Homalco First Nation and the Neighbouring Nations, which Understanding is attached hereto as Schedule "A";

- F. The Parties wish to confirm that the lands to be deleted from the ITA are to be replaced by other parcels of land as yet to be determined and agreed to by the Parties (the "Replacement Lands") and that the transfer and delivery of such Replacement Lands will require a further Amending Agreement pursuant to section 16.8 of the ITA and be specifically referred to in the Treaty (formerly known as the Final Agreement).

NOW THEREFORE in consideration of the mutual covenants and promises contained herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereby agree as follows:

PART I-INTERPRETATION

Definitions

- 1.1 In this Agreement:

"**Agreement**" means this Amending Agreement between Homalco Indian Band and the Province;

"**Deleted Lands**" means those lands which are to be deleted from the ITA pursuant to the Understanding between the Homalco First Nation and the Neighbouring Nations dated February 2017 as described and referenced in Recital Clauses B to D inclusive of this Agreement;

"**Effective Date**" means the date of this Agreement;

"**Existing Legal Proceeding**" means the following legal action: *Cape Mudge Indian Band v. HMQBC and the Homalco Indian Band*, Vancouver Registry No. S150306 (BCSC);

- 1.2 Reference to the phrase:

- a) "Final Agreement" in the ITA means and includes the Treaty to be concluded by the Parties and Canada at the conclusion of Stage 5 of the British Columbia Treaty process;
- b) "Traditional Territory" means and includes the statement of intent area of the Homalco First Nation on file with the British Columbia Treaty Commission; and
- c) "Treaty" means and includes a treaty or land claims agreement within the meaning of sections 25 and/or 35 of the *Constitution Act, 1982*.

- 1.3 **Other Words and Expressions:** Words and expressions not defined in this Agreement but defined in the ITA have the meaning ascribed to them in the ITA.

- 1.4 The Recital Clauses of this Agreement do and will form part of this Agreement, are material to and a substantive and fundamental part of this Agreement.

PART 2 - AMENDMENTS

Amendments

- 2.1 The Parties agree that the ITA shall be amended as follows:

- a) By amending the ITA to delete the following parcels of land from **Article 1.1 - Definitions** of the ITA in accordance with The Understanding between the Neighbouring Nations and the Homalco First Nation:

“‘Cameleon Harbour Parcel’ means those lands shown for illustrative purposes as ‘Subject Land’ in Map 5 of Schedule I and, following completion and approval of the survey or re-survey of those lands, the area legally described in the survey, which, for great certainty, will not include any land below the natural boundary (as defined in the *Land Act*) and the area of any Excluded Crown Corridor;”

“‘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 great certainty, will not include any land below the natural boundary (as defined in the *Land Act*) and the area of any Excluded Crown Corridor;”

“‘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 great certainty, will not include any land below the natural boundary (as defined in the *Land Act*) and the area of any Excluded Crown Corridor;”

- b) By amending the ITA to delete the following parcels of land from **Article 1.1 - Definitions** of the ITA:

“‘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;”

“‘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 great certainty, will not include any land below the natural boundary (as defined in the *Land Act*) and the area of any Excluded Crown Corridor;”

- c) By amending **Article 1.1 - Definitions**, to delete the definition of “Lands” in the ITA and replacing it with the following:

“Lands” means the Owen Bay Parcel and Thurston Bay Parcel, or either of them in this Agreement;

- d) By amending **Article 1.1 - Definitions**, to add the following:

“Crown Corridor” means a highway (as defined in the *Transportation Act*) and the area of any other road, right-of-way, easement or license over Crown land that is used for transportation or public utility purposes and that, where the Lands are not surveyed or have to be re-surveyed, is identified in Schedule 1.

- e) Amending **Article 1.3 - Schedules**, deleting:
 - Schedule 2: Log Handling and Storage; and
 - Schedule 3: Upland Owner Consent;
- f) Amending **Article 5.2 – Conditions Precedent to Land Transfers** to mean and include the Replacement Lands as defined in this Agreement and or in a final Treaty or a further amending Agreement made subsequent to the execution of this Agreement;
- g) Amending **Article 5.3 – Satisfaction of Conditions Precedent** to mean and include the Replacement Lands as defined in this Agreement and/or in a final Treaty or a further amending agreement made subsequent to the execution of this Agreement;
- h) Deleting **Article 6.2 - Closing Deliveries of the Province** in its entirety and replacing it with the following:

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. Thurston Bay Parcel and Owen Bay Parcel within 120 days after the satisfaction or waiver of the condition referred to in subparagraph 5.2 g of the ITA in relation to such parcels of land;
 - b. An agreed-to portion of the Replacement Lands as defined in the final Treaty or further amending agreement between the Parties within 120 days after the satisfaction or waiver of the condition referred to in subparagraph 5.2g of the ITA in relation to those lands, 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 Agreement-in-Principle; and
 - c. Any remaining portion of the Replacement Lands as defined in the final Treaty or further amending agreement between the Parties within 120 days after the satisfaction or waiver of the condition referred to in subparagraph 5.2g of the ITA in relation to those lands, which the Province will seek as soon as practical after initialling of the final Treaty.
- i) Deleting paragraph (a) of **Article 6.3 - Closing Deliveries by the Homalco First Nation** in its entirety;
 - j) Deleting "Hemming Bay Parcel" from paragraph (c) of **Article 6.3 - Closing Deliveries by the Homalco First Nation**;
 - k) Deleting in its entirety paragraph (g) of **Article 6.3 - Closing Deliveries by the Homalco First Nation** and replacing it with the following:
 - g. a letter of undertaking signed by the Homalco First Nation'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 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);

- l) Amending **Article 6.3 – Closing Deliveries by Homalco First Nation** to include and apply to the Replacement Lands as defined in this Agreement and/or a further amending agreement between the Parties made subsequent to the execution of this Agreement;
- m) Deleting **Article 7.4 – Environmental Remediation** in its entirety and replacing it with the following:

7.4 Environmental Remediation. The Homalco First Nation will from and after the Closing:

- a. assume all environmental liabilities relating to the Lands in 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 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.

7.4.1 The preceding paragraphs 7.4 a. - c. shall not include any environmental liabilities that have as their cause or source an event or action that occurred prior to the Closing.

- n) Amending **Article 10 - Other Covenants** by adding a new paragraph 10.1 c., as follows:
 - c. The Replacement Lands as yet to be determined will be subject to the provisions in Article 10.1 a. and b. of the ITA.
- o) Amending **Article 10.2 – Disposition of Interests in Lands** of the ITA by deleting the following:

10.2 Disposition of Interest 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.

And replacing it as follows:

10.2 Disposition of Interest in Lands. Notwithstanding amended Article 10.1c. of this Agreement, the Homalco First Nation may cause the Designated Company to charge or encumber the Lands as defined by this Agreement, including the Replacement Lands as yet to be determined, provided that the Homalco Indian Band or the Designated company advises the intended charge or encumbrance holder in writing that, on the Effective Date, the Lands will, unless otherwise agreed to by the Parties, be transferred by the Designated Company to the Homalco First Nation and will become Homalco Lands.

- p) Amending **Article 10 - Other Covenants** of the ITA by adding a new Article 10.2.1 as follows:

10.2.1 Failure to Ratify. Where the Final Agreement or concluding Treaty is not signed by the authorized representative of the Parties and Canada, or the Final Agreement or Treaty is not approved, given effect, declared valid and given the force of law under federal and provincial law:

- a. the restriction on the disposition of the Lands, including the Replacement Lands, under IO.1 c. will not apply; and
- b. any reservation placed on such parcels of land, including any reservation under the *Mineral Tenure Act*, will be removed.

- q) Deleting **Article 10.4 - Upland Owner Consent** in its entirety from the ITA.

- r) Deleting from **Schedule 1: Map of Lands** in the ITA of the following maps:

Schedule 1, Map 1, Crawford Anchorage;

Schedule 1, Map 2, Hemming Bay;

Schedule 1, Map 3, Young Passage (as identified in Schedule “B” to this Agreement);
and

Schedule 1, Map 5, Cameleon Harbour.

- s) Deleting **Schedule 2: Log Handling and Storage Areas** in its entirety from the ITA.

- t) Deleting **Schedule 3: Upland Owner Consent** in its entirety from the ITA.

- u) Deleting from **Schedule 4: Statutory Right of Way Agreement** the Hemming Bay Map in the ITA;

- v) Amending **Schedule 7: Agreement of Designated Company** by deleting the reference to Cameleon Harbour Parcel, Hemming Bay Parcel, Young Passage Parcel and Crawford

Anchorage Parcel in Recital A of the ITA; and

- w) Amending **Schedule 9: Permitted Encumbrances** in the ITA by deleting the following:

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;

And replacing it as follows:

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

PART 3 - OVERLAPPING CLAIMS

- 3.1 Notwithstanding **Article 12.- Overlapping Claims** in the ITA and, in particular, **Articles 12.1 and 12.2** thereof and the Understanding, the Parties acknowledge and agree that:
- a) the Deleted Lands are not to be considered or construed, at law or in equity, as an admission by the Homalco First Nation of the validity of any or all of the overlap claims being asserted by the Neighbouring Nations, collectively or severally, in and to the Deleted Lands or as to the strength or weight of such claims, legal or equitable; and
 - b) the Deleted Lands will continue to form part and parcel of the Homalco First Nation's Traditional Territory as defined in the ITA or this Agreement or as filed with the British Columbia Treaty Commission until otherwise agreed to in the Final Agreement under stage 5 of the British Columbia Treaty process and/or concluding Treaty between the Parties and Canada in respect thereof.

PART 4 - LEGAL PROCEEDINGS

- 4.1 In this Agreement, legal proceedings includes but is not limited to any existing litigation as particularly referred to in **Article 13 - Existing Litigation** of the ITA.
- 4.2 Existing Litigation includes *Cape Mudge Indian Band (We Wai Kai Nation) v. British Columbia (Ministry of Aboriginal Relations and Reconciliation) and the Homalco Indian Band (Homalco First Nation)*, Supreme Court of British Columbia Action No. S150306 (Vancouver Registry), and related court matters.

PART 5 - MISCELLANEOUS

Entire Agreement

- 5.1 This Agreement together with the ITA is the entire agreement between the Parties in respect of the subject matter of this Agreement and, except as set out in this Agreement and the ITA, there is no representation, warranty, collateral agreement, condition, right or obligation affecting this Agreement.

Enurement

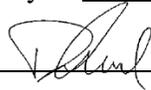
5.2 This Agreement extends to, is binding upon and enures to the benefit of the Parties, their successors and permitted assigns.

Execution in Counterparts

5.3 This Agreement may be executed in counterparts and by facsimile. Each signature is deemed to be an original signature and all executed documents together will constitute one and the same document.

THE PARTIES HAVE EXECUTED this Agreement as of the date of reference of this Agreement.

SIGNED on behalf of THE GOVERNMENT OF THE PROVINCE OF BRITISH COLUMBIA by the Minister of Indigenous Relations and Reconciliation by his/her duly authorized representative in the presence of on the 23 day of July, 2020:



Witness signature
Doug Caul

Witness name



SIGNATURE - Minister

Minister of Aboriginal Relations and Reconciliation

5th floor, 2957 Jutland Road, Victoria BC

Address

Deputy Minister

Occupation

SIGNED on behalf of the **HOMALCO INDIAN BAND** by its duly authorized representative in the presence of on the _ day of _____, 2020:

Witness signature

Witness name

Address

Occupation

SIGNATURE – Chief Councillor

SIGNED on behalf of the **HOMALCO INDIAN BAND** by its duly authorized representative in the presence of on the _ day of _____, 2020:

Witness signature

Witness name

Address

Occupation

SIGNATURE – Councillor

SIGNED on behalf of the **HOMALCO INDIAN BAND** by its duly authorized representative in the presence of on the _ day of _____, 2020:

Witness signature

Witness name

Address

Occupation

SIGNATURE – Councillor