

# COASTAL FERRY PERFORMANCE TERM 4 AMENDING AGREEMENT NO. 1

THIS AGREEMENT dated for reference the 08 day March, 2017

BETWEEN

**HER MAJESTY THE QUEEN IN RIGHT OF THE PROVINCE OF BRITISH COLUMBIA**, as represented by the Minister of Transportation and Infrastructure

(the "Province")

AND

**BRITISH COLUMBIA FERRY SERVICES INC.** a body corporate, incorporated under the laws of the Province of British Columbia under Certificate of Incorporation No. 0667014

("BC Ferries")

## WHEREAS

- A. The Coastal Ferry Services Contract, as defined in this Agreement, contemplates that the parties will from time to time enter into discussions reviewing certain matters set out in the Coastal Ferry Services Contract.
- B. The parties have undertaken such discussions and wish to amend and supplement the Coastal Ferry Services Contract on the terms and conditions set out in this Agreement.

**NOW THEREFORE** in consideration of the foregoing premises and for other good and valuable consideration (the receipt and sufficiency of which is hereby acknowledged by the parties), the Province and BC Ferries agree as follows:

## ARTICLE 1 - DEFINITIONS

**1.1** In this Agreement:

- (a) "CFSC" means the service contract between the Province and BC Ferries entitled the "Coastal Ferry Services Contract", as amended, and any other words having initial uppercase letters will have the meanings given to them in the CFSC.
- (b) "Letter Agreement" means the agreement between the Province and BC Ferries entitled "New Direct Mid-Coast Ferry Service between Port Hardy and Bella Coola (Route 28)" dated December 8, 2016.

## ARTICLE 2 - COASTAL FERRY SERVICES CONTRACT

### Schedule "A" Designated Ferry Routes and Services

- 2.1** Schedule "A" to the CFSC is amended by adding Route No. 28 – Port Hardy/Bella Coola to the table entitled "Designated Ferry Route Group" in section 1.

- 2.2 The parties agree that the CFSC will be further amended to incorporate the route overview for Route 28, the revised Core Service Levels for Route 10s and the Ferry Transportation Fees for Route 10s and Route 28.

### ARTICLE 3 – GENERAL

- 3.1 Notwithstanding any other provision of this Agreement, the payment of money by the Province to BC Ferries in connection with this Agreement or under the CFSC as a result of or in connection with 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 or part thereof when any payment of money by the Province to BC Ferries falls due, to make that payment; and
  - (b) Treasury Board, as defined in the *Financial Administration Act*, not having controlled or limited, under the *Financial Administration Act*, expenditure under any appropriation referred to in subsection (a) of this section.
- 3.2 No term of this Agreement is intended to derogate from or be inconsistent with or in conflict with any law, including without limitation the Act, and shall not be interpreted in a manner as to result in any such derogation, inconsistency or conflict.
- 3.3 Each term of this Agreement will be valid and enforceable to the fullest extent permitted by law and if any term of this Agreement is held to be invalid, unenforceable or illegal to any extent, such term may be severed and such invalidity, unenforceability or illegality will not prejudice or affect the validity, enforceability and legality of the remaining provisions of this Agreement.
- 3.4 This Agreement, the CFSC, and the Letter Agreement constitute the entire agreement between the parties in respect of the subject matter of this Agreement and no understandings, representations, contracts, or agreements, written, oral or otherwise, exist between the parties with respect to the subject matter of this Agreement except as expressly set out in this Agreement, the CFSC, or the Letter Agreement.
- 3.5 Time is of the essence of this Agreement and will remain of the essence of the CFSC, as amended and supplemented by this Agreement.
- 3.6 The provisions of the CFSC, as amended and supplemented by this Agreement, are ratified and confirmed and where the CFSC is referred to in another agreement between the Province and BC Ferries, unless otherwise expressly provided for, those references will be deemed to refer to the CFSC as amended and supplemented by this Agreement.
- 3.7 All dollar amounts expressed in this Agreement refer to lawful currency of Canada.
- 3.8 No waiver by either party of a breach or default by the other party in the observance, performance or compliance of any of its obligations under this Agreement will be effective unless it is in writing and no such waiver will be deemed or construed to be a waiver of any other breach or default, and failure or delay on the part of either party to complain of an act or failure of the other party or to declare such other party in default, irrespective of how long such failure or delay continues, will not constitute a waiver by such party of any of its rights against the other party.

