

INCREMENTAL TREATY AGREEMENT

This Agreement is dated for reference May 11, 2024

BETWEEN:

His Majesty the King in right of the Province of British Columbia, as represented by the Minister of Indigenous Relations and Reconciliation

(the "Province")

AND:

Lyackson First Nation, as represented by its Council

("Lyackson First Nation")

AND:

Cowichan Tribes, as represented by its Council

("Cowichan Tribes")

(together the "Parties")

WHEREAS:

- A. Lyackson First Nation and Cowichan Tribes, through their Chiefs and Councils, assert that they have used, occupied, governed and exercised exclusive ownership of their Traditional Territories from time immemorial;
- B. Lyackson First Nation and Cowichan Tribes, as part of the Hul'qumi'num Treaty Group, are engaged with the Province and Canada in negotiating a Treaty in accordance with the British Columbia Treaty Commission process;
- C. The Parties wish to create momentum in the treaty negotiations in order to conclude a Treaty;
- D. The Province introduced Draft Principles that Guide the Province of British Columbia's Relationship with Indigenous Peoples on May 22, 2018 (the "Draft Principles") to help guide the Province on a path of respect, partnership and collaboration, as the Province implements the United Nations Declaration on the

Rights of Indigenous Peoples and the Truth and Reconciliation Commission of Canada's Calls to Action;

- E. Lyackson First Nation and Cowichan Tribes entered into a memorandum of understanding (the "Memorandum of Understanding") which agrees to allocate an equal share of the Lands to each Nation.
- F. This Agreement will provide Lyackson First Nation and Cowichan Tribes with transitional economic benefits in advance of a Treaty and is in the spirit and vision of the Draft Principles.

NOW THEREFORE the Parties agree as follows:

ARTICLE 1 - INTERPRETATION

1.1 Definitions. In this Agreement:

"Aboriginal Rights" means asserted or determined aboriginal rights, including without limitation aboriginal title, which are or may be recognized and affirmed by section 35 of the *Constitution Act, 1982*;

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

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

"Council" and "Band Council" means the "council of the band" within the meaning of the *Indian Act*, as it applies to Cowichan Tribes or Lyackson First Nation, as the context requires;

"Cowichan Tribes" means Cowichan Tribes, a "band" within the meaning of the *Indian Act*;

"Crown Corridor" means a highway (as defined in the *Transportation Act*) and the area of any other road, right-of-way, easement or licence over Crown land that is used for transportation or public utility purposes;

"Crown Grant" means a Crown grant as defined in the *Land Act*, and for greater certainty includes a Form A transfer;

"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 Lyackson First Nation and Cowichan Tribes and which Lyackson First Nation and Cowichan Tribes have designated to take fee simple title to any of the Lands;

"Effective Date" means the date on which the Treaty takes effect in accordance with its terms;

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

"GST" means the goods and services tax imposed under the *Excise Tax Act* (Canada) or equivalent tax imposed under federal or provincial law;

"ITA" means this Incremental Treaty Agreement;

"ITA Date" means the date on which this Agreement is executed by the Parties;

"Lands" means, subject to the Reservations, Permitted Encumbrances and Crown Corridors, any or all of the following:

Parcel Identifier 006-456-898
Lot A, District Lots 65 and 50A, and Block 154, Cowichan Lake District,
Plan 44777

"Lyackson First Nation" means the Lyackson First Nation, a "band" within the meaning of the *Indian Act*;

"Member" means any person who is a "member of the band", as that phrase is defined in the *Indian Act*, of Lyackson First Nation or Cowichan Tribes, as the context requires;

"Memorandum of Understanding" means the memorandum of understanding between Cowichan Tribes and Lyackson First Nation attached as Schedule 5 to this Agreement;

"Other Cowichan Tribes Lands" means lands which, on the Effective Date, are owned by Cowichan Tribes or a Designated Company;

"Other Lyackson First Nation Lands" means lands which, on the Effective Date, are owned by Lyackson First Nation or a Designated Company;

"Permitted Encumbrances" means the liens, charges, and interests described in Part 1 and 2 of Schedule "1" for the Lands or any other Permitted Encumbrances agreed to by the Parties;

"Proceeding" includes any claim, demand, cause of action, action, suit or other proceeding, including any expenses, legal fees, damages, costs or other liability, incurred, directly or indirectly, arising out of or in connection with the foregoing;

"Provincial Official" means:

- a) the Province or any minister, public official, employee, contractor, agent or representative of the Province;
- b) any government corporation or any director, officer, employee, contractor, agent or representative of a government corporation; or
- c) any person acting as a decision maker under any enactment of the Province;

"PST" means the sales tax imposed under the *Provincial Sales Tax Act* or equivalent tax imposed under federal or provincial law;

"Reservations" means the exceptions and reservations contained in the *Land Act* and all subsisting exceptions and reservations of interests, rights and privileges and title contained in any previous grant of land;

"Traditional Territory" means, for the purposes of this Agreement, the statement of intent area filed by Lyackson First Nation and Cowichan Tribes as part of the Hul'qumi'num Treaty Group with the British Columbia Treaty Commission;

"Transfer" means the form prescribed under the *Land Title Act* transferring the freehold estate, in fee simple of the Lands to the Designated Company;

"Treaty" means the land claims agreement to be concluded by the Parties and Canada at the conclusion of Stage 5 of the British Columbia Treaty Commission process; and

"Treaty Settlement Lands" means those lands identified in the Final Agreement which form part of the Lyackson First Nation Lands or Cowichan Tribes Lands as the context requires.

1.2 Interpretation. For purposes of this Agreement:

- a) "this Agreement" means this Incremental Treaty Agreement, and includes 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 recitals and 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 acknowledgement, agreement, release and other covenant given, and action to be taken, by Lyackson First Nation and Cowichan Tribes under this Agreement means Lyackson First Nation and Cowichan Tribes acting by and through their Chief and Council, and will be conclusively deemed to have been given, or taken, by Lyackson First Nation and Cowichan Tribes on their own behalf, and for and on behalf of their 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" – Permitted Encumbrances
- Schedule "2" – Designated Company Agreement
- Schedule "3" – GST Certificate
- Schedule "4" – Consent of Designated Company in relation to Property Transfer Tax Matters
- Schedule "5" – Memorandum of Understanding between Lyackson First Nation and Cowichan Tribes

ARTICLE 2 – RECONCILIATION AND PURPOSE

- 2.1 **Reconciliation.** Lyackson First Nation and Cowichan Tribes acknowledge and agree that, to advance Treaty negotiations, the Lands transferred to the Designated Company for the benefit of Lyackson First Nation and Cowichan Tribes constitute a contribution by the Province towards the reconciliation of the Province's, Lyackson First Nation and Cowichan Tribes' interests and the settlement of Lyackson First Nation and Cowichan Tribes' aboriginal rights and title claims within the Traditional Territory through treaty negotiations and, as such, the benefits provided to Lyackson First Nation and Cowichan Tribes under this Agreement and in accordance with the Memorandum of Understanding will be counted as a portion of the Province's contribution towards the Treaty settlement.
- 2.2 **Purpose.** The purpose of this Agreement is to:
- a) demonstrate the commitment of the Parties to concluding a Treaty;
 - b) provide Lyackson First Nation and Cowichan Tribes with land as incremental treaty benefit in advance of a Treaty which will be transferred in accordance with this Agreement and will, on the Effective Date, become an element of the Treaty; and
 - c) set out a process to transfer the Lands to the Designated Company for the benefit of Lyackson First Nation and Cowichan Tribes.
- 2.3 **Addition to Reserve.** The Parties acknowledge that Lyackson First Nation and Cowichan Tribes will seek to add the Lands to their respective reserves through the federal Addition to Reserve process as soon as practicable after the transfer of Lands under this Agreement is completed and the objectives of the Memorandum of Understanding have been achieved to the mutual satisfaction of Lyackson First Nation and Cowichan Tribes.

ARTICLE 3 - COMING INTO EFFECT AND TERMINATION

- 3.1 **Coming into Effect.** This Agreement comes into effect when the Parties have executed it and, where it has been executed in counterparts, on the date the last Party signing the Agreement executes it.
- 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 any Party, upon seven (7) days written notice, prior to the ministerial order authorizing the disposition of the Lands that are the subject of the ministerial order under 5.2(h).

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

ARTICLE 4 - REPRESENTATIONS AND WARRANTIES

4.1 **Lyackson First Nation Representations.** Lyackson First Nation 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 a Treaty;
- c) it, as represented by its Council, has the legal power, capacity and authority to enter into and to carry out its obligations under this Agreement on behalf of Lyackson First Nation and its Members;
- d) any company designated by Lyackson First Nation for the purposes of this Agreement will be a Designated Company;
- e) any Designated Company will have 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;
- f) in the opinion of Lyackson First Nation, the Province has adequately consulted with Lyackson First Nation in relation to the transfer of the Lands to a Designated Company and the Permitted Encumbrances on the Lands; and
- g) it has executed and will abide by the Memorandum of Understanding.

4.2 **Cowichan Tribes Representations.** Cowichan Tribes 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 a Treaty;

- c) it, as represented by its Council, has the legal power, capacity and authority to enter into and to carry out its obligations under this Agreement on behalf of Cowichan Tribes and its Members;
- d) any company designated by Cowichan Tribes for the purposes of this Agreement will be a Designated Company;
- e) any Designated Company will have 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;
- f) in the opinion of Cowichan Tribes, the Province has adequately consulted with Cowichan Tribes in relation to the transfer of the Lands to a Designated Company and the Permitted Encumbrances on the Lands; and
- g) it has executed and will abide by the Memorandum of Understanding.

4.3 **Provincial Representations.** The Province represents and warrants to Lyackson First Nation and Cowichan Tribes, with the intent and understanding that they will be relied on by Lyackson First Nation and Cowichan Tribes 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 5.2, it will have the legal power, capacity and authority to transfer the fee simple title to the Lands to a Designated Company as contemplated by this Agreement.

ARTICLE 5 – CONDITIONS PRECEDENT

5.1 **Band Council Resolution.** Upon request from the Province, Lyackson First Nation and Cowichan Tribes will each deliver to the Province a resolution made by their respective Councils at a duly convened meeting of said Councils authorizing their respective representatives named in the resolution to execute this Agreement on behalf of Lyackson First Nation and Cowichan Tribes.

5.2 **Conditions Precedent to Land Transfers.** The obligation of the Province to transfer any of the Lands under this Agreement is, with respect to each parcel of Lands, 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 cost sharing the value of the Lands for treaty settlement purposes;
- c) the representations and warranties of Lyackson First Nation and Cowichan Tribes under this Agreement being true and correct on the applicable Closing Date;
- d) the Province being satisfied that, with respect to each transfer of the Lands, it has fulfilled any consultation obligations it may have with respect to assertions of Aboriginal Rights to the Lands by First Nations other than Lyackson First Nation and Cowichan Tribes;
- e) surveys for the Lands having been completed on or before the applicable Closing Date;
- f) the Memorandum of Understanding has been executed and remains in place and neither Lyackson First Nation or Cowichan Tribes are in material default or breach thereunder;
- g) the minister responsible for the *Ministry of Lands, Parks and Housing Act* has accepted transfer of administration of the Lands pursuant to section 106(2) of the *Land Act* ;
- h) the Province having given notice that the minister responsible has authorized the disposition of the Lands in accordance with section 9 of the *Ministry of Lands, Parks and Housing Act*; and
- i) the minister responsible recommending a mineral reserve be established on the Lands under the *Mineral Tenure Act*.

5.3 **Satisfaction of Conditions Precedent.** The Province will not be required to satisfy the conditions precedent under paragraph 5.2 until such time as Lyackson First Nation and Cowichan Tribes have notified the Province in writing that they are prepared to proceed with the transfer of the Lands under this Agreement.

5.4 **Waiver of Conditions Precedent.** The conditions precedent set out in 5.2 are for the sole benefit of the Province and may be waived by the Province on written notice to Lyackson First Nation and Cowichan Tribes.

ARTICLE 6 – TRANSFER OF LANDS

- 6.1 **Pre-Closing Deliveries by Lyackson First Nation and Cowichan Tribes.** Lyackson First Nation and Cowichan Tribes will notify the Province when the Designated Company is ready to proceed with the transfer of the Lands.
- 6.2 **Closing Deliveries by Province.** Following the satisfaction or waiver of the conditions precedent under 5.1 and 5.2, and subject to the Reservations and Permitted Encumbrances and the terms of this Agreement, the Province will provide the Designated Company with a Crown Grant to the Lands within 120 days after the issuance of a ministerial order under 5.2(h).
- 6.3 **Closing Deliveries by Lyackson First Nation and Cowichan Tribes.** Not less than 14 days before the Closing Date, or such other date as may be agreed to by the Parties, Lyackson First Nation and Cowichan Tribes will execute and deliver, or cause to be executed and delivered, or deliver, as the case may be, to the Province:
- a) an agreement executed by the Designated Company in the form attached as Schedule 2 in relation to the applicable Lands;
 - b) a certificate signed by an officer of the Designated Company in the form attached as Schedule 3 confirming the Designated Company's GST registration number and registered status;
 - c) a letter of undertaking signed by their legal counsel undertaking, among other things, that the Province will be provided with a signed copy of the Designated Company Agreement (Schedule 2) and the GST Certificate (Schedule 3);
 - d) a signed consent of the Designated Company in relation to Property Transfer Tax form executed by an authorized signatory of the Designated Company (Schedule 4); and
 - e) all such other documents that may be necessary or advisable for Lyackson First Nation, Cowichan Tribes and the Designated Company to provide to complete the transactions contemplated under this Agreement.
- 6.4 **Registration of Lands.** Subject to the Treaty, all Lands transferred under 6.2 will be registered in the Land Title Office.
- 6.5 **Closing Procedure.** Legal counsel for Lyackson First Nation, Cowichan Tribes, the Designated Company 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) if appropriate and required, provide a letter of undertaking to legal counsel for the other Party;
- b) use the Land Title and Survey Authority electronic filing system; and
- c) provide all documents filed under 6.5(b) to legal counsel for the other Party.

ARTICLE 7 – CONDITION OF LANDS

7.1 **Lands “As Is”.** Lyackson First Nation and Cowichan Tribes acknowledge and agree that any of the Lands acquired by a Designated Company under this Agreement are acquired “as is” as of the Closing Date.

7.2 **Viability of Lands.** Lyackson First Nation and Cowichan Tribes acknowledge and agree 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 Lyackson First Nation and Cowichan Tribes 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.** Lyackson First Nation and Cowichan Tribes:

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

7.4 Environmental Conditions Post-Closing. Lyackson First Nation and Cowichan Tribes will from and after the Closing:

- a) assume all environmental liabilities relating to the Lands including all liability for the clean-up of any contamination or any other toxic, hazardous, dangerous or potentially dangerous substances or conditions on or under the Lands or migrating from the Lands (including surface water and groundwater);
- b) release the Provincial Officials from and against any and all Proceedings with respect to any and all environmental liabilities relating to the Lands described in 7.4(a); and
- c) indemnify and save harmless the Provincial Officials from and against any and all Proceedings after the Closing arising out of or in connection with any and all environmental liabilities relating to the Lands described in 7.4(a).

7.5 Effect of section 7.4. For greater certainty:

- a) section 7.4 applies where:
 - i) any contamination relating to the Lands, whether disclosed or undisclosed, known or unknown, created or existing, arose before the Closing Date or arose before and continues after the Closing Date; and
 - ii) any environmental liability relating to the costs of remediation of the Lands are incurred after the Closing Date and relate to contamination that arose before the Closing Date or arose before and continues after the Closing Date; and
- b) section 7.4 does not apply where any environmental liability relating to the Lands results from the acts or omissions of the Province after the Closing Date.

ARTICLE 8 – RESERVATIONS AND ENCUMBRANCES

8.1 Reservations and Permitted Encumbrances. Lyackson First Nation and Cowichan Tribes acknowledge and agree that, on execution of this Agreement or receipt of updated Schedules under 8.3 and as of the Closing Date, as applicable:

- a) they will be familiar with the existence and terms of the Reservations and Permitted Encumbrances and accept fee simple title to the Lands subject to the Reservations and Permitted Encumbrances;
- b) the Province may grant any related extensions, renewals or replacements or issue any further rights related to the Permitted Encumbrances in accordance with provincial law; and
- c) they will not 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 **Amendments to Permitted Encumbrances.** The Parties acknowledge and agree that between the execution of this Agreement and the Closing Date, the Province may require that the Permitted Encumbrances be amended to:

- a) comply with current provincial policies and practices, and any legal requirements;
- b) correct any errors or omissions to the Permitted Encumbrances or the form of Permitted Encumbrances attached as Schedule "1".

8.3 **Amendments Form Part of Agreement.** Where any amendments are made under 8.2, Schedule "1" will be revised and initialed, as appropriate. The Parties agree that, notwithstanding any amendments under 8.2 being made after the execution of this Agreement, the revised and initialed Schedule will form part of this Agreement.

8.5 **Registration of Unregistered Interests.** Lyackson First Nation and Cowichan Tribes will consent, or will cause the Designated Company to consent, to the registration of any interests identified in Schedule "1" Part 2 which are not registered against the applicable Lands in the Land Title Office on or after the Closing Date.

8.6 **Indemnity for Charges.**

- a) Lyackson First Nation will indemnify and save harmless the Province and all Public Officials from and against any and all Proceedings arising out of or in connection with Lyackson First Nation or a Designated Company's acts or omissions in connection with any Permitted Encumbrance;
- b) Cowichan Tribes will indemnify and save harmless the Province and all Public Officials from and against any and all Proceedings arising out of or in connection with Cowichan Tribes or a Designated Company's acts or omissions in connection with any Permitted Encumbrance;

- 8.7 **BC Hydro Right of Ways.** Lyackson First Nation and Cowichan Tribes will work with BC Hydro to identify any BC Hydro right of ways and works on the Lands and will endeavor to reach agreement with BC Hydro on BC Hydro's continued access to and use of the Lands.

ARTICLE 9 – TRANSACTION COSTS

- 9.1 **Property Transfer Tax and Other Costs.** The Province is responsible for and will pay 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 costs or fees associated with the preparation and issuance of Crown Grants and any other documents required to register the Lands and Permitted Encumbrances;
 - c) any fees charged by the Land Title Office or the Land Title and Survey Authority relating to the registration of the Lands and the Permitted Encumbrances; and
 - d) property transfer tax payable under the *Property Transfer Tax Act* which, for greater certainty, the Province will pay or seek an exemption.
- 9.2 **Public Utility Permitted Encumbrances.** Notwithstanding 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, PST and Other Charges.** The Designated Company will be responsible for any federal or provincial sales tax, including GST and PST, 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.** The Designated Company is responsible for any and all annual taxes payable in respect of the Lands in accordance with provincial law unless and until such date as the Lands are added to Cowichan Tribes' and Lyackson First Nation's respective reserves. 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 Lyackson First Nation and Cowichan Tribes Covenants.** Lyackson First Nation and Cowichan Tribes acknowledge and agree that:

- a) in order to preserve the possibility of the Lands becoming Lyackson First Nation and Cowichan Tribes Lands in accordance with the Treaty, or the Lands being added to the respective reserves of Lyackson First Nation and Cowichan Tribes, Lyackson First Nation and Cowichan Tribes will not permit the Designated Company to dispose of its fee simple estate in the Lands, in whole or in part except to give effect to the Memorandum of Understanding, until the earliest of:
 - (i) a federal ministerial order being issued adding some or all the Lands to Cowichan Tribes' and/or Lyackson First Nation's reserve lands; or
 - (ii) after the Effective Date;
- b) subject to 11.1, the Lands are subject to provincial and local government laws, including applicable zoning, land use, land development and property tax laws, and at no time after Closing will Lyackson First Nation or Cowichan Tribes challenge the applicability of provincial laws to the Lands, unless and until the Lands become "reserve" lands within the meaning of the *Indian Act* for the benefit of Lyackson First Nation and/or Cowichan Tribes, and, in that case, only in respect of those portions of the Land which become reserve lands; and

for greater certainty, Lyackson First Nation and Cowichan Tribes release and forever discharge the Province and all Provincial Officials from all claims of infringement of their Aboriginal Rights in respect of the Lands to the extent that such claims are known to either Lyackson First Nation or Cowichan Tribes at the time of execution of this Agreement.

10.2 Disposition of Interests in Lands. Notwithstanding 10.1(a), Lyackson First Nation and Cowichan Tribes may charge or encumber the Lands provided that Lyackson First Nation and Cowichan Tribes advises the intended charge or encumbrance holder in writing that the Lands will:

- a) be transferred by the Designated Company to Lyackson First Nation and/or Cowichan Tribes and may become "reserve" lands within the meaning of the *Indian Act* for the benefit of Cowichan Tribes or Lyackson First Nation, as applicable; or
- b) On the Effective Date, may become Treaty Settlement Lands or be retained by the Designated Company or transferred by the Designated Company to Lyackson First Nation or Cowichan Tribes, and will become Other Lyackson First Nation Lands or Other Cowichan Tribes Lands.

- 10.3 **Indemnity for Charges.** Lyackson First Nation and Cowichan Tribes will indemnify and save harmless the Province and all Provincial Officials from any and all Proceedings arising out of or in connection with any Permitted Encumbrance, any charge or encumbrance granted by Lyackson First Nation and Cowichan Tribes under 10.2, the transfer of the fee simple estate in the Lands to the Designated Company or the Lands becoming Lyackson Nation Lands or Cowichan Tribes Lands.
- 10.4 **Failure to Ratify.** Where the Treaty is not signed by the authorized representative of the Parties or Canada, or the 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 under 10.1(a) will not apply; and
 - b) any reservation placed on the Lands, including any reservation under *Mineral Tenure Act*, will be removed.
- 10.5 **Registration of Unregistered Interests.** For the purposes of 10.4, Lyackson First Nation and Cowichan Tribes will consent, or will cause the Designated Company to consent, to the registration of any interests identified in Schedule 1 which are not registered against the applicable Lands in the Land Title Office on or after the Closing Date.

ARTICLE 11 – STATUS OF LANDS ON EFFECTIVE DATE

- 11.1 **Status of Lands on Effective Date.** As part of Treaty negotiations, the Parties will negotiate the status of the Lands transferred under this Agreement to Lyackson First Nation and Cowichan Tribes as “Treaty Settlement Lands” or “Other Lyackson First Nation Lands” or “Other Cowichan Tribes Lands” within the meaning of the Treaty.

ARTICLE 12 – OVERLAPPING CLAIMS

- 12.1 **Shared Territories.** Prior to the transfer of the Lands to the Designated Company, Lyackson First Nation and Cowichan Tribes will discuss and will make reasonable efforts to resolve any overlap or shared territory claims by other First Nations. In the event any such claims are not resolved to the Province's reasonable satisfaction, the Province may amend the boundaries of the Lands to transfer other lands that are reasonably equivalent to the Lands, subject to required provincial approvals.
- 12.2 **Other First Nations' Litigation.** In the event of any Proceeding 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 Lyackson

First Nation and Cowichan Tribes, Lyackson First Nation and Cowichan Tribes will provide the Province with reasonable assistance, upon request, in support of its defence of the Proceeding.

ARTICLE 13 – NEW LITIGATION

- 13.1 **New Litigation.** Before commencing any Proceeding relating to any Government Action within the Traditional Territory, Lyackson First Nation and Cowichan Tribes will:
- a) notify the Province of any interests they may have that may be impacted by the Government Action; and
 - b) participate in the dispute resolution process set out in 14.1-14.2.

ARTICLE 14 – DISPUTE RESOLUTION

- 14.1 **Representatives.** If a dispute arises between the Parties regarding the interpretation of a provision of this Agreement, the Parties or their duly appointed representatives will meet as soon as is practical 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 will be raised to more senior levels of the Province, Lyackson First Nation and Cowichan Tribes.
- 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 in this Agreement, 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 Indigenous Relations and Reconciliation
P.O Box 9100 Stn. Prov. Gvt.
Victoria, B.C. V8W 9B1

Email: tom.mccarthy@gov.bc.ca
Fax: (250) 387-6073

and if to the Lyackson First Nation:

Lyackson First Nation
8017 Chemainus Road
Chemainus, BC V0R 1K5
Attention: Hereditary Chief

Email: chiefthomas@lyackson.bc.ca
Fax: (250) 246-5049

and if to the Cowichan Tribes:

Cowichan Tribes
5760 Allenby Road
Duncan, BC V9L 5J1
Attention: Chief Councillor

Email: chief@cowichantribes.com
Fax: (250)748-1233

- 15.2 **Change of Address.** Either Party may, from time to time, give notice to the other Party of any change of address, email address or facsimile number of the Party giving such notice and after the giving of such notice, the address, email address or facsimile will, for purposes of this Agreement be conclusively deemed to be the address, email 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.
- 16.2 **Further Acts and Assurances.** Each of the Parties will, upon the reasonable request of the other Party, do such lawful acts or deliver such further documents in a timely fashion as are reasonably required in order to fully perform and carry out the terms of this Agreement.
- 16.3 **No Implied Waiver.** Any waiver of a provision of this Agreement, the performance by a Party of an obligation under this Agreement or 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 Lyackson First Nation and Cowichan Tribes 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 Lyackson First Nation or Cowichan Tribes 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 Lyackson First Nation or Cowichan Tribes.

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

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

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

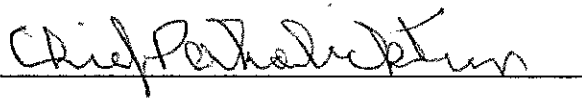
16.9 **Governing Law.** This Agreement will be governed by and construed in accordance with the laws of the Province of British Columbia.

[Remainder of page intentionally left blank]

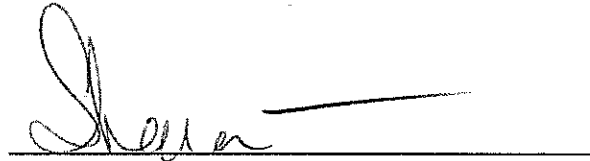
16.10 **Execution in Counterpart.** This Agreement may be entered into by each Party signing a separate copy of this Agreement (including a photocopy, email or facsimile copy) and delivering it to the other Party by email or facsimile transmission.

IN WITNESS WHEREOF the Parties have executed this Agreement as set out below on May 11, 2024:

**Signed on behalf of Lyackson First Nation
by**

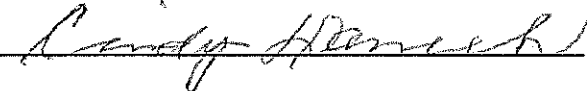


Hereditary Chief Pahalicktun, Richard Thomas

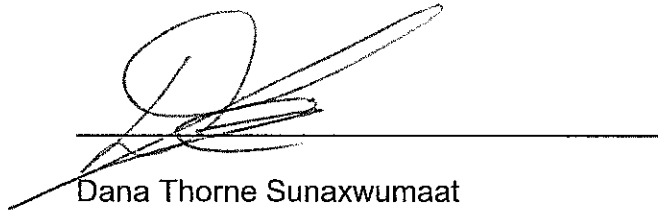


Laxele'wuts'aat Shana Thomas
Negotiator

Signed on behalf of Cowichan Tribes by



Chief Cindy Daniels Sulsulxumaat

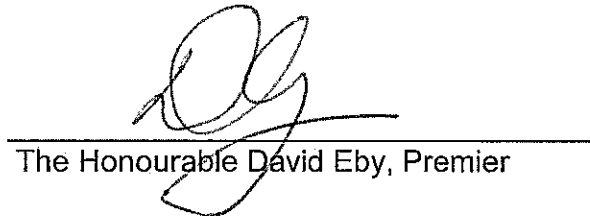


Dana Thorne Sunaxwumaat
A/Chief Administrative Officer

**Signed on behalf of His Majesty the King in
Right of the Province of British Columbia by**



The Honourable Murray Rankin, Minister of
Indigenous Relations and Reconciliation



The Honourable David Eby, Premier

Schedule "1" Part 1 – Permitted Encumbrances

Permitted Encumbrances
<p>all interests, charges and encumbrances registered on title under the <i>Land Title Act</i> as of the Closing Date including:</p> <ul style="list-style-type: none">a) Exceptions and Reservations M76300b) Undersurface and other Exceptions and Reservations S21894 <p>any conditional or final water license or substituted water license issued or given under the <i>Water Act</i>, 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</p> <p>all subsisting grants to, or subsisting rights of any person made or acquired under the <i>Mineral Tenure Act, Coal Act or Petroleum and Natural Gas Act</i> or under any prior or subsequent enactment of the Province of British Columbia of like effect</p> <p>all other liens, charges and encumbrances granted by the Province, with the prior written consent of Lyackson First Nation and Cowichan Tribes prior to the Closing Date</p> <p>Lyackson First Nation and Cowichan Tribes acknowledge that all existing interest holders and interests on the Lands may not have been identified in this Schedule prior to the execution of this Agreement and that these unidentified interests continue on the Lands indefinitely</p>

Schedule "1" Part 2 - Permitted Encumbrances-Interests Not Registered on Title

Interests Not Registered on Title
<p>Utility and local government Interests for hydro, telephone, cablevision, heating/natural gas, water infrastructure, storm drains, dikes and waste disposal/sewer continue on the Lands.</p>

Schedule "2" - Designated Company Agreement

This Agreement is dated for reference _____, 2024.

BETWEEN:

HIS MAJESTY THE KING IN RIGHT OF THE PROVINCE OF BRITISH COLUMBIA,
represented by the Minister of Indigenous Relations and Reconciliation [address]

(the "Province")

AND:

_____, a company incorporated under the laws of British Columbia and
having its principle place of business at [address]

(the "Designated Company")

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

WHEREAS:

- A. The Province, Lyackson First Nation and Cowichan Tribes have entered into an agreement dated _____ (the "Incremental Treaty Agreement") pursuant to which the Province will transfer to the Designated Company fee simple title to those lands legally described as:

[Insert Legal Description of lands]

(the "Lands")

- B. Lyackson First Nation, Cowichan Tribes and the Designated Company have agreed that, as a condition of the transfer of the Lands, the Designated Company will execute and deliver this Agreement on the terms set out below.

NOW THEREFORE the Province and the Designated Company agree as follows:

1. **Defined Terms.** The terms "Province", "Lyackson First Nation", "Cowichan Tribes" and any other capitalized terms used in this Agreement and defined in the Incremental Treaty Agreement will have the meaning given to those terms in the Incremental Treaty Agreement.
2. **Representations and Warranties.** The Designated Company represents and warrants that it is a "Designated Company" within the meaning of the Incremental Treaty Agreement and that it 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.

3. **ITA Binding.** The Designated Company hereby agrees that the terms of the Incremental Treaty Agreement relating to the Lands are and shall be legally binding on the Designated Company, *mutatis mutandis*, as if the Designated Company was a party to the Incremental Treaty Agreement, including, without limitation, those provisions of the Incremental Treaty Agreement relating to the condition of the Lands (Article 7), the Reservations and Permitted Encumbrances (Article 8) and other covenants (Article 10).
4. **Environmental Condition.** Without limiting the generality of the foregoing, the Designated Company waives the requirement, if any, of the Province to provide a site disclosure statement as defined in the *Environmental Management Act* in connection with its acquisition of the Lands.
5. **Enforcement of ITA.** The Province may, in its sole discretion, enforce any term or condition of the Incremental Treaty Agreement, including any obligation, covenant or indemnity of Lyackson First Nation and Cowichan Tribes, against the Designated Company, *mutatis mutandis*, or Lyackson First Nation and Cowichan Tribes or any of them.
6. **Legal Advice.** The Designated Company acknowledges that it has had full opportunity to review the terms and conditions of this Agreement and the Incremental Treaty Agreement, a copy of which is attached as Schedule A, and to seek independent legal advice with respect to their terms and conditions.
7. **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.
8. **Further Acts and Assurances.** The Parties will, upon the reasonable request of the other Party, do such further lawful acts or deliver such further documents in a timely fashion as are reasonably required in order to fully perform and carry out the terms of this Agreement.
9. **No Implied Waiver.** Any waiver of a provision of this Agreement, the performance by a Party of an obligation under this Agreement or 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.
10. **Successors.** This Agreement will enure to the benefit of and be binding on the Designated Company and its successors and the Province.
13. **No Fettering.** Nothing in this Agreement will be interpreted in a way that fetters the discretion given to any Provincial Official in an enactment.
14. **Amendment.** This Agreement may be amended from time to time by the Parties in writing.
15. **Governing Law.** This Agreement will be governed by and construed in accordance with the laws of the Province of British Columbia.

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

Signed by the Designated Company as of _____, 20__ by:

[Name of Company]

Per: Authorized Signatory

SIGNED on behalf of HIS MAJESTY THE KING IN RIGHT OF THE PROVINCE OF BRITISH COLUMBIA by the Minister of Indigenous Relations and Reconciliation or the Minister's authorized representative as of _____, 20____:

Minister of Indigenous Relations and Reconciliation
or the Minister's authorized representative

Schedule "3" – GST Certificate

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

Certificate as to Registration Status of Purchaser

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

FROM: *[the "Vendor"]*
TO: *[the "Purchaser"]*
RE: *[the "Property"]*

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

is a prescribed recipient under the Act.

[OR]

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

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

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

DATED *[month, day, year]*.

[Name of Corporate Vendor]

[Name of Individual Vendor]

Per: _____

Schedule "4" - Consent of Designated Company
in relation to Property Transfer Tax Matters

TO WHOM IT MAY CONCERN:

1. Article ____ of the Incremental Treaty Agreement (the Agreement) between the Province of British Columbia, Lyackson First Nation and Cowichan Tribes, executed dated [date], 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 [name of Designated Company] hereby
 - c. authorizes the Ministry of Finance and the Ministry of Indigenous Relations and Reconciliation to deal directly with one another in regard to all matters relating to the Property Transfer Tax, and

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

Executed on the ____ day of _____, 20__

Signature of the duly authorized signatory for the [name of Designated Company]

Name and Title (please print)

**Schedule "5" - Memorandum of Understanding between Lyackson
First Nation and Cowichan Tribes**