

INCREMENTAL TREATY AGREEMENT

This Agreement is dated for reference July 7, 2023.

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:

Ts'uubaa-asatx (formerly known as Lake Cowichan First Nation), on behalf of itself and its Members, as represented by the Chief and Council

WHEREAS:

- A. Ts'uubaa-asatx has Aboriginal Rights in its Traditional Territory;
- B. The Province of British Columbia, the First Nations Summit and the Government of Canada have endorsed the Recognition and Reconciliation of Rights Policy for Treaty Negotiations in British Columbia on September 4, 2019;
- C. The Province and Ts'uubaa-asatx are committed to advancing reconciliation based on the recognition and implementation of Ts'uubaa-asatx Aboriginal Rights, recognized and affirmed under section 35 of the *Constitution Act, 1982*, and upholding the standards for the survival, dignity, and well-being of Indigenous peoples in accordance with the United Nations Declaration on the rights of Indigenous Peoples ("UNDRIP"), the Calls to Action of the Truth and Reconciliation Commission, and the *Declaration on the Rights of Indigenous Peoples Act* ("Declaration Act");
- D. The Parties wish to create momentum in advancing meaningful and lasting reconciliation; and
- E. This Agreement will provide Ts'uubaa-asatx with transitional economic benefits in advance of a Treaty and is in the spirit and vision of the Declaration Act.

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 aboriginal title, which are or may be recognized and affirmed by section 35 of the *Constitution Act, 1982*;

"Chief" means, in respect of Ts'uubaa-asatx, "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 are uploaded to the electronic meet and are submitted to the Land Title Office;

"Council" and "Band Council" means the "council" of Ts'uubaa-asatx within the meaning of the *Indian Act*;

"Crown Corridor" means

- a) a highway (as defined in the *Transportation Act*), or
- b) any other area of road, right-of-way, easement or licence over Crown land that is used for transportation or public utility purposes which
 - a. is not a Permitted Encumbrance, and
 - b. is identified in Schedule "1";

"Crown Grant" means a Crown grant as defined in the *Land Act*;

"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 Ts'uubaa-asatx and which Ts'uubaa-asatx has designated to take fee simple title to any of the Lands;

"Effective Date" means the date on which the Treaty takes effect;

"Treaty" means the Treaty 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, approvals, 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;

"Lands" means the area of approximately 30 hectares, as shown for illustrative purposes in Schedule "1" and, following completion and approval of the 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*), any Crown Corridor, or any submerged lands.

"Member" means any person who is a "member of the band", as that phrase is defined in the *Indian Act*, of Ts'uubaa-asatx;

"Other Ts'uubaa-asatx Lands" means those lands identified in the Treaty as Other Ts'uubaa-asatx Lands, which for greater certainty, are not Ts'uubaa-asatx Lands as defined in the Treaty;

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

"Permitted Encumbrances" means the liens, charges, and other interests described in Part 2 and Part 3 of Schedule "2";

"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;

"Reservation" means the exceptions and reservations applicable to the Lands as described in Part 1 of Schedule "2";

"Subsequent Encumbrances" means charges and other interests identified in Schedule "2A";

"Traditional Territory" means, for the purposes of this Agreement, the statement of intent area filed by Ts'uubaa-asatx with the British Columbia Treaty Commission;

"Ts'uubaa-asatx Lands" means those lands identified in the Treaty as Ts'uubaa-asatx Lands; and

"Ts'uubaa-asatx" means the "band", as that term is defined in the *Indian Act*, named "Ts'uubaa-asatx" (formerly, Lake Cowichan First Nation) and includes all Members.

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 or other covenant given, and action to be taken, by Ts'uubaa-asatx under this Agreement

means Ts'uubaa-asatx acting by and through its Chief and Council, and will be conclusively deemed to have been given, or taken, by Ts'uubaa-asatx 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" – Exceptions and Reservations, Permitted Encumbrances and Other Interests
- Schedule "2A" – Subsequent Encumbrances
- Schedule "3" – Form of Permitted Encumbrances
- Schedule "4" – Designated Company Agreement
- Schedule "5" – GST Certificate
- Schedule "6" – Consent of Ts'uubaa-asatx First Nation in relation to Property Transfer Tax Matters

ARTICLE 2 – RECONCILIATION AND PURPOSE

2.1 **Reconciliation.** Ts'uubaa-asatx acknowledges and agrees that, in the spirit of the Declaration Act, and to advance treaty negotiations, the Lands transferred to the Designated Company in accordance with this Agreement constitute a contribution by the Province towards the reconciliation of the Province's and Ts'uubaa-asatx's interests and the settlement of Ts'uubaa-asatx's Aboriginal Rights within the Traditional Territory through treaty negotiations and, as such, the benefits provided to Ts'uubaa-asatx and the Designated Company under this Agreement 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 achieving long-term reconciliation; and
- b) in the spirit of the Declaration Act, provide Ts'uubaa-asatx with land, through the Designated Company, 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.

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 either Party prior to the minister responsible authorizing the disposition of the Lands as described in section 5.2(l).
- 3.3 **Termination on Litigation.** Despite 3.2, the Province may terminate this Agreement, including the transfer of any Lands which have not been completed, in the event Ts'uubaa-asatx commences a Proceeding relating to any Government Action within the Traditional Territory.
- 3.4 **Survival of Lands Conditions.** Despite 3.2, and subject to the Treaty, where any of the Lands are transferred under this Agreement, Articles 7, 10 and 12 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 **Ts'uubaa-asatx Representations.** Ts'uubaa-asatx 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 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 Ts'uubaa-asatx and its Members;
 - d) any company designated by Ts'uubaa-asatx 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 Ts'uubaa-asatx 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 Ts'uubaa-asatx, with the intent and understanding that they will be relied on by Ts'uubaa-asatx 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.** Concurrent with the execution of this Agreement by Ts'uubaa-asatx, Ts'uubaa-asatx will deliver to the Province a resolution adopted by its Council authorizing Ts'uubaa-asatx's representative(s) named in the resolution to execute this Agreement on behalf of Ts'uubaa-asatx.

5.2 **Conditions Precedent to Land Transfers.** The obligation of the Province to transfer any of the Lands to Ts'uubaa-asatx 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 Ts'uubaa-asatx under this Agreement being true and correct on and up to the applicable Closing Date;
- d) in respect of all previously transferred Lands, all obligations of Ts'uubaa-asatx and the Designated Company having been fully performed in accordance with this Agreement;
- e) 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 Ts'uubaa-asatx;

- f) the section 16 *Land Act* withdrawal from disposition being cancelled;
- g) the Province receiving from BC Hydro, Telus and Ts'uubaa-asatx confirmation that they have reached agreement on the terms and conditions of a distribution right of way agreement with respect to the Lands;
- h) the Province receiving from Telus and Ts'uubaa-asatx confirmation that they have reached agreement on the terms and conditions for a right of way to replace Statutory Right of Way Reg. No. FB243577 for extension of neighboring transmission lines with respect to the Lands;
- i) Telus Communications Inc. surrendering, on such terms and conditions as are satisfactory to the Province, Statutory Right of Way Reg. No. FB243577 from the Lands effective on or before the Closing Date;
- j) the Province receiving a registrable release of Statutory Right of Way Reg. No. FB243577 duly executed by Telus Communications Inc. for registration in the Land Title Office on or before the Closing Date;
- j) surveys for the Lands having been completed on or before the applicable Closing Date;
- k) the Province receiving from Ts'uubaa-asatx confirmation of the Designated Company that will take fee simple title to the Lands under section 6.1; and
- l) the Province having given notice that the minister responsible has authorized the disposition of the Lands in accordance with Provincial law.

5.3 **Satisfaction of Conditions Precedent.** The Province will not be required to take steps regarding, or confirm the status of, the items set out in the conditions precedent under paragraph 5.2 until such time as Ts'uubaa-asatx 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 5.2 are for the sole benefit of the Province and may be waived by the Province on written notice to Ts'uubaa-asatx.

ARTICLE 6 – TRANSFER OF LANDS

- 6.1 **Transfer of Lands.** Subject to the Reservations, Permitted Encumbrances and the terms of this Agreement, including the satisfaction or waiver of all applicable conditions precedent, the Province will:
- a) transfer the Lands to the Designated Company within 120 days after
 - i. the date on which Province confirms all conditions precedent under 5.1 and 5.2 have been waived or satisfied, or
 - ii. the date on which Ts'uubaa-asatx notifies the Province that the Designated Company is ready to proceed with the transfer of the Lands,whichever occurs last; and
 - b) if, before the Closing Date, the Province determines it owns subsurface resources in the Lands, request that the Chief Gold Commissioner establish a reserve under s. 21 of the *Coal Act*, and a reserve to prohibit a free miner from registering a mineral title on the Lands under s. 22 of the *Mineral Tenure Act*.
- 6.2 **Staged Transfer.** Without limiting section 6.1, the Parties agree that the transfer of the Lands may be staged such that one or more portions of the Lands may be transferred separately in the event that the conditions precedent for one parcel within the Lands are satisfied or waived prior to the conditions precedent for the other portions of the Lands being waived or satisfied, and, in that event,
- a) the conditions in section 5.2; and
 - b) the steps set out in sections 6.3 to 6.6
- will apply separately for each staged transfer of Lands.
- 6.3 **Closing Deliveries by Ts'uubaa-asatx.** Not less than 14 days before the Closing Date, or such other date as may be agreed to by the Parties, Ts'uubaa-asatx 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 “4” in relation to the applicable Lands;
 - b) a certificate signed by an officer of the Designated Company in the form attached as Schedule “5” confirming the Designated Company’s GST registration number and registered status;

- c) a signed consent of the Designated Company in relation to Property Transfer Tax form executed by Designated Company (Schedule "6");
- d) registrable copies of the executed Subsequent Encumbrances; and
- e) all such other documents that may be necessary or advisable for Ts'uubaa-asatx or a 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 6.1 will be registered in the Land Title Office.

6.5 **Closing Procedure.** Prior to Closing, legal counsel for Ts'uubaa-asatx, the Designated Company and the Province will confirm in writing, including any undertakings, the manner in which the documents necessary or advisable to carry out the registrations set out in this Agreement will be produced, managed, exchanged and delivered. Without limiting the generality of the foregoing, legal counsel responsible for registering the Lands will provide all documents submitted to the Land Title and Survey Authority to legal counsel for the other Party.

6.6 **Closing.** On the Closing Date,

- a) the Province will cause its solicitor to
 - i. initiate an electronic meet within myLTSA;
 - ii. upload the release of Statutory Right of Way Reg. No. FB243577 in favour of Telus Communications Inc.;
 - iii. upload any applicable Permitted Encumbrances which are not already registered;
 - iv. upload the Crown Grant; and
 - v. invite the solicitor for the Designated Company to the electronic meet;
- b) the Designated Company will cause its solicitor to
 - i. join the electronic meet initiated by the Province's solicitor;
 - ii. upload the Subsequent Encumbrances;
 - iii. upload any applicable *Property Transfer Tax Act* forms;
 - iv. file applicable *Land Owner Transparency Act* documents; and
 - v. provide the Province's solicitor with the applicable *Land Act Transparency Act* form numbers, with instructions for the Province to input same.
- c) once the solicitors for the Province and the Designated Company confirm that the items set out in subsections a) and b) have been completed and approved by all participants in the electronic meet, the Province will cause

its solicitor to submit documents uploaded in the electronic meet for registration the Land Title Office

unless otherwise arranged, and confirmed in writing, by the solicitors for Ts'uubaa-asatx, the Designated Company and the Province.

ARTICLE 7 – CONDITION OF LANDS

- 7.1 **Lands “As Is”.** Ts'uubaa-asatx acknowledges and agrees that any of the Lands acquired by a Designated Company under this Agreement are acquired “as is”.
- 7.2 **Viability and Condition of Lands.** Ts'uubaa-asatx 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) current ownership of the subsurface rights and resources of the Lands;
 - c) the economic feasibility of the development of the Lands;
 - d) the fitness of the Lands for any particular use, including the intended use of it by Ts'uubaa-asatx or by a Designated Company; and
 - e) 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.** Ts'uubaa-asatx:
- a) acknowledges it received an Environmental Assessment Final Determination Letter dated December 17, 2019 for a portion of the Lands formerly used for the Mead Creak Gravel Pit (site identification number 22571);
 - b) waives all requirements, if any, for any persons to perform any tasks on the Lands in relation to any silviculture obligations existing on the Effective Date and required under Provincial law;
 - c) 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
 - d) acknowledges and agrees 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 and past uses of the Land or any surrounding or neighbouring land.

7.4 Environmental Conditions. Ts'uubaa-asatx 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 7.4. For greater certainty:

- a) 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) 7.4 does not apply where any environmental liability relating to the Lands results from the acts or omissions of British Columbia after the Closing Date.

ARTICLE 8 – RESERVATIONS AND ENCUMBRANCES

8.1 Reservations and Permitted Encumbrances. Ts'uubaa-asatx acknowledges and agrees that, on execution of this Agreement or receipt of updated Schedules under 8.3 and as of the Closing Date:

- a) it is familiar with the existence and terms of the Reservations and Permitted Encumbrances and accepts fee simple title to the Lands to the Designated Company 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 Reservations and Permitted Encumbrances in accordance with provincial law; and
 - c) neither it nor the Designated Company will not do, or allow to be done, anything that would interfere with any rights under any of the Reservations or Permitted Encumbrances or that would otherwise result in any claim against the Province by anyone claiming by, through or under a Reservation or Permitted Encumbrance.
- 8.2 **Form of Permitted Encumbrances.** The Permitted Encumbrances will be in the form attached or to be attached as Schedule "3" and will include any modifications that Ts'uubaa-asatx and the holder of the Permitted Encumbrance may have agreed to in writing.
- 8.3 **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; and
 - b) correct any errors or omissions to the Permitted Encumbrances or the form of Permitted Encumbrances attached as Schedule "2" or Schedule "3", respectively.
- 8.4 **Amendments Form Part of Agreement.** Where any amendments are made under 8.3, Schedule "2" and Schedule "3" will be revised and initialed. The Parties acknowledge agree that, notwithstanding any amendments under 8.3 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.** Ts'uubaa-asatx will consent, or will cause the Designated Company to consent, to the registration of any interests identified in Schedule "2" Part 3 which are not registered against the applicable Lands in the Land Title Office on or after the Closing Date.
- 8.6 **Indemnity for Charges.** Ts'uubaa-asatx 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 Ts'uubaa-asatx's or a Designated Company's acts or omissions in connection with any Permitted Encumbrance.

- 8.7 **BC Hydro Right of Ways.** Ts'uubaa-asatx will work with BC Hydro to identify any BC Hydro rights of way and works on the Lands and will endeavour 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 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 and Subsequent Encumbrances held by a public utility will be the responsibility of the public utility.
- 9.3 **GST, PST and Other Charges.** Ts'uubaa-asatx is 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.** Subject to the Treaty, the Designated Company is responsible for any and all annual taxes payable in respect of the Lands in accordance with provincial law. 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 Ts'uubaa-asatx Covenants.** Ts'uubaa-asatx acknowledges and agrees that:

- a) in order to preserve the possibility of the Lands becoming Ts'uubaa-asatx Lands in accordance with the Treaty, Ts'uubaa-asatx will not permit the Designated Company to dispose of its fee simple estate in the Lands for a period of time commencing on the applicable Closing Date and ending on the earlier of:
 - i) a written proposal to dispose of the Land is agreed to by the Province; or
 - ii) the Effective Date;
- b) subject to 11.1 or unless the Lands become part of a reserve, within the meaning of the *Indian Act*, of Ts'uubaa-asatx, 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 Ts'uubaa-asatx challenge the applicability of provincial laws to the Lands; and
- c) for greater certainty, Ts'uubaa-asatx releases and forever discharges the Province and all Provincial Officials from all claims of infringement of its Aboriginal Rights in respect of the Lands, and that it has been adequately consulted and accommodated with respect to the terms and conditions of the transfer of the Lands, including the Reservations and Permitted Encumbrances and any related extensions, renewals or replacements or any further rights related to the Permitted Encumbrances in accordance with provincial law.

10.2 Disposition of Interests in Lands. Notwithstanding 10.1(a), the Designated Company may charge or encumber the Lands provided that Ts'uubaa-asatx advises the intended charge or encumbrance holder in writing that the Lands will, on the Effective Date:

- a) be transferred by the Designated Company to Ts'uubaa-asatx and will become Ts'uubaa-asatx Lands; or
- b) be retained by the Designated Company, or transferred by the Designated Company to Ts'uubaa-asatx, and will become Other Ts'uubaa-asatx Lands.

10.3 Indemnity for Charges. Ts'uubaa-asatx will indemnify and save harmless the Province and all Provincial Officials from and against any and all Proceedings arising out of or in connection with or any Permitted Encumbrance, any charge or encumbrance granted by the Designated Company under 10.2, the transfer of the fee simple estate in the Lands to Ts'uubaa-asatx or the Lands becoming Ts'uubaa-asatx 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, the restriction on the disposition of the Lands under 10.1(a) will not apply.
- 10.5 **Registration of Unregistered Interests.** Ts'uubaa-asatx will consent, or will cause the Designated Company to consent, to the registration of any interests identified in Schedule "2" 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 the Designated Company as "Ts'uubaa-asatx Lands" or "Other Ts'uubaa-asatx 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, Ts'uubaa-asatx 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 satisfaction, the Province may amend the boundaries of the Lands, not transfer the Lands, or transfer other lands.
- 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 Ts'uubaa-asatx, Ts'uubaa-asatx will provide the Province with reasonable assistance, upon request, in support of its defence of the Proceeding.

ARTICLE 13 – LITIGATION

- 13.1 **Existing Legal Proceedings.** The Parties acknowledge that there is no existing litigation that requires abeyance for the purposes of this agreement.
- 13.2 **New Litigation.** Before commencing any Proceeding relating to any Government Action within the Traditional Territory, Ts'uubaa-asatx 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 14.1-14.2.

ARTICLE 14 - DISPUTE RESOLUTION

- 14.1 **Representatives.** If a dispute arises between the Province and Ts'uubaa-asatx 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 and Ts'uubaa-asatx.
- 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. Govt.
Victoria, B.C. V8W 9B1

Email: Tom.McCarthy@gov.bc.ca
Fax: (250) 356-6159

and if to Ts'uubaa-asatx:

Ts'uubaa-asatx
313B Deer Road
PO Box 159
Lake Cowichan, BC V0R 2G0
Attention: Chief Councillor Melanie Livingstone

Email: Aaron@lcfn.ca
Fax: 250-749-4286

- 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 number 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 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.
- 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 Ts'uubaa-asatx 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 Ts'uubaa-asatx 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 Ts'uubaa-asatx.
- 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.
- 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 mail, email or facsimile transmission.

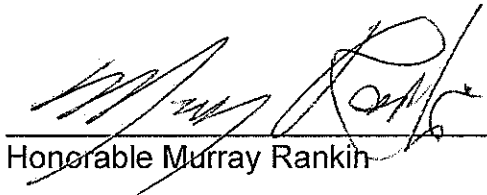
IN WITNESS WHEREOF the Parties have executed this Agreement as set out below:


Signed on behalf of Ts'uubaa-asatx, (formerly known as Lake Cowichan First Nation), on behalf of itself and its Members, as represented by the Chief and Council


Chief Councillor Melanie Livingstone

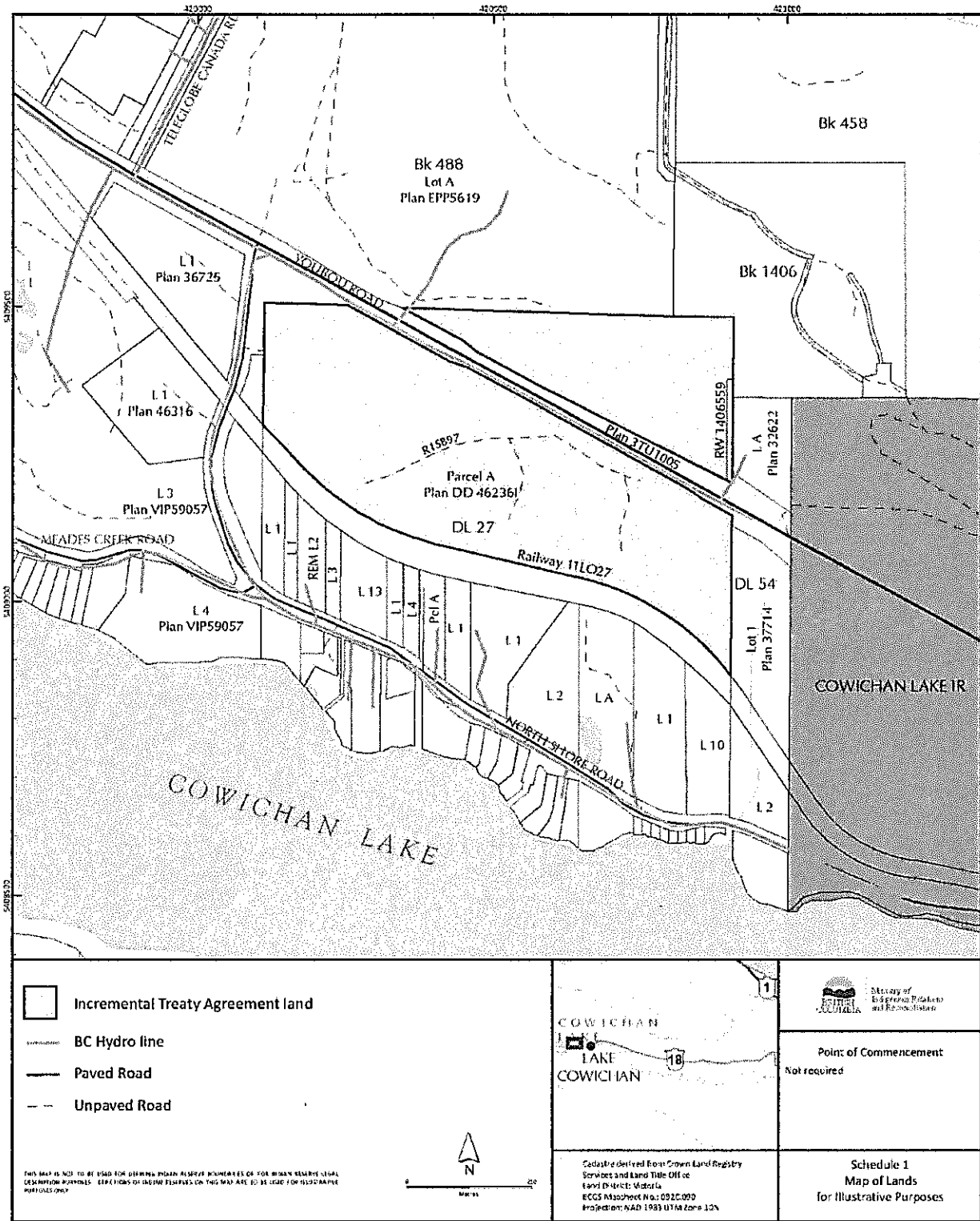

Witness

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


Honorable Murray Rankin

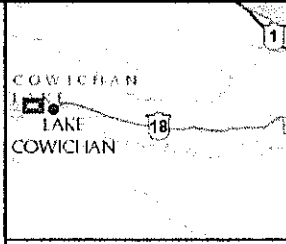

Witness

Schedule "1" – Map of Lands for Illustrative Purposes



- Incremental Treaty Agreement land
- BC Hydro line
- Paved Road
- Unpaved Road

THIS MAP IS NOT TO BE USED FOR DETERMINING BOUNDARY NUMBERS OR FOR OTHER SURVEYING PURPOSES. THE BOUNDARY NUMBERS ON THIS MAP ARE TO BE USED FOR IDENTIFICATION PURPOSES ONLY.



Cadastral derived from Crown Land Registry Services and Land Title Office
 1:50,000 Scale
 BCSS Mapsheet No.: 0922.000
 Projection: NAD 1983 UTM Zone 12N

Ministry of
 Indigenous Relations
 and Reconciliation

Point of Commencement
 Not required

Schedule 1
Map of Lands
 for Illustrative Purposes

Schedule "2"

Part 1 – Exceptions and Reservations

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.

The exceptions and reservations of the interests, rights, privileges and titles referred to in section 50 of the *Land Act*.

Part 2 – Permitted Encumbrances

- Exceptions and Reservations Reg. No. M76300
Remarks: INTER ALIA
A.F.B. 9.693.7434A
84386G
SECTION 172(3)
FOR ACTUAL DATE AND TIME OF REGISTRATION SEE
ORIGINAL GRANT FROM E AND N RAILWAY COMPANY
- all other interests registered on title under the *Land Title Act* as of the Closing Date
- all other liens, charges and encumbrances granted by the Province, with the prior written consent of Ts'uubaa-asatx prior to the Closing Date

Part 3 – Interests Not Registered on Title

Utility and local government Interests for hydro, telephone, cablevision, heating/natural gas, water infrastructure, storm drains, dykes and waste disposal/sewer continue on the Lands shown in Schedule "1".

Ts'uubaa-asatx acknowledges 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

Schedule "2A" – Subsequent Encumbrances

- Distribution Right of Way Agreement in favour of BC Hydro and Telus to be in a form agreed to by Ts'uubaa-asatx First Nation, BC Hydro and Telus
- Statutory Right of Way, in favour of TELUS, to be in a form agreed to by Ts'uubaa-asatx First Nation and Telus for extension of neighboring transmission line statutory right of way (to replace statutory right of way Reg. No. FB243577)

Schedule "3" – Form of Permitted Encumbrance

Exceptions and Reservations Reg. No. M76300 as registered in the Land Title Office with respect to the Lands.

Schedule "4" - Designated Company Agreement

This Agreement is dated for reference _____, 2023.

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 principal 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 and Ts'uubaa-asatx have entered into an agreement dated July 7, 2023, (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. Ts'uubaa-asatx 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" and "Ts'uubaa-asatx" 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 terms of the Incremental Treaty Agreement relating to the Lands which are for the benefit of the Province are legally binding on the Designated Company 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 profile 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 Ts'uubaa-asatx, against the Designated Company or Ts'uubaa-asatx or both 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 legal advice, independent from the Province, 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. The Schedules and Appendices to this Agreement form part of 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.
11. **No Admissions.** Nothing in this Agreement will be construed as an:
 - a) admission by the Province of the validity of any claim by Ts'uubaa-asatx 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 Ts'uubaa-asatx.
12. **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.
- 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 "5" – 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 "6" - Consent of Ts'uubaa-asatx
in relation to Property Transfer Tax Matters**

TO WHOM IT MAY CONCERN:

1. Article 9.1(d) of the Incremental Treaty Agreement (the Agreement) between the Province of British Columbia and Ts'uubaa-asatx, executed dated July 7, 2023, 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)