

RDIMS #10084078

30-10-050
Agreement to Transfer

AGREEMENT TO TRANSFER

Strathcona Regional District – November 2014
Owen Bay, Port Neville, & Surge Narrows

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ARTICLE 1 – DEFINITIONS

Section 1.01 Definitions

1.01.01 In this Agreement:

“Agreement” means this Agreement to Transfer, and includes the documents attached as Appendices “A” to “D”, inclusive, which form an integral part of this Agreement as fully as if they were set forth in their entirety;

“Applicable Environmental Laws” means all federal and provincial environmental laws of general application in the Province of British Columbia respecting environmental matters, as those laws apply to the Port Operator or the Port or Her Majesty. In the event of conflict of laws, the highest standard shall be met;

“Assignment, Assumption and Indemnity Agreement” means the document referred to in Section 2.02 when executed and delivered;

“Bill of Sale” means the document referred to in Section 2.02 when executed and delivered;

“Business Day” means a day other than a Saturday, Sunday or statutory holiday in the Province of British Columbia;

“Canadian Inspection Services” means inspection services as provided by legislation of the CIS Departments including the act of collecting revenue and of receiving, controlling, examining, interviewing, searching, detaining, removing and clearing conveyances, travelers and goods entering, departing or transiting Canada;

“Chattels” means items of tangible personal property (other than Consumable Stock) which are used for the Operation of the Ports;

“CIS Departments” means those departments or agencies of Her Majesty or any successor department or agency which provide Canadian Inspection Services at Canadian ports and includes:

- (a) Agriculture and Agri-Food Canada;
- (b) Canada Border Services Agency;
- (c) Canada Revenue Agency;
- (d) Citizenship and Immigration Canada;
- (e) Health Canada;
- (f) Public Safety Canada; and
- (g) Transport Canada;

“Closing” means the execution and delivery of the Instruments listed in Section 2.02 of this Agreement and the concurrent delivery of other documents as agreed between the parties;

“Closing Date” means a date on or before the 14th day of the month of November, 2014.

“Consumable Stock” means consumables which are used for the Operation of the Ports;

“Contaminant” means any substance, howsoever defined in any Applicable Environmental Laws, which is hazardous to persons, animals or plants and which affects the soil of or the water (including sediment) in, on, over or under the Port Lands or any Port Facilities;

“Contribution Agreement” means the document referred to in Section 2.02 when executed and delivered;

“Costs” means all expenses, losses, charges and payments relating to an event and including any professional, consultant and legal fees (on a “solicitor and his own client” basis) of professionals and consultants retained by a party hereto;

“Damages” means any loss, cost or damage including, but not limited to direct, indirect, incidental, special, exemplary, consequential or otherwise, loss of profits or revenue, interference with business operations, loss of tenants, lenders, investors or buyers, diminution in value of the Ports or any part thereof, inability to use any part of the Ports and Costs;

“Disclosure of Information Agreement” has the meaning set out in Subsection 15.01.02;

“Existing Expenditure Agreement” means any contract, agreement or arrangement whatsoever existing between Her Majesty and any other Person on the Closing Date whereby the other Person:

- (a) has agreed to supply any service or any goods or materials for the Operation of the Ports; or
- (b) has agreed to construct any building, structure, improvement or other fixture on any part of the Port Lands;

and whether or not such contract, agreement or arrangement is listed in Schedule “B” to the Assignment, Assumption and Indemnity Agreement referred to in Section 2.02 when executed and delivered;

“Existing Facilities” means any wharf, dock, pier, float, dolphin, berthing or mooring facility, breakwater, building, structure, improvement, infrastructure, facility and utility located on, in, over, under or through the Port Lands which is owned by Her Majesty immediately prior to the Transfer Date, and all pavement, landscaping and fixtures associated therewith;

“Existing Revenue Agreement” means any lease, agreement for lease, licence, easement, concession, franchise, permit, authorization, or any other arrangement whatsoever existing between Her Majesty and any other Person on the Closing Date whereby Her Majesty has granted a right to occupy or use the whole or any part of the Ports whether or not such lease, agreement for lease, licence, easement, concession, franchise, permit, authorization, or arrangement is listed in Schedule “A” to the Assignment, Assumption and Indemnity Agreement referred to in Section 2.02 when executed and delivered;

“Instruments” means the documents listed in Section 2.02 when executed and delivered;

“Minister” means the Minister of Transport or any person authorized in writing to act on the Minister’s behalf;

“Navigation Aids” means

- (a) light houses, light ships, floating and other lights, lanterns and other signals, buoys and beacons, radio aids to marine navigation, anchors and landmarks acquired, constructed, repaired, maintained, improved, erected, placed or laid down for the greater security and facility of marine navigation, and
- (b) any equipment or special electrical distribution cables required to bring electrical power to or to operate any aids contemplated in Paragraph (a) of this definition;

“Operate (Operation)” means to carry out or cause to be carried out in an active, diligent and continual basis and at minimum, the activities described in Schedule “A” to the Operating Agreement;

“Operating Agreement” means the document referred to in Section 2.02 when executed and delivered;

“Operating Period” means the period during which the Port Operator agrees to Operate the Ports as more particularly described in Subsection 3.01.01 of the Operating Agreement;

“Person” means any individual, company, corporation, partnership, firm, trust, sole proprietorship, government or government agency, authority or entity, however designated or constituted;

“Port” means the Port Lands, including the Port Facilities;

“Port Facilities” means Existing Facilities and includes those facilities described in Schedule “C” to the Operating Agreement;

“Port Lands” means all and singular those certain parcels or tracts of lands and premises situate, lying and being at Owen Bay, Port Neville, and Surge Narrows, British Columbia as more particularly described in Schedule “B” to the Operating Agreement;

“Port Operator’s Solicitor” means a Person who is appointed by the Port Operator, is qualified to practice law and is actively practicing law in the Province of British Columbia;

“Remedial Work” means any work required under the Applicable Environmental Laws to remedy an adverse environmental condition caused by the existence of a Contaminant affecting the soil or the water (including sediment) in, on, over or under the Ports;

“Report” means the following documents:

Owen Bay:

Regional Harbours and Ports Phase I Environmental Site Assessment Owen Bay, British Columbia was conducted by Golder Associates Ltd. in 1999

Regional Harbours and Ports Environmental Audit 2007 Owen Bay, Sonora Island, BC was conducted by Golder Associates Ltd. on August 21, 2007

Regional Harbours and Ports Environmental Audit 2010 Owen Bay, Sonora Island, BC was conducted by Transport Canada on July 26, 2010

Stage 1 Preliminary Site Investigation Owen Bay Public Port Facility, Owen Bay BC conducted by SNC-Lavalin Inc. on October 3, 2013

Port Neville:

Regional Harbours and ports Phase I Environmental Site Assessment Port Neville, British Columbia conducted by Golder Associates Ltd. in 1999

Regional Harbours and Ports Stage II Preliminary Site Investigation Port Neville Public Wharf Port Neville, British Columbia conducted by Golder Associates Ltd. on May 28, 2004

Regional Harbours and Ports Environmental Audit 2007 Port Neville, BC conducted by Transport Canada on August 21, 2007

Regional Harbours and Ports Environmental Audit 2010 Port Neville, BC conducted by Transport Canada on July 26, 2010

Stage 1 Preliminary Site Investigation Port Neville Public Port Facility, Port Neville BC conducted by SNC-Lavalin Inc. on October 10, 2013

Surge Narrows:

Regional Harbours and Ports Phase I Environmental Site Assessment Surge Narrows, British Columbia conducted by Golder Associates Ltd. on December 9, 1999

Regional Harbours and Ports Environmental Audit 2007 Surge Narrows, Read Island, BC conducted by Transport Canada on August 21, 2007

Regional Harbours and Ports Environmental Audit 2010 Surge Narrows, Read Island, BC conducted by Transport Canada on July 26, 2010

Stage 1 Preliminary Site Investigation Surge Narrows Public Port Facility, Read Island BC conducted by SNC-Lavalin Inc on October 3, 2013

Stage 1 Preliminary Site Investigation and Supplementary Intrusive Investigation Surge Narrows Public Port Facility, Read Island BC conducted by SNC-Lavalin Inc on March 31, 2014

Site Remediation, Surge Narrows Public Port Facility, Read Island BC conducted by SNC-Lavalin Inc on October 20, 2014

“Screening Report” has the meaning set out in Subsection 2(1) of the *Canadian Environmental Assessment Act* (c.37 1992);

“Transfer Date” means the day immediately following the Closing Date commencing at 00:00 hours; and

“Transition Period” means the period between the execution of this Agreement and the Closing Date.

ARTICLE 2 – UNDERTAKINGS

Section 2.01 Operation of Port

2.01.01 The parties agree that as of the Transfer Date:

- (a) Her Majesty shall vacate and cease to Operate the Ports; and
- (b) the Port Operator shall take possession of and Operate the Ports on its own behalf and not on behalf of Her Majesty for the duration of the Operating Period, in accordance with the Operating Agreement, any other agreement between the parties regarding the Ports and applicable law.

2.01.02 Subject to any other agreement which the parties may make regarding the Ports or navigable waters adjacent to the Ports, nothing in this Agreement precludes Her Majesty from continuing, on or after the Transfer Date, to carry on or cause to be carried on at the Ports or navigable waters adjacent to the Ports, governmental functions including, without limitation:

- (a) functions relating to marine navigation and traffic control, including functions relating to Navigation Aids administered by the Department of Fisheries and Oceans (Canadian Coast Guard) or any successor department or agency;
- (b) certain protective policing functions, particularly as they relate to marine security and the prevention of terrorism;
- (c) Canadian Inspection Services;
- (d) functions relating to inspection and security for which the Department of Transport is responsible, or any successor department or agency; and
- (e) the enforcement of law.

Section 2.02 Closing

- 2.02.01 The parties undertake to deliver, on the Closing Date, each of the following documents duly executed by the parties:
- (a) Operating Agreement, in the form attached as Appendix "A";
 - (b) Contribution Agreement, in the form attached as Appendix "B";
 - (c) Bill of Sale (regarding Chattels and Consumable Stock), in the form attached as Appendix "C"; and
 - (d) Assignment, Assumption and Indemnity Agreement, in the form attached as Appendix "D".
- 2.02.02 Each party shall, at any time, and from time to time, take any and all steps, and execute and deliver any and all further documents and assurances as the other party may reasonably request to carry out the provisions of this Agreement.
- 2.02.03 The parties agree that there are no representations, warranties, collateral agreements or conditions relating to the transfer of the Port Facilities, except as specified in this Agreement.

ARTICLE 3 – CONDITIONS PRECEDENT**Section 3.01 Conditions Precedent to Her Majesty's Obligations**

- 3.01.01 The obligations of Her Majesty under this Agreement are subject to the satisfaction of or compliance with the following conditions precedent:
- (a) **Truth and Accuracy of Representations and Warranties at Closing Date.** All of the written representations and warranties of the Port Operator made in this Agreement, and in any other agreement or certificate made or delivered pursuant to this Agreement, including the representations and warranties made by the Port Operator as set forth in Subsection 4.01.01, are true and correct at and as of the Closing Date and with the same effect as if made at and as of the Closing Date. On the Closing Date, the Port Operator shall provide Her Majesty with the following:
 - (i) a certificate of a knowledgeable and authorized officer of the Port Operator setting out the representations or warranties made by the Port Operator in Paragraphs 4.01.01 (a) to (i) inclusive and certifying that they are true and correct at and as of the Closing Date; and

- (ii) a legal opinion from the Port Operator's Solicitor in a form and content satisfactory to the Minister to the effect that all representations and warranties made by the Port Operator as set out in Paragraphs 4.01.01 (a) to (i) inclusive are true and correct at and as of the Closing Date. In providing such legal opinion, the Port Operator's Solicitor may rely upon the certificate of a knowledgeable and authorized officer of the Port Operator with respect to any matter of fact.
- (b) **Funds on Closing.** On the Closing Date, the Port Operator shall deliver to Her Majesty a certified cheque payable to the order of the Receiver General for Canada in an amount sufficient to cover any amount due and payable by the Port Operator to Her Majesty on the Closing Date under this Agreement or any other agreement made pursuant to this Agreement.

Section 3.02 Acknowledgment

- 3.02.01 The parties acknowledge that each of the conditions precedent set out in Subsection 3.01.01 is for the exclusive benefit of Her Majesty and may be waived in writing by the Minister in whole or in part.

Section 3.03 Conditions Precedent to the Port Operator's Obligations

- 3.03.01 The obligations of the Port Operator under this Agreement are subject to the satisfaction of or compliance with all of the following conditions precedent:
- (a) **Truth and Accuracy of Representations and Warranties at Closing Date.** All of the written representations and warranties of Her Majesty made in this Agreement, and in any other agreement or certificate made or delivered under this Agreement, including the representations and warranties made by Her Majesty as set forth in Subsection 4.02.01, are true and correct at and as of the Closing Date and with the same effect as if made at and as of the Closing Date. On the Closing Date, Her Majesty shall provide the Port Operator with a certificate of the Minister setting out the representations or warranties made by Her Majesty in Subsection 4.02.01 and certifying that they are true and correct at and as of the Closing Date;
 - (b) **Litigation.** On Closing Date, the Minister shall have prepared and delivered to the Port Operator, a list of litigation, setting out any suit, action, litigation, arbitration proceeding or governmental proceeding, including appeals and applications for review, in progress, pending or threatened against or involving Her Majesty and any judgment, decree, injunction or order of any court or arbitrator, involving Her Majesty, which might adversely affect the capacity or power of Her Majesty to execute and deliver any of the Instruments or to consummate the

transaction contemplated herein or therein or which might adversely affect, to a significant degree, the financial position of the Port Operator; and

- (c) **Update.** The Minister shall have prepared and delivered to the Port Operator, on the Closing Date, an updated list of litigation setting out any suit, action, litigation, arbitration proceeding or governmental proceeding, including appeals and applications for review, in progress, pending or threatened against or involving Her Majesty and any judgment, decree, injunction or order of any court or arbitrator, involving Her Majesty, which might adversely affect the capacity or power of Her Majesty to execute and deliver any of the Instruments or to consummate the transaction contemplated herein or therein or which might adversely affect to a significant degree the financial position of the Port Operator.

Section 3.04 Acknowledgments

- 3.04.01 The parties acknowledge that each of the conditions precedent set out in Subsection 3.03.01 is for the exclusive benefit of the Port Operator and may be waived in writing by the Port Operator in whole or in part.

Section 3.05 Conditions Precedent to both Her Majesty and the Port Operator

- 3.05.01 The obligations of both parties under this Agreement are subject to the satisfaction of or compliance with, at or before the Closing Date, all of the following conditions precedent:
- (a) **Federal or Provincial Regulatory Control.** No governmental body or authority or regulatory agency, body or tribunal having jurisdiction has made under applicable federal or provincial legislation on or before the Closing Date any decision or order precluding the Port Operator from executing and delivering any of the Instruments or from consummating the transactions contemplated herein or therein;
- (b) **Existing Facilities.** The Existing Facilities have not undergone, during the Transition Period, any material change which might adversely affect the Port Operator's financial position to a significant degree;
- (c) **Litigation.** No suit, action, litigation, arbitration proceeding, including appeals and applications for review, in progress, pending or threatened against or involving Her Majesty or the Port Operator has been instituted and no judgment, decree, injunction or order of any court or arbitrator, involving Her Majesty or the Port Operator, has been made which might adversely affect the capacity or power of Her Majesty or the Port Operator to execute and deliver any of the Instruments or to consummate

the transaction contemplated herein or therein or which might adversely affect the Port Operator's financial position to a significant degree;

- (d) **Decision or Order.** No court having jurisdiction has made on or before the Closing Date any decision or order precluding any of the parties from executing and delivering any agreements made pursuant to this Agreement or from consummating the transactions contemplated herein or therein.

Section 3.06 Acknowledgment

- 3.06.01 The parties acknowledge that each of the conditions precedent set out in Subsection 3.05.01 is for the benefit of both parties and may be waived in writing by both the Minister and the Port Operator in whole or in part.

Section 3.07 No Liability

- 3.07.01 If any of the conditions precedent set out in Subsection 3.01.01, 3.03.01 or 3.05.01 has not been met and the party or parties for whose benefit it exists have not waived that condition precedent, this Agreement shall, notwithstanding any intermediate acts or negotiations, be of no further force and effect and neither party shall be liable to the other for any Damages whatsoever.
- 3.07.02 Neither of the parties can raise the non-fulfillment of any of the conditions precedent set out in Subsections 3.01.01, 3.03.01 or 3.05.01 after the Closing Date.

ARTICLE 4 – REPRESENTATIONS AND WARRANTIES

Section 4.01 The Port Operator's Representations and Warranties

- 4.01.01 The Port Operator represents and warrants to Her Majesty that:
- (a) it is a Regional District whose head office is located in Campbell River, which has been duly incorporated and organized and is validly existing under the laws of British Columbia;
 - (b) it is duly qualified, licensed or registered to carry on business in the Province of British Columbia;
 - (c) it has all necessary corporate power, authority and capacity
 - (i) to Operate the Ports,

- (ii) to enter into this Agreement and the other agreements expressly contemplated in this Agreement and to perform its obligations herein and therein,
 - (iii) to borrow,
 - (iv) to impose, on a contractual or quasi-contractual basis, docking and other user charges at the Ports,
 - (v) to collect, on a contractual or quasi-contractual basis, all current ports revenues, and
 - (vi) to acquire and hold an interest in real property in the Province of British Columbia;
- (d) the execution and delivery of this Agreement and each of the other agreements expressly contemplated in this Agreement and the consummation of any of the transactions provided for in any of them have been duly authorized by all necessary corporate action on the part of the Port Operator;
- (e) the documents of incorporation and the by-laws of the Port Operator are consistent with the obligations of the Port Operator under this Agreement and any other agreement expressly contemplated in this Agreement;
- (f) it is not a party to, bound or affected by or subject to any indenture, mortgage, lease, agreement, instrument, charter, by-law, statute, rule, regulation, judgment, order, writ, decree or law which, with or without the giving of notice or the lapse of time, or both, would be violated, contravened, breached by, or under which default would occur, as a result of the execution, delivery and performance of this Agreement or any other agreement expressly contemplated in this Agreement or the consummation of any of the transactions provided for in any of them;
- (g) no approval, authorization, consent, permit, or other action by, or filing with, any governmental body or authority or any regulatory agency, body or tribunal having jurisdiction, or by any Person, whether pursuant to a contract or otherwise, is required in connection with the execution and delivery of this Agreement or any other agreement expressly contemplated in this Agreement and the performance of its obligations hereunder or thereunder, except as otherwise stated in this Agreement;
- (h) as of the Closing Date, there shall be no suit, action, litigation, arbitration proceeding or governmental proceeding, including appeals and applications for review, in progress, pending or threatened against or involving the Port Operator, or any judgment, decree, injunction or order

of any court or arbitrator, involving the Port Operator, which might adversely affect the capacity or power of the Port Operator to execute and deliver this Agreement or any other agreement expressly contemplated in this Agreement or to consummate the transaction provided for in any of them or which might adversely affect to a significant degree the Port Operator, its assets, its financial condition or its future prospects; and

- (i) this Agreement and the other agreements expressly contemplated in this Agreement, upon execution and delivery, constitute legal, valid and binding obligations of the Port Operator enforceable against the Port Operator in accordance with their terms.

Section 4.02 Her Majesty's Representations and Warranties

4.02.01 Her Majesty represents and warrants to the Port Operator that

- (a) this Agreement and any other agreement expressly contemplated in this Agreement, upon execution and delivery, constitute legally valid and binding obligations of Her Majesty enforceable against Her Majesty in accordance with their terms except as they may be limited by law; and
- (b) as of the Closing Date, there are no suits, actions, litigation, arbitration proceedings or governmental proceedings, including appeals and applications for review, in progress, pending or threatened against or involving Her Majesty, or any judgment, decree, injunction or order of any court or arbitrator, involving Her Majesty, which might adversely affect the capacity or power of Her Majesty to execute and deliver this Agreement or any other agreement expressly contemplated in this Agreement or to consummate the transaction provided for in any of them or which might adversely affect to a significant degree the financial position of the Port Operator other than those listed on the lists of litigation prepared and delivered by the Minister to the Port Operator under Paragraphs 3.03.01(b) and 3.03.01(c).

Section 4.03 Acknowledgments

4.03.01 The parties acknowledge that neither party has made nor shall make any representations and warranties with respect to this Agreement or any other agreement expressly referred to in this Agreement and that none is implied or to be implied by statute or otherwise, except the representations and warranties expressly made in this Agreement or in any other agreement expressly referred to in this Agreement or in any certificate or statement of fact made or delivered under this Agreement or in any other agreement expressly referred to in this Agreement.

4.03.02 The parties further acknowledge that neither party has relied on nor shall rely on any information provided by the other party in connection with this Agreement or in any other agreement expressly referred to in this Agreement other than the warranties and representations expressly made in this Agreement or in any other agreement expressly referred to in this Agreement or the certificates or other statements of fact provided under this Agreement or in any other agreement expressly referred to in this Agreement.

Section 4.04 Survival of Representations and Warranties

4.04.01 A representation or warranty contained in this Agreement or in any other agreement expressly referred to in this Agreement or in a certificate or other statement of fact provided hereunder or thereunder on the part of each of the parties shall survive the Closing and not merge with the Instruments, provided that a Notice of a breach of any such representation or warranty is given by the party claiming the benefit of such representation or warranty to the other party within a period of two (2) years from the Transfer Date.

Section 4.05 Independent Legal Advice

4.05.01 The parties each acknowledge having obtained their own independent legal advice with respect to this Agreement to the full extent deemed necessary by each party prior to its execution and delivery. The parties acknowledge that neither acted under duress in negotiating, drafting and executing this Agreement.

ARTICLE 5 – ENVIRONMENT

Section 5.01 Delivery of Report

5.01.01 The Port Operator acknowledges receipt of the Report commissioned by Her Majesty, at Her cost, concerning the environmental condition of certain lands and facilities at the Ports.

Section 5.02 Report Constitutes Proof

5.02.01 The Report is proof between the parties, in the absence of evidence to the contrary, as to the existence of any Contaminants affecting the soil of or the water (including sediment) in, on, over or under the Ports and the quantity thereof immediately prior to the Closing Date, notwithstanding the effective date of the Report.

Section 5.03 Environmental Assessment

Clause deleted intentionally.

Section 5.04 Sharing of Cost of Environmental Assessment

Clause deleted intentionally.

**ARTICLE 6 – HER MAJESTY’S RIGHTS AND OBLIGATIONS DURING
TRANSITION PERIOD****Section 6.01 Operation of Port**

6.01.01 Her Majesty shall continue to Operate the Ports during the Transition Period in accordance with federal governmental policies, processes and procedures.

Section 6.02 Material Changes

6.02.01 During the Transition Period, Her Majesty shall not make any material change to the Port Facilities where such change will adversely affect, to a significant degree, the financial position of the Port Operator, except to cope with an emergency or a force majeure.

6.02.02 During the Transition Period, Her Majesty shall give reasonable notice to the Port Operator of any proposed material change to the Port Facilities which will affect the Operation of the Ports after the Transfer Date.

Section 6.03 Transfer and Assignment

6.03.01 During the Transition Period, Her Majesty shall not transfer, sell, assign or otherwise dispose of the whole or any part of the Ports or any of the Chattels and Consumable Stock, except in the usual and ordinary course of the Operation of the Ports.

6.03.02 During the Transition Period, Her Majesty shall not mortgage, pledge or otherwise encumber the whole or any part of the Ports or any of the Chattels and Consumable Stock.

**ARTICLE 7 – THE PORT OPERATOR’S RIGHTS AND OBLIGATIONS DURING
TRANSITION PERIOD****Section 7.01 Access**

7.01.01 During the Transition Period, Her Majesty shall provide to the Port Operator and its employees, agents, counsel and accountants or other representatives, free and unrestricted access, during normal business hours, to:

- (a) the Ports; and

- (b) subject to the federal *Access to Information Act* (R.S. 1985, c.A-1), and the federal *Privacy Act* (R.S. 1985, c. P-21), all books, accounts records and other data and information relating to the Operation of the Ports that is under the control of Her Majesty,

provided that such access is to enable the Port Operator to carry on its due diligence examinations and to prepare itself to assume the Operation of the Ports on the Transfer Date.

Section 7.02 No Interference

- 7.02.01 The Port Operator shall act responsibly and shall not interfere with the day-to-day activities of Her Majesty in connection with the Operation of the Ports by Her Majesty during the Transition Period.

ARTICLE 8 – ACCOUNTS RECEIVABLE AND LIABILITIES

Section 8.01 Accounts Receivable and Liabilities

- 8.01.01 It is understood and agreed between the parties that the Port Operator is not assuming and shall not be liable or responsible for any of the liabilities, debts or obligations incurred by Her Majesty in the Operation of the Ports before the Transfer Date. Her Majesty shall indemnify and save harmless the Port Operator from and against all claims, demands, actions, damages, losses, costs, or expenses (collectively “claims”) suffered or incurred by the Port Operator arising out of any such liabilities, debts or obligations. The foregoing obligation of indemnification shall be subject to the requirement that Her Majesty shall, in respect of any claim made by a third party, be notified by the Port Operator of all material particulars thereof and be afforded an opportunity at Her sole expense and discretion to resist, defend and compromise the same. In the event that Her Majesty does not assume the defense of such claim, the Port Operator may defend against the claim in a manner it deems appropriate and may take such action as may be reasonably prudent in the circumstances to settle the claim.

- 8.01.02 Her Majesty shall be entitled to:

- (a) all accounts receivable in connection with the Ports due or accrued as at the Closing Date; and
- (b) all other assets in connection with the Ports which are not the subject matter of the Bill of Sale.

- 8.01.03 Subject to Subsection 8.01.04, Her Majesty agrees that She shall be solely responsible for invoicing and collecting all accounts receivable referred to in Subsection 8.01.02.
- 8.01.04 The Port Operator agrees that any funds received by the Port Operator with respect to the accounts receivable referred to in Subsection 8.01.02 shall be remitted to Her Majesty forthwith.

ARTICLE 9 – ADJUSTMENTS ON CLOSING

Section 9.01 Adjustments

- 9.01.01 The parties agree that adjustments shall be computed on an accrual basis as of the Closing Date on all revenues under Existing Revenue Agreements including all revenues due the Minister resulting from dues, charges and fees collected under federal legislation, including without limitation, harbour dues, fees for wharfage and berthage as well as on all charges, rentals and other expenses under Existing Expenditure Agreements, including all prepaid expenses, payments in lieu of taxes, hydro-electric and fuel charges, water rates, and other utility charges, and such other items as the parties may agree. An interim adjustment shall be made on the Closing Date, and thereafter further interim adjustments shall be made quarterly during the period of one (1) year which follows the Transfer Date on the basis of the data available at the time of each interim adjustment with a final adjustment made upon the expiry of the sixteenth (16th) month after the Transfer Date.

Section 9.02 Rules

- 9.02.01 The parties agree that, in making the adjustments referred to in Subsection 9.01, the following rules shall apply:
- (a) Her Majesty is responsible for any amount accrued or payable under an Existing Expenditure Agreement that is a “Goods Contract”, as defined under the federal *Government Contracts Regulations (SOR/87-402)*, in respect of goods that are delivered on or before the Closing Date;
 - (b) the Port Operator shall be responsible for any amount accrued or payable under an Existing Expenditure Agreement that is a “Goods Contract”, as defined under the *Government Contracts Regulations (SOR/87-402)*, in respect of goods that will be delivered after the Closing Date;
 - (c) Her Majesty is responsible for any amount accrued or payable under an Existing Expenditure Agreement that is a “Construction Contract” or a “Service Contract”, as defined under the *Government Contracts*

Regulations (SOR/87-402), in respect of the work performed if the work was completed on or before the Closing Date; and

- (d) if the work is not completed on or before the Closing Date, then any amount accrued or payable under an Existing Expenditure Agreement that is a "Construction Contract" or a "Service Contract", as defined under the *Government Contracts Regulations (SOR/87-402)*, shall be apportioned between Her Majesty and the Port Operator on the basis of the percentage of work completed as at the Closing Date.

Section 9.03 Security Deposits and Holdbacks

Clause deleted intentionally.

ARTICLE 10 – DEBTS DUE TO HER MAJESTY

Section 10.01 Debts Due to Her Majesty

- 10.01.01 Any amount owed to Her Majesty under this Agreement shall constitute a debt due to Her Majesty, and the Port Operator shall, on demand for payment issued by the Minister, pay all such amount forthwith to Her Majesty.

Section 10.02 Interest on Debt Due to Her Majesty

- 10.02.01 In accordance with the *Interest and Administrative Charges Regulations*, SOR/96-188, in all cases where there is a debt due to Her Majesty, interest calculated and compounded monthly at the average bank rate plus three per cent is payable on that amount and accrues during the period beginning on the due date and ending on the day on which payment is received by Her Majesty or a duly authorized agent of Her Majesty.

Section 10.03 Set Off

- 10.03.01 If there is a debt due to Her Majesty by the Port Operator, Her Majesty may, in Her sole discretion and in addition to any other remedies available to Her Majesty, retain the amount of the indebtedness by way of deduction from or set-off against any sum of money that may be due or payable by Her Majesty to the Port Operator.

ARTICLE 11 – BULK SALE

Section 11.01 Bulk Sale

Clause deleted intentionally.

ARTICLE 12 – NO PARTNERSHIP, JOINT VENTURE OR AGENCY**Section 12.01 No Partnership, Joint Venture or Agency**

- 12.01.01 Her Majesty and the Port Operator expressly disclaim any intention to create a partnership, joint venture or agency. It is understood, acknowledged and agreed that nothing contained in this Agreement nor any acts of Her Majesty or the Port Operator shall constitute or be deemed to constitute Her Majesty and the Port Operator as partners, joint venturers or principal and agent in any way or for any purpose. The Port Operator shall not represent or hold itself out to be an agent of Her Majesty. No party shall have any authority to act for or to assume any obligations or responsibility on behalf of the other party.
- 12.01.02 The Port Operator agrees to be liable to Her Majesty for any liability that Her Majesty incurs by virtue of being found to be liable with the Port Operator as a partner of, joint venturer with, or principal of the Port Operator. For greater certainty, the Port Operator assumes no responsibility for any liability to Her Majesty arising as a result of the act or omission of Her Majesty or Her agent which are the basis for the finding that Her Majesty or Her agent is a partner of, joint venturer with, or principal of the Port Operator.
- 12.01.03 For greater certainty, neither this Agreement nor any other agreement made pursuant to this Agreement nor any other document which may be necessary or desirable for purposes of completing the transaction contemplated by this Agreement, shall constitute or be construed or be deemed to constitute or be construed as a delegation by the Minister to the Port Operator of any of his powers, duties or functions.

ARTICLE 13 – INDEMNITY AND CONDUCT OF ACTIONS**Section 13.01 Indemnity**

- 13.01.01 The Port Operator agrees, at all times, to indemnify and save harmless Her Majesty or any of Her officers, servants, employees or agents from and against all claims and demands, loss, costs, damages, actions, suits or other proceedings by whomsoever made, brought or prosecuted in any manner based upon, occasioned by or attributable to the execution of this Agreement or any action taken or things done or maintained by virtue hereof, or the exercise in any manner of rights arising hereunder, except claims for damage resulting from the negligence of any officers, servants, employees or agents of Her Majesty while acting within the scope of their duties or employment.

Section 13.02 Conduct of Actions

- 13.02.01 If Her Majesty is made a party to any action, suit or proceeding in respect of a matter for which the Port Operator is obligated to indemnify Her Majesty, the Port Operator shall defend such action, suit or proceeding in the name of Her Majesty at the Port Operator's expense. The foregoing obligation of indemnification shall be subject to the requirement that the Port Operator shall, in respect of any claim made by a third party, be notified by Her Majesty of all material particulars thereof and be afforded an opportunity at the Port Operator's sole expense to resist, defend and compromise the same, provided that the Port Operator shall not be obligated to do so; and further provided that if the Port Operator does not assume the defense of such claim, Her Majesty may defend against the claim in any manner She deems appropriate and may take such action as may be reasonably prudent in the circumstances to settle the claim.

ARTICLE 14 – ARBITRATION**Section 14.01 Arbitration**

- 14.01.01 In the event that a dispute, conflict, claim or controversy ("Dispute") arises out of or in connection with this Agreement, and the parties are not able to resolve the Dispute through discussions, then with the written agreement of the parties ("Arbitration Agreement"), the Dispute will be referred to binding arbitration in accordance with the *Commercial Arbitration Act* (R.S. 1985, c. 17 2nd Supp.).

For the purposes of this Article, a Dispute includes, without limitation, a dispute, conflict, claim or controversy, not involving the interpretation or application of the public law of Canada, and concerning:

- (a) the formation, validity, interpretation, application or enforceability of this Agreement;
 - (b) the performance, breach, termination or other discharge of the Agreement;
 - (c) the duties, rights, obligations or remedies of the parties pursuant to the Agreement.
- 14.01.02 For the purpose of each arbitration under this Agreement, the Port Operator shall constitute one party to the arbitration and Her Majesty shall constitute the other party to the arbitration.
- 14.01.03 If a Dispute arises and the parties do not resolve some or all of the Dispute through discussions, then, either party may give written notice, in accordance with Section 15.18, to the other party of its intent to enter into an Arbitration

Agreement (“Notice of Intent”). If the parties have not entered into an Arbitration Agreement within fifteen (15) Business Days of receipt of the Notice of Intent, the parties are not obligated to enter into such an Arbitration Agreement.

- 14.01.04 The parties shall, in the Arbitration Agreement, concisely describe the matter submitted for arbitration. The parties further agree that the arbitral proceedings will consist of oral hearings for the presentation of evidence (either oral, written or both) and for oral argument and that such hearings are to be held within sixty (60) Business Days of the date of the Arbitration Agreement.
- 14.01.05
- (a) An arbitration under this Agreement shall be conducted by one arbitrator chosen by agreement of the parties.
 - (b) If the parties are unable to agree on the choice of an arbitrator within ten (10) Business Days from the date of execution of the Arbitration Agreement there shall be three (3) arbitrators (the “Arbitral Panel”).
 - (c) Either party may nominate one arbitrator and upon doing so shall in writing notify the other party of that nomination. Within ten (10) Business Days after receiving such notice, the other party shall nominate a second arbitrator. The two arbitrators shall within ten (10) Business Days after selection of the second arbitrator select a third arbitrator to be chairperson of the Arbitral Panel and to act jointly with them. If the two arbitrators fail to agree on the selection of the third arbitrator, the third arbitrator shall be designated by the ADR Institute of Canada upon application by either party.
 - (d) A person eligible for appointment as an arbitrator:
 - (i) will be an experienced arbitrator or counsel having training in arbitration;
 - (ii) will be independent and impartial; and
 - (iii) preferably, will have knowledge of, or experience in the subject matter in dispute.
- 14.01.06 The sole arbitrator or Arbitral Panel, as the case may be, (“Arbitrator”) shall have the right to grant legal and equitable relief and to award costs (including legal fees and the costs of the arbitration) and interest. The Arbitrator shall not be authorized to decide ex aequo et bono or as amiable compositeur. Nothing contained herein shall be construed to permit the Arbitrator to award punitive, exemplary or any similar damages.

- 14.01.07 Except to the extent that it may be inconsistent with the procedure set out in this Article, the *Commercial Arbitration Code (Commercial Arbitration Act (R.S. 1985, c. 17 2nd Supp.))* shall govern the arbitration of a Dispute under this Agreement.
- 14.01.08 The arbitration shall take place in the City of Vancouver at such place and time as the Arbitrator may fix for the purpose of hearing the evidence and representations that the parties may present. The arbitration proceedings shall be conducted in either French or English, with the agreement of the parties. No later than 20 Business Days after hearing the representations and evidence of the parties, the Arbitrator shall make its determination in writing and deliver one copy to each of the parties.
- 14.01.09 The arbitration proceedings shall be open to the public.
- 14.01.10 The parties agree to an exchange of all information upon which they intend to rely in any oral or written presentation during the arbitration. This exchange shall be completed no later than ten (10) Business Days prior to the date set for the arbitration hearing.
- 14.01.11 All information exchanged during this entire procedure shall be regarded as “without prejudice” communications. However, evidence that is independently admissible or discoverable shall not be rendered inadmissible or non-discoverable by virtue of its use during the arbitration.
- 14.01.12 Subject to the *Commercial Arbitration Code (Commercial Arbitration Act (R.S. 1985, c. 17 2nd Supp.))*, the decision of the Arbitrator, or a majority of its members, shall be final and binding upon the parties in respect of all matters relating to the arbitration, the conduct of the parties during the proceedings, and the final determination of the issues in the arbitration. The decision shall be in writing and include reasons for the decision. Judgment upon any award rendered by the Arbitrator may be entered in any court having jurisdiction thereof.
- 14.01.13 The costs of any arbitration hereunder shall be borne by the parties in the manner specified by the Arbitrator in its determination.
- 14.01.14 The Arbitrator shall resolve the Dispute in accordance with the laws of British Columbia.
- 14.01.15 It is agreed that the sole arbitrator or any member of the Arbitral Panel will neither represent nor testify on behalf of any of the parties in any subsequent proceeding between the parties or where they are opposed in interest. It is further agreed that the personal notes and written opinions of the sole arbitrator or any member of the Arbitral Panel made in relation to this arbitration are confidential and may not be used in any subsequent proceeding between the parties, or where they are opposed in interest.

ARTICLE 15 – GENERAL PROVISIONS

Section 15.01 Entire Agreement

15.01.01 This Agreement and the other agreements referred to in this Agreement, set forth the entire agreement between the parties concerning the subject matter hereof. No representation or warranty expressed, implied or otherwise is made by Her Majesty to the Port Operator or by the Port Operator to Her Majesty except as expressly set out in this Agreement or the other agreements referred to in this Agreement. Subject to Subsection 15.01.02, this Agreement supersedes and revokes all negotiations, arrangements, letters of intent, brochures, representations and information conveyed, whether oral or in writing, between the parties or their representatives or any other Person purporting to represent the Minister or the Port Operator. The Port Operator agrees that:

- (a) it has not been induced to enter into this Agreement or any other agreement referred to in this Agreement by any representations not set forth in this Agreement or any other agreement referred to in this Agreement;
- (b) it has not relied on any such representations;
- (c) it has conducted its own due diligence examinations in order to satisfy itself of the full, true and plain disclosure of the facts;
- (d) no such representations shall be used in the interpretation or construction of this Agreement or any other agreement referred to in this Agreement; and
- (e) no claims, including loss of profits and consequential damages arising as a result of, or from any such representations shall accrue to or be pursued by it, and Her Majesty shall have no liability for any such claims.

15.01.02 The Disclosure of Information Agreement made by the parties as of the 29th day of October, 2012, (“Disclosure of Information Agreement”) shall remain in full force and effect during the Transition Period and thereafter; however, after the Transition Period, only in respect of matters in existence as of the Transfer Date, and only insofar as the provisions of the Disclosure of Information Agreement are not inconsistent with the provisions of any other agreement made pursuant to this Agreement.

Section 15.02 Cancellations

15.02.01 If any party fails, for any reason, to keep, perform or observe any of the covenants, agreements, provisions, conditions or provisos contained in Section 2.02 on the part of that party to be kept, performed or observed, then the other

party may, at its option, terminate this Agreement by giving to the party in default a Notice. If Notice is so given, this Agreement shall terminate upon such Notice being given and neither party shall be liable to the other for any Damages whatsoever in respect of such termination.

Section 15.03 Assignment

- 15.03.01 Neither party shall assign this Agreement nor any of the party's rights, duties or obligations hereunder. Any attempt by a party to assign this Agreement or any of the party's rights, duties or obligations hereunder is void.
- 15.03.02 Subsection 15.03.01 shall not be interpreted as applying to any agreement made pursuant to this Agreement.

Section 15.04 Subdivisions

- 15.04.01 Unless otherwise stated, a reference in this Agreement, by numerical or alphabetical designation to an Article, Section, Subsection, Paragraph, Subparagraph, Appendix, Schedule or Annex, refers to the Article, Section, Subsection, Paragraph, Subparagraph, Appendix, Schedule, or Annex, bearing that designation in this Agreement.

Section 15.05 Headings

- 15.05.01 The division of this Agreement into Articles, Sections, Subsections, Paragraphs and Subparagraphs and the insertion of headings are for convenience of reference only and do not affect the construction or interpretation of this Agreement.

Section 15.06 Number and Gender

- 15.06.01 Words importing the singular number shall include the plural and words denoting the masculine gender shall include the feminine, if the context so requires.

Section 15.07 Accounting Terms and Principles

- 15.07.01 All accounting and financial terms used in this Agreement, except where otherwise provided either expressly or by necessary implication in this Agreement, are interpreted and applied in accordance with generally accepted accounting principles and generally accepted auditing standards in Canada as they exist from time to time.
- 15.07.02 Where the Canadian Institute of Chartered Accountants or any successor thereto includes a statement in its Handbook or any successor thereto on a method or alternative methods of accounting, such statement is regarded as the only

generally accepted accounting principle and generally accepted auditing standard applicable to the circumstances that it covers, and references herein to generally accepted accounting principles and generally accepted auditing standards are interpreted accordingly.

Section 15.08 Business Day

- 15.08.01 If the day on which any act or payment is required to be done or made under this Agreement is a day which is not a Business Day, then such act or payment is duly performed or made if done on the next following Business Day.

Section 15.09 Appendices and Schedules

- 15.09.01 All capitalized words and phrases used in any of the attached Appendices or Schedules shall have the same meanings as defined in this Agreement, unless specifically defined in the Appendix or Schedule.

Section 15.10 Statutes, Regulations and Rules

- 15.10.01 Any reference in this Agreement to all or any part of any statute, regulation or rule, unless otherwise stated, is a reference to that statute, regulation or rule or the relevant part thereof, as amended, substituted, replaced or re-enacted from time to time.

Section 15.11 Governing Law

- 15.11.01 This Agreement is interpreted in accordance with the laws in force in the Province of British Columbia, subject always to any paramount or applicable federal laws. Nothing in this Agreement is intended to or is construed as limiting, waiving or derogating from any federal Crown prerogative.

Section 15.12 Construed Covenants

- 15.12.01 All of the provisions and each agreement or obligation of this Agreement, even though not expressed as a covenant, are construed as covenants and agreements as though the words importing such covenants and agreements were used.

Section 15.13 Rights or Remedies

- 15.13.01 Nothing expressed or implied in this Agreement, or any other agreement referred to in this Agreement, is intended to or is construed to confer on or give any Person, other than the parties hereto and their respective successors and permitted assigns, any rights or remedies under or by reason of this Agreement or any such other agreement.

Section 15.14 Time of Essence

15.14.01 Time is of the essence of this Agreement.

Section 15.15 Amendment

15.15.01 This Agreement may be amended only by a written agreement signed by the parties at any time during the Transition Period.

Section 15.16 Waiver

15.16.01 The failure by any party to insist in any one instance upon the strict performance by the other party of obligations hereunder shall not constitute a waiver or relinquishment of any such obligations as to any other instances, and the same shall continue in full force and effect.

15.16.02 No covenant or condition of this Agreement may be waived by any party except by the written consent of that party, and forbearance or indulgence by that party in any regard whatsoever and no matter how long shall not constitute a waiver of the covenant or condition, and until performed or waived in writing that party shall be entitled to invoke any remedy available to that party under this Agreement or by law, despite the forbearance or indulgence.

Section 15.17 Severability

15.17.01 If, for any reason, any provision of this Agreement, other than any provision which is of fundamental importance to the arrangement between the parties, is to any extent held or rendered invalid or unenforceable, then the particular provision shall be deemed to be independent of and severed from the remainder of this Agreement and all the other provisions of this Agreement shall nevertheless continue in full force and effect.

Section 15.18 Notice

15.18.01 All notices or other communications necessary for the purpose of this Agreement shall be in writing and delivered personally or by courier, or sent by registered mail or by prepaid post or by facsimile, addressed:

(a) in the case of Her Majesty, to:

Transport Canada, Pacific Region
Suite 620, 800 Burrard Street
Vancouver, B.C. V6Z 2J8

Attention: Regional Director, Programs Branch

Telephone: 604-666-2387
Facsimile: 604-666-2961

or to such other address or facsimile number or addressed to such other Person as Her Majesty may, from time to time, designate in writing to the Port Operator; and

- (b) in the case of the Port Operator, to:

Strathcona Regional District
301-990 Cedar Street
Campbell River, B.C. V9W 7Z8
Attention: Chief Administrative Officer

Telephone: 250-830-6700
Facsimile: 250-830-6710

or to such other address or facsimile number or addressed to such other Person as the Port Operator may, from time to time, designate in writing to the Minister.

15.18.02 Any notice or communication is considered to have been received:

- (a) in the case of facsimile, on actual receipt, and
(b) in all other cases, on the date of delivery.

If the postal service is interrupted or threatened to be interrupted, or is substantially delayed, any notice shall be delivered personally or by facsimile.

Section 15.19 House of Commons

15.19.01 No member of the House of Commons or Senate shall be admitted to any share or part of this Agreement or to any benefit to arise from it that is not otherwise available to the general public.

Section 15.20 Conflict of Interest

15.20.01 No person governed by the post-employment terms and conditions set out in the *2003 Values and Ethics Code for the Public Service* shall derive a direct benefit from this Agreement unless that person complies with the applicable post-employment provisions.

Section 15.21 No Bribe

- 15.21.01 The Port Operator warrants that no bribe, gift, commission or other inducement has been paid, given, promised or offered to any Government official or employee for the obtaining of this Agreement, contrary to Section 121 of the *Criminal Code* (R.S. 1985, c. C-46).

Section 15.22 Approval

- 15.22.01 Neither this Agreement nor any other agreement made pursuant to this Agreement constitutes approval by Her Majesty or any federal agency or the fulfillment of any requirement under the federal *Competition Act* (R.S. 1985, c. C-34), or successor legislation.

Section 15.23 Costs

- 15.23.01 All costs and expenses (including without limitation the fees and disbursements of legal counsel) incurred in connection with this Agreement, or any other agreement made pursuant to this Agreement and the transactions contemplated herein and therein, shall be paid by the party incurring such costs and expenses.

Section 15.24 Survival

- 15.24.01 Subject to Subsection 4.04.01, the representations, warranties, covenants and agreements of the parties contained in this Agreement and in particular in Article 10 shall survive and will not merge with the Instruments on Closing.

Section 15.25 Federal Recognition and Public Disclosure

- 15.25.01 The form and content of any public announcement respecting this Agreement shall be subject to the prior written approval of the Minister.
- 15.25.02 The Port Operator understands and agrees that the Port Operator's name, the amount awarded and the general nature of the activities supported may be made publicly available by the Government of Canada by any means at any time.

ARTICLE 16 – ABORIGINAL CLAIMS**Section 16.01 Settlement of Aboriginal Claims**

- 16.01.01 Her Majesty covenants with the Port Operator that the Port Operator shall not be liable for, or called upon to contribute to, any amount paid by Her Majesty in settlement of any aboriginal claim, whether comprehensive, specific, or any other kind, pertaining to the Port Lands.

LIST OF APPENDICES

- A Operating Agreement
- B Contribution Agreement
- C Bill of Sale (regarding Chattels and Consumable Stock)
- D Assignment, Assumption and Indemnity Agreement

APPENDIX "A"

This is Appendix "A" to the **Agreement to Transfer** made by Her Majesty the Queen in right of Canada and the Strathcona Regional District as of the 14th day of November, 2014.

OPERATING AGREEMENT