

Hereby certified to be a true
copy of the original, this
16 day of November, 2004

Lenora Baird

SETTLEMENT AGREEMENT

THIS AGREEMENT is executed as of the 5th day of November, 2004 and is effective pursuant to the provisions of Article 7.

BETWEEN:

TSAWWASSEN FIRST NATION (also known as the Tsawwassen Indian Band)

("TFN")

AND:

CHIEF KIM BAIRD (on her own behalf and on behalf of the individual members of the Tsawwassen First Nation and on behalf of the said Tsawwassen First Nation)

("Chief Baird")

AND:

VANCOUVER PORT AUTHORITY

("VPA")

AND:

HER MAJESTY THE QUEEN IN RIGHT OF CANADA

("Canada")

AND:

BRITISH COLUMBIA FERRY SERVICES INC.

("BCFS")

AND:

HER MAJESTY THE QUEEN IN RIGHT OF BRITISH COLUMBIA

("BC")

AND:

B.C. TRANSPORTATION AND FINANCING AUTHORITY

("BCTFA")

AND:

BC RAIL LTD.

("BCR")

THIS AGREEMENT WITNESSES that in consideration of the payment of the sum of TEN DOLLARS (\$10.00) by each Party (as defined below) to the other Parties (as defined below), the covenants and agreements herein and other good and valuable consideration (the receipt and sufficiency of all of which consideration are hereby expressly acknowledged by the Parties and shall not be denied), the Parties hereby agree as follows:

ARTICLE 1

1.0 DEFINITIONS AND SCHEDULES

1.1 In this Agreement:

- a) "**Aboriginal Rights/Title Action**" means the Supreme Court of British Columbia, Vancouver Registry, Action No. L033497 commenced by the Plaintiffs on December 9, 2003;
- b) "**Agreement**" means this Agreement, including the schedule hereto;
- c) "**Article**" means an article in this Agreement;
- d) "**Business Day**" means any day other than a Saturday, Sunday or any statutory holiday in the Province of British Columbia;
- e) "**Compensation**" means the sum of \$2,500,000.00 paid to the TFN pursuant to section 2.1;
- f) "**Council**" means the council of the Tsawwassen First Nation, which is a "council of the band" within the meaning of the *Indian Act* and includes the Chief of the Band, and councillor means a member of the Council;

- g) "Defendants" means collectively VPA, Canada, BCFS (successor to British Columbia Ferry Corporation), BC, BCTFA and BCR;
- h) "Elector" means "elector" within the meaning of the *Indian Act*;
- i) "Indian Act" means the *Indian Act*, R.S.C. 1985, c.I-5 and the regulations made under that Act as amended or replaced, and any reference to a section of the *Indian Act* includes that section as amended or replaced, unless otherwise stated;
- j) "Litigation" means Supreme Court of British Columbia, Vancouver Registry, Action No. S021209 commenced by the Plaintiffs on February 28, 2002;
- k) "Memorandum of Agreement" means the agreement entitled "Memorandum of Agreement" dated the 5th day of November 2004, made between the TFN and VPA;
- l) "Parties" means the Plaintiffs and the Defendants collectively, and "Party" means any one of the Parties as the case may be and as the context may require;
- m) "Person" means an individual, legal personal representative, corporation, body corporate, firm, partnership, trust, trustee, syndicate, joint venture, unincorporated organization or governmental authority;
- n) "Plaintiffs" means collectively the TFN, the TFN Members and Chief Baird;
- o) "Settlement Date" means the day that the TFN provides written notice to the Defendants, pursuant to section 7.2 of this Agreement that the TFN have ratified this Agreement and the Memorandum of Agreement, provided that if the day the TFN provides the written notice is not a Business Day, then the Settlement Date shall mean the next Business Day after the day the TFN has provided the Defendants with written notice;
- p) "TFN Members" means the individual members of the Tsawwassen First Nation (also known as the Tsawwassen Indian Band) past, present, and future and whether born or unborn.

SCHEDULES

1.2 The following schedule is attached to this Agreement and are hereby incorporated into and shall form an integral part of this Agreement:

Schedule "A" Miscellaneous Terms

ARTICLE 2

2.0 ROBERTS BANK COMPENSATION

2.1 The VPA will pay compensation to the TFN in the sum of \$2,500,000.00 within 30 days of the Settlement Date, subject to any elections made by the TFN under the Memorandum of Agreement. As between Canada and VPA, subsection 59(1) of the *Port Authorities Management Regulations* applies to any action, claim, demand, liability, obligation, loss, damage, cost or expense in respect of this Agreement.

ARTICLE 3

3.0 SETTLEMENT OF LITIGATION

3.1 As of the Settlement Date, the Plaintiffs, and each of them, agree to forever release and discharge the Defendants and each of them and their respective past, present and future directors, officers, shareholders, affiliates, predecessor entities, insurers, employees, agents, successors and assigns (collectively the "Releasees") and each of the Releasees' respective executors, administrators, successors and assigns from all claims, proceedings, liabilities, obligations and costs, known or unknown and in law or in equity, which now or hereafter exist by reason of any events, acts or omissions prior to the execution of this Agreement which are the subject of the Litigation.

3.2 The Plaintiffs further agree to abandon the Litigation by filing a consent dismissal order. The Parties agree that the Litigation will be dismissed as if the Litigation had been decided on its merits and without costs to any of the Parties, and the Parties each hereby irrevocably authorize and instruct their respective

legal counsel to attend to the said dismissal of the Litigation without costs to any Party.

3.3 The Plaintiffs, and each of them, will not hereafter assert any action, cause of action, suit, claim or demand whatsoever, whether in law, in equity or otherwise, which the Plaintiffs and their respective heirs, descendants, legal representatives, successors and assigns may ever have had, may now have or may in the future have against the Releasees, with respect to:

- (a) the claims which are the subject of the Litigation;
- (b) the procedures resulting in the execution of this Agreement;
- (c) any errors or omissions in respect to the ratification of this Agreement by the TFN; and
- (d) the representations and warranties of the TFN under Articles 9 and 10 of this Agreement.

NO ADMISSION

3.4 The Parties acknowledge and agree that this Agreement, the consideration for this Agreement, the dismissal of the Litigation and anything else done pursuant to this Agreement are not admissions of any rights, direct or indirect fault, or liability by any of the Parties, and each Party expressly denies any fault or liability by it or those for whom it may at law be responsible.

NO FURTHER CLAIMS

3.5 The Plaintiffs, and each of them, agree that they will not make any further claim or take any further proceedings against any Person that might claim contribution or indemnity from any of the Defendants with respect to any claims which are the subject of the Litigation.

ARTICLE 4

4.0 ABORIGINAL RIGHTS/TITLE ACTION

4.1 The Parties acknowledge that a Writ in the Aboriginal Rights/Title Action has been filed but not served pending treaty negotiations between the TFN, Canada and BC. The TFN, Canada and BC acknowledge and agree that this Agreement shall not be relied upon by Canada or BC in treaty negotiations, nor impair or affect any future treaty settlement. All Parties acknowledge and agree that this Agreement shall not preclude the Plaintiffs from taking any position in the Aboriginal Rights/Title Action, except the Plaintiffs will not make any claims

in the Aboriginal Rights/Title Action, or any other legal action, in respect of the claims which are the subject of the Litigation.

4.2 The Plaintiffs hereby agree to discontinue the Aboriginal Rights/Title Action as against the VPA, BCR, BCTFA and BCFS, by consent, and without costs to any party. The Parties acknowledge and agree that discontinuance of the Aboriginal Rights/Title Action against those defendants shall not impair or affect the claims that may be made by the TFN against Canada and BC in the Aboriginal Rights/Title Action, except to the extent expressly referred to in section 4.1. The Parties acknowledge and confirm that this Agreement is intended to and does constitute a full and final release of all claims against the Defendants with respect to all of the claims which are the subject of the Litigation but does not constitute a release of the Defendants with respect to claims which are not the subject of the Litigation.

4.3 Any Party may disclose and utilize this Agreement, the Compensation and the Memorandum of Agreement in the Aboriginal Rights/Title Action or any other legal action in relation to an aboriginal rights or title claim over the area claimed by the TFN as its traditional territory.

4.4 This Agreement is not a treaty or lands claims agreement within the meaning of sections 25 and 35 of the *Constitution Act, 1982* and does not define, amend, recognize, affirm, deny or limit any existing rights or priorities afforded to aboriginal rights including title or treaty rights, other than as expressly provided in this Agreement.

4.5 The Parties acknowledge and confirm that nothing in this Agreement is intended to limit or prejudice the position that any Party may take on the existence or extent of any duty or duties of consultation and/or accommodation that may be owed by any of the Defendants to the TFN with respect to any claims which are not the subject of the Litigation. For clarity, the Parties acknowledge that consultation, accommodation and compensation with respect to the Roberts Bank Port Facility and the Roberts Bank Port Facility Expansion (in each case as defined in the Memorandum of Agreement) are dealt with in the Memorandum of Agreement.

ARTICLE 5

5.0 INDEMNITY

5.1 The Plaintiffs agree to save harmless and indemnify each of the Releasees, as the case may be, from any and all claims, proceedings, liabilities, damages, interest, costs (including legal fees and disbursements as between solicitor and

client), expenses and compensation of whatsoever kind (referred to collectively hereafter as any "Further Proceeding") incurred after the Settlement Date arising out of or in any way related to all present or future claims of the Plaintiffs, or any of them, with respect to claims which are the subject of the Litigation and from anything expressly settled, released or dismissed pursuant to this Agreement.

5.2 If the Plaintiffs, or any of them, commence, maintain, continue or assign any Further Proceeding against any other Person who claims contribution, indemnity or otherwise against the Releasees, or any of them, with respect to the claims which are the subject of the Litigation or to anything expressly settled, released or dismissed pursuant to this Agreement, the Plaintiffs agree to save harmless and indemnify each of the Releasees, as the case may be, from any Further Proceeding.

5.3 The Defendants, and each of them, will use all reasonable efforts to notify the Plaintiffs of any action, cause of action, suit, claim or demand referred to in sections 5.1 or 5.2 that is brought against each or any of them.

5.4 The Defendants will assume and control the defence and any negotiations relating to any action, cause of action, suit, claim or demand referred to in sections 5.1 or 5.2.

5.5 For clarity, the Plaintiffs' indemnity, as set out in this Article 5, applies with respect to any Further Proceeding by the Plaintiffs, or any of them with respect to claims which are the subject of the Litigation, but does not apply with respect to claims which are not the subject of the Litigation.

ARTICLE 6

6.0 MEMORANDUM OF AGREEMENT

6.1 This Agreement and the respective covenants, obligations, agreements, acknowledgements, releases, representations and warranties of the Parties herein are expressly conditional upon and subject to the TFN and the VPA ratifying the Memorandum of Agreement.

ARTICLE 7

7.0 TFN RATIFICATION

7.1 This Agreement and the respective covenants, obligations, agreements, acknowledgements, releases, representations and warranties of the Parties herein are expressly conditional upon and subject to TFN ratification of this Agreement.

7.2 The TFN shall provide written notice to the Defendants of ratification of this Agreement, and the Memorandum of Agreement, within 60 days of the execution date of this Agreement set out on page 1 of this Agreement.

7.3 For greater certainty, it is acknowledged that this Agreement will be ratified by the TFN if a majority of Electors who cast votes vote in favour of the Agreement at the ratification vote, except as set out in section 7.5.

7.4 All Parties except Canada will execute this Agreement subject only to: (a) the ratification of this Agreement by the TFN pursuant to this Article; and (b) the ratification by the VPA and the TFN of the Memorandum of Agreement pursuant to Article 6. Once the conditions are fulfilled to constitute a Settlement Date this Agreement is fully binding upon the Parties pursuant to its terms, with effect as of the Settlement Date, except that this Agreement shall not be binding on Canada, and shall not constitute a settlement of the Plaintiffs' claims against Canada, until the conditions of section 7.5 are fulfilled or waived.

7.5 Canada will execute this Agreement subject to those conditions set out section 7.4, except that, with respect to Canada, this Agreement will be ratified by the TFN if a majority of Electors vote in favour of the Agreement at the ratification vote. The requirements set out in this section 7.5 for ratification by a vote of the majority of the Electors is for the sole benefit of Canada and may be waived by Canada by notice to the TFN within 30 days of the Settlement Date, or such other time as the Parties may, in writing, agree. Once the conditions of this section 7.5 are fulfilled or waived by Canada, this Agreement is fully binding upon Canada and constitutes a settlement of the Plaintiffs' claims against Canada, in accordance with its terms, with effect as of the Settlement Date.

7.6 If the TFN do not ratify this Agreement and the Memorandum of Agreement and do not give notice pursuant to section 7.2 then, subject to further written agreement of all Parties, this Agreement and all covenants, obligations, agreements, acknowledgements, releases, representations and warranties are null and void.

ARTICLE 8

8.0 ADJOURNMENT OF THE LITIGATION

8.1 The Parties acknowledge that the Supreme Court of British Columbia has been advised in the Litigation that settlement discussions are underway and that all Parties have agreed that all case management dates and the trial date in the Litigation should be adjourned generally pending further advice to the Court from the Parties

ARTICLE 9

9.0 REPRESENTATION AND WARRANTIES

9.1 Each of the Parties hereby represents and warrants to the other Parties as follows:

- a) each Defendant represents and warrants to the Plaintiffs that the execution and delivery of this Agreement and all documents, instruments and agreements required to be executed and delivered by that Defendant pursuant to this Agreement, and the completion and performance of the transactions and obligations contemplated by, or contained in, this Agreement, have been duly authorized by all necessary corporate and other action on the part of that Defendant, and this Agreement has been duly executed and delivered by that Defendant and constitutes a legal, valid and binding obligation of that Defendant enforceable in accordance with its terms, except as may be limited by bankruptcy, insolvency, liquidation, reorganization, reconstruction and other similar laws of general application affecting the enforceability of remedies and rights of creditors and except that equitable remedies such as specific performance and injunction are in the discretion of a court. Nothing done by the Defendants under or in connection with this Agreement constitutes an acceptance or acknowledgement that the TFN has aboriginal rights and/or title;
- b) each Plaintiff represents and warrants to the Defendants that the execution and delivery of this Agreement and all documents, instruments and agreements required to be executed and delivered by the Plaintiffs pursuant to this Agreement, and the completion and performance of the transactions and obligations contemplated by, or contained in, this Agreement, have been duly authorized by all necessary corporate and other action on the part of the Plaintiffs, and this Agreement has been duly executed and delivered by the Plaintiffs and constitutes a legal, valid and binding obligation of the Plaintiffs, and each of them, enforceable in accordance with its terms, except as may be

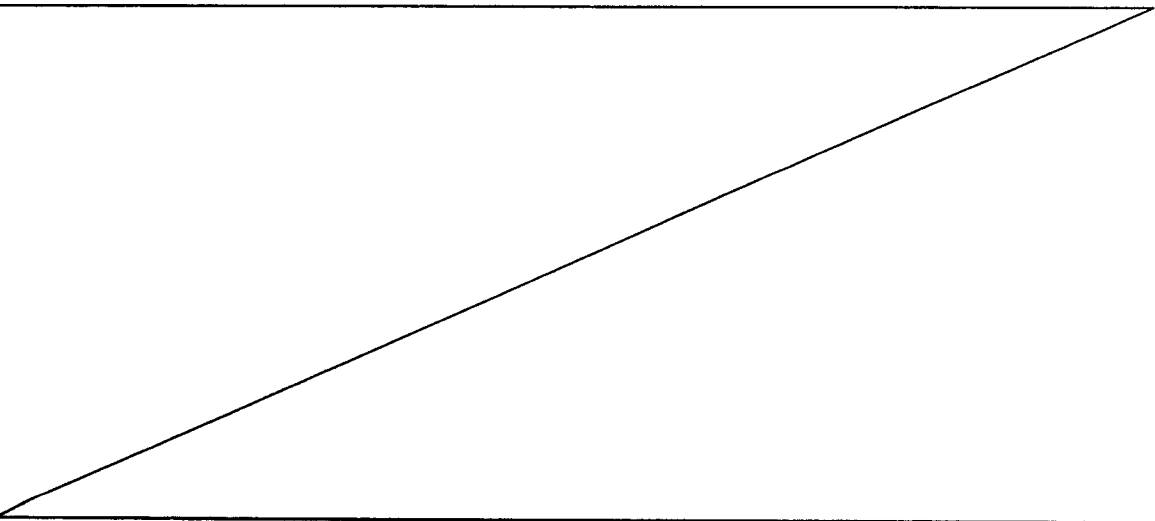
limited by bankruptcy, insolvency, liquidation, reorganization, reconstruction and other similar laws of general application affecting the enforceability of remedies and rights of creditors and except that equitable remedies such as specific performance and injunction are in the discretion of a court;

- c) each of the Parties represent and warrant that they have read this Agreement and understand and agree with the terms herein. The Parties acknowledge that they have executed this Agreement voluntarily after receiving independent legal advice from their solicitors; and
- d) in addition, and not so as to limit the foregoing, the TFN represents and warrants that:
 - (i) it has retained independent legal counsel qualified to practice law in the Province of British Columbia to advise the Plaintiffs with regard to the Litigation up to and including the execution and implementation of the Agreement;
 - (ii) its legal counsel has fully explained the legal nature and effect of the Agreement, and the legal nature and effect of the implementation of the Agreement, to the Plaintiffs.

ARTICLE 10

10.0 FURTHER ASSURANCES

10.1 The Parties agree to do such things, execute such further documents and take such further measures as may be necessary to carry out and implement the terms, conditions, intent and meaning of this Agreement.



10.2 The TFN confirms that by the ratification vote it has authorized the present Council and succeeding Councils to act for and on behalf of the Plaintiffs, and any of their respective heirs, executors, administrators and assigns, to do such things, execute such further documents and take such further measures as may be necessary to carry out and implement the terms, conditions, intent and meaning of this Agreement.

IN WITNESS WHEREOF the Parties have executed this Agreement as of the date set out on page 1 of this Agreement.

FOR THE TSAWWASSEN FIRST NATION

Kim Baird
Kwuntiltunaat
Chief Kim Baird

[Signature]
Witnessed by:

Russell Williams
Teawheelam
Councillor Russell Williams

[Signature]
Witnessed by:

Andrea Jacobs
Qwiyaqwiye
Councillor Andrea Jacobs

[Signature]
Witnessed by:

Stuart Morgan
Councillor Stuart Morgan

[Signature]
Witnessed by:

Laura Cassidy
Sxwamisat
Councillor Laura Cassidy

[Signature]
Witnessed by:

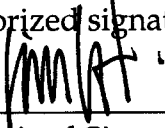
**Kwuntiltunaat, CHIEF KIM BAIRD, on her own behalf,
and on behalf of the individual members of
the Tsawwassen First Nation**

Per: Kim Baird
Kwuntiltunaat
Chief Kim Baird

[Signature]
Witnessed by:

VANCOUVER PORT AUTHORITY

by its authorized signatory(ies):

Per: 
Authorized Signatory

Per: 
Authorized Signatory

**HER MAJESTY THE QUEEN IN RIGHT
OF CANADA**

by its authorized signatory(ies):

Per: _____
Authorized Signatory

Per: _____
Authorized Signatory

**BRITISH COLUMBIA FERRY
SERVICES INC.**

by its authorized signatory(ies):

Per: _____
Authorized Signatory

Per: _____
Authorized Signatory

**HER MAJESTY THE QUEEN IN RIGHT
OF BRITISH COLUMBIA**

by its authorized signatory(ies):

Per: _____
Authorized Signatory

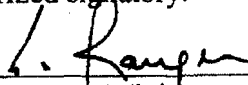
Per: _____
Authorized Signatory

VANCOUVER PORT AUTHORITY
by its authorized signatory(ies):

Per: _____
Authorized Signatory

Per: _____
Authorized Signatory

**HER MAJESTY THE QUEEN IN RIGHT OF CANADA,
REPRESENTED BY THE MINISTER OF TRANSPORT,**
by his authorized signatory:



Deputy Minister

Date of signing: 18/01/2005

**BRITISH COLUMBIA FERRY
SERVICES INC.**
by its authorized signatory(ies):

Per: _____
Authorized Signatory

Per: _____
Authorized Signatory

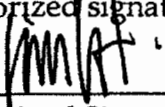
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OF BRITISH COLUMBIA**
by its authorized signatory(ies):

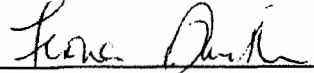
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Authorized signatory

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Authorized signatory

VANCOUVER PORT AUTHORITY

by its authorized signatory(ies):

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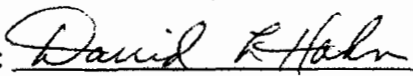
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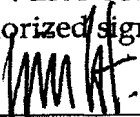
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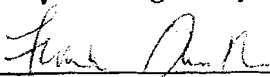
by its authorized signatory(ies):

Per: _____
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VANCOUVER PORT AUTHORITY
by its authorized signatory(ies):

Per: 
Authorized Signatory

Per: 
Authorized Signatory

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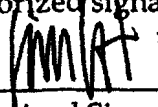
**HER MAJESTY THE QUEEN IN RIGHT
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by its authorized signatory(ies):

Per: _____
Authorized Signatory

Per: _____
Authorized Signatory

VANCOUVER PORT AUTHORITY
by its authorized signatory(ies):

Per: 
Authorized Signatory

Per: 
Authorized Signatory

**HER MAJESTY THE QUEEN IN RIGHT
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**BRITISH COLUMBIA FERRY
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Authorized Signatory

Per: _____
Authorized Signatory

**BC TRANSPORTATION AND
FINANCING AUTHORITY**

by its authorized signatory(ies):

Per: 
Authorized Signatory

Per: _____
Authorized Signatory

BC RAIL LTD.

by its authorized signatory(ies):

Per: _____
Authorized Signatory

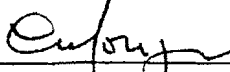
Per: _____
Authorized Signatory

**BC TRANSPORTATION AND
FINANCING AUTHORITY**
by its authorized signatory(ies):

Per: _____
Authorized Signatory

Per: _____
Authorized Signatory

BC RAIL LTD.
by its authorized signatory(ies):

Per: 
Authorized Signatory

Per: _____
Authorized Signatory

SCHEDULE "A"

MISCELLANEOUS TERMS

1. GENDER, NUMBER AND OTHER TERMS

In this Agreement, unless the context otherwise requires, words importing the singular include the plural and vice versa, words importing gender include all gender, "or" is not exclusive, and "including" is not limiting, whether or not non-limiting language (such as "without limitation") is used with reference thereto.

2. REFERENCES TO WHOLE AGREEMENT

Unless otherwise stated, the words "herein", "hereof", "hereby" and "hereunder" and other words of similar import refer to this Agreement as a whole and not to any particular article, section, subsection, paragraph or other subdivision or schedule.

3. HEADINGS

The inclusion of headings in this Agreement is for convenience only and shall not affect the construction or interpretation of this Agreement.

4. STATUTES

Unless otherwise stated, any reference to a statute includes and is a reference to such statute and to the regulations made pursuant to it, with all amendments thereto and in force from time to time, and to any statute or regulations that may be passed which supplement or supersede such statute or such regulations.

5. NO CONTRA PREFERENTUM

The language in all parts of this Agreement shall in all cases be construed as a whole and neither strictly for nor strictly against any of the Parties.

6. CURRENCY

All monetary amounts in this Agreement are stated and shall be paid in Canadian currency.

7. GOVERNING LAW AND ATTORNMENT

This Agreement shall be governed by and construed in accordance with the law of British Columbia and the law of Canada applicable therein and all disputes

and claims, whether for damages, specific performance, injunction, declaration or otherwise, both at law and equity, arising out of, or in any way connected with, this Agreement shall be referred to the courts of British Columbia and each of the Parties attorns to the exclusive jurisdiction of the courts of British Columbia, except where exclusive jurisdiction is otherwise conferred by statute.

8. CROSS-REFERENCES

Unless otherwise stated, a reference in this Agreement to a designated article, section, subsection, paragraph or other subdivision or to a schedule is to the designated article, section, subsection, paragraph or other subdivision of, or schedule to, this Agreement.

9. LEGAL AND OTHER FEES AND EXPENSES

Unless otherwise specifically provided herein, each of the Parties will pay their respective legal, accounting and other professional fees and expenses incurred by each of them in connection with the negotiation and settlement of this Agreement, the completion of the transactions contemplated by this Agreement and other matters pertaining hereto. For clarity, nothing in this Agreement affects or impairs obligations regarding payment of certain TFN expenses by or on behalf of the VPA, as set out in a Protocol Agreement between Canada, the VPA and the TFN, dated March 20, 2003.

10. NOTICES

Any notice, request, demand or other communication required or permitted to be given under this Agreement shall be in writing and either delivered by prepaid courier or sent by fax to the Party to which it is to be given at the address and fax number set out below:

**To the TFN and/or the TFN
Members:**

The Tsawwassen First Nation
Building 131 North
Tsawwassen Drive
Delta, B.C.
V4M 4G2
Fax: (604) 943-9226
Attention: Chief Kim Baird

With a copy to:

Donovan and Company
Barristers and Solicitors
6th Floor - 73 Water Street
Vancouver, B.C.
V6B 1A1
Fax: 604-688-4282
Attention: Susan J. Alcott

To Chief Kim Baird:

The Tsawwassen First Nation
Building 131 North
Tsawwassen Drive
Delta, B.C.
V4M 4G2
Fax: (604) 943-9226
Attention: Chief Kim Baird

With a copy to:

Donovan and Company
Barristers and Solicitors
6th Floor - 73 Water Street
Vancouver, B.C.
V6B 1A1
Fax: 604-688-4282
Attention: Susan J. Alcott

To the VPA:

Vancouver Port Authority
1900 Granville Square
200 Granville Street
Vancouver, B.C.
Fax: 604-665-9062
Attention: Fiona Smith

With a copy to:

Owen, Bird
Barristers & Solicitors
2900 - 595 Burrard Street
Vancouver, B.C.
V7X 1J5
Fax: 604-688-2827
Attention: Gregory J. Tucker

To Canada:

**Her Majesty the Queen in
Right of Canada**
Attorney General of Canada
284 Wellington Street
Ottawa, Ontario
Canada K1A 0H8

With a copy to:

The Department of Justice
BC Regional Office
900 - 840 Howe Street
Vancouver, B.C.
V6Z 2S9
Attention : Regional Director

To BCFS:

**British Columbia Ferry
Services Inc.**
1112 Fort Street
Victoria, B.C.
V8V 4V2
Fax: 250-380-3958
Attention: Bill Cottick, Vice
President Corporate Affairs,
General Counsel and Corporate
Secretary

With a copy to:

Borden Ladner Gervais LLP
Barristers and Solicitors
1200 Waterfront Centre
200 Burrard Street
Vancouver, B.C.
V7X 1T2
Fax: 604-687-1415
Attention: William K. McNaughton

To BC:

**Her Majesty the Queen in
Right of British Columbia**
Attorney General of British
Columbia
Room 232, Parliament Buildings
Victoria, B.C.
V8V 1X4
Fax: 250-387-6411
Attention: Attorney General

With a copy to:

Ministry of Attorney General
Legal Services Branch
Aboriginal Litigation and Research
Group
5th Floor, 1175 Douglas Street
Victoria, B.C.
V8W 9J7
Fax: 250-387-0343
Attention: Lisa J. Mrozinski

To BCTFA:

**B.C. Transportation and
Financing Authority**
PO Box 9850 Stn Prov Govt
5A, 940 Blanshard Street
Victoria, B.C.
V8W 9T5
Fax: 250-356-6970
Attention: Phil Christie, Director
Land Management Branch

With a copy to:

Ministry of Attorney General
Legal Services Branch
Aboriginal Litigation and Research
Group
5th Floor, 1175 Douglas Street
Victoria, B.C.
V8W 9J7
Fax: 250-387-0343
Attention: Lisa J. Mrozinski

To BCR:

BC Rail Ltd.
c/o British Columbia Railway
Company
Suite 400
221 West Esplanade
North Vancouver, B.C.
V7M 3J3

With a copy to:

Owen, Bird
Barristers & Solicitors
2900 - 595 Burrard Street
Vancouver, B.C.
V7X 1J5
Fax: 604-688-2827

Attention: Corporate Secretary

Attention: D. Barry Kirkham, Q.C.
and Gregory J. Tucker

or to such other address or fax number as a party may specify by notice given in accordance with this section. Any such notice, request, demand or other communication given as aforesaid will be deemed to have been given, in the case of delivery by prepaid courier, when delivered, and in the case of delivery by fax, when a legible fax is received by the recipient if received before 5:00 p.m. (Vancouver time) on a Business Day, or on the next Business Day if such fax is received on a day which is not a Business Day or after 5:00 p.m. on a Business Day.

11. TIME OF THE ESSENCE

Time shall be of the essence of this Agreement.

12. ENTIRE AGREEMENT

This Agreement constitutes the entire agreement among the Parties, except for the TFN and VPA for which this Agreement and the Memorandum of Agreement constitute the entire agreement, pertaining to the transactions contemplated by this Agreement and such agreement supersedes all prior agreements, undertakings, negotiations, proposals and discussions, whether oral or written, of the Parties (including the document entitled "*Without Prejudice Proposal to Tsawwassen First Nation Regarding Settlement of Alleged Impacts Relating to the Roberts Bank Development and the Proposed Expansion*") and there are no warranties, representations, covenants, obligations or agreements between the Parties except as set forth in this Agreement, and except for the TFN and the VPA also in the Memorandum of Agreement.

13. ASSIGNMENT

Except with the prior written consent of the other Parties (which may be arbitrarily withheld in the sole discretion of the Parties being asked to consent to the proposed assignment), none of the Parties may assign any of their respective benefits, obligations or liabilities under or in respect of this Agreement. For greater certainty the Parties agree that neither the transition of the Tsawwassen Reserve and certain Provincial Crown land to Tsawwassen Lands as provided in the Final Agreement (all as defined in the Memorandum of Agreement) nor the transition of the TFN under the *Indian Act* to the TFN under the Final Agreement shall constitute an assignment within the meaning of this Agreement.

14. INVALIDITY

Each of the provisions contained in this Agreement is distinct and severable and a determination of illegality, invalidity or unenforceability of any such provision or part hereof by a court of competent jurisdiction shall not affect the validity or enforceability of any other provision hereof, unless as a result of such determination this Agreement would fail in its essential purposes.

15. WAIVER AND AMENDMENT

Except as expressly provided in this Agreement, no amendment or waiver of it will be binding unless made in writing by the Party to be bound by such amendment or waiver. No waiver of any provision, or any portion of any

provision, of this Agreement will constitute a waiver of any other part of the provision or any other provision of this Agreement nor a continuing waiver unless otherwise expressly provided.

16. COUNTERPARTS

This Agreement may be executed in counterparts and each such counterpart will constitute an original document and such counterparts, taken together, will constitute one and the same instrument.

17. ENUREMENT

This Agreement will enure to the benefit of and will be binding upon the Parties and their respective successors and permitted assigns.