Tsawwassen First Nation Final Agreement

Canada

BRITISH COLUMBIA

Signed by the Parties to the Tsawwassen First Nation Final Agreement and dated for reference this ____ day of December, 2007 / Signé par les *parties* à l'*Accord définitif de la Première Nation de Tsawwassen* et ayant comme date de réféerence le ____ décembre 2007.

FOR THE TSAWWASSEN FIRST NATION / POUR LA PREMIÈRE NATION DE TSAWWASSEN signed in the province of Ontario this _____ day of December, 2007 / Signé dans la province de l'Ontario le ____ décembre 2007.

_____ _____

Kim Baird
Chief, Tsawwassen First Nation/chef de la Première Nation de Tsawwassen

Witnessed by/Témoin : Laura Cassidy
Councillor, Tsawwassen First Nation/conseillère de la Première Nation de Tsawwassen

FOR HER MAJESTY THE QUEEN IN RIGHT OF CANADA/POUR SA MAJESTÉ LA REINE DU CHEF DU CANADA : signed in the province of Ontario, this _____ day of December, 2007 / Signé dans la province de l'Ontario le ____ décembre 2007.

_____ _____

Her Majesty the Queen in Right of Canada as represented by/Sa Majesté la Reine du chef du Canada représentée par : The Honourable Chuck Strahl, P.C., M.P., Minister of Indian Affairs and Northern Development/l'honorable Chuck Strahl, C.P., député, ministre des Affaires indiennes et du Nord canadien.

Witnessed by/Témoin : Tim E. Koepke
Chief Federal Negotiator/négociateur fédéral en chef

FOR HER MAJESTY THE QUEEN IN RIGHT OF BRITISH COLUMBIA/POUR SA MAJESTÉ LA REINE DU CHEF DE LA COLOMBIE-BRITANNIQUE : signed in the province of Ontario, this _____ day of December, 2007 / Signé dans la province de l'Ontario le ____ décembre 2007.

_____ _____

Her Majesty the Queen in Right of British Columbia as represented by/Sa Majesté la Reine du chef de la Colombie-Britannique représentée par : the Honourable Michael de Jong, Minister, Aboriginal Relations and Reconciliation/ l'honorable Michael de Jong, ministre - Aboriginal Relations and Reconciliation

Witnessed by/Témoin : Bronwen Beedle
Chief Provincial Negotiator/négociatrice provinciale en chef

TABLE OF CONTENTS

PREAMBLE **1**

CHAPTER 1 - DEFINITIONS **3**

CHAPTER 2 - GENERAL PROVISIONS **21**
Nature of Agreement 21
Representation and Warranty 21
Constitution of Canada 21
Full and Final Settlement 22
Section 35 Rights of Tsawwassen First Nation 22
Modification 22
Purpose of Modification 23
Release of Past Claims 23
Indemnities 23
Application and Relationship of Federal Law, Provincial Law and Tsawwassen Law 24
Relationship of This Agreement and Federal Law, Provincial Law and Tsawwassen Law 25
International Legal Obligations 26
Other Rights, Benefits and Programs 27
Judicial Determinations in Respect of Validity 28
Consultation 28
Other Aboriginal People 29
Information and Privacy 30
Obligation to Negotiate 31
Other Agreements 31
Interpretation 31
Official Languages 33
Early Implementation 33
Entire Agreement 33
No Implied Waiver 33
Assignment 33
Enurement 34
Notice 34

CHAPTER 3 - TRANSITION **37**

CHAPTER 4 - LANDS **39**
Tsawwassen Lands 39
Interests on Tsawwassen Lands 41
Other Tsawwassen Lands 42
Subsurface Resources – Management and Administration 43
Tsawwassen Water Lots 43
Reconciliation Fund 44

Agricultural Land Reserve 44
Rights of Refusal 45
Addition to or Removal from Tsawwassen Lands 45
Highway 17 Corridor 48
Deltaport Way Corridor 50
Federal Expropriation 50
Provincial Expropriation 55
Mines and Minerals Under English Bluff 57
Accreted Lands 58
Legal Survey 58
Contaminated Sites 58
Economic Development Capital Fund 59

CHAPTER 5 - LAND TITLE 61
Registration of Tsawwassen Lands and Other Tsawwassen Lands 61
Cancellation of Indefeasible Title 61
Amendment to the *Land Title Act* 62

CHAPTER 6 - LAND MANAGEMENT 63
Power to Make Laws 63
Proposed Development 65
Provincial Initiatives and Land Use Processes 65

CHAPTER 7 - ACCESS 67
General 67
Power to Make Laws 67
Tsawwassen Roads 67
Local Roads and Local Boundary Roads 68
Crown Corridors 68
Dikes and Flood Protection 70
Access to Tsawwassen Lands 71
Tsawwassen Access to Adjacent Lands 72
Navigable Waters 72
Emergencies and Natural Disasters 72

CHAPTER 8 - FOREST RESOURCES 73
General 73
Power to Make Laws 73
Economic Opportunity 73

CHAPTER 9 - FISHERIES 75
General 75
Tsawwassen Allocations 77
Overages and Underages 78
Non-Allocated Species – Crab 78

Process for Non-Allocated Species 79
Arbitrated Tsawwassen Allocation 80
Amendment to the Final Agreement 82
Power to Make Laws 82
Designation 82
Documentation 83
Tsawwassen Harvest Documents 83
Tsawwassen Annual Fishing Plan 84
Joint Fisheries Committee 85
Tsawwassen Fisheries Operational Guidelines 89
Regional Fisheries Committee 89
Public Fisheries Management Advisory Process 90
Enforcement 90
Stewardship and Enhancement 91
Tsawwassen Fisheries Fund 91
Marine Protected Areas 91
Economic Opportunities 92
New Emerging Commercial Fisheries 92
Aquaculture 93

CHAPTER 10 - WILDLIFE 95
General 95
Power to Make Laws 97
Documentation 98
Designated Wildlife Species 98
Total Allowable Wildlife Harvest 99
Allocation of Designated Wildlife Species 99
Wildlife Harvest Plan 100
Regional Wildlife Planning 102
Enforcement 103
Training 103

CHAPTER 11 - MIGRATORY BIRDS 105
General 105
Power to Make Laws 107
Documentation 108
Enforcement 108
Conservation Measures 108
Designated Migratory Bird Population 108
Migratory Bird Agreements 109
Consultation on International Negotiations On Migratory Birds 110

CHAPTER 12 - NATIONAL PARKS AND NATIONAL MARINE CONSERVATION AREAS 111
General 111
Power to Make Laws 112

Documentation 113
Renewable Resource Harvesting 113
Conservation Measures 115
Park Establishment and Boundary Changes 115
Co-Operation in Planning and Management 116

CHAPTER 13 - PROVINCIAL PARKS AND GATHERING 119
General 119
Power to Make Laws 120
Documentation 121
Gathering Plants 121
Planning and Co-Operation In Management 122

CHAPTER 14 - CULTURE AND HERITAGE 125
General 125
Power to Make Laws 125
Beach Grove Parcels 126
Tsawwassen Artifacts 126
Heritage Resources 127
Archaeological Human Remains 128
Place Names 129

CHAPTER 15 - ENVIRONMENTAL MANAGEMENT 131
Power to Make Laws 131
Environmental Protection 131
Environmental Assessment 131
Environmental Emergencies 133

CHAPTER 16 - GOVERNANCE 135
Tsawwassen First Nation Self-Government 135
Legal Status and Capacity 135
Tsawwassen Constitution 136
Governance Transition 137
Tsawwassen Elections 137
Appeal and Review of Administrative Decisions 137
Registry of Laws 138
Participation of Non-Members 138
Notification of Tsawwassen Law-Making 139
Notification of Changes to Provincial Legislation 140
Delegation 142
Tsawwassen First Nation Law-Making Authorities 143
Tsawwassen Government 143
Tsawwassen Membership 144
Tsawwassen Assets 144
Adoption 145
Child Custody 148

Child Protection Services 148
Education 150
Post-Secondary Education and Training 151
Aboriginal Healers 151
Health Services 152
Social Services 152
Family Development Services 153
Liquor Control 153
Solemnization of Marriages 154
Judicial Proceedings in Respect of Matrimonial Property 154
Child Care 154
Emergency Preparedness 154
Regulation of Business 155
Buildings and Structures 156
Public Works 156
Traffic, Parking, Transportation and Highways 156
Public Order, Peace and Safety 157
Penalties 157
Adoption of Federal or Provincial Laws 157
Enforcement of Tsawwassen Laws 158
Adjudication of Tsawwassen Laws 159
Community Correctional Services 159
Tsawwassen First Nation Liability 160
Members of Tsawwassen Government 160
Tsawwassen Public Officers 161
Tsawwassen First Nation and Tsawwassen Government 162
Realization of Security Against Property of Tsawwassen First Nation 162

CHAPTER 17 - INTERGOVERNMENTAL RELATIONS AND SERVICES 165
Tsawwassen First Nation Membership in the Greater Vancouver Regional District 165
Services and Authorities 166
Land Use Planning 167
Provision of Water 167
Dispute Resolution 168

CHAPTER 18 - CAPITAL TRANSFER AND NEGOTIATION LOAN REPAYMENT 169
Capital Transfer 169
Negotiation Loan Repayment 169
Prepayments 169
Schedule 1 Capital Transfer Payment Plan 171
Notes for Finalizing Schedule 1 171
Schedule 2 Negotiation Loan Repayment Plan 174
Notes for Finalizing Schedule 2 174

CHAPTER 19 - FISCAL RELATIONS 177

CHAPTER 20 - TAXATION 183
Direct Taxation 183
Taxation Powers Agreements 183
Tsawwassen Lands 184
Transfer of Tsawwassen Capital 185
Indian Act Tax Exemption and Transitional Exemption 186
Tax Treatment Agreement 187

CHAPTER 21 - ELIGIBILITY AND ENROLMENT 189
General 189
Tsawwassen Eligibility Criteria 189
Applications for Enrolment under the Enrolment Committee 189
Other Land Claims Agreements 190
Enrolment Committee 190
Enrolment Appeal Board 192
Funding 194
Transition to Tsawwassen Government 194
Judicial Review 194

CHAPTER 22 - DISPUTE RESOLUTION 197
General 197
Scope: When This Chapter Applies to a Disagreement 197
Disagreements to go Through Stages 198
Stage One: Collaborative Negotiations 199
Stage Two: Facilitated Processes 199
Negotiating Conditions 200
Agreement 201
Stage Three: Adjudication – Arbitration 201
Effect of Arbitral Award 202
Application of Legislation 202
Stage Three: Adjudication – Judicial Proceedings 203
Notice to Parties 203
Costs 204

CHAPTER 23 - AMENDMENT 205
Deposit of Agreement 206
Periodic Review 206

CHAPTER 24 - RATIFICATION OF THE FINAL AGREEMENT 209
General 209
Ratification by Tsawwassen First Nation 209
Ratification of the Tsawwassen Constitution 209
Eligible Voters 209

Ratification Committee 210
Minor Changes Before Signing 211
Ratification by British Columbia 211
Ratification by Canada 212

CHAPTER 25 - IMPLEMENTATION 213
General 213
Implementation Plan 213
Implementation Committee 214

APPENDICES - See *Appendices - Tsawwassen First Nation Final Agreement*

Appendix A	Map of Tsawwassen Territory
Appendix B	Map of Tsawwassen Lands, Other Tsawwassen Lands and Rights of Refusal Lands
Appendix C	Tsawwassen Lands
Appendix D	Interests in Tsawwassen Lands
Appendix E	Other Tsawwassen Lands
Appendix F	Tsawwassen Water Lots
Appendix G	Application of the Agricultural Land Reserve
Appendix H	Rights of Refusal Lands
Appendix I	Specified Lands
Appendix J	Tsawwassen Fishing
Appendix K	Tsawwassen Wildlife Harvest Area
Appendix L	Tsawwassen Migratory Bird Harvest Area
Appendix M	Tsawwassen Plant Gathering Areas
Appendix N	National Parks within Tsawwassen Territory
Appendix O	Tsawwassen Heritage Sites and Key Geographic Features
Appendix P	Dispute Resolution Procedures
Appendix Q	Highway 17 Corridor
Appendix R	Map of Deltaport Way Corridor

PREAMBLE

WHEREAS:

A. Tsawwassen First Nation are Coast Salish, an aboriginal people, and speak a dialect of the Hun'qum'i'num language;

B. Tsawwassen First Nation claim aboriginal rights based on their assertion of a unique, current and historical, cultural connection and use, since time immemorial, to the lands, waters and resources surrounding those areas of Roberts Bank, the Fraser River, the Fraser River estuary, Pitt Lake, the Pitt River, the Serpentine River, the Nicomekl River, Boundary Bay and the Gulf Islands, that comprise Tsawwassen Territory in Canada;

C. The *Constitution Act, 1982* recognizes and affirms the existing aboriginal and treaty rights of the aboriginal peoples of Canada, and the courts have stated that aboriginal rights include aboriginal title;

D. Tsawwassen First Nation asserts that it has an inherent right to self-government, and the Government of Canada has negotiated self-government in this Agreement based on its policy that the inherent right to self-government is an existing aboriginal right within section 35 of the *Constitution Act, 1982*;

E. Tsawwassen First Nation has never entered into a treaty or land claims agreement with the Crown;

F. Canada established Tsawwassen Indian Reserve for the benefit of the Tsawwassen Indian Band;

G. Tsawwassen First Nation and Canada are signatories to the Framework Agreement on First Nation Land Management, and Canada transferred to Tsawwassen First Nation land management authority for Tsawwassen Indian Reserve;

H. Tsawwassen First Nation's existing aboriginal rights are recognized and affirmed by the *Constitution Act, 1982*, and the Parties have negotiated this Agreement under the British Columbia Treaty Commission process to provide certainty in respect of those rights and to allow them to continue and to have the effect and be exercised as set out in this Agreement;

I. Canada and British Columbia acknowledge the perspective of Tsawwassen First Nation that harm and losses in relation to its aboriginal rights have occurred in the past and express regret if any acts or omissions of the Crown have contributed to that perspective, and the Parties rely on this Agreement to move them beyond the difficult circumstances of the past;

J. Canada and British Columbia acknowledge the aspiration of Tsawwassen First Nation to preserve, promote and develop the culture, heritage, language and economy of Tsawwassen First Nation;

K. Canada and British Columbia acknowledge the aspiration of Tsawwassen First Nation and Tsawwassen people to participate more fully in the economic, political, cultural and social life of British Columbia in a way that preserves and enhances the collective identity of Tsawwassen people as Tsawwassen First Nation, and to evolve and flourish in the future as a self-sufficient and sustainable community; and

L. The Parties are committed to the reconciliation of the prior presence of Tsawwassen First Nation and of the sovereignty of the Crown through the negotiation of this Agreement which will establish a new government to government relationship based on mutual respect;

NOW THEREFORE THE PARTIES AGREE AS FOLLOWS:

CHAPTER 1
DEFINITIONS

In this Agreement:

"Agreed-Upon Programs and Services" means those programs and services agreed to by the Parties to be made available by Tsawwassen First Nation, towards which Canada or British Columbia agrees to contribute funding, and set out in a Fiscal Financing Agreement;

"Agreement" means this Tsawwassen First Nation Final Agreement among Tsawwassen First Nation, British Columbia and Canada, including all schedules and appendices to it;

"Aquatic Plants" includes all benthic and detached algae, brown algae, red algae, green algae, golden algae and phytoplankton, and all marine and freshwater flowering plants, ferns and mosses, growing in water or soils that are saturated during most of the growing season;

"Archaeological Human Remains" means human remains, of aboriginal ancestry, that are found within Tsawwassen Territory and determined not to be the subject of investigation by police or a coroner;

"Associated Burial Object" means an object that, by its attributes or location, can be demonstrated to have been placed in direct association with the burial or other funereal practice in respect of a human being, as part of the burial or other funereal practice;

"Associated Entities" means:

a. the Greater Vancouver Water District;

b. the Greater Vancouver Sewerage & Drainage District;

c. the Greater Vancouver Transportation Authority; and

d. the Greater Vancouver Housing Corporation.

"Beach Grove Parcels" means the Beach Grove Parcels set out in Appendix O-2;

"Boundary Bay Parcels" means the Boundary Bay Parcels set out in Appendix E-2;

"Burns Bog Ecological Conservancy Area" means the area set out in Appendix M that is administered under the Burns Bog Management Agreement

between Canada, British Columbia, the Greater Vancouver Regional District and the Corporation of Delta, dated March 23, 2004, and managed as a functional raised bog ecosystem;

"Canadian Total Allowable Catch" means**,** in respect of a stock or species of Fish, the amount of the stock or species that the Minister determines is available for harvest or is harvested in Canadian waters in aboriginal, commercial and recreational fisheries;

"Capital Transfer" means an amount paid by Canada to Tsawwassen First Nation under the Capital Transfer and Negotiation Loan Repayment chapter;

"Certificate of Transfer" means a certificate issued by Tsawwassen First Nation in accordance with Tsawwassen Law certifying that the transferee named in the certificate is a permitted transferee of a fee simple interest in Tsawwassen Lands;

"Child" means an individual under the age of majority under Provincial Law;

"Child Care" means the care, supervision, social or educational training, including preschool education, or physical or mental rehabilitative therapy, of a child under the age of 13 years, with or without charge, by a caregiver other than the child's Parent, but does not include an educational program provided under the *School Act* or the *Independent School Act* or a Tsawwassen Law in relation to kindergarten to grade 12 education;

"Child in Need of Protection" has the same meaning as under Provincial Law;

"Child Protection Service" means a service that provides for the protection of Children, where the primary objective is the Safety and Well-Being of Children, having due regard for:

a. protection from abuse, neglect, and harm, or threat of abuse, neglect, or harm, and any need for intervention;

b. Children in Care;

c. support of families and caregivers to provide a safe environment and prevent abuse, neglect, and harm, or threat of abuse, neglect, or harm; and

d. support of kinship ties and a Child's attachment to the extended family;

"Children in Care" means a Child who is in the custody, care or guardianship of a Director or an individual designated with comparable authority under Tsawwassen Law;

"Community Correctional Services" means:

a. community supervision of offenders subject to court orders, including youth justice court orders, and offenders on conditional and interim release, including temporary release from a youth custody centre;

b. preparation of reports for courts, correctional centres, youth custody centres, crown counsel and parole boards;

c. the operation of diversion programs and the supervision of diverted offenders;

d. provision of community based programs and interventions for offenders;

e. identification of and referral to appropriate community resources;

f. assistance in establishing programs to meet the needs of youth in conflict with the law; and

g. other community correctional and community youth justice services as may be delivered by British Columbia or Canada from time to time;

"Conflict" means actual conflict in operation or operational incompatibility;

"Consult" means provision to a party of:

a. notice of a matter to be decided;

b. sufficient information in respect of the matter to permit the party to prepare its views on the matter;

c. a reasonable period of time to permit the party to prepare its views on the matter;

d. an opportunity for the party to present its views on the matter; and

e. a full and fair consideration of any views on the matter so presented by the party;

"Contaminated Sites" has the same meaning as contaminated sites in the *Environmental Management Act*;

"Contamination" has the same meaning as contamination in the *Environmental Management Act*;

"Core Mandatory Regional Services" means those services that are core mandatory regional services delivered by the Greater Vancouver Regional District to all members as authorized under provincial legislation, Greater Vancouver Regional District letters patent or a service establishment bylaw adopted by the board of the Greater Vancouver Regional District;

"Crown" means Her Majesty the Queen in right of Canada or Her Majesty the Queen in right of British Columbia, as the case may be;

"Crown Corridor" means a road, highway or right of way, including the Road Allowance, that is on Crown land and is used for transportation or public utility purposes, including Highway #17 and Deltaport Way;

"Cultural Heritage Site" means an area within a National Park or National Marine Conservation Area that has heritage value to a group, including aboriginal people, a community and other Canadians, and may include a traditional use, archaeological, funereal or sacred site;

"Cultural Property" means:

a. ceremonial regalia and similar personal property associated with a chief, clan or family; or

b. other personal property that has cultural significance to Tsawwassen First Nation;

"Deltaport Way Corridor" means the Road Allowance and any area of land occupied by the Railway Works, as shown in Appendix R;

"Designated Migratory Bird Population" means a population of a species of Migratory Bird that has been designated by the Minister under the Migratory Birds chapter;

"Designated Wildlife Species" means a species of Wildlife designated under clause 27 of the Wildlife chapter;

"Direct" has the same meaning, for the purposes of distinguishing between a direct tax and an indirect tax, as in class 2 of section 92 of the *Constitution Act, 1867*;

"Director" means an individual designated as a director by the Minister under the *Child, Family and Community Service Act* or the *Adoption Act*, as applicable;

"Disagreement" means any conflict or dispute to which the Dispute Resolution chapter applies as set out in clause 6 of that chapter;

"Dispose" means, except in the Taxation chapter, to transfer or alienate by any method and includes assign, give, sell, grant, charge, convey, bequeath, devise, lease, divest, release, and agree to do any of those things;

"Domestic Purposes" means food, social or ceremonial purposes;

"Effective Date" means the date upon which this Agreement takes effect;

"Enhancement Initiative" means an initiative that is intended to result in an increase in the abundance or variety of a stock or species of Fish through:

a. the creation of or improvement to Fish habitat; or

b. the application of Fish culture technology;

"Environment" means the components of the earth and includes:

a. air, land, and water;

b. all layers of the atmosphere;

c. all organic and inorganic matter and living organisms; and

d. interacting natural systems that include the components referred to in a, b or c;

"Environmental Assessment" means an assessment of the environmental effects of a project;

"Environmental Emergency" means an uncontrolled, unplanned, or accidental release, or release in contravention of laws or regulations, of a substance into the Environment, or the reasonable likelihood of such a release into the Environment, that:

a. has or may have an immediate or long term harmful effect on the Environment;

b. constitutes or may constitute a danger to the Environment on which human life depends; or

c. constitutes or may constitute a danger in Canada to human life or health;

"Family Development Service" means a service that provides support and development for community life and the wellbeing of families;

"Federal Expropriating Authority" means Canada or any other entity authorized under federal legislation to expropriate land or an interest in land;

"Federal Law" includes federal statutes, regulations, ordinances, orders-in-council, and the common law;

"Federal and Provincial Law" means a Federal Law and a Provincial Law;

"Federal or Provincial Law" means a Federal Law or a Provincial Law;

"Federal Project" means a project, as defined in the *Canadian Environmental Assessment Act*, that is subject to an Environmental Assessment under that act;

"Federal Settlement Legislation" means the act of Parliament that gives effect to this Agreement;

"First Nation Government in British Columbia" means the government of a First Nation in British Columbia that has a treaty or a lands claims agreement in effect with Canada and British Columbia;

"Fiscal Financing Agreement" means an agreement negotiated among the Parties in accordance with the Fiscal Relations chapter;

"Fish" means:

a. fish, Intertidal Bivalves and other shellfish, crustaceans and marine animals, excluding cetaceans;

b. the parts of fish, Intertidal Bivalves and other shellfish, crustaceans, and marine animals, excluding cetaceans; and

c. the eggs, sperm, spawn, larvae, spat, juvenile stages and adult stages of fish, Intertidal Bivalves and other shellfish, crustaceans and marine animals, excluding cetaceans;

"Forest Resources" means all Timber Resources, medicinal plants, fungi, branches, bark, cones, bushes, roots, moss, mushrooms, ferns, floral greens, herbs, berries, spices, seeds and plants associated with grazing, including all biota, but does not include Wildlife, Migratory Birds, water, Fish or Aquatic Plants;

"Former Tsawwassen Reserve" means that portion of the lands set out in Appendix C-4, that immediately before the Effective Date comprised the Tsawwassen Indian Reserve, and the mines and minerals set out in Appendix C-5;

"Fraser River Parcels" means the Fraser River Parcels set out in Appendix E-2;

"Greater Vancouver Housing Corporation" means the Greater Vancouver Housing Corporation incorporated under Provincial Law on June 24, 1974, and its successors;

"Greater Vancouver Regional District" means the Greater Vancouver Regional District incorporated under the *Local Government Act*, and its successors;

"Greater Vancouver Sewerage and Drainage District" means the Greater Vancouver Sewerage and Drainage District incorporated under the *Greater Vancouver Sewerage and Drainage District Act*, and its successors;

"Greater Vancouver Transportation Authority" means the Greater Vancouver Transportation Authority established as a corporation under the *Greater Vancouver Transportation Authority Act*, and its successors;

"Greater Vancouver Water District" means the Greater Vancouver Water District incorporated under the *Greater Vancouver Water District Act*, and its successors;

"Heritage Resources" includes archaeological sites, traditional use sites, culturally modified trees, trails and routes, burial or other funereal sites, structural features, and cultural landscapes;

"Highway 17 Corridor" means the portion of Highway #17 that bisects the Former Tsawwassen Reserve as shown in Appendix Q-1;

"Indian" has the same meaning as Indian under the *Indian Act*;

"Intellectual Property" means any intangible property right resulting from intellectual activity in the industrial, scientific, literary or artistic fields, including any right relating to patents, copyrights, trademarks, industrial designs, or plant breeders' rights;

"International Legal Obligation" means an international obligation binding on Canada under international law, including those that are in force before, on or after the Effective Date;

"International Treaty" means an agreement governed by international law and concluded in written form:

a. between states; or

b. between one or more states and one or more international organizations,

whether that agreement is embodied in a single instrument or in two or more related instruments and whatever its particular designation;

"International Tribunal" means any international court, committee, treaty body, tribunal, arbitral tribunal, or other international mechanism or procedure that has jurisdiction to consider the performance of Canada in respect of the International Legal Obligation in question;

"Intertidal Bivalves" means manila clams, littleneck clams, butter clams, horse clams, soft-shell clams, varnish clams, blue mussels, cockles and oysters;

"Land Title Office" means the New Westminster Land Title Office located in New Westminster, British Columbia, as established and described in the *Land Title Act*, and its successors;

"Local Boundary Road" means:

a. the portions of the following roads, including the Road Allowance, that are located along the boundary of Tsawwassen Lands:

   i. 27B Avenue;

   ii. 34th Street;

   iii. 28th Avenue (from 52nd Street to 48th Street);

   iv. 52nd Street (from 28th Avenue to Highway #17); and

   v. 41B Street (portion south from Deltaport Way to portion bisecting Tsawwassen Lands); and

   vi. any roads, including the Road Allowance, that are located along the boundary of lands added to Tsawwassen Lands in accordance with the Lands chapter;

"Local Road" means:

a. Nulelum Way, including the Road Allowance;

b. the portions of the following roads that are located within Tsawwassen Lands, including the Road Allowance:

   i. 41B Street (portion bisecting Tsawwassen Lands);

   ii. 28B Avenue (portion bisecting Tsawwassen Lands); and

iii. 27B Avenue (portion bisecting Tsawwassen Lands); and

c. any roads, including the Road Allowance, that are within lands added to Tsawwassen Lands in accordance with the Lands chapter;

"Local Government" means the council of a municipality or the board of a regional district;

"Marine Protected Area" means a marine protected area as described in subsection 35(1) of the *Oceans Act*;

"Migratory Birds" means birds, as defined under Federal Law enacted further to international conventions, and, for greater certainty, includes their eggs;

"Minister" means, in respect of a matter, the Minister of Her Majesty the Queen in right of Canada, or in right of British Columbia, as the case may be, having the responsibility, from time to time, for the exercise of powers in respect of the matter in question and includes an individual appointed to serve in the department over which the Minister presides, in a capacity appropriate to the exercise of those powers;

"National Marine Conservation Area" includes a national marine conservation area reserve and means the lands and waters named and described in the schedules to the *Canada National Marine Conservation Areas Act* and administered under Federal Law that lie within Tsawwassen Territory;

"National Park" includes a national park reserve and means the lands and waters named and described in the schedules to the *Canada National Parks Act* and administered under Federal Law that lie within Tsawwassen Territory;

"National Wildlife Area" means a National Wildlife Area within Tsawwassen Territory, including Alaksen and Widgeon;

"Natural Boundary" means the visible high water mark of any lake, river, stream, or other body of water where the presence and action of the water are so common and usual, and so long continued in all ordinary years, as to mark on the soil of the bed of the body of water a character distinct from that of its banks, in vegetation, as well as in the nature of the soil itself;

"Neutral" means a person appointed to assist the Parties to resolve a Disagreement and, except in clause 23 of the Dispute Resolution chapter and Appendix P-4, includes an arbitrator;

"Neutral Appointing Authority" means the British Columbia International Commercial Arbitration Centre or, if the Centre is unavailable to make a required

appointment, any other independent and impartial body or individual acceptable to the Parties;

"Non-Member" means an individual who has reached the age of majority under Provincial Law, who is ordinarily resident on Tsawwassen Lands, and who is not a Tsawwassen Member;

"Other Tsawwassen Lands" means the lands referred to in clause 18 of the Lands chapter;

"Pacific Fishery Management Area" means a management area as defined in section 2 of the *Pacific Fishery Management Area Regulations* made under section 43 of the *Fisheries Act*;

"Parent" includes an individual with whom a child resides and who stands in place of the child's father or mother;

"Parties" means Tsawwassen First Nation, Canada and British Columbia, and "Party" means any one of them;

"Periodic Review Date" means the day that is 15 years after the Effective Date, and any day that occurs at any subsequent 15 year interval from a previous Periodic Review Date;

"Person" includes an individual, a partnership, a corporation, a trust, an unincorporated association and any other entity, and a government and any agency or political subdivision thereof, and their heirs, executors, administrators and other legal representatives;

Plants" means all flora and fungi but does not include Timber Resources except for the bark, branches and roots of Timber Resources and does not include Aquatic Plants except that for the purposes of Chapter 13, Provincial Parks and Gathering, mosses are included;

"Private Lands" means lands that are not Crown lands or Tsawwassen Lands;

"Protected Area" means provincial Crown land established or designated for any representative natural resource, recreation, conservation, historic or similar values under Provincial Law, but does not include a Provincial Park, ecological reserve or Wildlife Management Area;

"Provincial Building Regulations" means the provincial building code and other regulations under subsection 692(1) of the *Local Government Act*;

"Provincial Expropriating Authority" means a provincial ministry or agency or any Person who has the authority to expropriate land under provincial legislation;

"Provincial Law" includes provincial statutes, regulations, orders-in-council and the common law;

"Provincial Park" means provincial Crown land established as a provincial park under Provincial Law;

"Provincial Project" means a reviewable project, as defined in the British Columbia *Environmental Assessment Act*, that is subject to an Environmental Assessment under that act;

"Provincial Settlement Legislation" means the act of the Legislature of British Columbia that gives effect to this Agreement;

"Public Utility" means:

a. a Person, or the Person's lessee, trustee, receiver or liquidator who owns or operates in British Columbia equipment or facilities for the:

    i. production, gathering, processing, storage, transmission, sale, supply, distribution or delivery of petroleum, or petroleum products or by-products;

    ii. production, generation, gathering, processing, storage, transmission, sale, supply, distribution or delivery of gas (including natural gas, natural gas liquids, propane and coal bed methane), electricity, steam or water or any other agent for the production of light, heat, cold or power;

    iii. emission, transmission or reception of information, messages or communications by guided or unguided electromagnetic waves, including systems of cable, microwave, optical fibre or radio communications, if that service is offered to the public for compensation; or

b. a local or regional authority providing services in connection with air quality, dikes, water, sewage, solid waste disposal and wastewater treatment,

but for the purposes of this definition, Person does not include a Person engaged in the petroleum industry who is not otherwise a Public Utility;

"Railway Works" means the works of a company authorized by law to construct, own or operate a railway, and includes:

a. all branches, extensions, sidings, stations, depots, wharves, rolling stock, equipment and property connected with the railway;

b. all bridges, tunnels or other structures connected with the railway; and

c. all communications or signalling systems and related facilities and equipment used for railway purposes;

"Registrar" means the registrar of the Land Title Office;

"Renewable Resources" means Plants, birds including Migratory Birds, land mammals and traditional foods, but does not include Fish and Aquatic Plants;

"Renewable Resource Harvesting Document" means any authorizing document issued by the Minister under Federal Law in respect of the Tsawwassen Right to Harvest Renewable Resources;

"Reserve" has the same meaning as reserve in the *Indian Act*;

"Responsible Person" has the same meaning as responsible person in the *Environmental Management Act*;

"Review Period" means a time period beginning on a Periodic Review Date, and ending on a date six months later, or such other date as the Parties may agree;

"Rights of Refusal Lands" means the lands set out in Appendix H-2;

"Road Allowance" means the land used for a road or a highway, as surveyed, and includes the travelled portion, the shoulders and adjacent ditches, if any;

"Safety and Well-Being of Children" includes those guiding principles under section 2 of the *Child, Family and Community Service Act*;

"Salmon" means sockeye salmon, pink salmon, chinook salmon, coho salmon and chum salmon;

"Section 35 Rights of Tsawwassen First Nation" means the rights, anywhere in Canada, of Tsawwassen First Nation, that are recognized and affirmed by section 35 of the *Constitution Act, 1982*;

"Settlement Legislation" means the Federal Settlement Legislation and the Provincial Settlement Legislation;

"Site Profile" has the same meaning as site profile in the *Environmental Management Act*;

"Specific Claim Settlement" means any sum paid as compensation by Canada to Tsawwassen First Nation, which sum represents the amount negotiated by Canada and Tsawwassen First Nation in accordance with the Specific Claims Policy of Canada as compensation for a specific claim;

"Specified Lands" means the lands set out in Appendix I-2;

"State of Title Certificate" means a certificate issued under the *Land Title Act* as evidence of an interest in Tsawwassen Lands substantially in the form set out in Appendix D-8;

"Stewardship Activity" means an activity conducted for the assessment, monitoring, protection or management of Fish or Fish habitat;

"Subsurface Resources" includes:

a. earth, including diatomaceous earth, soil, peat, marl, sand and gravel;

b. slate, shale, argillite, limestone, marble, clay, gypsum, volcanic ash and rock;

c. minerals, including placer minerals;

d. coal, petroleum and natural gas;

e. fossils; and

f. geothermal resources;

"Surrendered Lands" has the same meaning as surrendered lands in the *Indian Act*;

"Terminal Surplus" means, in respect of Fraser River Chum salmon, the amount that the Minister determines is available for harvest or is harvested in Pacific Fisheries Management Area 29 or within the Fraser River by aboriginal, recreational and commercial fisheries;

"Timber Resources" means trees, whether standing, fallen, living, dead, limbed, bucked or peeled;

"Time Limited Federal Funding" means "time limited federal funding" as defined in the initial Fiscal Financing Agreement;

"Time Limited Provincial Funding" means "time limited provincial funding" as defined in the initial Fiscal Financing Agreement;

"Total Allowable Migratory Bird Harvest" means the maximum number of a Designated Migratory Bird Population that may be harvested by all harvesters in the Tsawwassen Migratory Bird Harvest Area in each year;

"Total Allowable Wildlife Harvest" means the amount determined by the Minister under clause 30 of the Wildlife chapter in relation to a Designated Wildlife Species;

"Trade and Barter" does not include sale;

"Transaction Tax" includes a tax imposed under:

a. the *Motor Fuel Tax Act*, R.S.B.C. 1996, c. 317;

b. the *Social Service Tax Act*, R.S.B.C. 1996, c. 431 (except those sections pertaining to alcohol);

c. the *Tobacco Tax Act*, R.S.B.C. 1996, c. 452;

d. the *Property Transfer Tax Act*, R.S.B.C. 1996, c. 378;

e. the *Hotel Room Tax Act*, R.S.B.C. 1996, c. 207;

f. section 4 of the *Insurance Premium Tax Act*, R.S.B.C. 1996, c. 232; and

g. Part IX of the *Excise Tax Act*, R.S.C. 1985, c. E-15;

"Tsawwassen Allocation" means:

a. in respect of a Designated Wildlife Species, a defined harvest quantity or quota, or a formula for calculating a harvest quantity or quota, of a Designated Wildlife Species for Tsawwassen First Nation; and

b. in respect of Fish and Aquatic Plants:

   i. a defined harvest quantity or quota;

   ii. a harvest quantity or quota determined by the use of a formula;

   iii. a harvest quantity or quota determined by the use of a formula with respect to a defined harvest area, within the Tsawwassen Fishing Area; or

   iv. any other definition of quantity or opportunity as the Parties may agree;

"Tsawwassen Annual Fishing Plan" means a Tsawwassen Annual Fishing Plan referred to in clause 65 of the Fisheries chapter;

"Tsawwassen Artifact" means any object created by, traded to, commissioned by, or given as a gift to a Tsawwassen individual or that originated from the Tsawwassen community, past or present, and that has past and ongoing importance to the culture or spiritual practices of Tsawwassen First Nation, but does not include any object that has been traded to, commissioned by, or given as a gift to another aboriginal individual or community;

"Tsawwassen Capital" means all land, cash, and other assets transferred to, or recognized as owned by, Tsawwassen First Nation under this Agreement;

"Tsawwassen Child" means an individual under the age of majority under Provincial Law who is a Tsawwassen Member;

"Tsawwassen Constitution" means the constitution of Tsawwassen First Nation provided for in the Governance chapter;

"Tsawwassen Corporation" means a corporation that is incorporated under Federal or Provincial Law, all the shares of which are owned legally and beneficially by Tsawwassen First Nation, a Tsawwassen First Nation settlement trust, or any combination of those entities or by a wholly-owned subsidiary of any of those entities or by any combination of those entities or subsidiaries;

"Tsawwassen Fee Simple Interest" means a fee simple interest that is subject to any condition, proviso, restriction, exception, or reservation that may be set out in Tsawwassen Law;

"Tsawwassen First Nation" means the collectivity that comprises all Tsawwassen Individuals;

"Tsawwassen First Nation Government" means the government of Tsawwassen First Nation as referred to in clause 2 of the Governance chapter and has the same meaning as "Tsawwassen Government";

"Tsawwassen First Nation Law" means a law made by Tsawwassen Government under this Agreement and includes the Tsawwassen Constitution, and has the same meaning as "Tsawwassen Law";

"Tsawwassen Fishing Area" means the Tsawwassen Fishing Area shown in Appendix J-1;

"Tsawwassen Fishing Right" means the right to harvest Fish and Aquatic Plants in the Tsawwassen Fishing Area and Intertidal Bivalves in the Tsawwassen Intertidal Bivalve Fishing Area under this Agreement;

"Tsawwassen Government" means the government of Tsawwassen First Nation as referred to in clause 2 of the Governance chapter and has the same meaning as "Tsawwassen First Nation Government";

"Tsawwassen Harvest Documents" means licences, permits, documents, or amendments thereto, that are issued by the Minister under Federal or Provincial Law in respect of the Tsawwassen Fishing Right;

"Tsawwassen Individual" means an individual who is eligible to be enrolled under this Agreement in accordance with the Eligibility and Enrolment chapter;

"Tsawwassen Institution" means Tsawwassen Government or a Tsawwassen Public Institution;

"Tsawwassen Intertidal Bivalve Fishing Area" means the Tsawwassen Intertidal Bivalve Fishing Area shown in Appendix J-1;

"Tsawwassen Lands" means the lands set out in Appendix C-4 as Tsawwassen Lands;

"Tsawwassen Law" means a law made by Tsawwassen Government under this Agreement and includes the Tsawwassen Constitution, and has the same meaning as "Tsawwassen First Nation Law";

"Tsawwassen Migratory Bird Harvest Area" means Tsawwassen Territory except:

a. Marine Protected Areas;

b. National Parks and National Marine Conservation Areas; and

c. land owned or in use, or expropriated or otherwise acquired, by Canada, from time to time, other than Indian Reserves and National Wildlife Areas;

"Tsawwassen Member" means a Tsawwassen Individual who is enrolled under this Agreement in accordance with the Eligibility and Enrolment chapter;

"Tsawwassen Public Institution" means a body, board, commission or any other similar entity, including a school board or health board, established by Tsawwassen First Nation under subclause 43.a of the Governance chapter;

"Tsawwassen Public Officer" means:

a. a member, commissioner, director or trustee of a Tsawwassen Public Institution;

b. a director, officer or employee of a Tsawwassen Corporation whose principal function is to provide public programs or services reasonably similar to those provided by federal, provincial or municipal governments, rather than to engage in commercial activities;

c. an officer or employee of Tsawwassen First Nation or a Tsawwassen Institution;

d. an election official within the meaning of a Tsawwassen Law; or

e. a volunteer who participates in the delivery of services by Tsawwassen First Nation, a Tsawwassen Institution, or a body referred to in subclause b, under the supervision of an officer or employee of Tsawwassen First Nation, a Tsawwassen Institution, or a body referred to in subclause b;

"Tsawwassen Right to Gather Plants" means the right to gather Plants under this Agreement;

"Tsawwassen Right to Harvest Renewable Resources" means the right to harvest Renewable Resources under this Agreement;

"Tsawwassen Right to Harvest Migratory Birds" means the right to harvest Migratory Birds under this Agreement;

"Tsawwassen Right to Harvest Wildlife" means the right to harvest Wildlife under this Agreement;

"Tsawwassen Road" means a road, including the Road Allowance, located within Tsawwassen Lands, but does not include a road designated by Tsawwassen First Nation as a private road, or a Local Road;

"Tsawwassen Territory" means the area of land that Tsawwassen First Nation identified in its Statement of Intent to the British Columbia Treaty Commission, as shown in Appendix A;

"Tsawwassen Water Lots" means those lands, submerged lands and waters shown in Appendix F-1;

"Tsawwassen Wildlife Harvest Area" means Tsawwassen Territory except:

a. Marine Protected Areas;

b. National Parks and National Marine Conservation Areas; and

c. land owned or in use, or expropriated or otherwise acquired, by Canada, from time to time, other than Indian Reserves;

"Utility Distribution Works" means all portions of a local distribution network of a Public Utility other than Utility Transmission Works;

"Utility Transmission Works" means the portion of the transportation infrastructure of a Public Utility whose primary purpose is bulk production or transportation to local distribution networks of the product or service supplied by that utility, and includes:

a. electrical facilities or works where the line is rated at or above 60 kV phase-to-phase nominal voltage;

b. natural gas facilities or works at or exceeding 100 pounds per square inch (psi) operating pressure or six inches in outside diameter; and

c. facilities of comparable capacity of other or new Public Utilities;

"Wildlife" means:

a. all vertebrate and invertebrate animals, including mammals, birds, reptiles and amphibians; and

b. the eggs, juvenile stages, and adult stages of all vertebrates and invertebrate animals;

but does not include Fish or Migratory Birds;

"Wildlife Harvest Plan" means a Wildlife Harvest Plan referred to in the Wildlife chapter;

"Wildlife Management Area" means provincial Crown land established as a wildlife management area under Provincial Law; and

"Writ of Execution" has the same meaning as a writ of execution in the *Court Order Enforcement Act.*

CHAPTER 2
GENERAL PROVISIONS

NATURE OF AGREEMENT

1. This Agreement is a treaty and a land claims agreement within the meaning of sections 25 and 35 of the *Constitution Act, 1982*.

2. This Agreement is binding on and can be relied on by the Parties.

3. This Agreement is binding on and can be relied on by all Persons.

4. Ratification of this Agreement by the Parties in accordance with the Ratification chapter is a condition precedent to the validity of this Agreement and, unless so ratified, this Agreement has no force or effect.

5. Canada and British Columbia will recommend to Parliament and the Legislature of British Columbia, respectively, that Settlement Legislation provide that this Agreement is binding on, and can be relied on by, all Persons, and is approved, given effect, declared valid and has the force of law.

REPRESENTATION AND WARRANTY

6. Tsawwassen First Nation represents and warrants to Canada and British Columbia that, in respect of the matters dealt with in this Agreement, Tsawwassen First Nation has the authority to enter, and it enters, into this Agreement on behalf of all Tsawwassen Individuals who, through Tsawwassen First Nation, have or may exercise any aboriginal rights, including aboriginal title, in Canada, or who may make any claim in respect of those rights.

7. Canada and British Columbia represent and warrant to Tsawwassen First Nation that, in respect of the matters dealt with in this Agreement, they have the authority to enter, and they enter, into this Agreement within their respective authorities.

CONSTITUTION OF CANADA

8. This Agreement does not alter the Constitution of Canada, including:

    a. the distribution of powers between Canada and British Columbia;

    b. the identity of Tsawwassen people as aboriginal people of Canada within the meaning of the *Constitution Act*, *1982*; or

c. sections 25 and 35 of the *Constitution Act, 1982*.

9. The *Canadian Charter of Rights and Freedoms* applies to Tsawwassen Government in respect of all matters within its authority.

10. There are no “Lands reserved for the Indians” within the meaning of the *Constitution Act, 1867* for Tsawwassen First Nation, and there are no “reserves” as defined in the *Indian Act* for Tsawwassen First Nation, and, for greater certainty, Tsawwassen Lands and Other Tsawwassen Lands are not “Lands reserved for the Indians” within the meaning of the *Constitution Act, 1867*, and are not “reserves” as defined in the *Indian Act*.

FULL AND FINAL SETTLEMENT

11. This Agreement constitutes the full and final settlement in respect of the aboriginal rights, including aboriginal title, in Canada of Tsawwassen First Nation.

SECTION 35 RIGHTS OF TSAWWASSEN FIRST NATION

12. This Agreement exhaustively sets out the Section 35 Rights of Tsawwassen First Nation, their attributes, the geographic extent of those rights, and the limitations to those rights to which the Parties have agreed, and those rights are:

    a. the aboriginal rights, including aboriginal title, modified as a result of this Agreement, in Canada, of Tsawwassen First Nation in and to Tsawwassen Lands and other lands and resources in Canada;

    b. the jurisdictions, authorities and rights of Tsawwassen Government; and

    c. the other Section 35 Rights of Tsawwassen First Nation.

MODIFICATION

13. Despite the common law, as a result of this Agreement and the Settlement Legislation, the aboriginal rights, including the aboriginal title, of Tsawwassen First Nation, as they existed anywhere in Canada before the Effective Date, including their attributes and geographic extent, are modified, and continue as modified, as set out in this Agreement.

14. For greater certainty, the aboriginal title of Tsawwassen First Nation anywhere that it existed in Canada before the Effective Date, including its attributes and geographic extent, is modified and continues as modified as

the estates in fee simple to those areas identified in this Agreement as Tsawwassen Lands and Other Tsawwassen Lands.

PURPOSE OF MODIFICATION

15. The purpose of the modification referred to in clause 13 is to ensure that as of the Effective Date:

    a. Tsawwassen First Nation has, and can exercise, the Section 35 Rights of Tsawwassen First Nation set out in this Agreement, including their attributes, geographic extent and the limitations to those rights to which the Parties have agreed;

    b. Canada, British Columbia and all other Persons can exercise their rights, authorities, jurisdictions and privileges in a manner that is consistent with this Agreement; and

    c. Canada, British Columbia and all other Persons do not have any obligations in respect of any aboriginal rights, including aboriginal title, of Tsawwassen First Nation to the extent that those rights, including aboriginal title, might be in any way other than, or different in attributes or geographic extent from, the Section 35 Rights of Tsawwassen First Nation set out in this Agreement.

RELEASE OF PAST CLAIMS

16. Tsawwassen First Nation releases Canada, British Columbia and all other Persons from all claims, demands, actions or proceedings, of whatever kind, whether known or unknown, that Tsawwassen First Nation ever had, now has or may have in the future, relating to or arising from any act or omission before the Effective Date that may have affected, interfered with or infringed any aboriginal right, including aboriginal title, in Canada of Tsawwassen First Nation.

INDEMNITIES

17. Tsawwassen First Nation will indemnify and forever save harmless Canada or British Columbia, as the case may be, from any and all damages, losses, liabilities, or costs excluding fees and disbursements of solicitors and other professional advisors, that Canada or British Columbia, respectively, may suffer or incur in connection with or as a result of any suit, action, cause of action, claim, proceeding or demand initiated or made before or after the Effective Date relating to or arising from:

    a. the existence in Canada of an aboriginal right, including aboriginal title, of Tsawwassen First Nation, that is determined to be other than, or

different in attributes or geographic extent from, the Section 35 Rights of Tsawwassen First Nation set out in this Agreement; or

b. any act or omission by Canada or British Columbia, before the Effective Date, that may have affected, interfered with or infringed any aboriginal right, including aboriginal title, in Canada of Tsawwassen First Nation.

18. A Party who is the subject of a suit, action, cause of action, claim, proceeding or demand that may give rise to a requirement to provide payment to that Party under an indemnity as set out in this Agreement:

a. will vigorously defend the suit, action, cause of action, claim, proceeding or demand; and

b. will not settle or compromise the suit, action, cause of action, claim, proceeding or demand except with the consent of the Party who has granted the indemnity, which consent will not be arbitrarily or unreasonably withheld or delayed.

APPLICATION AND RELATIONSHIP OF FEDERAL LAW, PROVINCIAL LAW AND TSAWWASSEN LAW

19. Federal Law, Provincial Law and Tsawwassen Law applies to Tsawwassen First Nation, Tsawwassen Members, Tsawwassen Lands, Tsawwassen Government, Tsawwassen Public Institutions and Tsawwassen Corporations.

20. Canada will recommend to Parliament that Federal Settlement Legislation include a provision that, to the extent that a Provincial Law does not apply of its own force to Tsawwassen First Nation, Tsawwassen Members, Tsawwassen Lands, Tsawwassen Government, Tsawwassen Public Institutions or Tsawwassen Corporations, that law of British Columbia will, subject to the Federal Settlement Legislation and any other act of Parliament, apply in accordance with this Agreement to Tsawwassen First Nation, Tsawwassen Members, Tsawwassen Lands, Tsawwassen Government, Tsawwassen Public Institutions and Tsawwassen Corporations, as the case may be.

21. Except as otherwise provided in this Agreement, Tsawwassen Law does not apply to Canada or British Columbia.

22. For greater certainty, the powers of Tsawwassen Government to make laws, set out in this Agreement, do not include the power to make laws in respect of criminal law, criminal procedure, Intellectual Property, the official

languages of Canada, aeronautics, navigation and shipping, or labour relations and working conditions.

23. Despite any other rule of priority in this Agreement, a Federal Law in relation to peace, order and good government, criminal law, human rights, the protection of the health and safety of all Canadians, or other matters of overriding national importance, prevails to the extent of a Conflict with a Tsawwassen Law.

24. Despite any other rule of priority in this Agreement, Federal and Provincial Law prevails to the extent of a Conflict with a Tsawwassen Law that has an incidental impact on a subject matter for which Tsawwassen Government:

    a. has no power to make laws; or

    b. has the power to make laws but in respect of which Federal and Provincial Laws prevail in the event of a Conflict.

25. Despite any other rule of priority in this Agreement, Federal and Provincial Law prevails to the extent of a Conflict with a Tsawwassen Law that has a double aspect with any federal or provincial legislative jurisdiction for which Tsawwassen Government:

    a. has no power to make laws; or

    b. has the power to make laws but in respect of which Federal and Provincial Laws prevail in the event of a Conflict.

RELATIONSHIP OF THIS AGREEMENT AND FEDERAL LAW, PROVINCIAL LAW AND TSAWWASSEN LAW

26. Any Tsawwassen Law that is inconsistent with this Agreement is of no force or effect to the extent of the inconsistency.

27. This Agreement prevails to the extent of an inconsistency with a Federal or Provincial Law.

28. Federal Settlement Legislation prevails over other Federal Law to the extent of a Conflict, and Provincial Settlement Legislation prevails over other Provincial Law to the extent of a Conflict.

29. A licence, permit or other authorization, to be issued by Canada or British Columbia as a result of this Agreement, will be issued under Federal or Provincial Law, as the case may be, and will not form part of this Agreement, and this Agreement prevails to the extent of any inconsistency with the licence, permit or other authorization.

INTERNATIONAL LEGAL OBLIGATIONS

30. After the Effective Date, before consenting to be bound by a new International Treaty that would give rise to a new International Legal Obligation that may adversely affect a right of Tsawwassen First Nation under this Agreement, Canada will Consult with Tsawwassen First Nation in respect of the International Treaty, either separately or through a forum that Canada determines is appropriate.

31. Where Canada informs Tsawwassen First Nation that it considers that a Tsawwassen Law or other exercise of power by Tsawwassen First Nation causes Canada to be unable to perform an International Legal Obligation, Tsawwassen First Nation and Canada will discuss remedial measures to enable Canada to perform the International Legal Obligation. Subject to clause 32, Tsawwassen First Nation will remedy the Tsawwassen Law or other exercise of power to the extent necessary to enable Canada to perform the International Legal Obligation.

32. Where Canada and Tsawwassen First Nation disagree over whether a Tsawwassen Law or other exercise of power by Tsawwassen First Nation causes Canada to be unable to perform an International Legal Obligation, the dispute will be resolved under the Dispute Resolution chapter of this Agreement, including the arbitration provisions, and:

    a. if the arbitrator, having taken into account all relevant considerations, including any reservations and exceptions taken by Canada, determines that the Tsawwassen Law or other exercise of power by Tsawwassen First Nation does not cause Canada to be unable to perform the International Legal Obligation, or that the remedial measures are sufficient to enable Canada to perform the International Legal Obligation, Canada will not take any further action for this reason aimed at changing the Tsawwassen Law or other exercise of power; or

    b. if the arbitrator, having taken into account all relevant considerations including any reservations and exceptions available to Canada, determines that the Tsawwassen Law or other exercise of power causes Canada to be unable to perform the International Legal Obligation, or that the remedial measures are insufficient to enable Canada to perform the International Legal Obligation, Tsawwassen First Nation will remedy the Tsawwassen Law or other exercise of power to the extent necessary to enable Canada to perform the International Legal Obligation.

33. Canada will Consult with Tsawwassen First Nation in respect of the development of positions taken by Canada before an International Tribunal where a Tsawwassen Law or other exercise of power by Tsawwassen First Nation has given rise to an issue concerning the performance of an International Legal Obligation of Canada. Canada's positions before the International Tribunal will take into account the commitment of the Parties to the integrity of this Agreement.

34. Despite clause 32, if there is a finding of an International Tribunal of non-performance of an International Legal Obligation of Canada attributable to a Tsawwassen Law or other exercise of power by Tsawwassen First Nation, Tsawwassen First Nation will, at the request of Canada, remedy the Tsawwassen Law or action to enable Canada to perform the International Legal Obligation consistent with the compliance of Canada, including Federal or Provincial Law, as applicable, in respect of that International Legal Obligation.

OTHER RIGHTS, BENEFITS AND PROGRAMS

35. Tsawwassen Members who are Canadian citizens or permanent residents of Canada continue to be entitled to all the rights and benefits of other Canadian citizens or permanent residents of Canada applicable to them from time to time.

36. Subject to clause 37, nothing in this Agreement affects the ability of Tsawwassen First Nation, Tsawwassen Members, Tsawwassen Government, Tsawwassen Public Institutions or Tsawwassen Corporations to participate in or benefit from federal or provincial programs for registered Indians, other Indians or aboriginal people in accordance with criteria in effect from time to time.

37. Tsawwassen Members are eligible to participate in programs established by Canada or British Columbia and to receive public services from Canada or British Columbia, in accordance with general criteria established for those programs or public services from time to time, to the extent that the Tsawwassen First Nation has not assumed responsibility for those programs or public services under a Fiscal Financing Agreement or other funding agreement.

38. Nothing in this Agreement affects the ability of Tsawwassen First Nation, Tsawwassen Members, Tsawwassen Government, Tsawwassen Public Institutions or Tsawwassen Corporations to apply for or bid on any commercial, economic or other activity or project for which they would otherwise be eligible.

39. Subject to the Transition chapter and clause 16 of the Taxation chapter, the *Indian Act* has no application to Tsawwassen First Nation, Tsawwassen Members, Tsawwassen Government or Tsawwassen Public Institutions, except for the purpose of determining whether an individual is an "Indian" within the meaning of the *Indian Act*.

40. Subject to clause 5 of the Transition chapter, the Framework Agreement on First Nation Land Management, the *First Nations Land Management Act* and the *Tsawwassen First Nation Land Code* have no application to Tsawwassen First Nation, Tsawwassen Members, Tsawwassen Lands, Tsawwassen Government or Tsawwassen Public Institutions.

41. For so long as the *First Nations Land Management Act* is in force, Canada will indemnify Tsawwassen First Nation, in respect of lands that immediately before the Effective Date comprised the Former Tsawwassen Reserve, in the same manner and under the same conditions as would be the case if the *First Nations Land Management Act* applied to those lands.

JUDICIAL DETERMINATIONS IN RESPECT OF VALIDITY

42. If a superior court of a province, the Federal Court of Canada or the Supreme Court of Canada finally determines any provision of this Agreement to be invalid or unenforceable:

    a. the Parties will make best efforts to amend this Agreement to remedy or replace the provision; and

    b. the provision will be severable from this Agreement to the extent of the invalidity or unenforceability and the remainder of the Agreement will be construed, to the extent possible, to give effect to the intent of the Parties.

43. No Party will challenge, or support a challenge to, the validity of this Agreement or any provision of this Agreement.

44. A breach of this Agreement by a Party does not relieve any Party from its obligations under this Agreement.

CONSULTATION

45. In respect of a Section 35 Right of Tsawwassen First Nation, the following is an exhaustive list of the consultation obligations of Canada and British Columbia:

    a. as provided in this Agreement;

b. as may be provided in federal or provincial legislation;

c. as may be provided in an agreement with Tsawwassen First Nation other than this Agreement; and

d. as may be required under the common law in relation to an infringement of that right.

46. For greater certainty, the exercise of a power or authority, or an action taken, by Canada or British Columbia that is consistent with or in accordance with this Agreement is not an infringement of the Section 35 Rights of Tsawwassen First Nation and will not be subject to any obligation to consult except as set out in subclause 45.a, 45.b or 45.c.

OTHER ABORIGINAL PEOPLE

47. Nothing in this Agreement affects, recognizes or provides any rights under section 35 of the *Constitution Act*, *1982* for any aboriginal people other than Tsawwassen First Nation.

48. If a superior court of a province, the Federal Court of Canada or the Supreme Court of Canada finally determines that any aboriginal people, other than Tsawwassen First Nation, have rights under section 35 of the *Constitution Act, 1982* that are adversely affected by a provision of this Agreement:

a. the provision will operate and have effect to the extent that it does not adversely affect those rights; and

b. if the provision cannot operate and have effect in a way that it does not adversely affect those rights, the Parties will make best efforts to amend this Agreement to remedy or replace the provision.

49. If Canada or British Columbia enters into a treaty or a land claims agreement within the meaning of sections 25 and 35 of the *Constitution Act, 1982* with any other aboriginal people and that treaty or land claims agreement adversely affects the Section 35 Rights of Tsawwassen First Nation as set out in this Agreement:

a. Canada or British Columbia, as the case may be, will provide Tsawwassen First Nation with additional or replacement rights or other appropriate remedies;

b. at the request of Tsawwassen First Nation, the Parties will negotiate and attempt to reach agreement on the provision of those additional or replacement rights or other appropriate remedies; and

c. if the Parties are unable to reach agreement on the provision of the additional or replacement rights or other appropriate remedies, the provision of those additional or replacement rights or remedies will be resolved in accordance with the Dispute Resolution chapter.

INFORMATION AND PRIVACY

50. For the purposes of federal and provincial access to information and privacy legislation, information that Tsawwassen First Nation provides to Canada or British Columbia in confidence is deemed to be information received or obtained in confidence from another government.

51. If Tsawwassen First Nation requests disclosure of information from Canada or British Columbia, the request will be evaluated as if it were a request by a province for disclosure of that information, but Canada and British Columbia are not required to disclose to Tsawwassen First Nation information that is only available to a particular province or particular provinces.

52. The Parties may enter into agreements in respect of any one or more of the collection, protection, retention, use, disclosure and confidentiality of personal, general or other information.

53. Canada or British Columbia may provide information to Tsawwassen First Nation in confidence if Tsawwassen Government has made a law or Tsawwassen First Nation has entered into an agreement with Canada or British Columbia, as the case may be, under which the confidentiality of the information will be protected.

54. Despite any other provision of this Agreement:

    a. Canada and British Columbia are not required to disclose information that they are required or authorized to withhold under Federal or Provincial Law, including under sections 37 to 39 of the *Canada Evidence Act*; and

    b. if federal or provincial legislation allows the disclosure of certain information only if specified conditions for disclosure are satisfied, Canada and British Columbia are not required to disclose that information unless those conditions are satisfied.

55. The Parties are not required to disclose any information that may be withheld at law, including a privilege at law.

OBLIGATION TO NEGOTIATE

56. Where the Parties are obliged under any provision of this Agreement to negotiate and attempt to reach agreement, all Parties will participate in the negotiations unless they agree otherwise.

57. Where this Agreement provides that the Parties, or any two of them, "will negotiate and attempt to reach agreement", those negotiations will be conducted as set out in the Dispute Resolution chapter, but no Party is obliged to proceed to Stage Three of the Dispute Resolution chapter unless they are required to do so in accordance with clause 27 of the Dispute Resolution chapter.

OTHER AGREEMENTS

58. An agreement, plan, guideline or other document made by a Party or Parties, that is referred to in, or contemplated by, this Agreement, including an agreement that is reached as a result of negotiations that under this Agreement are required or permitted, is not part of this Agreement, is not a treaty or land claims agreement and does not create, recognize or affirm aboriginal or treaty rights within the meaning of sections 25 and 35 of the *Constitution Act, 1982*.

INTERPRETATION

59. The provisions in this chapter prevail over the provisions in the other chapters of this Agreement to the extent of any inconsistency.

60. There will be no presumption that doubtful expressions, terms or provisions in this Agreement are to be resolved in favour of any particular Party.

61. If an authority of British Columbia that is referred to in this Agreement is delegated from Canada and:

    a. the delegation of that authority is revoked; or

    b. if a superior court of a province, the Federal Court of Canada or the Supreme Court of Canada finally determines that the delegation of that authority is invalid,

    then the reference to British Columbia will be deemed to be a reference to Canada.

62. If an authority of Canada that is referred to in this Agreement is delegated from British Columbia and:

a. the delegation of that authority is revoked; or

b. if a superior court of a province, the Federal Court of Canada or the Supreme Court of Canada finally determines that the delegation of that authority is invalid,

then the reference to Canada will be deemed to be a reference to British Columbia.

63. The schedules and appendices to this Agreement form part of this Agreement.

64. Unless the context requires otherwise, in this Agreement:

a. the word “will” denotes an obligation that, unless this Agreement provides otherwise, must be carried out as soon as practicable after the Effective Date or the event that gives rise to the obligation;

b. the word “or” is used in its inclusive sense, meaning A or B, or both A and B; and the word “and” is used in its joint sense, meaning A and B, but not either alone;

c. the word “including” means “including, but not limited to”, and the word “includes” means “includes, but is not limited to”;

d. a reference to a “chapter”, “clause”, “subclause”, “schedule” or “appendix” means a chapter, clause, subclause, schedule or appendix, respectively, of this Agreement;

e. a reference in a chapter of this Agreement to a “clause”, “subclause”, “schedule” or “appendix” means a clause, subclause, schedule or appendix, respectively, of that chapter;

f. the word “provincial” refers to the province of British Columbia;

g. the use of the singular includes the plural, and the use of the plural includes the singular; and

h. a reference to “harvest” includes attempts to harvest and a reference to “gather” includes attempts to gather.

65. In this Agreement:

a. the word “Consult” with an upper case “C” is to be interpreted with reference to the defined term “Consult” under the Definitions chapter,

and the word “consult” with a lower case “c” is to be given its ordinary meaning;

b. headings and subheadings 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;

c. a reference to a statute includes every amendment to it, every regulation made under it, every amendment to a regulation made under it, and any law enacted in substitution for it or in replacement of it; and

d. where a word is defined, other parts of speech and grammatical forms of the same word have corresponding meanings.

OFFICIAL LANGUAGES

66. For greater certainty, the Parties acknowledge that the *Official Languages Act* applies to this Agreement, including the execution of this Agreement.

EARLY IMPLEMENTATION

67. The Parties may agree to provide to Tsawwassen First Nation access to benefits provided for under this Agreement after the signing of this Agreement but before the Effective Date, and those benefits will be treated as if they were provided on the Effective Date, unless the Parties otherwise agree.

ENTIRE AGREEMENT

68. This Agreement is the entire agreement among 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.

NO IMPLIED WAIVER

69. Waiver by a Party of any provision of this Agreement in one instance does not constitute a waiver in any other instance, and any waiver must be in writing.

ASSIGNMENT

70. Unless otherwise agreed by the Parties, this Agreement may not be assigned, either in whole or in part, by any Party.

ENUREMENT

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

NOTICE

72. In clauses 73 through 77, “Communication” includes a written notice, document, request, approval, authorization or consent.

73. Unless otherwise set out in this Agreement, a Communication must be:

    a. delivered personally or by courier;

    b. transmitted by facsimile or electronic mail; or

    c. mailed by any method for which confirmation of delivery is provided.

74. A Communication will be considered to have been given, made or delivered, and received:

    a. if delivered personally or by courier, at the start of business on the next business day after the business day on which it was received by the addressee or a responsible representative of the addressee;

    b. if transmitted by facsimile or electronic mail and the sender receives confirmation of the transmission, at the start of business on the next business day after the business day on which it was transmitted; or

    c. if mailed by any method for which confirmation of delivery is provided, when receipt is acknowledged by the addressee.

75. The Parties may agree to give, make or deliver a Communication by means other than those provided in clause 73.

76. The Parties will provide to each other addresses for delivery of Communications under this Agreement and, subject to clause 77, will deliver a Communication to the address provided by each Party.

77. If no other address for delivery of a particular Communication has been provided by a Party, a Communication will be delivered, mailed to the postal address, or transmitted to the facsimile number, of the intended recipient as set out below:

For: Canada
Attention: Minister of Indian Affairs and
Northern Development
House of Commons
Room 583, Confederation Building
Ottawa, Ontario
K1A 0A6
Fax: (819) 953-4941

For: British Columbia
Attention: Minister of Aboriginal Relations and Reconciliation
Room 310, Parliament Buildings
PO Box 9052 Stn Prov Govt
Victoria, British Columbia
V8W 9E2
Fax: (250) 953-4856

For: Tsawwassen First Nation
Attention: Chief, Tsawwassen First Nation
131 North Tsawwassen Drive
Delta, British Columbia
V4M 4G2
Fax: (604) 943-9226

CHAPTER 3
TRANSITION

1. The *Indian Act* applies, with any modifications that the circumstances require, to the estate of an individual who died testate or intestate before the Effective Date and who at the time of death was a member of the Tsawwassen First Nation band under the *Indian Act*.

2. Before the Effective Date, Canada will take reasonable steps to:

   a. notify in writing all members of the Tsawwassen First Nation band under the *Indian Act* who have deposited wills with the Minister; and

   b. provide information to other members of the Tsawwassen First Nation band under the *Indian Act*,

   that their wills may not be valid after the Effective Date, and that they should have their wills reviewed to ensure validity under Provincial Law.

3. Section 51 of the *Indian Act* applies, with any modifications that the circumstances require, to the property and estate of an individual:

   a. who immediately before the Effective Date was a member of the Tsawwassen First Nation band under the *Indian Act*;

   b. who immediately before the Effective Date was a “mentally incompetent Indian” as defined in the *Indian Act*; and

   c. whose property and estate were immediately before the Effective Date under the administration of the Minister under section 51 of the *Indian Act*,

   until the individual is no longer a “mentally incompetent Indian” as defined in the *Indian Act*.

4. Sections 52, 52.2, 52.3, 52.4 and 52.5 of the *Indian Act* apply, with any modifications that the circumstances require, where immediately before the Effective Date the Minister was administering property to which an individual who is the infant child of an Indian is entitled, until the duties of the Minister in respect of the property have been discharged.

5. The laws and bylaws, if any, of the Tsawwassen First Nation band under the *Indian Act*, that were in effect on the day before the Effective Date continue in effect for 30 days after the Effective Date on those parcels of Tsawwassen Lands that comprised the Former Tsawwassen Reserve.

6. The relationship between a law or bylaw referred to in clause 5 and Federal or Provincial Laws is governed by the provisions of this Agreement that govern the relationship between Federal or Provincial Laws and Tsawwassen Laws in respect of the subject matter of the law or bylaw.

7. Tsawwassen Government may repeal, but not amend, a law or bylaw referred to in clause 5.

8. Nothing in this Agreement precludes a Person from challenging the validity of a law or bylaw referred to in clause 5.

9. Subject to clauses 96, 97 and 98 of the Lands chapter, on the Effective Date, all of the rights, titles, interests, assets, obligations and liabilities, of the Tsawwassen First Nation band under the *Indian Act*, vest in Tsawwassen First Nation, and the Tsawwassen First Nation band under the *Indian Act* ceases to exist.

CHAPTER 4
LANDS

TSAWWASSEN LANDS

1. On the Effective Date, Tsawwassen Lands consist of those lands set out in Appendix C-4 including, subject to clause 96, the Former Tsawwassen Reserve and all Subsurface Resources on or beneath the surface of Tsawwassen Lands.

2. On the Effective Date, subject to clauses 10 and 11, Tsawwassen First Nation owns Tsawwassen Lands in fee simple, being the largest estate known in law. That estate of Tsawwassen First Nation is not subject to any condition, proviso, restriction, exception or reservation set out in the *Land Act*, or any comparable limitation under Federal or Provincial Law. No estate or interest in Tsawwassen Lands may be expropriated except as permitted by, and under, this Agreement.

3. Under this Agreement, the Tsawwassen Constitution and Tsawwassen Law, Tsawwassen First Nation may:

   a. Dispose of the whole of its estate in fee simple in any parcel of Tsawwassen Lands to any Person; and

   b. from the whole of its estate in fee simple, or its interest, in any parcel of Tsawwassen Lands, create or Dispose of any lesser estate or interest to any Person, including rights of way and covenants similar to those in sections 218 and 219 of the *Land Title Act*,

   without the consent of Canada or British Columbia.

4. Where Tsawwassen First Nation Disposes of its estate in fee simple in a parcel of Tsawwassen Lands, that parcel of land does not cease to be Tsawwassen Lands.

5. All methods of acquiring a right in or over land by prescription or adverse possession, including the common law doctrine of prescription and the doctrine of the lost modern grant, are abolished in respect of Tsawwassen Lands.

6. If, at any time, any parcel of Tsawwassen Lands, or any estate or interest in a parcel of Tsawwassen Lands, finally escheats to British Columbia, British Columbia will transfer, at no charge, that parcel, estate or interest to Tsawwassen First Nation.

7. An estate, interest, reservation or exception held by Tsawwassen First Nation or by a Tsawwassen Public Institution in any parcel of Tsawwassen Lands:

   a. the title to which is not registered in the Land Title Office; or

   b. in respect of which title no application for registration in the Land Title Office has been made,

   is not subject to attachment, charge, seizure, distress, execution or sale under a Writ of Execution, order for sale or other process unless the attachment, charge, seizure, distress, execution or sale under a Writ of Execution, order for sale or other process is:

   c. made or issued for the purpose of enforcing, in accordance with its terms, a security instrument granted by Tsawwassen First Nation or by a Tsawwassen Public Institution;

   d. allowed under Tsawwassen Law; or

   e. made or issued for the purpose of enforcing a lien in favour of Canada or British Columbia.

8. An estate, interest, reservation or exception held by Tsawwassen First Nation or by a Tsawwassen Public Institution in any parcel of Tsawwassen Lands:

   a. the title to which is registered in the Land Title Office; or

   b. in respect of which title an application for registration in the Land Title Office has been made,

   is not subject to seizure or sale under a Writ of Execution, order for sale or other process unless the Writ of Execution, order for sale or other process is:

   c. made or issued for the purpose of enforcing, in accordance with its terms, a security instrument granted by Tsawwassen First Nation or by a Tsawwassen Public Institution;

   d. allowed under Tsawwassen Law;

   e. made or issued for the purpose of enforcing a lien in favour of Canada or British Columbia; or

f. by leave of the Supreme Court of British Columbia under clause 165 of the Governance chapter.

9. On the Effective Date, Tsawwassen Lands and Tsawwassen Water Lots are not within the boundaries of the Corporation of Delta.

INTERESTS ON TSAWWASSEN LANDS

10. On the Effective Date, the title of Tsawwassen First Nation to Tsawwassen Lands is free and clear of all interests except:

    a. any applicable interests referred to in Appendices D-1 and D-2, until such time as the Tsawwassen Fee Simple Interests are Disposed of under clause 11; and

    b. any applicable interests referred to in Appendices D-3, D-4, D-5, D-6 and D-7.

11. On the Effective Date, Tsawwassen First Nation will Dispose of, to each individual identified in Appendix D-1, a Tsawwassen Fee Simple Interest, free and clear of all interests except any applicable interests referred to in Appendices D-2 and D-3. For greater certainty, any Tsawwassen Law made under clause 1 of the Land Management chapter applies in respect of Tsawwassen Lands including Tsawwassen Fee Simple Interests.

12. Where, on the Effective Date, Tsawwassen First Nation Disposes of an interest or issues a replacement interest, Tsawwassen First Nation will execute documents in respect of that interest, in accordance with clauses 13 and 14.

13. Documents referred to in clause 12 will be in the applicable form, if any, set out in Appendix D-9, and will include any modification that Tsawwassen First Nation and the holder of the interest have agreed to in writing.

14. Documents referred to in clause 12 are deemed to be:

    a. executed and delivered by Tsawwassen First Nation on the Effective Date; and

    b. executed and delivered by the Person entitled to the interest on the Effective Date, whether or not the document is actually executed or delivered by that Person.

15. If Canada or British Columbia notifies Tsawwassen First Nation that an interest referred to in clause 10 or 11:

a. is in the name of a Person who was not entitled to that interest on the Effective Date; or

b. contains a clerical error or a wrong description of a material fact,

the responsible Parties will take reasonable measures to rectify the error.

16. On the Effective Date, Tsawwassen First Nation will execute any documents or undertakings required to assume any obligations in respect of the interests referred to in clause 10.

17. British Columbia will indemnify and forever save harmless Tsawwassen First Nation from any and all damages, losses, liabilities, or costs excluding fees and disbursements of solicitors and other professional advisors, that Tsawwassen First Nation may suffer or incur in connection with or as a result of any suit, action, cause of action, claim, proceeding or demand relating to or arising out of:

a. the omission from Appendix D-3 or D-7 of the name of a Person who, immediately before the Effective Date, had an interest in Tsawwassen Lands that had been granted by British Columbia; or

b. the incorrect naming of a Person in Appendix D-3 or D-7 as a Person entitled to an interest, where another Person was actually entitled, immediately before the Effective Date, to the interest in Tsawwassen Lands that had been granted by British Columbia.

OTHER TSAWWASSEN LANDS

18. Other Tsawwassen Lands consist of:

a. on the Effective Date, the Boundary Bay Parcels and the Fraser River Parcels, both as set out in Appendix E-2; and

b. after the Effective Date, other lands that Tsawwassen First Nation acquires in fee simple that are not Tsawwassen Lands.

19. On the Effective Date, Tsawwassen First Nation owns Other Tsawwassen Lands set out in Appendix E-2 in fee simple, subject to the conditions, provisos, restrictions, exceptions and reservations set out in the *Land Act* and subject to the interests set out in Appendix E-3.

20. If, after the Effective Date, Tsawwassen First Nation acquires land for which the estate in fee simple includes ownership of Subsurface Resources, Tsawwassen First Nation will own the Subsurface Resources on those Other Tsawwassen Lands.

21. Tsawwassen First Nation does not have the power to make laws in respect of Other Tsawwassen Lands unless otherwise provided in this Agreement.

SUBSURFACE RESOURCES – MANAGEMENT AND ADMINISTRATION

22. As owners of the Subsurface Resources on or under Tsawwassen Lands, and where Tsawwassen First Nation owns Subsurface Resources on or under Other Tsawwassen Lands in accordance with clause 20, Tsawwassen First Nation may set fees, rents, royalties or charges other than taxes, related to the exploration, development, extraction or production of those Subsurface Resources.

23. Clause 22 does not limit British Columbia from determining, collecting and receiving administrative fees, charges or other payments, relating to the exploration, development, extraction or production of Subsurface Resources from Tsawwassen Lands or Other Tsawwassen Lands, as applicable.

24. Nothing in this Agreement confers jurisdiction on Tsawwassen Government to make laws in relation to the exploration for, development, production, use or application of nuclear energy or atomic energy or the production, possession or use, for any purpose, of nuclear substances, prescribed substances, prescribed equipment or prescribed information.

25. Nothing in this Agreement confers jurisdiction on Tsawwassen Government to make laws in respect of:

    a. spacing and target areas related to petroleum and natural gas, or the conservation and allocation of petroleum and natural gas among parties having interests in the same reservoir;

    b. labour relations and working conditions, including occupational health and safety, in respect of exploration, development, production and site reclamation relating to Subsurface Resources;

    c. protection and reclamation of land and water courses in respect of the exploration, development or production of Subsurface Resources; or

    d. the closure, reclamation or abandonment of mines.

TSAWWASSEN WATER LOTS

26. On the Effective Date, British Columbia will issue to Tsawwassen First Nation, in the form set out in Appendix F-2, water lot leases in respect of the Tsawwassen Water Lots.

27. For so long as Tsawwassen First Nation is the lessee of a Tsawwassen Water Lot, Tsawwassen Government may make laws, subject to and consistent with the applicable Tsawwassen Water Lot lease, in respect of the regulation, control or prohibition of any action, activity or undertaking that constitutes, or may constitute, a nuisance, a trespass, a danger to public health or a threat to public order, peace or safety on that Tsawwassen Water Lot, other than actions, activities or undertakings authorized by the Crown.

28. A Federal or Provincial Law prevails to the extent of a Conflict with a Tsawwassen Law made under clause 27.

29. British Columbia will not designate Tsawwassen Lands or lands within the Tsawwassen Water Lots as a Wildlife Management Area, Protected Area, Provincial Park, conservancy or ecological reserve.

RECONCILIATION FUND

30. On the Effective Date, Canada will provide to Tsawwassen First Nation an amount, to be paid in accordance with clause 1 of the Capital Transfer and Negotiation Loan Repayment chapter, for the purpose of establishing a Reconciliation Fund in respect of legacy projects. The value in 2006 of that amount is approximately $440,000.

AGRICULTURAL LAND RESERVE

31. On the Effective Date, the Tsawwassen Lands set out in Appendix G-2 and Other Tsawwassen Lands retain the designation as an agricultural land reserve under the *Agricultural Land Commission Act*.

32. On the Effective Date, the Tsawwassen Lands set out in Appendix G-3 are excluded from the designation as an agricultural land reserve under the *Agricultural Land Commission Act*. For greater certainty, on the Effective Date, the Former Tsawwassen Reserve is not included in the designation as an agriculture land reserve under the *Agricultural Land Commission Act.*

33. Clause 31 does not result in a permanent designation of Tsawwassen Lands or Other Tsawwassen Lands as an agricultural land reserve. After the Effective Date, the Agricultural Land Commission may remove that designation in accordance with the *Agricultural Land Commission Act*.

34. In respect of Tsawwassen Lands and the Former Tsawwassen Reserve referred to in clause 32, those lands will not be included within the agricultural land reserve at any time after the Effective Date, except with the consent of Tsawwassen First Nation.

RIGHTS OF REFUSAL

35. Tsawwassen First Nation has the rights of refusal to purchase, on the terms and conditions set out in Appendix H-3, the Rights of Refusal Lands, which include Category B Lands within the meaning of the 1998 Roberts Bank Protocol Agreement between Tsawwassen First Nation and British Columbia.

ADDITION TO OR REMOVAL FROM TSAWWASSEN LANDS

36. Tsawwassen First Nation may add lands that it owns in fee simple to Tsawwassen Lands, in accordance with clauses 37 through 49, no more often than once every five years.

37. Nothing requires Canada or British Columbia to assume financial or other obligations associated with any addition to Tsawwassen Lands, including paying any costs arising because the lands added are not contiguous to Tsawwassen Lands.

38. Any financial charge or encumbrance on lands to be added to Tsawwassen Lands must be paid in full and discharged before the lands are added to Tsawwassen Lands, unless the holder of the charge or encumbrance agrees otherwise.

39. Any interest, other than a financial charge or encumbrance, on lands to be added to Tsawwassen Lands will continue, unless the holder of that interest agrees otherwise.

40. Tsawwassen First Nation will own the Subsurface Resources on lands that are added to Tsawwassen Lands if:

    a. the estate in fee simple includes ownership of Subsurface Resources; or

    b. British Columbia and Tsawwassen First Nation agree.

41. Specified Lands include Category B lands within the meaning of the 1998 Roberts Bank Protocol Agreement between Tsawwassen First Nation and British Columbia.

42. If, within 50 years after the Effective Date, Tsawwassen First Nation owns any parcel of Specified Lands in fee simple, that parcel of Specified Lands will become Tsawwassen Lands after completion of the process set out in clauses 43 and 44.

43. Before the addition of any parcel of Specified Lands to Tsawwassen Lands, Tsawwassen First Nation will:

    a. hold discussions with any resident of, or interest holder in, the parcel of Specified Lands and with the Corporation of Delta;

    b. address the provision of any service provided by any municipality to a parcel of Specified Lands and any tax revenue matter related to such service;

    c. consider whether a road that is adjacent to a parcel of Specified Lands should be a Local Road or a Local Boundary Road;

    d. consider the compatibility of any land use plan of Tsawwassen First Nation with any municipal or regional land use or transportation plan applying to that parcel of Specified Lands; and

    e. provide reasonable notice to Canada, British Columbia, the Greater Vancouver Regional District and the Corporation of Delta in respect of the addition of the parcel of Specified Lands and Tsawwassen First Nation will confirm in the notice that it has dealt with the matters set out in subclauses 43.a through 43.d.

44. Within 150 days of receipt of the notice referred to in subclause 43.e:

    a. the Parties will amend Appendix C-4 in accordance with clause 11 of the Amendment chapter to change the boundaries of Tsawwassen Lands;

    b. the Lieutenant Governor in Council will issue supplementary letters patent adjusting the area of the Corporation of Delta; and

    c. the parcel of Specified Lands will become Tsawwassen Lands upon the last of these events to occur.

45. After the 50-year period referred to in clause 42, British Columbia will consider a request by Tsawwassen First Nation to add land, including any parcel of the Specified Lands, to Tsawwassen Lands if:

    a. Tsawwassen First Nation owns the land in fee simple;

    b. the land is within Tsawwassen Territory; and

    c. the land is:

i. outside municipal boundaries and a change in jurisdiction to that land will not unreasonably restrict the expansion or development of a municipality; or

ii. inside municipal boundaries and the municipality consents.

46. In addition to the matters set out in clause 45, British Columbia will take into account among other factors:

a. whether the land is contiguous to existing Tsawwassen Lands; and

b. the interests of a regional district in cases where the land is within a regional district but not within a municipality.

47. After the 50-year period referred to in clause 42, Canada will consider a request from Tsawwassen First Nation to add land, including any parcel of the Specified Lands, to Tsawwassen Lands if:

a. Tsawwassen First Nation owns the lands in fee simple;

b. the lands are within Tsawwassen Territory; and

c. the lands are:

i. free from any overlapping aboriginal claim; or

ii. subject to an overlapping aboriginal claim and the claimant consents.

48. In considering whether to consent to a request referred to in clause 45 or 47, British Columbia or Canada may take into account any other matter that British Columbia or Canada, respectively, considers relevant.

49. If Canada and British Columbia consent to an addition, then within 150 days of receipt by Tsawwassen First Nation of written notice of that consent:

a. the Parties will amend Appendix C-4 in accordance with clause 11 of the Amendment chapter to change the boundaries of Tsawwassen Lands;

b. the Lieutenant Governor in Council will issue supplementary letters patent adjusting the boundaries of the relevant municipality; and

c. the parcel of land will become Tsawwassen Lands upon the last of these events to occur.

50. Tsawwassen First Nation may request the consent of Canada and British Columbia to remove a parcel of Tsawwassen Lands from the jurisdiction of Tsawwassen First Nation and such lands, if removed, will cease to be Tsawwassen Lands. In considering whether to consent, Canada and British Columbia may consider:

    a. necessary jurisdictional, administrative and servicing arrangements;

    b. the views of any affected municipalities and neighbouring First Nations;

    c. any impact on fiscal arrangements; and

    d. any legal or financial implications to Canada or British Columbia.

51. If Canada and British Columbia consent to the removal of a parcel of Tsawwassen Lands from the jurisdiction of Tsawwassen First Nation, then within 150 days of receipt by Tsawwassen First Nation of written notice of that consent:

    a. the Parties will amend Appendix C-4 in accordance with clause 11 of the Amendment chapter to change the boundaries of Tsawwassen Lands;

    b. the Lieutenant Governor in Council will issue supplementary letters patent adjusting the boundaries of the relevant municipality; and

    c. the parcel will cease to be Tsawwassen Lands upon the last of these events to occur.

HIGHWAY 17 CORRIDOR

52. On the Effective Date:

    a. the Highway 17 Corridor is not part of Tsawwassen Lands;

    b. British Columbia owns the Highway 17 Corridor except for Subsurface Resources which are owned by Tsawwassen First Nation;

    c. British Columbia owns the Highway 17 Corridor for use for provincial public highway purposes, subject to existing works of Public Utility set out in Appendix Q-2; and

    d. Tsawwassen First Nation may use the Subsurface Resources if that use is consistent with the use of the Highway 17 Corridor for provincial public highway purposes and works of Public Utility.

53. If British Columbia no longer requires any portion of the Highway 17 Corridor for provincial public highway purposes:

    a. at the request of Tsawwassen First Nation, Tsawwassen First Nation will take ownership of that portion in fee simple, at no cost to Tsawwassen First Nation;

    b. that portion will be in the same condition as it was in at the time British Columbia ceased to use it for provincial public highway purposes;

    c. the ownership of Tsawwassen First Nation of that portion will be subject to any existing works of Public Utility; and

    d. that portion ceases to be part of the Highway 17 Corridor.

54. Tsawwassen First Nation may add to Tsawwassen Lands that portion of the Highway 17 Corridor referred to in clause 53 but, before doing so, Tsawwassen First Nation will:

    a. consult with any interest holder whose interest lies within that portion;

    b. provide reasonable notice to Canada, British Columbia, the Greater Vancouver Regional District and the Corporation of Delta in respect of the addition; and

    c. confirm in the notice that Tsawwassen First Nation has completed the consultation referred to in subclause 54.a.

55. Within 150 days of the receipt of the notice referred to in subclause 54.b:

    a. the Parties will amend Appendix C-4 in accordance with clause 11 of the Amendment chapter to change the boundaries of Tsawwassen Lands;

    b. the Lieutenant Governor in Council will issue supplementary letters patent adjusting the area of the Corporation of Delta; and

    c. that portion of the Highway 17 Corridor will become Tsawwassen Lands upon the last of these events to occur.

56. Nothing in this Agreement requires British Columbia to assume any financial or other obligations, including survey costs or remediation costs, associated with an addition to Tsawwassen Lands of any portion of the Highway 17 Corridor.

DELTAPORT WAY CORRIDOR

57. British Columbia or Canada, as applicable, will Consult with Tsawwassen First Nation before authorizing new works within the Deltaport Way Corridor.

FEDERAL EXPROPRIATION

58. Canada acknowledges the interest of Tsawwassen First Nation in maintaining the size and integrity of Tsawwassen Lands and agrees that, as a general principle, federal expropriation of Tsawwassen Lands will be avoided where reasonably practicable, except as set out in this chapter.

59. Where the fee simple interest in a parcel of land in the Former Tsawwassen Reserve is held by Tsawwassen First Nation, a Tsawwassen Member, a Tsawwassen Corporation or a Tsawwassen Public Institution, no interest in that parcel may be expropriated by a Federal Expropriating Authority.

60. Despite clause 58, where the fee simple interest in a parcel of Tsawwassen Lands, including the Former Tsawwassen Reserve, is held by a Person other than Tsawwassen First Nation, a Tsawwassen Member, a Tsawwassen Corporation or a Tsawwassen Public Institution, this chapter does not apply to the expropriation of any interest in that parcel and, for greater certainty, any such interest may be expropriated under federal legislation.

61. Despite clause 58, but subject to clause 59, where the fee simple interest in a parcel of Tsawwassen Lands is held by Tsawwassen First Nation, any interest in that parcel may be expropriated by a Federal Expropriating Authority in accordance with this chapter, federal legislation, and with the consent of the Governor in Council.

62. Despite clause 58, but subject to clause 59, where the fee simple interest in a parcel of Tsawwassen Lands is held by a Tsawwassen Member, a Tsawwassen Corporation or a Tsawwassen Public Institution, any interest in that parcel may be expropriated by a Federal Expropriating Authority in accordance with federal legislation, and with the consent of the Governor in Council, and in accordance with clauses 63 through 68, clause 76, clause 77, and clauses 79 through 86, which apply with such modifications as the circumstances require to reflect that the interest is held by a Tsawwassen Member, a Tsawwassen Corporation or a Tsawwassen Public Institution, as the case may be, except that any return of land under clauses 79 through 82 will be to Tsawwassen First Nation.

63. The Governor in Council may consent to an expropriation of an interest in Tsawwassen Lands only if the expropriation is justifiable in accordance with clause 64 and necessary for a public purpose.

64. For the purposes of clause 63, an expropriation is justifiable where the Governor in Council is satisfied that the following requirements have been met:

    a. there is no other reasonably feasible alternative land to acquire that is not Tsawwassen Lands;

    b. reasonable efforts have been made by the Federal Expropriating Authority to acquire the interest in Tsawwassen Lands through agreement with Tsawwassen First Nation;

    c. the most limited interest in Tsawwassen Lands necessary for the purpose for which the interest in land is sought is expropriated and for the shortest time possible; and

    d. information relevant to the expropriation, other than documents that would be protected from disclosure under federal legislation, has been provided to Tsawwassen First Nation.

65. Before the Governor in Council consents to the expropriation of an interest in Tsawwassen Lands, the Federal Expropriating Authority will provide to Tsawwassen First Nation, and make available to the public, a report stating the justification for the expropriation and describing the steps taken to satisfy the requirements set out in clause 64.

66. If Tsawwassen First Nation objects to a proposed expropriation of an interest in Tsawwassen Lands, it may, within 60 days after the report has been provided to Tsawwassen First Nation in accordance with clause 65, by providing notice in writing to the Federal Expropriating Authority, refer the matter for review of the steps taken to satisfy the requirements set out in clause 64 directly to neutral evaluation under Stage Two of the Dispute Resolution chapter.

67. The Federal Expropriating Authority may not seek Governor in Council consent to the expropriation of an interest in Tsawwassen Lands before the expiration of the period referred to in clause 66 or, if Tsawwassen First Nation has referred the matter to a neutral evaluator in accordance with clause 66, before the neutral evaluator has reported on the matter, such report to be rendered to Tsawwassen First Nation and the Federal Expropriating Authority within 60 days of the referral being made, or within such additional time period as they may agree.

68. Without limiting the generality of the Dispute Resolution chapter, the opinion of the neutral evaluator under clause 66:

    a. is without prejudice to the legal positions that may be taken by a Federal Expropriating Authority and Tsawwassen First Nation in court or in any other forum;

    b. will not be admissible in any legal proceedings, unless otherwise required by law; and

    c. is not binding on the Governor in Council under clauses 63 and 64.

69. Where a fee simple interest in a parcel of Tsawwassen Lands is expropriated by a Federal Expropriating Authority, the Federal Expropriating Authority will make reasonable efforts:

    a. to identify replacement land within Tsawwassen Territory, being either Crown land or land available on a willing-seller willing-buyer basis, of equivalent or greater size and comparable value; and

    b. if the replacement land is acceptable to Tsawwassen First Nation, to acquire and offer the replacement land to Tsawwassen First Nation as partial or full compensation for the expropriation.

    If the Federal Expropriating Authority and Tsawwassen First Nation are unable to agree on the provision of replacement land as compensation, the Federal Expropriating Authority will provide Tsawwassen First Nation with other compensation in accordance with this Agreement.

70. Subject to clause 73, if the replacement land identified by the Federal Expropriating Authority would result in the total size of Tsawwassen Lands being less than as at the Effective Date and Tsawwassen First Nation does not agree that the replacement land is of comparable value to the interest in Tsawwassen Lands being expropriated, then Tsawwassen First Nation may refer the issue of whether the replacement land is of comparable value to the interest in Tsawwassen Lands being expropriated to be finally determined by arbitration under the Dispute Resolution chapter.

71. The total value of compensation for an interest in Tsawwassen Lands expropriated by a Federal Expropriating Authority under this chapter will be determined by taking into account the following factors:

    a. the market value of the expropriated interest or of the Tsawwassen Lands in which an interest has been expropriated;

b. the replacement value of any improvement to Tsawwassen Lands in which an interest has been expropriated;

c. any expenses or losses resulting from a disturbance directly attributable to the expropriation;

d. any reduction in the value of any interest in Tsawwassen Lands that is not expropriated which directly relates to the expropriation;

e. any adverse effect on any cultural or other special value of Tsawwassen Lands in which an interest has been expropriated to Tsawwassen First Nation, provided that the cultural or other special value is only applied to an interest in Tsawwassen Lands recognized in law and held by Tsawwassen First Nation, and provided that there will be no increase in the total value of compensation on account of any Section 35 Rights of Tsawwassen First Nation; and

f. the value of any special economic advantage arising out of or incidental to the occupation or use of Tsawwassen Lands by Tsawwassen First Nation to the extent that the value is not otherwise compensated.

72. Subject to clause 73, if the total value of compensation cannot be agreed upon between the Federal Expropriating Authority and Tsawwassen First Nation, or where there is disagreement on whether the combination of replacement land and cash is equal to the total value of compensation, either the Federal Expropriating Authority or Tsawwassen First Nation may refer the issue of the total value of compensation for dispute resolution under the Dispute Resolution chapter.

73. A dispute on the valuation of replacement land under clause 70, or on the total value of compensation under clause 72, or on the terms and conditions of the return of land under clause 82 will not delay the expropriation.

74. Any claim or encumbrance in respect of the interest expropriated may only be claimed against the amount of compensation that is otherwise payable under clause 71.

75. Interest on compensation is payable from the date the expropriation takes effect, at the prejudgment interest rate payable in accordance with federal legislation.

76. Where a Federal Expropriating Authority expropriates a fee simple interest in a parcel of Tsawwassen Lands, that parcel will no longer be Tsawwassen Lands.

77. Where a Federal Expropriating Authority expropriates less than a fee simple interest in a parcel of Tsawwassen Lands:

    a. the parcel retains its status as Tsawwassen Lands;

    b. the parcel remains subject to Tsawwassen Laws, except to the extent that such laws are inconsistent with the use of the parcel of land for which the expropriation took place; and

    c. Tsawwassen First Nation or any interest holder may continue to use and occupy the parcel, except to the extent that the use or occupation is inconsistent with the use of the parcel for which the expropriation took place in the view of the Federal Expropriating Authority.

78. Canada and British Columbia will consent to replacement land, transferred by a Federal Expropriating Authority to Tsawwassen First Nation as part of the compensation in accordance with clause 69, being added to Tsawwassen Lands if:

    a. the replacement land is within Tsawwassen Territory;

    b. the replacement land is outside municipal boundaries and a change in jurisdiction to that land will not unreasonably restrict the expansion or development of a municipality, or the replacement land is inside municipal boundaries if the municipality consents;

    c. the replacement land is free from any overlapping aboriginal claim unless the claimant consents; and

    d. the addition of replacement land to Tsawwassen Lands will not result in Canada or British Columbia being required to assume financial or other obligations.

79. Where an expropriated interest in a parcel of Tsawwassen Lands is no longer required for the purpose for which it was expropriated, the federal department, agency or entity, or its successor or assigns, will ensure that the interest in land is returned to Tsawwassen First Nation on the terms and conditions negotiated in accordance with clause 81. Subject to clause 78, where a fee simple interest in a parcel of land is returned to Tsawwassen First Nation in accordance with this clause, the parcel of land will become Tsawwassen Lands on the date of the transfer.

80. The Minister responsible for the federal department, agency or other entity, or its successors or assigns, who holds the expropriated interest, without the consent of the Governor in Council, may decide that the expropriated

interest is no longer required and may determine the disposition of any improvements.

81. The terms and conditions of the return of an expropriated interest in Tsawwassen Lands, including requirements relating to financial considerations based on market value principles, the condition of the land to be returned, and the process for resolving disputes on the implementation of the terms and conditions, will be negotiated by Tsawwassen First Nation and the Federal Expropriating Authority at the time of the expropriation.

82. Subject to clause 73, where the terms and conditions of the return of an expropriated interest in Tsawwassen Lands cannot be agreed upon by Tsawwassen First Nation and the Federal Expropriating Authority at the time of the expropriation, either Tsawwassen First Nation or the Federal Expropriating Authority may refer the issue to be finally determined by arbitration under the Dispute Resolution chapter.

83. Except as otherwise provided in clauses 58 through 86, no conflict or dispute between the Parties in respect of the interpretation, application or implementation of these clauses will go to dispute resolution under the Dispute Resolution chapter.

84. For greater certainty, and subject to clause 85, except to the extent that the provisions of this chapter modify the application of federal legislation relating to an expropriation of Tsawwassen Lands, all federal legislation relating to expropriation applies to an expropriation of Tsawwassen Lands under this chapter.

85. Without limiting the generality of clause 27 of the General Provisions chapter, this Agreement prevails to the extent of an inconsistency with the federal *Expropriation Act* or other federal legislation relating to an expropriation of Tsawwassen Lands.

86. Nothing in this Agreement affects or limits the application of the *Emergencies Act (Canada),* or any successor legislation, and the *Emergencies Act (Canada)* continues to apply in all aspects to Tsawwassen Lands.

PROVINCIAL EXPROPRIATION

87. British Columbia acknowledges as a general principle that where it is reasonable to use other means, expropriation of Tsawwassen Lands and Other Tsawwassen Lands will be avoided.

88. Expropriations of Tsawwassen Lands by Provincial Expropriating Authorities in total, over time, will not exceed three per cent of the amount of Tsawwassen Lands as at the Effective Date.

89. For greater certainty, Provincial Law in respect of expropriation applies to Other Tsawwassen Lands and to additions to Tsawwassen Lands.

90. Subject to this chapter, any expropriation of Tsawwassen Lands by and for the use of a Provincial Expropriating Authority will be carried out in accordance with applicable provincial legislation and processes.

91. Where a Provincial Expropriating Authority has determined that it must use Tsawwassen Lands:

    a. it will make reasonable efforts to acquire the land through agreement with Tsawwassen First Nation and any interest holder; and

    b. it will provide to Tsawwassen First Nation and any interest holder information relevant to the acquisition or expropriation.

92. Any expropriation of Tsawwassen Lands by a Provincial Expropriating Authority will be:

    a. of the smallest estate or interest necessary, and for the shortest time required;

    b. by and for the use of a provincial ministry or agent of the provincial Crown, or for the use of a Public Utility whether or not an agent of the Crown, who would otherwise have the authority to expropriate land under provincial legislation, or on whose behalf British Columbia may expropriate;

    c. necessary for a public purpose; and

    d. with the consent of the Lieutenant Governor in Council.

93. The total value of the compensation provided by the Provincial Expropriating Authority will take into account among other factors:

    a. the market value of the estate or interest expropriated plus reasonable damages for disturbance including moving, legal and survey costs;

    b. the value of the goodwill of a business located on the expropriated property if the business cannot be relocated;

c. if not included in the market value, the value of a special economic advantage to the owner arising out of the owner's occupation of the land and the value of improvements made by an owner occupying a residence on the land; and

d. if the expropriated property has a limited market because of its use, compensation may be based on the reasonable costs of rebuilding on another site.

94. Where a fee simple estate or less than a fee simple estate in a parcel of Tsawwassen Lands is expropriated by a Provincial Expropriating Authority:

a. the parcel retains its status as Tsawwassen Lands;

b. the parcel remains subject to Tsawwassen Law except to the extent that the Tsawwassen Law is inconsistent with the use of the parcel of land for which the expropriation took place; and

c. Tsawwassen First Nation or any interest holder may continue to use and occupy the parcel, except to the extent that such use or occupation is inconsistent with the use of the parcel of land for which the expropriation took place.

95. Where an expropriated interest in Tsawwassen Lands is no longer required by a Provincial Expropriating Authority, the interest will be returned to Tsawwassen First Nation subject to terms to be negotiated at the time of the return.

MINES AND MINERALS UNDER ENGLISH BLUFF

96. The mines and minerals set out in Appendix C-5 are not included in Tsawwassen Lands, and Canada will transfer those mines and minerals to British Columbia on the Effective Date.

97. Tsawwassen First Nation releases to Canada all of the rights and interests that Tsawwassen First Nation or Tsawwassen Members ever had, now have or may have in the future in the mines and minerals referred to in clause 96, and acknowledges that, on the Effective Date, those mines and minerals are no longer set apart for the use and benefit of Tsawwassen First Nation.

98. In consideration of the arrangement described in clause 96 and the release set out in clause 97, Canada will pay to Tsawwassen First Nation the sum of two million dollars ($2,000,000) on the Effective Date, the sufficiency of which Tsawwassen First Nation hereby acknowledges.

ACCRETED LANDS

99. For greater certainty, the water boundary fronting Tsawwassen Lands is the Natural Boundary.

100. Tsawwassen First Nation owns any lawful accretions to Tsawwassen Lands.

101. Where Tsawwassen First Nation provides to Canada and British Columbia notice confirming that there has been lawful accretion within the meaning of the *Land Title Act* to Tsawwassen Lands, then within 150 days the Parties will amend Appendix C-4 in accordance with clause 11 of the Amendment chapter to reflect the change to the boundaries of Tsawwassen Lands and, if required, the Lieutenant Governor in Council will issue supplementary letters patent to reflect the change, if any, to the area of the Corporation of Delta.

LEGAL SURVEY

102. Canada and British Columbia will, as agreed between them, pay the cost of initially surveying the boundaries of Tsawwassen Lands, and Other Tsawwassen Lands set out in Appendix E-2.

103. In those cases where adequate surveys do not already exist, before the Effective Date, or as soon as practicable after the Effective Date, Canada and British Columbia will register new survey plans in the Land Title Office and upon registration of those new survey plans, the Parties will amend Appendix C-4 in accordance with clause 11 of the Amendment chapter to change the boundaries of Tsawwassen Lands.

CONTAMINATED SITES

104. The transfer of the Former Tsawwassen Reserve to Tsawwassen First Nation in accordance with this Agreement does not, in and of itself, result in British Columbia being liable in respect of any Contamination of such lands.

105. In respect of provincial Crown lands transferred to Tsawwassen First Nation in accordance with this Agreement, to the best of British Columbia's knowledge those lands have not been used for a prescribed industrial or commercial purpose or any other purpose or activity prescribed under the *Environmental Management Act*, and British Columbia is not required to prepare or provide a Site Profile for those lands.

106. Nothing in this Agreement precludes Tsawwassen First Nation from recovering the costs incurred in the inspection or remediation of any Contaminated Sites on the lands referred to in clause 105 from British

Columbia or any other Person who may be determined to be a Responsible Person in respect of the Contamination of that site.

ECONOMIC DEVELOPMENT CAPITAL FUND

107. On the Effective Date, Canada will provide to Tsawwassen First Nation an amount, to be paid in accordance with clause 1 of the Capital Transfer and Negotiation Loan Repayment chapter, for the purpose of establishing an Economic Development Capital Fund. The value in 2006 of that amount is approximately $1,055,000.

CHAPTER 5
LAND TITLE

REGISTRATION OF TSAWWASSEN LANDS AND OTHER TSAWWASSEN LANDS

1. On the Effective Date:

   a. the interests of Tsawwassen First Nation in Tsawwassen Lands and Other Tsawwassen Lands; and

   b. the interests referred to in Appendices D-1 through D-7,

   and any other interests subordinate to those interests will be registered, or will remain registered, in the Land Title Office in accordance with the requirements of the *Land Title Act*.

2. On registration of the indefeasible title to a parcel of Tsawwassen Lands the Registrar will make a notation on the indefeasible title that the parcel is Tsawwassen Lands and may be subject to conditions, provisos, restrictions, exceptions and reservations, in favour of Tsawwassen First Nation.

3. Registration, in accordance with clause 1, including the provision of a State of Title Certificate, will be at no cost to Tsawwassen First Nation or the holder of an interest referred to in clause 1, except for a Public Utility, other than Tsawwassen First Nation, with an interest referred to in Appendix D-3.

4. No title adverse to, or in derogation of, the title of the registered owner of a parcel of Tsawwassen Lands under the *Land Title Act* will be acquired by length of possession and, for greater certainty, subsection 23(4) of the *Land Title Act* does not apply in respect of Tsawwassen Lands.

CANCELLATION OF INDEFEASIBLE TITLE

5. Only Tsawwassen First Nation, in accordance with this chapter, may apply under the *Land Title Act* for cancellation of the registration of an indefeasible title to a parcel of Tsawwassen Lands.

6. When applying under the *Land Title Act,* in accordance with this chapter, for the cancellation of the registration of an indefeasible title to a parcel of Tsawwassen Lands, Tsawwassen First Nation will provide to the Registrar an application for cancellation of the registration and any duplicate indefeasible title that may have been issued in respect of that parcel.

7. Upon receiving an application from Tsawwassen First Nation for cancellation of the registration of an indefeasible title to a parcel of Tsawwassen Lands under clauses 5 and 6, and if:

   a. the registered owner of the estate in fee simple to the parcel is Tsawwassen First Nation, a Tsawwassen Corporation or a Tsawwassen Public Institution;

   b. the registered owner consents; and

   c. the indefeasible title to the parcel is free and clear of all charges, except those in favour of Tsawwassen First Nation,

   the Registrar will cancel the registration of the indefeasible title.

8. The *Land Title Act* will not apply to a parcel of Tsawwassen Lands for which the indefeasible title under the *Land Title Act* has been cancelled under that Act in accordance with this Agreement.

AMENDMENT TO THE LAND TITLE ACT

9. Provincial Settlement Legislation will amend the *Land Title Act*:

   a. to give effect to this Agreement;

   b. to require that a Certificate of Transfer issued in accordance with Tsawwassen Law be submitted to the Registrar before the transfer of a fee simple interest may be registered in respect of Tsawwassen Lands; and

   c. so that, under that Act, the position of the Tsawwassen First Nation and the Tsawwassen Government in relation to Tsawwassen Lands is analogous, as may be applicable, to:

      i. the Crown and the provincial government in relation to Crown land, or

      ii. a municipality and its council, a regional district and its board or an improvement district and its board of trustees, in relation to lands in a municipality, regional district or improvement district.

10. The Registrar is entitled to rely on, and is not required to make any inquiries in respect of, the matters certified in the Certificate of Transfer.

CHAPTER 6
LAND MANAGEMENT

POWER TO MAKE LAWS

1. Tsawwassen Government may make laws in respect of:

    a. the creation, ownership and Disposition of a Tsawwassen Fee Simple Interest;

    b. the ownership and Disposition of estates or interests in Tsawwassen Lands including:

        i. fee simple interests;

        ii. mortgages;

        iii. leases;

        iv. licences, permits, easements and rights of way, including rights of way and covenants similar to those in sections 218 and 219 of the *Land Title Act*; and

        v. any conditions or restrictions on such estates or interests.

    c. the ownership and Disposition of rights of access to any Tsawwassen Lands to certain Tsawwassen Members for cultural purposes, including gathering, and the recording of such rights of access by Tsawwassen First Nation in accordance with arrangements made by Tsawwassen First Nation with interest holders on Tsawwassen Lands;

    d. the management and use of Tsawwassen Lands, including planning, zoning and development;

    e. the establishment and operation of a Tsawwassen First Nation land title or land registry system:

        i. for Tsawwassen Lands that are not registered in the Land Title Office; or

        ii. for interests that are not recognized under Federal or Provincial Law;

    f. provision of services in relation to Tsawwassen Lands;

g. expropriation for public purposes or public works by Tsawwassen First Nation of estates or interests in Tsawwassen Lands, if Tsawwassen First Nation provides fair compensation to the owner of the estate or interest; and

h. the approval of proposed developments on Tsawwassen Lands.

2. Despite subclause 1.g, Tsawwassen First Nation may not expropriate:

a. estates or interests granted or continued on the Effective Date where expropriation is precluded under the terms and conditions of those estates or interests;

b. estates or interests expropriated by Canada or British Columbia after the Effective Date; or

c. estates or interests granted or continued on the Effective Date to a provincial ministry or agent of the provincial Crown or for the use of a Public Utility, whether or not an agent of the Crown, that would otherwise have authority to expropriate an estate or interest in land under provincial legislation or on whose behalf British Columbia may expropriate.

3. For greater certainty, subclause 2.c describes an exception to the Tsawwassen Government law making authority in respect of expropriation and does not and is not intended to address the authority of a Provincial Expropriating Authority to expropriate under provincial legislation which authority is dealt with in the Lands chapter.

4. Tsawwassen Government may exercise authority over agriculture on Tsawwassen Lands through land use planning and zoning under subclause 1.d.

5. A Tsawwassen Law made under clause 1 prevails to the extent of a Conflict with a Federal or Provincial Law.

6. Despite clause 5, a Federal or Provincial Law in respect of the division of matrimonial real property prevails to the extent of a Conflict with a Tsawwassen Law in respect of the division of matrimonial real property made under subclause 1.a or 1.b. For greater certainty, a Tsawwassen Law that may restrict the Disposition of real property to a Tsawwassen Member is not a Tsawwassen Law in respect of the division of matrimonial real property.

7. Despite clause 5, except in respect of the Former Tsawwassen Reserve and any other Tsawwassen Lands excluded from an agricultural land

reserve designation, the *Agricultural Land Commission Act* prevails to the extent of a Conflict with a Tsawwassen Law made under subclause 1.d.

8. Despite clause 5, a Federal or Provincial Law in relation to Environmental Assessment prevails to the extent of a Conflict with a Tsawwassen Law made under subclause 1.h.

9. A Tsawwassen Law under subclause 1.a or 1.b in respect of estates or interests that are recognized under Federal or Provincial Law must be consistent with common law principles in respect of those interests and, for greater certainty, a Tsawwassen Law in respect of a Tsawwassen Fee Simple Interest is not inconsistent with common law principles.

10. Without limiting the scope of authority of Tsawwassen Government to make laws under this Agreement, before Tsawwassen Government makes a law under subclause 1.d, Tsawwassen First Nation will consult residents of Tsawwassen Lands who may be affected by the proposed law, through a process similar in principle to that required of a municipality undertaking similar law-making.

PROPOSED DEVELOPMENT

11. Despite any approval of a proposed development made by Tsawwassen First Nation under subclause 1.h, no Federal Project or Provincial Project on Tsawwassen Lands will proceed unless there has been compliance with any applicable Federal or Provincial Law in respect of Environmental Assessment.

12. For greater certainty, Tsawwassen First Nation may establish administrative procedures for evaluating proposed developments referred to in subclause 1.h, including the environmental effects of the developments.

PROVINCIAL INITIATIVES AND LAND USE PROCESSES

13. Nothing in this Agreement precludes Tsawwassen First Nation from participating in processes or institutions, including processes or institutions that may address matters of shared decision-making, or benefiting from future provincial programs, policies or initiatives of general application to First Nations as British Columbia develops a new relationship with First Nations.

14. Nothing in this Agreement precludes Tsawwassen First Nation from participating in, or benefiting from, federal or provincial benefit-sharing programs of general application, in accordance with general criteria established for those programs from time to time.

15. Nothing in this Agreement precludes Tsawwassen First Nation from entering into arrangements that are consistent with this Agreement, with willing third parties, in order to further economic opportunities for Tsawwassen First Nation.

16. British Columbia will invite Tsawwassen First Nation to participate in any provincial land use planning process affecting Tsawwassen Territory on the following bases:

    a. Tsawwassen First Nation will be consulted and may participate in the same capacity as a Local Government, a First Nation or as a member of the public, as the case may be; and

    b. British Columbia will provide Tsawwassen First Nation with the decision resulting from any such process and the reasons for that decision.

CHAPTER 7
ACCESS

GENERAL

1. Local Boundary Roads to the centre line, Tsawwassen Roads, and Local Roads are:

    a. part of Tsawwassen Lands; and

    b. owned by Tsawwassen First Nation.

POWER TO MAKE LAWS

2. Tsawwassen Government may make laws in respect of access to Tsawwassen Lands.

3. A Tsawwassen Law made under clause 2 prevails to the extent of a Conflict with a Federal or Provincial Law.

TSAWWASSEN ROADS

4. Tsawwassen First Nation is responsible for maintenance and repair of Tsawwassen Roads.

5. Tsawwassen Roads are open to the public unless designated otherwise by Tsawwassen First Nation.

6. Tsawwassen First Nation may temporarily close Tsawwassen Roads for reasons of safety or public order, or for cultural reasons.

7. Tsawwassen First Nation may permanently close a Tsawwassen Road.

8. Before Tsawwassen First Nation permanently closes a Tsawwassen Road, Tsawwassen First Nation will:

    a. provide public notice and an opportunity for affected Persons to make representations to Tsawwassen First Nation; and

    b. notify the operators of Public Utilities whose facilities or works may be affected.

LOCAL ROADS AND LOCAL BOUNDARY ROADS

9. Subject to clauses 10 and 11, the public will have the same right of access on Local Roads and Local Boundary Roads as they have on comparable roads in the adjoining municipality.

10. In respect of a Local Boundary Road:

    a. unless Tsawwassen Government and the council of the adjoining municipality agree otherwise, the Local Boundary Road will be kept open, maintained, kept in repair and improved by both parties; and

    b. a Tsawwassen Law in respect of the Local Boundary Road or a portion of it, must be acceptable to the council of the adjoining municipality and a municipal bylaw affecting the Local Boundary Road or a portion of it, must be acceptable to Tsawwassen Government.

11. In respect of a Local Road:

    a. Tsawwassen First Nation will keep open, maintain, keep in repair and improve a Local Road to the same extent as would a municipality in respect of similar roads; and

    b. before Tsawwassen First Nation seeks to close all or part of a Local Road to all or some types of traffic or to remove the dedication of the Local Road, Tsawwassen First Nation will:

        i. provide public notice and an opportunity for affected Persons to make representations to Tsawwassen First Nation; and

        ii. notify the operators of Public Utilities whose facilities or works may be affected.

CROWN CORRIDORS

12. On the request of Tsawwassen First Nation, British Columbia will Consult with Tsawwassen First Nation in respect of the regulation of traffic and transportation on a Crown Corridor that is adjacent to Tsawwassen Lands.

13. Tsawwassen First Nation will Consult with British Columbia in respect of land use decisions of Tsawwassen First Nation relating to the development of Tsawwassen Lands adjacent to Crown Corridors.

14. British Columbia will Consult with Tsawwassen First Nation in respect of the development of any new Crown Corridor adjacent to Tsawwassen Lands.

15. On Tsawwassen Lands adjacent to Crown Corridors, and only to the extent reasonably required to protect the safety of the users of Crown Corridors, British Columbia has the authority to regulate all matters relating to:

    a. the location and design of intersecting roads giving access to Crown Corridors from Tsawwassen Lands, including:

        i. regulating or requiring signs, signals or other traffic control devices on Crown Corridors;

        ii. regulating or requiring merging lanes, on-ramps and off-ramps; or

        iii. requirements for contributions to the cost of the matters referred to in subclauses 15.a.i and 15.a.ii; and

    b. the height and location of structures.

16. Subject to provincial requirements in respect of safety and emergency preparedness, including those set out in clause 15, Tsawwassen First Nation will have access from Tsawwassen Lands to a road or Crown Corridor.

17. So long as British Columbia owns the Highway 17 Corridor, British Columbia retains discretion to allow a Person to use, occupy or possess the corridor for works of Public Utility.

18. After the Effective Date, if a Public Utility wishes to use, occupy or possess any portion of the Highway 17 Corridor for the purpose of, or relating to, the installation of new Utility Distribution Works, British Columbia will, as a condition of granting a permit or other authorization to the Public Utility for the installation of the Utility Distribution Works, require the Public Utility to give at least 15 days prior written notice to Tsawwassen First Nation of its intention to install the new Utility Distribution Works with a description of those works.

19. After the Effective Date, if a Public Utility wishes to use, occupy or possess any portion of the Highway 17 Corridor for the purposes of or relating to the installation of new Utility Transmission Works, British Columbia will, as a condition of granting a permit or other authorization to the Public Utility for the installation of the Utility Transmission Works, require the Public Utility to satisfy the conditions set out in clauses 20 and 21, and to agree to the terms of clause 22.

20. The Public Utility will Consult with Tsawwassen First Nation at least 60 days before the effective date of the proposed permit or authorization, in respect

of measures to be taken by the Public Utility or any compensation payable to Tsawwassen First Nation, in relation to the installation of the new Utility Transmission Works.

21. Where no agreement is reached between the Public Utility and Tsawwassen First Nation under clause 20 within the time specified, the Public Utility will, at the request of Tsawwassen First Nation, agree with Tsawwassen First Nation to submit the issue of compensation to arbitration under the *Commercial Arbitration Act*.

22. The Public Utility and Tsawwassen First Nation will direct an arbitrator appointed under clause 21 to consider the following guidelines in making an award:

    a. the award may be decided by reference to principles of law and equity or any other basis agreed to by Tsawwassen First Nation and the Public Utility; and

    b. the arbitrator may consider:

        i. the facts relating to the actual or potential use, benefit or costs to Tsawwassen First Nation of the Utility Transmission Works;

        ii. other arbitration awards decided in similar circumstances;

        iii. the economic benefit to First Nations of comparable utilities on First Nation land; and

        iv. generally accepted land compensation principles and all relevant evidence.

DIKES AND FLOOD PROTECTION

23. Despite clause 39 of the Lands chapter, Tsawwassen First Nation is the diking authority under the *Dike Maintenance Act* for dikes and flood protection structures owned by Tsawwassen First Nation on Tsawwassen Lands.

24. Tsawwassen First Nation will construct and maintain dikes and flood protection structures on Tsawwassen Lands to standards required by the Inspector of Dikes under the authority of the *Dike Maintenance Act*, and may enter into contracts for the provision of services related to the construction and maintenance of those dikes and flood protection structures.

ACCESS TO TSAWWASSEN LANDS

25. Residents of Tsawwassen Lands and other interest holders on Tsawwassen Lands will have access to their property and ancillary interests including access on Tsawwassen Roads, Local Roads and Local Boundary Roads, subject to the terms and conditions of their leases, permits or other tenures.

26. Public Utilities will have access onto and across Tsawwassen Lands, where reasonably required, to interests and installations that are on or adjacent to Tsawwassen Lands, Local Roads or Local Boundary Roads, subject to the terms and conditions of any lease, permit or other tenure.

27. Employees, agents and contractors of Canada, British Columbia or Local Governments, members of the Canadian Armed Forces, peace officers, investigators and Federal or Provincial Law enforcement officers have access, in accordance with Federal or Provincial Law, onto and across Tsawwassen Lands, including for greater certainty Tsawwassen Roads, Local Roads and Local Boundary Roads, in order to enforce laws, carry out duties under Federal or Provincial Law, respond to emergencies and deliver programs and services.

28. Subject to the terms and conditions of any lease, permit or other tenure, Canada, British Columbia, Public Utilities or Local Governments entering onto or crossing Tsawwassen Lands under clauses 26 or 27 will provide reasonable notice of entry to Tsawwassen Lands:

    a. before the entry if it is practicable to do so; or

    b. as soon as practicable after the entry.

29. The requirement under clause 28 to provide reasonable notice does not apply to peace officers, investigators or Federal or Provincial Law enforcement officers, carrying out duties under Federal or Provincial Law.

30. Persons who have access to Tsawwassen Lands under clause 27 are not subject to payment of fees or compensation for access except as required by Federal or Provincial Law in respect of the payment of fees or compensation for access to Tsawwassen Lands.

31. This Agreement does not limit the authority of Canada or the Minister of National Defence to carry out activities related to national defence and security on Tsawwassen Lands, without payment of any fees or other charges to Tsawwassen First Nation, except as provided for under Federal Law.

TSAWWASSEN ACCESS TO ADJACENT LANDS

32. Employees, agents and contractors of Tsawwassen First Nation have access to lands adjacent to Tsawwassen Lands in accordance with Federal or Provincial Law in order to enforce laws, carry out duties under Tsawwassen Law, respond to emergencies or deliver programs and services, or for other purposes specified under this Agreement.

33. When carrying out duties under clause 32, Tsawwassen First Nation will provide reasonable notice of entry to adjacent lands:

    a. before the entry if it is practicable to do so; or

    b. as soon as practicable after the entry.

34. Any right of access by Tsawwassen First Nation or a Tsawwassen Member under this Agreement is subject to any agreement in respect of the Roberts Bank port facility entered into from time to time between Tsawwassen First Nation and the Vancouver Port Authority or a successor owner or operator of the Roberts Bank port facility.

NAVIGABLE WATERS

35. This Agreement does not affect the public right of navigation.

EMERGENCIES AND NATURAL DISASTERS

36. Any Party may respond to an emergency or natural disaster on Crown land or Tsawwassen Lands or the bodies of water immediately adjacent to Tsawwassen Lands, if the Person with primary responsibility for responding has not responded, or is unable to respond, in a timely way.

37. The Party responding will, if possible, notify the Person with primary responsibility in advance of taking action but, in any case, will notify that Person as soon as practicable after responding.

38. In the event of a provincial declaration of emergency or natural disaster, access to Tsawwassen Roads, Local Roads and Local Boundary Roads will be in accordance with Federal or Provincial Law.

CHAPTER 8
FOREST RESOURCES

GENERAL

1. Tsawwassen First Nation owns all Forest Resources on Tsawwassen Lands and Other Tsawwassen Lands set out in Appendix E-2.

POWER TO MAKE LAWS

2. Tsawwassen Government may make laws in respect of the management of Forest Resources on Tsawwassen Lands.

3. A Federal or Provincial Law prevails to the extent of a Conflict with a Tsawwassen Law made under clause 2.

4. For greater certainty, Provincial Laws in respect of the marking and scaling of Timber Resources apply to Timber Resources harvested on and transported from Tsawwassen Lands.

5. Timber Resources harvested on Tsawwassen Lands may be manufactured and exported in accordance with Provincial and Federal Law as if the Timber Resource had been harvested on Private Lands that were granted by the Crown before March 12, 1906 and are not in a tree farm licence area as defined in the *Forest Act*.

ECONOMIC OPPORTUNITY

6. On the Effective Date, Canada will provide to Tsawwassen First Nation an amount, to be paid in accordance with clause 1 of the Capital Transfer and Negotiation Loan Repayment chapter, for the purpose of establishing a Forestry Fund. The value in 2006 of that amount is approximately $106,000.

7. At the request of Tsawwassen First Nation, British Columbia and Tsawwassen First Nation may meet, as often as annually, to discuss specific economic opportunities related to forestry that may be available within Tsawwassen Territory.

8. Tsawwassen First Nation may notify British Columbia of the individual who is responsible for forestry matters within Tsawwassen First Nation, to facilitate the provision of information under clause 7.

CHAPTER 9
FISHERIES

GENERAL

1. Tsawwassen First Nation has the right to harvest for Domestic Purposes:

   a. Fish and Aquatic Plants in the Tsawwassen Fishing Area; and

   b. Intertidal Bivalves in the Tsawwassen Intertidal Bivalve Fishing Area,

   in accordance with this Agreement.

2. The Tsawwassen Fishing Right is limited by measures necessary for conservation, public health or public safety.

3. The Tsawwassen Fishing Right is held by Tsawwassen First Nation and Tsawwassen First Nation may not Dispose of that right.

4. Tsawwassen First Nation and Tsawwassen Members have the right to Trade and Barter Fish and Aquatic Plants harvested under the Tsawwassen Fishing Right, among themselves or with other aboriginal people of Canada.

5. Harvesting of Fish and Aquatic Plants under the Tsawwassen Fishing Right will be conducted in accordance with the provisions of Tsawwassen Harvest Documents.

6. Unless otherwise provided for in a Tsawwassen Harvest Document, the Tsawwassen Fishing Right will be exercised within:

   a. the Tsawwassen Fishing Area, in respect of all species of Fish and Aquatic Plants; and

   b. the Tsawwassen Intertidal Bivalve Fishing Area, in respect of Intertidal Bivalves.

7. Harvesting of Intertidal Bivalves under the Tsawwassen Fishing Right in areas where the Tsawwassen Intertidal Bivalve Fishing Area overlaps with a National Park or National Marine Conservation Area will be conducted in accordance with the terms and conditions for harvesting in National Parks and National Marine Conservation Areas.

8. The Tsawwassen Fishing Right will be exercised in a manner that does not interfere with authorized uses or Dispositions of provincial Crown land existing on the Effective Date or authorized in accordance with clause 9.

9. British Columbia may authorize uses of or Dispose of provincial Crown land and any authorized use or Disposition may affect the methods, times and locations of the harvest of Fish and Aquatic Plants under the Tsawwassen Fishing Right, provided that British Columbia ensures that those authorized uses or Dispositions do not deny Tsawwassen First Nation the reasonable opportunity to harvest Fish and Aquatic Plants in the Tsawwassen Fishing Area.

10. Upon six months notice by either Party, Tsawwassen First Nation and British Columbia will negotiate and attempt to reach agreement on a process to evaluate uses and Dispositions of provincial Crown land that have the potential to deny Tsawwassen First Nation the reasonable opportunity to harvest under the Tsawwassen Fishing Right in the Tsawwassen Fishing Area.

11. British Columbia may authorize uses of or Dispose of provincial Crown land and any authorized use or Disposition:

    a. may affect the methods, times and locations of the harvest of Intertidal Bivalves under the Tsawwassen Fishing Right in the Tsawwassen Intertidal Bivalve Fishing Area; and

    b. may, because of the location of the Tsawwassen Intertidal Bivalve Fishing Area, result in Tsawwassen First Nation having no meaningful opportunity to harvest Intertidal Bivalves in the Tsawwassen Intertidal Bivalve Fishing Area.

12. The harvest of Intertidal Bivalves under the Tsawwassen Fishing Right in the Tsawwassen Intertidal Bivalve Fishing Area will be exercised in a manner that does not interfere with authorized uses or Dispositions of provincial Crown land existing on the Effective Date or authorized in accordance with clause 11.

13. British Columbia has no obligation to Consult in respect of authorized uses or Dispositions of provincial Crown land made under clause 11.

14. The Minister retains authority for managing and conserving Fish, Aquatic Plants, and Fish habitat and will exercise that authority in a manner that is consistent with this Agreement.

15. The Tsawwassen Fishing Right may be exercised by those individuals who are designated by Tsawwassen First Nation to harvest Fish and Aquatic Plants.

16. Any vessel used to harvest Fish and Aquatic Plants under the Tsawwassen Fishing Right will be a vessel that has been designated by Tsawwassen

First Nation. For greater certainty, this Agreement does not alter the application of Federal or Provincial Law in respect of foreign fishing vessels in Canadian waters.

17. Neither Canada nor British Columbia will require an individual, designated by Tsawwassen First Nation, to have a licence for the harvesting of Fish and Aquatic Plants under the Tsawwassen Fishing Right.

18. Neither Canada nor British Columbia will charge a fee for a Tsawwassen Harvest Document, or any management fee or landing fee in respect of fisheries authorized by a Tsawwassen Harvest Document.

19. Fish and Aquatic Plants harvested under the Tsawwassen Fishing Right may not be sold.

20. This Agreement does not alter Federal or Provincial Law in respect of property in Fish or Aquatic Plants.

21. Nothing in this Agreement precludes:

    a. Tsawwassen Members from harvesting Fish and Aquatic Plants under a licence, permit or other document issued under Federal or Provincial Law, or as otherwise authorized under Federal or Provincial Law;

    b. Tsawwassen First Nation from concluding agreements that are in accordance with Federal and Provincial Law with other aboriginal groups with respect to designations to harvest Fish and Aquatic Plants;

    c. Tsawwassen Members from being designated by another aboriginal group to harvest Fish and Aquatic Plants under federal or provincial arrangements with that aboriginal group.

22. Tsawwassen First Nation will provide catch data and other information related to Fish and Aquatic Plants harvested under the Tsawwassen Fishing Right as required by Tsawwassen Harvest Documents or Federal or Provincial Law.

TSAWWASSEN ALLOCATIONS

23. The Tsawwassen Allocations for Fish and Aquatic Plants are set out in Appendix J-2.

24. In any year in which the Minister determines, in respect of a stock or species of Fish or Aquatic Plants for which there is a Tsawwassen Allocation expressed as a fixed number, that the quantity of that stock or

species that is available for harvest is not sufficient to meet all anticipated allocations from that stock or species for food, social or ceremonial purposes, the Minister may reduce any one or more of the allocations for that year.

25. Where, under clause 24, the Minister wishes to reduce a Tsawwassen Allocation, the Minister will inform the Joint Fisheries Committee of the proposed reduction and, if time permits, will take into account any written recommendations on the proposed reduction received from the Joint Fisheries Committee before implementing the reduction.

26. Where under clause 24, the Minister reduces a Tsawwassen Allocation, the Minister will give reasons in writing for the reduction to Tsawwassen First Nation and the Joint Fisheries Committee.

OVERAGES AND UNDERAGES

27. The Minister and Tsawwassen First Nation will endeavour to minimize any overages or underages for Tsawwassen Allocations in each year and to minimize the accumulation of overages and underages through adjustments to the Tsawwassen First Nation annual harvest in successive years.

28. The Tsawwassen Fisheries Operational Guidelines describe the process, timing and data sources for calculating overages and underages.

29. Unless Canada and Tsawwassen First Nation agree otherwise, the determination of overages and underages described in the Tsawwassen Fisheries Operational Guidelines will be consistent with the principles described in Appendix J-3.

30. Overages and underages will not be applied to non-salmon Fish species harvested under the Tsawwassen Fishing Right and managed by British Columbia as of the Effective Date.

NON-ALLOCATED SPECIES – CRAB

31. Any Tsawwassen Harvest Document for Tsawwassen First Nation to harvest crab under the Tsawwassen Fishing Right will authorize the harvest to be carried out using the number of traps proposed by Tsawwassen First Nation in the Tsawwassen Annual Fishing Plan for the harvest if:

    a. the number of traps does not exceed 50 traps per vessel;

    b. the traps meet the requirements for traps for harvesting crab as set out in the Tsawwassen Fisheries Operational Guidelines; and

c. a Tsawwassen Allocation for crab has not been established under this Agreement.

PROCESS FOR NON-ALLOCATED SPECIES

32. For the purposes of this chapter,

a. "Non-Allocated Species" means a species of Fish or Aquatic Plant for which a Tsawwassen Allocation has not been established under this Agreement;

b. "Basic Harvest Entitlement" for a Non-Allocated Species means Tsawwassen First Nation average annual harvest, expressed as:

i. a defined harvest quantity or quota;

ii. a harvest quantity or quota determined by the use of a formula; or

iii. a harvest quantity or quota determined by the use of a formula with respect to a defined harvest area within the Tsawwassen Fishing Area or the Tsawwassen Intertidal Bivalve Fishing Area,

for that species for Domestic Purposes, over the Base Period for that Non-Allocated Species, as may be determined by arbitration under clauses 40 through 49;

c. "Base Period" for a Non-Allocated Species means a period of 10 calendar years immediately preceding the date of a proposal made under clause 34 for the establishment of a Tsawwassen Allocation for the Non-Allocated Species, or such other period as the Minister and Tsawwassen First Nation may agree.

33. Non-Allocated Species may be harvested for Domestic Purposes under the Tsawwassen Fishing Right in accordance with Tsawwassen Harvest Documents.

34. Subject to clause 35, the Minister or Tsawwassen First Nation may propose the establishment of a Tsawwassen Allocation for a Non-Allocated Species by providing the other Parties with a written proposal and providing a copy of the proposal to the Joint Fisheries Committee.

35. The Minister and Tsawwassen First Nation will propose the establishment of a Tsawwassen Allocation for crab under clause 34 in the twelfth year after the Effective Date or such other date as the Minister and Tsawwassen First Nation may agree.

36. Where, under clause 34, the Minister or Tsawwassen First Nation proposes the establishment of a Tsawwassen Allocation for a Non-Allocated Species under the Tsawwassen Fishing Right, the Joint Fisheries Committee will consider the proposal, taking into account:

    a. Base Period information on the harvests by Tsawwassen First Nation of that Non-Allocated Species for Domestic Purposes;

    b. measures necessary for conservation, including the impact of those measures on the harvests by Tsawwassen First Nation of that Non-Allocated Species for Domestic Purposes**;**

    c. harvests for management of that Non-Allocated Species;

    d. other harvests of that Non-Allocated Species for food, social or ceremonial purposes;

    e. the impact of commercial and recreational fisheries on harvests by Tsawwassen First Nation of that Non-Allocated Species for Domestic Purposes; and

    f. other relevant information.

37. Where all representatives of the Joint Fisheries Committee agree, the Joint Fisheries Committee may recommend to the Parties that studies, in respect of the information referred to in clause 36, be conducted to assist the representatives in reaching agreement on a recommendation.

38. Where all representatives of the Joint Fisheries Committee agree on a recommendation for a Tsawwassen Allocation for a Non-Allocated Species, the Joint Fisheries Committee will notify the Parties of that recommendation.

39. Where, six months after receipt of a proposal under clause 34, the Joint Fisheries Committee has not agreed on recommendations for a Tsawwassen Allocation, the Joint Fisheries Committee will notify the Parties that they are unable to agree on a recommendation.

ARBITRATED TSAWWASSEN ALLOCATION

40. Where a proposal is made under clause 34 to establish a Tsawwassen Allocation for a Non-Allocated Species and the Minister and Tsawwassen First Nation have not agreed to a Tsawwassen Allocation for that Non-Allocated Species within one year after the proposal, the Basic Harvest Entitlement for that Non-Allocated Species will be finally determined by

arbitration, under the Dispute Resolution chapter, without proceeding through Stages One and Two.

41. Where the Minister and Tsawwassen First Nation agree with the recommendation of the Joint Fisheries Committee for studies, the Parties may agree to extend the time period referred to in clause 39 or 40 to allow for the completion of the studies referred to in clause 37.

42. The Minister or Tsawwassen First Nation may request that an arbitrator describe a Basic Harvest Entitlement for a Non-Allocated Species under the Tsawwassen Fishing Right as a defined harvest quantity or quota, or a harvest quantity or quota determined by the use of a formula, or a harvest quantity or quota determined by the use of a formula in respect of a defined harvest area within the Tsawwassen Fishing Area or Tsawwassen Intertidal Bivalve Fishing Area.

43. In an arbitration referred to in clause 40, the arbitrator will take into account the factors set out in clause 36.

44. In an arbitration referred to in clause 40, the arbitrator will determine the Basic Harvest Entitlement within a period of not more than one year.

45. An arbitrator may extend the time period referred to in clause 44 to allow for the completion of studies referred to in clause 37.

46. Where an arbitrator determines the Basic Harvest Entitlement for a species, the Minister and Tsawwassen First Nation will, as soon as practicable, negotiate and attempt to reach agreement on the Tsawwassen Allocation for that species.

47. If, six months after an arbitrator provides a decision to the Parties under clause 40, the Parties have not agreed on the Tsawwassen Allocation for that Non-Allocated Species, the Tsawwassen Allocation for that Non-Allocated Species is the Basic Harvest Entitlement times 1.25.

48. In the case of crab, where an arbitrator determines the Basic Harvest Entitlement for crab under clause 40, the Parties will use that Basic Harvest Entitlement as the Tsawwassen harvest level for crab until the Parties reach agreement on a Tsawwassen Allocation under clause 46 or until a Tsawwassen Allocation is established under clause 49.

49. In the case of crab, if 30 months after an arbitrator provides a decision under clause 40, the Parties have not agreed on the Tsawwassen Allocation, the Tsawwassen Allocation is the Basic Harvest Entitlement times 1.25.

AMENDMENT TO THE FINAL AGREEMENT

50. Where the Minister and Tsawwassen First Nation agree in writing to the Tsawwassen Allocation for a Non-Allocated Species, or a Tsawwassen Allocation for a Non-Allocated Species is determined under clause 47 or 49, the Parties will amend this Agreement, in accordance with clause 11 of the Amendment chapter, to include the Tsawwassen Allocation in this Agreement.

POWER TO MAKE LAWS

51. Tsawwassen Government may make laws in respect of:

    a. the designation of individuals and vessels to harvest Fish and Aquatic Plants under the Tsawwassen Fishing Right; and

    b. the distribution among Tsawwassen Members of Fish and Aquatic Plants harvested under the Tsawwassen Fishing Right.

52. A Tsawwassen Law made under clause 51 prevails to the extent of a Conflict with a Federal or Provincial Law.

53. Tsawwassen Government may make laws in respect of:

    a. the designation of individuals and vessels by Tsawwassen First Nation to harvest Fish and Aquatic Plants under fishing licences that are issued to Tsawwassen First Nation but that are not Tsawwassen Harvest Documents;

    b. the documentation of individuals and vessels designated by Tsawwassen First Nation; and

    c. the Trade and Barter by Tsawwassen Members of Fish and Aquatic Plants harvested under the Tsawwassen Fishing Right.

54. A Federal or Provincial Law prevails to the extent of a Conflict with a Tsawwassen Law made under clause 53.

DESIGNATION

55. Where a Tsawwassen Allocation for a species of Fish or Aquatic Plants has been established under this Agreement, Tsawwassen First Nation may designate Tsawwassen Members and other individuals to harvest that species of Fish or Aquatic Plants under the Tsawwassen Fishing Right.

56. Tsawwassen First Nation may not designate individuals who are not Tsawwassen Members to harvest a species of Fish or Aquatic Plants under the Tsawwassen Fishing Right where no Tsawwassen Allocation for that species has been established under this Agreement.

DOCUMENTATION

57. Where Tsawwassen First Nation designates an individual or a vessel, Tsawwassen First Nation will issue written documentation to the individual or vessel to evidence the designation.

58. Documentation issued under clause 57 will:

    a. be in the English language, which version is authoritative and, at the discretion of Tsawwassen First Nation, in the Hun'qum'i'num language;

    b. in the case of an individual, include the name and address of the individual; and

    c. meet any requirements set out in the Tsawwassen Fisheries Operational Guidelines and Tsawwassen Harvest Documents.

TSAWWASSEN HARVEST DOCUMENTS

59. Each year, or periodically for those fisheries matters managed by British Columbia, the Minister will issue one or more Tsawwassen Harvest Documents to Tsawwassen First Nation in respect of the Tsawwassen Fishing Right. A Tsawwassen Harvest Document will be consistent with this Agreement.

60. Tsawwassen First Nation will inform those individuals who are designated by Tsawwassen First Nation to harvest Fish and Aquatic Plants under the Tsawwassen Fishing Right of the provisions of the Tsawwassen Harvest Documents.

61. Where the Minister issues a Tsawwassen Harvest Document, the Minister will take into account:

    a. conservation measures and the availability of fisheries resources;

    b. the recommendations on the provisions of Tsawwassen Harvest Documents that the Minister has received in a timely way from the Joint Fisheries Committee;

    c. utilization of the fisheries resources for the benefit of all Canadians;

d. efficient and effective harvesting of fisheries resources;

e. requirements for integration and efficient management of all fisheries;

f. accepted scientific procedures for management of fisheries resources; and

g. any other matters that the Minister considers relevant.

62. The Minister will provide written reasons to Tsawwassen First Nation and the Joint Fisheries Committee if the provisions of a Tsawwassen Harvest Document differ significantly from:

a. the provisions that the Joint Fisheries Committee recommended to the Minister for inclusion in the Tsawwassen Harvest Document; or

b. a written recommendation in respect of the Tsawwassen Harvest Document under clause 77.

63. Where the Minister amends a Tsawwassen Harvest Document, the Minister will:

a. give notice to;

b. provide written reasons to; and

c. where practicable, discuss those amendments in advance with

Tsawwassen First Nation and the Joint Fisheries Committee.

64. Where special circumstances make it impracticable to discuss an amendment with Tsawwassen First Nation or the Joint Fisheries Committee under clause 63, the Minister:

a. may amend the Tsawwassen Harvest Document without receiving recommendations from the Joint Fisheries Committee; and

b. will notify the Joint Fisheries Committee and Tsawwassen First Nation as soon as practicable of the amendment and the reasons for the amendment.

TSAWWASSEN ANNUAL FISHING PLAN

65. Every year, Tsawwassen First Nation will develop a Tsawwassen Annual Fishing Plan for the harvest under the Tsawwassen Fishing Right of Non-

Allocated Species of Fish and Aquatic Plants, and species for which there is a Tsawwassen Allocation.

66. A Tsawwassen Annual Fishing Plan will include, as appropriate, Tsawwassen First Nation preferences as to:

    a. the stocks or species of Fish and Aquatic Plants to be harvested and, where appropriate, the amounts;

    b. a description of the Fish and Aquatic Plants to be harvested;

    c. the species, locations and timing of the harvest of Intertidal Bivalves;

    d. the location and timing of harvests;

    e. access to specific run timing groups;

    f. the method of harvest, the size, type, identification, marking, and quantity of fishing gear and the manner in which it may be used;

    g. the monitoring of harvests, including notification, catch monitoring, identification and reporting of harvest;

    h. the distribution and transportation of Fish and Aquatic Plants harvested under the Tsawwassen Fishing Right;

    i. Tsawwassen First Nation enforcement activities;

    j. other matters as may be required for Tsawwassen Harvest Documents; and

    k. other matters in respect of Tsawwassen fisheries.

67. Each year, Tsawwassen First Nation will provide a Tsawwassen Annual Fishing Plan to the Joint Fisheries Committee in a timely way.

JOINT FISHERIES COMMITTEE

68. On the Effective Date, the Parties will establish a Joint Fisheries Committee to facilitate cooperative assessment, planning, and management of:

    a. the exercise of the Tsawwassen Fishing Right;

    b. Enhancement Initiatives and Stewardship Activities by Tsawwassen First Nation;

c. monitoring and enforcement activities in respect of Tsawwassen First Nation fisheries; and

d. other matters as the Parties may agree.

69. Subject to federal and provincial access to information and privacy legislation, the Parties will provide each other with access to publicly available information necessary to enable the Joint Fisheries Committee to carry out its functions and activities.

70. The Joint Fisheries Committee will consist of one representative from each Party, but additional individuals may participate in meetings to support or assist a representative.

71. Canada may choose not to attend Joint Fisheries Committee meetings on fisheries matters managed by British Columbia.

72. British Columbia may choose not to attend Joint Fisheries Committee meetings on fisheries matters managed by Canada.

73. In facilitating cooperative activities and functions under clause 68, the Joint Fisheries Committee may:

a. discuss publicly available information for proposed new emerging commercial fisheries and other fisheries that may be conducted in Tsawwassen Territory or that could significantly affect the Tsawwassen Fishing Right;

b. discuss publicly available information that is related to measures necessary for conservation, public health or public safety that could significantly affect the Tsawwassen Fishing Right;

c. discuss publicly available information related to proposed Enhancement Initiatives in the Tsawwassen Fishing Area or Tsawwassen Intertidal Bivalve Fishing Area;

d. arrange for the collection and exchange of publicly available data on fisheries;

e. discuss possible provisions for a Tsawwassen Annual Fishing Plan or Tsawwassen Harvest Documents before Tsawwassen First Nation develops a Tsawwassen Annual Fishing Plan;

f. review a Tsawwassen Annual Fishing Plan;

g. review proposals by Tsawwassen First Nation for Enhancement Initiatives;

h. communicate with other advisory bodies in respect of matters of mutual interest;

i. exchange publicly available information on issues related to international arrangements that could significantly affect the Tsawwassen Fishing Right; and

j. carry out other functions and activities as the Parties may agree.

74. The Joint Fisheries Committee may discuss and make recommendations to the Parties in respect of:

a. Tsawwassen First Nation fisheries for Non-Allocated Species and Tsawwassen Allocations;

b. the management and harvesting of Fish in the Tsawwassen Fishing Area and the Tsawwassen Intertidal Bivalve Fishing Area;

c. the management and harvesting of Fish outside the Tsawwassen Fishing Area and the Tsawwassen Intertidal Bivalve Fishing Area that could significantly affect harvesting under the Tsawwassen Fishing Right;

d. the management and protection of Fish habitat;

e. Enhancement Initiatives and Stewardship Activities conducted by Tsawwassen First Nation in Tsawwassen Territory;

f. overages and underages;

g. in-season amendments to Tsawwassen Harvest Documents;

h. the provisions for Tsawwassen Harvest Documents, taking into account, among other things, provisions related to:

i. matters set out in a Tsawwassen Annual Fishing Plan, where Tsawwassen First Nation gives the Tsawwassen Annual Fishing Plan to the Joint Fisheries Committee in a timely way;

ii. measures for establishing harvest amounts for a Non-Allocated Species in any given year;

iii. access to a specific stock; and

iv. other measures for the harvest and management of Fish;

i. procedures for the identification of surplus Salmon and terms and conditions for harvests of surplus Salmon;

j. the size and disposition of surplus Salmon;

k. the harvest of surplus Salmon; and

l. other matters that could significantly affect harvesting under the Tsawwassen Fishing Right.

75. The Joint Fisheries Committee will establish its own operating procedures and the Parties will set them out in the Tsawwassen Fisheries Operational Guidelines.

76. The Joint Fisheries Committee representatives will seek to operate by consensus. The representatives of the Joint Fisheries Committee representing the Tsawwassen First Nation and Canada are responsible for functions and activities in respect of fisheries matters managed by Canada. The representatives of the Joint Fisheries Committee representing the Tsawwassen First Nation and British Columbia are responsible for functions and activities in respect of fisheries matters managed by British Columbia.

77. If the Joint Fisheries Committee has not been able to reach agreement on a recommendation or is unable to convene due to special circumstances, any Party may submit its written recommendations to the Minister and will provide a copy to the other Parties.

78. If special circumstances make it impracticable for the Minister to receive recommendations from the Joint Fisheries Committee, the Minister:

a. may make the decision or take the action that the Minister considers necessary, without receiving recommendations from the Joint Fisheries Committee; and

b. for the matters described in the Tsawwassen Fisheries Operational Guidelines, will provide written reasons to the Joint Fisheries Committee, as soon as practicable**,** of the special circumstances and the decision made or action taken.

TSAWWASSEN FISHERIES OPERATIONAL GUIDELINES

79. The Tsawwassen Fisheries Operational Guidelines set out the operational principles, procedures and guidelines to assist the Parties to implement this chapter.

80. The Parties will update and maintain the Tsawwassen Fisheries Operational Guidelines document as required.

REGIONAL FISHERIES COMMITTEE

81. Where a regional fisheries committee is proposed or established for aboriginal fisheries in an area that includes all or part of the Tsawwassen Fishing Area or Tsawwassen Intertidal Bivalve Fishing Area and that committee has functions and activities similar to those of the Joint Fisheries Committee, the Parties will determine which functions or activities of the Joint Fisheries Committee can be addressed more effectively by a regional fisheries committee, and will discuss the mechanism for participation by Tsawwassen First Nation in the regional fisheries committee.

82. Any Party may request that a function or activity of the Joint Fisheries Committee be performed by the regional fisheries committee**.**

83. In determining which functions or activities of the Joint Fisheries Committee can be addressed more effectively by a regional fisheries committee under clause 81, no Party will unreasonably withhold consent to a request made by another Party.

84. Where the Parties agree that a function or activity of the Joint Fisheries Committee will be carried out by a regional fisheries committee:

    a. the Parties will update the Tsawwassen Fisheries Operational Guidelines document, as required, to reflect the change; and

    b. a reference in this Agreement to the Joint Fisheries Committee will be read as a reference to the regional fisheries committee for that function or activity.

85. Where a regional fisheries committee performs a function or activity of the Joint Fisheries Committee:

    a. any Party may request that a function or activity that is not effectively addressed or efficiently coordinated by the regional fisheries committee be resumed by the Joint Fisheries Committee; and

b. the Parties will update the Tsawwassen Fisheries Operational Guidelines document, as required, to reflect the change.

86. In determining which functions or activities of the regional fisheries committee can be resumed by the Joint Fisheries Committee, under subclause 85.a, no Party will unreasonably withhold its consent to a request made by another Party.

87. If a regional fisheries committee is terminated and is not replaced by another process, the Joint Fisheries Committee will resume its original functions or activities.

88. The Parties will, from time to time, review and discuss the effectiveness of the Joint Fisheries Committee and the regional fisheries committee that carries out a function or activity of the Joint Fisheries Committee.

PUBLIC FISHERIES MANAGEMENT ADVISORY PROCESS

89. Where Canada or British Columbia proposes to establish a public fisheries management advisory process for an area of the Fraser River watershed that includes any part of the Tsawwassen Fishing Area or Tsawwassen Intertidal Bivalve Fishing Area, Canada or British Columbia will Consult with Tsawwassen First Nation in developing that public fisheries management advisory process and, if appropriate, will provide for participation by Tsawwassen First Nation on the same basis as other First Nations.

90. Neither a public fisheries management advisory process referred to in clause 89 nor a regional fisheries committee referred to in clause 81 is an international fisheries advisory process.

91. The design, establishment and termination of public fishery advisory management processes are at the discretion of the Minister.

ENFORCEMENT

92. The Parties may negotiate agreements in respect of the enforcement of Federal and Provincial Laws and Tsawwassen Laws in respect of fisheries.

93. Tsawwassen Laws made under this chapter may be enforced by persons authorized to enforce, in British Columbia, Federal Law, Provincial Law or Tsawwassen Law.

STEWARDSHIP AND ENHANCEMENT

94. With the approval of the Minister and in accordance with Federal and Provincial Law, Tsawwassen First Nation may conduct Enhancement Initiatives and Stewardship Activities in Tsawwassen Territory.

95. Canada and Tsawwassen First Nation may negotiate agreements in respect of Tsawwassen First Nation activities related to Enhancement Initiatives and Stewardship Activities.

TSAWWASSEN FISHERIES FUND

96. On the Effective Date, Canada will pay to Tsawwassen First Nation one million dollars ($1,000,000) to establish a Tsawwassen Fisheries Fund.

97. The Tsawwassen Fisheries Fund may be used for:

    a. promoting the conservation and protection of Fish and Aquatic Plants and Fish habitat in Tsawwassen Territory;

    b. facilitating the sustainable management of Fish and Fish habitat in Tsawwassen Territory; and

    c. promoting and supporting participation by Tsawwassen First Nation in the stewardship of Fish and Fish habitat in Tsawwassen Territory.

98. In pursuing the uses of the Tsawwassen Fisheries Fund, Tsawwassen First Nation may seek and consider recommendations from the Joint Fisheries Committee.

MARINE PROTECTED AREAS

99. Canada will Consult with Tsawwassen First Nation when Canada proposes to establish, terminate, or change the boundaries of a Marine Protected Area that is wholly or partially within Tsawwassen Territory.

100. Tsawwassen First Nation may recommend in writing that Canada establish, terminate or change the boundaries of a Marine Protected Area that is wholly or partially within Tsawwassen Territory.

101. Where Tsawwassen First Nation makes a written recommendation under clause 100 to establish, terminate or change the boundaries of a Marine Protected Area that is wholly or partially within Tsawwassen Territory, Canada will review the recommendation and provide a written response.

ECONOMIC OPPORTUNITIES

102. On the Effective Date, Canada, British Columbia and Tsawwassen First Nation will enter into a Tsawwassen First Nation Harvest Agreement.

103. For greater certainty, as provided for under clause 58 of the General Provisions chapter, a Tsawwassen First Nation Harvest Agreement:

    a. is not part of this Agreement; and

    b. is not a treaty or land claims agreement and does not create, recognize or affirm aboriginal or treaty rights within the meaning of sections 25 and 35 of the *Constitution Act, 1982*.

104. A Party may terminate a Tsawwassen First Nation Harvest Agreement and it will recompense the Tsawwassen First Nation in accordance with the terms of that agreement.

105. For purposes of increasing the commercial fishing capacity of Tsawwassen First Nation, on the Effective Date, Canada will provide to Tsawwassen First Nation amounts, to be paid in accordance with clause 1 of the Capital Transfer and Negotiation Loan Repayment chapter, to establish:

    a. a Tsawwassen Commercial Fish Fund; and

    b. a Tsawwassen Commercial Crab Fund.

    The values in 2006 of the amounts referred to in subclauses 105.a and 105.b are approximately $1,155,000 and $450,000, respectively.

NEW EMERGING COMMERCIAL FISHERIES

106. Where the Minister proposes to establish a new emerging commercial fishery within Pacific Fishery Management Areas 14, 15, 16, 17, 18, 19, 20, 28 or 29, the Minister will advise Tsawwassen First Nation of the proposal to establish the fishery and will Consult with Tsawwassen First Nation on a process for participants to enter the fishery and for how the fishery should be allocated among participants**.**

107. Any participation by Tsawwassen First Nation in any new emerging commercial fishery authorized by the Minister will be determined in accordance with the process established by the Minister.

AQUACULTURE

108. Tsawwassen First Nation may give notice to British Columbia within ten years of the Effective Date that it wishes to negotiate a shellfish aquaculture tenure within Tsawwassen Territory.

109. A notice from Tsawwassen First Nation under clause 108 will include written confirmation that Tsawwassen First Nation has addressed any issues arising from claims of other aboriginal groups to specific shellfish aquaculture tenure sites proposed by Tsawwassen First Nation.

110. Upon receiving notice from Tsawwassen First Nation under clause 109, British Columbia and Tsawwassen First Nation will negotiate and attempt to reach agreement on a shellfish aquaculture tenure under Provincial Law.

CHAPTER 10
WILDLIFE

GENERAL

1. Tsawwassen First Nation has the right to harvest Wildlife for Domestic Purposes in the Tsawwassen Wildlife Harvest Area in accordance with this Agreement.

2. The Tsawwassen Right to Harvest Wildlife is limited by measures necessary for conservation, public health or public safety.

3. The Tsawwassen Right to Harvest Wildlife is held by Tsawwassen First Nation and Tsawwassen First Nation may not Dispose of that right.

4. Tsawwassen First Nation and Tsawwassen Members have the right to Trade and Barter Wildlife or Wildlife parts, including meat and furs, harvested under the Tsawwassen Right to Harvest Wildlife, among themselves or with other aboriginal people of Canada resident in British Columbia.

5. Tsawwassen First Nation may sell Wildlife or Wildlife parts, including meat and furs, harvested under the Tsawwassen Right to Harvest Wildlife if the sale is permitted under Federal and Provincial Law, and any such sale will be in accordance with Federal and Provincial Law and any Tsawwassen Law made under subclause 22.b.

6. British Columbia may authorize uses of or Dispose of provincial Crown land, including Provincial Parks and Protected Areas, and any authorized use or Disposition:

    a. may affect the methods, times and locations of the harvest under the Tsawwassen Right to Harvest Wildlife; and

    b. having regard to the location of the Tsawwassen Wildlife Harvest Area within and adjacent to a heavily urbanized area with limited Wildlife habitat, may result in Tsawwassen First Nation being without any meaningful opportunity to harvest under the Tsawwassen Right to Harvest Wildlife.

7. The Tsawwassen Right to Harvest Wildlife will be exercised in a manner that does not interfere with authorized uses or Dispositions of provincial Crown land, including Provincial Parks and Protected Areas, existing on the Effective Date or authorized in accordance with clause 6.

8. Tsawwassen First Nation and British Columbia may meet, at the request of either Party, to discuss the harvest of Wildlife, including harvest for Domestic Purposes, or the development of a Wildlife Harvest Plan.

9. In compensation for the limited existing opportunity to harvest Wildlife and the likely future diminution or loss of any meaningful opportunity to harvest Wildlife in the Tsawwassen Wildlife Harvest Area, on the Effective Date, Canada will provide to Tsawwassen First Nation an amount, to be paid in accordance with clause 1 of the Capital Transfer and Negotiation Loan Repayment chapter, for the purpose of establishing a Wildlife Fund. The value in 2006 of that amount is approximately $50,000. No additional compensation will be payable by Canada or British Columbia at any time to Tsawwassen First Nation in respect of the limited opportunity or diminution or loss of any meaningful opportunity to harvest Wildlife in the Tsawwassen Wildlife Harvest Area.

10. British Columbia has no obligation to Consult in respect of its authorized uses or Dispositions of Crown land made under clause 6, other than as set out in clauses 34 and 35 of the Provincial Parks and Gathering chapter.

11. Tsawwassen First Nation may exercise the Tsawwassen Right to Harvest Wildlife on Private Lands, if the owner or occupant of that land agrees to provide access.

12. Tsawwassen First Nation may exercise the Tsawwassen Right to Harvest Wildlife on a Reserve if the Indian Band for whom the Reserve is set aside agrees to provide access.

13. This Agreement does not preclude Tsawwassen First Nation from entering into an agreement with a federal department or agency in respect of access and harvesting by Tsawwassen Members on land owned or in use by that department or agency in accordance with that agreement and Federal and Provincial Law.

14. Tsawwassen First Nation may exercise the Tsawwassen Right to Harvest Wildlife within Burns Bog Ecological Conservancy Area if harvesting of Wildlife is permitted on the lands, and any such harvesting will be in accordance with Federal and Provincial Law, and Local Government bylaws.

15. The Minister retains authority for managing and conserving Wildlife and Wildlife habitat and will exercise that authority in a manner that is consistent with this Agreement.

16. Neither Canada nor British Columbia will require a Tsawwassen Member to have a licence or to pay a fee or royalty for harvesting Wildlife under the Tsawwassen Right to Harvest Wildlife.

17. Nothing in this Agreement affects the application of Federal or Provincial Law in respect of the possession, use or regulation of firearms.

18. This Agreement does not alter Federal or Provincial Law in respect of property in Wildlife.

19. This Agreement does not preclude Tsawwassen Members from harvesting Wildlife in Canada under:

    a. Federal or Provincial Law;

    b. an agreement, that is in accordance with Federal and Provincial Law, between Tsawwassen First Nation and other aboriginal people; or

    c. an arrangement between other aboriginal people and Canada or British Columbia.

POWER TO MAKE LAWS

20. Tsawwassen Government may make laws in respect of:

    a. the designation of Tsawwassen Members to harvest Wildlife under the Tsawwassen Right to Harvest Wildlife;

    b. the distribution among Tsawwassen Members of Wildlife harvested under the Tsawwassen Right to Harvest Wildlife;

    c. the Trade and Barter of Wildlife harvested by Tsawwassen Members under the Tsawwassen Right to Harvest Wildlife;

    d. methods, timing, and location of the harvest of Wildlife by Tsawwassen Members under the Tsawwassen Right to Harvest Wildlife; and

    e. the identification of which Wildlife and Wildlife parts, harvested under the Tsawwassen Right to Harvest Wildlife, may be transported by an undocumented First Nation citizen or by an aboriginal trading partner who is not a First Nation citizen.

21. A Tsawwassen Law made under clause 20 prevails to the extent of a Conflict with a Federal or Provincial Law.

22. Tsawwassen Government may make laws in respect of:

    a. the management of Wildlife habitat on Tsawwassen Lands;

    b. the sale of Wildlife and Wildlife parts, including meat and furs, harvested under the Tsawwassen Right to Harvest Wildlife; and

    c. the documentation of Tsawwassen Members who have been designated.

23. A Federal or Provincial Law prevails to the extent of a Conflict with a Tsawwassen Law made under clause 22.

DOCUMENTATION

24. Tsawwassen First Nation will issue documentation to identify individuals who are authorized by Tsawwassen First Nation to harvest Wildlife under the Tsawwassen Right to Harvest Wildlife.

25. When harvesting under the Tsawwassen Right to Harvest Wildlife an individual is required to produce, at the request of a person authorized to enforce Federal Law, Provincial Law or Tsawwassen Law in respect of Wildlife, the documentation referred to in clause 24.

26. Documentation issued under clause 24 will:

    a. be in the English language, which version is authoritative and, at the discretion of Tsawwassen First Nation, in the Hun'qum'i'num language; and

    b. include the name and address of the individual.

DESIGNATED WILDLIFE SPECIES

27. If the Minister determines that, in order to address a conservation risk to a Wildlife species within the Tsawwassen Wildlife Harvest Area, there should be a Total Allowable Wildlife Harvest established for that species, the Minister may designate that species as a Designated Wildlife Species.

28. Tsawwassen First Nation or British Columbia may recommend to the Minister whether a Wildlife species should be, or continue to be, a Designated Wildlife Species.

29. The Minister may determine that a Wildlife species is no longer a Designated Wildlife Species if the Minister determines that the conservation

risk to that Wildlife species within the Tsawwassen Wildlife Harvest Area no longer exists.

TOTAL ALLOWABLE WILDLIFE HARVEST

30. If the Minister establishes a Designated Wildlife Species, the Minister will determine the maximum number of the Designated Wildlife Species that may be harvested by all harvesters in the Tsawwassen Wildlife Harvest Area in each year as the Total Allowable Wildlife Harvest.

31. The Minister will request and consider recommendations from Tsawwassen First Nation before determining the Total Allowable Wildlife Harvest for a Designated Wildlife Species.

32. In determining the Total Allowable Wildlife Harvest for a Designated Wildlife Species, the Minister will take into account the population of the Designated Wildlife Species within, and outside, the Tsawwassen Wildlife Harvest Area.

ALLOCATION OF DESIGNATED WILDLIFE SPECIES

33. If the Minister establishes a Designated Wildlife Species, British Columbia and Tsawwassen First Nation will negotiate and attempt to reach agreement on the Tsawwassen Allocation of that Designated Wildlife Species.

34. In determining a Tsawwassen Allocation, the Minister will take into account the Tsawwassen Right to Harvest Wildlife, and all relevant information presented by British Columbia and Tsawwassen First Nation and, in particular, information in respect of:

    a. the Total Allowable Wildlife Harvest for the Designated Wildlife Species;

    b. current and past harvest by Tsawwassen Members for Domestic Purposes;

    c. changes in Tsawwassen First Nation harvesting effort; and

    d. harvest by individuals who are not Tsawwassen Members.

35. British Columbia or Tsawwassen First Nation may, at any time, request a review to vary a Tsawwassen Allocation.

36. The Party requesting a review of a Tsawwassen Allocation has the onus of establishing that the Tsawwassen Allocation should be varied.

37. A negotiation to vary a Tsawwassen Allocation will take into account the Tsawwassen Right to Harvest Wildlife and all relevant information presented by British Columbia and Tsawwassen First Nation and, in particular, information in respect of:

    a. the Total Allowable Wildlife Harvest for the Designated Wildlife Species;

    b. current and past harvest by Tsawwassen Members for Domestic Purposes;

    c. changes in Tsawwassen First Nation harvesting effort;

    d. harvest by individuals who are not Tsawwassen Members;

    e. changes in the status of the Designated Wildlife Species; and

    f. changes in conservation requirements.

38. If Tsawwassen First Nation and British Columbia fail to agree on a Tsawwassen Allocation under clause 33 or 37, the Tsawwassen Allocation or a variation to the Tsawwassen Allocation will be finally determined by arbitration under the Dispute Resolution chapter. In making a determination, the arbitrator will take into account the Tsawwassen Right to Harvest Wildlife and the information referred to in clause 34 or 37, as the case may be.

WILDLIFE HARVEST PLAN

39. The Tsawwassen Right to Harvest Wildlife in respect of a Designated Wildlife Species will be exercised in accordance with an approved Wildlife Harvest Plan.

40. Tsawwassen First Nation will develop a proposed Wildlife Harvest Plan for the harvest of:

    a. a Designated Wildlife Species; and

    b. a Wildlife species proposed by Tsawwassen First Nation or British Columbia for inclusion in a Wildlife Harvest Plan in order to adequately manage and conserve the resource.

41. A proposed Wildlife Harvest Plan will include, as necessary, provisions in respect of:

    a. documentation of harvesters authorized by Tsawwassen First Nation;

b. methods, timing and locations of harvesting by Tsawwassen First Nation;

c. the number, sex and age composition of the harvest of Designated Wildlife Species and other Wildlife species;

d. method of identifying harvested Wildlife;

e. method of monitoring and reporting harvested Wildlife;

f. process for in-season adjustment and amendment to the Wildlife Harvest Plan;

g. the term of the Wildlife Harvest Plan;

h. management concerns identified by the Minister; and

i. other matters agreed to by British Columbia and Tsawwassen First Nation.

42. Tsawwassen First Nation will submit the proposed Wildlife Harvest Plan to the Minister for approval.

43. In considering a proposed Wildlife Harvest Plan the Minister will take into account:

a. conservation requirements and availability of Wildlife resources including, as applicable, any Tsawwassen Allocation;

b. public health and public safety;

c. any Tsawwassen First Nation preferences set out in the proposed Wildlife Harvest Plan in respect of harvest locations, methods, or times;

d. requirements for the integration and efficient harvest of the overall Wildlife resources;

e. scientific and local information, and aboriginal traditional knowledge brought forward by Tsawwassen First Nation, with respect to Wildlife populations, numbers, health, distribution and methods for managing Wildlife;

f. harvesting by individuals who are not Tsawwassen Members; and

g. other relevant considerations.

44. After reviewing the Wildlife Harvest Plan, the Minister may, in a timely way:

    a. advise Tsawwassen First Nation of any questions regarding the Wildlife Harvest Plan;

    b. give Tsawwassen First Nation an opportunity to respond to those questions;

    c. consider the response of Tsawwassen First Nation; and

    d. modify, adjust and make additions or deletions to the Wildlife Harvest Plan.

45. The Minister may approve a method of harvesting that differs from those methods permitted under Federal or Provincial Law if the Minister is satisfied that the method is consistent with public safety.

46. The Minister will, in a timely way, subject to the factors referred to in clause 43, approve, or vary and approve, the Wildlife Harvest Plan.

47. A Wildlife Harvest Plan will come into effect when it is approved by the Minister.

48. The Wildlife Harvest Plan will be reviewed at such times as proposed by either Tsawwassen First Nation or British Columbia.

49. An approved Wildlife Harvest Plan prevails to the extent of a Conflict with a Provincial Law.

REGIONAL WILDLIFE PLANNING

50. Tsawwassen First Nation will be invited to participate in any public regional wildlife advisory management process established by British Columbia for an area that includes any portion of the Tsawwassen Wildlife Harvest Area. The Minister may request recommendations resulting from the process before determining:

    a. whether a Wildlife species will be or continue to be a Designated Wildlife Species; and

    b. the Total Allowable Wildlife Harvest for any Designated Wildlife Species.

51. Tsawwassen First Nation will be invited to participate in any First Nation regional wildlife harvest advisory body established by British Columbia for

an area that includes any part of Tsawwassen Territory in the Lower Mainland region.

ENFORCEMENT

52. Tsawwassen First Nation and British Columbia may negotiate agreements in respect of the enforcement of Provincial Laws, or Tsawwassen Laws in respect of Wildlife.

53. Tsawwassen Laws made under this chapter may be enforced by persons authorized to enforce Federal Law, Provincial Law, or Tsawwassen Law in respect of Wildlife.

54. Tsawwassen Government will make laws to require:

    a. Tsawwassen Members to comply with a Wildlife Harvest Plan; and

    b. all individuals who harvest Wildlife or transport Wildlife or Wildlife parts under the Tsawwassen Right to Harvest Wildlife to carry documentation issued by Tsawwassen First Nation and to produce that documentation on request by an authorized person.

TRAINING

55. Tsawwassen First Nation may establish programs, consistent with provincial programs, to require training for Tsawwassen Members who harvest under the Tsawwassen Right to Harvest Wildlife in respect of:

    a. conservation and safety; and

    b. methods of harvesting and handling Wildlife.

56. In the absence of any program established by Tsawwassen First Nation under clause 55, the provincial training program will apply to Tsawwassen Members who harvest under the Tsawwassen Right to Harvest Wildlife.

57. If a Tsawwassen Member required under Provincial Law to take training has taken that training under a program established by Tsawwassen First Nation under clause 55, the Tsawwassen Member will not be obliged to take that training under a provincial program.

CHAPTER 11
MIGRATORY BIRDS

GENERAL

1. Tsawwassen First Nation has the right to harvest Migratory Birds for Domestic Purposes in the Tsawwassen Migratory Bird Harvest Area throughout the year in accordance with this Agreement.

2. The Tsawwassen Right to Harvest Migratory Birds is limited by measures necessary for conservation, public health or public safety.

3. The Tsawwassen Right to Harvest Migratory Birds is held by Tsawwassen First Nation and Tsawwassen First Nation may not Dispose of that right.

4. Tsawwassen First Nation and Tsawwassen Members have the right to Trade and Barter Migratory Birds harvested under the Tsawwassen Right to Harvest Migratory Birds, among themselves or with other aboriginal people of Canada resident in British Columbia.

5. Tsawwassen First Nation may sell inedible by-products, including down, of Migratory Birds harvested under the Tsawwassen Right to Harvest Migratory Birds, in accordance with Federal and Provincial Law and a Tsawwassen Law made under subclause 20.e.

6. Tsawwassen First Nation may sell Migratory Birds harvested under the Tsawwassen Right to Harvest Migratory Birds if the sale of Migratory Birds is permitted under Federal and Provincial Law, and any such sale will be in accordance with Federal and Provincial Law and a Tsawwassen Law made under subclause 22.c.

7. This Agreement does not preclude Tsawwassen First Nation from entering into an agreement with a federal department or agency in respect of access and harvesting by Tsawwassen Members on land owned or in use by that department or agency in accordance with that agreement and Federal and Provincial Laws.

8. The Tsawwassen Right to Harvest Migratory Birds will be exercised in a manner that does not interfere with authorized uses or Dispositions of provincial Crown land existing as at the Effective Date or authorized in accordance with clause 9.

9. British Columbia may authorize uses of or Dispose of provincial Crown land and any authorized use or Disposition may affect the methods, times and locations of the harvest under the Tsawwassen Right to Harvest Migratory Birds, provided that British Columbia ensures that those authorized uses or

Dispositions do not deny to Tsawwassen First Nation the reasonable opportunity to harvest under the Tsawwassen Right to Harvest Migratory Birds.

10. Upon six months notice by either Party, Tsawwassen First Nation and British Columbia will negotiate and attempt to reach agreement on a process to evaluate uses and Dispositions of provincial Crown land that have the potential to deny to Tsawwassen First Nation the reasonable opportunity to harvest under the Tsawwassen Right to Harvest Migratory Birds.

11. Tsawwassen First Nation may exercise the Tsawwassen Right to Harvest Migratory Birds on Private Lands, if the owner or occupant of that land agrees to provide access.

12. Tsawwassen First Nation may exercise the Tsawwassen Right to Harvest Migratory Birds on a Reserve, if the Indian Band for whom the Reserve is set aside agrees to provide access.

13. Tsawwassen First Nation may exercise the Tsawwassen Right to Harvest Migratory Birds on lands contained within a National Wildlife Area if Canada agrees to provide access, and any such harvest will be in accordance with Federal and Provincial Law.

14. The transport and export by Tsawwassen First Nation and Tsawwassen Members of Migratory Birds or their inedible by-products, including down, harvested under the Tsawwassen Right to Harvest Migratory Birds are subject to Federal and Provincial Law.

15. The Minister retains authority for managing and conserving Migratory Birds and Migratory Bird habitat and will exercise that authority in a manner that is consistent with this Agreement.

16. Neither Canada nor British Columbia will require a Tsawwassen Member to have a licence or to pay a fee or royalty for harvesting Migratory Birds under the Tsawwassen Right to Harvest Migratory Birds.

17. Nothing in this Agreement affects the application of Federal or Provincial Law in respect of the possession, use or regulation of firearms.

18. This Agreement does not alter Federal or Provincial Law in respect of property in Migratory Birds.

19. This Agreement does not preclude Tsawwassen Members from harvesting Migratory Birds in Canada under:

a. Federal or Provincial Law;

b. an agreement, that is in accordance with Federal and Provincial Law, between Tsawwassen First Nation and other aboriginal people; or

c. an arrangement between other aboriginal people and Canada or British Columbia.

POWER TO MAKE LAWS

20. Tsawwassen Government may make laws in respect of:

a. the designation of Tsawwassen Members to harvest Migratory Birds under the Tsawwassen Right to Harvest Migratory Birds;

b. the distribution among Tsawwassen Members of Migratory Birds harvested under the Tsawwassen Right to Harvest Migratory Birds;

c. the methods, timing, and location of the harvest of Migratory Birds by Tsawwassen Members under the Tsawwassen Right to Harvest Migratory Birds;

d. the Trade and Barter of Migratory Birds harvested under the Tsawwassen Right to Harvest Migratory Birds; and

e. the sale of inedible by-products, including down, of Migratory Birds harvested under the Tsawwassen Right to Harvest Migratory Birds.

21. A Tsawwassen Law made under clause 20 prevails to the extent of a Conflict with a Federal or Provincial Law.

22. Tsawwassen Government may make laws in respect of:

a. the management of Migratory Birds and Migratory Bird habitat on Tsawwassen Lands;

b. the establishment and administration of licensing requirements for the harvest of Migratory Birds under the Tsawwassen Right to Harvest Migratory Birds, including the issuance of documentation to identify individuals designated by Tsawwassen First Nation in respect of that harvest; and

c. the sale of Migratory Birds harvested under the Tsawwassen Right to Harvest Migratory Birds.

23. A Federal or Provincial Law prevails to the extent of a Conflict with a Tsawwassen Law made under clause 22.

DOCUMENTATION

24. Tsawwassen First Nation will issue documentation to identify individuals who are authorized by Tsawwassen First Nation to harvest under the Tsawwassen Right to Harvest Migratory Birds.

25. When harvesting under the Tsawwassen Right to Harvest Migratory Birds, an individual is required to produce, at the request of a person authorized to enforce Federal Law, Provincial Law or Tsawwassen Law in respect of Migratory Birds, the documentation referred to in clause 24.

26. Documentation issued under clause 24 will:

    a. be in the English language, which version is authoritative and, at the discretion of Tsawwassen First Nation, in the Hun'qum'i'num language; and

    b. include the name and address of the individual.

ENFORCEMENT

27. The Parties may negotiate and attempt to reach agreements in respect of the enforcement of Federal Law, Provincial Law, and Tsawwassen Law in respect of Migratory Birds.

28. Tsawwassen Laws made under this chapter may be enforced by persons authorized to enforce Federal Law, Provincial Law, or Tsawwassen Law in respect of Migratory Birds.

CONSERVATION MEASURES

Designated Migratory Bird Population

29. At the request of Tsawwassen First Nation or the Minister, the Parties will share information in respect of conservation for Migratory Bird populations, including activities related to harvesting under the Tsawwassen Right to Harvest Migratory Birds.

30. Where, in the opinion of a Party, there is a conservation risk to a Migratory Bird population, that Party may make recommendations to the Minister for the designation of that population as a Designated Migratory Bird Population.

31. After Consulting with Tsawwassen First Nation, the Minister may designate a Migratory Bird population as a Designated Migratory Bird Population if the Minister determines that, in order to address a conservation risk to that population, a Total Allowable Migratory Bird Harvest of that Migratory Bird population is necessary.

32. The Minister, in determining the Total Allowable Migratory Bird Harvest for a Designated Migratory Bird Population, will take into account, among other things, the following:

    a. recommendations from Tsawwassen First Nation;

    b. the best available knowledge about the Designated Migratory Bird Population, including aboriginal traditional knowledge;

    c. continental and local conservation requirements; and

    d. Canada's international commitments in respect of Migratory Birds.

33. In making an allocation for Tsawwassen First Nation from the Total Allowable Migratory Bird Harvest for a Designated Migratory Bird Population, the Minister will take into account the Tsawwassen Right to Harvest Migratory Birds and, among other things, the following:

    a. the Total Allowable Migratory Bird Harvest for that population;

    b. current and past food, social or ceremonial needs, and harvesting practices of Tsawwassen First Nation in respect of that population; and

    c. other harvests of that population for food, social or ceremonial purposes.

34. On the recommendation of a Party, the Minister may determine that there is no longer a conservation risk to a Designated Migratory Bird Population and remove the designation from that population.

Migratory Bird Agreements

35. The Parties may enter into an agreement on the conservation or management of Migratory Birds, including a range of activities related to achieving Migratory Bird population and habitat conservation objectives, such as inventory, monitoring, assessment, research, harvest allocation, regulation, compliance and enforcement, creation and management of protected areas, stewardship, restoration, enhancement, outreach and education on best practices.

CONSULTATION ON INTERNATIONAL NEGOTIATIONS ON MIGRATORY BIRDS

36. Canada will Consult with Tsawwassen First Nation on the development of Canada's positions in respect of international discussions or negotiations that may adversely affect the Tsawwassen Right to Harvest Migratory Birds.

CHAPTER 12
NATIONAL PARKS AND NATIONAL MARINE CONSERVATION AREAS

GENERAL

1. Tsawwassen First Nation has the right to harvest Renewable Resources for Domestic Purposes:

   a. in National Parks that are wholly or partly within Tsawwassen Territory; and

   b. in National Marine Conservation Areas that are wholly or partly within Tsawwassen Territory, if any are established,

   in accordance with this Agreement.

2. Harvesting of Intertidal Bivalves under the Tsawwassen Fishing Right in areas where the Tsawwassen Intertidal Bivalve Fishing Area overlaps with a National Park or National Marine Conservation Area will be conducted in accordance with the terms and conditions for harvesting in National Parks and National Marine Conservation Areas in this chapter, as if Intertidal Bivalves were included in the definition of Renewable Resources.

3. The Tsawwassen Right to Harvest Renewable Resources is limited by measures necessary for conservation, public health or public safety.

4. The Tsawwassen Right to Harvest Renewable Resources is held by Tsawwassen First Nation and Tsawwassen First Nation may not Dispose of that right.

5. Tsawwassen First Nation and Tsawwassen Members have the right to Trade and Barter Renewable Resources harvested under the Tsawwassen Right to Harvest Renewable Resources, among themselves or with other aboriginal people of Canada resident in British Columbia.

6. For ceremonial purposes, Tsawwassen First Nation and Tsawwassen Members may exchange regalia or traditional or artistic objects, made from Renewable Resources harvested in accordance with this chapter, among themselves or with other Coast Salish people.

7. The transport and export by Tsawwassen First Nation and Tsawwassen Members of Renewable Resources harvested under the Tsawwassen Right to Harvest Renewable Resources are subject to Federal and Provincial Law.

8. The Minister retains authority for the management, administration and control of National Parks and National Marine Conservation Areas, and any other protected areas that are owned by Canada and administered by the Parks Canada Agency, and will exercise that authority in a manner that is consistent with this Agreement.

9. Neither Canada nor British Columbia will require a Tsawwassen Member to have a licence or to pay a fee or royalty for harvesting Renewable Resources under the Tsawwassen Right to Harvest Renewable Resources.

10. Canada will not charge a fee for a Tsawwassen Member to enter or gain access to a National Park or National Marine Conservation Area to harvest under the Tsawwassen Right to Harvest Renewable Resources, but may charge for the use of visitor facilities or other services for which fees are normally charged.

11. Nothing in this Agreement affects the application of Federal or Provincial Law in respect of the possession, use or regulation of firearms.

12. This Agreement does not alter Federal or Provincial Law in respect of property in Renewable Resources.

13. This Agreement does not preclude Tsawwassen Members from gathering Plants on federal Crown lands other than federal protected areas, subject to Federal and Provincial Law.

POWER TO MAKE LAWS

14. Tsawwassen Government may make laws in respect of:

    a. the designation of Tsawwassen Members to harvest Renewable Resources under the Tsawwassen Right to Harvest Renewable Resources; and

    b. the distribution among Tsawwassen Members of Renewable Resources harvested under the Tsawwassen Right to Harvest Renewable Resources.

15. A Tsawwassen Law made under clause 14 prevails to the extent of a Conflict with a Federal or Provincial Law.

16. Tsawwassen Government may make laws in respect of the documentation of Tsawwassen Members who have been designated to harvest under the Tsawwassen Right to Harvest Renewable Resources.

17. A Federal or Provincial Law prevails to the extent of a Conflict with a Tsawwassen Law made under clause 16.

DOCUMENTATION

18. Tsawwassen First Nation will issue documentation to identify individuals who are authorized to harvest under the Tsawwassen Right to Harvest Renewable Resources.

19. When harvesting under the Tsawwassen Right to Harvest Renewable Resources, an individual is required to produce, at the request of a person authorized to enforce Federal Law, Provincial Law or Tsawwassen Law in respect of Renewable Resources, the documentation referred to in clause 18.

20. Documentation issued under clause 18 will:

    a. be in the English language, which version is authoritative, and, at the discretion of Tsawwassen First Nation, in the Hun'qum'i'num language;

    b. include the name and address of the individual; and

    c. meet any requirements set out in a Renewable Resource Harvesting Document.

RENEWABLE RESOURCE HARVESTING

21. Each year, or as otherwise agreed, Canada and Tsawwassen First Nation will meet to develop terms and conditions for harvesting under the Tsawwassen Right to Harvest Renewable Resources and will make reasonable efforts to reach consensus using a collaborative process.

22. In developing the terms and conditions referred to in clause 21, Canada and Tsawwassen First Nation will take into account:

    a. the Tsawwassen Right to Harvest Renewable Resources;

    b. the preferences of Tsawwassen First Nation in respect of the quantity, methods, timing and locations for harvesting;

    c. the requirements for conservation and ecological integrity and the availability of the Renewable Resources to which the terms and conditions would apply;

d. the use of the relevant National Park or National Marine Conservation Area for the benefit and enjoyment of all Canadians;

e. other authorized uses of the National Park or National Marine Conservation Area;

f. requirements for the management of the National Park or National Marine Conservation Area;

g. opportunities for similar harvesting activities outside of National Parks and National Marine Conservation Areas, as provided for in other chapters of this Agreement;

h. other harvests of Renewable Resources for food, social or ceremonial purposes; and

i. any other matter that Canada or Tsawwassen First Nation considers relevant.

23. Subject to clause 24, after receiving and considering any terms and conditions developed under clause 21, the Minister will, in a timely way, issue a Renewable Resource Harvest Document to Tsawwassen First Nation that sets out the terms and conditions for harvesting under the Tsawwassen Right to Harvest Renewable Resources.

24. Where Canada and Tsawwassen First Nation do not agree on terms and conditions under clause 21, the Minister may take the action, including issuing a Renewable Resource Harvesting Document, that the Minister considers necessary.

25. The Minister may issue or amend a Renewable Resource Harvesting Document:

a. at the request of Tsawwassen First Nation; or

b. in order to respond to exceptional circumstances where it is not practicable to engage in the process referred to in clause 21.

26. Where the Minister takes action under clause 24 or 25, the Minister will advise Tsawwassen First Nation as soon as practicable of the action taken and the reasons for it.

27. Tsawwassen First Nation will exercise the Tsawwassen Right to Harvest Renewable Resources in accordance with:

a. the applicable Tsawwassen Renewable Resource Harvesting Document; and

b. the management plan for the relevant National Park or National Marine Conservation Area.

28. Tsawwassen First Nation will provide to the Minister, on request, information in respect of harvesting by Tsawwassen Members under the Tsawwassen Right to Harvest Renewable Resources.

29. Canada will Consult with Tsawwassen First Nation in respect of any proposed new legislation or regulation, or amendment thereto, for harvesting of Renewable Resources in any National Park or National Marine Conservation Area that is wholly or partly within Tsawwassen Territory to the extent that the new legislation or regulation, or amendment thereto, may reasonably be expected to affect the Tsawwassen Right to Harvest Renewable Resources.

30. After Consultation with Tsawwassen First Nation, the Minister may close to harvesting an area in a National Park or National Marine Conservation Area, for as long as necessary, for purposes of park or marine conservation area management including ecosystem research, protection of representative ecosystems and protection of species or habitats.

CONSERVATION MEASURES

31. Canada will Consult with Tsawwassen First Nation in respect of:

a. the need for additional conservation measures within the relevant National Park or National Marine Conservation Area in Tsawwassen Territory during the term of a Renewable Resource Harvesting Document; and

b. the development and implementation of such additional conservation measures where the Minister decides that the measures are necessary.

32. After the Consultation referred to in clause 31, the Minister may amend a Renewable Resource Harvesting Document to the extent required to bring into effect the conservation measures referred to in clause 31.

PARK ESTABLISHMENT AND BOUNDARY CHANGES

33. Canada will Consult with Tsawwassen First Nation before establishing or changing the boundaries of any National Park or National Marine Conservation Area that is wholly or partly within Tsawwassen Territory.

CO-OPERATION IN PLANNING AND MANAGEMENT

34. In respect of a National Park or National Marine Conservation Area that is wholly or partly within Tsawwassen Territory, Canada will Consult with Tsawwassen First Nation on:

    a. the role of Tsawwassen First Nation in interim planning and management planning;

    b. the role of Tsawwassen First Nation in the research and protection of Cultural Heritage Sites of significance to Tsawwassen First Nation;

    c. the role of Tsawwassen First Nation in the identification, protection, interpretation and presentation of Tsawwassen Artifacts and heritage where applicable, including the use of the Hun'qum'i'num language in signage and interpretation; and

    d. the traditional ecological knowledge of Tsawwassen First Nation being considered in the natural history and management of any National Park or National Marine Conservation Area.

35. At the request of Tsawwassen First Nation, Canada and Tsawwassen First Nation will negotiate and attempt to reach agreement on arrangements for Tsawwassen First Nation to provide advice on matters affecting Tsawwassen First Nation in any National Park or National Marine Conservation Area that is wholly or partly within Tsawwassen Territory.

36. An agreement referred to in clause 35 will take the place of any Consultation referred to in clause 34.

37. An agreement referred to in clause 35 may provide for the following:

    a. representation in an advisory process;

    b. procedures for an advisory process, including a consensual approach and a dispute resolution process;

    c. procedures for cooperation on appropriate cultural activities and the management of Renewable Resource harvesting;

    d. identification of the interests of Tsawwassen Members in economic, employment or training opportunities in or associated with any National Park or National Marine Conservation Area; and

    e. any other matters as agreed by Canada and Tsawwassen First Nation.

38. In respect of a National Park or National Marine Conservation Area that is wholly or partly within Tsawwassen Territory, Tsawwassen First Nation will make reasonable efforts to cooperate with others who harvest Renewable Resources for food, social or ceremonial purposes.

CHAPTER 13
PROVINCIAL PARKS AND GATHERING

GENERAL

1. Tsawwassen First Nation has the right to gather Plants for Domestic Purposes in those areas set out in Appendix M-2 in accordance with this Agreement.

2. If any additional Provincial Park, Protected Area or Wildlife Management Area is established in Tsawwassen Territory, the Parties will amend Appendices M-1 and M-2 to include the area, in accordance with clause 11 of the Amendment chapter, unless the Parties agree otherwise.

3. The Tsawwassen Right to Gather Plants is limited by measures necessary for conservation, public health or public safety.

4. The Tsawwassen Right to Gather Plants is held by Tsawwassen First Nation and Tsawwassen First Nation may not Dispose of that right.

5. Tsawwassen First Nation and Tsawwassen Members have the right to Trade and Barter Plants gathered under the Tsawwassen Right to Gather Plants, among themselves or with other aboriginal people of Canada resident in British Columbia.

6. For ceremonial purposes, Tsawwassen First Nation and Tsawwassen Members may exchange regalia or traditional or artistic objects, made from Plants gathered under the Tsawwassen Right to Gather Plants, among themselves and with other Coast Salish people.

7. The Tsawwassen Right to Gather Plants will be exercised in a manner that does not interfere with authorized uses or Dispositions existing on the Effective Date or with uses, Dispositions or boundary modifications authorized in accordance with clause 8.

8. British Columbia may authorize uses of, Dispose of, or make boundary modifications to the areas set out in Appendix M-2 and any authorized use, Disposition or boundary modification may affect the methods, times and locations of gathering under the Tsawwassen Right to Gather Plants provided that British Columbia ensures that those authorized uses, Dispositions or boundary modifications do not deny to Tsawwassen First Nation the reasonable opportunity to gather under the Tsawwassen Right to Gather Plants.

9. Upon six months notice by either Party, Tsawwassen First Nation and British Columbia will negotiate and attempt to reach agreement on a

process to evaluate uses and Dispositions of provincial Crown land that have the potential to deny to Tsawwassen First Nation the reasonable opportunity to gather under the Tsawwassen Right to Gather Plants.

10. The transport and export by Tsawwassen First Nation and Tsawwassen Members of Plants gathered under the Tsawwassen Right to Gather Plants are subject to Federal and Provincial Law.

11. The Minister retains authority for managing, administering and controlling Provincial Parks, Protected Areas and Wildlife Management Areas and will exercise that authority in a manner that is consistent with this Agreement.

12. Neither Canada nor British Columbia will require a Tsawwassen Member to have a licence or to pay a fee or royalty for gathering Plants under the Tsawwassen Right to Gather Plants.

13. Tsawwassen Members will have access, without a fee being charged, for entrance to and within areas set out in Appendix M-2, except where fees are charged to a Tsawwassen Member for use of visitor facilities and services for which fees are normally charged.

14. This Agreement does not alter Federal or Provincial Law in respect of property in Plants.

15. This Agreement does not preclude Tsawwassen Members from gathering Plants on provincial Crown lands, subject to Federal and Provincial Law.

POWER TO MAKE LAWS

16. Tsawwassen Government may make laws in respect of:

    a. the designation of Tsawwassen Members to gather Plants under the Tsawwassen Right to Gather Plants;

    b. the distribution among Tsawwassen Members of Plants gathered under the Tsawwassen Right to Gather Plants; and

    c. the Trade and Barter of Plants gathered under the Tsawwassen Right to Gather Plants.

17. A Tsawwassen Law made under clause 16 prevails to the extent of a Conflict with a Federal or Provincial Law.

18. Tsawwassen Government may make laws in respect of the documentation of Tsawwassen Members who have been designated to gather Plants.

19. A Federal or Provincial Law prevails to the extent of a Conflict with a Tsawwassen Law made under clause 18.

DOCUMENTATION

20. Tsawwassen First Nation will issue documentation to individuals who are authorized by Tsawwassen First Nation to gather under the Tsawwassen Right to Gather Plants.

21. When gathering under the Tsawwassen Right to Gather Plants, an individual is required to produce, at the request of a person authorized to enforce Federal Law, Provincial Law, or Tsawwassen Law in respect of Plants, the documentation referred to in clause 20.

22. Documentation issued under clause 20 will:

    a. be in the English language, which version is authoritative and, at the discretion of Tsawwassen First Nation, in the Hun'qum'i'num language;

    b. include the name and address of the individual; and

    c. meet any requirements set out in the approved gathering plan.

GATHERING PLANTS

23. The Tsawwassen Right to Gather Plants will be exercised in accordance with an approved gathering plan.

24. Tsawwassen First Nation will develop a proposed gathering plan, consistent with the applicable management plan, if any, for areas set out in Appendix M-2 and submit it to the Minister for approval.

25. The Minister will consult with the Greater Vancouver Regional District before approving a gathering plan that includes provincial Crown land within the Burns Bog Ecological Conservancy Area.

26. Any approved gathering plan that includes provincial Crown land within the Burns Bog Ecological Conservancy Area will be consistent with the Burns Bog Management Agreement between Canada, British Columbia, the Greater Vancouver Regional District and the Corporation of Delta, dated March 23, 2004.

27. At the request of the Minister or Tsawwassen First Nation, or on or before the expiry of the approved gathering plan, Tsawwassen First Nation, in

collaboration with British Columbia, will submit a new or revised proposed gathering plan.

28. The Minister may issue or amend an approved gathering plan:

    a. at the request of Tsawwassen First Nation; or

    b. in order to respond to exceptional circumstances where it is impracticable to engage in discussions with Tsawwassen First Nation.

29. Tsawwassen First Nation will provide to the Minister, on request, information concerning the activities of Tsawwassen Members related to the exercise of the Tsawwassen Right to Gather Plants.

PLANNING AND CO-OPERATION IN MANAGEMENT

30. British Columbia and Tsawwassen First Nation may enter into an agreement in respect of the development of a cooperative working relationship in the Fraser River estuary, including the South Arm Marshes Wildlife Management Area, and Roberts Bank south to the United States border.

31. Where a public management planning process is established for a Provincial Park, Protected Area or Wildlife Management Area that is wholly or partially within Tsawwassen Territory, Tsawwassen First Nation may participate in the planning process on the same basis as other participants.

32. The participation of Tsawwassen First Nation in the planning processes referred to in clause 31 may include providing input on Tsawwassen First Nation culture and history, including:

    a. protection of Heritage Resources of significance to Tsawwassen First Nation;

    b. interpretation and presentation of Tsawwassen culture in interpretive signage; and

    c. Tsawwassen traditional ecological knowledge.

33. British Columbia may proceed with any Provincial Park, Protected Area or Wildlife Management Area public management planning process whether or not Tsawwassen First Nation participates in that process.

34. British Columbia will Consult with Tsawwassen First Nation in respect of:

a. the establishment of new Provincial Parks, Protected Areas or Wildlife Management Areas;
b. the Disposition of or modification of boundaries of existing Provincial Parks, Protected Areas or Wildlife Management Areas; and

c. changes in the use or designation of existing Provincial Parks, Protected Areas or Wildlife Management Areas;

that may affect the Tsawwassen Right to Gather Plants, the Tsawwassen Right to Harvest Wildlife or the Tsawwassen Right to Harvest Migratory Birds.

35. British Columbia will Consult with Tsawwassen First Nation on the closure of opportunities for the exercise of the Tsawwassen Right to Harvest Wildlife in Provincial Parks and Protected Areas within the Tsawwassen Wildlife Harvest Area.

36. Nothing in this Agreement obliges British Columbia to establish any new Provincial Park, Protected Area or Wildlife Management Area or to maintain the designation of any Provincial Park, Protected Area, Wildlife Management Area or the Burns Bog Ecological Conservancy Area.

37. At the request of either Party, British Columbia and Tsawwassen First Nation will meet to discuss and exchange written information about maintenance, construction, research and operations opportunities available for competitive bid within any Provincial Park, Protected Area or Wildlife Management Area set out in Appendix M-2.

CHAPTER 14
CULTURE AND HERITAGE

GENERAL

1. Tsawwassen First Nation has the right to practise the culture of Tsawwassen First Nation, and to use the Hun'qum'i'num language, in a manner that is consistent with this Agreement.

POWER TO MAKE LAWS

2. Tsawwassen Government may make laws in respect of:

   a. the preservation, promotion and development of the culture of Tsawwassen First Nation and the Hun'qum'i'num language on Tsawwassen Lands;

   b. the conservation and protection of and access to Heritage Resources on Tsawwassen Lands;

   c. archaeological sites on Tsawwassen Lands and archaeological material found after the Effective Date on Tsawwassen Lands;

   d. Tsawwassen Artifacts owned by Tsawwassen First Nation;

   e. Archaeological Human Remains found after the Effective Date on Tsawwassen Lands and any Archaeological Human Remains that come into the possession of Tsawwassen First Nation from Canada or British Columbia after the Effective Date; and

   f. the devolution of Cultural Property of a Tsawwassen Member who dies without a valid will.

3. A Tsawwassen Law made under clause 2 prevails to the extent of a Conflict with a Federal or Provincial Law.

4. For the purposes of subclause 2.a, the culture of Tsawwassen First Nation includes its history, feasts, ceremonies, symbols, songs, dances, stories and traditional naming practices. For greater certainty, and in accordance with clause 22 of the General Provisions chapter, Tsawwassen Government does not have the power to make laws in respect of Intellectual Property or the official languages of Canada.

5. Tsawwassen First Nation has standing in any judicial proceeding in which:

   a. the validity of the will of a Tsawwassen Member; or

b. the devolution of Cultural Property of a Tsawwassen Member,

is in issue, including any proceeding to vary a will.

6. Tsawwassen First Nation may commence, and has standing to intervene in, an action under provincial legislation in relation to wills variation in respect of the will of a Tsawwassen Member that provides for the devolution of Cultural Property.

7. In a proceeding to which clause 5 or clause 6 applies, the court will consider, among other matters, any evidence or representations in respect of Tsawwassen Law and Tsawwassen First Nation customs dealing with the devolution of Cultural Property.

8. The participation of Tsawwassen First Nation in proceedings referred to in clause 5 or clause 6 will be in accordance with the applicable rules of court and will not affect the ability of the court to control its process.

BEACH GROVE PARCELS

9. As of the Effective Date, in respect of the Beach Grove Parcels, unless Tsawwassen First Nation agrees otherwise, British Columbia will:

a. retain ownership;

b. not permit any activity under the *Heritage Conservation Act*; and

c. not permit any activity with respect to heritage objects.

10. Tsawwassen First Nation and British Columbia may negotiate and attempt to reach agreement for a delegated management arrangement over the Beach Grove Parcels, but there will be no associated financial obligations.

TSAWWASSEN ARTIFACTS

11. After the Effective Date, if a Tsawwassen Artifact comes into the permanent possession or under the control of the Royal British Columbia Museum, Tsawwassen First Nation and the Royal British Columbia Museum may negotiate a custodial arrangement for the Tsawwassen Artifact.

12. Tsawwassen First Nation and the Royal British Columbia Museum may negotiate and attempt to reach agreement on arrangements outside this Agreement in respect of cultural artifacts in the possession of either Tsawwassen First Nation or the Royal British Columbia Museum, in accordance with their respective policies and procedures.

13. On the Effective Date, British Columbia will pay to Tsawwassen First Nation one million dollars ($1,000,000) to establish a Cultural Purposes Fund.

14. Tsawwassen First Nation owns a Tsawwassen Artifact discovered, after the Effective Date, on Tsawwassen Lands in an archaeological context.

15. If a Tsawwassen Artifact, discovered off Tsawwassen Lands, comes into the permanent possession or under the control of Canada, Canada may lend or transfer that Tsawwassen Artifact to Tsawwassen First Nation in accordance with an agreement negotiated between Tsawwassen First Nation and Canada.

16. At the request of Tsawwassen First Nation, the Royal British Columbia Museum will share, in accordance with Federal and Provincial Law, any information it has about Tsawwassen Artifacts or Tsawwassen Archaeological Human Remains in other public collections in Canada.

17. At the request of Tsawwassen First Nation, Canada will use reasonable efforts to facilitate access by Tsawwassen First Nation to Tsawwassen Artifacts or Archaeological Human Remains of Tsawwassen ancestry that are held in Canadian public collections.

HERITAGE RESOURCES

18. Before the Effective Date, Tsawwassen First Nation and British Columbia may negotiate and attempt to reach agreement to provide for the meaningful participation of Tsawwassen First Nation in the identification, conservation, interpretation, management and protection of heritage sites that are:

    a. of significance to Tsawwassen First Nation;

    b. outside Tsawwassen Lands; and

    c. within Tsawwassen Territory.

19. Tsawwassen First Nation and British Columbia may negotiate and attempt to reach agreement to provide for cooperative management of Heritage Resources that are:

    a. of significance to Tsawwassen First Nation; and

    b. on provincial Crown land within Tsawwassen Territory.

20. Nothing in this Agreement precludes Tsawwassen First Nation from providing to Canada information in respect of the presence on federal Crown land of artifacts, Archaeological Human Remains or Heritage Resources of significance to Tsawwassen First Nation.

21. Where British Columbia establishes a public or First Nation process in respect of Heritage Resources found on provincial Crown land within Tsawwassen Territory, Tsawwassen First Nation may participate in that process on the same basis as any other First Nation or other participant.

22. Where Canada establishes a public or First Nation process in respect of artifacts or Archaeological Human Remains found on federal Crown land within Tsawwassen Territory, Tsawwassen First Nation may participate in that process on the same basis as any other First Nation or other participant.

23. Where Tsawwassen First Nation provides to British Columbia information on an archaeological site within Tsawwassen Territory, in a format that meets the standards of the provincial archaeological site inventory, British Columbia will record that information in the provincial archaeological site inventory.

24. British Columbia and Tsawwassen First Nation may exchange information in respect of newly discovered archaeological sites and heritage objects within Tsawwassen Territory as they are identified.

25. Where British Columbia determines that a site within Tsawwassen Territory that is listed in the provincial archaeological site inventory is an archaeological site confirmed through archaeological investigation to no longer exist, or is a type of site not protected under Provincial Law, British Columbia will provide to Tsawwassen First Nation information on that site.

ARCHAEOLOGICAL HUMAN REMAINS

26. Subject to clause 27, at the request of Tsawwassen First Nation, Canada or British Columbia, as applicable, will transfer to Tsawwassen First Nation, in accordance with Federal or Provincial Law and policy, Archaeological Human Remains or Associated Burial Objects that:

    a. come into the possession of Canada or British Columbia after the Effective Date; and

    b. that can be demonstrated to be linked to Tsawwassen First Nation.

27. If there are competing aboriginal claims to the Archaeological Human Remains or Associated Burial Objects referred to in clause 26, Tsawwassen

First Nation will provide to Canada or British Columbia, as applicable, written confirmation that the claim has been resolved before the transfer proceeds.

28. British Columbia will inform Tsawwassen First Nation where British Columbia becomes aware of a site that contains Archaeological Human Remains off Tsawwassen Lands and within Tsawwassen Territory.

PLACE NAMES

29. On the Effective Date, British Columbia will add the place names proposed by Tsawwassen First Nation, set out in Appendix O-4, to the British Columbia Geographical Names Database.

30. After the Effective Date, Tsawwassen First Nation may propose that British Columbia name, rename or add a place name to a geographic feature in accordance with Federal or Provincial Law and policy.

CHAPTER 15
ENVIRONMENTAL MANAGEMENT

POWER TO MAKE LAWS

1. Tsawwassen Government may make laws applicable on Tsawwassen Lands to manage, protect, preserve and conserve the Environment including laws in respect of:

    a. the prevention, mitigation and remediation of pollution and the degradation of the Environment;

    b. waste management, including solid wastes and wastewater;

    c. protection of local air quality, but such laws will include standards that meet or exceed the standards set by the Greater Vancouver Regional District in bylaws in respect of the protection of local air quality; and

    d. response to an Environmental Emergency.

2. A Federal or Provincial Law prevails to the extent of a Conflict with a Tsawwassen Law made under clause 1.

ENVIRONMENTAL PROTECTION

3. Within Tsawwassen Territory, Tsawwassen First Nation has the right to participate in provincial Environmental processes and to receive referrals on Environmental matters from British Columbia on the same basis as Local Governments or other First Nations.

ENVIRONMENTAL ASSESSMENT

4. If a proposed Federal Project may reasonably be expected to adversely affect Tsawwassen Lands or Tsawwassen First Nation rights set out in this Agreement:

    a. Canada will ensure that Tsawwassen First Nation is provided with timely notice of the Environmental Assessment and information describing the Federal Project in sufficient detail to permit Tsawwassen First Nation to determine whether it is interested in participating in the Environmental Assessment;

    b. if Tsawwassen First Nation confirms that it is interested in participating in the Environmental Assessment of the Federal Project, Canada will provide Tsawwassen First Nation with an opportunity to comment on

the Environmental Assessment conducted under the *Canadian Environmental Assessment Act*, including:

i. the scope of the Federal Project;

ii. the environmental effects of the Federal Project;

iii. any mitigation measures to be implemented; and

iv. any follow-up programs to be implemented;

c. during the course of the Environmental Assessment conducted under the *Canadian Environmental Assessment Act*, Canada will give full and fair consideration to any comments provided by Tsawwassen First Nation under subclause 4.b, and will respond to the comments, before taking any decision to which those comments pertain; and

d. Canada will provide to Tsawwassen First Nation access to information in Canada's possession related to the Environmental Assessment of the Federal Project, in accordance with the public registry provisions in the *Canadian Environmental Assessment Act*.

5. For greater certainty, clause 4 also applies where the Federal Project referred to in that clause is also a Provincial Project and is subject to a harmonized Environmental Assessment process.

6. If a proposed Federal Project that is referred to a panel under the *Canadian Environmental Assessment Act* may reasonably be expected to adversely affect Tsawwassen Lands or Tsawwassen First Nation rights set out in this Agreement, Canada will provide Tsawwassen First Nation with:

a. the opportunity to propose to the Minister a list of names that the Minister may consider for appointment to the panel, unless the panel is a decision-making body such as the National Energy Board, or Tsawwassen First Nation is a proponent of the Federal Project; and

b. formal standing before that panel.

7. If a proposed Provincial Project is located within the area of land that as at the Effective Date comprises the Greater Vancouver Regional District, or is otherwise located within Tsawwassen Territory, and may reasonably be expected to adversely affect Tsawwassen Lands, residents of Tsawwassen Lands or Tsawwassen First Nation rights set out in this Agreement, British Columbia will ensure that Tsawwassen First Nation:

a. receives timely notice of, and relevant available information on, the Provincial Project and the potential adverse environmental effects;

b. is Consulted regarding the environmental effects of the Provincial Project; and

c. receives an opportunity to participate in any Environmental Assessment of that Provincial Project.

8. British Columbia will give full and fair consideration to the comments received from Tsawwassen First Nation under subclauses 7.b and 7.c, and will respond to those comments during the Environmental Assessment process, before making a decision that would have the effect of enabling the Provincial Project to be carried out in whole or in part.

9. Despite any decision made by Canada or British Columbia in respect of a Federal Project or a Provincial Project, no Federal Project or Provincial Project may proceed on Tsawwassen Lands without the consent of Tsawwassen First Nation.

10. Where a proposed development referred to in subclause 1.h of the Land Management chapter is a Federal Project or a Provincial Project that is subject to the administrative procedures referred to in clause 12 of that chapter, the Parties will negotiate and attempt to reach agreement to harmonize their respective procedures.

ENVIRONMENTAL EMERGENCIES

11. As the owner of, or decision-maker in respect of, Tsawwassen Lands, Tsawwassen First Nation has responsibility for the prevention of, preparedness for, timely response to and recovery from Environmental Emergencies that originate on Tsawwassen Lands.

12. Any Party may respond to an Environmental Emergency on Crown land or Tsawwassen Lands or the bodies of water immediately adjacent to Tsawwassen Lands if the Person who has primary responsibility for responding has not responded, or is unable to respond, in a timely way.

13. If possible, in advance of taking action, a Party responding as described in clause 12, will notify the Person who has primary responsibility, but in any case, will notify that Person as soon as practicable after responding.

14. The Parties may negotiate and attempt to reach agreement in respect of the prevention of, preparedness for, response to, and recovery from Environmental Emergencies occurring on Tsawwassen Lands, which

agreement will include a definition of the roles and responsibilities of each Party.

CHAPTER 16
GOVERNANCE

TSAWWASSEN FIRST NATION SELF-GOVERNMENT

1. Tsawwassen First Nation has the right to self-government, and the authority to make laws, as set out in this Agreement.

2. Tsawwassen Government, as provided for under the Tsawwassen Constitution and this Agreement, is the government of Tsawwassen First Nation.

3. The rights, powers, privileges and authorities of Tsawwassen First Nation will be exercised in accordance with Tsawwassen Laws, including the Tsawwassen Constitution, and with this Agreement.

4. For greater certainty, the authority of Tsawwassen Government to make laws in respect of a subject matter as set out in this Agreement includes the authority to make laws and do other things as may be necessarily incidental to exercising that authority.

5. Tsawwassen First Nation will act through Tsawwassen Government in exercising its rights, powers, privileges and authorities, and in carrying out its duties, functions and obligations.

6. Subject to requirements to make laws under this Agreement, Tsawwassen First Nation may exercise the law-making authorities set out in this Agreement over time.

LEGAL STATUS AND CAPACITY

7. Tsawwassen First Nation is a legal entity with the capacity, rights, powers, and privileges of a natural person including the ability to:

    a. enter into contracts and agreements;

    b. acquire and hold property or an interest in property, and sell or otherwise Dispose of that property or interest;

    c. raise, spend, invest and borrow money;

    d. sue and be sued; and

    e. do other things ancillary to the exercise of its rights, powers and privileges.

TSAWWASSEN CONSTITUTION

8. Tsawwassen First Nation will have a Constitution, consistent with this Agreement**,** which will provide:

    a. for a democratic Tsawwassen Government, including its duties, composition and membership;

    b. that Tsawwassen Government will be democratically accountable with elections at least every five years;

    c. that a majority of members of Tsawwassen Government will be elected;

    d. that Tsawwassen Government may include elements of traditional governance;

    e. for the role of advisory bodies in Tsawwassen Government;

    f. that this Agreement sets out the authority of the Tsawwassen Government to make laws;

    g. for a system of financial administration with standards comparable to those generally accepted for governments in Canada, through which Tsawwassen Government will be financially accountable to Tsawwassen Members;

    h. for conflict of interest rules comparable to those generally accepted for governments of similar size in Canada;

    i. for recognition and protection of rights and freedoms of Tsawwassen Members;

    j. that every individual who is enrolled under this Agreement is entitled to be a Tsawwassen Member;

    k. for a process for the enactment of laws by Tsawwassen Government;

    l. for a process for challenging the validity of laws enacted by Tsawwassen Government;

    m. that any law enacted by Tsawwassen Government that is inconsistent with the Tsawwassen Constitution is, to the extent of the inconsistency, of no force or effect;

n. for the establishment of Tsawwassen Public Institutions;

o. for conditions under which Tsawwassen First Nation may Dispose of land or interests in land;

p. for a process for the removal from office of members of Tsawwassen Government;

q. for a process for the amendment of the Tsawwassen Constitution; and

r. for other provisions**.**

9. The Tsawwassen Constitution, once ratified in accordance with this Agreement, comes into force on the Effective Date.

GOVERNANCE TRANSITION

10. The individuals who were the Chief Councillor and Councillors of the Tsawwassen First Nation band council under the *Indian Act* on the day immediately before the Effective Date are the chief and legislative members, respectively, of Tsawwassen Government from the Effective Date until the office holders elected in the first election for Tsawwassen Government take office.

TSAWWASSEN ELECTIONS

11. The first election for Tsawwassen Government will be held no later than six months after the Effective Date.

12. Elections for members of Tsawwassen Government will be held in accordance with the Tsawwassen Constitution and other Tsawwassen Laws.

APPEAL AND REVIEW OF ADMINISTRATIVE DECISIONS

13. Tsawwassen First Nation will establish procedures for appeal or review of administrative decisions made by Tsawwassen First Nation or a Tsawwassen Public Institution and, if those procedures provide for a right of appeal to a court for a decision made under a Tsawwassen Law, the Supreme Court of British Columbia has jurisdiction to hear those appeals.

14. An application may be made to the Supreme Court of British Columbia for judicial review of an administrative decision made by Tsawwassen First Nation or a Tsawwassen Public Institution under a Tsawwassen Law, and the Supreme Court of British Columbia has jurisdiction to hear any such application, but no such application may be brought until all procedures for

appeal or review provided by Tsawwassen First Nation under clause 13, and applicable to that decision, have been exhausted.

15. The *Judicial Review Procedure Act* applies to an application for judicial review under clause 14, and Provincial Settlement Legislation will provide that the *Judicial Review Procedure Act* is amended to include Tsawwassen Law in the definition of enactment.

REGISTRY OF LAWS

16. Tsawwassen Government will:

    a. maintain a public registry of Tsawwassen Laws in the English language which version is authoritative and, at the discretion of Tsawwassen First Nation, in the Hun'qum'i'num language;

    b. provide Canada and British Columbia with copies of Tsawwassen Laws as soon as practicable after they are enacted, unless otherwise agreed by the Parties; and

    c. establish procedures for determining the coming into force and providing for the publication of Tsawwassen Laws.

PARTICIPATION OF NON-MEMBERS

17. Tsawwassen First Nation will provide that Tsawwassen Institutions will Consult with Non-Members in respect of decisions of Tsawwassen Institutions that directly and significantly affect those Non-Members.

18. Tsawwassen First Nation will provide that Non-Members may participate in the decision-making processes of a Tsawwassen Public Institution if the activities of that Tsawwassen Public Institution directly and significantly affect Non-Members.

19. The means of participation under clause 18 will include:

    a. if members of a Tsawwassen Public Institution are elected, an opportunity for Non-Members to vote for and stand for election as a member of the Tsawwassen Public Institution with the ability to participate in discussions and to vote on matters that directly and significantly affect Non-Members;

    b. if members of a Tsawwassen Public Institution are not elected, at least one member of the Tsawwassen Public Institution will be a Non-Member selected by Non-Members with the ability to participate in

discussions and to vote on matters that directly and significantly affect Non-Members; or

c. other comparable measures.

20. Despite clause 19, Tsawwassen First Nation may provide that a majority of the members of the Tsawwassen Public Institution must be Tsawwassen Members.

21. Tsawwassen First Nation will establish the means of participation under clause 18 by law at the same time that it establishes a Tsawwassen Public Institution whose activities may directly and significantly affect Non-Members.

22. Tsawwassen First Nation will provide Non-Members with access to the appeal and review procedures established under clause 13 in respect of activities that directly and significantly affect Non-Members.

NOTIFICATION OF TSAWWASSEN LAW-MAKING

23. Before Tsawwassen Government brings into force any Tsawwassen Law in respect of:

a. adoption;

b. Child Protection Services;

c. health services;

d. social services;

e. Child Care services; or

f. kindergarten to grade 12 education,

Tsawwassen Government will give at least six months written notice of the proposed Tsawwassen Law to Canada and British Columbia.

24. Despite clause 23, after giving the notice referred to in clause 23, Tsawwassen Government may bring into force the Tsawwassen Law within the six month period if Canada and British Columbia agree.

25. The Parties may negotiate and attempt to reach agreements in respect of any of the matters set out in clause 26 or 27, but an agreement under those clauses is not a condition precedent to the exercise of law-making authority

by Tsawwassen Government, and such authority may be exercised immediately following the six month notice period referred to in clause 23.

26. If Canada or British Columbia makes a request in writing within three months of being given notice under clause 23, Tsawwassen First Nation will Consult with Canada or British Columbia, as the case may be, in respect of:

    a. options the Parties could take to address the interests of Tsawwassen First Nation through methods other than law-making;

    b. immunity of individuals providing services or exercising authority under Tsawwassen Law;

    c. readiness and quality assurance; and

    d. other matters as the Parties may agree.

27. At the written request of any Party within three months of notice being provided under clause 23, the relevant Parties will discuss:

    a. any transfer of cases and related documentation from federal or provincial institutions to Tsawwassen Institutions, including any confidentiality and privacy considerations;

    b. any transfer of assets from federal or provincial institutions to Tsawwassen Institutions;

    c. any appropriate amendments to Federal or Provincial Laws; and

    d. other matters as the Parties may agree.

28. If, in the notice referred to in clause 23, Tsawwassen First Nation advises that it is proposing a Tsawwassen Law for reasons of emergency, Canada and British Columbia will respond as soon as practicable.

NOTIFICATION OF CHANGES TO PROVINCIAL LEGISLATION

29. Subject to clause 35 or an agreement under clause 32, before British Columbia introduces legislation in the Legislative Assembly of British Columbia, or before the Lieutenant Governor in Council approves a regulation, British Columbia will notify, in writing, Tsawwassen First Nation if:

    a. this Agreement provides for Tsawwassen Government law-making authority in respect of the subject matter of the legislation or regulation;

b. the legislation or regulation may affect the protections, immunities, limitations in respect of liability, remedies over, or rights referred to in clauses 163 and 164; or

c. the legislation or regulation may affect the rights, powers, duties, obligations, or the protections, immunities, limitations in respect of liability, remedies over, or rights referred to in clause 114;

except where this cannot be done for reasons of emergency or confidentiality.

30. If British Columbia does not notify Tsawwassen First Nation under clause 29 for reasons of emergency or confidentiality, British Columbia will notify, in writing, Tsawwassen First Nation, as soon as practicable, that it has introduced legislation in the Legislative Assembly of British Columbia, or deposited a regulation with the Registrar of Regulations.

31. Notifications under clauses 29 and 30 will include:

a. the nature and purpose of the proposed legislation or regulation; and

b. the date that the proposed legislation or regulation is anticipated to take effect, if it has not already done so.

32. Tsawwassen First Nation and British Columbia may negotiate and attempt to reach agreements establishing alternatives to the obligations that would otherwise apply under clauses 29, 30, 31 and 33.

33. Subject to clauses 34 and 35, or an agreement under clause 32, if Tsawwassen First Nation makes a written request to British Columbia, then British Columbia and Tsawwassen First Nation will discuss the effect, if any, of the legislation or regulation on:

a. a Tsawwassen Law; or

b. the matters referred to in subclauses 29.b and 29.c.

34. If British Columbia establishes a process providing for collective discussions with First Nation Governments in British Columbia concerning matters referred to in clause 33, Tsawwassen First Nation will participate in that process and the process will satisfy the obligations of British Columbia under clause 33.

35. If Tsawwassen First Nation is a member of a representative body and British Columbia has entered into an agreement with the body that provides

for consultation in respect of matters referred to in clause 29, 30, 31, and 33, then consultations between British Columbia and that representative body in respect of a particular matter will satisfy the obligations on British Columbia to provide notice under clauses 29 and 30 and discussion under clause 33.

36. Unless British Columbia agrees otherwise, Tsawwassen First Nation will retain the information provided under clauses 29 through 35 in strict confidence until such time, if ever, the proposed legislation is given first reading in the Legislative Assembly of British Columbia or the regulation is deposited with the Registrar of Regulations, as applicable.

37. The Parties acknowledge that nothing in clauses 29 through 35 is intended to interfere with the legislative process of British Columbia.

38. Despite any other provision of this Agreement, to the extent that provincial legislation or a regulation referred to in clause 29 affects the validity of a Tsawwassen Law, the Tsawwassen Law will be valid for a period of six months or until it is amended, whichever is the shorter period, after the coming into force of the provincial legislation or regulation.

DELEGATION

39. Any law-making authority of Tsawwassen Government under this Agreement may be delegated by a Tsawwassen Law to:

    a. a Tsawwassen Public Institution;

    b. another First Nation Government in British Columbia;

    c. a public institution established by one or more First Nation Governments in British Columbia;

    d. British Columbia;

    e. Canada;

    f. a Local Government; or

    g. a legal entity as agreed by the Parties,

    if the delegation and the exercise of any law-making authority is in accordance with this Agreement and the Tsawwassen Constitution.

40. Any authority of Tsawwassen First Nation under this Agreement other than a law-making authority may be delegated by a Tsawwassen Law to:

a. any body set out in clause 39; or

b. a legal entity in Canada

if the delegation and the exercise of any delegated authority is in accordance with this Agreement and the Tsawwassen Constitution.

41. Any delegation under subclauses 39.b through 39.g or clause 40 requires the written consent of the delegate.

42. Tsawwassen First Nation may receive a delegated authority by agreement, including a law-making authority.

TSAWWASSEN FIRST NATION LAW-MAKING AUTHORITIES

Tsawwassen Government

43. Tsawwassen Government may make laws in respect of the election, administration, management and operation of Tsawwassen Government including:

a. the establishment of Tsawwassen Public Institutions, including their respective powers, duties, composition and membership, but the registration or incorporation of the Tsawwassen Public Institution must be under Federal or Provincial Law;

b. the powers, duties, responsibilities, remuneration and indemnification of members, officials, employees and appointees of Tsawwassen Institutions;

c. the establishment of a Tsawwassen Corporation, but the registration or incorporation of the Tsawwassen Corporation must be under Federal or Provincial Law;

d. the financial administration of Tsawwassen First Nation and Tsawwassen Institutions; and

e. elections, by-elections and referenda.

44. In accordance with clause 22 of the General Provisions chapter, nothing in clause 43 confers authority on Tsawwassen Government to make laws in respect of labour relations and working conditions.

45. Tsawwassen Government will make laws to:

a. provide Tsawwassen Members with reasonable access to information in the custody or control of a Tsawwassen Institution; and

b. provide Persons other than Tsawwassen Members with reasonable access to information in the custody or control of a Tsawwassen Institution regarding matters that directly and significantly affect those Persons.

46. For greater certainty, a Tsawwassen Law made under clause 45 need not provide access to information of a kind that is generally unavailable under Federal or Provincial Law.

47. A Tsawwassen Law made under clause 43 or 45 prevails to the extent of a Conflict with a Federal or Provincial Law, except that a Federal or Provincial Law in respect of the protection of personal information prevails to the extent of a Conflict with a Tsawwassen Law made under clause 43 or 45.

Tsawwassen Membership

48. Tsawwassen Government may make laws in respect of membership in Tsawwassen First Nation.

49. A Tsawwassen Law made under clause 48 prevails to the extent of a Conflict with a Federal or Provincial Law.

50. The conferring of membership in Tsawwassen First Nation does not:

a. confer or deny rights of entry into Canada, Canadian citizenship, or the right to be registered as an Indian under the *Indian Act*; or

b. except as set out in this Agreement or in Federal or Provincial Law, impose any obligation on Canada or British Columbia to provide rights or benefits.

Tsawwassen Assets

51. Tsawwassen Government may make laws in respect of the use, possession, management and Disposition of:

a. assets located on Tsawwassen Lands;

b. assets located off Tsawwassen Lands; and

c. Other Tsawwassen Lands as an asset,

of Tsawwassen First Nation, a Tsawwassen Corporation or a Tsawwassen Public Institution.

52. For greater certainty, the law-making authority in clause 51 does not include the authority to make laws in respect of creditors' rights and remedies.

53. A Tsawwassen Law made under subclause 51.a prevails to the extent of a Conflict with a Federal or Provincial Law.

54. A Federal or Provincial Law prevails to the extent of a Conflict with a Tsawwassen Law made under subclause 51.b or 51.c.

Adoption

55. In determining a Child's best interests, all relevant factors will be considered including those factors that must be considered under the *Adoption Act.*

56. Tsawwassen Government may make laws in respect of:

    a. adoption of Tsawwassen Children in British Columbia;

    b. adoption in British Columbia by Tsawwassen Members of Children who reside on Tsawwassen Lands; and

    c. adoption in British Columbia of Children of Tsawwassen Members in accordance with clause 60.

57. Tsawwassen Laws under clause 56 will:

    a. expressly provide that the best interests of the Child are the paramount consideration in determining whether an adoption will take place; and

    b. provide for the consent of individuals whose consent to a Child's adoption is required under Provincial Law, subject to the power of the court to dispense with such consent under Provincial Law.

58. If Tsawwassen Government makes laws under clause 56, Tsawwassen First Nation will:

    a. develop operational and practice standards that promote the best interests of the Child;

    b. participate in British Columbia's information management systems, or establish an information management system that is compatible with British Columbia's information management systems, concerning the

management, storage and disposal of adoption records and the safeguarding of personal adoption information; and

c. provide British Columbia and Canada with a record of all adoptions occurring under Tsawwassen Law.

59. A Tsawwassen Law made under clause 56 applies to the adoption of a Tsawwassen Child residing off Tsawwassen Lands if:

a. the Tsawwassen Child has not been placed for adoption under the *Adoption Act*, and all of the following consent to the application of Tsawwassen Law to the adoption:

i. the parents of the Tsawwassen Child;

ii. if the Tsawwassen Child has reached the age where consent to adoption is required under the *Adoption Act*, the Tsawwassen Child; and

iii. if the Tsawwassen Child is not under the guardianship of a Director, the guardian of the Tsawwassen Child;

b. a Director designated under the *Child, Family and Community Service Act* is guardian of the Tsawwassen Child, and the Director consents in accordance with subclauses 62.c and 62.d; or

c. a court dispenses with the requirement for the consent referred to in subclause 59.a, in accordance with the criteria that would be used by that court in an application to dispense with the requirement for a parent's or guardian's consent to an adoption under Provincial Law.

60. A Tsawwassen Law made under clause 56 applies to the adoption of a Child of a Tsawwassen Member or a Child residing on Tsawwassen Lands who is not a Tsawwassen Child if:

a. before the Child is placed for adoption under Tsawwassen Law, all of the following consent to the application of Tsawwassen Law to the adoption:

i. the parents of the Child;

ii. if the Child has reached the age where consent to adoption is required under the *Adoption Act*, the Child; and

iii. if the Child is not under the guardianship of a Director, the guardian of the Child;

b. a Director designated under the *Child, Family and Community Service Act* is guardian of the Child and the Director consents to the application of Tsawwassen Law to the adoption of that Child provided that it is in the best interests of the Child; or

c. a court dispenses with the requirement for the consent referred to in subclause 60.a, in accordance with the criteria that would be used by that court in an application to dispense with the requirement for a parent's or guardian's consent to an adoption under Provincial Law.

61. The Parties will negotiate and attempt to reach agreement on the information that will be included in the record provided under subclause 58.c.

62. If a Director designated under the *Child, Family and Community Service Act*, or a successor to that position, becomes the guardian of a Tsawwassen Child, the Director will:

a. provide notice to Tsawwassen First Nation that the Director is the guardian of the Tsawwassen Child;

b. provide notice to Tsawwassen First Nation when the Director applies for a continuing custody order for the Tsawwassen Child, provide Tsawwassen First Nation with a copy of the continuing custody order once the order is made and make reasonable efforts to involve Tsawwassen First Nation in planning for the Tsawwassen Child;

c. if requested by Tsawwassen First Nation, consent to the application of Tsawwassen Law to the adoption of the Tsawwassen Child provided that it is in the best interests of the Tsawwassen Child; and

d. in determining the best interests of the Tsawwassen Child under subclause 62.c., the Director will consider the importance of preserving the Tsawwassen Child's cultural identity.

63. A Tsawwassen Law made under clause 56 prevails to the extent of a Conflict with a Federal or Provincial Law.

64. Before placing a Tsawwassen Child for adoption, an adoption agency must make reasonable efforts to:

a. obtain information about the Tsawwassen Child's cultural identity; and

b. discuss with the designated representative of Tsawwassen First Nation, the placement of the Tsawwassen Child.

65. Subclause 64.b does not apply if the Tsawwassen Child has reached the age where consent to adoption is required under the *Adoption Act* and the Tsawwassen Child objects to the discussion taking place, or if the birth parent or other guardian of the Tsawwassen Child who requested that the Tsawwassen Child be placed for adoption objects to the discussion taking place.

66. Nothing in this Agreement prevents Tsawwassen First Nation from sharing information with any Person in respect of an adoption occurring under Tsawwassen Law, with the written permission of the adoptive parents, birth parents and the adoptee if over the age of majority under Provincial Law.

Child Custody

67. Tsawwassen First Nation has standing in any judicial proceedings in British Columbia in which custody of a Tsawwassen Child is in dispute and the court will take judicial notice of Tsawwassen Law and will consider any evidence and representations in respect of Tsawwassen Law and Tsawwassen First Nation customs in addition to any other matters it is required by law to consider.

68. The participation of Tsawwassen First Nation in proceedings referred to in clause 67 will be in accordance with the applicable rules of court and will not affect the ability of the court to control its process.

Child Protection Services

69. Tsawwassen Government may make laws in respect of Child Protection Services on Tsawwassen Lands with respect to:

    a. Tsawwassen Children; and

    b. Children who are not Tsawwassen Children, subject to an agreement under clause 75 between Tsawwassen First Nation and British Columbia.

70. Tsawwassen Laws under clause 69 will:

    a. expressly provide that the Tsawwassen Law will be interpreted and administered such that the Safety and Well-Being of Children are the paramount considerations; and

    b. not preclude the reporting under Provincial Law of a Child in Need of Protection.

71. If Tsawwassen Government makes laws under clause 69, Tsawwassen First Nation will:

    a. develop operational and practice standards intended to ensure the Safety and Well-Being of Children;

    b. participate in British Columbia's information management systems, or establish an information management system that is compatible with British Columbia's information management systems, concerning Children in Need of Protection and Children in Care;

    c. allow for mutual sharing of information with British Columbia concerning Children in Need of Protection and Children in Care; and

    d. establish and maintain a system for the management, storage and disposal of Child Protection Service records and the safeguarding of personal Child Protection Services information.

72. Tsawwassen First Nation and British Columbia acknowledge that the information shared under subclause 71.c is personal information, as defined in federal and provincial privacy and access to information legislation, and agree to protect that personal information from subsequent disclosures to the extent possible under law.

73. Despite a Tsawwassen Law made under clause 69, if there is an emergency in which a Child on Tsawwassen Lands is a Child in Need of Protection, British Columbia may act to protect the Child and, in those circumstances, unless British Columbia and Tsawwassen First Nation agree otherwise in writing, British Columbia, as appropriate, will refer the matter to Tsawwassen First Nation after the emergency.

74. A Tsawwassen Law made under clause 69 prevails to the extent of a Conflict with a Federal or Provincial Law.

75. At the request of Tsawwassen First Nation, Tsawwassen First Nation and British Columbia will negotiate and attempt to reach agreements in respect of Child Protection Services for:

    a. Tsawwassen Children who do not reside on Tsawwassen Lands; or

    b. Children who reside on Tsawwassen Lands who are not Tsawwassen Children.

76. Where the Director becomes the guardian of a Tsawwassen Child, the Director will make reasonable efforts to include Tsawwassen First Nation in planning for the Tsawwassen Child, including adoption planning.

Education

77. Tsawwassen Government may make laws in respect of education in the culture of Tsawwassen First Nation and the Hun'qum'i'num language provided by a Tsawwassen Institution or a person appointed by Tsawwassen First Nation on Tsawwassen Lands including:

    a. the certification and accreditation of teachers of the culture of Tsawwassen First Nation and the Hun'qum'i'num language; and

    b. the development of the curriculum for teaching the culture of Tsawwassen First Nation and the Hun'qum'i'num language.

78. Tsawwassen Government may make laws in respect of kindergarten to grade 12 education provided by a Tsawwassen Institution on Tsawwassen Lands.

79. A Tsawwassen Law made under clause 78 will:

    a. establish curriculum, examination, and other standards that permit students to transfer between school systems at a similar level of achievement and permit students to enter the provincial post-secondary education systems; and

    b. provide for the certification and accreditation of teachers, by a Tsawwassen Public Institution, or by a body recognized by British Columbia, in accordance with standards comparable to standards applicable to individuals who teach in public or provincially-funded independent schools in British Columbia.

80. Tsawwassen Government may make laws in respect of kindergarten to grade 12 home education of Tsawwassen Members on Tsawwassen Lands.

81. A Tsawwassen Law made under clause 77, 78 or 80 prevails to the extent of a Conflict with a Federal or Provincial Law.

82. If Tsawwassen Government makes laws under clause 78, at the request of Tsawwassen First Nation or British Columbia, those Parties will negotiate and attempt to reach agreement concerning the provision of kindergarten to grade 12 education to:

    a. individuals, other than Tsawwassen Members, residing on Tsawwassen Lands; and

b. Tsawwassen Members residing off Tsawwassen Lands.

Post-Secondary Education and Training

83. Tsawwassen Government may make laws in respect of post-secondary education provided by a Tsawwassen Institution on Tsawwassen Lands including:

a. the establishment of post-secondary education institutions with the ability to grant degrees, diplomas or certificates;

b. the determination of the curriculum for post-secondary education institutions established by Tsawwassen Government; and

c. the provision for and coordination of adult education programs including but not limited to employment training services.

84. A Federal or Provincial Law prevails to the extent of a Conflict with a Tsawwassen Law made under clause 83.

Aboriginal Healers

85. Tsawwassen Government may make laws in respect of the authorization of individuals to practise as aboriginal healers on Tsawwassen Lands.

86. Tsawwassen Government authority to make laws under clause 85 does not include the authority to regulate:

a. medical or health practices that, or practitioners who, require licensing or certification under Federal or Provincial Law; or

b. products or substances that are regulated under Federal or Provincial Law.

87. Tsawwassen Laws made under clause 85 will establish standards:

a. in respect of competence, ethics and quality of practice that are reasonably required to protect the public; and

b. that are reasonably required to safeguard personal client information.

88. A Tsawwassen Law made under clause 85 prevails to the extent of a Conflict with a Federal or Provincial Law.

Health Services

89. Tsawwassen Government may make laws in respect of health services, including public health, provided by a Tsawwassen Institution on Tsawwassen Lands.

90. Tsawwassen Laws made under clause 89 will take into account the protection, improvement and promotion of public and individual health and safety.

91. At the request of any Party, the Parties will negotiate and attempt to reach agreement for the delivery and administration by a Tsawwassen Institution of federal and provincial health services and programs for individuals residing on Tsawwassen Lands.

92. Federal or Provincial Law prevails to the extent of a Conflict with a Tsawwassen Law made under clause 89.

93. Despite clause 92, a Tsawwassen Law made under clause 89 in respect of the organization and structure of Tsawwassen Institutions used to deliver health services on Tsawwassen Lands prevails to the extent of a Conflict with a Federal or Provincial Law.

Social Services

94. Tsawwassen Government may make laws in respect of social services provided by a Tsawwassen Institution, including income assistance, services related to family and community life, and housing.

95. A Federal or Provincial Law prevails to the extent of a Conflict with a Tsawwassen Law made under clause 94.

96. Tsawwassen Government authority under clause 94 does not include the authority to make laws in respect of the licensing and regulation of facility-based services provided off Tsawwassen Lands.

97. At the request of any Party, the Parties will negotiate and attempt to reach agreement in respect of:

    a. exchanging information for the purpose of avoiding double payments and related matters; and

    b. administration and delivery by a Tsawwassen Institution of federal and provincial social services and programs for individuals residing on Tsawwassen Lands.

98. Tsawwassen Laws under clause 94 may require individuals collecting income assistance from a Tsawwassen Institution to participate in work programs or other similar programs.

Family Development Services

99. Tsawwassen Government may make laws in respect of Family Development Services provided by a Tsawwassen Institution on Tsawwassen Lands.

100. A Federal or Provincial Law prevails to the extent of a Conflict with a Tsawwassen Law made under clause 99.

Liquor Control

101. Tsawwassen Government may make laws in respect of the prohibition of, and the terms and conditions for, the sale, exchange, possession, manufacture or consumption of liquor, on Tsawwassen Lands.

102. A Federal or Provincial Law prevails to the extent of a Conflict with a Tsawwassen Law made under clause 101.

103. Tsawwassen First Nation, its agents and assignees have:

    a. the exclusive right to sell liquor on Tsawwassen Lands in accordance with Federal and Provincial Law; and

    b. the right to purchase liquor from the British Columbia Liquor Distribution Branch, or its successors, in accordance with Federal and Provincial Law.

104. British Columbia will approve an application made, in accordance with Provincial Law, by Tsawwassen First Nation, its agents or assignees for a licence, permit, or other authority to sell liquor on Tsawwassen Lands.

105. Despite subclause 103.a, if Tsawwassen First Nation consents, British Columbia may issue to a person other than Tsawwassen First Nation, its agents or assignees a licence, permit, or other authority to sell liquor on Tsawwassen Land.

106. British Columbia will, in accordance with Provincial Law, authorize persons designated by Tsawwassen First Nation to approve or deny applications for special occasion licences or temporary permits to sell liquor on Tsawwassen Lands.

Solemnization of Marriages

107. Tsawwassen Government may make laws in respect of solemnization of marriages within British Columbia by individuals designated by Tsawwassen First Nation to solemnize marriages.

108. Individuals designated by Tsawwassen First Nation to solemnize marriages:

    a. will be appointed by British Columbia as individuals authorized to solemnize marriages; and

    b. have the authority to solemnize marriages under Provincial Law and Tsawwassen Law, and have all the associated rights, duties and responsibilities of a marriage commissioner under the provincial *Marriage Act*.

109. A Federal or Provincial Law prevails to the extent of a Conflict with a Tsawwassen Law made under clause 107.

Judicial Proceedings in Respect of Matrimonial Property

110. Tsawwassen First Nation has standing in any judicial proceedings in which the treatment of interests in Tsawwassen Lands upon the breakdown of a marriage involving at least one Tsawwassen Member is in dispute, and the court will consider any evidence and representations in respect of Tsawwassen Law which may restrict the alienation of Tsawwassen Lands to Tsawwassen Members in addition to any other matters it is required by law to consider.

111. The participation of Tsawwassen First Nation in proceedings referred to in clause 110 will be in accordance with the applicable rules of court and will not affect the ability of the court to control its process.

Child Care

112. Tsawwassen Government may make laws in respect of Child Care services on Tsawwassen Lands.

113. A Federal or Provincial Law prevails to the extent of a Conflict with a Tsawwassen Law made under clause 112.

Emergency Preparedness

114. Tsawwassen First Nation has:

    a. the rights, powers, duties and obligations; and

b. the protections, immunities and limitations in respect of liability,

of a local authority under Federal and Provincial Law in respect of emergency preparedness and emergency measures on Tsawwassen Lands.

115. Tsawwassen Government may make laws in respect of the rights, powers, duties, and obligations of Tsawwassen First Nation under clause 114.

116. A Federal or Provincial Law prevails to the extent of a Conflict with a Tsawwassen Law made under clause 115.

117. For greater certainty, Tsawwassen First Nation may declare a state of local emergency, and exercise the powers of a local authority in respect of local emergencies in accordance with Federal and Provincial Law in respect of emergency measures, but any declaration and any exercise of those powers is subject to the authority of Canada and British Columbia set out in that Federal and Provincial Law.

118. Nothing in this Agreement affects the authority of:

a. Canada to declare a national emergency; or

b. British Columbia to declare a provincial emergency,

in accordance with Federal or Provincial Law.

Regulation of Business

119. Tsawwassen Government may make laws in respect of the regulation, licensing, and prohibition of businesses on Tsawwassen Lands, which laws may impose licence fees or other fees.

120. For greater certainty, the authority to make laws under clause 119 includes the authority to prohibit:

a. a public show, exhibition, carnival, or performance of any kind or in any particular location;

b. the operation of places of amusement to which the public has access; and

c. professional boxing, professional wrestling and other professional athletic contests.

121. For greater certainty, the authority to make laws under clause 119 does not include the authority to make laws in respect of the accreditation, certification, or professional conduct of professions and trades except as provided in clauses 77, 78 and 80.

122. A Federal or Provincial Law prevails to the extent of a Conflict with a Tsawwassen Law made under clause 119.

Buildings and Structures

123. The *British Columbia Building Code* applies to Tsawwassen Lands.

124. Tsawwassen Government may make laws in respect of buildings and structures on Tsawwassen Lands, but Tsawwassen Laws must not establish standards for buildings or structures to which the *British Columbia Building Code* applies that are additional to or different from the standards established by the *British Columbia Building Code*.

125. At the request of Tsawwassen First Nation, British Columbia will negotiate and attempt to reach an agreement to enable Tsawwassen Government to establish standards for buildings or structures that are additional to or different from the standards established by the *British Columbia Building Code*.

126. A Federal or Provincial Law prevails to the extent of a Conflict with a Tsawwassen Law made under clause 124.

Public Works

127. Tsawwassen Government may make laws in respect of public works and related services on Tsawwassen Lands.

128. A Federal or Provincial Law prevails to the extent of a Conflict with a Tsawwassen Law made under clause 127.

Traffic, Parking, Transportation and Highways

129. Tsawwassen Government may make laws in respect of traffic, parking, transportation and highways on Tsawwassen Lands to the same extent as Local Governments have authority to make laws in respect of traffic, parking, transportation and highways in municipalities in British Columbia.

130. A Federal or Provincial Law prevails to the extent of a Conflict with a Tsawwassen Law made under clause 129.

Public Order, Peace and Safety

131. Tsawwassen Government may make laws in respect of the regulation, control or prohibition of any actions, activities or undertakings on Tsawwassen Lands that constitute, or may constitute, a nuisance, a trespass, a danger to public health, or a threat to public order, peace or safety including:

    a. in respect of animals;

    b. requirements regarding the discharge of firearms, the use of bows and arrows, knives and other weapons, firecrackers, fireworks, explosives; and

    c. public games, sports, races and athletic contests.

132. A Federal or Provincial Law prevails to the extent of a Conflict with a Tsawwassen Law made under clause 131.

Penalties

133. Subject to clauses 134, 135 and 136, and clause 6 of the Taxation chapter, a Tsawwassen Law may provide for the imposition of penalties, including fines, restitution and imprisonment, for the violation of Tsawwassen Law.

134. Subject to clause 135, and clause 6 of the Taxation chapter, a Tsawwassen Law may provide for a fine of up to ten thousand dollars ($10,000) or the general limit for summary conviction offences under section 787 of the *Criminal Code,* whichever is greater.

135. A Tsawwassen Law in respect of the protection of the Environment may provide for a fine that is not greater than that imposed for comparable offences punishable upon summary conviction under the *Canadian Environmental Protection Act.*

136. Subject to clause 6 of the Taxation chapter, a Tsawwassen Law may provide for a term of imprisonment for a violation of a Tsawwassen Law that is not greater than the general limit for summary conviction offences under section 787 of the *Criminal Code*.

Adoption of Federal or Provincial Laws

137. Tsawwassen Government may adopt Federal or Provincial Law in respect of matters within Tsawwassen Government law-making authority set out in this Agreement.

Enforcement of Tsawwassen Laws

138. Tsawwassen First Nation is responsible for any enforcement of Tsawwassen Law.

139. At the request of Tsawwassen First Nation, to the extent of their respective jurisdictions, the Parties will negotiate and attempt to reach agreement in respect of the enforcement of Tsawwassen Law by federal or provincial enforcement officials or police forces.

140. Tsawwassen Government may make laws for the enforcement of Tsawwassen Law including the appointment of officials to enforce Tsawwassen Law. Powers of enforcement for those officials will not exceed those provided by Federal or Provincial Law for enforcing similar laws in British Columbia.

141. Tsawwassen Government law-making authority does not include:

    a. the authority to establish a police force;

    b. authorizing the carriage or use of firearms by enforcement officials; or

    c. the authority to establish a court.

142. Nothing in this Agreement prevents Tsawwassen First Nation from establishing a police force under Provincial Law.

143. After receiving a written request from Tsawwassen First Nation, the Parties will discuss and explore options for the establishment of a court, other than a provincial court with inherent jurisdiction or a federal court, to adjudicate offences and other matters arising under Tsawwassen Laws or laws of other First Nation Governments in British Columbia.

144. If Tsawwassen First Nation appoints officials to enforce Tsawwassen Law, Tsawwassen First Nation will:

    a. ensure that any Tsawwassen First Nation enforcement officials are appropriately trained to carry out their duties having regard to training requirements for other enforcement officers carrying out similar duties in British Columbia; and

    b. establish procedures for responding to complaints against Tsawwassen First Nation enforcement officials.

145. A Federal or Provincial Law prevails to the extent of a Conflict with a Tsawwassen Law made under clause 140.

146. Tsawwassen First Nation may, by a proceeding brought in the Supreme Court of British Columbia, enforce, or prevent or restrain the contravention of, Tsawwassen Law.

Adjudication of Tsawwassen Laws

147. The Provincial Court of British Columbia has jurisdiction to hear prosecutions of offences under Tsawwassen Law.

148. The summary conviction proceedings of the *Offence Act* apply to prosecutions of offences under Tsawwassen Law.

149. Tsawwassen First Nation is responsible for all aspects of any prosecution under Tsawwassen Law, including appeals, and may carry out this responsibility by:

    a. appointing or retaining individuals to conduct prosecutions and appeals, in a manner consistent with the principle of prosecutorial independence and consistent with the overall authority and role of the Attorney General in the administration of justice in British Columbia; or

    b. entering into agreements with Canada or British Columbia in respect of the conduct of prosecutions and appeals.

150. Unless the Parties agree otherwise, British Columbia will pay any fines collected, in respect of a penalty imposed on a person by the Provincial Court of British Columbia or the Supreme Court of British Columbia, as the case may be, for an offence under a Tsawwassen Law, to Tsawwassen First Nation on a similar basis as British Columbia makes payments to Canada for fines that may be collected by British Columbia in respect of an offence under a Federal Law.

151. The Provincial Court of British Columbia or the Supreme Court of British Columbia, as the case may be, has jurisdiction to hear legal disputes arising between individuals under Tsawwassen Law.

Community Correctional Services

152. A Tsawwassen Institution may provide Community Correctional Services for individuals charged with, or found guilty of, an offence under Tsawwassen Law.

153. At the request of Tsawwassen First Nation, Tsawwassen First Nation and British Columbia may negotiate and attempt to reach agreement to provide

Community Correctional Services on Tsawwassen Lands for individuals charged with, or found guilty of, an offence under Federal or Provincial Law.

154. Tsawwassen First Nation and British Columbia may negotiate and attempt to reach agreement for Tsawwassen First Nation to provide rehabilitative community based programs and interventions off Tsawwassen Lands for Tsawwassen Members charged with, or found guilty of, an offence under a Federal or Provincial Law.

155. Tsawwassen First Nation and Canada may negotiate and attempt to reach agreement for persons appointed by a Tsawwassen Institution to provide Community Correctional Services to adult Tsawwassen Members released from a federal penitentiary or who are subject to a long-term supervision order, including parole, temporary absence supervision, or other similar service delivered by Canada.

156. This Agreement does not authorize Tsawwassen First Nation to establish or maintain places of confinement, except for police jails or lock-ups operated by a police service established under Provincial Law.

TSAWWASSEN FIRST NATION LIABILITY

Members of Tsawwassen Government

157. No action for damages lies or may be instituted against an elected or appointed member or former member of Tsawwassen Government for:

    a. anything said or done or omitted to be said or done by or on behalf of Tsawwassen First Nation or Tsawwassen Government by someone other than that elected or appointed member or former member while he or she is or was a member;

    b. any alleged neglect or default in the performance, or intended performance, of a duty or the exercise of a power, of Tsawwassen First Nation or Tsawwassen Government while that person is, or was, a member;

    c. anything said or done or omitted to be said or done by that person in the performance, or intended performance, of the person's duty or the exercise of the person's power; or

    d. any alleged neglect or default in the performance, or intended performance, of that person's duty or exercise of that person's power.

158. Subclauses 157.c and 157.d do not provide a defence if:

a. the person has, in relation to the conduct that is the subject matter of the action, been guilty of dishonesty, gross negligence or malicious or wilful misconduct; or

b. the cause of action is libel or slander.

159. Subclauses 157.c and 157.d do not absolve Tsawwassen First Nation from vicarious liability arising out of a tort committed by a member or former member of Tsawwassen Government for which Tsawwassen First Nation would have been liable had that clause not been in effect.

Tsawwassen Public Officers

160. No action for damages lies or may be instituted against a Tsawwassen Public Officer or former Tsawwassen Public Officer for:

a. anything said or done or omitted to be said or done in the performance, or intended performance, of the officer's duty or the exercise of the officer's power; or

b. any alleged neglect or default in the performance, or intended performance, of that officer's duty or exercise of that officer's power.

161. Clause 160 does not provide a defence if:

a. the Tsawwassen Public Officer has, in relation to the conduct that is the subject matter of the action, been guilty of dishonesty, gross negligence or malicious or wilful misconduct; or

b. the cause of action is libel or slander.

162. Clause 160 does not absolve any of the corporations or bodies referred to in the definition of Tsawwassen Public Officer from vicarious liability arising out of a tort committed by a Tsawwassen Public Officer for which the corporation or body would have been liable had that clause not been in effect.

163. Despite clause 160, a Tsawwassen Public Officer does not have protections, immunities or limitations in respect of liability, in respect of the provision of a service, if no persons delivering reasonably similar programs or services under Federal or Provincial Law have protections, immunities, limitations in respect of liability and rights under Federal or Provincial Law, except as may be otherwise provided under Federal or Provincial Law.

Tsawwassen First Nation and Tsawwassen Government

164. Tsawwassen First Nation and Tsawwassen Government have the protections, immunities, limitations in respect of liability, remedies over, and rights provided to a municipality and its municipal council under Part 7 of the *Local Government Act*.

165. Subject to the provisions of this Agreement, Tsawwassen First Nation has the protections, immunities, limitations in respect of liability, remedies over, and rights provided to a municipality under the *Occupiers Liability Act*, and, for greater certainty, has those protections, immunities, limitations in respect of liability, remedies over, and rights, in respect of a road on Tsawwassen Lands used by the public, or by industrial or resource users, if Tsawwassen First Nation is the occupier of that road.

Realization of Security Against Property of Tsawwassen First Nation

166. Without limiting clause 164, but subject to clauses 7 and 8 of the Lands chapter, no real or personal property of Tsawwassen First Nation or a Tsawwassen Public Institution is subject to seizure or sale under a Writ of Execution, order for sale or other process without leave of the Supreme Court of British Columbia, and the court, in granting or refusing leave under this clause, may:

    a. permit the issuance of the writ, make the order or allow the other process at a time and on conditions the court considers proper; or

    b. refuse to permit the writ to be issued or suspend action under it, or deny the order or other process, on terms and conditions the court considers proper or expedient.

167. In determining how to proceed under clause 166, the court must have regard to:

    a. any reputed insolvency of Tsawwassen First Nation;

    b. any security afforded to the judgment creditor by the registration of the judgment;

    c. the effect on delivery of programs or services by Tsawwassen First Nation that are not provided by municipalities in British Columbia, and the funding of those programs or services;

    d. any immunities from seizure of property of Tsawwassen First Nation under this Agreement; and

e. whether the judgment creditor has exhausted all other remedies, including the seizure of personal property and remedies against Other Tsawwassen Lands.

CHAPTER 17
INTERGOVERNMENTAL RELATIONS AND SERVICES

TSAWWASSEN FIRST NATION MEMBERSHIP IN THE GREATER VANCOUVER REGIONAL DISTRICT

1. On the Effective Date and in accordance with this Agreement, Tsawwassen First Nation is a First Nation member of the Greater Vancouver Regional District.

2. Tsawwassen First Nation may participate in Associated Entities and, for greater certainty, as a member of the Greater Vancouver Regional District, may participate in the board of the Greater Vancouver Water District.

3. In accordance with this chapter, Provincial Settlement Legislation will give effect to the participation of Tsawwassen First Nation as a First Nation member of the Greater Vancouver Regional District.

4. If needed for the purpose of carrying out its functions, powers, duties and obligations as a member of the Greater Vancouver Regional District or any Associated Entity as provided for in this Agreement, Tsawwassen First Nation will be deemed to have the powers of a municipality necessary for that purpose.

5. At the request of British Columbia or Tsawwassen First Nation, the Parties will review the membership of Tsawwassen First Nation in the Greater Vancouver Regional District and the Associated Entities, ten years after the Effective Date or such earlier date as British Columbia and Tsawwassen First Nation may agree.

6. British Columbia will Consult with Tsawwassen First Nation on any changes to the structure of regional government that directly and significantly affect Tsawwassen First Nation.

7. British Columbia will Consult with the Greater Vancouver Regional District on any changes to Tsawwassen First Nation membership in the Greater Vancouver Regional District that are proposed after the Effective Date.

8. On the Effective Date, Tsawwassen First Nation will appoint a director to the board of the Greater Vancouver Regional District and the director will have all the functions, powers, duties and obligations of a director of the board of the Greater Vancouver Regional District.

9. The director appointed under clause 8 will be an elected member of Tsawwassen Government.

SERVICES AND AUTHORITIES

10. Authorities, regulations and bylaws of the Greater Vancouver Regional District and Associated Entities do not apply on Tsawwassen Lands or Tsawwassen Water Lots except as provided in this Agreement or otherwise agreed to by Tsawwassen First Nation and the Greater Vancouver Regional District or Associated Entity.

11. As a member of the Greater Vancouver Regional District, Tsawwassen First Nation will receive and pay for Core Mandatory Regional Services delivered by the Greater Vancouver Regional District.

12. Tsawwassen First Nation will pay to the Greater Vancouver Regional District the amounts requisitioned annually, in the manner set out in section 805 of the *Local Government Act*, in respect of Core Mandatory Regional Services.

13. All bylaws of the Greater Vancouver Regional District in respect of Core Mandatory Regional Services received by Tsawwassen First Nation apply in respect of Tsawwassen First Nation, Tsawwassen Lands and Tsawwassen Water Lots.

14. Tsawwassen First Nation will participate in the Greater Vancouver Transportation Authority including receipt of and payment for services on the same basis that a municipality within the Greater Vancouver Regional District would participate in the Greater Vancouver Transportation Authority.

15. Tsawwassen First Nation may negotiate and attempt to reach agreement with the Greater Vancouver Transportation Authority for improved delivery of public transportation services to Tsawwassen Lands.

16. The Greater Vancouver Regional District or Associated Entities, as applicable, and Tsawwassen First Nation, may negotiate and attempt to reach agreement for the provision of local services, other than Core Mandatory Regional Services, through the Greater Vancouver Regional District or Associated Entities and for the application of authorities, regulations and bylaws of the Greater Vancouver Regional District or Associated Entities to Tsawwassen First Nation, Tsawwassen Lands or Tsawwassen Water Lots, as appropriate.

17. For greater certainty, Tsawwassen First Nation may enter into agreements in respect of the provision of and payment for:

    a. Local Government services on Tsawwassen Lands;

    b. Tsawwassen First Nation services to Local Government; or

c. library services.

18. Tsawwassen First Nation agrees that any contractual service agreement with a Local Government in effect on the Effective Date will remain in effect following the Effective Date until such time as it is renegotiated or is terminated under the terms of the agreement.

LAND USE PLANNING

19. Provincial Settlement Legislation will provide that Tsawwassen First Nation's land use plan that is in place at the Effective Date will be deemed to meet the statutory requirements of the *Local Government Act* for consistency with the regional growth strategy of the Greater Vancouver Regional District in place at the Effective Date.

20. A land use plan prepared by Tsawwassen First Nation after the Effective Date will include a statement equivalent to a regional context statement as defined in the *Local Government Act*, identifying how its land use plan is consistent with a regional growth strategy approved by the Greater Vancouver Regional District with the participation of Tsawwassen First Nation as a member of the Greater Vancouver Regional District.

21. Before Tsawwassen Government makes a planning or zoning law, Tsawwassen First Nation will consult any Local Government that may be affected by the proposed law through a process similar in principle to that required of a municipality undertaking similar law-making. This requirement does not limit the scope of the authority of Tsawwassen First Nation under this Agreement.

PROVISION OF WATER

22. Before the Effective Date, British Columbia will ensure that the Greater Vancouver Water District will supply water on reasonable terms to Tsawwassen First Nation as a member of the Greater Vancouver Regional District, and a member of the Greater Vancouver Water District.

23. Before the Effective Date, British Columbia will ensure that the Greater Vancouver Water District has the legal authority to supply water to Tsawwassen First Nation.

24. Tsawwassen First Nation will negotiate and attempt to reach agreement with the Greater Vancouver Water District on the construction and capital costs for the infrastructure connection to the source of the water supply from the Greater Vancouver Water District for the provision of water service to Tsawwassen First Nation.

25. The water services provided in accordance with this Agreement by the Greater Vancouver Water District to Tsawwassen First Nation will be on the same terms as apply in respect of providing such services to a member municipality of equivalent size, including equivalent terms in respect of costs, including costs of infrastructure.

26. If the board of the Greater Vancouver Water District and Tsawwassen First Nation fail to agree on the terms and conditions upon which Tsawwassen First Nation is added to the Greater Vancouver Water District, Tsawwassen First Nation may appeal to the Minister.

27. The Minister has absolute power and authority to settle the terms and conditions upon which Tsawwassen First Nation is added to the Greater Vancouver Water District.

DISPUTE RESOLUTION

28. Tsawwassen First Nation and Local Government may use a dispute resolution process set out in the Dispute Resolution chapter of this Agreement, the *Local Government Act* or the *Community Charter* or another process agreed to by the Parties for resolving disputes between Tsawwassen First Nation and Local Government.

29. Despite clause 28, Local Government may be limited by Provincial Law to specific dispute resolution processes.

CHAPTER 18
CAPITAL TRANSFER AND NEGOTIATION LOAN REPAYMENT

CAPITAL TRANSFER

1. Subject to clause 4, the Capital Transfer from Canada to Tsawwassen First Nation, including the following funds:

    a. the Economic Development Capital Fund referred to in clause 107 of the Lands chapter;

    b. the Forest Resources Fund referred to in clause 6 of the Forest Resources chapter;

    c. the Commercial Fish Fund referred to in subclause 105.a of the Fisheries chapter;

    d. the Commercial Crab Fund referred to in subclause 105.b of the Fisheries chapter;

    e. the Wildlife Fund referred to in clause 9 of the Wildlife chapter; and

    f. the Reconciliation Fund referred to in clause 30 of the Lands chapter,

    will be paid in accordance with the Capital Transfer Payment Plan in Schedule 1.

2. The value in 2006 of the Capital Transfer referred to in clause 1 is approximately $13.9 million.

NEGOTIATION LOAN REPAYMENT

3. Subject to clause 5, Tsawwassen First Nation will make negotiation loan repayments to Canada in accordance with the Negotiation Loan Repayment Plan in Schedule 2.

4. Canada may set off and deduct from a payment made under clause 1, the amount of a negotiation loan repayment to be made under clause 3 on the same date, except to the extent that the negotiation loan repayment amount has been prepaid in accordance with clause 5.

PREPAYMENTS

5. In addition to any negotiation loan repayment amount required under clause 3, Tsawwassen First Nation may make loan prepayments to Canada. All prepayments will be applied to the outstanding scheduled negotiation loan

repayment amounts in consecutive order from the Effective Date. Tsawwassen First Nation will notify Canada in writing of a prepayment at least 30 days before the date of that prepayment.

6. The “n” anniversary for which a prepayment is to be applied will be the earliest anniversary for which a scheduled negotiation loan repayment amount, or a portion thereof, remains outstanding. Any loan prepayment applied to an outstanding negotiation loan repayment amount, or to a portion thereof, will be credited at its future value, as of the “n” anniversary, determined in accordance with the following formula:

   Future Value = Prepayment * $(1+C)^K$ * (1+C*H/365)

   where,

   “/” means divided by;

   “*” means multiplied by;

   “K” is the number of complete years between the date of the prepayment and the “n” anniversary;

   “H” is one plus the number of days remaining in the period between the date of the prepayment and the “n” anniversary, once the number of complete years referred to in “K” above has been deducted, and

   “C” is 4.545 per cent per year.

7. If the future value of the prepayment exceeds the outstanding amount of the negotiation loan repayment amount scheduled for the “n” anniversary, the excess will be deemed to be a prepayment made on the “n” anniversary so that the future value of the excess will be applied as of the next anniversary in a manner analogous to that described in this clause.

8. On receipt of a prepayment, Canada will issue a letter to Tsawwassen First Nation setting out the amount of the prepayment received and the manner in which it will be applied.

SCHEDULE 1 CAPITAL TRANSFER PAYMENT PLAN

Part 1

PAYMENT DATE	PROVISIONAL PAYMENT AMOUNT
Effective Date	$**3,404,489**
First anniversary of Effective Date	$1,000,000
Second anniversary of Effective Date	$1,000,000
Third anniversary of Effective Date	$1,000,000
Fourth anniversary of Effective Date	$1,000,000
Fifth anniversary of Effective Date	$1,000,000
Sixth anniversary of Effective Date	$1,000,000
Seventh anniversary of Effective Date	$1,000,000
Eighth anniversary of Effective Date	$1,000,000
Ninth anniversary of Effective Date	$1,000,000

Part 2

FUND	PAYMENT DATE	PROVISIONAL PAYMENT AMOUNT
Economic Development Capital Fund	Effective Date	$1,055,304
Forest Resources Fund	Effective Date	$105,530
Commercial Fish Fund	Effective Date	$1,155,304
Commercial Crab Fund	Effective Date	$450,000
Wildlife Fund	Effective Date	$50,000
Reconciliation Fund	Effective Date	$440,000

NOTES FOR FINALIZING SCHEDULE 1

These notes will not form part of this Agreement. The purpose of these notes is to enable the Parties to calculate on the Revision Date the amounts to be shown in the final version of this Schedule. The Provisional Payment Amounts are expressed in second quarter 2006 dollars.

These instructions will be deleted, and will no longer form part of this Agreement, when this Schedule is completed in accordance with these instructions and the Effective Date occurs.

1. In these notes:

"FDDIPI" means the Final Domestic Demand Implicit Price Index for Canada, series D100466, published regularly by Statistics Canada in Matrix 10512:

Implicit Price Indexes, Gross Domestic Product, or its replacement series as specified by Statistics Canada;

"Revision Date" means the date 30 days before the Effective Date, or another date if the Parties agree;

"Signing Date" means the date on which this Agreement is signed by the Parties;

"Transition Date" is the date that is 15 months after the Signing Date.

2. If the period between the Signing Date and the Effective Date is less than 15 months, on the Revision Date each provisional payment amount in the Capital Transfer Payment Plan will be adjusted as follows:

   provisional payment amount * M/L

   where,

   "/" means divided by;

   "*" means multiplied by;

   "L" is the value of FDDIPI for the first quarter of 2006 published by Statistics Canada at the same time that the values used in M are published; and

   "M" is the first published value of FDDIPI for the latest calendar quarter for which Statistics Canada has published a FDDIPI before the Revision Date.

3. If the period between the Signing Date and the Effective Date is greater than 15 months, on the Revision Date each provisional payment amount in the Capital Transfer Payment Plan will be adjusted as follows:

   provisional payment amount * $[(P/Q) * (1 + CR)^{Y} * (1+CR*D/365)]$

   where:

   "Q" is the value of FDDIPI for the first quarter of 2006 published by Statistics Canada at the same time that the values used in P are published;

   "P" is the first published value of FDDIPI for the latest calendar quarter for which Statistics Canada has published a FDDIPI before the Transition Date;

   "Y" means the number of complete years between the Transition Date and the Effective Date;

   "D" is the number of days remaining in the period between the Transition Date and the Effective Date, after deducting the complete years in that period that have been taken into account in the determination of Y; and

"CR" is 4.545 per cent.

The purpose of applying clause 3 is to limit the period for which the Capital Transfer is adjusted by FDDIPI to the period that ends on the date that is 15 months after the Signing Date, and to lengthen the period for which the Capital Transfer is adjusted by the calculation rate to the period between the date that is 15 months after the Signing Date and the Effective Date.

4. On the Revision Date, following the adjustment performed in accordance with either clause 2 or 3 of these notes, the Capital Transfer Payment Plan will be amended to incorporate the adjusted figures and the headings in the Capital Transfer Payment Plan above will be replaced by the following headings:

Part 1

	PAYMENT AMOUNT
PAYMENT DATE	**CANADA WILL PAY**

Part 2

FUND	**PAYMENT DATE**	**PAYMENT AMOUNT**
		CANADA WILL PAY

SCHEDULE 2 NEGOTIATION LOAN REPAYMENT PLAN

Negotiation Loan Repayment Plan

PAYMENT DATE	PROVISIONAL NEGOTIATION LOAN REPAYMENT AMOUNT
Effective Date	$1,336,097
First anniversary of Effective Date	$ 469,478
Second anniversary of Effective Date	$ 469,478
Third anniversary of Effective Date	$ 469,478
Fourth anniversary of Effective Date	$ 469,478
Fifth anniversary of Effective Date	$ 469,478
Sixth anniversary of Effective Date	$ 469,478
Seventh anniversary of Effective Date	$ 469,478
Eighth anniversary of Effective Date	$ 469,478
Ninth anniversary of Effective Date	$ 469,478

NOTES FOR FINALIZING SCHEDULE 2

These notes will not form part of this Agreement. The purpose of these notes is to enable the Parties to calculate on the Revision Date the amounts to be shown in the final version of this Schedule.

The provisional loan repayment amounts are based on total outstanding negotiation loans and interest accrued as of March 31, 2006. Final loan repayment amounts, including any further negotiation loans made and interest accrued after March 31, 2006, will be calculated and included in the final loan repayment schedule in accordance with the following notes.

1. In these notes:

"Revision Date" is the same as the Revision Date in Schedule 1.

2. On the Revision Date, the provisional negotiation loan repayment amounts in the Negotiation Loan Repayment Plan will be adjusted to final negotiation loan repayment amounts by:

    a. determining the amount of the additional negotiation loans made by Canada to Tsawwassen First Nation which were not included in the calculation of the provisional negotiation loan repayment amounts and any additional interest accrued since the provisional negotiation loan and interest amounts were calculated; and

b. pro-rating and adjusting the additional amounts determined in accordance with subclause 2.a of these notes for Tsawwassen First Nation and applying these amounts to the Negotiation Loan Repayment Plan such that the amounts in the final Negotiation Loan Repayment Plan are proportional to the amounts in the provisional Negotiation Loan Repayment Plan and such that the final Negotiation Loan Repayment Plan incorporates interest on unpaid loan balances, using 4.545% as an interest rate per year beginning at the Effective Date and compounded annually, which is the same rate of interest that was used to establish the provisional Negotiation Loan Repayment Plan.

3. Canada will calculate the final negotiation loan repayment amounts based on a document that Canada and Tsawwassen First Nation will produce jointly before the Revision Date setting out the final negotiation loan and interest amounts and the relevant terms and conditions of the loans as at the Effective Date.

4. On the Revision Date, following the adjustment performed in accordance with clause 2 of these notes, the Negotiation Loan Repayment Plan will be amended to incorporate the adjusted figures and the headings in the Negotiation Loan Repayment Plan will be replaced by the following headings:

PAYMENT DATE	**NEGOTIATION LOAN REPAYMENT AMOUNT**

CHAPTER 19
FISCAL RELATIONS

1. The Parties acknowledge that they each have a role in supporting Tsawwassen First Nation, through direct or indirect financial support or through access to public programs and services, as set out in the Fiscal Financing Agreement or provided through other arrangements.

2. Every five years, or other periods as may be agreed, the Parties will negotiate and attempt to reach agreement on a Fiscal Financing Agreement that will:

    a. set out the Agreed-Upon Programs and Services, including the recipients of those programs and services;

    b. set out the responsibilities of each of the Parties in respect of the Agreed-Upon Programs and Services;

    c. set out the funding in respect of the Agreed-Upon Programs and Services;

    d. set out the contribution of Tsawwassen First Nation to the funding of the Agreed-Upon Programs and Services from its own source revenues as determined under clause 4 of this chapter;

    e. set out mechanisms for the transfer of funds to Tsawwassen First Nation from Canada or British Columbia;

    f. set out procedures for:

        i. the collection and exchange of information, including statistical and financial information, required for the administration of Fiscal Financing Agreements;

        ii. dispute resolution in relation to Fiscal Financing Agreements;

        iii. the accountability requirements, including those in respect of reporting and audit, of Tsawwassen First Nation;

        iv. negotiating the inclusion of additional programs and services to the list of the Agreed-Upon Programs and Services within the term of a Fiscal Financing Agreement;

        v. addressing exceptional circumstances and emergencies; and

        vi. negotiating subsequent Fiscal Financing Agreements; and

g. address other matters as agreed to by the Parties.

3. In negotiating a Fiscal Financing Agreement, the Parties will take into account:

a. the cost of providing, either directly or indirectly, the Agreed-Upon Programs and Services that are reasonably comparable to similar programs and services available in other communities of similar size and circumstance in south-western British Columbia;

b. efficiency and effectiveness, including opportunities for economies of scale, in the provision of the Agreed-Upon Programs and Services, which may include, where appropriate, cooperative arrangements with other governments, First Nations or existing service providers;

c. the existing levels of funding provided by Canada or British Columbia;

d. the costs of operating Tsawwassen Government;

e. the prevailing fiscal policies of Canada or British Columbia;

f. the location and accessibility of communities on Tsawwassen Lands;

g. the jurisdictions, authorities, programs and services assumed by Tsawwassen First Nation under this Agreement;

h. the desirability of reasonably stable, predictable and flexible fiscal arrangements;

i. the changes in price and volume, which may include the number of individuals eligible to receive the Agreed-Upon Programs and Services; and

j. other matters as agreed by the Parties.

4. From time to time, the Parties will negotiate and attempt to reach agreement on the own source revenue contribution of Tsawwassen First Nation to the funding of the Agreed-Upon Programs and Services under subclause 2.d, taking into account:

a. the capacity of Tsawwassen First Nation to generate revenues;

b. the existing Tsawwassen First Nation own source revenue arrangements negotiated under this Agreement;

c. the prevailing fiscal policies on the treatment of First Nation own source revenue in self government fiscal arrangements;

d. that own source revenue arrangements should not unreasonably reduce incentives for Tsawwassen First Nation to generate revenues;

e. that the reliance of Tsawwassen First Nation on fiscal transfers should decrease over time as it becomes more self-sufficient; and

f. other matters as agreed by the Parties.

5. In negotiating the own source revenue contribution of Tsawwassen First Nation to the funding of the Agreed-Upon Program and Services under clause 4, unless otherwise agreed:

a. own source revenue arrangements will not include:

i. the Capital Transfer, in the manner set out in the initial agreement in respect of own source revenues;

ii. the proceeds from the sale of Tsawwassen Lands;

iii. any federal or provincial payments under Fiscal Financing Agreements or other agreements for programs and services;

iv. the interest or income on funds received by Tsawwassen First Nation from Canada or British Columbia for a purpose related to the implementation of this Agreement and held in a special purpose fund as set out in the initial agreement in respect of own source revenues, or as agreed by the Parties from time to time, provided that the interest or income is used for a purpose or activity that is intended by the Parties to be funded from that special purpose fund;

v. the payments received as a result of the settlement in 2004 relating to Roberts Bank port facility and the Tsawwassen ferry terminal;

vi. gifts or charitable donations;

vii. the amounts received as compensation for specific losses or damages to property or assets;

viii. a Specific Claim Settlement; or

ix. other sources agreed by the Parties; and

b. own source revenue arrangements will not permit:

i. Canada to benefit from the decision of British Columbia to vacate tax room or to transfer revenues or tax authorities to Tsawwassen First Nation; or

ii. British Columbia to benefit from the decision of Canada to vacate tax room or to transfer revenues or tax authorities to Tsawwassen First Nation.

6. If the Parties do not reach agreement on a subsequent Fiscal Financing Agreement by the expiry date of an existing Fiscal Financing Agreement, the existing Fiscal Financing Agreement:

a. will continue in effect for up to two years from its original expiry date, or for such other period of time as the Parties may agree in writing; and

b. will terminate on the earlier of:

i. the expiry of the extended term determined in accordance with subclause 6.a; and

ii. the date of commencement of a subsequent Fiscal Financing Agreement.

7. The creation of Tsawwassen Government, the provision of Tsawwassen Government legislative authority under this Agreement, or the exercise of Tsawwassen Government legislative authority does not create or imply any financial obligation or service responsibility on the part of any Party, other than as set out in a Fiscal Financing Agreement.

8. For greater certainty, where the Parties agree in the initial Fiscal Financing Agreement that Canada will provide Time Limited Federal Funding for any Tsawwassen First Nation responsibilities specified in that agreement and Canada duly provides the Time Limited Federal Funding, Canada has no obligation to negotiate and attempt to reach agreement on the provision of further funding for any of the responsibilities specified.

9. For greater certainty, where the Parties agree in the initial Fiscal Financing Agreement that British Columbia will provide Time Limited Provincial Funding for any Tsawwassen First Nation responsibilities specified in that agreement and British Columbia duly provides the Time Limited Provincial Funding, British Columbia has no obligation to negotiate and attempt to

reach agreement on the provision of further funding for any of the responsibilities specified.

10. Any funding required for the purposes of a Fiscal Financing Agreement, or any other agreement that is reached as a result of negotiations that are required or permitted under any provision of this Agreement and that provides for financial obligations to be assumed by a Party, is subject to the appropriation of funds:

    a. in the case of Canada, by Parliament;

    b. in the case of British Columbia, by the Legislature of British Columbia; and

    c. in the case of Tsawwassen First Nation, by Tsawwassen Government.

CHAPTER 20
TAXATION

DIRECT TAXATION

1. Tsawwassen Government may make laws in respect of**:**

    a. Direct taxation of Tsawwassen Members within Tsawwassen Lands in order to raise revenue for Tsawwassen First Nation purposes;

    b. the implementation of any taxation agreement entered into between Tsawwassen First Nation and Canada or British Columbia.

2. Tsawwassen Government powers provided for in subclause 1.a will not limit the taxation powers of Canada or British Columbia.

3. Despite clause 59 of the General Provisions chapter, any Tsawwassen Law made under this chapter or any exercise of power by Tsawwassen First Nation, is subject to and will conform with International Legal Obligations in respect of taxation, and clauses 30 through 34 of the General Provisions chapter do not apply in respect of International Legal Obligations in respect of taxation.

TAXATION POWERS AGREEMENTS

4. From time to time, at the request of Tsawwassen First Nation, Canada and British Columbia, together or separately, may negotiate and attempt to reach agreement with Tsawwassen First Nation in respect of:

    a. the extent, if any, to which the power of Tsawwassen Government under subclause 1.a may be extended to apply to Persons, other than Tsawwassen Members, within Tsawwassen Lands; and

    b. the manner in which the taxation powers of Tsawwassen Government under subclause 1.a, as extended by the application of subclause 4.a, will be coordinated with existing federal or provincial tax systems, including:

        i. the amount of tax room that Canada or British Columbia may be prepared to vacate in favour of taxes imposed by Tsawwassen First Nation; and

        ii. the terms and conditions under which Canada or British Columbia may administer, on behalf of Tsawwassen First Nation, taxes imposed by Tsawwassen First Nation.

5. Despite the provisions of the Governance chapter, Parties to an agreement under clause 4 may provide for an alternative approach to the appeal, enforcement or adjudication of a Tsawwassen Law in respect of taxation.

6. Tsawwassen Law with respect to taxation may provide for:

   a. a fine that is greater than the limits set out in clause 133 of the Governance chapter; or

   b. a term of imprisonment that is greater than the limit set out in clause 135 of the Governance chapter,

   where there is an agreement to that effect as contemplated in clause 4.

TSAWWASSEN LANDS

7. Tsawwassen First Nation is not subject to capital taxation, including real property taxes and taxes on capital or wealth, in respect of the estate or interest of Tsawwassen First Nation in Tsawwassen Lands on which there are no improvements or on which there is a Designated Improvement.

8. In clause 7, “Designated Improvement” means:

   a. a residence of a Tsawwassen Member;

   b. an improvement, all or substantially all of which is used for a Public Purpose or a purpose ancillary or incidental to the Public Purpose, including:

      i. a public governance or administration building, public meeting building, public hall, public school or other public educational institution, teacherage, public library, public health facility, public care facility, public seniors home, public museum, place of public worship, manse, fire hall, police facility, court, correction facility, public recreation facility, public park, or an improvement used for Tsawwassen cultural or spiritual purposes;

      ii. works of public convenience constructed or operated for the benefit of Tsawwassen Members, occupiers of Tsawwassen Lands or persons visiting or in transit through Tsawwassen Lands, including public utility works, public works used to treat or deliver water or as part of a public sewer system, public roads, public bridges, public drainage ditches, traffic signals, street lights, public sidewalks, and public parking lots; or

      iii. similar improvements;

c. an improvement that is used primarily for the management, protection or enhancement of a natural resource, including a forestry, fishery or wildlife resource, other than an improvement that is used primarily in harvesting or processing a natural resource for profit; and

d. forest resources and forest roads.

9. In subclause 8.b, “Public Purpose” does not include the provision of property or services primarily for the purpose of profit.

10. For the purposes of clauses 7 and 8:

a. for greater certainty, Tsawwassen Lands include the improvements on those lands; and

b. an improvement is deemed to be on the land that is necessarily ancillary to the use of the improvement.

11. For greater certainty, the exemption from taxation in clause 7 does not apply to a taxpayer other than Tsawwassen First Nation nor does it apply in respect of a disposition of Tsawwassen Lands or interests in those lands by Tsawwassen First Nation.

12. For Canada and British Columbia income tax purposes, proceeds of disposition received by Tsawwassen First Nation on expropriation of Tsawwassen Lands in accordance with the Lands chapter will not be taxable.

TRANSFER OF TSAWWASSEN CAPITAL

13. A transfer under this Agreement of Tsawwassen Capital and a recognition of ownership under this Agreement of Tsawwassen Capital is not taxable.

14. For purposes of clause 13, an amount paid to a Tsawwassen Member is deemed to be a transfer of Tsawwassen Capital under this Agreement if the payment:

a. reasonably can be considered to be a distribution of a Capital Transfer received by Tsawwassen First Nation; and

b. becomes payable to the Tsawwassen Member within 90 days and is paid to the Tsawwassen Member within 270 days from the date that Tsawwassen First Nation receives the Capital Transfer.

15. For Canada and British Columbia income tax purposes, Tsawwassen Capital is deemed to have been acquired by Tsawwassen First Nation at a cost equal to its fair market value on the later of:

    a. the Effective Date; and

    b. the date of transfer of ownership or the date of recognition of ownership, as the case may be.

INDIAN ACT TAX EXEMPTION AND TRANSITIONAL EXEMPTION

16. Section 87 of the *Indian Act* will have no application to a Tsawwassen Member:

    a. in respect of Transaction Taxes, as of the first day of the first month after the eighth anniversary of the Effective Date; and

    b. in respect of all other taxes, as of the first day of the first calendar year after the 12th anniversary of the Effective Date.

17. Subject to subclauses 1.a and 4.a and clauses 18 to 21, as of the Effective Date, the following is exempt from taxation:

    a. the interest of an Indian in Tsawwassen Lands that were Reserve lands or Surrendered Lands on the day before the Effective Date;

    b. the personal property of an Indian situated on Tsawwassen Lands that were Reserve lands on the day before the Effective Date; and

    c. an Indian in respect of the ownership, occupation, possession or use of any property referred to in subclause 17.a or 17.b.

18. Clause 17 will cease to be effective:

    a. in respect of Transaction Taxes, as of the first day of the first month after the eighth anniversary of the Effective Date; and

    b. in respect of all other taxes, as of the first day of the first calendar year after the 12th anniversary of the Effective Date.

19. Clause 17 will be interpreted to exempt an Indian in respect of a property or interest, or in respect of the ownership, occupation, possession or use thereof, in the same manner and under the same conditions in which section 87 of the *Indian Act* would have applied, but for this Agreement, if the property were situated on, or the interest were in, a Reserve.

20. Clause 17 only applies to an Indian during the period that section 87 of the *Indian Act* applies to the Indian.

21. If Tsawwassen First Nation imposes a tax within Tsawwassen Lands and concludes a tax agreement for that purpose with Canada or British Columbia as contemplated in clause 4, clause 17 does not apply to the extent that the Tsawwassen First Nation, Canada or British Columbia, as the case may be, imposes a tax that the particular taxation agreement specifies is applicable to Tsawwassen Members and other Indians within Tsawwassen Lands.

TAX TREATMENT AGREEMENT

22. The Parties will enter into a Tax Treatment Agreement, which will come into effect on the Effective Date.

23. Canada and British Columbia will recommend to Parliament and the Legislature of British Columbia, respectively, that the Tax Treatment Agreement be given effect and the force of law under federal and provincial legislation.

CHAPTER 21
ELIGIBILITY AND ENROLMENT

GENERAL

1. Enrolment under this Agreement does not:

    a. confer or deny rights of entry into Canada, Canadian citizenship, or the right to be registered as an Indian under the *Indian Act*, or

    b. except as set out in this Agreement or in any Federal or Provincial Law, impose any obligation on Canada or British Columbia to provide rights or benefits.

TSAWWASSEN ELIGIBILITY CRITERIA

2. An individual is eligible to be enrolled under this Agreement if that individual:

    a. was a member or was entitled to be a member of the Tsawwassen First Nation band under the *Indian Act* as of the day before the Effective Date;

    b. is of Tsawwassen First Nation ancestry;

    c. was adopted under a law recognized in Canada, or under Tsawwassen First Nation customs, by an individual eligible to be enrolled; or

    d. is a descendant of an individual eligible to be enrolled under subclause 2.a, 2.b or 2.c.

3. Despite subclause 2.d, where an individual having no aboriginal ancestry became a member of the Tsawwassen First Nation band under the *Indian Act* before April 17, 1985, because of marriage to a member of the Tsawwassen First Nation band under the *Indian Act*, and that individual subsequently has a child with another individual who is not eligible under clause 2, that child is not eligible to be enrolled.

APPLICATIONS FOR ENROLMENT UNDER THE ENROLMENT COMMITTEE

4. An applicant, on their own behalf, on behalf of a child under the age of 18, or on behalf of an adult whose affairs they have the legal authority to manage, may:

    a. apply to the enrolment committee to be enrolled;

b. appeal a decision of the enrolment committee to the enrolment appeal board; or

c. seek judicial review of a decision of the enrolment appeal board.

5. Each applicant has the burden of demonstrating to the enrolment committee that the applicant meets the eligibility criteria set out in clause 2.

6. If an applicant requests that the name of an individual in relation to whom they submitted an application for enrolment be removed from the enrolment register, the enrolment committee will remove that name and will notify the applicant of the removal.

OTHER LAND CLAIMS AGREEMENTS

7. An applicant may not at the same time be enrolled under this Agreement if the applicant is:

a. a member of an aboriginal group that is a signatory to a treaty;

b. enrolled under another land claims agreement in Canada; or

c. on an *Indian Act* band list, other than that of the Tsawwassen First Nation band under the *Indian Act*.

8. An applicant**,** upon application, must notify the enrolment committee if the applicant, or an individual on behalf of whom the applicant is applying, falls within a category set out in clause 7.

ENROLMENT COMMITTEE

9. The enrolment committee will be established by Tsawwassen First Nation at a time agreed upon by the Parties, and will consist of three representatives appointed by Tsawwassen First Nation.

10. Tsawwassen First Nation will notify Canada and British Columbia of the representatives on the enrolment committee, as soon as practicable upon their appointment.

11. The enrolment committee will:

a. establish its procedures and set its time limits;

b. publish its procedures and time limits, including the eligibility criteria and a list of the documentation and information required of each

applicant**,** in time for individuals to review before making their applications for enrolment;

c. provide an application form to any individual who wishes to apply for enrolment;

d. receive applications for enrolment;

e. consider and make a decision on each application, based on the eligibility criteria set out in clause 2;

f. before the date of the ratification vote**,** enrol applicants who meet the eligibility criteria and who meet the time limits set out in subclause 11.a;

g. maintain a record of those decisions;

h. provide written notification to each applicant and to the Parties of its decision in respect of each application and, if enrolment is refused, include written reasons for that decision;

i. establish and maintain an enrolment register containing the name of each individual who is enrolled;

j. add names to, delete names from, or amend names on, the enrolment register in accordance with this chapter and the decisions of the enrolment appeal board;

k. provide information in respect of an enrolment application, in confidence, on request of the Parties or of the enrolment appeal board, and the Parties acknowledge that such information is personal information as defined in federal and provincial privacy and access to information legislation, and agree to protect that personal information from subsequent disclosures to the extent possible under the law;

l. report to the Parties on the enrolment process as requested;

m. keep information about applications confidential; and

n. on request provide to the Parties without cost a true copy of the enrolment register.

12. After a decision by the enrolment committee and before any appeal of that decision is commenced, an applicant may submit new information to the enrolment committee.

13. The enrolment committee may, before an appeal of a decision is commenced, vary the decision on the basis of new information if it considers the decision was in error.

14. If the enrolment committee does not make a decision in respect of an application within the time established in its procedures, the application will be deemed to be refused and the refusal will constitute grounds for appeal to the enrolment appeal board.

15. Subject to this chapter, all decisions of the enrolment committee are final and binding.

16. In addition to the functions set out in clauses 11 through 15, the enrolment committee will provide the ratification committee with the name of each individual who is enrolled, and any other relevant information requested by the ratification committee in accordance with the Ratification chapter.

ENROLMENT APPEAL BOARD

17. Tsawwassen First Nation and Canada will each appoint one member to the enrolment appeal board and will jointly appoint a third member, and the members will select, from among themselves, a chairperson.

18. Tsawwassen First Nation and Canada will establish the enrolment appeal board at a date agreed upon by the Parties.

19. A member of the enrolment committee may not also be a member of the enrolment appeal board.

20. The enrolment appeal board will:

    a. establish its procedures and set its time limits;

    b. publish its procedures and time limits;

    c. hear and determine any appeal brought under subclause 4.b or clause 14, including:

        i. determining whether the appellant, or the individual on behalf of whom the appellant appealed, will be enrolled;

        ii. re-hearing any matters arising from clauses 31 or 32; and

        iii. maintaining a record of those decisions;

d. conduct hearings in public, unless it determines in a particular case that there are reasons for confidentiality that outweigh the public interest in having an open hearing;

e. provide written reasons for each decision to each appellant and to the Parties;

f. maintain a record of decisions and provide those decisions to the enrolment committee as required; and

g. provide a report to the Parties on the appeal process, as requested.

21. An applicant under clause 4, or a Party, may appeal by written notice to the enrolment appeal board:

a. any decision of the enrolment committee made under subclause 11.e or clause 13; and

b. any application that is deemed to be refused under clause 14.

22. On or after the Effective Date, the enrolment appeal board may:

a. require, by summons, any individual to appear before the enrolment appeal board as a witness and to produce any relevant document in their possession;

b. direct a witness to answer, on oath or solemn affirmation, any relevant question posed to the witness; and

c. re-hear an appeal that was completed before the Effective Date.

23. A judge of the Provincial Court of British Columbia, on application by the enrolment appeal board, may enforce a summons or direction under clause 22.

24. An appellant or Party, or a witness appearing before the enrolment appeal board, may be represented by counsel or an agent.

25. Subject to clauses 30 through 33, all decisions of the enrolment appeal board are final and binding.

26. No action lies against the enrolment appeal board, or any member of the enrolment appeal board, for anything done or omitted to be done in good faith in the performance or intended performance of a duty under this chapter.

FUNDING

27. Canada and British Columbia will provide to Tsawwassen First Nation an agreed amount of funding for the enrolment committee and the enrolment appeal board to carry out the functions referred to in clauses 9 through 22.

TRANSITION TO TSAWWASSEN GOVERNMENT

28. The enrolment committee and the enrolment appeal board will be dissolved when they have rendered final decisions in respect of those applications or appeals commenced before the Effective Date.

29. After the Effective Date, Tsawwassen First Nation will:

    a. be responsible for an enrolment process and the administrative costs of that process;

    b. maintain an enrolment register;

    c. provide a copy of the enrolment register to Canada and British Columbia each year or as requested, without cost; and

    d. provide information concerning enrolment to Canada and British Columbia as requested, without cost.

JUDICIAL REVIEW

30. An applicant or a Party may apply to the Supreme Court of British Columbia to review a decision of the enrolment appeal board on the grounds that the enrolment appeal board:

    a. acted without jurisdiction, acted beyond its jurisdiction or refused to exercise its jurisdiction;

    b. failed to observe procedural fairness;

    c. erred in law; or

    d. based its decision on an erroneous finding of fact that it made in a perverse or capricious manner or without regard for the material before it.

31. On an application for judicial review under clause 30, the court may dismiss the application, set aside the decision, or refer the matter back to the enrolment appeal board for determination in accordance with any directions that the court considers appropriate.

32. If the enrolment appeal board fails to hear or decide an appeal within a reasonable time, an applicant or Party may apply to the Supreme Court of British Columbia for an order directing the enrolment appeal board to hear or decide the appeal, in accordance with any directions that the court considers appropriate.

33. An applicant or Party may apply for judicial review within 60 days of receiving notification of the decision of the enrolment appeal board or a longer time as determined by the court.

CHAPTER 22
DISPUTE RESOLUTION

GENERAL

1. The Parties share the following objectives:

    a. to cooperate with each other to develop harmonious working relationships;

    b. to prevent or minimize Disagreements;

    c. to identify Disagreements quickly and resolve them in the most expeditious and cost-effective manner; and

    d. to resolve Disagreements in a non-adversarial, collaborative and informal atmosphere.

2. Except as otherwise provided, participating Parties may agree to vary a procedural requirement contained in this chapter, or in Appendix P, as it applies to a particular Disagreement.

3. Participating Parties may agree to, or the Supreme Court of British Columbia, on application, may order:

    a. the abridgment of a time limit; or

    b. the extension of a time limit, despite the expiration of that time limit in this chapter or in Appendix P.

SCOPE: WHEN THIS CHAPTER APPLIES TO A DISAGREEMENT

4. In this chapter, and in Appendix P, a Party is deemed to be directly engaged in a Disagreement if another Party, acting reasonably, gives the first Party a written notice requiring it to participate in a process described in this chapter to resolve the Disagreement.

5. This chapter is not intended to apply to all conflicts or disputes between or among the Parties, but is limited to the conflicts or disputes described in clause 6.

6. This chapter only applies to:

    a. a conflict or dispute in respect of:

i. the interpretation, application, or implementation of this Agreement, or

ii. a breach or anticipated breach of this Agreement;

b. a conflict or dispute, where provided for in this Agreement; or

c. negotiations required to be conducted under any provision of this Agreement that provides that the Parties, or any of them, "will negotiate and attempt to reach agreement".

7. This chapter does not apply to:

a. an agreement between or among the Parties other than this Agreement, unless the Parties have agreed that this chapter applies to that agreement;

b. the implementation plan; or

c. conflicts or disputes, where excluded from this chapter.

8. Nothing in this chapter limits the application of a dispute resolution process, under a Federal or Provincial Law, to a conflict or dispute involving a person if that conflict or dispute is not a Disagreement.

9. Nothing in a Federal Law or Provincial Law limits the right of a Party to refer a Disagreement to this chapter.

DISAGREEMENTS TO GO THROUGH STAGES

10. The Parties desire and expect that most Disagreements will be resolved by informal discussions between or among the Parties, without the necessity of invoking this chapter.

11. Subject to the provisions of this Agreement, Disagreements not resolved informally will progress, until resolved, through the following stages:

a. Stage One: formal, unassisted efforts to reach agreement between or among the Parties in collaborative negotiations under Appendix P-1;

b. Stage Two: structured efforts to reach agreement between or among the Parties with the assistance of a Neutral, who has no authority to resolve the dispute, in a facilitated process under Appendix P-2, P-3, P-4 or P-5 as applicable; and

c. Stage Three: final adjudication in arbitral proceedings under Appendix P-6, or in judicial proceedings.

12. Except as otherwise provided, no Party may refer a Disagreement to final adjudication in Stage Three without first proceeding through Stage One and a facilitated process in Stage Two as required in this chapter.

13. Nothing in this chapter prevents a Party from commencing arbitral or judicial proceedings at any time:

a. to prevent the loss of a right to commence proceedings due to the expiration of a limitation period; or

b. to obtain interlocutory or interim relief that is otherwise available pending resolution of the Disagreement under this chapter.

STAGE ONE: COLLABORATIVE NEGOTIATIONS

14. If a Disagreement is not resolved by informal discussion and a Party directly engaged in the Disagreement wishes to invoke this chapter, that Party will deliver a written notice, as required under Appendix P-1, as soon as practicable to the other Parties, requiring the commencement of collaborative negotiations.

15. Upon receiving the notice under clause 14, a Party directly engaged in the Disagreement will participate in the collaborative negotiations.

16. A Party not directly engaged in the Disagreement may participate in the collaborative negotiations by giving written notice to the other Parties, preferably before the collaborative negotiations commence.

17. If the Parties have commenced negotiations in the circumstances described in subclause 6.c then, for all purposes under this chapter, those negotiations will be deemed collaborative negotiations and the particular matter under negotiation will be considered a Disagreement.

18. Collaborative negotiations terminate in the circumstances set out in Appendix P-1.

STAGE TWO: FACILITATED PROCESSES

19. Within 15 days of termination of collaborative negotiations that have not resolved the Disagreement, a Party directly engaged in a Disagreement by delivering a notice to the other Parties may require the commencement of a facilitated process.

20. A notice under clause 19:

    a. will include the name of the Party or Parties directly engaged in the Disagreement and a summary of the particulars of the Disagreement; and

    b. may propose the use of a particular facilitated process described in clause 23.

21. Upon receiving a notice under clause 19, a Party directly engaged in the Disagreement will participate in a facilitated process described in clause 23.

22. A Party not directly engaged in the Disagreement may participate in the facilitated process by giving written notice to the other Parties within 15 days of delivery of a notice under clause 19.

23. Within 30 days after delivery of a notice under clause 19, the Parties directly engaged in the Disagreement will attempt to agree to use one of the following processes:

    a. mediation under Appendix P-2;

    b. technical advisory panel under Appendix P-3;

    c. neutral evaluation under Appendix P-4;

    d. elders advisory council under Appendix P-5; or

    e. any other non-binding dispute resolution process assisted by a Neutral

    and if they fail to agree, they will be deemed to have selected mediation under Appendix P-2.

24. A facilitated process terminates:

    a. in the circumstances set out in the applicable Appendix; or

    b. as agreed by the participating Parties, if an Appendix does not apply.

NEGOTIATING CONDITIONS

25. In order to enhance the prospect of reaching agreement, the Parties participating in collaborative negotiations or a negotiation component of a facilitated process will:

a. at the request of a participating Party, provide timely disclosure of sufficient information and documents to enable a full examination of the subject matter being negotiated;

b. make every reasonable effort to appoint negotiating representatives who have sufficient authority to reach an agreement, or who have ready access to such authority; and

c. negotiate in good faith.

AGREEMENT

26. Any agreement reached in a process under this chapter

    a. will be:

        i. recorded in writing;

        ii. signed by authorized representatives of the Parties to the agreement; and

        iii. delivered to all Parties; and

    b. is binding only on the Parties who have signed the agreement.

STAGE THREE: ADJUDICATION – ARBITRATION

27. After the later of termination of collaborative negotiations, or of a required facilitated process, in respect of a Disagreement arising out of any provision of this Agreement that provides that a matter will be “finally determined by arbitration”, the Disagreement will, on the delivery of a notice by a Party directly engaged in the Disagreement, to all Parties as required under Appendix P-6, be referred to and finally resolved by arbitration in accordance with that Appendix.

28. After the later of termination of collaborative negotiations, or a required facilitated process, in respect of any Disagreement, other than a Disagreement referred to in clause 27, and with the written agreement of all the Parties directly engaged in the Disagreement, the Disagreement will be referred to, and finally resolved by, arbitration in accordance with Appendix P-6.

29. Where two Parties make a written agreement under clause 28, they will deliver a copy of the agreement as soon as practicable to the Party that is not directly engaged in the Disagreement.

30. Upon delivering a written notice to the participating Parties to the arbitration within 15 days after receiving a notice under clause 27 or copy of a written agreement under clause 28, a Party not directly engaged in the Disagreement is entitled to be, and will be added as, a party to the arbitration of that Disagreement whether or not that Party has participated in collaborative negotiations or a required facilitated process.

31. Despite clause 30, an arbitral tribunal may make an order adding a Party as a participating Party at any time, if the arbitral tribunal considers that:

    a. the participating Parties will not be unduly prejudiced; or

    b. the issues stated in the pleadings are materially different from those identified in the notice to arbitrate under clause 27 or the written agreement to arbitrate under clause 28,

    and, in that event, the arbitral tribunal may make any order it considers appropriate or necessary in the circumstances in respect of conditions, including the payment of costs, upon which the Party may be added.

EFFECT OF ARBITRAL AWARD

32. An arbitral award is final and binding on all Parties whether or not a Party has participated in the arbitration.

33. Despite clause 32, an arbitral award is not binding on a Party that has not participated in the arbitration if:

    a. the Party did not receive copies of:

        i. the notice of arbitration or agreement to arbitrate; or

        ii. the pleadings and any amendments or supplements to the pleadings; or

    b. the arbitral tribunal refused to add the Party as a participating Party to the arbitration under clause 31.

APPLICATION OF LEGISLATION

34. No legislation of any Party in respect of arbitration, except the Settlement Legislation, applies to an arbitration conducted under this chapter.

35. A court must not intervene or offer assistance in an arbitration or review an arbitral award under this chapter except as provided in Appendix P-6.

STAGE THREE: ADJUDICATION – JUDICIAL PROCEEDINGS

36. Nothing in this chapter creates a cause of action where none otherwise exists.

37. Subject to clause 38, at any time a Party may commence proceedings in the Supreme Court of British Columbia in respect of a Disagreement.

38. A Party may not commence judicial proceedings in respect of a Disagreement if the Disagreement:

    a. is required to be referred to arbitration under clause 27 or has been agreed to be referred to arbitration under clause 28;

    b. has not been referred to collaborative negotiations or a facilitated process as required under this chapter; or

    c. has been referred to collaborative negotiations or a facilitated process that has not yet been terminated.

39. Nothing in subclause 38.a prevents an arbitral tribunal or the participating Parties from requesting the Supreme Court of British Columbia to make a ruling respecting a question of law as permitted in Appendix P-6.

NOTICE TO PARTIES

40. If, in any judicial or administrative proceeding, an issue arises in respect of:

    a. the interpretation or validity of this Agreement; or

    b. the validity, or applicability of:

        i. any Settlement Legislation; or

        ii. any Tsawwassen Law,

    the issue will not be decided until the party raising the issue has properly served notice on the Attorney General of British Columbia, the Attorney General of Canada, and Tsawwassen First Nation.

41. In any judicial or administrative proceeding to which clause 40 applies, the Attorney General of British Columbia, the Attorney General of Canada, and Tsawwassen First Nation may appear and participate in the proceedings as parties with the same rights as any other party.

COSTS

42. Except as provided otherwise in the Appendices, each participating Party will bear the costs of its own participation, representation, and appointments in collaborative negotiations, a facilitated process, or an arbitration, conducted under this chapter.

43. Subject to clause 42 and except as provided otherwise in the Appendices, the participating Parties will share equally all costs of collaborative negotiations, a facilitated process, or an arbitration, conducted under this chapter.

44. For purposes of clause 43, “costs” include:

    a. fees of the Neutrals;

    b. costs of hearing and meeting rooms;

    c. actual and reasonable costs of communications, accommodation;

    d. meals, and travel of the Neutrals;

    e. costs of required secretarial and administrative support for the Neutrals, as permitted in the Appendices; and

    f. administration fees of a Neutral Appointing Authority.

CHAPTER 23
AMENDMENT

1. Any Party may propose an amendment to this Agreement.

2. Before proceeding with an amendment to this Agreement, the Parties will attempt to find other means to address the interests of the Party proposing the amendment.

3. Amendments to this Agreement require the consent of all Parties.

4. Where the Parties agree to amend this Agreement, they will determine the form and wording of the amendment, including additions, substitutions and deletions.

5. Canada will give consent to an amendment to this Agreement by order of the Governor in Council.

6. British Columbia will give consent to an amendment to this Agreement by resolution of the Legislative Assembly of British Columbia.

7. Where federal or provincial legislation is required to give effect to an amendment to this Agreement, Canada or British Columbia, as the case may be, will take all reasonable steps to enact the legislation.

8. Tsawwassen First Nation will give consent to an amendment to this Agreement by a resolution of the legislative members of Tsawwassen Government.

9. Unless the Parties agree otherwise, an amendment to this Agreement takes effect once the consent requirements under clauses 3, 5, 6 and 8 are completed and any legislation required under clause 7 has been brought into force.

10. Each Party will give notice to the other Parties when consent in accordance with clause 5, 6 or 8, as applicable, has been given and when any legislation referred to in clause 7, if applicable, has been brought into force.

11. Despite the requirement for consent referred to in clauses 3, 5, 6, 8 and 9, where this Agreement provides that the Parties will amend this Agreement upon the happening of an event, the Parties will take all further steps necessary, including those referred to in clause 4, to conclude and give effect to the amendment.

12. The Parties agree to take the necessary steps to implement an amendment to this Agreement as soon as possible after the amendment takes effect.

13. Each Party will be responsible for publishing all amendments to this Agreement.

DEPOSIT OF AGREEMENT

14. The Parties will deposit a copy of this Agreement and any amendments to this Agreement, including any instruments giving effect to an amendment, in the following locations:

    a. by Canada, in:

        i. the Library of Parliament;

        ii. the library of the Department of Indian Affairs and Northern Development in the National Capital Region; and

        iii. the library of the regional office of the Department of Indian Affairs and Northern Development in British Columbia;

    b. by British Columbia, in the Legislative Library of British Columbia;

    c. by Tsawwassen First Nation, in its main office; and

    d. any other location agreed by the Parties.

PERIODIC REVIEW

15. The Parties recognize and acknowledge that this Agreement provides a foundation for an ongoing relationship among the Parties and commit to conducting a periodic review of this Agreement in accordance with clauses 16 through 23.

16. Sixty days before each Periodic Review Date, each Party will provide the other Parties with written notice if the Party wishes to discuss a matter contemplated by clause 17 and if no notice is provided the Parties will forgo engaging in a review for that Review Period.

17. The purpose of the periodic review is to provide an opportunity for the Parties to meet and discuss:

    a. the practicability of the harmonization of the legal and administrative systems of Canada and British Columbia with those of Tsawwassen First Nation, including law-making authorities that are being exercised by Tsawwassen First Nation under this Agreement;

b. the practicability of processes established by the Parties in accordance with this Agreement; and

c. other matters in respect of the implementation of the provisions of this Agreement as the Parties may agree in writing.

18. Unless the Parties agree otherwise, the discussion under clause 17 will take place on the Periodic Review Date and such other dates as the Parties agree, but will not exceed the applicable Review Period, and within 60 days of the end of that discussion each Party will provide the other Parties with its written response on any matter discussed during that Review Period.

19. Unless the Parties agree otherwise, the periodic review and all discussions and information relating to the matter of the periodic review are without prejudice to the respective legal positions of the Parties.

20. Nothing made or done in respect of a periodic review, including the discussions or the responses provided by the Parties, creates any legally binding rights or obligations.

21. Except for the commitment of the Parties to meet and provide written responses as set out in clause 18, neither the periodic review process nor the decisions or actions of the Parties relating in any way to the periodic review process are:

a. subject to the process set out in the Dispute Resolution chapter; or

b. reviewable by a court or in any other forum.

22. For greater certainty, none of the Parties is required to agree to amend this Agreement or any agreement contemplated by this Agreement as a result of a periodic review. Where the Parties agree to amend this Agreement, any such amendment will be made in accordance with this chapter. Where the Parties agree to amend an agreement contemplated by this Agreement, the agreement will be amended in accordance with its terms.

23. Each of the Parties will be responsible for its own costs in relation to a periodic review process.

CHAPTER 24
RATIFICATION OF THE FINAL AGREEMENT

GENERAL

1. This Agreement will be submitted to the Parties for ratification after it has been initialled by the chief negotiators for the Parties.

RATIFICATION BY TSAWWASSEN FIRST NATION

2. Ratification of this Agreement by Tsawwassen First Nation requires:

    a. that Tsawwassen Individuals have a reasonable opportunity to review this Agreement;

    b. a vote, by way of a secret ballot, conducted by the ratification committee as set out in clauses 3, 4, 5 and 9;

    c. that a majority of those individuals who are eligible to vote under clauses 4 and 5 vote in favour of this Agreement;

    d. ratification of the Tsawwassen Constitution through the process set out in clause 3; and

    e. that this Agreement be signed by the authorized representative of Tsawwassen First Nation.

RATIFICATION OF THE TSAWWASSEN CONSTITUTION

3. Ratification of the Tsawwassen Constitution by Tsawwassen First Nation requires:

    a. that Tsawwassen Individuals have a reasonable opportunity to review the Tsawwassen Constitution;

    b. a vote, by way of a secret ballot; and

    c. that a majority of those individuals who are eligible to vote under clauses 4 and 5 vote in favour of the Tsawwassen Constitution.

ELIGIBLE VOTERS

4. An individual is eligible to vote if the individual is:

    a. a Tsawwassen Member; and

b. at least 18 years of age on the last scheduled day of voting in the vote referred to in clause 2.

5. A Tsawwassen Individual, who is not yet a Tsawwassen Member and whose name is therefore not included on the official voters list, is eligible to vote if that individual:

a. provides the voting officer with a completed enrolment application form or evidence satisfactory to the voting officer that the individual has submitted an enrolment application form to the enrolment committee;

b. provides evidence satisfactory to the voting officer that the individual meets the requirement set out in subclause 4.b; and

c. declares in writing that the individual meets the eligibility criteria set out in the Eligibility and Enrolment chapter.

6. The ballot of an individual described in clause 5 counts in determining the outcome of the ratification vote only if the enrolment committee notifies the ratification committee that the individual is a Tsawwassen Individual.

RATIFICATION COMMITTEE

7. The Parties will establish a ratification committee, consisting of one representative appointed by each Party, to be responsible for the ratification process set out in this chapter.

8. Canada and British Columbia will provide to Tsawwassen First Nation an agreed amount of funding for the ratification committee to carry out the functions referred to in clause 9.

9. Conduct of the ratification vote requires that the ratification committee:

a. establish and publish its procedures;

b. set its time limits;

c. take reasonable steps to provide Tsawwassen Individuals the opportunity to review this Agreement;

d. prepare and post a preliminary list, at least 60 days before the first day of voting, of individuals who are eligible to vote, based upon the information provided by the enrolment committee;

e. at least 21 days before the first day of voting, prepare and post an official voters list, consisting of the names of individuals whose names

were provided by the enrolment committee and who are determined by the ratification committee as eligible to vote;

f. approve the form and content of the ballot;

g. authorize and provide general direction to voting officers;

h. conduct the vote on the day or days determined by the ratification committee;

i. update the official voters list by:

i. at any time before the end of voting, adding to the official voters list the names of individuals who are eligible to vote under this chapter;

ii. adding to the official voters list the name of each individual who votes in accordance with clause 5 and whose vote counts in accordance with clause 6;

iii. removing from the official voters list the name of each individual who died on or before the last day of voting without having voted; and

iv. removing from the official voters list the name of each individual who did not vote and for whom is provided, within seven days of the last scheduled day of voting, certification by a qualified medical practitioner that the individual was physically or mentally incapacitated to the point that they could not have voted on the dates set for voting;

j. after updating the official voters list in accordance with subclause 9.i, establish a final voters list;

k. count the vote; and

l. report the final results to the Parties.

MINOR CHANGES BEFORE SIGNING

10. Before the Parties sign this Agreement, the chief negotiators for the Parties may agree to make minor changes to this Agreement.

RATIFICATION BY BRITISH COLUMBIA

11. Ratification of this Agreement by British Columbia requires:

a. that this Agreement be signed by a Minister of the Crown authorized by the Lieutenant Governor in Council; and

b. the coming into force of Provincial Settlement Legislation.

12. British Columbia will Consult with Tsawwassen First Nation in respect of the development of the Provincial Settlement Legislation.

RATIFICATION BY CANADA

13. Ratification of this Agreement by Canada requires:

a. that this Agreement be signed by a Minister authorized by the federal Cabinet to do so; and

b. the coming into force of Federal Settlement Legislation.

14. Canada will Consult with Tsawwassen First Nation in respect of the development of the Federal Settlement Legislation.

CHAPTER 25
IMPLEMENTATION

GENERAL

1. The implementation plan for this Agreement takes effect on the Effective Date and has a term of 10 years, unless renewed or extended by the Parties on the recommendation of the implementation committee.

IMPLEMENTATION PLAN

2. The implementation plan:

    a. identifies its purposes;

    b. identifies the obligations of the Parties;

    c. identifies the activities to be undertaken to fulfill those obligations and the responsible Party;

    d. identifies the timelines, including when activities will be completed;

    e. specifies how the implementation plan may be amended;

    f. specifies how the implementation plan may be renewed or extended; and

    g. addresses other matters as the Parties may agree.

3. Without limiting clause 58 of the General Provisions chapter, the implementation plan:

    a. does not create legal obligations;

    b. does not alter any rights or obligations set out in this Agreement;

    c. does not preclude any Party from asserting that rights or obligations exist under this Agreement even though they are not referred to in the implementation plan; and

    d. is not to be used to interpret this Agreement.

Implementation Committee

4. On the Effective Date, the Parties will establish an implementation committee for a 10 year term that may be renewed or extended if the Parties agree.

5. The implementation committee consists of one member appointed by each Party, and additional representatives may participate in meetings to support or assist a member. The Parties will each appoint their first member of the implementation committee on the Effective Date.

6. The implementation committee will:

    a. provide a forum for the Parties to discuss the implementation of this Agreement;

    b. establish its own procedures and operating guidelines;

    c. monitor and oversee the operation of the implementation plan;

    d. review implementation progress;

    e. assist in resolution of any implementation problems;

    f. recommend revisions to the implementation plan;

    g. develop a communications strategy in respect of the implementation and content of this Agreement;

    h. provide for the preparation of annual reports on the implementation of this Agreement;

    i. before the expiry of the implementation plan, advise the Parties on further implementation measures required and recommend whether the implementation plan should be renewed or extended; and

    j. undertake other activities as the Parties may agree.

Tsawwassen First Nation

Land Facing the Sea

If you would like more information about the Tsawwassen First Nation Final Agreement, contact:

Canada
Indian and Northern Affairs Canada
British Columbia Region
600 - 1138 Melville Street
Vancouver, BC V6E 4S3
1-800-567-9604
www.inac.gc.ca/bc/ftno
infopubs@inac.gc.ca

Tsawwassen First Nation
Tsawwassen First Nation
#131 N Tsawwassen Drive
Delta, BC V4M 4G2
604-943-2112
www.tsawwassenfirstnation.com
info@tsawwassenfirstnation.com

British Columbia
Ministry of Aboriginal Relations
and Reconciliation
PO Box 9100 Stn Prov Govt
Victoria, BC V8W 9B1
1-800-880-1022
www.gov.bc.ca/arr
ABRInfo@gov.bc.ca