

PERFORMANCE TERM 3 AMENDING AGREEMENT No. 1

THIS AGREEMENT is dated for reference the 3rd day of April, 2013

BETWEEN:

HER MAJESTY THE QUEEN IN RIGHT OF THE PROVINCE OF BRITISH COLUMBIA, as represented by the Minister of Transportation and Infrastructure
(the "Province")

AND:

BRITISH COLUMBIA FERRY SERVICES INC., a body corporate, incorporated under the laws of the Province of British Columbia under Certificate of Incorporation No. 0667014
(**"BC Ferries"**)

WHEREAS

- A. The Coastal Ferry Services Contract, as defined in this Agreement, contemplates that the parties will implement specific service adjustments in Performance Term Three;
- B. The parties have undertaken discussions in respect of specific service adjustments, and wish to amend the Coastal Ferry Services Contract on the terms and conditions set out in this Agreement.

NOW THEREFORE in consideration of the foregoing premises and for other good and valuable consideration (the receipt and sufficiency of which each of the Province and BC Ferries acknowledges) the parties agree as follows:

1. DEFINITIONS

- 1.1 In this Agreement "**CFSC**" means the service contract between the Province and BC Ferries entitled the "Coastal Ferry Services Contract", as amended, and any other words having initial uppercase letters will have the meanings given to them in the CFSC.

2. COASTAL FERRY SERVICES CONTRACT

Schedule A [Designated Routes and Services]

- 2.1 Schedule "A" to the CFSC is amended as follows:

- (a) A section 3(b.1) is added as follows:

"(b.1) The Province and BC Ferries have agreed and acknowledge that the Province has agreed to pay \$7.1 million to BC Ferries in respect of the Ferry Transportation Fee and the parties further acknowledge that the \$7.1 million forms part of the \$30 million aggregate net savings target."

- (b) A section 3(b.2) is added as follows:

"(b.2) The \$7.1 million Ferry Transportation Fee will be paid to BC Ferries in nine equal monthly installments of \$788,888, to be paid no later than the last business day of each month, from July 1, 2013 to March 31, 2014 and will be in addition to the amounts set out in the Ferry Transportation Fee table for Part 2 - Contract Year 2013/2014.

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- (b) Section 3(c) is amended by deleting the words "\$26 million" and substituting in its place "\$18.9 million";
- (c) Section 3(g) is deleted in its entirety and the following section 3(g) is substituted:
 - “(g) The Province and BC Ferries agree to incorporate specific service level adjustments to Core Service Levels as set out in Schedule “A”, which are designed to achieve \$18.9 million in net savings, by executing a Performance Term 3 Amending Agreement by March 31, 2014.”; and
- (d) Section 3(h) is deleted in its entirety and the following section 3(h) is substituted:
 - “(h) If the Performance Term 3 Amending Agreement referenced in section 3(g) above is not executed by March 31, 2014, the parties agree that the circumstances would support BC Ferries applying to the Commissioner for relief under section 42(1) of the Act.”

3. GENERAL

- 3.1 Notwithstanding any other provision of this Agreement, the payment of money by the Province to BC Ferries in connection with this Agreement or under the CFSC as a result of or in connection with this Agreement is subject to:
 - (a) there being sufficient monies available in an appropriation, as defined in the *Financial Administration Act*, to enable the Province, in any fiscal year or part thereof when any payment of money by the Province to BC Ferries falls due, to make that payment; and
 - (b) Treasury Board, as defined in the *Financial Administration Act*, not having controlled or limited, under the *Financial Administration Act*, expenditure under any appropriation referred to in subsection (a) of this section.
- 3.2 No term of this Agreement is intended to derogate from or be inconsistent with or in conflict with any law, including without limitation the Act, and shall not be interpreted in a manner as to result in any such derogation, inconsistency or conflict.
- 3.3 Each term of this Agreement will be valid and enforceable to the fullest extent permitted by law and if any term of this Agreement is held to be invalid, unenforceable or illegal to any extent, such term may be severed and such invalidity, unenforceability or illegality will not prejudice or affect the validity, enforceability and legality of the remaining provisions of this Agreement.
- 3.4 This Agreement and the CFSC constitute the entire agreement between the parties in respect of the subject matter of this Agreement and no understandings, representations, contracts, or agreements, written, oral or otherwise, exist between the parties with respect to the subject matter of this Agreement or to the subject matter of this Agreement and of the CFSC or of anything relating to this Agreement except as expressly set out in this Agreement or the CFSC.
- 3.5 Time is of the essence of this Agreement and will remain of the essence of the CFSC, as amended and supplemented by this Agreement.
- 3.6 The provisions of the CFSC, as amended and supplemented by this Agreement, are ratified and confirmed and where the CFSC is referred to in another agreement between the Province and BC

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Ferries, unless otherwise expressly provided for, those references will be deemed to refer to the CFSC as amended and supplemented by this Agreement.

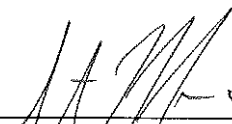
- 3.7 All dollar amounts expressed in this Agreement refer to lawful currency of Canada.
- 3.8 No waiver by either party of a breach or default by the other party in the observance, performance or compliance of any of its obligations under this Agreement will be effective unless it is in writing and no such waiver will be deemed or construed to be a waiver of any other breach or default, and failure or delay on the part of either party to complain of an act or failure of the other party or to declare such other party in default, irrespective of how long such failure or delay continues, will not constitute a waiver by such party of any of its rights against the other party.
- 3.9 Each party will, upon the reasonable request of the other, make, do, execute or cause to be made, done or executed all further and other lawful acts, deeds, things, devices, documents, instruments and assurances whatever for the better or more perfect and absolute performance of the obligations of the requested party under this Agreement.
- 3.10 This Agreement may only be amended by a written agreement executed on behalf of each of the Province and BC Ferries.

IN WITNESS WHEREOF, each of the Province and BC Ferries has executed this Agreement by its duly authorized representative or officer, as follows:

Signed on behalf of Her Majesty the Queen in right)
of the Province of British Columbia by a)
duly authorized representative of the)
Minister of Transportation and Infrastructure:)



WITNESS NAME



Grant Main, Deputy Minister
Ministry of Transportation and

BRITISH COLUMBIA FERRY SERVICES INC.

Per: _____
Robert P. Clarke, Chief Financial Officer

