# AGREEMENT TO TRANSFER SPANISH HILLS (NORTH GALIANO) WHARF, GALIANO ISLAND, BRITISH COLUMBIA

**THIS AGREEMENT** made in triplicate as of the 30<sup>th</sup> day of November, 2018.

# **BETWEEN:**

# HER MAJESTY THE QUEEN

**IN RIGHT OF CANADA** as represented by the Minister of Fisheries and Oceans 200 - 401 Burrard Street Vancouver, BC, V6C 3S4

(hereinafter called Canada)

**OF THE FIRST PART** 

AND:

#### **CAPITAL REGIONAL DISTRICT**

625 Fisgard Street Victoria, BC V8W 1R7

(hereinafter called CRD)

# OF THE SECOND PART

**WHEREAS** Canada wishes to divest Herself of the wharf referred to as Spanish Hills (North Galiano) on Galiano Island, British Columbia which is no longer related to its federal core program or mandate;

**AND WHEREAS** CRD wishes to acquire this wharf and to operate, maintain and manage the wharf on its own behalf and not on behalf of Canada.

**NOW THEREFORE THIS AGREEMENT WITNESSES** that, in consideration of the mutual covenants and agreements and ten (10) dollars now paid by CRD to Canada herein and subject to the terms and conditions hereinafter set out, the parties agree as follows:

# DEFINITIONS

#### 1.01 In this Agreement:

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

**"District Lot 310"** means District Lot 310, Cowichan District, containing 0.6 acres and granted by OIC 1647 dated August 20, 1947;

"Goods" means the Wharf, float and anything attached to or upon or associated with these objects that are owned by Canada and located on District Lot 310, Galiano Island, British Columbia;

"Spanish Hills (North Galiano) Reports" means those reports from DFO, Small Craft Harbours regarding the environmental issues around the Wharf and its state of repair, which are described in Schedule "A";

"**Transfer Date**" means January 20, 2019 or such other date as mutually agreed upon by the Parties;

"Wharf" means Spanish Hills (North Galiano) Wharf, located on District Lot 310 on Galiano Island, British Columbia.

# UNDERTAKINGS

# Sale, Assignment and Transfer of the Wharf

- 2.01 Canada hereby sells, assigns, and transfers the Goods and all the right, title, interest, property, claim and demand of Canada thereto and therein, to the CRD, to and for its sole and only use forever as of the Transfer Date.
- 2.03 Immediately after the Transfer Date, Canada will send a duly executed Transfer of Administration and Control to the Province of British Columbia in the form attached as Schedule "B", cancelling District Lot 310 and concurrently therewith will provide a copy of the executed Transfer of Administration and Control to the CRD. CRD will apply for a water lot from the Province of BC for the same general location as District Lot 310.

# Management of the Wharf

2.06 The CRD undertakes to manage and maintain the Wharf, including continued public access, for a minimum of ten (10) years from the Transfer Date.

# Payments towards Refurbishing and Repairing the Wharf

2.07 Canada shall pay to CRD three hundred and thirty seven thousand dollars (\$337,000) on the Transfer Date, in order for CRD to undertake the repairs and ongoing maintenance and refurbishment of the Wharf. CRD agrees to use these funds only for repair, maintenance, refurbishment and administrative costs, such as CRD staff time, design and consultation directly related to repairs and maintenance of the Wharf, or for similar functions for the facilities currently located or to be constructed in Horton Bay on Mayne Island, as described in the agreement between the parties dated November 30, 2018. CRD agrees to hold these funds in a separate account specified for the above purposes.

#### **CONDITIONS PRECEDENT**

3.01 The obligations of the CRD under this Agreement are subject to approval of this Agreement by the Board of the CRD on or before the Transfer Date.

# **REPRESENTATIONS AND WARRANTIES**

#### **Representations and Warranties of Canada**

4.01 Canada represents and warrants to the CRD that as of the above date Canada is not aware of any suits, actions, litigation, arbitration proceedings or governmental proceedings, including appeals and applications for review, in progress, pending or threatened against or involving Canada which might adversely affect the Goods or the capacity or power of Canada to execute and deliver this Agreement or which might adversely affect the financial position of the CRD.

# **Representations and Warranties of CRD**

- 4.02 The CRD represents and warrants that as of the date of this Agreement and the Transfer Date:
  - (a) it is a Regional District whose head office is located in Victoria, which has been duly incorporated and organized and is validly existing under the laws of British Columbia;
  - (b) it is duly qualified, licensed or registered to carry on business in the Province of British Columbia;
  - (c) it has all necessary corporate power, authority and capacity to enter into this Agreement and to perform its obligations herein.

# Acknowledgments

- 4.03 The parties acknowledge that Canada has delivered and CRD is in receipt of the Spanish Hills (North Galiano) Reports.
- 4.04 The parties acknowledge and agree that neither party has made nor shall make any other representations and warranties with respect to this Agreement except the representations and warranties expressly made in this Agreement or in any other agreement expressly referred to in this Agreement.
- 4.05 The parties further acknowledge that neither party has relied on nor shall rely on any information provided by the other party in connection with this Agreement other than the Spanish Hills (North Galiano) Reports and the warranties and representations expressly made in this Agreement or in any other agreement expressly referred to in this Agreement.

# GENERAL PROVISIONS

# No Partnership, Joint Venture or Agency

5.01 Canada and CRD expressly disclaim any intention to create a partnership, joint venture or agency, and nothing in this Agreement shall create a partnership, joint venture or agency between the parties. Neither party shall hold itself out as agent for the other party and neither party have any authority to act for or to assume any obligations or responsibility on behalf of the other party.

# **Entire Agreement**

- 5.02 This Agreement sets forth the entire agreement between the parties concerning the Wharf. The parties agree that each has:
  - (a) not been induced to enter into this Agreement by any representations not set forth in this Agreement;
  - (b) it has conducted its own due diligence examinations in order to satisfy itself of the full, true and plain disclosure of the facts.

# **Stacking of Financial Assistance**

5.03 CRD declares that at the time of executing this Agreement, the payment of three hundred and thirty seven thousand dollars described above is the only federal funding it has applied for, received, or expects to receive for the repair expenses described above.

# Assignment

5.04 Neither party shall assign this Agreement nor any of the party's rights, duties or obligations hereunder without the prior written consent of the other party.

# **Governing Law**

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

# **Construed Covenants**

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

# **Rights or Remedies**

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

# **Time of Essence**

5.08 Time is of the essence of this Agreement.

# Severability

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

# Notice

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

(a) in the case of Canada to:

Department of Fisheries and Oceans, Pacific Region 200-401 Burrard Street Vancouver, BC V6C 3S4

Attention: Regional Director Small Craft Harbours – Pacific Region Fisheries and Oceans Canada

Telephone: 604-666-1146

or to such other address or addressed to such other Person as Canada may, from time to time, designate in writing to the CRD; and

(b) in the case of the CRD, to:

Capital Regional District Headquarters & Board Room Location: 625 Fisgard Street Victoria, BC V8W 1R7

Attention: Ted Robbins, General Manager Integrated Water Services

Telephone: 250-474-9606

or to such other address or addressed to such other Person as CRD may, from time to time, designate in writing to Canada.

- 5.11 Any notice or communication is considered to have been received:
  - (a) in the case of facsimile, on actual receipt, and
  - (b) in all other cases, on the date of delivery.

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

# **Conflict of Interest**

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

# Counterpart

5.13 This Agreement may be executed and delivered by facsimile or email and in any number of counterparts, each of which when executed and delivered is an original but all of which taken together constitute one and the same instrument.

**IN WITNESS WHEREOF** the CRD and Canada have executed this Agreement as evidenced by the signatures of their duly authorized directors, officers or representatives as of the day and year first above written.

	<ul> <li>HER MAJESTY THE QUEEN IN RIGHT</li> <li>OF CANADA as represented by the Minister</li> <li>of Fisheries and Oceans by Her authorized</li> <li>signatory:</li> </ul>
Witness	) Karen Calla
Print Name:	) Regional Director
	) Small Craft Harbours - Pacific Region,
	) Fisheries and Oceans Canada
	<ul> <li>CAPITAL REGIONAL DISTRICT by its</li> <li>authorized signatories:</li> </ul>
Witness	) Print Name:
Print Name:	) Position:
	) () () () () () () () () () () () () ()
Witness	) Print Name:
Print Name:	) Position:

# SCHEDULE "A"

### Spanish Hills (North Galiano) Reports

# 1. Phase 1 Environmental Site Assessment North Galiano Small Craft Harbour Site No. PS06113 Active Earth Engineering Ltd. Dated: March 31, 2010

David Michell, P.Eng., CSAP Senior Engineer 1909 Duchess Street Victoria, BC V8R 4W2

David Kneale, P. Geo Senior Hydrogeologist 4510 Saddlehorn Crescent Langley, BC V2Z 1J6

- 2. Fisheries and Oceans Marine Engineering Inspection Small Craft Harbours Branch dated August 2000
- 3. Fisheries and Oceans Small Craft Harbours Branch Details Inspection of North Galiano dated October 2001
- 4. Fisheries and Oceans Small Craft Harbours Branch Detailed Inspection of North Galiano dated Mach 2005
- Fisheries and Oceans Detailed Harbour Inspection – North Galiano dated February 2013

# SCHEDULE "B"

# CANADA

# TRANSFER OF ADMINISTRATION AND CONTROL OF FEDERAL REAL PROPERTY TO A PROVINCE (PARCEL – IN PERPETUITY)

### WHEREAS:

- A. British Columbia Order in Council No. 1647 dated August 20, 1947 reserved and set apart for the Department of Public Works, Canada the land described in that Order in Council, surveyed as Lot 310, Cowichan District, containing 0.6 acres as a site for an approach and float landings for so long as required for such purpose.
- **B.** The federal real property hereinafter described is no longer required for the purpose set out in B.C. OIC no. 1647 dated August 20, 1947 by Her Majesty the Queen in Right of Canada.
- **C.** The within transfer of administration and control is satisfactory to the Minister of Justice.

**IN WITNESS WHEREOF** this transfer of administration and control has been signed and countersigned pursuant to the *Federal Real Property and Federal Immovables Act*.

DATED as at the date of countersignature this \_\_\_\_\_ day of \_\_\_\_\_, 2018.

<b>SIGNED</b> on behalf of the Minister of Fisheries and Oceans by:	) )	
Karen Calla Regional Director, Small Craft Harbours - Pacific Region, Fisheries and Oceans Canada	) ) ) )	KAREN CALLA
<b>COUNTERSIGNED</b> on behalf of the Minister of Justice by:	) ) )	
Name: John Clark Title: Legal Counsel	) ) )	JOHN CLARK

# Appendix C

#### AGREEMENT TO REPLACE HORTON BAY WHARF, MAYNE ISLAND, BRITISH COLUMBIA

**THIS AGREEMENT** made in triplicate as of the 30<sup>th</sup> day of November, 2018.

#### **BETWEEN:**

# HER MAJESTY THE QUEEN

**IN RIGHT OF CANADA** as represented by the Minister of Fisheries and Oceans 200 - 401 Burrard Street Vancouver, BC, V6C 3S4

(hereinafter called "Canada")

**OF THE FIRST PART** 

AND:

#### **CAPITAL REGIONAL DISTRICT**

625 Fisgard Street Victoria, BC V8W 1R7

(hereinafter called "**CRD**")

#### **OF THE SECOND PART**

**WHEREAS** Canada wishes to divest Herself of the wharf located at Horton Bay on Mayne Island, British Columbia which is no longer related to its federal core program or mandate;

**AND WHEREAS** CRD has been managing this wharf since 2007 and wishes to replace it with a new larger facility located approximately 400 metres to the north located at the terminus of Anson Road, and wishes to construct operate, maintain and manage the replacement wharf on its own behalf and not on behalf of Canada.

**NOW THEREFORE THIS AGREEMENT WITNESSES** that, in consideration of the mutual covenants and agreements and ten (10) dollars now paid by CRD to Canada herein and subject to the terms and conditions hereinafter set out, the parties agree as follows:

#### DEFINITIONS

#### 1.01 In this Agreement:

**"Agreement"** means this Agreement to Replace Horton Bay Wharf, and includes the documents attached as Appendices which form an integral part of this Agreement as fully as if they were set forth in their entirety;

**"District Lot 431"** means District Lot 431, Plan 5TU546, containing 0.287 acres and granted by British Columbia Order in Council number 2001 dated August 26, 1960, file number 0227020;

"Existing Wharf" means the wharf located in District Lot 431;

"Goods" means the Existing Wharf, float and anything attached to or upon or associated with these objects that are owned by Canada and located on District Lot 431, Mayne Island, British Columbia.

"Horton Bay Wharf Reports" means the reports and investigations commissioned by DFO, Small Craft Harbours and described in Schedule "A";

"**Transfer Date**" means January 20, 2019 or such other date as mutually agreed upon by the Parties;

# UNDERTAKINGS

# Transfer and Removal of the Existing Wharf and Construction of New Wharf

- 2.01 Canada hereby sells, assigns, and transfers the Goods and all the right, title, interest, property, claim and demand of Canada thereto and therein, to the CRD, to and for its sole and only use forever as of the Transfer Date. The CRD agrees to remove the Existing Wharf at Horton Bay as soon as conveniently possible, and provide a brief report and photographs to Canada documenting the removal immediately thereafter..
- 2.02. CRD agrees to construct a new public wharf, with a minimum moorage capacity of 300 feet, at the terminus of Anson Road, approximately 400 meters north of the Existing Wharf at Horton Bay, Mayne Island. CRD estimate the new wharf will be in operation in 12 to 24 months.
- 2.03 Immediately after the Transfer Date, Canada will send a duly executed Transfer of Administration and Control to the Province of British Columbia cancelling District Lot 431 in the form attached as Schedule "B" cancelling District Lot 431 and concurrently therewith will provide a copy of the executed Transfer of Administration and Control to the CRD.

# Management of the Wharf

2.04 The CRD undertakes to manage and maintain the new wharf at Anson Road, including allowing for public access, for a minimum of ten (10) years after completion. CRD also undertakes to manage the Existing Wharf, allowing for public access, until it is removed.

# Payments towards Removing and Replacing the Existing Wharf

2.05 Canada shall pay to CRD three hundred and fifty thousand dollars (\$350,000) on the Transfer Date, in order for CRD to undertake the construction of the new wharf and the removal of the Existing Wharf.

# **REPRESENTATIONS AND WARRANTIES**

# **Representations and Warranties of CRD**

- 3.01 The CRD represents and warrants that as of the date of this Agreement:
  - (a) it is a Regional District whose head office is located in Victoria, which has been duly incorporated and organized and is validly existing under the laws of British Columbia;
  - (b) it is duly qualified, licensed or registered to carry on business in the Province of British Columbia;
  - (c) it has all necessary corporate power, authority and capacity to enter into this Agreement and to perform its obligations herein.

# Acknowledgments

- 3.02 The parties acknowledge that Canada has delivered and CRD is in receipt of the Horton Bay Wharf Reports.
- 3.03 The parties acknowledge and agree that neither party has made nor shall make any other representations and warranties with respect to this Agreement except the representations and warranties expressly made in this Agreement or in any other agreement expressly referred to in this Agreement.
- 3.04 The parties further acknowledge that neither party has relied on nor shall rely on any information provided by the other party in connection with this Agreement other than the warranties and representations expressly made in this Agreement or in any other agreement expressly referred to in this Agreement.

# **GENERAL PROVISIONS**

# No Partnership, Joint Venture or Agency

4.01 Canada and CRD expressly disclaim any intention to create a partnership, joint venture or agency, and nothing in this Agreement shall create a partnership, joint venture or agency between the parties. Neither party shall hold itself out as agent for the other party and neither party have any authority to act for or to assume any obligations or responsibility on behalf of the other party.

# **Entire Agreement**

- 4.02 This Agreement sets forth the entire agreement between the parties concerning the replacement of Horton Bay wharf and the parties agree that each has:
  - (a) not been induced to enter into this Agreement by any representations not set forth in this Agreement;
  - (b) it has conducted its own due diligence examinations in order to satisfy itself of the full, true and plain disclosure of the facts.

# Assignment

4.03 Neither party shall assign this Agreement nor any of the party's rights, duties or obligations hereunder without the prior written consent of the other party.

# **Governing Law**

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

# **Construed Covenants**

- 4.05 All of the provisions and each agreement or obligation of this Agreement, even though not expressed as a covenant, are construed as covenants and agreements as though the words importing such covenants and agreements were used.
   Rights or Remedies
- 4.06 Nothing expressed or implied in this Agreement is intended to or is construed to confer on or give any Person, other than the parties hereto and their respective successors and permitted assigns, any rights or remedies under or by reason of this Agreement.

# **Time of Essence**

4.07 Time is of the essence of this Agreement.

# Severability

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

#### Notice

- 4.09 All notices or other communications necessary for the purpose of this Agreement shall be in writing and delivered personally or by courier, or sent by registered mail or by prepaid post or by facsimile, addressed:
  - (a) in the case of Canada to:

Department of Fisheries and Oceans, Pacific Region 200-401 Burrard Street Vancouver, BC V6C 3S4

Attention: Regional Director Small Craft Harbours – Pacific Region Fisheries and Oceans Canada

Telephone: 604-666-1146

or to such other address or addressed to such other Person as Canada may, from time to time, designate in writing to the CRD; and

(b) in the case of the CRD, to:

Capital Regional District Headquarters & Board Room Location: 625 Fisgard Street Victoria, BC V8W 1R7

Attention: Ted Robbins, General Manager Integrated Water Services

Telephone: 250-474-9606

or to such other address or addressed to such other Person as CRD may, from time to time, designate in writing to Canada.

- 4.10 Any notice or communication is considered to have been received:
  - (a) in the case of facsimile, on actual receipt, and
  - (b) in all other cases, on the date of delivery.

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

# **Conflict of Interest**

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

#### Counterpart

**1.0** This Agreement may be executed and delivered by facsimile or email and in any number of counterparts, each of which when executed and delivered is an original but all of which taken together constitute one and the same instrument.

**IN WITNESS WHEREOF** the CRD and Canada have executed this Agreement as evidenced by the signatures of their duly authorized directors, officers or representatives as of the day and year first above written.

	) ) ) ) )	HER MAJESTY THE QUEEN IN RIGHT OF CANADA as represented by the Minister of Fisheries and Oceans by Her authorized signatory:
Witness Signature Print Name:	)	Karen Calla Regional Director Small Craft Harbours - Pacific Region, Fisheries and Oceans Canada
	) ) )	<b>CAPITAL REGIONAL DISTRICT</b> by its authorized signatories:

	)	
Witness	) Print Name:	
Print Name:	) Position:	
	)	
	)	
	)	
Witness	) Print Name:	
Print Name:	) Position:	

#### SCHEDULE "A" Horton Bay Wharf Reports

Capital Regional District, Victoria BC Port Transfer Feasibility Study Engineering Inspection and Evaluation Horton Bay Approach and Float May 1997 Villholth Jensen & Associates Ltd.

Fisheries and Oceans Horton Bay, Mayne Island, B.C. LC: 6061 Marine Engineering Inspection Villholth Jensen & Associates Ltd. Prepared for Small Craft Harbours Branch September 2000

Horton Bay detailed Harbour Inspection Report Foreshore Technologies Inc. 118 Garden Avenue North Vancouver, BC V7P 3H2 Phone: 604-983-311 Prepared for: Fisheries and Oceans Canada, Small Craft Harbours Branch March 25, 2008

Stage 1 Preliminary Site Investigation Version 2.0 Horton Bay Small Craft Harbour PS 06061/Class B Small Craft Harbour Mayne Island, British Columbia Prepared by AMEC Earth & Environmental 2227 Douglas Road Burnaby, BC V5C 5A9 Phone: 604-294-3811 Dated: March 2009 www.amec.com

Inspection of the Horton Bay Facility (Mayne Island) Dated: July 2, 2014 Prepared by WorleyParsons Canada 600, 4321 Still Creek Drive Burnaby, BC V5C 6S7 Phone: 604-298-1616 www.worleyparsons.com

# SCHEDULE "B"

# CANADA

# TRANSFER OF ADMINISTRATION AND CONTROL OF FEDERAL REAL PROPERTY TO A PROVINCE (PARCEL – IN PERPETUITY)

#### WHEREAS:

- A. British Columbia Order in Council No. 2001 dated August 26, 1960 reserved and set apart for the Department of Public Works, Canada the land described in that Order in Council, surveyed as Lot 431, Cowichan District, containing 0.287 acres as a site for a wharf for so long as required for such purpose.
- **B.** The federal real property hereinafter described is no longer required for the purpose set out in B.C. OIC no. 2001 dated August 26, 1960 by Her Majesty the Queen in Right of Canada.
- **C.** The within transfer of administration and control is satisfactory to the Minister of Justice.

**IN WITNESS WHEREOF** this transfer of administration and control has been signed and countersigned pursuant to the *Federal Real Property and Federal Immovables Act*.

<b>DATED</b> as at the date of countersignature this		day of	, 2017
<b>SIGNED</b> on behalf of the Minister of	)		
Fisheries and Oceans by:	)		
·	)		
Karen Calla	)		
Regional Director,	)	KAREN CALLA	
Small Craft Harbours - Pacific Region,	)		
Fisheries and Oceans Canada	)		
	)		
COUNTERSIGNED on behalf of	)		
the Minister of Justice by:	)		
	)		
	)		
Name: John Clark	)		
Title: Legal Counsel	)	JOHN CLARK	

Appendix C