

## **BARNSTON ISLAND FERRY AGREEMENT**

This Agreement is dated for reference this 1st day of April, 2012

**BETWEEN:**

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

as represented by the Minister of Transportation and Infrastructure  
c/o The Ministry of Transportation and Infrastructure,  
Marine Branch  
940 Blanshard St.  
Victoria, British Columbia V8W 9T5

(the "Province")

**AND:**

**BC TRANSPORTATION FINANCING AUTHORITY,**  
a corporation continued under the *Transportation Act*  
940 Blanshard Street  
Victoria, British Columbia V8W 9T5

("TFA")

**AND:**

**WESTERN PACIFIC MARINE LTD.,**  
a corporation having an office at  
501 Denman Street  
Vancouver, British Columbia V6G 2W9

(the "Contractor")

(together, the Parties)

**WHEREAS:**

- A** The Province and TFA are the owners of or otherwise have rights in and to the Ferry Facility and Watercraft located on Barnston Island in the Greater Vancouver Regional District and in the City of Surrey, British Columbia;
- B** The Province wishes to engage the Contractor to utilize the Ferry Facility and Watercraft and to operate and provide the Ferry Service; and

- C** The Contractor has been selected as the Preferred Proponent under the RFP and has agreed to operate and provide the Ferry Service in keeping with this Agreement;

ACCORDINGLY, the parties agree as follows:

**1. Definitions**

In this Agreement, the following words have the following meanings:

**"Anniversary Date"** means April 1, 2013 and each April 1st thereafter for the remainder of the Term;

**"Business Day"** means a day in which the Province's offices are open, and excludes statutory holidays in British Columbia;

**"Business Opportunities"** means the business initiatives carried out by the Contractor which use the Ferry Facility but which are only incidental to the Ferry Service;

**"Change Order"** means a written order by the Province requiring the Contractor to perform a change to the Services pursuant to Section 7;

**"Charter"** means the bare boat charter in Schedule 1;

**"Contact Person"** means the contact person set out for the Province and for the Contractor in Section 16 herein;

**"Commencement Date"** means April 1, 2012;

**"Contract Documents"** has the meaning ascribed in Section 18.6;

**"Contract Year"** means a period of 12 consecutive months during the Term, commencing on the Commencement Date and thereafter on the Anniversary Date;

**"Dispute"** means any disagreement or difference of opinion between the Province and the Contractor regarding the interpretation of, or compliance or non-compliance (including determinations of Events of Default) with the terms of this Agreement;

**"Dispute Resolution Protocol"** means the protocol in Schedule 12 by which the parties will resolve a Dispute;

**"Event of Default"** means an event of default as described in Section 12;

**"Event of Force Majeure"** means:

- (a) acts of God, wars (declared or undeclared), revolutions, riots, insurrections or strikes (including illegal work stoppages), provided that any such event is a major disabling event or circumstance in relation to the normal operations of the party directly affected as a whole, which is beyond the reasonable control of that party and results in a material delay, interruption or failure by that party in carrying out its duties, covenants or obligations under this Agreement, provided always that lack of money, financing or credit to resolve such contingencies will not be deemed an Event of Force Majeure; and
- (b) for the purposes of Section 15.2 the failure by the Contractor to obtain or maintain in force comprehensive general liability insurance as described in Section 8, provided that:
  - (i) the Contractor has used its best efforts to obtain the insurance;
  - (ii) the Contractor's failure to retain the insurance, that is in place, is not due to the Contractor's breach of the terms of an existing insurance contract placed in compliance with Section 8;
  - (iii) the Contractor's failure to obtain the insurance does not occur as a result of the Contractor's lack of money, financing or credit or due to the Contractor's performance record under this Agreement; and
  - (iv) the Province and the Contractor have not resolved the issue of the Contractor's failure to obtain insurance in a manner that is acceptable to both of them.

**"Expiry Date"** means March 31, 2015;

**"Ferry Facility"** means the Barnston Island ferry facility which is utilized to operate and provide the Ferry Service, including the lands, areas and infrastructure pursuant to the Licence Schedule 3 and as further described in Schedule 6;

**"Ferry Service"** means those services described in Section 2;

**"Inland Ferry Traffic System" or "IFTS"** – means a Microsoft Access 97 application used by the Province for tracking ferry traffic information and ferry downtime information for its inland ferry routes;

**"Laws"** means all applicable federal, provincial, regional, municipal or local laws, statutes, ordinances, rules, regulations, by-laws and enforceable orders, decisions or directives including any permits or authorizations required under any of the foregoing;

**"Licence"** means the licence attached in Schedule 3;

**"RFP"** means that certain Request for Proposal pursuant to which the Contractor submitted the preferred proposal and has successfully negotiated with the Province the right to operate and provide the Ferry Service as herein provided;

**"Referee"** means the individual chosen by the parties hereto for the purpose of resolving disputes arising from this Agreement pursuant to Schedule 13;

**"Service Fee"** means the fee which the Province shall pay to the Contractor to operate and provide the Ferry Service and when expressed in a dollar amount herein, it will be expressed exclusive of applicable taxes;

**"Term"** means the period of time during which this Agreement is in effect as set out in Section 4;

**"Watercraft"** means that certain barge as further described in Schedule 6, used in the provision of the Ferry Service, owned by the TFA and chartered to the Contractor, bearing official number 0198100 and the name Barnston Island No. 3.

## **2. Description of Ferry Services**

2.1 The Contractor shall operate and provide the Ferry Service as described in this Section 2 and in accordance with Schedule 2 Ferry Service Specifications and the Contractor's Ferry Service Plan in Appendix A to Schedule 2 to the Province's satisfaction and in accordance with the terms and conditions of this Agreement and all Contract Documents.

2.2 The Contractor will provide the ferry sailings utilizing the Watercraft and the Contractor's vessel that has been preapproved by the Province for the propulsion of the Watercraft. The ferry sailings will link Barnston Island with the mainland of British Columbia for an uninterrupted year-round ferry service to and from Barnston Island approximately 18 hours per day on a continuous demand-basis in accordance with the following schedule at no cost to the users thereof:

- Monday, Tuesday, Wednesday, Thursday      6:15 am to 11:55 pm;
- Friday, Saturday, Sunday      6:15 am to 12:55 am;

2.3 The Contractor shall provide an immediate, on-call emergency ferry service, available 24 hours a day.

2.4 The Contractor shall provide all communications and reporting to the Province pursuant to the Contract Documents.

- 2.5 The Contractor shall provide all repair and maintenance obligations to and for the Watercraft, including regular repair, maintenance and refits pursuant to the Contract Documents.
- 2.6 The Contractor shall provide all repair and maintenance obligations to and for the Ferry Facility pursuant to the Contract Documents.
- 2.7 The Contractor shall provide all other services and perform its obligations required to be performed pursuant to the Contract Documents.
- 2.8 On the Commencement Date, the Contractor shall:
- (a) have all required insurance and securities required by Section 8 in place;
  - (b) have completed the Contractor's Ferry Service Plan to the Province's satisfaction;
  - (c) have completed the 'beginning of term' transition services to the Province's satisfaction.
- 2.9 The Province's approval of the plans in Section 2.8 does not relieve the Contractor from its full obligations pursuant to all Laws, including safety laws, nor from its obligations to perform all of the terms, covenants and conditions of this Agreement, all of which are expressly reserved by the Province.
- 2.10 The Contractor will operate the Ferry Service (whether by the Watercraft or by the alternative watercraft pursuant to Section 6.3, as the case may be) during the scheduled hours in Section 2.2 and a disruption in sailings for any reason exceeding two or more consecutive hours may result in the Province electing to invoke a withholding or deduction in Section 5.1, without limitation to the Province's other remedies and rights, which are cumulative and not in the alternative.

### **3. Contractor's Tenure on Land and Watercraft Charter**

- 3.1 The Province and TFA have granted to the Contractor a licence to use and occupy the Ferry Facility, and a charter over the Watercraft that is attached as Schedule 3 and Schedule 1, respectively.

### **4. Term and Renewal Term**

- 4.1 The term of this Agreement shall be for a period of 3 Contract Years, commencing on April 1, 2012 and expiring on March 31, 2015.
- 4.2 Provided the Contractor duly and punctually observes and performs the covenants, agreements and provisos in this Agreement, the Province and TFA

may at the sole discretion of the Province and the TFA, not later than six months prior to the expiration of the Term nor earlier than twelve months by written notice to the Contractor make an election to grant the Contractor a renewal of this Agreement for a further term of three years upon all the terms, covenants, agreements and provisos contained in this Agreement except for the Service Fee which shall be subject to agreement between the Province and the Contractor and except a further right of renewal.

- 4.3 The parties covenant to negotiate the Service Fee for the renewal term in good faith. However, if the Province and the Contractor do not reach agreement on the Service Fee for the renewal term, then the Province may, at its sole discretion, elect not to grant such a renewal.

## **5. Financial Arrangements**

- 5.1 In consideration of the Ferry Service being performed by the Contractor, in strict conformity herewith and to the satisfaction of the Province, the Province shall pay to the Contractor the Service Fee, in equal monthly instalments at the end of the month for the services performed during that month, provided that in the event the Contractor experiences a disruption in sailings as described in Section 2.10, the Province may withhold or deduct the amount of \$150 for each hour or portion thereof the Contractor experiences that disruption as a reasonable estimation of the Province's costs resulting therefrom;

- 5.2 The amount of the Service Fee for each Contract Year shall be:

first Contract Year: \$867,108.00;  
second Contract Year: \$884,626.00; and  
third Contract Year: \$1,047,727.00;

with all amounts being exclusive of applicable taxes.

- 5.3 The Province shall pay to the Contractor the final monthly instalment of the Service Fee of the Term within 30 days of the Contractor providing to the Province all information specified in Section 9 ("Reporting") of this Agreement provided that the Province may withhold or deduct from such final instalment any amount owing or otherwise payable to the Province by the Contractor, or any amount for which the Contractor is liable to the Province, pursuant to this Agreement or otherwise, including, without limiting the generality of the foregoing:

- (a) any amount(s) owing or payable to the Province by the Contractor arising from the failure by the Contractor to duly perform all of its obligations pursuant to this Agreement, the Licence described in Section 3.1 above, the Charter of the Watercraft described in Section 3.1 or any other agreement between the Province and the Contractor with respect to the operation or provision of the Ferry Service; and

- (b) any amount(s) equal to costs incurred or reasonably estimated by the Province to be incurred to restore the Ferry Facility and/or the Watercraft to the same condition it was in at the commencement of the Term, reasonable wear and tear excepted.

5.4 Notwithstanding any other provision of this Agreement, the payment of money by the Province to the Contractor under 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 the Contractor falls due under this Agreement, 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 sub-section (a) of this Section.

## **6. Repairs and Maintenance**

- 6.1 The Contractor shall, at the Contractor's cost and expense, repair and maintain the Ferry Facility and the Watercraft pursuant to the specifications in Schedule 4 for the Ferry Facility and Schedule 5 for the Watercraft.
- 6.2 The Contractor shall deliver the Watercraft to dry-dock for refit in January, 2015 pursuant to the Refit Requirements in Appendix A of Schedule 5, and the costs of delivery and refit to be solely borne by the Contractor.
- 6.3 During any period the Watercraft is in dry-dock for refit, the Contractor shall provide at its cost, an alternative watercraft with which the Contractor shall perform the Ferry Service.
- 6.4 Notwithstanding any other provision of this Agreement or any provision of the Licence, the Charter, or any other agreement between the Province and the Contractor with respect to the operation or provision of the Ferry Service, the Contractor shall repair (unless the Province elects to cause another contractor to repair), and shall be responsible for paying all costs for repairing (regardless of whether the Contractor or another contractor so repairs), any and all damage to the Ferry Facility and/or the Watercraft, where such damage is caused by, is based upon or arises out of or from any act or omission of the Contractor, or its directors, officers, agents, servants, employees, sub-contractors, permitted assigns or any other person, firm or corporation for whom the Contractor is legally responsible.

## **7. Change Orders**

- 7.1 The Province may, in its discretion and by delivering no less than a 30 day written Change Order to the Contractor, direct the Contractor to perform additional repairs and maintenance that does not form part of the Ferry Service or vary, amend or modify the specifications in Schedules 4 and 5:
- (a) the Change Order will specify the date by which the change is to be implemented by the Contractor;
  - (b) the Province will pay the Contractor for performing the Change Order items in accordance with the Direct Plus Rates set out in Schedule 11;
- 7.2 The Province and the Contractor may vary and amend the Ferry Service and as a consequence vary and amend the Service Fee by written mutual agreement.
- 7.3 Notwithstanding Section 7.1, the Province may elect to cause another contractor to perform work otherwise associated with a Change Order.

## **8. Insurance and Securities**

- 8.1 The Contractor shall obtain and keep in good standing during the Term the insurance and securities set out on Schedule 7 (or any substitute made pursuant to Section 8.2) and shall comply with the terms and conditions set out in Schedule 7.
- 8.2 The Contractor may request, and the Province may at its sole discretion agree, during the Term to substitute one form of security with another form of security, provided that in the sole opinion of the Province, the Contractor maintains the security in good standing during the Term.

## **9. Reporting and Audits**

### **Immediate Reporting**

- 9.1 The Contractor shall immediately notify the Province and also forthwith prepare and submit to the Province in writing a notice of any damage to the Ferry Facility, Watercraft and/or disruption to the Ferry Service sailings.

### **Monthly Reporting**

- 9.2 The Contractor shall prepare and submit monthly reports to the Province's Contact Person, before the 10<sup>th</sup> day of the month for the immediately preceding month. These monthly reports shall include:



- (a) the monthly report in the form and content as provided on the specimen form provided in Schedule 8;
- (b) Traffic Reports using the Province's Inland Ferry Traffic System ("IFTS"):
  - (i) the number of vehicles by vehicle type for each sailing;
  - (ii) the number of passengers, both foot passengers and vehicle passengers for each sailing;
  - (iii) the number and types of vehicles left behind for each sailing;
  - (iv) the number of trips, including emergency trips; and
  - (v) the amount of downtime for vehicle-carrying Watercraft, the reason for the downtime in each case.

### **Annual Reporting**

9.3 The Contractor shall prepare and submit to the Province's Contact Person annual reports that are certified by the Contractor's director, financial officer or proprietor to be true and correct with respect to all of the expenses incurred in the operation of the Ferry Service. The annual reports as reported on the specimen form provided in Schedule 9 shall include:

- (a) details of the amount and cost of fuel and lubricant consumption;
- (b) details of the aggregate hours of crew time together with remuneration paid and details of management remuneration paid;
- (c) details of expenses (excluding the Contractor's own labour costs) with respect to the maintenance and repairs of the Ferry Facility and the Watercraft;
- (d) details respecting the cost of all utilities including, without restriction, water, hydro, telephone and propane; and
- (e) such further information with respect to the expenses and operations of the Ferry Service as the Province may reasonably request.

### **On Demand Reporting**

9.4 The Contractor shall upon request of the Province from time to time, fully inform the Province in writing or through electronic transmission of data, of work identified, scheduled and completed by the Contractor in connection with the provision and operation of the Ferry Service.

## **Provincial Audits**

- 9.5 The Contractor shall establish and maintain at a location within British Columbia:
- (a) accurate books of account and records (including supporting documents) to the satisfaction of the Province; and
  - (b) written records pertaining to all aspects of the provision and operation of the Ferry Service.
- 9.6 The Province shall be at liberty at any time and from time to time to audit and/or inspect any and all aspects of the Ferry Facility and Watercraft and the provision and operation of the Ferry Service by the Contractor, including, without limitation, operations and financial information with respect to the provision and operation of the Ferry Service by the Contractor, and should the Province choose to do so, the Contractor shall cooperate with the Province and permit and provide to the Province's servants, agents and authorized representatives full and unfettered access to the Ferry Facility, Watercraft and to all of the Contractor's books of accounts and records respecting the provision and operation of the Ferry Service.
- 9.7 The Province will schedule and perform one audit every Contract Year pursuant to this Section 9, at its cost and expense. Should any additional audit(s) or follow up audit(s) be determined necessary by the Province in its discretion, these additional audits shall be at the Contractor's cost and expense. The Province reserves the right to set off against the Service Fee any and all audit costs for audits that are more than once every Contract Year incurred by the Province.
- 9.8 In the event an audit referred to in Section 9.7 finds that the Contractor is not in compliance with its obligations set forth in this Agreement and the Contract Documents, the Province may, by written notice, provide the audit results and require the Contractor to complete such work identified by the audit in order for the Contractor to cure the deficiencies and conform to its obligations and the requirements of this Agreement and Contract Documents. This notice will stipulate a reasonable time within which the Contractor will remedy the deficiencies. If the Contractor does not correct the deficiencies within the period of time stipulated in the Province's notice, then the Province may at its discretion and without further notice to the Contractor cure the deficiencies with another contractor performing that work. The Contractor will work in harmony and cooperation with this other contractor and the Contractor will continue to provide all other Ferry Services.
- 9.9 In the event the Province hires another contractor pursuant to Section 9.8, the Province will set off from the Service Fee payment the direct cost of the other contractor, the cost of any experts and advisors hired by the Province to

complete the work identified by the audit, plus a 15% mark-up for the Province's own administrative and overhead costs.

- 9.10 The Contractor will not commit an act or omission that will prejudice the warranty in respect of the work completed by another contractor hired pursuant to Section 9.8.

## **10. Dispute Resolution**

- 10.1 Upon a Dispute arising out of or in connection with any provision of this Agreement, either party may invoke the Dispute Resolution Protocol in Schedule 12 by written notice to the other in order to resolve the Dispute.
- 10.2 The parties shall forthwith after entering into this Agreement, enter into a contract with a Referee in the form set out in Schedule 13.
- 10.3 If a Dispute arises which the parties cannot resolve by agreement, then it shall be resolved by the Referee.
- 10.4 If the parties are unable to agree on a Referee with whom to contract, then a Referee shall be chosen by an arbitrator pursuant to the *Commercial Arbitration Act*, RSBC 1996, c 55.

## **11. Indemnity**

- 11.1 The Contractor shall indemnify and save harmless the Province and TFA and their respective servants, directors, officers, employees, deputies, delegates, representatives, and agents from and against all claims, liabilities, demands, losses, damages, costs and expenses (including legal costs on a solicitor and own client basis), fines, penalties, assessments and levies made against or incurred, suffered or sustained by any of them at any time or times (whether before or after the expiration or sooner termination of this Agreement) where the same or any of them are based upon or arise out of or from anything done or omitted to be done by the Contractor and/or its subcontractors pursuant to this Agreement including, without limitation, any claim against the Province or TFA for failure to supervise or inspect the work which is performed by the Contractor pursuant to this Agreement, which indemnity shall survive the expiration or sooner termination of this Agreement.

## **12. Default And Remedies**

- 12.1 Any of the following events will constitute an event of default whether the event is voluntary, involuntary or results from the operation of law or any judgment or order of any court or administrative or government body:

- (a) the Contractor fails to observe, perform or comply with any provision of this Agreement and the Contract Documents;
- (b) any representation or warranty made by the Contractor in this Agreement is materially untrue or incorrect;
- (c) any information, statement, document, certificate or report furnished or submitted by or on behalf of the Contractor to the Province pursuant to this Agreement is materially untrue or incorrect;
- (d) the Contractor fails to deliver to the Province notice that there has occurred or is continuing a default under this Agreement, and which specifies the particulars of the default;
- (e) there is any *bona fide* action or proceeding, pending or threatened against the Contractor, which would, in the reasonable opinion of the Province, have a material adverse effect upon the ability of the Contractor to fulfill its obligations under this Agreement;
- (f) an order is made, a resolution is passed or a petition is filed, for the liquidation or winding up of the Contractor;
- (g) a change occurs with respect to any of the properties, assets, conditions (financial or otherwise), business or operations of the Contractor which, in the reasonable opinion of the Province, materially adversely affects the ability of the Contractor to fulfill any of its obligations under this Agreement;
- (h) the Contractor becomes insolvent, commits an act of bankruptcy, makes an assignment for the benefit of its creditors or otherwise acknowledges its insolvency;
- (i) a bankruptcy petition is filed or presented against, or a proposal under the *Bankruptcy and Insolvency Act* (Canada) is made by, the Contractor;
- (j) a compromise or arrangement is proposed in respect of the Contractor under the *Companies' Creditors Arrangement Act* (Canada);
- (k) a receiver or receiver-manager of any property of the Contractor is appointed;
- (l) the Contractor permits any sum, which is not disputed to be due by it, to remain unpaid after legal proceedings have been commenced to enforce payment thereof;

- (m) the Contractor ceases, in the reasonable opinion of the Province, to carry on business as a going concern;
- (n) the Contractor, without the prior written approval of the Province, assigns, sells or in any manner disposes of or encumbers all or any of its interest in, or rights acquired under, this Agreement;
- (o) without the prior written consent of the Province, the direct or indirect legal or beneficial ownership and effective control of the Contractor changes from that represented in Schedule 10;
- (p) any action is taken to enforce any security interest, charge or encumbrance granted, created or issued by the Contractor;
- (q) the failure of the Contractor to comply with the Insurance requirements of Section 8;
- (r) the failure of the Contractor to comply with all applicable safety laws, which in the Province's sole discretion is considered a material risk to person(s) and/or property; or if the Contractor's use or occupation of the Watercraft represents a potential or actual hazard (in the Province's sole discretion);
- (s) any part of the Ferry Facility and/or Watercraft is seized or confiscated under legal process or otherwise or is attached or becomes subject to any encumbrance, charge, claim or lien except as may arise through the acts of the Province or TFA or other occupier of part of the Ferry Facility and/or Watercraft for whom the Contractor is not legally responsible and the same is not discharged or satisfied by the Contractor in a timely fashion as the Province in its sole discretion may determine; and
- (t) any part of the Ferry Facility and/or Watercraft is abandoned, sold, transferred or encumbered by the Contractor.

12.2 On the happening of an Event of Default, or at any time thereafter, the Province or TFA may deliver written notice to the Contractor specifying the Event of Default and the Province may, at its option, elect to do any one or more of the following:

- (a) pursue any remedy available to the Province or TFA at law or in equity including any remedy available to it under the security;
- (b) retain a holdback to recover any overpayment to the Contractor or to recover any other sums which are due and payable to the Province by the Contractor, including:

- (i) if the Event of Default is a failure to perform a Change Order in accordance with this Agreement, twice the value for the particular items involved in carrying out such a Change Order, or
  - (ii) if the Event of Default is a failure to perform the Ferry Service in accordance with this Agreement and Contract Documents, an amount equal to twice the value of the Ferry Service not performed, such value to be determined by the Province in the Province's sole discretion.
- (c) take all actions in its own name or in the name of the Contractor that may reasonably be required to cure the Event of Default in which case all payments, costs and expenses incurred will be payable by the Contractor to the Province on demand and set off against any sums owing by the Province to the Contractor present or future, including any amount retained as a holdback under Section 12.2 (b);
- (d) require the Contractor to cure the Event of Default within a time period specified by the Province;
- (e) if the Event of Default is pursuant to Section 12.1 (s), then the Province without any liability whatsoever, and in addition to any other remedy to which the Province is entitled, may remove the same at the expense of the Contractor and may suspend the Charter and/or suspend the Licence for any period at the discretion of the Province;
- (f) if an Event of Default with respect to which an amount has been retained as a holdback under Section 12.2 (b):
  - (i) has been cured by the Contractor to the satisfaction of the Province within a time period specified by the Province, then the Province may pay the holdback amount retained to the Contractor; or
  - (ii) is not curable or has not been cured by the Contractor to the satisfaction of the Province within a time period specified by the Province and the holdback resulted from an Event of Default identified in Section 12.2 (b)(i) or (ii), then the Province may keep the amount retained as a reduction of fees otherwise payable to the Contractor under Section 12.2 (b)(i) or (ii) and the Contractor and the Province agree that an amount equal to twice the value of the work not supplied, determined according to Section 12.2 (b)(i) or (ii), is an appropriate estimate of the losses and damages incurred by the Province arising from the Contractor's default, after taking into account, without limitation, the Province's increased administration costs, the costs of hiring an alternate contractor to perform the Ferry Service, the delays in the performance of the Ferry Service and the

costs associated with traffic closures or delays, if any, which resulted from the Event of Default.

- (g) waive the Event of Default; and
- (h) terminate this Agreement, subject to the expiration of any time period specified by a notice delivered pursuant to Section 12.2 (d).

12.3 The rights, powers and remedies conferred on the Province and TFA under this Agreement are not intended to be exclusive and each will be cumulative and in addition to and not in substitution for every other right, power and remedy existing or available to the Province and TFA under this Agreement, any other agreement, at law or in equity and the exercise by the Province and TFA of any right, power or remedy will not preclude the simultaneous or later exercise by the Province of any other right, power or remedy.

12.4 No failure or delay on the part of any party to complain of an act or failure of another party or to declare such other party in default, irrespective of how long such act or failure to act will continue, will constitute a waiver by such party of its rights under this Agreement.

12.5 No interest will be payable by the Province or TFA on any amount retained as a holdback in accordance with Section 12.2.

### **13. Contractor's Documentation and Records**

13.1 At the expiry or earlier termination of this Agreement, the Contractor shall supply the Province with all relevant plans, records, manuals, logs and other documentation created or produced in regard to the provision of the Ferry Service including the return of all such documents provided to the Contractor by the Province. A document, for the purpose of this Section 13.1, may have been created by mechanical, electronic, or other means and shall include all such forms.

### **14. Transition Services**

14.1 Transition services shall be supplied by the Contractor in accordance with Appendix B of Schedule 2 and such services are part of the Ferry Service and consideration for which is part of the Service Fee.

### **15. Force Majeure**

15.1 If an Event of Force Majeure occurs or is likely to occur,

- (a) the party directly affected will notify the other party immediately, and will use its best efforts to remove, curtail or contain the cause of the delay,

interruption or failure and to resume with the least possible delay performance of its duties, covenants and obligations under this Agreement; and

(b) if the party directly affected by the Event of Force Majeure is the Contractor, then:

(i) the Province will not be obliged to pay to the Contractor any amounts pursuant to sailings of the Watercraft attributable, as determined by the Province, to the period during which the Event of Force Majeure is continuing,

(ii) during the time period while the Event of Force Majeure continues the Province will pay monthly fees to the Contractor for performing Change Order items that are in the nature of additional work items.

15.2 (a) if either party is aware or is made aware, through its dealings with the insurance industry or the transportation services industry, that an Event of Force Majeure is likely to occur, then that party will notify the other parties and the parties will enter into good faith negotiations with a view to entering into a mutually acceptable agreement that will prevent the Event of Force Majeure from occurring;

(b) if either party is aware or is made aware, through its dealings with the insurance industry or the transportation services industry, that an Event of Force Majeure has occurred, then that party will notify the others immediately;

(c) if the party giving notice under Section 15 is the Contractor, then the Province will as soon as reasonably practicable, notify the Contractor whether or not the Province is satisfied, in the Province's sole discretion, that the matter described in the notice constitutes an Event of Force Majeure described herein, and the Province's notice will be final and binding; and

(d) if the party giving notice under this Section 15 is the Province or TFA, or if the Province has notified the Contractor under this Section 15 that the matter described in the Contractor's notice constitutes an Event of Force Majeure, then the Contractor will enter into good faith negotiations with the Province with a view to resolve the Event of Force Majeure and to resume, with the least possible delay, the performance of this Agreement, and notwithstanding any other provisions in this Agreement, the Province will not be obliged to make any payments to the Contractor in connection with this Agreement during the period that such Event of Force Majeure is continuing.



**16. Notice**

16.1 Any notice, document, statement, report, demand to be given or made under this Agreement, will be in writing and may be given or made by personal delivery to the party to whom it is to be given or made, or by mailing in Canada with postage prepaid addressed,

(a) if to the Province and the TFA:

Ministry of Transportation and Infrastructure  
P.O. Box 9850, Stn. Prov. Gov't  
940 Blanshard Street  
Victoria, B.C. V8W 9T5

Attention: Marine Manager, Inland Ferries, Marine Branch

or such other Contact Person or address as the Province may notify the Contractor from time to time;

(b) and if to the Contractor:

Western Pacific Marine Ltd.  
501 Denman Street  
Vancouver, B.C. V6G 2W9

Attention: President

or such other Contact Person and address as may be notified in writing by the Contractor to the Province from time to time;

and any such notice, document, statement, report, or demand so mailed will be deemed given to and received by the addressee on the third business day after the mailing of the same except in the event of disruption of postal services in Canada in which case any such notice, document, statement, report, demand or payment will be deemed given to and received by the addressee when actually delivered to the particular address set out above.

16.2 Any notice, document, report, statement or demand desired or required to be given or made under this Agreement may be transmitted by facsimile from either party to the other and will be conclusively deemed validly given to and received by the intended recipient when so transmitted if transmitted to the following numbers:

(a) If to the Contractor: (604) 605-6006

(b) If to the Province and TFA: (250) 356-0897

or such other facsimile number as may be notified in writing by either party to the other from time to time during the Term.

## **17. Miscellaneous**

- 17.1 Any public announcement relating to this Agreement will be arranged by the Province in consultation with the Contractor.
- 17.2 Any property provided by or on behalf of the Province or the TFA to the Contractor as a result of this Agreement will be the exclusive property of the Province or the TFA (as the case may be) and will, subject to the following provision, be delivered by the Contractor to the Province immediately following the expiration or sooner termination of this Agreement, provided that the Province may, at any time or times prior to the expiration or sooner termination of this Agreement, give written notice to the Contractor requesting delivery by the Contractor to the Province of all or any part of such property in which event the Contractor will immediately comply with such request.
- 17.3 The Contractor will treat as confidential and will not, without the prior written consent of the Province, publish, release, or disclose, or permit to be published, released or disclosed either before or after the expiration or sooner termination of this Agreement, any information, supplied to, obtained by, or which comes to the knowledge of the Contractor as a result of this Agreement, except insofar as such publication, release or disclosure is required by law or is necessary to enable the Contractor to fulfill the obligations of the Contractor under this Agreement.
- 17.4 The Contractor will not, during the Term, perform a service for or provide advice to any person, firm or corporation or other legal entity where the performance of the service or the provision of the advice may or does, in the reasonable opinion of the Province, give rise to a conflict of interest between the obligations of the Contractor to the Province under this Agreement and the obligations of the Contractor to such other person, firm or corporation or other legal entity.
- 17.5 This Agreement constitutes the entire agreement between the Parties in respect of the subject matter of this Agreement and no understandings, representations, contracts, or agreements, oral or otherwise, exist between the Parties with respect to the subject matter of this Agreement except as expressly set out in this Agreement. The Contractor agrees that in entering into this Agreement the Contractor has not and does not rely upon any previous representation of the Province, or of servants, employees, agents, or representatives of the Province, whether expressed or implied, or upon any inducement or agreement of any kind or nature. All prior understandings, negotiations, representations, contracts or agreements are hereby cancelled.

- 17.6 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 terms and conditions of this Agreement.
- 17.7 Public disclosure of this Agreement and any documents or other records pertaining to this Agreement or those agreements which are in the custody or under the control of the Province, will be governed by the *Freedom of Information and Protection of Privacy Act*, R.S.B.C. 1996, c.165.
- 17.8 Time will be of the essence of this Agreement.
- 17.9 All provisions of this Agreement in favour of the Province and TFA and all rights and remedies of the Province and TFA, either at law or in equity, will survive the expiration or sooner termination of this Agreement.
- 17.10 This Agreement will enure to the benefit of and be binding upon the Province, TFA and their assigns and Contractor and its successors and permitted assigns.
- 17.11 The Contractor will not assign its rights and obligations under this Agreement without the prior written consent of the Province which the Province may grant or refuse at its sole discretion acting reasonably or unreasonably. The following events will be deemed to be an assignment of the Contractor's rights and obligations under this Agreement:
- (a) if the Contractor is a corporation but none of its shares are traded on any public stock exchange or in any public stock market, any transaction, amalgamation, arrangement, reorganization, joint venture, trust or other agreement which will result in a direct or indirect change of control of such corporation or direct or indirect change of ownership of the business during the Term; or
  - (b) if the Contractor is a partnership, the cessation, other than through death, at any time during the Term by any person who at the time of the execution of this Agreement owns a partner's interest, or such ownership, or a material change in the ownership, in the opinion of the Province, of such partner's interest.
- 17.12 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.

17.13 If any provision of this Agreement or the application thereof to any person or circumstance is invalid or unenforceable to any extent, the remainder of this Agreement and the application of such provision to any other person or circumstance will not be affected or impaired thereby and will be valid and enforceable to the extent permitted by law.

17.14 This Agreement may only be amended by a further written agreement executed by both parties.

17.15 The Contractor will use its best efforts to adopt electronic modes of communication and transfer of information in formats and through modes of communication specified by the Province.

## **18. Interpretation**

18.1 A reference in this Agreement:

- (a) to a statute whether or not that statute has been defined, means a statute of the Province of British Columbia unless otherwise stated and includes every amendment to it, every regulation made under it and any enactment passed in substitution therefore or in replacement thereof; and
- (b) to any other agreement between the Parties means that other agreement as it may be amended from time to time by the Parties.

18.2 Unless the context otherwise requires, any reference to "this Agreement" means this instrument, all of the Schedules attached to it and all documents, manuals or publications referenced in the Schedules and any reference in this Agreement to any section, subsection or paragraph by number is a reference to the appropriate section, subsection or paragraph in this Agreement.

18.3 The headings or captions in this Agreement are inserted for convenience only and 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.

18.4 In this Agreement, "person" includes a corporation, firm, association and any other legal entity and wherever the singular or masculine is used it will be construed as if the plural, the feminine or the neuter, and wherever the plural or the feminine or the neuter is used it will be construed as the singular or masculine, as the case may be, had been used where the context or the parties so require.

18.5 Each schedule attached to this Agreement is an integral part of this Agreement as if set out at length in the body of this Agreement.

18.6 For the purposes of this Agreement, the "Contract Documents" will consist of the following documents:

- (a) the Agreement and its schedules; and
- (b) the particular provisions of any manuals, drawings and publications referred to in the Agreement (the "Relevant Provisions of the Manuals and Drawings").

18.7 Conflicts among provisions to this Agreement will be resolved as follows:

- (a) a provision in the body of this Agreement will prevail over any conflicting provision in, attached to or incorporated by reference into a schedule, unless that conflicting provision expressly states otherwise;
- (b) a provision in a schedule will prevail over any conflicting provision in an appendix, another document attached to, or incorporated by reference into a schedule, unless the schedule expressly states otherwise; and
- (c) a provision found elsewhere in this Agreement will prevail over the Relevant Provisions of the Manuals and Drawings.

18.8 In this Agreement, the words "including" and "includes", when following any general term or statement, are not to be construed as limiting the general term or statement to the specific items or matters set forth or to similar items or matters, but rather as permitting the general term or statement to refer to all other items or matters that could reasonably fall within the broadest possible scope of the general term or statement.

18.9 All dollar amounts expressed in this Agreement refer to lawful currency of Canada, exclusive of applicable taxes.

18.10 This Agreement will be governed by, construed and interpreted in accordance with the laws of the Province of British Columbia and the courts of competent jurisdiction within the Province of British Columbia, will have exclusive jurisdiction with respect to any legal proceedings between the Province and the Contractor arising out of this Agreement.

18.11 The schedules, that will form an integral part of this Agreement and are attached hereto, are as follows:

Schedule 1      Bare Boat Charter

Schedule 2	Ferry Service Specifications Appendix A – Contractor's Ferry Service Plan Appendix B – Contractor's Transition Service Plan
Schedule 3	Licence
Schedule 4	Ferry Facility Maintenance Specifications
Schedule 5	Watercraft Maintenance Specifications Appendix A – Refit Requirements
Schedule 6	List of Assets
Schedule 7	Insurance and Securities
Schedule 8	Monthly Report Specimen
Schedule 9	Annual Report Specimen
Schedule 10	Corporate Information
Schedule 11	Direct Plus Rates
Schedule 12	Dispute Resolution Protocol
Schedule 13	Referee Agreement Specimen

## **19. Contractor's Representations and Warranties and Other Covenants**

19.1 The Contractor represents and warrants to the Province and TFA on the execution of this Agreement and at all times thereafter during the Term of this Agreement, with the knowledge that the Province and TFA shall rely upon these warranties and representations in entering into this Agreement and completing their obligations under this Agreement, that,

- (a) if the Contractor is a corporation, then it is duly organized and validly existing under the laws of British Columbia, or under the laws of any other province or state in which case it is registered extra-provincially in British Columbia;
- (b) the Contractor has full power, capacity and legal right to enter into and perform its obligations under this Agreement and any agreements and other instruments referred to herein or delivered in connection with this Agreement;

- (c) this Agreement has been duly authorized, executed and delivered and constitutes a valid and binding obligation of the Contractor enforceable in accordance with its terms;
- (d) the Contractor has no knowledge of any fact that materially adversely affects or, so far as it can foresee, might materially adversely affect its properties, assets, condition (financial or otherwise), business or operations or its ability to fulfill its obligations under this Agreement;
- (e) all information, statements, documents and reports furnished or submitted by the Contractor to the Province in connection with this Agreement and any other agreement referred to herein or delivered in connection with this Agreement are true;
- (f) the observance and performance of the terms and conditions of this Agreement, or any other agreement referred to herein, will not constitute a breach by it of or a default by it under:
  - (i) any statute, regulation or bylaw of Canada or the Province of British Columbia applicable to or binding on it;
  - (ii) its constating documents; or
  - (iii) any contract or agreement to which it is a party;
- (g) the authorized capital of the Contractor, if applicable, is as disclosed in Schedule 10;
- (h) the legal and beneficial ownership and effective control of all of the authorized, issued and outstanding voting shares of the Contractor, if applicable, is as disclosed in Schedule 10;
- (i) there are no agreements, options or rights of any kind held by any person with respect to any of the voting shares of the Contractor, if applicable, except as disclosed in Schedule 10;
- (j) the Contractor has good safekeeping, marketable title to and possession of all its assets, free and clear of all liens, charges or encumbrances except those disclosed in Schedule 10;
- (k) the Contractor is not party to, or threatened with, any litigation and has no knowledge or any claims against it that would materially affect its undertaking or financial condition;

- (l) there are no liabilities of the Contractor, contingent or otherwise, that are not disclosed or reflected in Schedule 10 herein except those incurred in the ordinary course of its business;
- (m) if the Contractor is a partnership, then the identification of all of the partners of the partnership and their respective interests in the partnership are as disclosed in Schedule 10;
- (n) if the Contractor is a partnership and if any of the partners of the partnership are corporate entities, then the information required by Sections 19.1(g), (h) and (i) with respect to each corporate partner is as disclosed in Schedule 10;
- (o) the Contractor has filed all tax, corporate information and other returns, required to be filed by the laws of British Columbia, Canada and any other jurisdiction where it is required to file such returns, and has complied with all workers compensation legislation and other similar legislation to which it may be subject and has paid all taxes, fees and assessments calculated to be due by the Contractor under those laws as of the date of this Agreement;
- (p) the Contractor is not in breach of any statute, regulation or bylaw applicable to the Contractor or its operations;
- (q) the Contractor holds all permits, licences, consents and authorities issued by any federal, provincial, regional or municipal government or an agency of any of them, that are necessary in connection with the operations of the Contractor;
- (r) the making of this Agreement, and the performance of and compliance with the terms of this Agreement does not conflict with and will not result in a breach of, or constitute a default under, the memorandum or articles of the Contractor or the acceleration of any indebtedness under, any terms, provisions or conditions of, any indenture, mortgage, deed of trust, agreement, security agreement, licence, franchise, certificate, consent, permit, authority or other instrument to which the Contractor is a party or is bound or any judgment, decree, order, rule or regulation of any court or administrative body by which the Contractor is bound or, to the knowledge of the Contractor, any statute, regulation or bylaw applicable to the Contractor;
- (s) it has no knowledge of any untrue or incorrect representation or assurance, whether verbal or written, given by the Contractor, its directors or officers to the Province in connection with this Agreement;



- (t) it has sufficient trained staff, facilities, materials, appropriate equipment and approved subcontractual agreements in place and available to enable it to fully perform the Ferry Service; and
  - (u) it has independently reviewed all labour relations issues related to the performance of the Contractor's obligations under this Agreement.
- 19.2 All representations, warranties, covenants and agreements made in this Agreement and all certificates and other documents delivered by or on behalf of the Contractor are material and shall conclusively be deemed to have been relied upon by the Province and TFA, despite any prior or subsequent investigation by the Province or TFA.
- 19.3 All statements contained in any certificate or other document delivered by or on behalf of the Contractor to the Province or TFA under this Agreement or in connection with any of the transactions contemplated by this Agreement will be deemed to be representations and warranties of the Contractor under this Agreement.
- 19.4 The provisions of Sections 19.1, 19.2 and 19.3 shall continue in full force and effect despite the fulfillment by the Contractor of any or all of its obligations under this Agreement or the payment by the Province to the Contractor of any or all of the monies that the Province becomes liable to pay to the Contractor pursuant to this Agreement.
- 19.5 The Contractor shall:
- (a) observe, abide by and comply with all Laws that apply to the operation and provision of the Ferry Service and the use and occupation of the Ferry Facility;
  - (b) ensure that the representations and warranties set forth herein are true and correct at all times during the Term and provide evidence to that effect to the Province on the written request of the Province;
  - (c) maintain its corporate existence if applicable and in any event carry on and conduct its business in a proper business-like manner in accordance with good business practice and keep or cause to be kept proper books of account in accordance with generally accepted accounting principles or international financing reporting standards applied on a consistent basis;
  - (d) punctually pay as they become due all accounts, expenses, wages, salaries, taxes, levies, rates, fees, contributions and assessments required to be paid by it on any of its undertaking;

- (e) provide and maintain all financial management and technical expertise necessary for the Contractor to carry out its obligations under this Agreement;
- (f) perform its obligations in this Agreement and in any agreement referred to herein in a good and workmanlike manner, free of defects or deficiencies and to the satisfaction of the Province;
- (g) provide its own personnel for the operation and provision of the Ferry Service and ensure that its personnel is properly trained and qualified;
- (h) observe and comply with all laws, by-laws, orders, directions, rules and regulations of any competent government authority or branch or agency thereof relating to the environment and to occupational health and safety, including without limitation the *Workers Compensation Act* (British Columbia) and the Occupational Health and Safety Regulation thereunder, directly or indirectly applicable to the Contractor or this Agreement, including by ensuring that the provision of and operation of the Ferry Service, complies with all such laws, by-laws, orders, directions, rules and regulations;
- (i) notwithstanding any limitation in the said Occupational Health and Safety Regulation which would exempt the Contractor from the requirement to initiate and maintain an occupational health and safety program, ensure that the safety program:
  - (i) is designed to prevent injuries and occupational diseases within the contemplation of the *Workers Compensation Act* (British Columbia) and the Occupational Health and Safety Regulation thereunder;
  - (ii) provides for the establishment and maintenance of a system or process to ensure compliance with the *Workers Compensation Act* (British Columbia) and the Occupational Health and Safety Regulation thereunder in respect of the Ferry Service and this Agreement; and
  - (iii) satisfies the requirements of an occupational health and safety program under the *Workers Compensation Act* (British Columbia) and the Occupational Health and Safety Regulation thereunder;
- (j) discharge the responsibilities of the Prime Contractor under the *Workers Compensation Act* (British Columbia) and the Occupational Health and Safety Regulation thereunder, in connection with the Ferry Service and this Agreement; and

- (k) within 15 days of the delivery of a written demand from the Province, provide the Province with such information and documents with respect to the affairs of the Contractor and the provision and operation of the Ferry Service as the Province may reasonably require.

19.6 The Contractor is an independent contractor and not the servant, employee, partner or agent of the Province or the Province or TFA.

19.7 The Contractor will not, in any manner whatsoever, commit or purport to commit the Province or the TFA to the payment of any money to any person.

19.8 The Province may, from time to time, give such instructions to the Contractor as the Province considers necessary in connection with the operation and provision of the Ferry Service, which instructions the Contractor will comply with, but the Contractor will not be subject to the control of the Province with respect to the manner in which such instructions are carried out.

19.9 No partnership, joint venture or agency will be created or will be deemed to be created by this Agreement or any action of the parties under this Agreement.

## **20. Business Opportunities**

20.1 In the event the Contractor is desirous of utilizing the Ferry Facility and/or the Watercraft for purposes other than those contained herein, it shall so notify the Province, detailing the proposed additional usages. The Province, at its sole discretion, shall consider the proposal and may or may not accede to the request of the Contractor, with or without conditions, or may reject the proposal. The Province shall be at liberty to arbitrarily and unreasonably withhold its consent to any proposal made by the Contractor as aforesaid.

## **21. BC Transportation Financing Authority**

21.1 TFA is named as a party to this Agreement as its authority is required with respect to the granting of the Licence of the Ferry Facility and the Charter of the Watercraft referred to in Section 3.1

21.2 TFA hereby grants to the Province the full right and authority to act on its behalf in respect of any and all matters affecting the Licence and the Ferry Facility and the Charter and the Watercraft in relation to this Agreement, and generally the provision and operation of the Ferry Service by the Contractor which full right and authority includes, without limitation, the full right and authority to do any thing, take any step, sign any document, enter upon, use and occupy the Ferry Facility and any improvements thereon and the Watercraft, enforce any right and pursue any remedy, or to refrain from doing any such thing or things as the case may be, without the Province having to seek or obtain from TFA any further approval or direction in respect of the foregoing.

## 22. OWNERSHIP OF DOCUMENTS

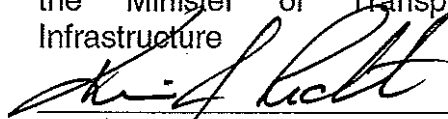
- 22.1 All reports provided by or on behalf of the Contractor to the Province pursuant to this Agreement are and will remain the exclusive property of the Province. The Province may at any time and from time to time use any and all such reports including without limitation all or any part of the information contained in such reports for any purpose whatsoever as the Province in its sole discretion may determine. This provision will survive the expiration or earlier termination of this Agreement, the Licence and the Charter.

## 23. EARLY TERMINATION

- 23.1 The terms of this Agreement shall automatically terminate upon the early termination expiring of the Charter and/or License.

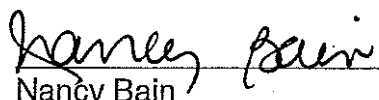
The parties have executed this Agreement as of the date first stated above:

SIGNED on behalf of **HER MAJESTY THE QUEEN IN RIGHT OF THE PROVINCE OF BRITISH COLUMBIA** as represented by the Minister of Transportation and Infrastructure



Kevin Richter,  
Assistant Deputy Minister,  
Infrastructure Department

### BC Transportation Financing Authority



Nancy Bain  
Executive Financial Officer and  
Corporate Secretary

### Western Pacific Marine Ltd.



Graham Clarke  
President, Secretary