

SHISHALH GOVERNMENT-TO-GOVERNMENT AGREEMENT

BETWEEN:

Her Majesty the Queen in Right of the Province of British Columbia, as represented by the Minister of Aboriginal Relations and Reconciliation (the “**Province**”)

AND:

Sechelt Indian Band, established under the *Sechelt Indian Band Self-Government Act*, on behalf of itself and its Members, as represented by the Chief and Council (“**shíshálh**”)

(collectively referred to here as the “Parties” and individually referred to as a “Party”)

WHEREAS

- A. The Province recognizes that the shíshálh people’s aboriginal rights and title exist in shíshálh Territory, that further processes are needed to identify their scope and geographic extent and to give full legal effect to those aboriginal rights and title, and that it is in the interests of both Parties to foster a stronger and more collaborative government-to-government relationship for land, resource, and economic development opportunities within the Territory;
- B. The Supreme Court of Canada in *Tsilhqot’in Nation v. British Columbia*, 2014 SCC 44, found that the Tsilhqot’in Nation had established Aboriginal title in British Columbia;
- C. shíshálh and the Province have the mutual objective of taking significant steps towards in advancing reconciliation between them through collaborative negotiations, actions, and dialogue;
- D. shíshálh and the Province wish to establish this framework that will guide their efforts to advance reconciliation, including through the negotiation of agreements that respect shíshálh Title and Rights, the protection of shíshálh culture and way of life, the creation of economic opportunities and benefits in shíshálh Territory; and
- E. The Parties recognize that the commitment to discussions and negotiations provided for in this Agreement are further steps towards reconciliation of their interests and deepening the clarity and predictability for shíshálh, the Province,

industry, and citizens within shíshálh Territory, on the terms set out in this Agreement.

NOW THEREFORE in consideration of the exchange of mutual promises and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties agree as follows:

1. Interpretation

1.1 Definitions. In this Agreement:

“Agreement” means this shíshálh Government-to-Government Agreement;

“Comprehensive Forestry Agreement” means the agreement to be negotiated by the Parties in accordance with the Forestry Term Sheet;

“Dock Management Plan” means the management plan developed by the Parties with respect to docks in Pender Harbour;

“Egmont Parcel” means the parcel of land described as such in the Reconciliation Agreement;

“Effective Date” means the date this agreement is fully executed by both Parties;

“Interim Forestry Agreement” means the agreement with respect to forest revenue, consultation and accommodation negotiated by the Parties;

“Long Term Reconciliation Agreement” means the agreement to be negotiated by the Parties that supports the relationship between the Parties and may include land, economic, environmental, resource and cultural measures that address or accommodate shíshálh Title and Rights;

“Narrows Inlet Parcels” means the parcel of land described as such in the Reconciliation Agreement;

“Penner Report” means the November 8, 2015 Review of Draft Pender Harbour Dock Management Plan written by Barry Penner;

“Phase 1” means within approximately 6 months from the Effective Date;

“Phase 2” means within approximately 6 – 12 months from the Effective Date;

“Phase 3” means within approximately 12 - 24 months from the Effective Date;

“Reconciliation Agreement” means the land transfer agreement with respect to the Egmont Parcel, Narrows Inlet Parcels and Salmon Inlet Parcel;

“Release” means the release of claims with respect to the existing tenured docks in Pender Harbour;

“Salmon Inlet Parcel” means the parcel of land described as such in the Reconciliation Agreement;

“Shared Decision Making Agreement” means the shared decision agreement to be reached between the Parties relating to dock management in Pender Harbour;

“Senior Official” means the individuals appointed by each Party to the Solutions Forum;

“Solutions Forum” means the forum established under section 7;

“Strategic Issue” means an issue or disagreement that arises between the Parties that may affect the implementation of this Agreement or the relationship between the Parties;

“Territory” means the area identified on the map attached in Appendix A; and

“Title and Rights” means:

- a) asserted aboriginal rights, including aboriginal title, or
- b) determined aboriginal rights, including aboriginal title, which are recognized and affirmed under section 35(1) of the *Constitution Act, 1982*.

2. Purpose

2.1 The purposes of this Agreement are:

- (a) to establish a framework for negotiating a Long Term Reconciliation Agreement and agreements that support reaching a Long Term Reconciliation Agreement that will provide significant advances in and contribute towards the reconciliation of the relationship of the Parties;
- (b) to confirm the actions the Parties will take to address particular outstanding matters between them, specifically regarding:

- (i) transfers of land in shíshálh Territory, including through the Reconciliation Agreement;
 - (ii) development in and around Pender Harbour, including through the Dock Management Plan, Shared Decision Making Agreement, Release and Penner Report; and
 - (iii) land and resource agreements respecting forestry, revenue sharing and shared decision making; and
- (c) to establish a Solutions Forum through which shíshálh and the Province will manage Strategic Issues, with the goal of avoiding or addressing such matters early, avoiding legal actions to the extent possible, and deepening relationships and collaboration.

2.2 The Parties acknowledge that they share the mutual expectation that the successful completion of an agreement or agreements contemplated under subsection 2.1 (a), will result in a clear structure and patterns for collaborative relations regarding land and resource matters in shíshálh Territory over an extended period of time.

3. Principles

3.1 shíshálh and the Province recognize that the successful implementation of the this Agreement will require systematic, timely, creative, and disciplined efforts by both Parties. To that end, the Parties agree to the following principles:

- (a) Each Party's respective officials, representatives and teams will endeavour to:
 - (i) act in an open, good faith and transparent manner toward one another in dealing with the matters set out in this Agreement and when implementing this Agreement;
 - (ii) apply a "solutions-oriented" approach to all discussions, negotiations and the implementation of this Agreement;
 - (iii) use reasonable efforts to negotiate and implement any agreement or agreements, within reasonable periods of time, without undue or unnecessary delays;
 - (iv) strive to build a trusting and positive relationship between shíshálh and the Province, in an effort to deepened reconciliation, including through achieving deeper knowledge and understandings of shíshálh Title and Rights, and the interests of the Province; and

- (v) deepen learning and respect for shíshálh culture and way of life and understanding of the shíshálh people.

4. Negotiations Framework

4.1 The Parties will address the following matters as part of the negotiation of a Long Term Reconciliation Agreement:

- (a) identification, agreement upon, and implementation of land and resource measures or objectives in shíshálh Territory that clarify areas for forms and levels of:
 - (i) protection;
 - (ii) economic activity and development;
 - (iii) shíshálh cultural stewardship; and
 - (iv) transfer of lands to the shíshálh Nation.
- (b) identification, and agreement upon, processes for shared decision-making between the Province and shíshálh that achieve or advance the following:
 - (i) clarity and predictability for shíshálh, the Province, and third parties regarding the process, expectations, roles and responsibilities, modes of communication, and range of potential outcomes;
 - (ii) mechanisms for engagement and working together that create a significant likelihood for consensus outcomes in a timely manner; and
 - (iii) processes to resolve matters that significantly reduce the likelihood of recourse to the courts;
- (c) identification, and agreement upon measures that may be taken to address or accommodate shíshálh Title and Rights that may include models for different areas of the Territory, and different resources, certain activities, or general measures to be applied; and
- (d) identification, agreement upon, and implementation of measures that provide greater certainty and predictability.

4.2 The Parties have identified the following interests which may be addressed through an agreement or agreements to be negotiated by the Parties:

- (a) shísháhlh has identified the following interests:
 - (i) transfer of lands including gravel lands;
 - (ii) significant increase in forestry opportunities and allocation;
 - (iii) resource revenue sharing;
 - (iv) land and resource decision-making; and
 - (v) shísháhlh land stewardship and cultural protection.

- (b) The Province has identified the following interests:
 - (i) contribution to reconciliation that becomes an element in a Long Term Reconciliation Agreement;
 - (ii) positive forestry relationship between the Province, shísháhlh and forest licence holders;
 - (iii) responsible environmental management;
 - (iv) procedural fairness for third parties;
 - (v) long term stability and predictability for land and resource decisions;
 - (vi) long term stability and predictability for use and development in and around Pender Harbour and the Territory;
 - (vii) substantive reconciliation of interests through negotiated agreements and avoiding or discontinuing court actions;
 - (viii) collaborative relations with shísháhlh, industry and citizens; and
 - (ix) public accountability.

This list of the Parties interests is neither exhaustive nor complete, and will not limit any negotiations between the Parties, including negotiations contemplated by this Agreement.

- 4.3 As part of addressing the list of interests and matters in section 4.2, the Parties acknowledge the need to engage regarding shísháhlh's land use plan, shísháhlh's decision-making process, and provincial land and resource laws, policies, and legislation.

5. Funding

- 5.1 The Province recognizes that capacity support is needed for shíshálh to implement this Agreement. The Province will provide \$100,000.00 to shíshálh within 60 days of the Effective Date to contribute towards shíshálh capacity to implement this Agreement. The Parties acknowledge that additional capacity funding may be required and will be discussed.
- 5.2 Notwithstanding any other provision in this Agreement, any payment of funds by the Province to shíshálh under this Agreement is subject to:
- (a) there being sufficient monies available in an appropriation, as defined in the *Financial Administration Act*, R.S.B.C. 1996 c. 138, to enable British Columbia in any fiscal year or part thereof when such payment is required, to make such payment; and
 - (b) Treasury Board, as defined in the *Financial Administration Act*, R.S.B.C. 1996 c. 138, not having controlled or limited expenditure under any appropriation necessary in order to make such payment.

6. Specific Actions

- 6.1 The Parties have identified phases related to the negotiation of the Long Term Reconciliation Agreement pursuant to section 4 and the negotiation and implementation of other agreements between the Parties. The timelines identified in these sections are targets and actions identified below may require more or less time to complete, as appropriate in the circumstances.
- 6.2 **Phase 1.** The Parties intend to take the following steps in Phase 1:
- (a) the Parties will enter scoping discussions towards a Long Term Reconciliation Agreement including:
 - (i) reviewing the Parties respective interests identified in section 4.2; and
 - (ii) identifying information and sharing views on the matters identified in subsections 4.1 (a) to (d);
 - (b) the Parties will enter into the Reconciliation Agreement, Interim Forestry Agreement, and Forestry Term Sheet in accordance with all required approvals;
 - (c) the Parties will implement the following steps under the signed Reconciliation Agreement and Forestry Term Sheet:

- (i) complete the transfer of the Egmont Parcel in accordance with the terms of the signed Reconciliation Agreement; and
 - (ii) enter negotiations of the Comprehensive Forestry Agreement in accordance with approved mandates;
- (d) the Parties will identify target timelines and initiate work to identify an appropriate area to establish a First Nations Woodland Licence and enter into a Forest Tenure Opportunities Agreement in accordance with all required approvals;
- (e) the Province will commission and the Parties will work together on an environmental study of the impacts of docks in Pender Harbour and an archaeological inventory for the north side of Pender Harbour in accordance with the Penner Report;
- (f) the Province will commission the Stage 3 environmental report for the Narrows Inlet Parcel and the Stage 2 environmental report for Salmon Inlet Parcels in accordance with the signed Reconciliation Agreement;
- (g) the Parties will explore potential opportunities with respect to the Sechelt Golf Course; and
- (h) the Province will proceed with short-term (up to 2 years) modification agreements to extend the tenures for up to 321 existing tenured docks in Pender Harbour.

6.3 Phase 2. The Parties intend to take the following steps in Phase 2:

- (a) the Parties will negotiate a Long Term Reconciliation Agreement based on the scoping work done by the Parties under subsection 6.2 (a) and in accordance with approved mandates;
- (b) If a Stage 3 environmental report is required for Salmon Inlet Parcel the Province will commission the report in accordance with the signed Reconciliation Agreement;
- (c) the Parties will negotiate and seek to reach agreement on the a Comprehensive Forestry Agreement, in accordance with the Forestry Term Sheet and approved mandates;
- (d) following the completion of the studies identified subsection 6.2 (e) (i) the Parties will take appropriate steps to review, amend and finalize the Dock Management Plan, including all required shíshálh and public consultation and any required accommodation measures that may be necessary;

- (e) the Parties will work collaboratively to negotiate and seek to reach agreement on a Dock Management Plan Shared Decision Making Agreement concurrent with the Dock Management Plan; and
- (f) where the Parties are unable to finalize the Dock Management Plan or reach agreement on the Shared Decision Making Agreement, the Province may exercise its discretion to terminate the Reconciliation Agreement pursuant to the terms of the Reconciliation Agreement.

6.4 Phase 3. The Parties intend to take the following steps in Phase 3:

- (a) the Parties will finalize the negotiation and enter into the Long Term Reconciliation Agreement, in accordance with all required mandates and approvals;
- (b) the Parties will continue to implement the Reconciliation Agreement including the following steps:
 - (i) after receiving the required notice from shíshálh the Parties will work together to undertake remediation measures on the Salmon Inlet Parcel and the Narrows Inlet Land Parcels in accordance with the signed Reconciliation Agreement;
 - (ii) where the Parties decide not to proceed with the remediation of the Salmon Inlet Parcel or the Narrows Inlet Parcels in accordance with the Reconciliation Agreement:
 - (A) the Province will recommend that a reserve under s. 17 of the *Land Act*, RSBC 1996, c. 245 be placed over the lands in question, taking into consideration the existing interests on the lands, for a reasonable period of time to provide the Parties an opportunity to develop alternate solutions, and
 - (B) subject to the Province obtaining all required mandates and approvals, the Parties will discuss steps that may be taken to facilitate future transfer of these lands as part of the Long Term Reconciliation Agreement negotiation;
- (c) the Parties will enter into the Release with respect to the 321 existing tenured docks in Pender Harbour; and
- (d) the Parties will take steps to establish a First Nations Woodland Licence in accordance with the terms of a signed Forest Tenure Opportunities Agreement.

7. Solutions Forum

- 7.1 The Parties will establish a Solutions Forum to address Strategic Issues that may arise during the implementation of this Agreement.
- 7.2 Each Party will provide early notice to the other Party of Strategic Issues and endeavour to resolve such issues through the mechanisms set out in this Agreement, prior to pursuing other paths, such as legal action, or termination of agreements.
- 7.3 The Parties agree the Solutions Forum does not replace, duplicate, fetter or delay the consultation and accommodation processes between the Parties.
- 7.4 The Parties' goals for the Solutions Forum are as follows:
- (a) to act as a forum through which senior officials of shíshálh and the Province will seek to work collaboratively, dialogue and seek to resolve Strategic Issues in shíshálh Territory; and
 - (b) to strengthen their working relationship, manage conflict, and increase their capacity for collaboration.
- 7.5 shíshálh and British Columbia agree to the following principles to guide the work of the Solutions Forum:
- (a) communications and documents are without prejudice and confidential and may be identified in advance in writing by a Party as with prejudice and on the record;
 - (b) sharing of information in accordance with applicable laws;
 - (c) early identification of issues of concern, so that early intervention and conflict management can take place; and
 - (d) striving to work by consensus on resolving issues, identifying solutions and implementing those solutions.
- 7.6 Each Party will appoint a senior official to represent the Party at the Solutions Forum.
- 7.7 The Parties will use the following process to address Strategic Issues:
- (a) either Party may bring a Strategic Issue to the Solutions Forum;
 - (b) where both Senior Officials agree the Strategic Issue merits further exploration through the Solutions Forum, the Senior Officials will meet as

soon as practicable;

- (c) the Solutions Forum will set its own meeting schedule as appropriate in the circumstances to address the issues identified;
- (d) the Senior Officials may set time limits for addressing Strategic Issues;
- (e) meetings of the Solutions Forum may take place by teleconference or in person;
- (f) either Party may ask other of their representatives to attend the Solutions Forum meetings; and
- (g) where the Solutions Forum is unable to resolve a Strategic Issue, the Parties may agree to use other dispute resolution mechanisms to resolve the issue or disagreement.

7.8 The Parties will assess the effectiveness of the Solutions Forum after one year and may agree to expand the scope or amend the process used.

8. Term and Termination

8.1 The term of this Agreement will commence on the Effective Date.

8.2 Either Party may terminate this Agreement upon:

- (a) 90 days written notice to the other Party with a detailed explanation of the reason for termination; or
- (b) upon the terms of this Agreement being incorporated by the Parties into a successor agreement or modified by mutual agreement of the Parties.

8.3 If notice of termination is given the Parties will meet within 30 days to understand the reasons for termination and whether any opportunity to avoid termination is possible.

8.4 The Parties agree that subsection 6.3 (f) will survive despite termination of this Agreement.

9. Representations and Warranties

9.1 **shíshálh Representations.** shíshálh represents and warrants to the Province, with the intent and understanding that they will be relied on by the Province in entering into this Agreement, that:

- (a) it has the legal power, capacity and authority to enter into this Agreement on its own behalf and on behalf of its members;
- (b) it has taken all necessary actions and has obtained all necessary approvals to enter into this Agreement for and on behalf of its members; and
- (c) this Agreement is valid and binding obligation upon it.

9.2 **Provincial Representations.** The Province represents and warrants to shíshálh, with the intent and understanding that they will be relied on by shíshálh in entering into this Agreement, that it has the authority to enter into this Agreement and that this Agreement is a valid and binding obligation of the Province.

10. General

10.1 **Legal Advice.** Both Parties confirm that each have had the full opportunity to review the terms and conditions of this Agreement and, and each have sought independent legal advice with respect to their terms and conditions.

10.2 **Schedules.** Appendix A - Map of shíshálh Territory to this Agreement forms part of this Agreement.

10.3 **Further Approvals.** The Parties acknowledge that further mandates and approvals are required to enter into or to complete the negotiations described in this Agreement. Negotiation mandates and any agreements reached between the Parties as a result of those negotiations, including the Reconciliation Agreement, Interim Forestry Agreement, Forestry Term Sheet, Comprehensive Forestry Agreement, and Long Term Reconciliation Agreement are subject to each Party obtaining all required approvals, including any Cabinet and Treasury Board approvals.

10.4 **No Implied Waiver.** Any waiver of:

- (a) a provision of this Agreement;
- (b) the performance by a Party of an obligation under this Agreement; or
- (c) a default by a Party of an obligation under this Agreement; and
- (d) will be in writing and signed by the Party giving the waiver and will not be a waiver of any other provision, obligation or subsequent default.

- 10.5 **Successors.** This Agreement will enure to the benefit of and be binding on the Parties and its successors and the Province.
- 10.6 **No Admissions.** Nothing in this Agreement will be construed:
- (a) as an admission by either Party of the validity or invalidity of any claim by shíshálh to an aboriginal right or aboriginal title within the meaning of section 35 of the *Constitution Act, 1982*;
 - (b) as establishing, limiting or abrogating any aboriginal rights or aboriginal title of the shíshálh Nation; or
 - (c) as an acknowledgment or admission by the Province that it has an obligation to provide financial or economic accommodation or compensation to the shíshálh Nation;
 - (d) as in any way limiting the position either Party may take in any negotiations or in any proceeding including the negotiation of a Long Term Reconciliation Agreement.
- 10.7 **Not a Treaty.** The Parties agree this Agreement does not:
- (a) constitute a treaty or land claims agreement within the meaning of section 25 or 35 of the *Constitution Act, 1982*; or
 - (b) establish, recognize, affirm, define, deny, limit or amend any Aboriginal rights or Aboriginal title of the shíshálh people; and
 - (c) preclude the right of either Party to engage in further processes to establish the scope or the geographic extent of Aboriginal title and rights in the Territory.
- 10.8 **No Fettering.** This Agreement, including the implementation of the Solutions Forum, does not affect the jurisdiction or fetter the discretion of any decision-making authority.
- 10.9 **Time.** Time will be of the essence.
- 10.10 **Notice.** Any notice, document or communication required or permitted to be given hereunder shall be in writing and delivered by hand or facsimile to the Party to which it is to be given as follows:

To the Province:
Deputy Minister
Ministry of Aboriginal Relations and Reconciliation
P.O. Box Stn. Prov. Govt.

Victoria, B.C. V8W 9B1
Fax No. (250) 387-6073

To shíshálh Nation:
Chief Councillor
P.O. Box 740
5555 Sunshine Coast Highway
Sechelt, B.C. V0N 3A0
Fax No. (250) 885-3490

or to such other address in Canada as either Party may in writing advise. Any notice, document or communication will be deemed to have been given on the business day when delivered or when transmitted with confirmation of transmission by facsimile if done so during or before normal business hours in the city of the addressee and if after such normal business hours the business day next following.

- 10.11 **Amendment.** This Agreement may be amended from time to time by the agreement of the Parties in writing.
- 10.12 **Governing Law.** This Agreement will be governed by and construed in accordance with the laws of the Province of British Columbia.
- 10.13 **Validity of Agreement.** If any part of this Agreement is void or unenforceable at law:
- (a) the invalidity of that part will not affect the validity of the remainder, which will continue in full force and effect and be construed as if this Agreement had been executed without the invalid part; and
 - (b) the Parties will negotiate and attempt to reach agreement on a replacement for the part declared or held invalid with a view to achieving the intent of the Parties as expressed in this Agreement.
- 10.14 **Interpretation.** For purposes of this Agreement:
- a. “including” means “including, but not limited to” and “includes” means “includes, but not limited to”;
 - b. the recitals and headings are for convenience only, do not form a part of this Agreement and in no way define, limit, alter or enlarge the scope or meaning of any provision of this Agreement;
 - c. a reference to a statute includes every amendment to it, every regulation made under it, every amendment made to a regulation made under it and any law enacted in substitution for, or in replacement of, it;

- d. words in the singular include the plural, and words in the plural include the singular unless the context or any specific definition requires;
- e. in the calculation of time under this Agreement, all references to “days” are to business days from Monday to Friday (except statutory holidays in British Columbia), except that if the time for doing an act falls or expires on a day that is not a business day, the time is extended to the next business day;
- f. any reference to a corporate entity includes any predecessor or successor to such entity;
- g. there will be no presumption that doubtful expressions, terms or provisions in this Agreement are to be resolved in favour of any Party.

[Execution page to follow]

10.15 **Execution in Counterparts.** This Agreement may be entered into by each Party signing a separate copy of this Agreement (including a photocopy or facsimile copy) and delivering it to the other Party by facsimile transmission. All executed counterparts taken together will constitute one agreement.

IN WITNESS WHEREOF the Parties have executed this Agreement as set out below:

**Signed on behalf of the Sechelt Indian
Band by**

Date



Chief Calvin Craig

April 1, 2016



Councillor Gary Feschuk

April 1, 2016



Councillor Randy Joe

April 1, 2016

**Signed on behalf of Her Majesty the
Queen In Right of the Province of
British Columbia by**

Date



Minister John Rustad

June 21, 2016

APPENDIX A - MAP OF SHÍSHÁLH TERRITORY

