

**Penticton Indian Band  
Forest & Range  
Consultation and Revenue Sharing Agreement (FCRSA)  
(the "Agreement")**

**Between:**

**Penticton Indian Band  
as represented by  
Chief and Council  
("Penticton Indian Band")**

**And**

**Her Majesty the Queen in Right of the Province of British Columbia  
as represented by the Minister of Indigenous Relations and Reconciliation  
("British Columbia")**

(Collectively the "Parties")

**PREAMBLE:**

Members of the Penticton Indian Band are part of the *syilx* Nation, and we are the original inhabitants of *syilx* territory, with a *nk'w'ł'mantet* (clearly defined society and relationship) to the *tmx'wulax'w* (land) and all *sqilx'w* (human) and *tmix'w* (animal inhabitants of this land), which is contractual and is clearly defined within our *captikwł* (laws) and our ongoing oral tradition. A foundational principle that guides our view of development within all areas of our territory is stated as follows:

"Activities in the community will be conducted with respect for *tmx'wulax'w*, the *l?\_nak'ul'mentat* (traditions) with *l?\_ank'amen* (prayer) and *l?\_anunx'ina?ten* (in harmony with our cultural belief systems)."

We are further guided by our basic member values that state that "All lands will be developed with respect to our cultural and for the environment and with utmost consideration given to the importance of maintaining natural resources and Ancestral Lands for generations to come."

It is with this spirit that this Agreement is entered into from the perspective of the Penticton Indian Band.

**WHEREAS:**

- A. Penticton Indian Band has Aboriginal Rights, interests and responsibilities within their Ancestral Lands. The Penticton Indian Band has an unbroken relationship to

their ancestral lands that is important to their culture and the maintenance of their community, governance and economy.

- B. The Parties hold differing views regarding Aboriginal title, ownership, jurisdiction and authority over the lands and resources within the Ancestral Lands of the Penticton Indian Band. Without prejudice to the differing viewpoints, the Parties seek a more productive government-to-government relationship with regard to forest resource management and revenue sharing.
- C. The Parties agree that this Agreement is without prejudice to the Aboriginal Rights of the Penticton Indian Band and any other syilx community.
- D. The Provincial government passed the legislation in November 2019 to implement the United Nations Declaration on the Rights of Indigenous Peoples (UN Declaration), which the Truth and Reconciliation Commission confirms as the framework for reconciliation. The *B.C. Declaration on the Rights of Indigenous Peoples Act* aims to create a path forward that respects the human rights of Indigenous peoples while introducing better transparency and predictability in the work we do together.
- E. The Parties wish to set out a process for consultation regarding forest and range resource development on lands subject to provincial forest and range legislation within the Ancestral Lands.
- F. The Parties intend this Agreement to assist in achieving greater Penticton Indian Band input into provincial forest management and decision making, leading to greater certainty for forest and range resource development on lands subject to provincial forest and range legislation within the Ancestral Lands, and to assist Penticton Indian Band in its' pursuit of activities to enhance the well-being of community Members.
- G. The Parties support a collaborative approach to engaging on significant decisions such as annual allowable cut (AAC) determinations, and apportionment decisions within Penticton Indian Band Ancestral Lands.

**THEREFORE THE PARTIES AGREE AS FOLLOWS:**

## **ARTICLE 1 - INTERPRETATION**

**1.1 Definitions.** For the purposes of this Agreement, the following definitions apply:

**"Aboriginal Rights"** means:

- (a) asserted Penticton Indian Band 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*;

**"Administrative and/or Operational Decision"** means a decision made by the Minister or a Delegated Decision Maker related to forest and range resources under provincial legislation that is included in the First Annual List and/or Annual List as defined and set out in Appendix B and includes AAC decisions, apportionment decisions and operational plans ;

**"Band Council Resolution"** means a resolution of Penticton Indian Band having the form of Appendix D;

**"BC Fiscal Year"** means a period beginning on April 1 of a calendar year and ending on March 31 of the next calendar year;

**"Delegated Decision Maker"** and **"DDM"** means a person with authority to make statutory decisions with respect to forest and range resources under provincial legislation as amended from time to time;

**"Designate"** means the entity described in section 4.2;

**"Effective Date"** means the last date on which this Agreement has been fully executed by the Parties;

**"Eligible Volume"** means the volume of Crown timber provided to Penticton Indian Band originating from the volume reallocation of the *Forestry Revitalization Act* (Bill 28);

**"First Fiscal Year of the Term"** means the BC Fiscal Year in which the Effective Date falls;

**"Forest Tenure Opportunity Agreement"** means an agreement signed between the Minister and a First Nation that provides for the Minister to direct award forest tenure under the *Forest Act*;

**"Licensee"** means a holder of a forest tenure or a range tenure;

**"Matrix"** means the table set out as a part of section 1.10 of Appendix B;

**"Minister"** means the Minister of Forests, Lands and Natural Resource Operations and Rural Development having the responsibility, from time to time, for the exercise of powers in respect of forests and range matters;

**"Operational Plan"** means a Forest Stewardship Plan, Woodlot Licence Plan, a Range Use Plan, or Range Stewardship Plan, as those terms are defined in provincial forest and range legislation;

**"Payment Account"** means the account described in subsection 4.4(a);

**"RA"** means a reconciliation agreement between British Columbia and Penticton Indian Band that creates a foundation for the reconciliation of aboriginal rights and/or



aboriginal title with Crown sovereignty but is not a treaty in the meaning of section 35(1) of the *Constitution Act, 1982*;

**"Revenue Sharing Contribution"** means each payment to be made by British Columbia to Penticton Indian Band under Article 3 of this Agreement;

**"SEA"** means a strategic engagement agreement between British Columbia and Penticton Indian Band that includes agreement on a consultation process between Penticton Indian Band and British Columbia in relation to the potential adverse impacts of natural resource decisions on Penticton Indian Band's Aboriginal Rights;

**"Term"** means the term of this Agreement set out in section 13.1;

**"Timber Harvesting Land Base"** means the portion of the total land area of a management unit considered by Ministry of Forest, Lands and Natural Resource Operations and Rural Development to contribute to, and be available for, long-term timber supply;

**"Ancestral Lands"** means the asserted Territory of the Penticton Indian Band located within British Columbia as identified by Penticton Indian Band and shown in bold black on the map attached in Appendix A.

**1.2 Interpretation.** For purposes of this Agreement:

- (a) "includes" and "including" are not intended to be limiting;
- (b) the recitals and headings are inserted for convenience of reference only, do not form part of this Agreement and are not intended to define, enlarge or restrict the scope or meaning of this Agreement or any provision of it;
- (c) any reference to a statute in this Agreement includes all regulations made under that statute and any amendments or replacement of that statute or its regulations;
- (d) unless the context otherwise requires, words expressed in the singular include the plural and *vice versa*;
- (e) any reference to a corporate entity includes any predecessor or successor to such entity; and
- (f) there will be no presumption that doubtful expressions, terms or provisions in this Agreement are to be resolved in favour of any Party.

**1.3 Appendices.** The following Appendices and Schedule are attached to and form part of this Agreement:

Appendix A - Map of Ancestral Lands;

Appendix B - Consultation Process

Appendix B - Schedule 1 – List of Decisions;

Appendix C - Revenue Sharing Contribution Methodology;  
Appendix D - Band Council Resolution Appointing Delegate;

## **ARTICLE 2 - PURPOSE AND OBJECTIVES**

- 2.1 Purpose and objectives.** The purposes and objectives of this Agreement are:
- (a) to establish a consultation process through which the Parties will meet their respective consultation obligations in relation to potential adverse impacts of proposed forest and range resource development activities, Administrative and/or Operational Decisions or Operational Plans, on Penticton Indian Band's Aboriginal Rights;
  - (b) to provide a Revenue Sharing Contribution to support the capacity of the Penticton Indian Band to participate in the consultation process herein and to assist the Penticton Indian Band to pursue activities that will enhance the social, economic and cultural well-being of its members; and
  - (c) to assist in achieving stability and greater certainty for forest and range resource development within the Ancestral Lands.

## **ARTICLE 3 - REVENUE SHARING CONTRIBUTIONS**

- 3.1 Calculation and timing of payments.** Subject to section 4.5 and Articles 5 and 12, during the Term, British Columbia will:
- (a) make annual Revenue Sharing Contributions, calculated in accordance with Appendix C, to Penticton Indian Band (or its Designate under section 4.2, as the case may be); and
  - (b) pay the annual Revenue Sharing Contribution in two equal instalments, the first to be made on or before September 30<sup>th</sup> and the second to be made on or before March 31<sup>st</sup>.
- 3.2 First Fiscal Year.** Notwithstanding section 3.1, for the First Fiscal Year of the Term, the Revenue Sharing Contribution is deemed to be \$464,441 the first instalment of which will be paid on or before March 31 if the Effective Date is after July 31<sup>st</sup>.
- 3.3 Prorated amounts.** For the purposes of determining the amount of the Revenue Sharing Contribution for partial BC Fiscal Years, the amount will be prorated to the month in which the Agreement is terminated by either Party under section 13, or; to the end of the month in which the Agreement expires.
- 3.4 Subsequent BC Fiscal Year amounts.** February 28<sup>th</sup> of each year during the Term, British Columbia will provide written notice to Penticton Indian Band of the

amount of the Revenue Sharing Contribution for the following BC Fiscal Year and the summary document(s) and calculations identified in Appendix C.

- 3.5. Amount agreed to.** The Penticton Indian Band agrees that the amount set out in the notice provided under section 3.4 will be the amount of the Revenue Sharing Contribution payable under this Agreement for that following BC Fiscal Year.

## **ARTICLE 4 - DELIVERY OF PAYMENTS**

- 4.1 Recipient entity.** Unless Penticton Indian Band notifies British Columbia that it has made an election under section 4.2, Revenue Sharing Contributions will be paid to Penticton Indian Band.
- 4.2 Election of Designate.** Penticton Indian Band may elect to have a Designate receive Revenue Sharing Contributions provided that the Designate:
- (a) is a registered corporation or society with the legal authority and capacity to receive the funds for the purposes described in section 2.1; and
  - (b) is duly appointed to receive the Revenue Sharing Contribution on behalf of Penticton Indian Band and such appointment is confirmed by a Band Council Resolution of Penticton Indian Band.
- 4.3 Obligations continue.** The election of a Designate under section 4.2 does not relieve Penticton Indian Band of its obligations under this Agreement.
- 4.4 Payment Account.** Penticton Indian Band or its Designate will:
- (a) establish and, throughout the Term, maintain an account in the name of Penticton Indian Band (or its Designate, as the case may be) at a Canadian financial institution into which direct deposits can be made by British Columbia for the purpose of receiving monies payable by British Columbia pursuant to this Agreement (the "Payment Account"); and
  - (b) provide to British Columbia sufficient address and account information respecting the Payment Account to enable British Columbia to make direct deposit payments to the Payment Account.
- 4.5 Requirement to make a payment.** British Columbia may withhold a Revenue Sharing Contribution it would otherwise be required to make until Penticton Indian Band (or its Designate, as the case may be) has met the requirements set out in section 4.4.
- 4.6 Non-payment.** In the event of non-payment by British Columbia pursuant to section 5.2, Penticton Indian Band's obligations under sections 8 and 10, and British Columbia's right to suspend or terminate this Agreement under section 12.3, are suspended during the period of non-payment.



## ARTICLE 5 - CONDITIONS OF PAYMENT

**5.1 Reporting and compliance requirements.** Revenue Sharing Contributions under this Agreement are subject to:

- (a) Penticton Indian Band having published all of the necessary statements and reports before the applicable dates as set out in Article 8 of this Agreement;
- (b) Penticton Indian Band being in all other respects in compliance with the terms of this Agreement; and
- (c) Revenue Sharing Contributions not having been suspended under Article 12 of this Agreement.

**5.2. Appropriation.** Notwithstanding any other provisions of this Agreement, the payment of money by British Columbia to Penticton Indian Band pursuant to this Agreement is subject to:

- (a) there being sufficient monies available in an appropriation, as defined in the *Financial Administration Act*, to enable British Columbia in any BC Fiscal Year or part thereof when any such payment may be required, to make that payment; and
- (b) Treasury Board not having controlled or limited, pursuant to the *Financial Administration Act*, expenditure under any appropriation referred to in (a).

## ARTICLE 6 - CONSULTATION

**6.1 Satisfaction of consultation obligations.** The Parties agree that the process set out in Appendix B of this Agreement will be the means by which British Columbia will fulfill its' procedural obligations to consult on proposed Administrative and/or Operational Decisions, and the means by which British Columbia will identify potential measures to accommodate any potential adverse impacts on the Penticton Indian Band's Aboriginal Rights resulting from Administrative and/or Operational Decisions.

**6.2 Other decisions.** The Parties agree that if British Columbia contemplates a decision or course of action in relation to forest or range use that does not fall within the definition of Administrative and/or Operational Decision in this Agreement and the decision or course of action has potential impacts to Penticton Indian Band's Aboriginal Rights, such decision or course of action will be the subject of consultation and, where appropriate, accommodation, as agreed to by the Parties.

**6.3 Map may be shared.** British Columbia may share the map attached as Appendix A, including digital versions of the map, with other provincial agencies or with a Licensee responsible for information sharing associated with Operational Plans or Administrative and/or Operational Decisions.

- 6.4 Capacity funding.** The Parties acknowledge and agree that to assist Penticton Indian Band to engage in consultation under this Agreement and in consultation under any SEA or RA that addresses but does not provide capacity funding for forest and range related consultation, Penticton Indian Band will, under 1.4 of Appendix C, receive no less than \$35,000 per annum.

## **ARTICLE 7 - ACKNOWLEDGMENTS AND COVENANTS**

- 7.1 Revenue Sharing Contributions will vary.** Penticton Indian Band acknowledges that forest revenues derived from forestry resources within Penticton Indian Band's Ancestral Lands received by British Columbia fluctuate and that the Revenue Sharing Contributions under this Agreement will vary over time.
- 7.2 Revenue Sharing Contributions support the process of Reconciliation and are an accommodation.** Without pre-determining their sufficiency, Penticton Indian Band agrees that the Revenue Sharing Contributions made under this Agreement are a step in the process towards reconciliation, and constitute an accommodation for any potential adverse impacts of Administrative and/or Operational Decisions, and any forest or range development practices that may be carried out under Operational Plans approved during the term of this Agreement, on Penticton Indian Band's Aboriginal Rights.
- 7.3 Where consultation process followed.** Penticton Indian Band agrees that if the consultation process set out in this Agreement is followed, and if British Columbia provides the Revenue Sharing Contribution, British Columbia has entered into a process towards reconciliation and has fulfilled the procedural requirements of its duty to consult and has provided an accommodation with respect to potential adverse impacts of Administrative and/or Operational Decisions, and any forest or range development practices that may be carried out under an Operational Plan, on Penticton Indian Band's Aboriginal Rights.

## **ARTICLE 8 - COMMUNITY PRIORITIES, ANNUAL REPORTS and RECORDS**

- 8.1 Reporting.** A statement of community priorities and annual report will be published by Penticton Indian Band in a manner that can reasonably be expected to bring the information to the attention of its communities within 90 days of the end of each BC Fiscal Year.
- 8.2. Audit.** British Columbia may, at its sole discretion, such discretion to be exercised reasonably and with prior notice and rationale, require an audit of the expenditures made from the Payment Account to determine that all such expenditures were made in furtherance of the purposes and objectives referred to in section 2.1.



- 8.3. Delivery of Report.** The annual reports referred to in section 8.1 will be provided to British Columbia within 120 days of the end of each BC Fiscal Year.
- 8.4. Continuing Obligations.** Notwithstanding the termination or expiry of this Agreement, the provisions of this Article 8 will continue to apply for 120 days after Penticton Indian Band receives the final Revenue Sharing Contribution from British Columbia.

## **ARTICLE 9 – SET OFF**

- 9.1 Set off.** In addition to any other right under this Agreement, British Columbia may set off against any payment that Penticton Indian Band is entitled to receive under this Agreement, any unfulfilled financial obligations of Penticton Indian Band to British Columbia arising from a licence entered into as a result of a direct award tenure agreement between Penticton Indian Band, or a legal entity controlled by the Penticton Indian Band, and British Columbia.
- 9.2 Notice.** British Columbia will notify Penticton Indian Band of the amount of the unfulfilled financial obligation before it exercises its right of set off under section 9.1.

## **ARTICLE 10 - ASSISTANCE**

- 10.1 Cooperation and Support** Penticton Indian Band agrees that it will work with the province collaboratively, in a timely manner, to address concerns with any provincially authorized forest activities within the Traditional Territory prior to taking any action with respect to such activities.

## **ARTICLE 11 - DISPUTE RESOLUTION**

- 11.1 Dispute Resolution Process.** If a dispute arises between British Columbia and Penticton Indian Band regarding the interpretation of a provision of this Agreement:
- (a) duly appointed representatives of the Parties will meet as soon as is practicable to attempt to resolve the dispute;
  - (b) if the Parties' representatives are unable to resolve the dispute, the issue will be referred to more senior representatives of British Columbia and Penticton Indian Band within sixty (60) days; and
  - (c) if the dispute cannot be resolved by the Parties directly under subsections (a) or (b), the Parties may agree to other appropriate approaches to assist in reaching resolution of the issue. Resolution processes will include

Penticton Indian Band culturally appropriate dispute resolution processes including the *enowkinwixw* process.

## **ARTICLE 12 - SUSPENSION and TERMINATION**

**12.1 Suspension of Revenue Sharing Contributions.** In addition to any other right under this Agreement, British Columbia may suspend further Revenue Sharing Contributions under this Agreement where Penticton Indian Band:

- (a) is in material breach of its obligations under Articles 6, 8 or 10 or Appendix B of this Agreement; or
- (b) has outstanding unfulfilled financial obligations to British Columbia arising from a licence issued further to an agreement between Penticton Indian Band and British Columbia.

**12.2 Notice of Suspension.** Where Revenue Sharing Contributions are suspended under section 12.1, British Columbia will provide notice to Penticton Indian Band of the reason for the suspension, including the specific material breach or the outstanding unfulfilled financial obligation on which it relies and the Parties will meet to attempt to resolve the issue giving rise to the suspension.

**12.3 Termination following suspension.** If the issue giving rise to the suspension of Revenue Sharing Contributions is not resolved within sixty (60) days after notice is provided under section 12.2, British Columbia may terminate the Agreement at any time by written notice.

**12.4 Termination by Penticton Indian Band.** Penticton Indian Band may terminate this Agreement if it determines, acting reasonably, that British Columbia is not fulfilling its obligations under the terms of this Agreement. Upon making any such determination, Penticton Indian Band will provide notice to British Columbia of the determination and the Parties will attempt to resolve their differences.

**12.5 Proceedings inconsistent with acknowledgments.** Notwithstanding any other provision of this Agreement, British Columbia may suspend Revenue Sharing Contributions and may terminate this Agreement at any time by written notice where Penticton Indian Band challenges or supports a challenge to an Administrative and/or Operational Decision, approved or adopted by British Columbia during the term of this Agreement, or activities carried out pursuant to those decisions or plans, by way of legal proceedings or otherwise, on the basis that:

- (a) contrary to section 7.2, a Revenue Sharing Contribution provided for under this Agreement does not constitute an accommodation for adverse impacts of such decisions, plans or activities on Penticton Indian Band's Aboriginal Rights; or
- (b) contrary to section 7.3, by British Columbia or a Licensee following the consultation process described in Appendix B, British Columbia has not

fulfilled the procedural requirements of its duty to consult with Penticton Indian Band regarding the potential adverse impacts of such decisions, plans or activities on Penticton Indian Band's Aboriginal Rights.

**12.6 Termination by Either Party.** This Agreement may be terminated by either Party on ninety (90) days written notice or on a date mutually agreed on by the Parties.

**12.7 Meet to attempt to resolve issue.** If a Party gives written notice under section 12.5, the Parties will, prior to the end of the notice period, meet and attempt to resolve any issue that may have given rise to the termination notice.

**12.8 Independent Mediator.** Should the Parties be unable to resolve the issue that has given rise to a termination notice, and should both parties agree that, the *syilx* Nation *enowkinwixw* process may be implemented or an independent mediator may be hired to assist in resolving the issue.

**12.9 Effect of Termination.** Where this Agreement is terminated under this Article 12, the Revenue Sharing Contribution for the BC Fiscal Year in which termination becomes effective will be prorated to the termination date.

### **ARTICLE 13 - TERM**

**13.1 Term.** The term of this Agreement will be one (1) year commencing on the Effective Date, unless it is extended under section 13.2 or terminated under Article 12.

**13.2 Extension of the Term.** At least two (2) months prior to the third anniversary of the Effective Date, the Parties will evaluate the effectiveness of this Agreement and decide whether to extend the Term.

**13.3 Terms of the Extension.** Where the Parties agree to extend the Term they will negotiate and attempt to reach agreement on the terms of the extension.

**13.4 Evaluation.** Either Party may, on an annual basis, request the participation of the other Party to review the effectiveness of this Agreement and to consider potential amendments to it.

### **ARTICLE 14 – REPRESENTATIONS and WARRANTIES**

**14.1 Legal power, capacity and authority.** The Penticton Indian Band 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 it enters into this Agreement for, and on behalf of itself and its members and that as represented by its Chief and Council, it has the legal power, capacity and authority to enter into and to carry out its obligations under this Agreement.



## **ARTICLE 15 - NOTICE and DELIVERY**

**15.1 Delivery of Notices.** Any notice, document, statement or report contemplated under this Agreement must be in writing and will be deemed validly given to and received by a Party, if delivered personally, on the date of delivery, or, if delivered by mail, email or facsimile copier, when received by the Parties at the addresses as follows:

if to British Columbia:

Deputy Minister  
Ministry of Indigenous Relations and Reconciliation  
P.O. Box 9100 STN PROV GOVT  
Victoria B.C. V8W 9B1  
Telephone: (250) 356-1394  
Fax: (250) 387-6594

and if to the Penticton Indian Band:

Chief Greg Gabriel  
Penticton Indian Band  
841 Westhills Drive  
Penticton BC V2A 0E8  
Telephone: (250) 493-0048  
Fax: (250) 493-2882

**15.2 Change of Address.** Either Party may, from time to time, give notice to the other Party of a change of address or facsimile number and after the giving of such notice, the address or facsimile number specified in the notice will, for purposes of section 15.1, supersede any previous address or facsimile number for the Party giving such notice.

## **ARTICLE 16 - GENERAL PROVISIONS**

**16.1 Governing law.** This Agreement will be governed by and construed in accordance with the laws of British Columbia.

**16.2 Not a Treaty.** This Agreement does not:

- (a) constitute a treaty or a lands claims agreement within the meaning of sections 25 or 35 of the *Constitution Act, 1982* (Canada); or
- (b) affirm, recognize, abrogate or derogate from any Penticton Indian Band's Aboriginal Rights.

**16.3 No Admissions.** Nothing in this Agreement will be construed as:

- (a) an admission of the validity of, or any fact or liability in relation to, any claims relating to alleged past or future infringements of Penticton Indian Band's Aboriginal Rights;
- (b) an admission by Penticton Indian Band of the validity of, or any fact or liability in relation to, any claims relating to British Columbia jurisdiction or authority within the Ancestral Lands;
- (c) an admission or acknowledgement of any obligation to provide any financial, economic or other compensation, including those in this Agreement, as part of British Columbia's obligation to consult and, as appropriate, accommodate; or
- (d) in any way limiting the position the Parties may take in any proceedings or in any discussions or negotiations between the Parties, except as expressly contemplated in this Agreement.

**16.4 No Fettering.** Without prejudice to Penticton Indian Band's views on jurisdiction within the Ancestral Lands, nothing in this Agreement is to be construed as interfering with, or fettering in any manner, the exercise by British Columbia or its agencies of any statutory, prerogative, executive or legislative power or duty.

**16.5 No Implied Waiver.** Any waiver of any term or breach of this Agreement is effective only if it is in writing and signed by the waiving Party and is not a waiver of any other term or breach.

**16.6 Assignment.** Penticton Indian Band must not assign, either directly or indirectly, this Agreement or any right of First Nation under this Agreement without the prior written consent of British Columbia.

**16.7 Emergencies.** Nothing in this Agreement affects the ability of either Party to respond to any emergency circumstances.

**16.8 Acknowledgment.** The Parties acknowledge and enter into this Agreement on the basis that Aboriginal Rights exist within the Ancestral Lands. The Parties intend that broader processes that may be engaged in to bring about reconciliation may lead to a common understanding of these Aboriginal Rights.

**16.9 Third Parties.** This Agreement is not intended to limit any obligation of forest or range licensees or other third parties to Penticton Indian Band.

**16.10 Other Economic Opportunities and Benefits.** This Agreement does not preclude Penticton Indian Band from seeking other or non-economic accommodations or accessing forest economic opportunities and benefits, including impact benefit agreement with third parties, which may be available to it, other than those expressly set out in this Agreement.

- 16.11 Validity of Agreement.** If any provision of this Agreement or the application of it to any person or circumstance is invalid or unenforceable to any extent, the remainder of this Agreement and the application of it to any person or circumstance will not be affected or impaired and will be valid and enforceable to the extent permitted by law.
- 16.12 Entire Agreement.** This Agreement and any amendment to it constitute the entire agreement between the Parties with respect to the subject matter of this Agreement.
- 16.13 Further Acts and Assurances.** Each Party must perform the acts, execute and deliver the writings, and give the assurances as may be reasonably necessary to give full effect to this Agreement.
- 16.14 Execution in Counterpart.** This Agreement may be entered into by a separate copy of this Agreement being executed by each Party and that executed copy being delivered to the other Party by a method provided for in Article 16 or any other method agreed to by the Parties.
- 16.15 Amendment in Writing.** No amendment to this Agreement is effective unless it is agreed to in writing and signed by the Parties.



Signed on behalf of:

**Penticton Indian Band**

  
\_\_\_\_\_  
Chief Greg Gabriel

  
\_\_\_\_\_  
Councillor

  
\_\_\_\_\_  
Councillor


  
\_\_\_\_\_  
Councillor

**Dolly Kanger**  
Councillor

\_\_\_\_\_  
Councillor

\_\_\_\_\_  
Councillor

\_\_\_\_\_  
Councillor


  
\_\_\_\_\_  
Witness of Penticton Indian Band  
signatures

March 16, 2021  
\_\_\_\_\_  
Date

\_\_\_\_\_  
Councillor

Signed on behalf of:

**Government of British Columbia**

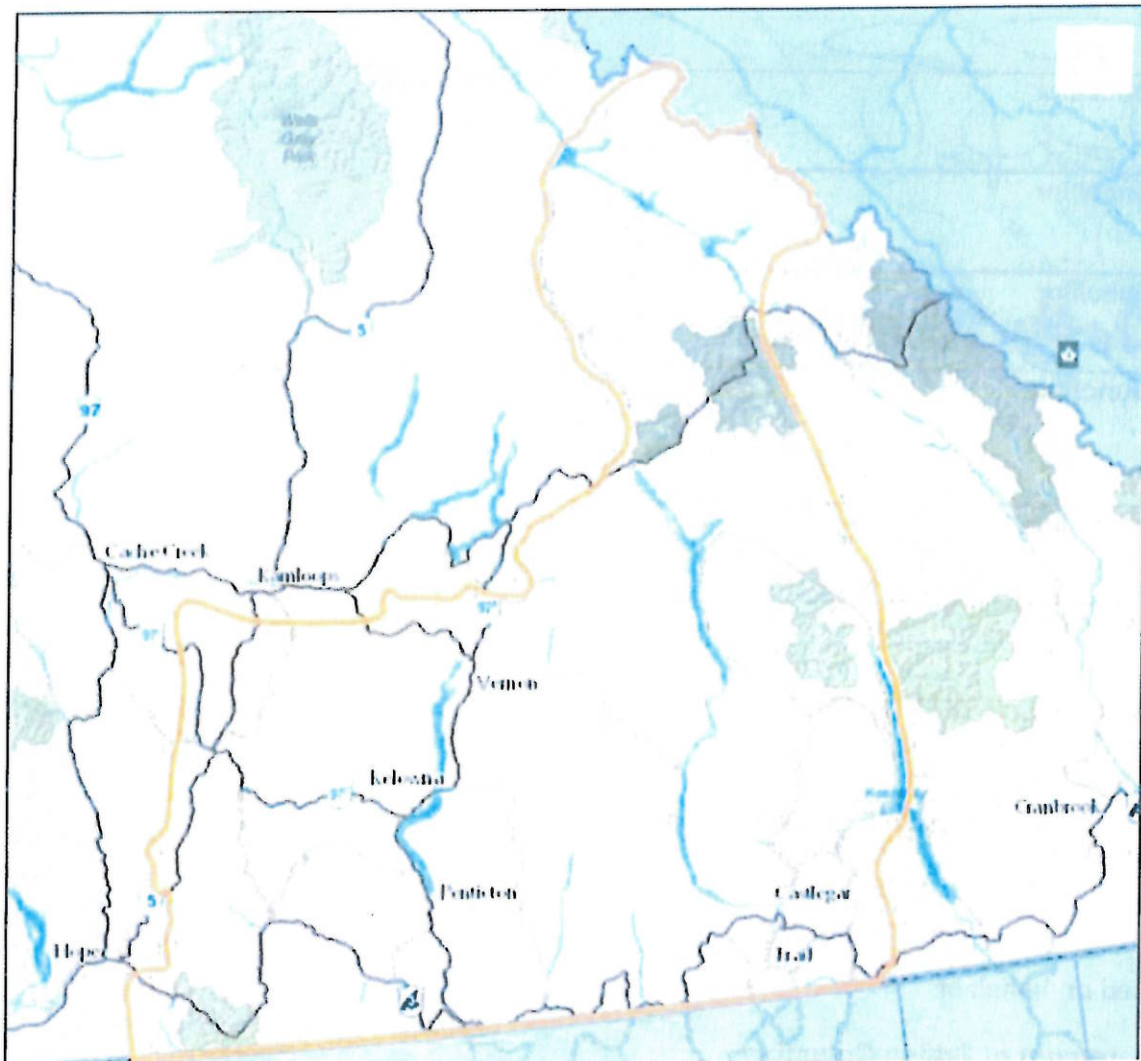
  
\_\_\_\_\_  
Minister of Indigenous Relations and  
Reconciliation

  
\_\_\_\_\_  
Witness of Minister signature

March 25, 2021  
\_\_\_\_\_  
Date

## APPENDIX A

Penticton Indian Band's Boundary used to determine the Revenue Sharing Contribution provided under this Agreement



## **APPENDIX B**

### **Consultation Process for Administrative and/or Operational and Operational Plans within Penticton Indian Band Ancestral Lands**

- 1.1 British Columbia will consult with Penticton Indian Band on proposed Administrative and/or Operational Decisions and Operational Plans that may potentially adversely impact Penticton Indian Band's Aboriginal Rights within the Ancestral Lands, in accordance with this Appendix B.
- 1.2 Penticton Indian Band will fully participate in information sharing and/or consultation with British Columbia, Licensees or proponents regarding proposed Administrative and/or Operational Decisions or Operational Plans within the Ancestral Lands in accordance with this Appendix B.
- 1.3 In order to facilitate consultation, the Parties will use the Matrix set out in section 1.10 of this Appendix to determine which proposed Administrative and/or Operational Decisions and Operational Plans will require consultation, as well as the appropriate level of consultation for those decisions and plans.
- 1.4 The level of consultation required for the types of Administrative and/or Operational Decisions and Operational Plans listed in Schedule 1 (the "List of Decisions") will be the level indicated in the column of Schedule 1 headed "Consultation Level", unless the Parties agree to a different consultation level under section 1.11 of this Appendix.
- 1.5 If on or before January 31<sup>st</sup> a Party requests that the List of Decisions or the consultation level for a type of decision or plan set out in it be revised for a subsequent BC Fiscal Year, the Parties will discuss that request and if the Parties agree to a revision, update the List of Decisions on or before March 31<sup>st</sup> of the current fiscal year.
- 1.6 If British Columbia becomes aware of proposed Administrative and/or Operational Decisions or Operational Plans not contained in the List of Decisions that will have effect within the Ancestral Lands of Penticton Indian Band during the current fiscal year, British Columbia will notify the Penticton Indian Band of those decisions or plans and the Parties will, with reference to the criteria set out in the Matrix, seek to agree on the consultation levels that will be applicable to those decisions or plans.
- 1.7 If the Parties cannot agree upon which consultation level in section 1.10 of this Appendix should apply to a particular or any Operational or Administrative Decision or Operational Plan, then British Columbia will consult with Penticton Indian Band on the basis of British Columbia's consultation procedures in effect at the time as well as the applicable case law respecting consultation obligations.
- 1.8 In reviewing and responding to a proposed Administrative and/or Operational Decision or Operational Plan submitted to them, Penticton Indian Band will, unless otherwise agreed by the Parties, provide the party (i.e. British Columbia, Licensee or proponent) that supplied the proposed decision or plan to them, with all reasonably available information that will identify any potential adverse



impacts to their Aboriginal Rights that may occur as a result of the proposed Administrative and/or Operational Decision or Operational Plan within the Ancestral Lands or forest or range resource development practices that may be carried out pursuant to that decision or plan.

- 1.9 If a proposed Administrative and/or Operational Decision or Operational Plan is submitted to Penticton Indian Band and if British Columbia has met its consultation obligations set out in this Agreement, and no response is received within the consultation period set out in section 1.10 of this Appendix for the consultation level applicable to the proposed Administrative and/or Operational Decision or Operational Plan, then British Columbia may proceed to make a decision regarding the decision or plan.

1.10 The Parties agree that:

- (a) as set out in the table below (the "Matrix") there will be six (6) potential levels of consultation for a proposed Administrative and/or Operational Decision or Operational Plan;
- (b) subject to the List of Decisions, the appropriate consultation level for a proposed Administrative and/or Operational Decision or Operational Plan will be determined by reference to the criteria set out in the Matrix; and
- (c) the consultation period applicable to a consultation level is the period referred to in the Matrix, the List of Decisions or as otherwise agreed to by the Parties, whichever period is the longest.



Level	Description	Intent
<b>1. Information Sharing:</b> prior to formal consultation process	Referral to Penticton Indian Band during planning to provide opportunity to incorporate Aboriginal Rights prior to submitting plan/request to Decision Maker.	Proponent or Licensee engages directly with Penticton Indian Band, and provides summary of communications to British Columbia.
<b>2. Available on Request</b>	Type of notification whereby British Columbia informs Penticton Indian Band they will not be sending out information.	British Columbia notifies on an annual basis which decision(s) fall in this category. Penticton Indian Band can request more detail if they wish.
<b>3. Notification</b>	Notify in writing Penticton Indian Band about an upcoming decision and provide overview information. Would be an opportunity for comment.	British Columbia provides Penticton Indian Band base level information and a short reasonable time (21-30 calendar day consultation period determined by the Parties) to comment. Limited follow-up.

Level	Description	Intent
<b>4. Expedited Consultation Process</b>	Where there is an imminent threat to a resource value (e.g. mountain pine beetle spread control) an expedited consultation process is undertaken.	Intense but short timeline (about 10 calendar days). A justification for shortening the period would be given by describing the imminent threat. May require a meeting.
<b>5. Normal Consultation</b>	Follow on "normal" track for consultation guided by up-to-date consultation policy. Meetings to resolve issues where possible and make decision in a timely manner.	Intent to follow this course in most circumstances. Usually a 30 – 60 calendar day consultation period. May involve meaningful discussion of accommodation options where appropriate. British Columbia will notify Penticton Indian Band of the final decision where requested by the Penticton Indian Band.
<b>6. Deep Consultation</b>	Use reasonable effort to inform in an accessible manner and to engage in full discussions around the proposed decision. Make reasonable efforts to accommodate where necessary. Preliminary assessments may indicate a significant Aboriginal Rights and a significant impact to that right.	Would involve meaningful discussion of suitable accommodation options and interim solutions where appropriate. May require extended timelines. British Columbia will provide the Penticton Indian Band with the final decision and rationale in writing.

- 1.10 The Parties may agree to increase or decrease the consultation level for a specific proposed Administrative and/or Operational Decision or Operational Plan where detailed Aboriginal Rights information is provided that indicates a different consultation level is appropriate.
- 1.11 Unless requested by the Penticton Indian Band, the Province is not obligated to inform the Penticton Indian Band of the Delegated Decision Maker's decision where the consultation level in respect of the proposed decision was level three (3) or lower.

## **Schedule 1 – List of Decisions**



## **APPENDIX C**

### **Revenue Sharing Contribution Methodology**

#### **Ancestral Lands Forest Revenue Sharing Component**

- 1.0 In each BC Fiscal Year that this Agreement is in effect, and subsequent to the release by the Minister of Finance of the previous BC Fiscal Year's public accounts, a summary document will be prepared showing Forest District Revenue for the Forest Districts of Chilliwack, Cascades, Thompson-Rivers, Okanagan-Shuswap, Rocky Mountain and Selkirk, defined as the total of stumpage, waste and annual rent payments received by the Crown for the previous 2 BC Fiscal Years. An average amount over 2 years will be calculated for each of the above noted Forest Districts.
- 1.1 For the purposes of the summary document in section 1.0 of this Appendix, the stumpage payments from Eligible Volume in Penticton Indian Band's Forest License A86093 will not be included in the calculations of forest revenue.
- 1.2 The amount of the forest revenue attributed to the Penticton Indian Band's Ancestral Lands will be calculated by determining the percent of Penticton Indian Band's Ancestral Lands that falls within the Timber Harvesting Land Base in each of the Forest Districts noted in 1.0, applied against the forest revenue described in section 1.0 of this Appendix. This calculation will prorate for overlapping territories of other First Nations.
- 1.3 The Ancestral Lands Forest Revenue Sharing Component will be calculated by multiplying 3 percent of the forest revenue attributed to the Penticton Indian Band as described in section 1.2 of this Appendix.
- 1.4 If Penticton Indian Band is not receiving capacity funding for forestry consultation through a SEA or RA, then it will receive \$35,000 or the amount calculated in accordance with section 1.3, whichever is greater, which may be used by Penticton Indian Band as capacity funding to participate in the consultation process in accordance with section 6.0 of this Agreement.
- 1.5 For each BC Fiscal Year that this Agreement is in effect, the calculations outlined in sections 1.0 to 1.4 of this Appendix will be performed.

#### **Direct Award Tenure Forest Revenue Sharing Component**

- 2.0 Subsequent to the release by the Minister of Finance of the previous BC Fiscal Year's public accounts, a summary document will be prepared of Penticton Indian Band's Forest License A86093 forest revenue, defined as the total of stumpage payments received by the Crown for the previous BC Fiscal Year from Eligible Volume within Penticton Indian Band's Forest Licence.

- 2.1 The Direct Award Forest Tenure Revenue Sharing Component will be calculated by multiplying 35 percent of the forest revenue as described in section 2.0 of this Appendix.
- 2.2 For each Fiscal Year that this Agreement is in effect, the calculations outlined in sections 2.0 and 2.1 of this Appendix will be performed.

### **Forest Revenue Sharing Transition**

- 3.1 For each BC Fiscal Year that this Agreement is in effect, a portion of the Revenue Sharing Contribution is calculated by adding the total of the Ancestral Lands Forest Revenue Sharing Component to the Direct Award Tenure Forest Revenue Sharing Component for that BC Fiscal Year.
- 3.2 For each BC Fiscal Year that this Agreement is in effect, the remaining portion of the Revenue Sharing Contribution is calculated by determining the value of the payments that were made by British Columbia to Penticton Indian Band in any given full year under the Penticton Indian Band *Forest and Range Opportunity Agreement* ("the Annual Amount") and applying the following percentages to that Annual Amount:
  - 3.2.1 2019/20 BC Fiscal Year: 40 percent;
  - 3.2.2 2020/21 BC Fiscal Year 40 percent;
  - 3.2.3 2021/22 BC Fiscal Year 40 percent.
- 3.3 Notwithstanding section 3.2 of this Appendix, if the Revenue Sharing Transition Calculation for BC Fiscal years 2019/20; 2020/21 and 2021/22 under section 3.1 provides:
  - (a) an amount calculated under sections 1.3 and 2.1 of this Appendix that is equal to or greater than the annual payments received under the Penticton Indian Band *Forest and Range Opportunity Agreement*, then Penticton Indian Band will receive the annual payments described by the Revenue Sharing Transition Calculation in section 3.1 for BC Fiscal Years 2019/20; 2020/21 and 2021/22, and;
  - (b) an amount calculated under the Revenue Sharing Transition Calculations in sections 3.1 and 3.2 of this Appendix that is greater than the annual payments received under the Penticton Indian Band *Forest and Range Opportunity Agreement*, then Penticton Indian Band will receive an annual payment for BC fiscal Years 2019/20, 2020/21 and 2021/22 that is equal to the annual payment received under the Penticton Indian Band *Forest and Range Agreement*.

## **APPENDIX D**

### **Band Council Resolution Appointing the Recipient Entity for this Agreement (“Designate”)**



