

**Kwakiutl**  
**Forest & Range**  
**Consultation and Revenue Sharing Agreement (FCRSA)**  
**(the "Agreement")**

**Between:**

**Kwakiutl**

As Represented by  
Chief and Council  
(Kwakiutl)

**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")

**WHEREAS:**

- A. Kwakiutl has Douglas Treaty rights and has and asserts inherent Aboriginal rights and title, which are recognized and affirmed by Section 35 of the *Constitution Act, 1982* (the "Section 35 Rights").
- B. Kwakiutl continues to exercise its Section 35 Rights throughout the Kwakiutl Territory, as defined below.
- C. The Parties wish to set out a process for consultation regarding forest and range resource development on Crown lands within the Kwakiutl Territory.
- D. The Parties intend this Agreement to assist in achieving stability and greater certainty for forest and range resource development on Crown lands within the Kwakiutl Territory and to assist Kwakiutl in its pursuit of activities to enhance the wellbeing of its Members.
- E. The Parties wish to support Kwakiutl's participation in forest resource development in the Territory.
- F. The Declaration on the Rights of Indigenous People Act provides a framework for how the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) will be implemented in British Columbia. The Province intends to take all measures necessary to ensure the laws of British Columbia are consistent with UNDRIP in accordance with the Act and to create opportunities for the Province and Indigenous governing bodies to negotiate and enter into decision-making agreements.
- G. The Province is committed to working towards the implementation of UNDRIP and the Truth and Reconciliation Commission Calls to Action, by working in partnership with Indigenous peoples of British Columbia to establish positive government-to-government relationships built on a foundation of respect, rights, and reconciliation.

THEREFORE THE PARTIES AGREE AS FOLLOWS:

## ARTICLE 1 - INTERPRETATION

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

**“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;

**“Agreement”** means this Agreement;

**“Band Council Resolution”** means a resolution of Kwakiutl Council;

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

**“Council”** means the elected Chief Councillor and Council of Kwakiutl;

**“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 Kwakiutl in a Direct Award tenure under Section 47.3 of the *Forest Act* originating from the volume reallocation of the *Forestry Revitalization Act* that is appraised through the Market Pricing System;

**“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*;

**“Kwakiutl Territory”** means the traditional territory claimed by Kwakiutl located within British Columbia as identified by Kwakiutl and shown as “Kwakiutl Territory – Core Area” and “Kwakiutl Territory – Notification Area” on the map attached in Appendix A.

**“Kwakiutl Territory – Core Consultation Area”**, means, for the purpose of this Agreement, the territory claimed by Kwakiutl First Nation located within British Columbia as identified by Kwakiutl First Nation and shown as “Kwakiutl Territory – Core Consultation Area” as per the Map of the Kwakiutl Territory, attached as Appendix A.

**“Kwakiutl Territory – Notification Area”**, means, for the purpose of this Agreement, the territory claimed by Kwakiutl First Nation located within British Columbia as identified by Kwakiutl First Nation and shown as “Kwakiutl Territory – Notification Area” as per the Map of the Kwakiutl Territory, attached as Appendix A.

**“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, 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 Kwakiutl 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 Kwakiutl under Article 3 of this Agreement;

**"SEA"** means a strategic engagement agreement between British Columbia and Kwakiutl that includes agreement on a consultation process between Kwakiutl and British Columbia in relation to the potential adverse impacts of proposed provincial land and natural resource decisions on Kwakiutl's Section 35 Rights;

**"Section 35 Rights"** means rights which are recognized and affirmed under section 35(1) of the *Constitution Act, 1982*;

**"Term"** means the term of this Agreement set out in section 14.1;

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

## **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 Kwakiutl Territory;

Appendix B - Consultation Process

B - Schedule 1 – List of Decisions;

Appendix C - Revenue Sharing Contribution Methodology;

Appendix D - Band Council Resolution Appointing Delegate;

Appendix E - Statement of Community Priorities Format; and,

Appendix F- Annual Report.

## 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, including Administrative and/or Operational Decisions or Operational Plans, on Kwakiutl's Section 35 Rights;
- (b) to provide a Revenue Sharing Contribution to support the capacity of Kwakiutl to participate in the consultation process herein, as an accommodation for any adverse impacts to Kwakiutl's Section 35 Rights resulting from forest and range resource development within Kwakiutl Territory and so that Kwakiutl may 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 on Crown lands within the Kwakiutl Territory.

## ARTICLE 3 - REVENUE SHARING CONTRIBUTIONS

**3.1 Calculation and timing of payments.** Subject to section 4.5 and Articles 5 and 13, during the Term, British Columbia will:

- (a) make annual Revenue Sharing Contributions, calculated in accordance with Appendix C, to Kwakiutl (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 \$84,309, which will be paid on or before March 31, 2021.

**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.** Before November 30<sup>th</sup> of each year during the Term, British Columbia will provide written notice to Kwakiutl 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.** Kwakiutl 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 Kwakiutl notifies British Columbia that it has made an election under to section 4.2, Revenue Sharing Contributions will be paid to Kwakiutl.
- 4.2 Election of Designate.** Kwakiutl 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 Kwakiutl and such appointment is confirmed by a Band Council Resolution of Council.
- 4.3 Obligations continue.** The election of a Designate under section 4.2 does not relieve Kwakiutl of its obligations under this Agreement.
- 4.4 Payment Account.** Kwakiutl or its Designate will:
- (a) establish and, throughout the Term, maintain an account in the name of Kwakiutl (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 Kwakiutl (or its Designate, as the case may be) has met the requirements set out in section 4.4.

## ARTICLE 5 - CONDITIONS OF PAYMENT

- 5.1 Reporting and compliance requirements.** For each BC Fiscal Year following the First Fiscal Year of the Term, the requirement to make a Revenue Sharing Contribution is subject to:
- (a) Kwakiutl having published all of the necessary statements and reports before the applicable dates as set out in Article 8 of this Agreement;
  - (b) Kwakiutl not being in material breach of its obligations under **Error! Reference source not found.**, **Error! Reference source not found.** or **Error! Reference source not found.** of this Agreement; and
  - (c) Revenue Sharing Contributions not having been suspended under Article 13 of this Agreement.
- 5.2 Appropriation.** Notwithstanding any other provisions of this Agreement, the payment of money by British Columbia to Kwakiutl 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 subject to 6.3, the process set out in Appendix B of this Agreement will be the means by which they will fulfill their obligations to consult on proposed Operational Plans or proposed Administrative and/or Operational Decisions and, where appropriate, the means by which British Columbia will identify potential measures to accommodate any potential adverse impacts on the Kwakiutl's Section 35 Rights resulting from Operational Plans or Administrative and/or Operational Decisions.
- 6.2 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.
- 6.3 SEA or RA applies.** The Parties agree that notwithstanding 6.1:
- (a) if before the Effective Date Kwakiutl enters into a SEA, or RA that includes a consultation process which addresses forest and range management and decision making, the consultation process set out in the SEA or RA will continue after the Effective Date;
  - (b) if after the Effective Date Kwakiutl enters into a SEA, or RA that includes a consultation process which addresses forest and range management and decision making, the consultation process set out in the SEA or RA will supersede and replace the consultation process set out in this Agreement for the term of the SEA or RA; and
  - (c) if the SEA or RA referred to in (a) or (b) comes to the end of its term or is terminated prior to the end of the Term, the consultation process set out in Appendix B of this Agreement will apply for the remainder of the Term.
- 6.4 Capacity funding.** The Parties acknowledge and agree that to assist Kwakiutl 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, Kwakiutl will, under 1.4 of Appendix C, receive capacity funding of no less than \$35,000 per annum.

## ARTICLE 7 - ACKNOWLEDGMENTS AND COVENANTS

- 7.1 Revenue Sharing Contributions will vary.** Kwakiutl acknowledges that forest revenues received by British Columbia fluctuate and that the Revenue Sharing Contributions under this Agreement will vary over time.
- 7.2 Revenue Sharing Contributions are an accommodation.** Without predetermining the sufficiency of such, Kwakiutl agrees that the Revenue Sharing Contributions made under this Agreement constitute a component of any accommodation that may be required for any potential adverse impacts of Administrative and/or Operational Decisions, and any forest or range development practices that may be carried out under an Operational Plans, on Kwakiutl's Section 35 rights, from April 1, 2020, to the end of the term of this Agreement.
- 7.3 Where consultation process followed.** Kwakiutl agrees that if the consultation process set out in this Agreement is followed, British Columbia has adequately consulted 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 Kwakiutl's Section 35 Rights, from April 1, 2020, to the end of the term of this Agreement.

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

- 8.1 Statement of Community Priorities.** Kwakiutl covenants and agrees that it will:
- (a) within 60 days of the Effective Date, based on the First Fiscal Year Revenue Sharing Contribution, prepare a statement of community priorities for the Term substantially in the form set out in Appendix E that outlines activities it intends to fund to help achieve the socio-economic objectives referred to in section 2.1(b); and
  - (b) before the end of each BC Fiscal Year, consider whether the statement of community priorities identified in subsection (a) should be revised based on the updated Revenue Sharing Contribution for subsequent BC Fiscal Years agreed to under section 3.5.
- 8.2. Annual Report.** Within 90 days of the end of each BC Fiscal Year, Kwakiutl will prepare an annual report, substantially in the form set out in Appendix F, identifying all expenditures made from the Payment Account since the date of the last such report or in the case of the first such report, since the Effective Date of this Agreement, and confirming that, aside from reasonable administrative expenses, all such expenditures were made in furtherance of the purposes and objectives referred to in section 2.1.
- 8.3. Community Engagement.** Within 90 days of the end of each BC Fiscal Year, Council will provide Members with reasonable access to the statement of community priorities and annual report referred to in sections 8.1 and 8.2
- 8.4. Audit.** British Columbia may, at its sole discretion and at the sole expense of Kwakiutl, 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.
- 8.5. Delivery of Report.** The annual report referred to in section 8.2 will be provided to British Columbia within 120 days of the end of each BC Fiscal Year.
- 8.6. Continuing Obligations.** Notwithstanding the termination or expiry of this Agreement, the provisions of this Article 8 will continue to apply for 120 days after Kwakiutl receives the final Revenue Sharing Contribution from British Columbia.

## **ARTICLE 9 - SECURITY DEPOSITS**

- 9.1 Silviculture Deposit.** In consideration of Kwakiutl entering into this Agreement, British Columbia may choose not to require a silviculture deposit pertaining to a licence entered into as a result of a direct award tenure agreement entered into between Kwakiutl, or a legal entity controlled by the Kwakiutl, and British Columbia.

## **ARTICLE 10 – SET OFF**

- 10.1 Set off.** In addition to any other right under this Agreement, British Columbia may set off against any payment that Kwakiutl is entitled to receive under this Agreement, any unfulfilled financial obligations of Kwakiutl to British Columbia arising from a licence entered into as a result of a direct award tenure agreement between Kwakiutl, or a legal entity controlled by the Kwakiutl, and British Columbia.
- 10.2 Notice.** British Columbia will notify Kwakiutl of the amount of the unfulfilled financial obligation before it exercises its right of set off under section 10.1.

## ARTICLE 11 - ASSISTANCE

**11.1 Stability for land and resource use.** The Parties agree that they will make reasonable and good faith efforts to respond promptly and work collaboratively to attempt to resolve issues that may adversely affect, challenge or impede provincially authorized forest and range activities in the Territory.

## ARTICLE 12 - DISPUTE RESOLUTION

**12.1 Dispute Resolution Process.** If a dispute arises between British Columbia and Kwakiutl 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 Kwakiutl; 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.

## ARTICLE 13 - SUSPENSION and TERMINATION

**13.1 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 Kwakiutl:

- (a) is in material breach of its obligations under Articles 6, 8 or 11 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 Kwakiutl and British Columbia.

**13.2 Notice of Suspension.** Where Revenue Sharing Contributions are suspended under section 13.1, British Columbia will provide notice to Kwakiutl 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.

**13.3 Termination following suspension.** If the issue giving rise to the suspension of Revenue Sharing Contributions is not resolved within 60 days after notice is provided under section 13.2, British Columbia may terminate the Agreement at any time by written notice.

**13.4 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 Kwakiutl challenges or supports a challenge to an Administrative and/or Operational Decision, an Operational Plan 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 a component of any accommodation required for adverse impacts of such decisions, plans or activities on Kwakiutl's Section 35 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 adequately consulted with Kwakiutl regarding the potential adverse impacts of such decisions, plans or activities on Kwakiutl's Section 35 Rights.

**13.5 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.



- 13.6 Meet to attempt to resolve issue.** If a Party gives written notice under section 13.5, 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.
- 13.7 Effect of Termination.** Where this Agreement is terminated under this Article 13, the Revenue Sharing Contribution for the BC Fiscal Year in which termination becomes effective will be prorated to the termination date.

## **ARTICLE 14 - TERM**

- 14.1 Term.** The term of this Agreement will be three (3) years commencing on the Effective Date unless it is extended under section 14.2 or terminated under Article 13.
- 14.2 Extension of the Term.** At least two 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.
- 14.3 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.
- 14.4 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 15 – REPRESENTATIONS and WARRANTIES**

- 15.1 Legal power, capacity and authority.** Kwakiutl 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 that as represented by its Council, it has the legal power, capacity and authority to enter into and to carry out its obligations under this Agreement.

## ARTICLE 16 - NOTICE and DELIVERY

- 16.1 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:

(778)

974-5479

Fax: (250) 387-6594

if to the Kwakiutl Band Council:

Chief Councillor Ross Hunt Jr.

Kwakiutl Band Council

PO Box 1440

Port Hardy, BC V0N 2P0

Telephone: (250) 949-6012

Fax: (250) 949-6066

- 16.2 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 16.1, supersede any previous address or facsimile number for the Party giving such notice.

## ARTICLE 17 - GENERAL PROVISIONS

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

- 17.2 Not a Treaty.** This Agreement does not constitute a treaty or a lands claims agreement within the meaning of sections 25 or 35 of the *Constitution Act, 1982*.

- 17.3 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 Kwakiutl's Section 35 Rights;
- (b) 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
- (c) 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.

- 17.4 No Fettering.** 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.
- 17.5 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.
- 17.6 Assignment.** Neither Party will have any right to transfer or otherwise assign this Agreement without the prior written consent of the other Party.
- 17.7 Emergencies.** Nothing in this Agreement affects the ability of either Party to respond to any emergency circumstances.
- 17.9 Third Parties.** This Agreement is not intended to limit any obligation of forest or range licensees or other third parties to Kwakiutl.
- 17.10 Other Economic Opportunities and Benefits.** This Agreement does not preclude Kwakiutl from accessing forestry economic opportunities and benefits, which may be available to it, other than those expressly set out in this Agreement.
- 17.11 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.
- 17.12 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.
- 17.13 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.
- 17.14 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.
- 17.15 Amendment in Writing.** No amendment to this Agreement is effective unless it is agreed to in writing and signed by the Parties.
- 17.16 No limitation.** Nothing in this Agreement will be interpreted in a manner that in any way expresses Kwakiutl's support for any proposed activity of the Province, limits Kwakiutl's participation in consultation and accommodation processes with the Province with respect to any proposed activity, or limits Kwakiutl's participation, including shared decision-making processes, in regulatory proceedings with respect to any activity.
- 17.17 Non-derogation.** Nothing in this agreement will be interpreted in a manner that infringes, abrogates, derogates, or extinguishes any of Kwakiutl's Section 35 Rights and the Parties agree that nothing in this agreement defines, amends, or denies the existence of, or in any way limits Kwakiutl's Section 35 Rights, including any rights to consultation or accommodation or any proposed or potential impact or infringement of such rights whether proposed, potential or actual.

Signed on behalf of:

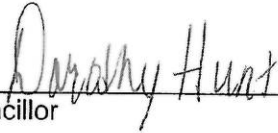
**Kwakiutl**

**March 30, 2021**

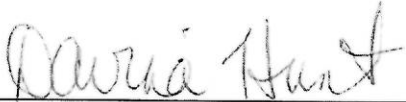


Chief Councillor Ross Hunt Jr.

**Date**



Councillor



Councillor



Witness of Kwakiutl signatures

Signed on behalf of:

**Government of British Columbia**



Minister of Indigenous Relations and  
Reconciliation

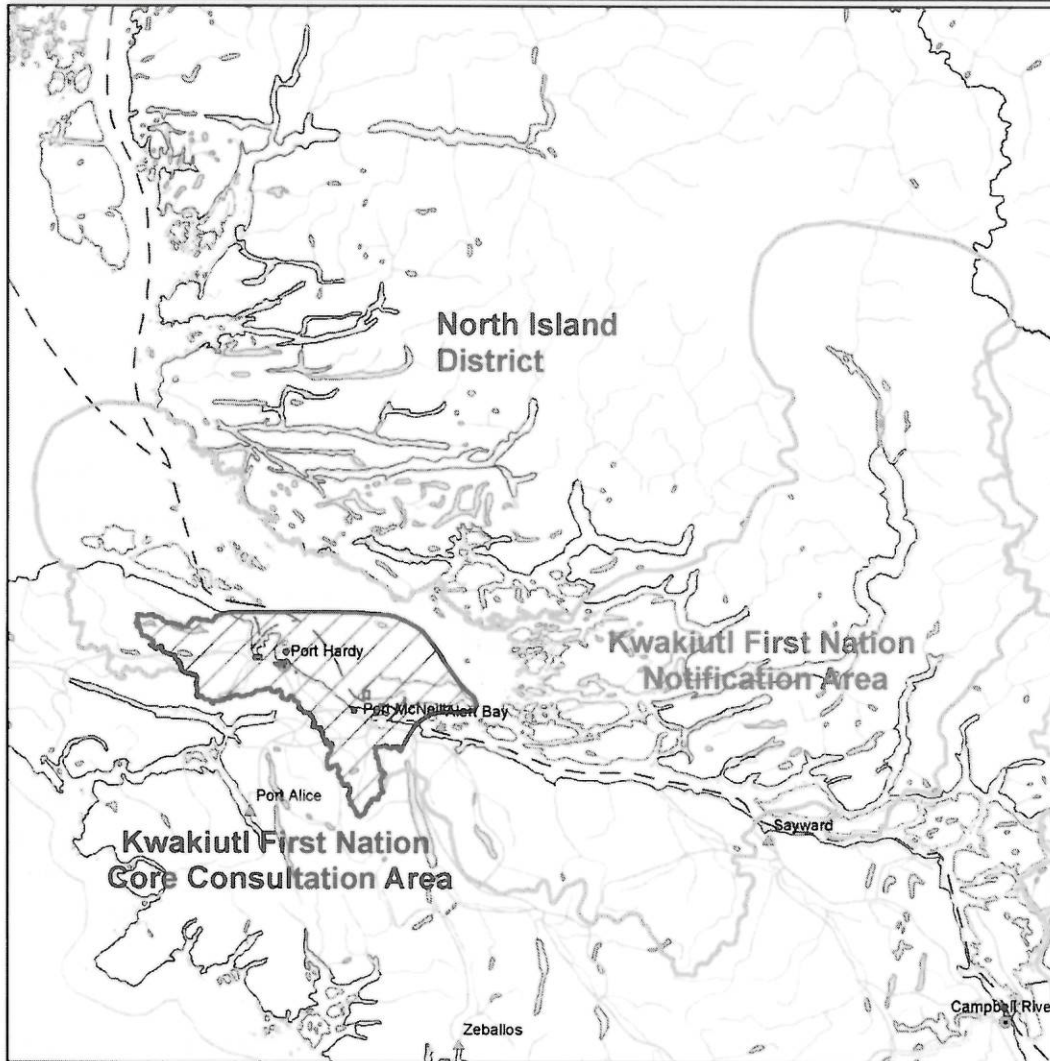
**May 3, 2021**

**Date**



# APPENDIX A

## APPENDIX A Map of the Kwakiutl First Nation Core Consultation & Notification Areas



### Legend: Kwakiutl First Nation FCRSA Map

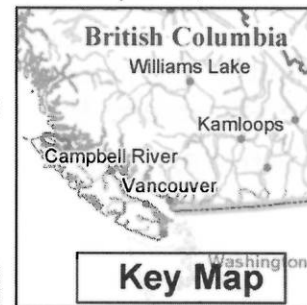
-  Kwakiutl Territory – Core Consultation Area (Zone A)
-  Kwakiutl Territory – Notification Area (Zone B)
-  Kwakiutl Indian Reserves



0 35 70 140 Km

This map has been prepared for information purposes only and is not intended to create, recognize, limit or deny any aboriginal rights, including title, that any First Nations may have, or impose any obligations on British Columbia or alter the legal status of resources within the Province or the existing legal authority of British Columbia.

Date: April 21, 2021



## **APPENDIX B**

### **Consultation Process for Administrative and/or Operational and Operational Plans within Kwakiutl Territory**

- 1.1 British Columbia will consult with Kwakiutl on proposed Administrative and/or Operational Decisions and Operational Plans that may potentially adversely impact Kwakiutl's Aboriginal Interests within the Kwakiutl Territory, in accordance with this Appendix B.
- 1.2 Within the Kwakiutl Territory – Notification Area 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 at Level 3 Notification, with a maximum timeline of 10 calendar days, unless the Parties agree to a different consultation level under section 1.10 of this Appendix.
- 1.3 Within the Kwakiutl Territory – Core Consultation Area, 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 1.10 of this Appendix.
- 1.4 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.
- 1.5 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 Kwakiutl Territory during the current fiscal year, British Columbia will notify the Kwakiutl 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 Kwakiutl 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, Kwakiutl 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 Interests that may occur as a result of the proposed Administrative and/or Operational Decision or Operational Plan within the

Kwakiutl Territory 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 Kwakiutl 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 Kwakiutl during planning to provide opportunity to incorporate Aboriginal Interests prior to submitting plan/request to Decision Maker.	Proponent or Licensee engages directly with Kwakiutl, and provides summary of communications to British Columbia.  Where the outcome of the engagement is positive, an expedited/shortened engagement period of up to 10 calendar days would be triggered (on those applications/projects requiring authorizations), allowing time for Kwakiutl and BC to confirm the outcome or response. If otherwise, then default to Level 3 or 5, dependent upon decision-type.
<b>2. Available on Request</b>	Type of notification whereby British Columbia informs Kwakiutl they will not be sending out information.	British Columbia notifies on an annual basis which decision(s) fall in this category. Kwakiutl can request more detail if they wish.

<b>Level</b>	<b>Description</b>	<b>Intent</b>
<b>3. Notification</b>	Notify in writing Kwakiutl about an upcoming decision and provide overview information. Would be an opportunity for comment.	British Columbia provides Kwakiutl base level information and a short reasonable time (30-45 calendar day consultation period determined by the Parties) to comment. Limited follow-up.
<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 45-90 calendar day consultation period. May involve meaningful discussion of accommodation options where appropriate. British Columbia will notify Kwakiutl of the final decision where requested by the Kwakiutl.
<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 Interest and a significant impact to that interest.	Would involve meaningful discussion of suitable accommodation options and interim solutions where appropriate. May require extended timelines. British Columbia will provide the Kwakiutl 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 Interest information is provided that indicates a different consultation level is appropriate.
- 1.11 Unless requested by the Kwakiutl, the Province is not obligated to inform the Kwakiutl 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**  
**North Island – Central Coast Natural Resource District**

Decision Category	Decision	Delegated Decision Maker <sup>1</sup>	Consultation Level	Consultation Period (calendar days)	Comments/Pending Decisions
<b>ADMINISTRATIVE DECISIONS</b>					
<b>Timber Supply Area</b>	Timber supply review resulting in Allowable Annual Cut (AAC) determination	Chief Forester	6	24 months total	<i>Multiple 60-day processes at discreet intervals over a 24-month period</i>
<b>Timber Supply Area</b>	AAC apportionment or disposition	Minister of Forests, Lands & Natural Resource Operations	5	45-90 days	
<b>Tree Farm Licence</b>	Timber supply review resulting in an AAC determination	Deputy Chief Forester	5	12-24 months total	<i>Multiple processes at discreet intervals</i>
<b>Tree Farm Licence</b>	Management Plan approval	Deputy Chief Forester	5	45-90 days	<i>Consultation usually combined with AAC determination</i>
<b>Tree Farm Licence</b>	Deletion of Crown or private land from TFL	Minister of Forests, Lands & Natural Resource Operations	5	45-90 days	
<b>Tree Farm Licence</b>	Replacement, consolidation, or subdivision	Minister of Forests, Lands & Natural Resource Operations	5	45-90 days	
<b>Tree Farm Licence, Forest Licence, Timber Licence, Woodlot Licence</b>	Transfer	Various	3 or 5	30-90 days	<i>Transfer of TFL/FL = Level 5 Transfer of TL/WL = Level 3</i>
<b>Timber Licence</b>	Extension or consolidation	Regional Executive Director	5	45-90 days	
<b>Forest Licence</b>	Replacement, consolidation, or subdivision	Regional Executive Director	5	45-90 days	
<b>Forest Licence</b>	Issuance of FL	Regional Executive Director	5	45-90 days	
<b>Non-Replaceable Forest Licence</b>	Extension or issuance of NRFL	Regional Executive Director	3 or 5	30-90 days	<i>Extension = Level 3 New Tenure = Level 5</i>
<b>Community Forest Agreement</b>	Establishment and advertisement of new CFA area	Regional Executive Director/District Manager	5	45-90 days	
<b>Community Forest Agreement</b>	Issuance of a CFA	Regional Executive Director	5	45-90 days	<i>Consultation usually combined with Mgmt. Plan as CFA cannot be issued until the Mgmt. Plan is approved</i>
<b>Community Forest Agreement</b>	Approval of new CFA Management Plan or major amendment	District Manager	3 or 5	30-90 days	<i>Major Amendment = Level 3 New Plan = Level 5</i>
<b>Community Forest Agreement</b>	Boundary amendment	Regional Executive Director/District Manager	3	30-45 days	

Decision Category	Decision	Delegated Decision Maker <sup>1</sup>	Consultation Level	Consultation Period (calendar days)	Comments/Pending Decisions
<b>Community Forest Agreement</b>	Probationary CFA transition to CFA	Regional Executive Director	3	30-45 days	
<b>Community Forest Agreement</b>	CFA replacement	Regional Executive Director	3	30-45 days	
<b>Woodlot Licence</b>	Establishment of new WL area	District Manager	5	45-90 days	
<b>Woodlot Licence</b>	Issuance of a WL	District Manager	5	45-90 days	<i>Consultation usually combined with Mgmt. Plan as WL cannot be issued until Mgmt. Plan is approved</i>
<b>Woodlot Licence</b>	Approval of new WL Management Plan or major amendment	District Manager	3 or 5	30-90 days	<i>Major Amendment = Level 3 New Plan = Level 5</i>
<b>Woodlot Licence</b>	Boundary amendment, consolidation, or replacement	District Manager	3	30-45 days	
<b>First Nations Woodland Licence</b>	Award of FNWL	Regional Executive Director	5	45-90 days	<i>Consultation usually combined with Mgmt. Plan as FNWL cannot be issued until the Mgmt. Plan is approved</i>
<b>First Nations Woodland Licence</b>	Approval of new FNWL Management Plan or major amendment	District Manager	3 or 5	30-90 days	<i>Major Amendment = Level 3 New Plan = Level 5</i>
<b>First Nations Woodland Licence</b>	Boundary amendment or replacement	Regional Executive Director/District Manager	3	30-45 days	
<b>Forestry Licence to Cut</b>	Issuance of FLTC or amendment to existing	District Manager or Timber Sales Manager	1, 3 or 5	10-90 days	<i>Supplemental consultation level subject to outcome of proponent-led info sharing. Includes minor cutting, small scale salvage, rec sites and trails, etc.</i>
<b>Forestry Licence to Cut</b>	Issuance of FLTC for community wildfire protection	Regional Executive Director	1 or 3	10-45 days	<i>Non-emergency licence to cut for wildfire prevention</i>
<b>Occupant Licence to Cut</b>	Issuance or amendment of OLTC	District Manager	3	30-45 days	<i>Consultation often done in conjunction with a Land Act tenure. Generally involves minor tree removal to allow for new infrastructure installation, i.e. cell towers, non-emergency community wildfire protection, etc.</i>
<b>BC Timber Sales</b>	New timber sales licence (TSL)	Timber Sales Manager	1, 3 or 5	10-90 days	<i>BCTS-led process – level superseded by any BCTS/FN Protocol Agreement</i>
<b>Special Use Permit</b>	Issuance of new SUP	District Manager	1, 3 or 5	10-90 days	<i>Supplemental consultation level subject to outcome of any licensee-led info-sharing</i>



Decision Category	Decision	Delegated Decision Maker <sup>1</sup>	Consultation Level	Consultation Period (calendar days)	Comments/Pending Decisions
<b>Special Use Permit</b>	Amendment or replacement of existing SUP	District Manager	1 or 3	10-45 days	<i>Supplemental consultation level subject to outcome of any licensee-led info-sharing</i>
<b>Forestry Related Land Act Tenure</b>	Issuance of new tenure over previously undisturbed site	Regional Executive Director or Designate/District Manager	1, 3 or 5	10-90 days	<i>Supplemental consultation level subject to outcome of any proponent-led info-sharing</i>
<b>Forestry Related Land Act Tenure</b>	Amendment, extension, assignment, or replacement of tenures on previously impacted/developed site	Regional Executive Director or Designate/District Manager	1 or 3	10-45 days	<i>Supplemental consultation level subject to outcome of any proponent-led info-sharing. Some replacements may be 'batched' following a unique process.</i>
<b>Forestry or Recreation Related Land Act Tenure</b>	Section 16 reserve or Section 17 designation	Regional Executive Director or Designate/District Manager	3	30-45 days	
<b>Higher Level Plan</b>	Land use objectives – new or major amendments	Minister of Forests, Lands & Natural Resource Operations	5	45-90 days	
<b>Old Growth Management Area</b>	Amendment to existing or establishment of new OGMA	District Manager	1 or 3	10-45 days	<i>OGMAs tend to protect existing old growth stands from harvest and alternatively serve to recruit old growth from younger stands. Supplemental consultation subject to outcome of any licensee-led info-sharing</i>
<b>Government Actions Regulation</b>	Establishment of GAR	Regional Executive Director or Designate/District Manager	3	30-45 days	<i>Generally GAR order serves to protect lands from development</i>
<b>Recreation Sites &amp; Trails</b>	Establishment of a previously existing/non-established or new interpretive forest site, recreation site or trail under FRPA Section 56	Assistant Deputy Minister Sites and Trails BC	3 or 5	30-90 days	<i>Previously existing = Level 3 New = Level 5</i>
<b>Recreation Sites &amp; Trails</b>	Dis-establish recreation sites and trails	Assistant Deputy Minister Sites and Trails BC	3	30-45 days	
<b>Recreation Sites &amp; Trails</b>	Trail construction under FRPA Section 57	Regional Manager/District Recreation Officer Sites and Trails BC	3	30-45 days	
<b>Recreation Sites &amp; Trails</b>	Protection of recreation resource under FRPA Section 58	Regional Manager Sites and Trails BC	3	30-45 days	

Decision Category	Decision	Delegated Decision Maker <sup>1</sup>	Consultation Level	Consultation Period (calendar days)	Comments/Pending Decisions
<b>Recreation Sites &amp; Trails</b>	Expansion, alteration, improvement or rehabilitation of an existing forest interpretive site, recreation site or trail	Regional Manager Sites and Trails BC	3	30-45 days	
<b>OPERATIONAL PLANS</b>					
<b>FL/TL/TFL/CFA/FNWL</b>	Forest Stewardship Plan extension	District Manager	3	30-45 days	
<b>FL/TL/TFL/CFA/FNWL</b>	Forest Stewardship Plan approval, including major amendment	District Manager	6	90-120 days	
<b>FL/TL/TFL/CFA/FNWL</b>	Forest Stewardship Plan, minor amendment requiring approval	District Manager	1 or 3	10-45 days	<i>Supplemental consultation level subject to outcome of any proponent-led info-sharing</i>
<b>WL/FNWL</b>	New Licence Plan or major amendment or extension	District Manager	3 or 5	30-90 days	<i>Amendment/Extension = Level 3 New = Level 5</i>
<b>Range Tenure</b>	Range Use Plan or Stewardship Plan, including major amendments	District Manager	5	45-90 days	
<b>Range Tenures</b>	Range Use Plan or Stewardship Plan extensions	District Manager	3	30-45 days	
<b>Range Tenures</b>	Range Use Plan or Stewardship Plan minor amendments	District Manager	3	30-45 days	
<b>OPERATIONAL DECISIONS</b>					
<b>FL/TL/TFL/CFA/WL/FNWL</b>	Cutting Permit issuance	District Manager	1, 2, 3, 4 or 5	10-90 days	<i>Supplemental consultation level subject to outcome of licensee-led info-sharing</i>
<b>FL/TL/TFL/CFA/WL/FNWL</b>	Cutting Permit amendment	District Manager	2	n/a	<i>Generally these are minor amendments only – may be subject to licensee-led info-sharing</i>
<b>Road Permit</b>	Road Permit issuance/amendment	District Manager and Timber Sales Manager	1, 2, 3, 4 or 5	10-90 days	<i>Supplemental consultation level subject to outcome of licensee-led info-sharing</i>
<b>Road Use Permit</b>	New Road Use Permits on existing Forest Service Roads	District Manager	2	n/a	



Decision Category	Decision	Delegated Decision Maker <sup>1</sup>	Consultation Level	Consultation Period (calendar days)	Comments/Pending Decisions
<b>Forest Investment Account</b>	Sustainable forest management planning; management unit/watershed level strategies/plans; resource inventories; monitoring; decision support; stand treatments; recreation, etc.	District Manager	1 or 2	n/a	<i>Consultation/info sharing levels guided by Land Based Investment (LBI) Interim First Nations Info Sharing Guidelines 2010 developed under the LBI program and generally recipient-led</i>
<b>Free Use Permit</b>	Free use permit issuance for First Nation's traditional and cultural activities	District Manager	2	n/a	
<b>Miscellaneous</b>	Authority to harvest timber by Crown agents (Section 52 Forest Act)	District Manager	3	30-45 days	<i>May include FSR realignment, helipad clearing for BCTS, research branch destructive sampling, etc.</i>
<b>Miscellaneous</b>	Permit to grow and/or harvest Christmas Trees on Crown land	District Manager	2	n/a	<i>Often in association with compatible land use such as hydro power line ROW</i>

<sup>1</sup> For informational purposes only; the delegated decision maker level bound by legislation and delegation processes may vary over time.

## **APPENDIX C**

### **Revenue Sharing Contribution Methodology**

#### **Kwakiutl Territory 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 of the DNI District forest revenue, 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 the DNI Forest District.
- 1.1 For the purposes of the summary document in section 1.0 of this Appendix, the stumpage payments from Eligible Volume in Kwakiutl's Forest License (if applicable) will not be included in the calculations of forest revenue.
- 1.2 The amount of the forest revenue attributed to the Kwakiutl's Territory will be calculated by determining the percent of Kwakiutl's Territory that falls within the Timber Harvesting Land Base in the DNI Forest District, 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 Territory Forest Revenue Sharing Component will be calculated by multiplying 3 percent of the forest revenue attributed to the Kwakiutl as described in section 1.2 of this Appendix.
- 1.4 If Kwakiutl 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 Kwakiutl 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 detailing of Kwakiutl's Forest License (if applicable) forest revenue, defined as the total of stumpage payments received by the Crown for the previous BC Fiscal Year from Eligible Volume within the 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.

## **APPENDIX D**

**Band Council Resolution Appointing**

**the**

**Recipient Entity for this Agreement ("Designate")**

## APPENDIX E

### Kwakiutl Statement of Community Priorities

*(Example only)*

Socio-economic Priority	Annual Amount			Specific Outcomes	Measurement Criteria
	2020/2021	2021/2022	2022/2023		

2020/2021 Revenue Sharing Contribution \$To Be Determined

2021/2022 Revenue Sharing Contribution \$To Be Determined

2022/2023 Revenue Sharing Contribution \$To Be Determined

## APPENDIX F

### Kwakiut Statement of Community Priorities

#### Annual Report

*(Example only)*

Socio-economic Priority	2020/2021 Planned Expenditures	2020/2021 Actual Expenditures	Outcomes Achieved	Variance Explanation

#### Confirmation

In accordance with section 8.2 of the Agreement, First Nation confirms that aside from reasonable administrative expenses, all actual expenditures were made for the purpose of furthering the purposes and objectives set out in section 2.1 of the Agreement.

Signed this 30th day of March:

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(Signature)

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(Name) On behalf of (First Nation)