

**Kwicksutaineuk First Nation  
Forest & Range  
Consultation and Revenue Sharing Agreement (FCRSA)  
(the "Agreement")**

**Between:  
The Kwicksutaineuk First Nation**

As Represented by  
Chief and Council  
(the Kwicksutaineuk First Nation)

**And**

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

(Collectively the "Parties")

**WHEREAS:**

- A. In 2005, British Columbia and the First Nations Leadership Council, representing the Assembly of First Nations-BC Region, First Nations Summit, and the Union of BC Indian Chiefs entered into a New Relationship and signed the Transformative Change Accord, the purposes of which is to implement a government-to-government relationship based on an effective working partnership, enhanced collaboration, mutual respect and recognition and accommodation of Aboriginal title and rights and achieve the mutual goals of closing the social and economic gap between First Nations and other British Columbians.
- B. In the spirit of the New Relationship and the Transformative Change Accord, British Columbia and Kwicksutaineuk First Nation have undertaken a shared commitment to strengthening relationships on a government-to-government basis, and on focusing efforts to close the socio-economic gaps between Aboriginal and non-Aboriginal people.
- C. This Agreement, and the benefits flowing from it, will assist the Kwicksutaineuk First Nation in achieving progress towards the goals referred to in the previous recitals, and in particular help to address the conditions that contribute to economic challenges among Aboriginal people and to ensure that they can more fully benefit from and contribute to British Columbia's prosperity.
- D. British Columbia recognizes that Kwicksutaineuk First Nation has a unique history and its own culture and traditions that help to define it, and that these characteristics, along with its relationship with British Columbia, form an important context for the cooperative efforts needed to improve the Kwicksutaineuk First Nation community's well-being.

- E. The Kwicksutaineuk First Nation has Aboriginal Interests within its Traditional Territory.
- F. British Columbia intends to consult with the Kwicksutaineuk First Nation and to accommodate its Aboriginal Interests as appropriate (including accommodation by way of the payments provided through this Agreement), with respect to impacts on the Kwicksutaineuk First Nation's Aboriginal Interests arising from forest and/or range resource development activities proposed within the Kwicksutaineuk First Nation Traditional Territory.
- G. The Kwicksutaineuk First Nation intends to fully participate in any consultation or information sharing with British Columbia or a Licensee in relation to forest and/or range resource development activities proposed within the Kwicksutaineuk First Nation's Traditional Territory that may impact the Kwicksutaineuk First Nation's Aboriginal Interests.
- H. This Agreement is intended to assist in achieving stability and greater certainty for forest and/or range resource development on Crown lands within the Traditional Territory of the Kwicksutaineuk First Nation which will enhance the ability of the forestry and ranching industries to exercise timber harvesting and grazing rights in a timely, economic, and environmentally sustainable manner while longer term interests of the Kwicksutaineuk First Nation are addressed through other agreements or processes.

**THEREFORE THE PARTIES AGREE AS FOLLOWS:**

**1.0 Definitions**

For the purposes of this Agreement, the following definitions apply:

- 1.1 **"Aboriginal Interests"** means asserted aboriginal rights (including aboriginal title) or determined aboriginal rights (including aboriginal title) which are recognized and affirmed by section 35(1) of the *Constitution Act, 1982*.
- 1.2 **"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 as identified in the First Annual List and/or Annual List as defined in Appendix B.
- 1.3 **"Band Council Resolution"** means a resolution of Kwicksutaineuk First Nation having the form of Appendix D.
- 1.4 **"BC Fiscal Year"** means a period beginning on April 1 of a calendar year and ending on March 31 of the next calendar year.
- 1.5 **"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.
- 1.6 **"Designate"** has the meaning given to that term in section 3.1.1.

- 1.7 **"Effective Date"** means the date on which this Agreement has been ratified and signed by each of the Parties.
- 1.8 **"First Fiscal Year of the Term"** has the meaning given to that term in section 3.3.
- 1.9 **"Licensee"** means a holder of a forest tenure or a range tenure.
- 1.10 **"Matrix"** means the framework in Appendix B which will be used to define consultation between the Parties with respect to Operational and Administrative Decisions.
- 1.11 **"Minister"** means the Minister of Forests, Lands and Natural Resource Operations having the responsibility, from time to time, for the exercise of powers in respect of forests and range matters.
- 1.12 **"Operational Plan"** means a Forest Stewardship Plan, Woodlot Licence Plan, a Range Use Plan, or Range Stewardship Plan (as those terms are defined in forest and range legislation) that has or will have effect in the Kwicksutaineuk First Nation's Traditional Territory.
- 1.13 **"RA"** means a reconciliation agreement between British Columbia and the Kwicksutaineuk First Nation 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*.
- 1.14 **"Revenue Sharing Contribution"** means each payment to be made by British Columbia to the Kwicksutaineuk First Nation in accordance with Section 3.0 of this Agreement.
- 1.15 **"SEA"** means a strategic engagement agreement between British Columbia and the Kwicksutaineuk First Nation that describes a consultation process between the Kwicksutaineuk First Nation and more than one natural resource ministry of the Government of British Columbia.
- 1.16 **"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*.
- 1.17 **"Term"** has the meaning given to that term in section 11.1.
- 1.18 **"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 to contribute to, and be available for, long-term timber supply.
- 1.19 **"Traditional Territory"** means the Kwicksutaineuk First Nation's claimed or asserted Traditional Territory as shown in bold black on the map attached in Appendix A.
- 1.20 **"Treasury Board"** means the cabinet committee of British Columbia defined in the *Financial Administration Act*.

## **2.0 Purpose and Objectives**

The purposes and objectives of this Agreement are:

- 2.1 In relation to potential impacts on Kwicksutaineuk First Nation 's Aboriginal Interests resulting from forest and range development in its Traditional Territory, to facilitate the Parties in meeting their respective legal consultation obligations by supporting the capacity of Kwicksutaineuk First Nation to participate in consultation initiated by British Columbia and by establishing a consultation process which results in appropriate accommodation measures being implemented, where appropriate, in addition to the Revenue Sharing Contribution provided as an accommodation in this Agreement; and
- 2.2 To provide an opportunity for the Kwicksutaineuk First Nation to identify and pursue activities that will enhance and improve the social, cultural and economic well-being of its community and assist the Kwicksutaineuk First Nation in achieving progress towards closing socio-economic gaps between the members of Kwicksutaineuk First Nation and non-Aboriginal people in British Columbia.

### **3.0 Forest Revenue Sharing Contribution**

- 3.1 Recipient Entity:
  - 3.1.1 Unless the Kwicksutaineuk First Nation elects to have another entity (its "Designate") receive Revenue Sharing Contributions pursuant to section 3.1.2, recognizing that any such election does not relieve the Kwicksutaineuk First Nation of its obligation under this agreement, the Kwicksutaineuk First Nation will be the recipient of the Revenue Sharing Contributions..
  - 3.1.2 Where the Kwicksutaineuk First Nation chooses to have its Designate receive Revenue Sharing Contributions under this Agreement, British Columbia may withhold payment of the Revenue Sharing Contribution until it is satisfied that the Designate is a registered corporation or society with the legal authority and capacity to receive the funds for the purposes described in section 2.0 and that it has been appointed by Band Council Resolution documented in Appendix D to receive the Revenue Sharing Contribution on behalf of the Kwicksutaineuk First Nation.
- 3.13 Kwicksutaineuk First Nation will establish and throughout the Term maintain a bank account in the name of Kwicksutaineuk First Nation (or the 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. Kwicksutaineuk First Nation will 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.

- 3.2 Subject to section 3.1.2 and section 10.0 of this Agreement, British Columbia will during the Term make annual Revenue Sharing Contributions, calculated in accordance with Appendix C, to the Kwicksutaineuk First Nation, or to its Designate, as the case may be, and, subject to section 3.4 and 3.6, the Revenue Sharing Contribution will be disbursed in two equal payments: the first payment to be paid on or before September 30<sup>th</sup>, and the second payment to be paid on or before March 31<sup>st</sup>.
- 3.3 Notwithstanding section 3.2, for the BC Fiscal Year in which the Effective Date falls (the "First Fiscal Year of the Term") the amount calculated in accordance with Appendix C is deemed to be \$91,758. For further certainty the first payment under this agreement will be on March 31, 2012.
- 3.4 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 signed by the Kwicksutaineuk First Nation.
- 3.5 Before November 30<sup>th</sup> of each year during the Term, Kwicksutaineuk First Nation will receive written notification from British Columbia of the Revenue Sharing Contribution for the following BC Fiscal Year (including the summary document(s) and calculations identified in Appendix C) and the Kwicksutaineuk First Nation agrees that such written notification will have the effect for the purposes of this Agreement of describing the amount of the Revenue Sharing Contribution under this Agreement for that following BC Fiscal Year.
- 3.6 For each BC Fiscal Year subsequent to the First Fiscal Year of the Term, the Revenue Sharing Contribution will be provided by British Columbia to the Kwicksutaineuk First Nation or its Designate in the manner specified in section 3.2 only if Kwicksutaineuk First Nation has published all of the necessary statements and reports before the appropriate dates as set out in section 6.0 of this Agreement, is in all other respects in compliance with the terms of this Agreement and this Agreement has not been suspended or terminated pursuant to section 10.0.
- 3.7 Notwithstanding any other provisions of this Agreement, the payment of money by British Columbia to the Kwicksutaineuk First Nation pursuant to this Agreement is subject to:
  - 3.7.1 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

- 3.7.2 Treasury Board not having controlled or limited, pursuant to the *Financial Administration Act*, expenditure under any appropriation referred to in section 3.7.1.

#### **4.0 Consultation Process**

- 4.1 The Parties agree that consultation with respect to impacts to Kwicksutaineuk First Nation's Aboriginal Interests arising from any Operational or Administrative Decisions or Operational Plans is to be carried out in accordance with the process set out in Appendix B of this Agreement.
- 4.2 British Columbia will use the map of the Kwicksutaineuk First Nation's Traditional Territory used in the Kwicksutaineuk First Nation Forest Agreement which map will be set out in this Agreement as Appendix A, unless this is the first such agreement between British Columbia and Kwicksutaineuk First Nation in which event the Kwicksutaineuk First Nation will provide a hard copy map of its Traditional Territory and a digital copy of the Traditional Territory boundary conforming to current government mapping standards, which hard copy will be set out in this Agreement as Appendix A.
- 4.3 Kwicksutaineuk First Nation agrees that British Columbia may share the map of the Traditional Territory as set out in Appendix A with another provincial government agency and/or a licensee responsible for information sharing associated with a decision that is subject to this Agreement.
- 4.4 The Parties agree that in the event Kwicksutaineuk First Nation enters into a SEA or RA with British Columbia after the Effective Date which 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 if the SEA or RA so provides; and in any such case, if the SEA or RA terminates prior to the end of the Term, the Parties agree that the consultation process set out in Appendix B of this Agreement will apply for the remainder of the Term.
- 4.5 In the event that the Effective Date falls after the date on which Kwicksutaineuk First Nation enters into a SEA or RA with British Columbia that includes a consultation process which addresses forest and range management and decision making, and the SEA or RA is subsequently terminated prior to the end of the Term, the Kwicksutaineuk First Nation agrees that this Agreement will be amended within 60 days of the date of termination of the SEA or RA to include a consultation process in this Agreement.

#### **5.0 Acknowledgments and Covenants by Kwicksutaineuk First Nation**

- 5.1 Kwicksutaineuk First Nation acknowledges that forest revenues received by British Columbia fluctuate and that the Revenue Sharing Contributions under this Agreement will vary over time.
- 5.2 Kwicksutaineuk First Nation agrees that the Revenue Sharing Contributions made under section 3.0 of this Agreement constitute an accommodation for impacts on Kwicksutaineuk First Nation Aboriginal Interests of Administrative Decisions, Operational Decisions and/or Operational Plans in the Traditional Territory.
- 5.3 Kwicksutaineuk First Nation agrees that during the term of this Agreement, 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 infringements of Kwicksutaineuk First Nation's Aboriginal Interests in the context of Operational Decisions and Administrative Decisions that British Columbia will make and any forest or range practices that may be carried out under an Operational Plan in the Traditional Territory.

## **6.0 Community Priorities, Annual Reports and Records**

- 6.1 Kwicksutaineuk First Nation covenants and agrees as follows:
  - 6.1.1 Within 60 days of the Effective Date of this Agreement, Kwicksutaineuk First Nation or its Designate will prepare a statement of community priorities covering the term of the Agreement, substantially in the form set out in Appendix E that outlines activities it intends to fund to help achieve the socio-economic objectives identified in section 2.2. This statement will outline the community priorities based on the First Fiscal Year Revenue Sharing Contribution.
  - 6.1.2 Before the end of each BC Fiscal Year, Kwicksutaineuk First Nation or its Designate will update the statement of community priorities identified in section 6.1.1 based on the updated Revenue Sharing Contribution described in section 3.5.
  - 6.1.3 Within 90 days of the end of each BC Fiscal Year, Kwicksutaineuk First Nation or its Designate 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 for the purpose of accomplishing the purposes and objectives referred to in section 2.0.
  - 6.1.4 British Columbia retains the right at its sole discretion, such discretion to be exercised reasonably, to require an audit of expenditures made from the Payment Account to ensure that all such expenditures were made for appropriate purposes under this Agreement, such audit to

be at the expense of the Kwicksutaineuk First Nation or its Designate.

- 6.1.5 The documents referred to in sections 6.1.1, 6.1.2, and 6.1.3 will be published by Kwicksutaineuk First Nation or its Designate in a manner that can reasonably be expected to bring the information to the attention of its communities and the public.
- 6.1.6 Notwithstanding the termination or expiry of this Agreement, Kwicksutaineuk First Nation or its Designate will continue to comply with the provisions of section 6.1 until 90 days after it receives the last Revenue Sharing Contribution from British Columbia.
- 6.2 If Kwicksutaineuk First Nation requires funding ("capacity") to engage in consultation processes on forest and range decisions, or with other provincial Ministries where Kwicksutaineuk First Nation has entered into an SEA and/or RA with British Columbia, up to \$35,000 annually of the Revenue Sharing Contribution will be used by Kwicksutaineuk First Nation for that capacity during the Term of this Agreement.

## **7.0 Security Deposits**

- 7.1 In recognition of Kwicksutaineuk First Nation entering into this Agreement, British Columbia may choose not to request a silviculture deposit(s) pertaining to licence(s) entered into as a result of the invitation to apply under a Forest Tenure Opportunity Agreement entered into between Kwicksutaineuk First Nation (or a legal entity controlled by the Kwicksutaineuk First Nation) and British Columbia.
- 7.2 Kwicksutaineuk First Nation agrees that British Columbia may apply any payment that Kwicksutaineuk First Nation is entitled to receive under this Agreement, to a maximum of the amounts that British Columbia would have obtained in a silviculture deposit, in order to fully or partially satisfy any unfulfilled financial obligations of Kwicksutaineuk First Nation to British Columbia arising from a licence(s) entered into as a result of the invitation to apply under a Forest Tenure Opportunity Agreement entered into between Kwicksutaineuk First Nation (or a legal entity controlled by the Kwicksutaineuk First Nation) and British Columbia.
- 7.3 Prior to British Columbia applying any payment to satisfy unfulfilled Kwicksutaineuk First Nation financial obligations arising from a licence(s) in accordance with section 7.2, British Columbia will notify the Kwicksutaineuk First Nation of the unfulfilled financial obligation(s) and will discuss the proposed action with the Kwicksutaineuk First Nation.

## **8.0 Stability for Land and Resource Use**

- 8.1 Kwicksutaineuk First Nation will respond immediately to any discussions sought by British Columbia in relation to any acts of intentional interference by members of Kwicksutaineuk First Nation with provincially authorized

forest and/or range activities and will work co-operatively with British Columbia to assist in resolving any such matters.

## **9.0 Dispute Resolution**

- 9.1 If a dispute arises between British Columbia and the Kwicksutaineuk First Nation regarding the interpretation of a provision of this Agreement, the duly appointed representatives of the Parties will meet as soon as is practicable to attempt to resolve the dispute.
- 9.2 If the Parties are unable to resolve differences at the appropriate level, the interpretation issue will be raised to more senior levels of British Columbia and the Kwicksutaineuk First Nation.
- 9.3 If the interpretation dispute cannot be resolved by the Parties directly, the Parties may choose other appropriate approaches to assist in reaching resolution of the interpretation issue.

## **10.0 Suspension and Termination**

- 10.1 British Columbia may suspend the making of further Revenue Sharing Contributions under this Agreement if it determines, acting reasonably, that Kwicksutaineuk First Nation is not fulfilling its obligations under sections 4.0 and 6.0 or sections 8.1 or 10.3 of this Agreement, or where the Kwicksutaineuk First Nation has outstanding unfulfilled financial obligations to British Columbia arising from a licence(s) issued further to an agreement between the Kwicksutaineuk First Nation and British Columbia. Upon making any such determination, British Columbia will provide notice to Kwicksutaineuk First Nation of the alleged non-compliance, and the Parties will then attempt to resolve their differences.
- 10.2 If the alleged non-compliance by Kwicksutaineuk First Nation is not resolved within 60 days of the notice provided in section 10.1, British Columbia will notify Kwicksutaineuk First Nation that the alleged non-compliance remains unresolved and, without limiting the actions that may be taken by British Columbia, may terminate this Agreement.
- 10.3 If, during the term of this Agreement, Kwicksutaineuk First Nation challenges or supports a challenge to an Administrative Decision and/or Operational Decision or an Operational Plan or activities carried out pursuant to those decisions or plans, by way of legal proceedings or otherwise, on the basis that, contrary to section 5.2, the Revenue Sharing Contribution provided for in section 3.0 of this Agreement does not provide an accommodation for impacts on Kwicksutaineuk First Nation's Aboriginal Interests then, without limiting any actions that may be taken by British Columbia, the Revenue Sharing Contribution provided for in section 3.0 may be suspended or this Agreement may be terminated by British Columbia.

- 10.4 This Agreement will terminate prior to the end of the Term in any one of the following circumstances; 90 days' written notice of termination is given by one Party to the other; termination occurs in accordance with any of the provisions of section 10.0; or upon mutual agreement of the Parties. In the event of such early termination of this Agreement, the Revenue Sharing Contribution for the BC Fiscal Year in which termination becomes effective will be prorated to the termination date.
- 10.5 If a Party gives written notice of its intention to terminate this Agreement effective 90 days from the date of the notice, the Parties will, prior to the end of the 90-day period, meet and will attempt to resolve any issue that may have given rise to the termination notice.

## **11.0 Term**

- 11.1 The term of this Agreement commences on the Effective Date and, unless terminated earlier in accordance with any of the provisions hereof, will end on the day immediately before the third anniversary of the Effective Date.

## **12.0 Renewal of the Agreement**

- 12.1 Prior to the expiry of the Term, if the terms and conditions of this Agreement are being met, British Columbia and Kwicksutaineuk First Nation will, if each party has received such authorizations as it may require, begin negotiations for the renewal of this Agreement or for a new agreement.

## **13.0 Amendment of Agreement**

- 13.1 Any alteration or amendment to the terms and conditions of the Agreement must be in writing and duly executed by the Parties.
- 13.2 Either Party may request the participation of the other Party to review the effectiveness of this Agreement annually and consider amendments to this Agreement.

## **14.0 Entire Agreement**

- 14.1 This Agreement and any amendment to it constitute the entire Agreement between the Parties with respect to the subject matter of this Agreement.

## **15.0 Notice**

- 15.1 Any notice or other communication that is required to be given or that a Party wishes to give to the other Party with respect to this Agreement, will be in writing and will be effective if delivered, sent by registered mail, or transmitted by facsimile to the address of the other Party as in this section of the Agreement.
- 15.2 Any notice or other communications will be deemed to have been given on the date it is actually received, if received before 4:00 p.m. If received after

4:00 p.m., it will be deemed to have been received on the next business day.

- 15.3 The address of either Party may be changed by notice in the manner set out in this section of the Agreement.

**British Columbia**

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

**Kwicksutaineuk First Nation**

Chief Robert Chamberlin  
PO Box 10, 14 Gatu Street  
Albert Bay, BC V0N 1A0  
Telephone: (250) 974-3004  
Fax: (250) 974-3007

## **16.0 Miscellaneous**

- 16.1 This Agreement shall be interpreted in a manner consistent with provincial and federal law.
- 16.2 This Agreement is not a treaty or a lands claims agreement within the meaning of sections 25 and 35 of the *Constitution Act, 1982* and does not define or amend aboriginal rights, or limit any priorities afforded to aboriginal rights, including aboriginal title.
- 16.3 This Agreement does not address or prejudice conflicting interests or competing claims between First Nations.
- 16.4 Subject to paragraph 10.3, this Agreement will not limit the positions that a Party may take in future negotiations or court actions.
- 16.5 British Columbia acknowledges and enters into this Agreement on the basis that the Kwicksutaineuk First Nation has Aboriginal Interests within their Traditional Territory but that the specific nature, scope or geographic extent of Aboriginal Interests of the Kwicksutaineuk First Nation have yet to be determined. Broader processes engaged in to bring about reconciliation will result in a common understanding of the nature, scope and geographic extent of Aboriginal Interests or treaty interests of the Kwicksutaineuk First Nation.
- 16.6 References in this Agreement to Crown lands are without prejudice to the Kwicksutaineuk First Nation's Aboriginal title and/or rights claims over those lands.
- 16.7 This Agreement does not address or affect any claims by the Kwicksutaineuk First Nation regarding impacts on its Aboriginal Interests resulting from past Operational or Administrative Decisions made by British Columbia prior to the effective date of this Agreement.
- 16.8 This Agreement and any decisions made during the term of this Agreement do not change or affect the positions either Party has, or may have, regarding jurisdiction and authorities.
- 16.9 Any reference to a statute in this Agreement includes all regulations made under that statute and any amendments or replacement of that statute and its regulations.
- 16.10 There will be no presumption that any ambiguity in any of the terms of this Agreement should be interpreted in favour of either Party.
- 16.11 The applicable laws of British Columbia and Canada shall govern this Agreement.
- 16.12 This Agreement is not intended to limit any obligation of forest or range Licensees or other third parties to the Kwicksutaineuk First Nation.
- 16.13 This Agreement does not exclude the Kwicksutaineuk First Nation from accessing forestry economic opportunities and benefits, which may be

available to the Kwicksutaineuk First Nation, other than those expressly set out in this Agreement.

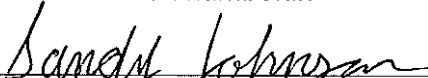
- 16.14 Nothing in this Agreement is to be construed as an acceptance of or admission by a Party of the position of the other Party or as an admission of fact or liability.
- 16.15 This Agreement does not constitute an admission of an obligation to provide financial or economic benefits, as provided in this Agreement, as part of the British Columbia's obligation to consult and accommodate.
- 16.16 If any part of this Agreement is void or unenforceable at law, that part shall be severed from this Agreement and the rest of the Agreement shall remain in effect and fully enforceable.
- 16.17 If any part of this Agreement is void or unenforceable at law, the Parties agree to negotiate and attempt to reach agreement, to the extent reasonably possible and as their respective interests may require, on a replacement for the severed part with a view to achieving the intent of the Parties as expressed in this Agreement.
- 16.18 All headings in this Agreement are for convenience only and do not form a part of this Agreement and are not intended to interpret, define, limit, enlarge, modify or explain the scope, extent or intent of this Agreement or any of its provisions.
- 16.19 In this Agreement, words in the singular include the plural, and words in the plural include the singular unless the context or any specific definition otherwise requires.
- 16.20 The appendices to this Agreement form part of the Agreement.


16.21 This Agreement may be entered into by each Party signing a separate copy of this Agreement, including a photocopy or faxed copy, and delivering it to the other Party by fax. Each facsimile will be deemed to be an original for all purposes and all counterparts taken together will be deemed to constitute one document.

Signed on behalf of:

**Kwicksutaineuk First Nation**

  
\_\_\_\_\_  
Chief Robert Chamberlin

  
\_\_\_\_\_  
Councillor


  
\_\_\_\_\_  
Councillor

Witness of Kwicksutaineuk First Nation  
signatures

MARCH 21 2012  
Date

Signed on behalf of:

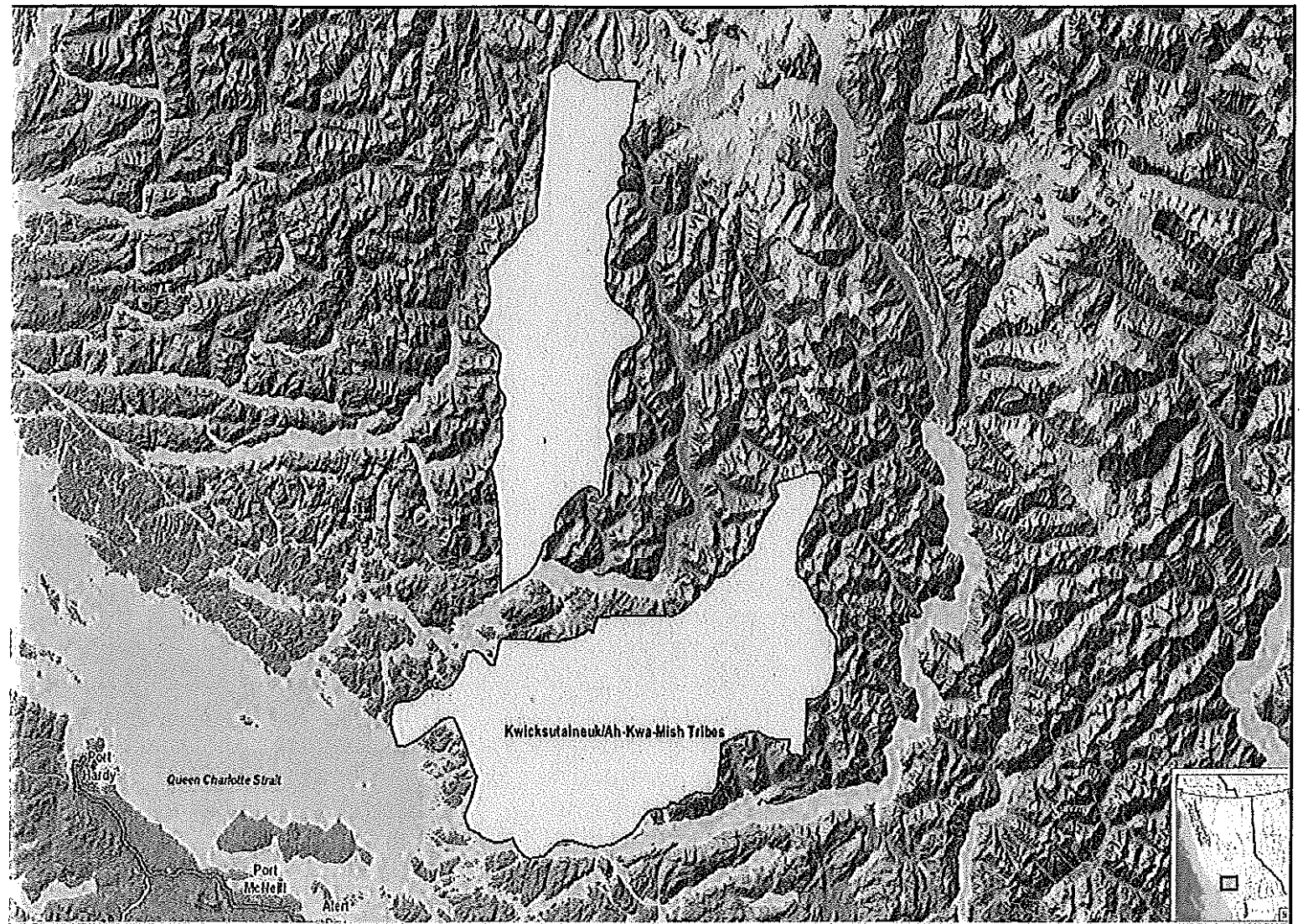
**Government of British Columbia**

  
\_\_\_\_\_  
Mary Polak  
Minister of Aboriginal Relations and  
Reconciliation

04.03.12  
Date

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

**APPENDIX A**  
**Map of Kwicksutaineuk First Nation Traditional Territory**



## **APPENDIX B**

### **Consultation**

#### **On Operational and Administrative Decisions and Operational Plans.**

In order to facilitate consultation with respect to Operational and Administrative Decisions and Operational Plans, the Parties have agreed to use the Matrix framework set out in section 1.10 of this Appendix ("section 1.10"), which allows the Parties to determine which Operational and Administrative Decisions and Operational Plans will require consultation, as well as the associated appropriate level of consultation for those decisions and plans.

- 1.1 British Columbia agrees to consult with Kwicksutaineuk First Nation in accordance with the applicable consultation level agreed to by the Parties under section 1.10 on Operational Plans, Operational Decisions, and Administrative Decisions that may potentially adversely impact Kwicksutaineuk First Nation's Aboriginal Interests within the Traditional Territory.
- 1.2 Kwicksutaineuk First Nation agrees to fully participate with British Columbia and/or Licensees or licence proponents, as set out in this Agreement and in accordance with the applicable level of consultation to which the Parties have agreed under section 1.10, in information sharing and/or consultation regarding proposed Operational Decisions, Administrative Decisions, and Operational Plans dealing with forest and range development within the Traditional Territory.
- 1.3 In this Appendix, "First Annual List" means a list of Operational and Administrative Decisions and Operational Plans, which may require consultation during the First Fiscal Year of the Term or part thereof in which the Effective Date occurs, that is provided to the Kwicksutaineuk First Nation by British Columbia in advance of the Parties entering into this Agreement.
- 1.4 Prior to entering into this Agreement, the Parties will agree on the applicable consultation levels for the decisions on the First Annual List, using the consultation levels described in section 1.10.
- 1.5 In this Appendix, "Annual List" means an annual list of Operational and Administrative Decisions and Operational Plans that may require consultation in a fiscal year of the Agreement in which those decisions are anticipated to be made, and that will be provided to the Kwicksutaineuk First Nation by British Columbia before March 31<sup>st</sup> of each year after the First Fiscal Year of the Term.
- 1.6 For fiscal years subsequent to the First Fiscal Year of the term, the Parties will meet annually on or before March 31<sup>st</sup> to discuss the Annual List and, in the case of decisions and plans for which the Parties have not already agreed to a consultation level described in section 1.10 in a preceding fiscal year, the Parties will agree on the consultation levels that will be applicable to those Operational and Administrative Decisions and Operational Plans on the Annual List, in accordance with section 1.10.

- 1.7 When British Columbia becomes aware of proposed types of Operational or Administrative Decisions or Operational Plans not contained in the Annual List that will have effect within the Traditional Territory of Kwicksutaineuk First Nation during the current fiscal year, British Columbia will notify the Kwicksutaineuk First Nation of those new types of decisions or plans and the Parties will seek to agree on the consultation levels that will be applicable to those Operational and Administrative Decisions and Operational Plans, in accordance with section 1.10.
- 1.8 In reviewing and responding to an Operational Decision, Administrative Decision, or Operational Plan submitted to them, Kwicksutaineuk First Nation will, unless otherwise agreed by the Parties, provide the party (i.e. British Columbia, a licensee or proponent) that supplied the proposed decision or plan to them, with all reasonably available information that will identify any potential impacts to their Aboriginal Interests that may occur as a result of proposed forest and/or range resource development activities pursuant to that Operational Decision, Administrative Decision or Operational Plan within the Traditional Territory.
- 1.9 If no response is received from Kwicksutaineuk First Nation within the timeframe set out in section 1.10, then British Columbia may conclude that Kwicksutaineuk First Nation does not intend to respond or participate in the consultation process in respect of the Operational or Administrative Decision or Operational Plan and that a decision may proceed.
- 1.10 The Parties agree to the following description and intent of the consultation levels:



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

Level	Description	Intent
		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 30 – 60 calendar day consultation period. May involve meaningful discussion of accommodation options where appropriate. British Columbia will notify Kwikwaka'wakw First Nation of the final decision where requested by the Kwikwaka'wakw First Nation.
<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 Kwikwaka'wakw First Nation with the final decision and rationale in writing.

- 1.11 The Parties may agree to adjust the consultation levels for specific circumstances where detailed aboriginal interest information is shared that would suggest a different consultation level.
- 1.12 Kwikwaka'wakw First Nation agrees that the province is not obligated, unless requested by the Kwikwaka'wakw First Nation, to inform the Kwikwaka'wakw First Nation of the Delegated Decision Maker's decision for decisions on which the consultation level has been level three (3) or lower.
- 1.13 If the Parties cannot agree upon which consultation level in section 1.10 should apply to a particular or any Operational or Administrative Decision or Operational Plan, then British Columbia will consult with Kwikwaka'wakw First Nation on the

basis of British Columbia's consultation procedures in effect at the time as well as the applicable case law respecting consultation obligations.

As per Section 1.3 and 1.6 of Appendix B – Kwicksutaneuk-Ah'Kwaw'Ah'Mish

First Annual List and Annual List for 2012/2013

Decision Category	Decision	Delegated Decision Maker <sup>1</sup>	Consultation Level	Consultation Period <sup>2</sup>	Comments/Pending Decisions
<b>ADMINISTRATIVE DECISIONS</b>					
Timber Supply Area	Timber supply review for TSA resulting in Annual Allowable Cut (AAC) determination	Chief Forester	5	24 months total	<i>Multiple 60 day processes at discreet intervals over a 24 month period</i>
Timber Supply Area	Annual allowable cut (AAC) apportionment in TSA	Minister of Forests, Lands & Natural Resource Operations	5	30-60 days	
Timber Supply Area	Annual allowable cut (AAC) disposition in TSA	Regional Executive Director	3	21-30 days	
Tree Farm Licence	Timber supply review for TFL resulting in an AAC determination	Deputy Chief Forester	5	30-60 days	
Tree Farm Licence	Management Plan approval	Deputy Chief Forester	3	21-30 days	
Tree Farm Licence	Deletion of Crown land from TFL	Minister of Forests, Lands & Natural Resource Operations	5	30-60 days	
Tree Farm Licence	Replacement, consolidation or subdivision	Minister of Forests, Lands & Natural Resource Operations	3	21-30 days	
Tree Farm Licence/Forest Licence/Timber Licence	Transfer	Minister of Forests, Lands & Natural Resource Operations	3	21-30 days	<i>Unknown until application is received</i>
Timber Licence	Extension	Regional Executive Director	5	30-60 days	
Forest Licence	Replacement, consolidation or subdivision	Regional Executive Director	3	21-30 days	A75083 (Lion's Gate – Kingcome TSA)
Forest Licence	Issuance of FL	Regional Executive Director	5	30-60 days	
Non-Replaceable Forest Licence	Extension or issuance of NRFL	Regional Executive Director	3 or 5	21-60 days	<i>Extension = Level 3; New Tenure = Level 5</i>
Community Forest Agreement	Establishment of new CFA area	District Manager	5	30-60 days	
Community Forest Agreement	Approval of new CFA Management Plan or major amendment	Regional Executive Director or District Manager	3 or 5	21-60 days	<i>Major Amendments = Level 3; New Plans = Level 5</i>
Community Forest Agreement	Boundary amendment	Regional Executive Director	3	21-30 days	
Community Forest Agreement	Probationary CFA transition to CFA	Regional Executive Director	3	21-30 days	
Woodlot Licence	Establishment of new WL area.	District Manager	5	30-60 days	
Woodlot Licence	Approval of new WL Management Plan or major amendment	District Manager	3 or 5	21-60 days	<i>Major Amendments = Level 3; New Plans = Level 5</i>
Woodlot Licence	Direct award of WL to First Nation through	District Manager	3	21-30 days	

	FRA/FRO process (either new or area increase)				
Woodlot Licences	Boundary amendment	District Manager	3	21-30 days	
BC Timber Sales	New timber sales licence (TSL)	Timber Sales Manager	5	30-60 days	Potentially 1 new TSL - O'Brien Bay A89756
Special Use Permits	Amendment to or replacement of existing or approval of new application	District Manager	1, 3 or 5	0-60 days	<i>Supplemental consultation levels i.e. Amendment or Replacement = Level 3; New Permits = Level 5; subject to outcome of any licensee-led info-sharing.</i> Potential replacements: S19524
Forestry-Related Land Act Tenures	Amendment to or replacement of existing or approval of new application for forestry-related tenures	District Manager	1, 3 or 5	0-60 days	<i>Supplemental consultation levels i.e. Amendment or Replacement = Level 3; New Permits = Level 5; subject to outcome of any licensee-led info-sharing.</i> Potentially 1-2 new applications and 1 replacement - 1406926
Old Growth Management Areas	Amendment to existing or establishment of new OGMA	District Manager	3 or 5	21-60 days	<i>OGMAs tend to protect existing old growth stands from harvest and alternatively serve to recruit old growth from younger stands. Amendment = Level 3; New OGMA = Level 5</i>
Government Action Regulation	Establishment of GAR	District Manager or Regional Recreation Manager	3	21-30 days	<i>Generally GAR order serve to protect lands from development</i>
Recreation Sites & Trails	Development of service contracts or management agreements	District Recreation Officer	3	21-30 days	
Recreation Sites & Trails	Section 16 of Land Act -- map reserve only for foreshores	District Recreation Officer	3	21-30 days	
Recreation Sites & Trails	Establishment of a previously existing/non-established or new interpretive forest site, recreation site or trail under Section 56 of FRPA	Deputy Minister Sites and Trails BC	3 or 5	21-60 days	<i>Establishment of previously existing = Level 3; Establishment of new = Level 5</i>
Recreation Sites & Trails	Expansion, alteration, improvement or rehabilitation of an existing forest interpretive site, recreation site or trail	Regional Manager Sites and Trails BC	3	21-30 days	
<b>OPERATIONAL PLANS</b>					
FL/TL/TFL/CFA	Forest Stewardship Plan extension	District Manager	3	21-30 days	Potentially 2 --NW Hardwoods, WFP MLC
FL/TL/TFL/CFA	Forest Stewardship Plan approval, including major	District Manager	5	30-60 days	

	amendment				
FL/TL/TFL/CFA	Forest Stewardship Plan, minor amendment	District Manager	2	n/a	
Woodlot Licence	New Woodlot Licence Plan or major amendment or extension	District Manager	3 or 5	21-60 days	<i>Amendment/Extension = Level 3; New WLP = Level 5</i>
Range Tenure	Range Use Plan or Stewardship Plan, including major amendments	District Manager	5	30-60 days	
Range Tenures	Range Use Plan or Stewardship Plan extensions	District Manager	3	21-30 days	
Range Tenures	Range Use Plan or Stewardship Plan minor amendments	District Manager	2	n/a	
<b>OPERATIONAL DECISIONS</b>					
FL/TL/TFL/CFA/WL	Cutting Permit Issuance	District Manager	1 to 5	0-60 days	<i>Supplemental consultation levels subject to outcome of licensee-led info-sharing Average 100<sup>+</sup> per year in District</i>
FL/TL/TFL/CFA/WL	Cutting Permit amendment	District Manager	2	n/a	<i>Generally these are minor amendments only. Average 20 per year in District</i>
Road Permits	Road Permit Issuance/amendment	District Manager and Timber Sales Manager	1 to 5	0-60 days	<i>Supplemental consultation levels subject to outcome of licensee-led info-sharing Potentially 120<sup>+</sup> amendments and 12 new permits per year in District</i>
Road Use Permit	New Road Use Permits on existing Forest Service Roads	District Manager	2	n/a	
Forest Investment Account	Sustainable forest management planning; management unit/watershed level strategies/plans; resource inventories; monitoring; decision support; stand treatments; recreation, etc	District Manager	1 to 5	0-60 days	<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>
Miscellaneous	Free use permit issuance for First Nation's traditional and cultural activities	District Manager	2	n/a	
Miscellaneous	Authority to harvest timber by Crown agents (Section 52 Forest Act)	District Manager	3	21-30 days	<i>May include FSR realignment, hell pad clearing for BCTS, research branch destructive sampling, etc</i>
Miscellaneous	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>
Forestry Licence to Cut	Issuance of FLTC or amendment/extension to	District Manager or Timber Sales	1 to 5	0-60 days	<i>Supplemental consultation level subject to outcome of</i>

	existing.	Manager			<i>proponent-/licensee-led info sharing. Includes minor cutting, small scale salvage, rec sites and trails, etc. Amendments/extensions = Level 3</i> Potentially 1-2 new and 1 extension/amendment
<b>Forestry Licence to Cut</b>	Issuance of FLTC for community wildfire protection	Regional Executive Director	3	21-30 days	<i>Non-emergency licence to cut for wildfire prevention</i>
<b>Occupant Licence to Cut</b>	Issuance of OLTC.	District Manager	2	n/a	<i>Consultation often done as part of a Project at the Land Act tenure issuance. Generally involves minor tree removal to allow for new infrastructure/facilities installation, ie. cell towers, heli-ski glading, etc. Potentially 4 annually within District</i>

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

<sup>2</sup> Consultation Period will default to maximum in range specified in Section 1.10 of Appendix B for Level 3 or 5 decisions. Minimum in range can be suggested if supporting rationale is provided to Kwicksutaineuk-Ah'Kwaw'Ah'Mish First Nation.

## **APPENDIX C**

### **Revenue Sharing Contribution Methodology**

#### **Traditional 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 of British Columbia, a summary document will be prepared of North Island Forest 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 North Island Forest District.
- 1.1 For the purposes of the summary document in section 1.0 of this Appendix, the stumpage payments from Kwicksutaineuk First Nation's Forest License (A82555) will not be included in the calculations of forest revenue.
- 1.2 The amount of the forest revenue attributed to the Kwicksutaineuk First Nation's Traditional Territory will be calculated by determining the percent of Kwicksutaineuk First Nation's Traditional Territory that falls within the Timber Harvesting Land Base in North Island 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 Traditional Territory Forest Revenue Sharing Component will be calculated by multiplying 3 percent of the forest revenue attributed to the Kwicksutaineuk First Nation as described in section 1.2 of this Appendix.
- 1.4 Where the calculation in section 1.3 of this Appendix is less than \$35,000, Kwicksutaineuk First Nation will receive a maximum of \$35,000 to provide capacity to participate in the consultation process in accordance with section 4.0 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 of British Columbia, a summary document will be prepared of Kwicksutaineuk First Nation's Forest License A82555 forest revenue, defined as the total of stumpage payments received by the Crown for the previous BC Fiscal Year.
- 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 BC 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**

- 3.0 The Parties agree that new methods to calculate the Revenue Sharing Contribution will be phased in over the next 3 years.
- 3.1 For each BC Fiscal Year that this Agreement is in effect, a portion of the Revenue Sharing Contribution is calculated by determining the total of the Traditional Territory Forest Revenue Sharing Component and the Direct Award Tenure Forest Revenue Sharing Component for that BC Fiscal Year ("the sum") and applying the following percentages to that sum:
- 3.1.1 2011/12 BC Fiscal Year: 50 percent
- 3.1.2 2012/13 BC Fiscal Year: 80 percent; and
- 3.1.3 2013/14 BC Fiscal Year: 100 percent.
- 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 Kwikwaka'wakw First Nation in any given full year under the Kwikwaka'wakw First Nation Forestry Agreement which expired on March 31, 2010 ("the Annual Amount") and applying the following percentages to that Annual Amount:
- 3.2.1 2011/12 BC Fiscal Year: 59 percent;
- 3.2.2 2012/13 BC Fiscal Year: 55 percent; and
- 3.2.3 2013/14 BC Fiscal Year: 50 percent.
- 3.3 The Parties agree that if this Agreement is renewed in accordance with section 12.0 of this Agreement, or this Agreement expires in the 2014/2015 BC Fiscal Year, the Revenue Sharing Contribution will be the sum of:
- 3.3.1 the Traditional Territory Forest Revenue Sharing Component and the Direct Award Tenure Forest Revenue Sharing Component calculated in this Appendix.