

SUSTUT LAXYIP STRATEGIC ENGAGEMENT AGREEMENT (the “Agreement”)

This Agreement is dated for reference September 12, 2018 (“Effective Date”)

AMONG:

Sustut Watershed Simgigyat, as represented by the Hereditary Chiefs on their own behalf and on behalf of their respective house (“**Wilp**”) members (collectively referred to in this Agreement as “**Sustut**”)

AND:

Gitxsan Treaty Society, a society incorporated under the *Societies Act*, S.B.C. 2015, c.18 (“**GTS**”)

AND:

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

(Each referred to as a “Party” and collectively referred to as the “**Parties**”)

WHEREAS:

- A. The Parties are interested in developing new ways to realign and strengthen the relationship between Sustut and the Province, respectful of Gitxsan hereditary structures, Gitxsan ‘Ayookw’ (set of laws), and Gitxsan aboriginal rights and title (“Gitxsan Aboriginal Rights and Title”) within the Sustut Laxyip (as outlined in the map in Appendix A).
- B. The Parties intend to implement the Agreement as a bridging step towards reconciliation and a constructive step towards creating a positive and enduring relationship between Sustut and the Province and ultimately between the Gitxsan and the Province.

NOW THEREFORE the Parties agree as follows:

1. INTERPRETATION

- 1.1 The following are the Appendices to and form part of this Agreement:
- Appendix A – Map of Sustut Laxyip
 - Appendix B – Laxyip Engagement Framework (“Engagement Framework”)
 - Appendix C – Facilitator Terms of Reference (“Terms of Reference”)

2. PURPOSE

- 2.1 The purpose of this Agreement is to establish governance structures that allow for a stabilized government-to-government relationship and facilitate further reconciliation between the Province and Sustut by:
- a. enabling meaningful, effective and efficient consultation process regarding Land and Resource Decisions through the Engagement Framework to fulfill the obligations of each Party as it pertains to consultation; and
 - b. the Parties working collaboratively to make progress on joint initiatives (“Joint Initiatives”) that include:
 - i. economic opportunities including resource revenue sharing, forestry tenure opportunities, forestry business opportunities;
 - ii. collaborative land management and environmental stewardship; and
 - iii. human resource capacity development to support governance and economic initiatives.

3. LAXYIP ENGAGEMENT FRAMEWORK

- 3.1 The Parties will use the Engagement Framework attached as Appendix B when consulting on proposed strategic, administrative or operational decisions related to land and resource use made by Natural Resource Sector Ministries, including plans, approvals or renewals of tenures, certificates, permits or other authorizations (“Land and Resource Decisions”) within Sustut Laxyip during the term of this Agreement.
- 3.2 The following Ministries are participants to this Agreement:
- a. Ministry of Indigenous Relations and Reconciliation
 - b. Ministry of Forests, Lands, Natural Resource Operations and Rural Development;

- c. Ministry of Energy, Mines and Petroleum Resources; and
- d. Ministry of Environment and Climate Change Strategy.

(“Natural Resource Sector Ministries”)

3.3 The Parties agree that the Sustut Laxyip Facilitator will:

- a. co-ordinate the engagement process under the Engagement Framework on behalf of the Sustut in accordance with the Laxyip Facilitator Terms of Reference attached as Appendix C; and
- b. be the primary liaison with Sustut Simgigyat and Wilp members in the Sustut Laxyip responsible for conveying Gitxsan interests and concerns to the Province.

3.4 The Parties agree the Engagement Framework will constitute the means by which the Province will seek to fulfill its obligation for meaningful consultation on Land and Resource Decisions within the Sustut Laxyip.

4. ROLES AND RESPONSIBILITIES

4.1 The Sustut Watershed Simgigyat are responsible for:

- a) nominating an individual for the Sustut Laxyip Facilitator position;
- b) ensuring the Sustut Laxyip Facilitator performs the responsibilities set out in the Terms of Reference;
- c) engaging with the Sustut Laxyip Facilitator to provide information on Gitxsan interests and concerns regarding proposed Land and Resource Decisions within the Sustut Laxyip in cooperation with all Sustut Watershed Simgigyat of the Sustut Laxyip; and
- d) nominating other Sustut Watershed Simgigyat representatives to participate in the evaluation discussions described in sections 5.1 and 5.2, as required.

4.2 GTS is responsible for:

- a) hiring the Sustut Laxyip Facilitator nominated by Sustut Watershed Simgigyat;
- b) paying the fees and agreed expenses of the Sustut Laxyip Facilitator; and
- c) facilitating communication and collaboration between the Sustut Laxyip Facilitator and the Laxyip facilitators of other Gitxsan watersheds participating in similar projects.

5. REPORTING

- 5.1 The Sustut Laxyip Facilitator will maintain a record of progress and activities, and submit quarterly status reports to the Parties as specified in the Terms of Reference.
- 5.2 The Parties will meet quarterly or as needed to have an open, reflective and constructive discussion regarding quarterly status reports submitted by facilitators, implementation of the Agreement, and progress on Joint Initiatives.

6. FUNDING

- 6.1 For the period of this Agreement following the Effective Date, the Province will pay to GTS, on behalf of the Sustut Simgiyat, a total amount of \$225,000 for the purpose of hiring the Sustut Laxyip Facilitator and performing obligations under this Agreement, as follows:
 - a. \$75,000 within 30 days of the Effective Date; and
 - b. \$75,000 annually, on or before June 9th during the remainder of the term of the Agreement.

7. TERM AND TERMINATION

- 7.1 The term of the Agreement will commence on the Effective Date and will expire June 9th 2021, unless terminated earlier in accordance with section 7.2.
- 7.2 Either the Province or Sustut may terminate this Agreement by providing 30 days written notice to the other parties stating reasons for the termination.

8. GENERAL PROVISIONS

- 8.1 This Agreement is not a treaty or lands claims Agreement within the meaning of section 25 or 35 of the *Constitution Act, 1982* (Canada), and does not affirm, recognize, establish, define, limit, amend, abrogate or derogate from any rights recognized and affirmed by section 35(1) of the *Constitution Act, 1982*.
- 8.2 This Agreement does not change or affect the positions any party has, or may have, regarding its jurisdiction, responsibilities and/or decision-making authority, nor is it to be interpreted in a manner that would affect or unlawfully interfere with that decision-making authority.
- 8.3 This Agreement, including the appendices to the Agreement and any amendment to it, constitute the entire Agreement between the Parties with respect to the subject matter of this Agreement. Any amendment to this Agreement must be agreed to in writing by the Parties.

- 8.4 If any part of this Agreement is void or unenforceable at law:
- a) the invalidity of that part will not affect the validity of the remainder, which will continue in full force and effect and be construed as if this Agreement had been executed without the invalid part; and
 - b) the Parties will negotiate and attempt to reach Agreement on a replacement for the part declared or held invalid with a view to achieving the intent of the Parties as expressed in this Agreement.
- 8.5 Nothing in this Agreement affects the ability of the Parties to respond to any emergency circumstances.
- 8.6 The Province represents and warrants to Sustut Simgigyat and GTS with the intent and understanding that they will be relied on by Sustut Simgigyat and GTS in entering into this Agreement, that it has the authority to enter into this Agreement and to make the covenants and representations in this Agreement that this Agreement is a valid and binding obligation of the Province.
- 8.7 GTS represents and warrant to the Province, with the intent and understanding that they will be relied on by the Province in entering into this Agreement, that:
- a) it is a duly incorporated society under the Society Act, and that it is in good standing;
 - b) it has the legal power, capacity and authority to enter into this Agreement for and on behalf of itself and to engage in the structures and processes under this Agreement on behalf of its members; and
 - c) this Agreement is valid and binding obligation upon it.
- 8.8 Sustut Simgigyat each represent and warrant to the Province that they have the authority to enter into this Agreement and to engage in the structures and processes under this Agreement on behalf of their Wilp members and that this Agreement is a valid and binding obligation on them.
- 8.9 This Agreement may be executed in counterparts and/or facsimile by the Parties and all of the counterparts taken together constitute one Agreement.

Signed on behalf of **Sustut Watershed Simgigyat** by:

Haiwas (Gloria Wilson)

Date

Rena Benson

Nii Kyap (Rena Benson)

Aug 02, 2018

Date

D. Shatta

Wii Gaak (Dorothy Smith-Lattie)

Aug 2, 18

Date

[Signature]

O'Yea (Clifford Sampare)

Aug 2, 2018

Date

Signed on behalf of the **Gitksan Treaty Society** by:

[Signature]

Brian Williams – Authorized Representative of **GTS**

[Signature]

Miluulak (Alice Jeffrey)

Aug 22/18

Date

Tsa Buk (Wilmer Johnson)

Date

Aug 2/18

Date

Signed on behalf of:

Government of British Columbia

Trish Balcaen
Assistant Deputy Minister
Ministry of Indigenous

Date

Signed on behalf of **Sustut Watershed Simgigyat** by:

Haiwas (Ambrose Wright for Gloria Wilson)

Miluulak (Alice Jeffrey)

Date

Date



Tsa Buk (Willie Blackwater for Wilmer Johnson)

Nii Kyap (Rena Benson)

Date

Date

Wii Gaak (Dorothy Smith-Lattie)

Date

O'Yea (Clifford Sampare)

Date

Signed on behalf of the **Gitxsan Treaty Society** by:

Brian Williams – Authorized Representative of **GTS**

Date

Signed on behalf of:

Government of British Columbia

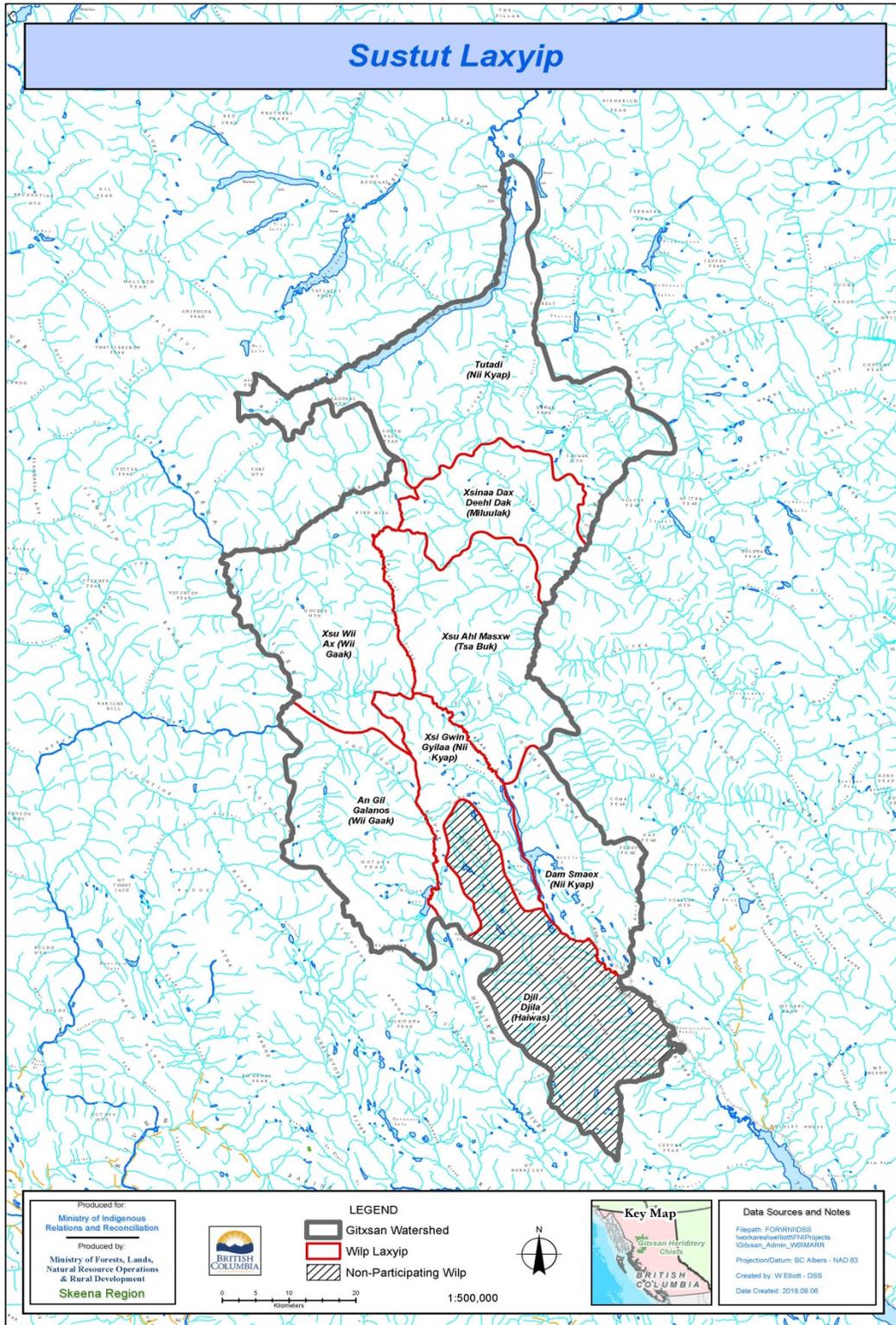


Trish Balcaen
Assistant Deputy Minister
Ministry of Indigenous
Relations and Reconciliation

SEPT 12/18
Date

APPENDICES

APPENDIX A Sustut Laxyip Map



APPENDICES

APPENDIX B Laxyip Engagement Framework

1. Pre-engagement / Information Sharing

- 1.1 The Province will encourage applicants to contact the Sustut Laxyip Facilitator to engage with Sustut Simgiyat and share information early in the engagement process. The Sustut Laxyip Facilitator will facilitate early engagement with appropriate Simgiyat and Wilp members, and is encouraged to share information about the early engagement with the Province.

2. Consultation Initiation – Province provides information to Sustut Laxyip Facilitator

- 2.1 When the Province receives and reviews an application for a Land and Resource Decision within the Sustut Laxyip that may have an adverse effect on Gitxsan Aboriginal Rights, recognized and affirmed by section 35(1) of the *Constitution Act, 1982* and determines that it is required to consult with Gitxsan, the Province will prepare and provide to the Sustut Laxyip Facilitator an information package in the form of a shared engagement record, which will be sent by email and include the following information:

- a) location, nature and extent of proposed activity;
- b) known Gitxsan interests;
- c) potential impacts to Gitxsan Aboriginal Rights; and
- d) the Province's suggested depth, timeline and approach to engagement.

- 2.2 The Sustut Laxyip Facilitator will review the shared engagement record, identify the relevant Wilp and share the information package with the appropriate Sustut Simgiyat or delegate(s).

- 2.3 The Sustut Laxyip Facilitator will respond in writing (by email or other means) as soon as possible within 30 calendar days of receiving the shared engagement record to:

- a) confirm the Sustut Simgiyat's intentions to engage in consultation on the matter, and to request additional information or clarification relating to the application(s) or timelines if necessary; or
- b) to indicate that Sustut Simgiyat have no interest in further consultation.

2.4 If the Province does not receive a response within 30 calendar days or where Sustut indicates no interest in further consultation, the Province may proceed to decision on the proposed decision(s).

3. Further Engagement

3.1 Where Sustut confirms that it intends to engage in consultation, the Parties will, within 60 calendar days from the date Sustut received the shared engagement record, have further discussions including making reasonable efforts to satisfy requests by the other party to meet in person with affected Simgigyat, delegates or members.

3.2 The Parties will engage as reasonably required to discuss:

- a) The Sustut Simgigyat's concerns and any recommendations by Sustut Simgigyat or their delegates to avoid, mitigate, or otherwise address potential impacts to Gitxsan Aboriginal Rights;
- b) the Province's views regarding potential adverse impacts to Gitxsan Aboriginal Rights and any Sustut Simgigyat proposals or recommendations;
- c) shared or respective interests; and
- d) any proposed measures to address those concerns including but not limited to:
 - i. non-economic accommodation measures such as avoidance or mitigation measures;
 - ii. potential for economic accommodation; and
 - iii. a decision not to authorize a particular activity.

3.3 Where the proposed decision carries the potential for serious adverse impacts to Gitxsan Aboriginal Rights, and more time is reasonably required, the Parties will extend consultation for an additional time period, including target end date, to be determined by the Parties.

3.4 The Province and the Sustut Laxyip Facilitator will make available to the Province's statutory decision maker and the Sustut Simgigyat a shared

engagement record documenting the engagement process, Sustut Simgiyat concerns, and recommended mitigation or accommodation measures.

- 3.5 Where the Parties are unable to reach agreement on appropriate accommodation tools to meaningfully address the concerns raised by Sustut, the Province will provide Sustut with written reasons within the shared engagement record why Sustut's accommodation proposals have not been accepted.

4. Decision

- 4.1 Provincial statutory decision makers will consider all relevant information including the shared engagement record when making the decision.

APPENDICES

APPENDIX C

Sustut Laxyip Facilitator Terms or Reference

1. **Sustut Laxyip Facilitator:**

Name: Ang Smith

Phone: (250) 842-6780 Ext.243

Email: asmith@gitxsan.ca

2. **Sustut Laxyip Facilitator Responsibilities**

- 2.1 The Sustut Laxyip Facilitator will report to the Sustut Watershed Simgigyat. The Sustut Laxyip Facilitator will act as the key contact for the Province on consultation matters within the Sustut Laxyip.
- 2.2 The Sustut Laxyip Facilitator is responsible for:
- a) providing organizational and logistical leadership and technical support to the Simgigyat and Wilp members to support their participation in the Engagement Framework and accurately record their interests and concerns;
 - b) facilitating engagement, exchange of information and maintaining and distributing records of engagement activities between Provincial staff, Simgigyat, and Wilp members to support implementation of the Engagement Framework;
 - c) coordinating training and other learning opportunities;
 - d) coordinating engagement with Simgigyat and Wilp members on Provincial policy initiatives;
 - e) coordinating communication and meetings as needed with Simgigyat and the Province to achieve progress on Joint Initiatives laid out in Sec. 2.1 b;
 - f) attending workshop sessions with Laxyip facilitators of the other Gitxsan watersheds participating in related Agreements and GTS to discuss implementation of the Agreement, share information, and identify areas for collaboration; and

- g) maintaining a record of progress and activities, and submitting quarterly status reports to the Parties setting out:
 - i. the proposed Land and Resource Decisions referred to the Sustut Laxyip Facilitator using the Engagement Framework during the previous quarter; and
 - ii. the Simgigyat or other individuals contacted in respect of each proposed Land and Resource Decision, and whether or not responses have been provided to the Sustut Laxyip Facilitator.

2.3 Duties that support implementation of the Agreement include:

- a) Coordinating consultation between the Province and the Simgigyat including:
 - i. receiving and distributing Provincial consultation information;
 - ii. supporting and summarizing Simgigyat discussion and responses;
 - iii. facilitating engagement between the Province and Simgigyat; and
 - iv. ensuring agreed upon timelines and engagement processes are adhered to.
- b) Leading communication, planning and reporting within the Laxyip including:
 - i. Setting up regular meetings with Simgigyat of the Laxyip including logistical support and preparation of agendas, information packages and meeting and decision notes.
 - ii. Coordinating with respect to internal Gitxsan governance disputes by facilitating information sharing, assisting to schedule meetings, or other communications as needed between Simgigyat and if necessary the Province.