

## **ECONOMIC AND COMMUNITY DEVELOPMENT AGREEMENT**

This Agreement is dated the 23 of January, ~~2013~~ 2014

BETWEEN:

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

AND:

**Soda Creek Indian Band**, on behalf of itself and its Members, as represented by  
the Chief and Council  
("Xat'sūll")

(collectively referred to as the "Parties" and individually referred to as a "Party")

### **WHEREAS:**

- A. The Parties wish to develop an effective long-term working relationship that includes the sharing of mineral tax revenues from the expanded portion of the Project;
- B. The Parties will utilize the process set out in this Agreement and may explore other opportunities to minimize impacts on Xat'sūll's Aboriginal Interests as a result of the Mine operation and provide accommodation, where necessary; and
- C. The Parties recognize a shared interest in ensuring that environmental issues, as they relate to Xat'sūll's Aboriginal Interests, are considered in the Consultation Process set out in this Agreement.

**NOW THEREFORE** the Parties agree as follows:

### **1 DEFINITIONS**

- (1) In this Agreement:

**"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*;

**"Agreement"** means this Economic and Community Development Agreement including its attached appendices and schedules and any amendments made to it from time to time in accordance with its provisions;

**"Arbitration"** means the process set out in subsection 19(11) of this Agreement;

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

**"Consultation Process"** means the process set out in Appendix D of this Agreement;

**"Dispute"** means any disagreement:

- a) which relates to the implementation or interpretation of this Agreement but does not include a disagreement that relates to:
  - i. a Government Action;
  - ii. consultation under section 10 and Appendices D and E;
  - iii. termination of this Agreement under section 15;
  - iv. the amount of a Project Payment under section 3; and
- b) about which written notice of a dispute is given in accordance with subsections 19(3) and 20(1);

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

**"GMC"** means the Gibraltar Mine Committee;

**"Government Action"** means any process, amendment, decision, authorization, permit, licence, approval, Crown land disposition, agreement and other action with respect to the Project whatsoever entered into or otherwise taken by a Provincial Agency after February 12, 2013;

**"Government-to-Government Decision Making Framework"** means the ongoing discussion between the *Northern Secwepemc te Qelmucw* and British Columbia regarding an overarching framework for decision making;

**"Incremental Ore Production"** means the greater of:

- a) the amount by which the metric tonnes of Ore processed through the Mill exceeds 42,000 metric tonnes of Ore per day, calculated on an annual basis; and
- b) the amount of metric tonnes of Ore processed through the Mill on an annual basis attributable to New or Expanded Pit Areas.

**"Mediation"** means the process set out in subsection 19(9) of this Agreement;

**"Member"** means an individual who is presently, has been or will be a member of the Soda Creek Indian Band as shown in its band list within the meaning of the *Indian Act*;

**"Mill"** means the mill located within the Project Area;

**"Mine"** means the Gibraltar mine registered with the BC Chief Inspector of Mines;

**"Mine Fiscal Year"** means a "fiscal year of the mine" as defined in the *Mineral Tax Act*;

**"Mineral Tax Act"** means the *Mineral Tax Act*, R.S.B.C. 1996, c. 291, as amended from time to time, and legislation in addition to or in substitution thereof which assesses a tax in favour of British Columbia similar to the tax presently assessed under the *Mineral Tax Act*;

**"New or Expanded Pit Areas"** means the expansion into pushbacks of existing pits or the establishment of new pits within the Project Area authorized by Government Action after the Effective Date;

**"Notice of Withdrawal"** means a notice provided by Xat'sùll to the British Columbia in accordance with subsection 11(5);

**"Operator"** has the same meaning as in the *Mineral Tax Act*;

**"Ore"** means any naturally-occurring and unprocessed combination of minerals mined from the Project Area;

**"Payment Statement"** means the financial statement that British Columbia will provide to Xat'sùll under 3(9) or (10);

**"Permit Amendment"** means the amendment to the M-40 Permit approved by British Columbia authorized on February 12, 2013;

**"Project"** means, unless otherwise agreed in writing by the Parties, any and all activities after February 12, 2013 in or related to the Project Area and Government Actions, including:

- a) the Mine including its associated infrastructure associated infrastructure, access roads, power facilities, and other physical facilities located within the Project Area;
- b) any changes, modifications or expansions to the Mine;

- c) all matters relating to the exploration, planning, permitting, construction, maintenance, repair, operation, closure and reclamation of the Mine; and
- d) any changes or modifications to existing access roads and power lines located outside the Project Area, to the extent required in connection with the Mine;

**"Project Area"** means, for the purposes of this Agreement, the area shown on the map attached as Appendix A;

**"Project Payments"** means the payments to be made by British Columbia to Xat'sūll each year pursuant to section 3; and **"Project Payment"** means any one such payment;

**"Proponent"** means an Operator who from time to time is responsible for the Project and for paying *Mineral Tax Act* tax payments to British Columbia in relation to the Project;

**"Provincial Agency"** means the provincial agencies listed in Appendix C.

**"Statement of Community Priorities"** means the statement that Xat'sūll will prepare in accordance with subsections 9(1)(a) and (b);

**"Term"** means the term of the Agreement set out in section 14;

**"Xat'sūll"** means the Soda Creek Indian Band, a band, as that term is defined in the *Indian Act*, R.S.C. 1985, c. I-5; and

**"Xat'sūll Stewardship Area"** means, for the purposes of this Agreement, the area shown on the map attached as Appendix B.

## **2 PURPOSES**

(1) The purposes of this Agreement are to:

- (a) provide Project Payments associated with the Incremental Ore Production to enable Xat'sūll to pursue activities that will enhance the social, economic and cultural well-being of its Members;
- (b) enable a Consultation Process that will meet the Parties' respective consultation obligations in relation to potential adverse impacts of the Project on Xat'sūll's Aboriginal Interests, including the provision of Project Payments as a component of any obligation British Columbia may have to accommodate; and
- (c) provide stability and certainty for the Project and enhance the thoroughness, efficiency and effectiveness of communication between the Parties with respect to the Project.

### **3 PROVINCIAL PAYMENTS**

#### **Definitions**

(1) In this section:

"Incremental Mineral Tax Revenue" means the Net Mineral Tax Revenue attributable to Incremental Ore Production;

"Net Mineral Tax Revenue" means the total amount of tax, penalty and interest paid by the Proponent under the *Mineral Tax Act* in respect of the Project, less the total amount of tax, penalty and interest refunded and interest paid to the Proponent under the *Mineral Tax Act* in respect of the Project, but does not include a Post-Closure Reclamation Amount;

"Overpayment" means an amount paid by British Columbia under this Agreement that exceeds the amount Xat'sùll was entitled to receive, including:

- a) an amount paid under this Agreement because of an inaccurate Incremental Ore Production figure being used to calculate a Project Payment; or
- b) a negative Project Payment amount (which may occur if the Proponent has paid more tax than required in a previous BC Fiscal Year);

"Post-Closure Reclamation Amount" means an amount paid by the Proponent or refunded to the Proponent in respect of the Project in relation to a reclamation tax credit for a Mine Fiscal Year commencing after production at the Project has ceased; and

"Underpayment" means an amount that Xat'sùll was entitled to receive under this Agreement in respect of Incremental Mineral Tax Revenue in a BC Fiscal Year, but did not receive as part of the Project Payment for that BC Fiscal Year, including an amount not paid by British Columbia because of an inaccurate Incremental Ore Production figure being used to calculate a Project Payment.

#### **How Amount Payable for a Mine Fiscal Year is Determined**

- (2) British Columbia will pay to Xat'sùll 23.45% of the Incremental Mineral Tax Revenue for the Mine Fiscal Year.
- (3) British Columbia will determine Incremental Mineral Tax Revenue based on Incremental Ore Production for the Mine Fiscal Year to which the Net Mineral Tax Revenue relates.

- (4) If the Proponent has not reported its Incremental Ore Production for the Mine Fiscal Year at the time a Project Payment is calculated, British Columbia will estimate the Incremental Ore Production for the purpose of determining Incremental Mineral Tax Revenue.
- (5) British Columbia may make an adjustment in a subsequent BC Fiscal Year if it determines that a calculation of Incremental Mineral Tax Revenue was based on an inaccurate Incremental Ore Production figure, and the adjustment may result in an Underpayment or Overpayment.

#### **Calculation and Timing of Project Payments**

- (6) British Columbia will calculate the Project Payments for each BC Fiscal Year in accordance with Schedule 1.
- (7) If the Project Payment for a BC Fiscal Year ending after the Effective Date is a positive amount, British Columbia will, within one hundred and fifty (150) days after the end of the BC Fiscal Year for which the Project Payment is calculated, pay Xat'sùll the amount calculated in accordance with Schedule 1 provided that:
  - (a) British Columbia has not received a Notice of Withdrawal; or
  - (b) the Project Payment has not been suspended under subsection 16(1).

#### **Payment Statements**

- (8) British Columbia will, subject to it obtaining the Proponent's agreement referred to in subsection 6(4), provide Xat'sùll with a Payment Statement within ninety (90) days after the end of each BC Fiscal Year ending after the Effective Date which will contain the following information:
  - (a) with respect to each Mine Fiscal Year for which Incremental Mineral Tax Revenue was received by British Columbia or refunded or paid to the Proponent by British Columbia in the BC Fiscal Year:
    - (i) Incremental Ore Production;
    - (ii) Net Mineral Tax Revenue received by British Columbia or refunded or paid to a Proponent by British Columbia in the BC Fiscal Year;
    - (iii) Current Revenue, as defined in Schedule 1; and
    - (iv) the Mine Fiscal Year Amount, as defined in Schedule 1;

- (b) the amount of any Overpayment or Underpayment resulting from adjustments made under subsection 3(5); and
- (c) the amount of the Project Payment.

#### **Other Payment Provisions**

- (9) The Parties acknowledge that *Mineral Tax Act* revenues fluctuate and that Project Payments will vary over time.
- (10) British Columbia will notify the Xat'sùll of any significant changes made to the *Mineral Tax Act* tax regime.
- (11) If during the Term, British Columbia makes significant changes to the *Mineral Tax Act* tax regime, the Parties may negotiate alternative mine revenue sharing opportunities.
- (12) The Parties acknowledge that the determination of Incremental Ore Production and Incremental Mineral Tax Revenue is based on approximations and therefore subject to imprecision.
- (13) British Columbia may rely on information provided by the Proponent, including the report provided by the Proponent of Incremental Ore Production for a Mine Fiscal Year, in determining Incremental Ore Production and in calculating Project Payments under subsection 3(6).
- (14) If the Proponent does not provide information for the purposes of determining Incremental Ore Production, British Columbia will notify Xat'sùll that the Proponent has not provided information in respect of the determination of Incremental Ore production for that Mine Fiscal Year and will determine Incremental Ore Production based on the best available information.
- (15) British Columbia will make reasonable efforts to ensure the accuracy of information that is used to determine Incremental Ore Production and to calculate Project Payments but British Columbia makes no warranty or representation as to the accuracy of such information and no action or proceeding lies against British Columbia in relation to any claim that information or the determination of Incremental Ore Production was inaccurate.
- (16) In the event that the Proponent is no longer responsible for making payments under the *Mineral Tax Act* in relation to the Project, such that there will be no subsequent payment to Xat'sùll under this Agreement, British Columbia will send to Xat'sùll a notice of any Overpayment Amount that remains outstanding, and British Columbia may deduct the Overpayment Amount from any other future amounts that may be payable to Xat'sùll.

#### **4 DELIVERY OF PAYMENTS**

- (1) British Columbia will not be required to make any Project Payment to Xat'sūll until Xat'sūll has established a bank account under subsection 4(2).
- (2) Xat'sūll will:
  - (a) establish and maintain in the name of Soda Creek Indian Band a separate account requiring dual signatures, one of which must be the signature of the Chief of Soda Creek Indian Band, at a Canadian financial institution for the sole purpose of receiving Project Payments ("Payment Account") into which direct deposits can be made by British Columbia; and
  - (b) provide British Columbia with the address and account information to enable British Columbia to make Project Payments.
- (3) British Columbia will deposit Project Payments payable to Xat'sūll under the Agreement directly into the Payment Account established under subsection 4(2).
- (4) For greater certainty, prior to British Columbia making any Project Payment, Xat'sūll must be in compliance with subsection 4(2).
- (5) Xat'sūll will maintain the Payment Account for as long as there is money in it to be disbursed.
- (6) British Columbia will be entitled to rely on any notice of change of address or accounts set out in any Xat'sūll Band Council Resolution received by British Columbia.

#### **5 USE OF PROJECT PAYMENTS**

- (1) Xat'sūll will use the Project Payments for initiatives consistent with the objective of enhancing the socio-economic well-being of its Members, including but not limited to initiatives related to education, culture, housing, infrastructure, health, economic development and governance capacity.
- (2) Xat'sūll may use all, or a portion of, Project Payments received in any given year to pursue initiatives in that year, or may hold such payments for initiatives in future years.
- (3) Whether or not the Term has ended, Xat'sūll agrees that it will continue to use the monies received under this Agreement for the objective set out in subsection 5(1).



## 6 CONFIDENTIAL INFORMATION

- (1) Subject to subsections 6(2) and 6(3), Xat'sùll will keep confidential information that British Columbia marks as "confidential", including Payment Statements and any information that relates to tax payments under the *Mineral Tax Act*, and will not disclose such information to any other person, unless compelled to do otherwise by law.
- (2) Xat'sùll may disclose confidential information to their advisors, including legal, financial, tax and other professional advisors, provided that those advisors agree in writing to keep the information confidential.
- (3) Xat'sùll may disclose the amount of a Project Payment to its Members each year.
- (4) Notwithstanding any other provision of this Agreement, British Columbia's obligation to provide a Payment Statement and other information that is confidential under the *Mineral Tax Act* is subject to British Columbia obtaining the agreement of the Proponent to share such information and any additional confidentiality provisions the Proponent may require.
- (5) Xat'sùll acknowledges that British Columbia has informed it of the confidentiality requirements under the *Mineral Tax Act*.
- (6) British Columbia will as soon as practicable after the Effective Date seek to obtain the agreement referred to in subsection 6(4).
- (7) British Columbia will keep confidential information that Xat'sùll marks as "confidential", and will not disclose such information to any other person, except:
  - (a) as necessary to support a consultation or decision making process regarding any Government Action, or
  - (b) in accordance with the *Freedom of Information and Protection of Privacy Act*, or as otherwise required by law.
- (8) If British Columbia receives a request under the *Freedom of Information and Protection of Privacy Act* for disclosure of confidential information received from Xat'sùll, the Province will provide Xat'sùll with an opportunity to express their views regarding any impacts that may arise from a disclosure.

## **7 APPROPRIATION**

- (1) Notwithstanding any other provision of this Agreement, the Project Payments to be provided by British Columbia to Xat'sùll are subject to:
  - (a) there being sufficient monies available in an appropriation, as defined in the *Financial Administration Act*, to enable British Columbia in any Fiscal Year or part thereof when such payment is required, to make such payment; and
  - (b) Treasury Board, as defined in the *Financial Administration Act*, not having controlled or limited expenditure under any appropriation necessary in order to make such payment.

## **8 PAYMENT DISPUTES**

- (1) If Xat'sùll disagrees with the amount of a Project Payment Xat'sùll may give notice to British Columbia and on such notice:
  - (a) the Parties will meet as soon as practicable to discuss the matter of concern;
  - (b) subject to the Province obtaining the agreement of the Proponent under subsection 6(4) to share confidential information, Xat'sùll may, at its own expense, submit any reasonable disagreement about the Project Payment calculations to an independent and impartial body or individual acceptable to the Parties to provide an independent non-binding opinion, which may be submitted to the Province for consideration; and
  - (c) British Columbia will review the matter and take any remedial actions required following the later of the meeting under 8(1)(a) or receipt of the opinion provided under 8(1)(b). Remedial action may include reimbursing Xat'sùll for expenses incurred under 8(1)(b).

## **9 COMMUNITY PRIORITIES AND REPORTING**

- (1) Xat'sùll agrees as follows:
  - (a) Within one year of the Effective Date of this Agreement, Xat'sùll will prepare a Statement of Community Priorities that identifies community priorities and outlines goals and specific outcomes that Xat'sùll intends to fund to help achieve the objective set out in subsection 5(1) over the next three (3) years.
  - (b) Within ninety (90) days of receipt of a Project Payment under this Agreement Xat'sùll will provide to its Members a report that describes how the payments received under this Agreement were used during the previous year and how

they have helped Xat'sùll achieve the Statement of Community Priorities referred in (a).

- (c) Xat'sùll will maintain financial records with respect to the Project Payments provided under this Agreement in accordance with Generally Accepted Accounting Principles and Public Sector Accounting Standards.
- (d) The documents referred to in clauses (a) and (b) will be published by Xat'sùll on the internet or in another manner that can reasonably be expected to bring the information to the attention of its Members, British Columbia and the public.
- (e) Xat'sùll will, if requested by British Columbia, provide audited financial statements with respect to the expenditure of funds from the Payment Account.
- (f) Notwithstanding the termination or expiry of this Agreement, Xat'sùll will continue to comply with this section 9 until 12 months after Xat'sùll receives the last Project Payment from British Columbia. If after the expiry of the 12 month period, there are funds remaining in the Payment Account, British Columbia may require that Xat'sùll continue to comply with the reporting requirements set out in this section 9 for a period of up to nine (9) additional years or may, at its discretion, release Xat'sùll from further reporting obligations at any time after the last Project Payment is received.

## **10 CONSULTATION AND ACCOMMODATION PROCESS**

- (1) Provincial Agencies will consult with Xat'sùll regarding applications for Government Actions received by a Provincial Agency after the Effective Date which may adversely impact Xat'sùll's Aboriginal Interests, and Xat'sùll will participate, in accordance with the Consultation Process.
- (2) Xat'sùll agrees that compliance by British Columbia with the Consultation Process will fulfill the obligation of British Columbia to consult Xat'sùll with respect to any Government Action.
- (3) After a period of one year from the Effective Date, or at an earlier time if agreed to by the Parties, the Parties will meet to review the effectiveness of the Consultation Process and consider potential amendments to improve the Consultation Process, including potential amendments to the timelines set out in Appendix D.
- (4) The Parties agree that the Proponent may support the Consultation Process through information sharing prior to applications being received by a Provincial Agency.

- (5) The Parties acknowledge the ongoing Government-to-Government Decision Making Framework negotiations that are occurring between British Columbia and the Northern Secwepemc te Qelmucw (NStQ), which includes Xat'sūll. The Parties further acknowledge that these negotiations are intended to develop a process that will apply to all natural resource government actions proposed by British Columbia. When and if such an agreement is reached, the Parties acknowledge that the process developed through that agreement may be applicable to any subsequent authorizations related to the Project and may agree in writing to replace the Consultation Process set out in this Agreement.
- (6) The Parties agree that the consultation process set out in Section 4 and Appendix B of the Forestry Consultation and Revenue Sharing Agreement between Xat'sūll and British Columbia does not apply to applications for Government Actions received by a Provincial Agency after the Effective Date.
- (7) Nothing in this Agreement affects the ability of the Crown to delegate procedural aspects of consultation to the Proponent.
- (8) Notwithstanding subsection 20(1), communications or other information exchanged between the Parties in the Consultation Process may be provided by letter or electronic mail.
- (9) The Parties will establish and maintain a Gibraltar Mine Committee, for the purpose of government-to-government communication with respect to the Mine.
- (10) The Parties understand that British Columbia, as represented by the Ministry of Energy and Mines and Ministry of Environment, and Xat'sūll have developed terms of reference for the Gibraltar Mine Committee ("GMC"), which terms of reference do not form a part of this Agreement but are, for illustrative purposes only, attached to this Agreement as Appendix F.
- (11) The Parties acknowledge the GMC may provide information to Provincial Agencies during the Consultation Process and such information may be considered by Provincial Agencies, as appropriate.

## **11 CERTAINTY**

### **Releases and Acknowledgements by Xat'sūll**

- (1) Xat'sūll, on its own behalf, and on behalf of its Members:
  - (a) agrees that British Columbia, including each Provincial Agency, has and will be deemed to have fulfilled any legal obligations to consult and accommodate Xat'sūll with respect to the Permit Amendment and all Government Actions between the date of the Permit Amendment and the Effective Date;

- (b) releases and forever discharges British Columbia, including each Provincial Agency, from all actions, causes of action, claims, proceedings, debts, duties, demands, interest, fines, costs, expenses and compensation of whatsoever amount and kind which it ever may have had, has or may ever have against British Columbia relating to any legal obligation to consult and accommodate with respect to the Permit Amendment and all Government Actions between the date of the Permit Amendment and the Effective Date; and
- (c) agrees that the Project Payments made under subsections 3(7) or 3(8) of this Agreement constitutes a component of any accommodation that may be required for any potential adverse impacts on Xat'sūll's Aboriginal Interests.

#### **Further Assurances**

- (2) Xat'sūll, on its own behalf, and on behalf of its Members, agrees:
  - (a) without restricting the generality of subsections 11(1) and 11(4), not to bring or continue any action or other proceeding, at law or in equity, in its own name or by representative action, against British Columbia which is inconsistent with subsections 11(1) and 11(4); and
  - (b) not to challenge or impede the right of British Columbia or the Proponent, or any of their respective employees, contractors, agents, representatives or invitees, to gain access to the Project, including any facilities associated with the Project whether located on Xat'sūll's Stewardship Area or elsewhere, and to carry out any activities associated with the development and operations of the Project.

#### **Acknowledgements by British Columbia**

- (3) British Columbia agrees that this Agreement does not prohibit Xat'sūll or Members from:
  - (a) participating in government programs for which they may be eligible; and
  - (b) entering into agreements with other parties, including agreements with the Proponent.

## **Annual Release**

- (4) Upon the acceptance of a Project Payment under subsections 3(7) or 3(8), Xat'sùll, on its own behalf, and on behalf of its Members, will be deemed to have:
  - (a) agreed that British Columbia has complied with subsection 10(1) and has fulfilled any and all legal obligations to consult and accommodate Xat'sùll in relation to Government Actions taken in the BC Fiscal Year to which that Project Payment applies; and
  - (b) released and forever discharged British Columbia and each Provincial Agency from all actions, causes of action, claims, proceedings, debts, duties, demands, interest, fines, costs, expenses and compensation of whatsoever amount and kind which it ever had, has or may ever have against British Columbia in relation to:
    - (i) any legal obligations to consult and accommodate Xat'sùll with respect to Government Actions taken in the BC Fiscal Year to which that Project Payment applies; and
    - (ii) any demands or claims for capacity funding, revenue generation, revenue sharing and economic benefits, third party studies or payments of any kind related to Government Actions taken in the BC Fiscal Year to which that Project Payment applies.
- (5) At any time during a BC Fiscal Year and up to 45 days after the end of that BC Fiscal Year, Xat'sùll may provide a written Notice of Withdrawal to British Columbia that it will not accept a Project Payment in accordance with subsection 11(4) for that BC Fiscal Year.
- (6) Nothing in this section 11 modifies, limits or otherwise affects the ability of the Xat'sùll to raise, or the ability of the Province to consider and address, any concerns regarding proposed Government Action related to the Project.
- (7) For greater certainty, subsection (6) applies whether or not the same or similar concerns have been raised, considered or addressed previously in respect of a Government Action to which the Consultation Process applies.
- (8) For greater certainty, nothing in subsection 4 is intended to preclude Xat'sùll from bringing an action or other proceeding against a person other than the Province with respect to the Mine.

## **Assistance**

- (9) Xat'sùll will promptly, upon request by British Columbia, cooperate with British Columbia and provide its support to British Columbia in seeking to resolve any

action that might be taken by any Member that is inconsistent with section 6, subsections 11(1), 11(2), 11(4) or section 12.

## **12 CONTINUING OBLIGATIONS**

- (1) The Parties acknowledge and agree that sections 6 and 9 and subsections 11(1), 11(4), 11(6), 17(3) and 17(4) survive the termination of this Agreement.

## **13 ASSIGNMENT**

- (1) Xat'sùll will not assign, either directly or indirectly, this Agreement or any right of Xat'sùll under this Agreement without the prior written consent of British Columbia.

## **14 TERM**

- (1) The term of this Agreement will commence on the Effective Date and will continue for as long as tax, interest and penalties payable by a Proponent are subject to reassessment under applicable legislation, unless terminated in accordance with this Agreement.
- (2) The Term may be extended by the mutual written agreement of both Parties.

## **15 TERMINATION**

- (1) Either Party may terminate this Agreement prior to the end of the Term on the grounds set out in subsections 15(2) or 15(3) by giving the other Party ninety (90) days advance written notice of the intent to terminate the Agreement and the reasons for terminating the Agreement. During the ninety (90) day period, representatives of the Parties will meet in order to discuss the circumstances which gave rise to the written notice and in order to determine whether there is a basis for rescinding the notice.
- (2) Xat'sùll may terminate this Agreement in accordance with subsection 15(1) if:
  - (a) British Columbia fails to make a payment to Xat'sùll as contemplated by section 3 other than a failure to pay as a result of a dispute concerning the proper amount of payment;
  - (b) British Columbia does not make a Project Payment as a result of the provisions of section 7;

- (c) the representation or warranty made by British Columbia in this Agreement is untrue or incorrect; or
  - (d) British Columbia is not in compliance with its obligations under this Agreement.
- (3) British Columbia may terminate this Agreement in accordance with section 15(1) if:
- (a) Xat'sūll is not in compliance with its obligations under this Agreement;
  - (b) any representation or warranty made by Xat'sūll in this Agreement is untrue or incorrect;
  - (c) Xat'sūll does not remedy the cause for suspension of payments under subsection 16(1) within the time required under subsection 16(2)(c);
  - (d) Xat'sūll does not withdraw its Notice of Withdrawal under subsection 11(5) within sixty (60) days of its issuance; or
  - (e) Xat'sūll commences any legal proceeding against British Columbia, or activates a proceeding in abeyance, in relation to the Project or this Agreement, other than a legal proceeding based on a claim that British Columbia has failed to make a Project Payment due under this Agreement.

## **16 SUSPENSION OF PAYMENTS**

- (1) British Columbia may suspend making further Project Payments where:
- (a) Xat'sūll is in material breach of its obligations under subsection 4(2), subsection 5(1), section 9 or section 13 of this Agreement;
  - (b) any representation or warranty made by Xat'sūll in this Agreement is untrue or incorrect in any material respect; or
  - (c) Xat'sūll provides a Notice of Withdrawal under subsection 11(5).
- (2) Where Project Payments are suspended under subsection 16(1):
- (a) British Columbia will provide notice to Xat'sūll of the reasons for suspending Project Payments including the specific material breach or untrue or incorrect representation or warranty relied on;
  - (b) within ten (10) days of receiving the notice under clause (a), either Party may provide a written request to discuss the reasons giving rise to the suspension of Project Payments and the Parties will meet to attempt to resolve the issue through unassisted collaborative negotiation;



- (c) where the Parties have engaged in unassisted collaborative negotiation under clause (b) and the issue that gave rise to the suspension of Project Payments is not resolved within 30 days of the request under clause (b), British Columbia may provide notice to terminate in accordance with section 15; and
  - (d) where neither Party has made a request under clause (b), British Columbia may provide notice to terminate in accordance with section 15.
- (3) Where Project Payments for the Project are suspended under subsection 16(1) and:
- (a) the material breach is remedied;
  - (b) the representation or warranty required by this Agreement is made true and correct in all material respects; or
  - (c) the Notice of Withdrawal is withdrawn prior to Termination;

British Columbia will make any Project Payments it would otherwise have been required to make with respect to the Project within sixty (60) days of the date that the material breach is remedied, the representation or warranty is made true and correct in all material respects, or the Notice of Withdrawal is withdrawn.

- (4) If Project Payments that British Columbia would otherwise have been required to make are suspended and this Agreement is terminated before the material breach has been remedied, the representation or warranty is made true and correct in all material respects, or the Notice of Withdrawal is withdrawn, section 17 will apply to determine the Parties' further rights and obligations under this Agreement, including their rights and obligations in respect of Project Payments suspended under subsection (1).

## **17 RULE FOR END OF TERM**

- (1) If the Term ends otherwise than on the last day of a Mine Fiscal Year:
- (a) no payment will be payable to Xat'sùll under this Agreement in relation to that portion of that Mine Fiscal Year after the date on which the Term ends or in relation to any subsequent Mine Fiscal Year; and
  - (b) subject to clause (a) above, the obligations of British Columbia set out in subsections 3(2) through 3(8) will continue, but only to the extent that tax, penalty or interest is received from, or refunded or paid to, the Proponent by British Columbia in relation to Mine Fiscal Years ending between the Effective Date of the Agreement and the date the Term ends.
- (2) If the Term ends otherwise than on the last day of a BC Fiscal Year the Project Payment for that BC Fiscal Year will be prorated to the end of the Term based on

the number of days in the BC Fiscal Year occurring before the end of the Term as a portion of the total days in the BC Fiscal Year, and for greater certainty, will not include payment for any portion of the BC Fiscal Year after the date on which the Term ends or in relation to any subsequent BC Fiscal Year.

- (3) Notwithstanding subsections (1) and (2), and unless Xat'sùll provides the covenants, agreements and releases described in subsection (4), upon termination of this Agreement:
    - (a) the obligations of British Columbia set out in subsections 3(2) through 3(8) will continue, but only to the extent that tax, penalty or interest is received from, or refunded or paid to, the Proponent by British Columbia in BC Fiscal Years ending between the Effective Date of the Agreement and the termination date;
    - (b) British Columbia is fully released and discharged from all of its obligations in respect of any Project Payments suspended under subsection 16(1); and
    - (c) subject to section 12, the Parties are otherwise fully released and discharged from the further performance of their respective obligations under the Agreement.
  - (4) If within ninety (90) days after a notice of termination is provided under subsection 15(1) or within thirty (30) days after a notice of termination is provided under subsection 16(4), Xat'sùll, on its own behalf, and on behalf of its Members:
    - (a) covenants and agrees that British Columbia has complied with section 10(1) and has fulfilled any and all legal obligations to consult and accommodate Xat'sùll in relation to the Government Actions taken up to and including the termination date or an earlier date agreed to by the Parties, and
    - (b) releases and forever discharges British Columbia from all actions, causes of action, claims, proceedings, debts, duties, demands, interest, fines, costs, expenses and compensation of whatsoever amount and kind which it ever may have had, has or may ever have against British Columbia with respect to any and all legal obligation to consult and accommodate or to provide capacity funding, revenue generation, revenue-sharing and economic benefits, third party studies or payments or disbursements of any kind related to the Government Actions taken up to and including the termination date or an earlier date agreed to by the Parties,
- subsection (1) will apply and British Columbia will:
- (c) within 60 days after the date on which Xat'sùll provides British Columbia with the covenant, agreement and release described above, make any suspended Project Payment, and

- (d) within the 150 days after the end of the BC Fiscal Year in which the termination occurs, provide a Project Payment for that BC Fiscal Year prorated to the termination date in accordance with subsection (2) or prorated to an earlier date agreed to by the Parties.

## **18 REPRESENTATIONS AND WARRANTIES**

- (1) Xat'sùll represents and warrants to British Columbia, on which British Columbia will rely in entering into this Agreement, the following:
  - (a) its band council is a duly constituted band council under the Indian Act;
  - (b) it has the legal power, capacity and authority to enter into this Agreement on its own behalf and on behalf of its Members;
  - (c) it has taken all necessary actions and obtained all necessary approvals to enter into this Agreement for and on behalf of its Members;
  - (d) it has obtained or had the opportunity to obtain the advice of its own financial, legal, tax and other professional advisors with respect to this Agreement; and
  - (e) it enters into this Agreement for, and on behalf of, all of its Members, and that the Agreement is a valid and binding obligation of Xat'sùll and its Members.
- (2) British Columbia represents and warrants to Xat'sùll, on which Xat'sùll will rely in entering into this Agreement, that it has the authority to enter into this Agreement and to carry out its obligations in accordance with the terms of this Agreement and this Agreement is a valid and binding obligation of British Columbia.

## **19 DISPUTE RESOLUTION**

- (1) The Parties will endeavor to resolve any Disputes in a co-operative, effective and timely manner.
- (2) Section 19 does not apply to Government Actions, consultation under section 10 and Appendices D and E, payment disputes under section 8 or to termination of this Agreement pursuant to section 15.
- (3) Either Party may give written notice of Dispute to the other Party, which must include a summary of the particulars of the Dispute.
- (4) Where a Party issues a notice of Dispute, the Parties will meet within ten (10) days and will attempt to resolve the Dispute through unassisted collaborative negotiation.

- (5) The Parties may agree to vary a procedural requirement contained in this section 19 as it applies to a particular Dispute.
- (6) No Party may commence a court proceeding concerning a Dispute without first proceeding to Mediation as provided for in subsections (8) and (9), except:
  - (a) to prevent the loss of a right of action due to the expiration of a limitation period;
  - (b) to obtain interlocutory or interim relief; or
  - (c) if the matter is considered by the Party to be of an urgent nature.
- (7) Where a Dispute arises in relation to sections 4, 5, 9, 13 or 6 is not resolved through informal collaborative negotiations within sixty (60) days, then with the written agreement of both Parties, either Party may deliver a written notice to Mediate to the other Party, requiring commencement of Mediation.
- (8) Where a Dispute other than one referred to in subsection (7) is not resolved through informal collaborative negotiations within sixty (60) days and a Party wishes to invoke Mediation, that Party will deliver a written notice to Mediate to the other Party, requiring commencement of Mediation.

#### **Mediation Process**

- (9) The following will apply to Mediation pursuant to this subsection 19(9):
  - (a) Upon receiving a notice to Mediate, a Party directly engaged in a Dispute will participate in the Mediation.
  - (b) The Mediation will be conducted by a neutral mediator who has skill and experience in mediation and who has no authority to impose a solution on the Parties.
  - (c) The Mediation will be conducted by one mediator appointed by agreement of the Parties. If there is no such agreement within thirty (30) days after delivery of the notice to Mediate, the mediator will be appointed by the Mediate BC Society using the Society's mediation rules.
  - (d) The Mediation will be conducted in the manner that the mediator considers necessary and appropriate to assist the Parties to resolve the dispute in a fair, efficient and cost-effective manner.
  - (e) The Mediation is terminated at the earliest of:
    - (i) the expiration of thirty (30) days after the appointment of the mediator or any longer period agreed to by the Parties;

- (ii) the withdrawal from the mediation of a Party by notice in writing to the mediator, provided that no such Party may withdraw until after the first meeting with the mediator;
    - (iii) the date on which the Parties agree in writing to terminate the Mediation; or
    - (iv) the date on which the Parties sign a written agreement resolving the Dispute.
  - (f) The Parties will:
    - (i) on request of the other Party, provide timely disclosure of sufficient information and documents to enable a full examination of the subject matter being negotiated, with the exception of privileged documents and subject to applicable information and privacy legislation and other laws imposing confidentiality requirements;
    - (ii) make every reasonable effort to appoint negotiating representatives with sufficient authority to reach an agreement, or with ready access to such authority; and
    - (iii) negotiate in good faith.
  - (g) The Mediation process and all its related proceedings will be and will remain confidential, unless the Parties agree otherwise.
  - (h) A Party may withdraw from Mediation at any time by providing written notice of its intent to the mediator.
  - (i) The Mediation will not restrict in any way the positions that each of the Parties may take in any dispute, arbitration or court proceeding.
  - (j) The mediator will not issue a report or make any recommendations unless requested to do so in writing by the Parties.
  - (k) Any agreement reached through Mediation will be recorded in writing, signed by authorized representatives of the Parties and delivered to the Parties.
  - (l) The Parties will each bear the costs of their own participation, representation and appointments in the Mediation. The Parties will share equally all common costs of the mediation, including fees of the mediator, costs of meeting rooms, actual and reasonable disbursements incurred by the mediator, and fees of the British Columbia Mediator Roster Society.
- (10) If the Parties are unable to resolve a Dispute through Mediation in accordance with subsection (9), and after termination of the Mediation under clause (9)(e), then

with the written agreement of the Parties (the "Arbitration Agreement"), the dispute will be referred to and resolved by arbitration.

### **Arbitration Process**

(11) The following will apply to Arbitration pursuant to this subsection 19(11).

- (a) Unless the Parties otherwise agree, the Arbitration will be conducted by an arbitrator appointed by agreement of the Parties. If there is no such agreement within thirty (30) days after the date of signing of the Arbitration Agreement, the arbitrator will be appointed by the British Columbia International Commercial Arbitration Centre, or if the Centre is unavailable, any other independent and impartial body or individual acceptable to the Parties.
- (b) The Arbitration process and all its related proceedings will be and will remain confidential, unless the Parties agree otherwise.
- (c) Subject to the exceptions in applicable arbitration legislation, the decision of the arbitrator is final and binding on the Parties for the term of this Agreement.
- (d) Except as otherwise ordered by the arbitrator,
  - (i) the Parties will each bear the costs of their own participation, representation and appointments in the Arbitration, and
  - (ii) the Parties will share equally all common costs of the Arbitration, including fees of the arbitrator, costs of hearing and meeting rooms, actual and reasonable disbursements incurred by the arbitrator, and administration fees of the British Columbia Commercial Arbitration Centre or other appointing authority.

(12) The Parties may also choose other appropriate approaches to assist in reaching resolution of the Dispute.

(13) Nothing in this section 19 creates a cause of action where none otherwise exists.

## **20 NOTICE AND DELIVERY**

(1) Where in this Agreement any notice or other communication is required to be given by any of the Parties, it will be made in writing. It will be effectively given:

- (a) by personal delivery to the address of the Party set out below, on the date of delivery;
- (b) by pre-paid registered mail to the address of the Party mentioned in this Agreement, on the date the registered mail is delivered; or

- (c) by facsimile, to the facsimile number of the Party set out in this Agreement, on the date the facsimile is received.
- (2) The address and facsimile numbers of the Parties are:
- (a) Xat'sūll:
- Soda Creek Indian Band  
3405 Mountain House Road  
Williams Lake BC V2G 5L5  
Fax: (250) 989-2300  
Attention: Chief & Council
- (b) British Columbia:
- Ministry of Aboriginal Relations and Reconciliation  
2957 Jutland Road  
Victoria, BC V8T 5J9  
Fax: (250) 387-6073  
Attention: Assistant Deputy Minister, Strategic Initiatives Division
- (3) Any Party may at any time give notice to the other Party of any change of address or facsimile number in accordance with subsection (1).

## **21 GENERAL PROVISIONS**

- (1) This Agreement is not a treaty or land claims agreement within the meaning of sections 25 and 35 of the *Constitution Act, 1982*.
- (2) This Agreement does not create, expand, amend, define, affirm, recognize, limit, deny, abrogate, extinguish, replace or derogate from any Aboriginal Interests.
- (3) British Columbia acknowledges and enters into this Agreement on the basis that Xat'sūll has Aboriginal Interests within Secwepemc Traditional Territory but that the specific nature, scope or geographic extent of those Aboriginal Interests has yet to be determined, and where appropriate, reconciled with Crown Sovereignty. The Parties intend that broader processes that may be engaged in to bring about reconciliation may lead to a common understanding of the nature, scope and geographic extent of Xat'sūll Aboriginal Interests or treaty interests and their relationship with Crown Sovereignty.
- (4) This Agreement does not change or affect the position either Party has, or may have, regarding its jurisdiction, responsibilities and decision-making authority.
- (5) Nothing in this Agreement shall limit or diminish any contractual, equitable or other obligation of the Proponent to Xat'sūll, nor shall an agreement between Xat'sūll and the Proponent limit or diminish the Province's obligations under this Agreement. For further clarity, nothing in this Agreement precludes Xat'sūll from:

- (a) continuing to negotiate and implement revenue- and benefits-sharing agreements with proponents and other governments,
  - (b) accessing economic opportunities and benefits, which may be available to Xat'sùll other than those expressly set out in this Agreement, or
  - (c) participating in government programs for which any of Xat'sùll may be eligible.
- (6) This agreement is not intended to be interpreted in a manner that would affect or unlawfully interfere with any legislative authority of British Columbia or fetter the discretion of any decision-making authority.
- (7) No partnership, joint venture, agency, fiduciary or employment relationship will be deemed to be created by this Agreement or by any actions of the Parties under this Agreement.
- (8) Except as expressly contemplated herein, this Agreement does not limit the position either Party may take in any legal or administrative proceedings or in any discussions or negotiations between the Parties.
- (9) 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 liability and without limiting the foregoing, this Agreement is not to be construed as an admission of:
  - (a) the validity of, or any fact or liability in relation to any claims for compensation for alleged past or future infringements of Aboriginal Interests of any kind whatsoever or whensoever arising in relation to such assertions; or
  - (b) an obligation to provide financial or economic benefits or compensation, including those provided in this Agreement, as part of British Columbia's obligation to consult and, as appropriate, accommodate in relation to the Project.
- (10) This Agreement does not constitute an admission that Government Actions have resulted or will result in any unjustified infringement of any Aboriginal Interests.
- (11) This Agreement is to be governed by the applicable laws of Canada and British Columbia.
- (12) There will be no presumption that any ambiguity in any of the terms of this Agreement should be interpreted in favour of either Party.
- (13) This Agreement and any amendment to it constitute the entire Agreement between the Parties with respect to the subject matter of this Agreement, unless otherwise agreed in writing by the Parties.



- (14) If any part of this Agreement is void or unenforceable at law, it shall be severed from this Agreement and the rest of the Agreement shall remain in effect and fully enforceable.
- (15) 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) 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.
- (17) 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.
- (18) The use of the word "including" is to be read as not limiting the generality of the preceding term or phrase.
- (19) In this Agreement, any reference made to a statute includes all regulations made under that statute and any amendments or replacements.
- (20) No term, condition, acknowledgement or other provision of this Agreement will be considered to have been waived by the Parties unless such waiver is expressed in writing by the Parties.
- (21) All references in this Agreement to a designated section or other subdivision or to an appendix are to the designated section or other subdivision of, or appendix to, this Agreement.
- (22) Any reference to a corporate entity includes and is also a reference to any corporate entity that was a predecessor to, or that is a successor to, such entity.
- (23) The following schedules and appendices are attached to and form part of this Agreement:

Schedule 1: Calculation of Project Payments

Appendix A: Map showing Area of the Project

Appendix B: Xat'sūll's Stewardship Area

Appendix C: Provincial Agencies

Appendix D: Consultation Process

Appendix E: Criteria Table

(24) This Agreement may be executed by the Parties in counterparts and by facsimile or scanned copy.

## 22 Amendments

- (1) Any amendment of this Agreement agreed to by the Parties must be in writing and signed by the Parties.
- (2) If an amendment to the Province's policy regarding mineral tax revenue sharing substantially alters benefits available under the Economic and Community Development Agreement program, the Parties will discuss potential amendments to this Agreement to reflect the policy change.

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

SIGNED in the presence of:

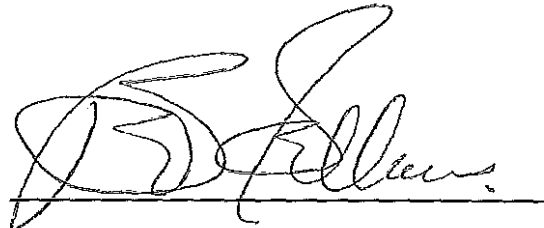
Marjorie Sellars (witness) this \_\_\_\_\_  
day

of Dec 16, 2013 at

Williams Lake:

Marjorie Sellars  
Witness

Soda Creek Indian Band, on behalf of itself  
and its Members, as represented by the  
Chief and Council



Chief Bev Sellars

SIGNED in the presence of:

Mark Knudsen this 23  
day

of January, 2014 at

Prince George:

Mark Knudsen  
Witness

HER MAJESTY THE QUEEN IN RIGHT  
OF THE PROVINCE OF BRITISH  
COLUMBIA, as represented by the  
Minister of Aboriginal Relations and  
Reconciliation



John Rustad, Minister

## SCHEDULE 1 CALCULATION OF PROJECT PAYMENTS

### Definitions

(1) In this Schedule:

**"BC Fiscal Year Total" or "BCFYT"** means the sum of the Mine Fiscal Year Amounts calculated under this Schedule in respect of all Mine Fiscal Years for which there is Current Revenue;

**"Current BC Fiscal Year"** means the BC Fiscal Year for which the Project Payment is being calculated;

**"Current Revenue"** means, in respect of a Mine Fiscal Year, the amount of Incremental Mineral Tax Revenue for the Mine Fiscal Year received by the Province or refunded or paid to the Proponent by the Province in the Current BC Fiscal Year;

**"Mine Fiscal Year Amount"** means, in respect of a Mine Fiscal Year, the amount calculated under section 3 of this Schedule;

**"Outstanding Overpayments" or "OsOp"** means the total of:

- (a) any Overpayment remaining as a result of the Project Payment for the BC Fiscal Year immediately before the Current BC Fiscal Year being a negative amount; and
- (b) all other Overpayments that have not been included in the calculation of a previous Project Payment;

**"Outstanding Underpayments" or "OsUp"** means the total of all Underpayments that have not been included in the calculation of a previous Project Payment;

### Calculation of Project Payment

(2) The amount of the Project Payment for a BC Fiscal Year will be calculated according to the following formula:

$$\text{Project Payment} = \text{BCFYT} + \text{OsUp} - \text{OsOp}$$

### Calculation of a single Mine Fiscal Year Amount

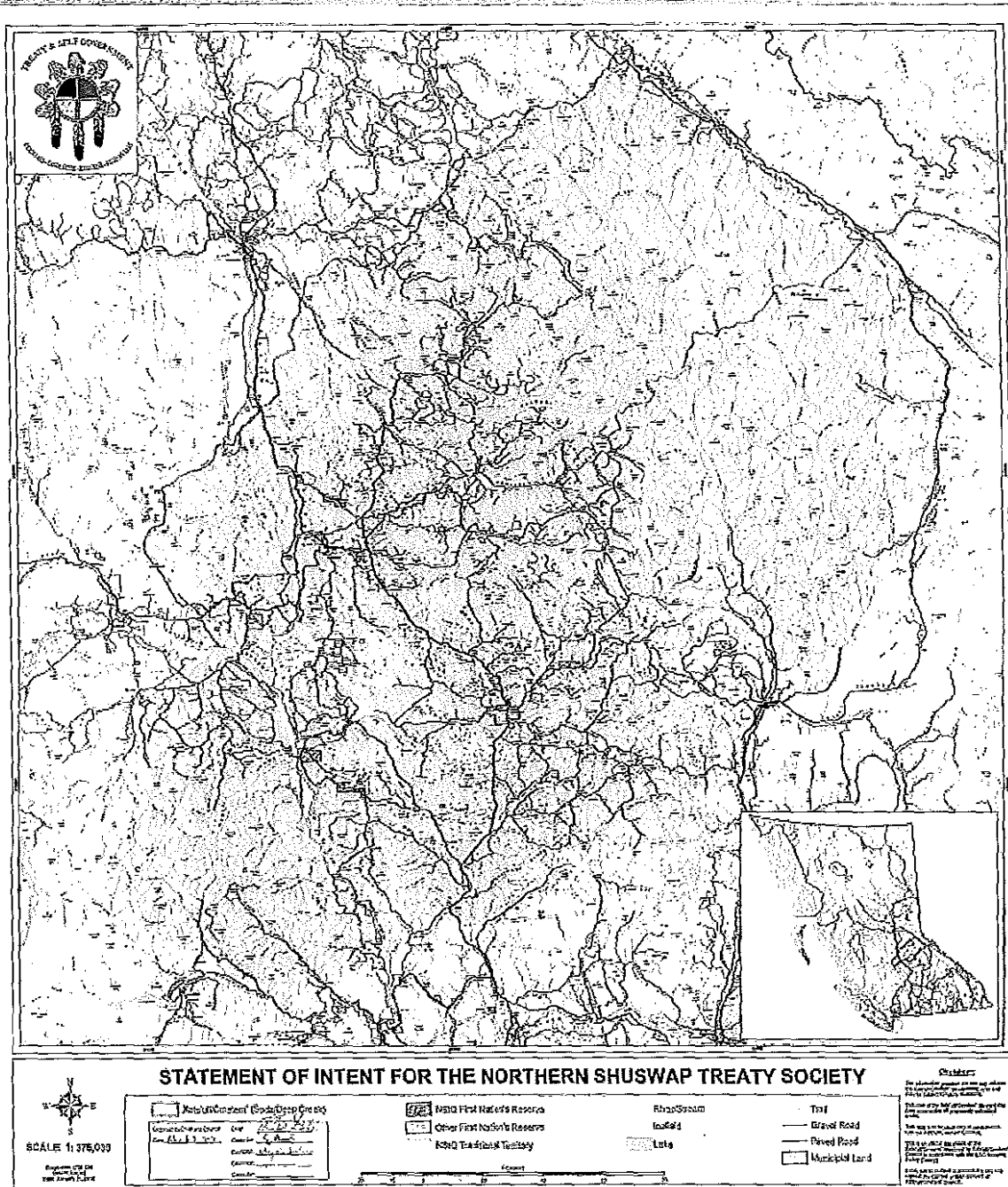
(3) Each Mine Fiscal Year Amount will be calculated according to the following formula:

$$\text{Mine Fiscal Year Amount} = 23.45\% \times \text{Current Revenue.}$$

## Appendix A: Project Area



## Appendix B – Xat'sūll Stewardship Area



## **Appendix C: Provincial Agencies**

**Ministry of Aboriginal Relations and Reconciliation**  
**Ministry of Forests Lands and Natural Resource Operations**  
**Ministry of Energy & Mines**  
**Ministry of Transportation and Infrastructure**  
**Ministry of Environment**

## **Appendix D: Consultation Process**

### **1 Definitions**

In this Appendix:

"days" do not include Saturdays, Sundays and statutory holidays;

"Decision Type" refers to the level of consultation for a Government Action (Type 1, 2 or 3) and the corresponding procedure set out in section 3, 4 and 5 of this Appendix;

"Information Package" means the information provided in accordance with subsection 2 (2) of this Appendix.

### **2 Mine Closure**

(1) British Columbia will undertake ongoing engagement with the Xat'sūll with respect to Mine closure as follows:

- a. invite Xat'sūll to join in future discussions on mine closure through an appropriate venue;
- b. invite Xat'sūll to participate in all reviews of the Mine closure plans over time;

(2) Except as provided in subsection (1), the consultation process set out in this Appendix D does not apply to mine closure plans.

### **3 Consultation Initiation**

- (1) When a Provincial Agency receives a request to approve a Government Action, the Provincial Agency will determine the Decision Type in accordance with the Criteria Table based on a determination of which set of criteria best describes the potential impacts associated with the proposed Government Action.
- (2) The Parties will examine the Criteria Table in Appendix E and may, for further clarity, identify examples of Government Actions for each Consultation Process Type to assist the Parties in the implementation of the Consultation Process.
- (3) The Provincial Agency will initiate the Consultation Process by providing an Information Package to Xat'sūll that will include the following:
  - (a) relevant background information and a description of the proposed Government Action(s);
  - (b) location of the proposed Government Action(s) within the Project Area, and associated GIS based information;

- (c) application(s) and any supporting materials including studies and technical reports submitted by the Proponent to the Provincial Agency;
  - (d) a description of potential impacts on Xat'sùll's Aboriginal Interests, and measures to mitigate and/or accommodate identified impacts to those interests;
  - (e) the primary Provincial Agency contact and contact information;
  - (f) identification of the Decision Type and a rationale for the selection; and
  - (g) a timeline for the consultation process consistent with the timelines established in this Appendix for the selected Type of Government Action.
- (4) The Provincial Agency will notify the GMC of the proposed Government Action and will invite the GMC to provide, by a specified date, any information that may be relevant to the proposed Government Action. Any information the Provincial Agency receives from the GMC will be shared with Xat'sùll during the Consultation Process.
  - (5) Where multiple Government Actions are considered at the same time, Provincial Agencies will endeavor to include a description of all Government Actions within a single Information Package.
  - (6) If Xat'sùll does not agree with the Province's determination of the Decision Type, Xat'sùll may within 5 days of receiving the Information Package provide the Provincial Agency with a written request that the Decision Type be changed and provide information supporting such a request, including potential impacts Xat'sùll's Aboriginal Interests from the Government Action. The Provincial Agency will consider such requests and notify Xat'sùll of its determination regarding the Decision Type.

#### **4 Type 1 Decisions**

- (1) Where Xat'sùll receives an Information Package concerning a Government Action identified as Type 1 Xat'sùll may, within fifteen (15) days from the date the Information Package is received by Xat'sùll or if applicable, the date the notification provided by the Provincial Agency under subsection 3(6) of this Appendix is received by Xat'sùll, provide a response to the Provincial Agency identifying any concerns, comments or suggested mitigations in response to the Information Package.
- (2) The relevant statutory decision maker may make a decision with respect to the application for a Government Action after the expiry of the fifteen (15) day period, unless the Provincial Agency and Xat'sùll agree to an extension of time for further Xat'sùll review, in which case, the statutory decision maker may make a decision after the expiry of the extension period.



- (3) If Xat'sūll provided comments in relation to the proposed Government Action, the relevant statutory decision maker or the Provincial Agency will notify Xat'sūll in writing of the decision made regarding the proposed Government Action including any measures taken to respond to comments made by Xat'sūll.

## **5 Type 2 Decisions**

- (1) Where Xat'sūll receive an Information Package concerning a Government Action identified as Type 2, Xat'sūll may, within thirty (30) days from the date the Information Package is received by Xat'sūll or if applicable, the date the notification provided by the Provincial Agency under subsection 3(6) of this Appendix is received by Xat'sūll, provide a response to the Provincial Agency:
  - (a) identifying any concerns, comments or suggested mitigations in response to the Information Package;
  - (b) providing a detailed description of any additional information that Xat'sūll requires in order to understand the impacts of the proposed Government Action on Xat'sūll's Aboriginal Interests; and
  - (c) requesting a meeting with the Provincial Agency to further discuss the proposed Government Action.
- (2) The relevant statutory decision maker may make a decision with respect to the proposed Government Action:
  - (a) before the expiry of the thirty (30) days if Xat'sūll indicate in writing that they have no concern with, or no position on, the proposed Government Action; or
  - (b) after the expiry of the thirty (30) day period, unless the Provincial Agency and Xat'sūll agree to an extension of time for further Xat'sūll review or to arrange a meeting between Xat'sūll and the Provincial Agency, in which case, the statutory decision maker may make a decision after the expiry of the extension period.
- (3) If Xat'sūll provided comments in relation to the Information Package, the relevant statutory decision maker or the Provincial Agency will notify Xat'sūll in writing of the decision made regarding the proposed Government Action including any measures taken to respond to comments made by Xat'sūll.

## **6 Type 3 Decisions**

- (1) Where Xat'sùll receive an Information Package concerning a Government Action identified as Type 3, Xat'sùll may, within thirty (30) days from the date the Information Package is received by Xat'sùll or if applicable, the date the notification provided by the Provincial Agency under subsection 3(6) of this Appendix is received by Xat'sùll, provide a response to the Provincial Agency that:
  - (a) identifies any concerns, comments or suggested mitigations in response to the Information Package; and
  - (b) provides a detailed description of any additional information that Xat'sùll requires in order to understand the impacts of the proposed Government Action on Xat'sùll's Aboriginal Interests.
- (2) Alternatively, Xat'sùll may provide the Provincial Agency with notice that no further consultation is required.
- (3) Within thirty (30) days of receiving the response from Xat'sùll under subsection 6(1) of this Appendix, the Parties will hold a meeting(s) for the purpose set out in subsection 6(4) below and will make reasonable efforts to:
  - (a) utilize existing committees to facilitate the initial meeting, including those which may be constituted by agreement between Xat'sùll and the Proponent;
  - (b) provide additional technical information required by Xat'sùll and requested under subsection 6(1)(b) of this Appendix to properly understand the proposed Government Actions; and
  - (c) invite the Proponent to the initial meeting.
- (4) The Parties will work collaboratively to develop recommendations on proposed mitigations and accommodations at any meetings under subsection 6(3) of this Appendix.
- (5) At the end of thirty (30) day period under subsection 6(3) of this Appendix, the Provincial Agency will provide Xat'sùll with a summary of potential mitigations and accommodations that have been jointly discussed by the Parties and the summary will be provided to the relevant statutory decision maker.
- (6) Within twenty (20) days of receiving the summary under 6(5) of this Appendix, Xat'sùll will prepare and provide to the Provincial Agency a consultation report that includes:
  - (d) any additional proposed mitigations or accommodations that address any impacts to Aboriginal Interests identified by Xat'sùll; and

- (e) if required, any additional submissions regarding Xat'sùll's views on the proposed Government Action(s).
- (7) If Xat'sùll includes any additional submissions in the consultation report under subsection 6(6) of this Appendix, either Party may request an issue resolution meeting with the relevant statutory decision maker.
- (8) Where a meeting is requested under subsection 6(7), the Parties will meet with the relevant statutory decision maker or their representative, and attempt to resolve the issue in question within twenty (20) days from British Columbia receiving submissions under subsection 6(6) of this Appendix.
- (9) If an issue remains unresolved after the meeting referred to in subsection 6(8) of this Appendix, each Party will notify the other in writing of the outstanding points of disagreement and any consensus recommendations that may have been reached during the meeting.
- (10) The relevant statutory decision maker or the Provincial Agency will notify Xat'sùll in writing of the decision made regarding the proposed Government Action including any measures taken to respond to comments made by Xat'sùll and how such comments were considered in reaching the decision.

## **Appendix E: Criteria Table**

The Criteria Table contains criteria for determining whether the proposed Government Action is Type 1, Type 2 or Type 3 for the purposes of the Consultation Process set out in Appendix D of this Agreement.

### **Type 1: Criteria**

- Negligible perceived impact on Aboriginal Interests
- Low physical impact on land
- Low fish and wildlife impact
- Replacements of existing tenures that created low previous impact on Aboriginal Interests
- Maintenance of existing infrastructure, but excluding herbicide use or road deactivation

### **Type 2: Criteria**

- Low to Moderate physical impact
- Moderate fish and wildlife impact
- Moderate impact on Xats'ull's access to their Aboriginal Interests
- Moderate land alteration or disturbance
- Long standing replacements of existing tenures that created moderate previous impact on Aboriginal Interests

### **Type 3: Criteria**

- Significant fish and wildlife impacts
- Significant water and land impacts
- Significant land alteration or disturbance
- Major new access structures
- Aboriginal Interests potentially displaced/irreplaceable in a specific area
- Replacements of existing tenures that created high previous impact on Aboriginal Interests

Indian and Northern  
Affairs Canada

Affaires Indiennes  
et du Nord Canada

Indian and Inuit Affairs

Affaires Indiennes et Inuit

Chronological No.

2013

File Reference

2013-SCIB 716-35

### BAND COUNCIL RESOLUTION

<b>NOTE:</b> The words "From our Band funds", "Capital" or "Revenue", whichever is the case, must appear in all resolutions requesting expenditures from Band Fund	
<b>THE COUNCIL OF THE SODA CREEK INDIAN BAND</b>	Current Capital Balance \$ _____
<b>AGENCY DISTRICT</b>	Committed \$ _____
<b>NORTH PACIFIC REGION</b>	Current Revenue Balance \$ _____
<b>PROVINCE</b>	Committed \$ _____
<b>BRITISH COLUMBIA</b>	
<b>PLACE WILLIAMS LAKE</b>	
<b>DATE:</b> <u>16</u> <u>DECEMBER</u> <u>2013</u>	
Day Month Year	

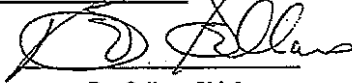
DO HEREBY RESOLVE:

*That Council hereby approves the Gibraltar Mine Economic and Community Development Agreement ("ECDA") and the Gibraltar Mine Committee Terms of Reference, and authorizes Chief Bev Sellars to sign them on behalf of the Soda Creek Indian Band (Xats'ül).*

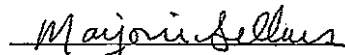
A quorum for this Band consists of 3 Council Members

This Band Council Resolution was passed at a duly convened meeting of the Soda Creek Band Council on:

**December 16-2013**

  
Bev Sellars, Chief

\_\_\_\_\_  
Thomas Phillips, Councillor

  
Marjorie Sellars-Cady, Councillor

  
Donna Dixon, Councillor

\_\_\_\_\_  
Marnie Sellars, Councillor

\_\_\_\_\_  
Councillor

FOR DEPARTMENTAL USE ONLY				
1. Band Fund Code	2. Computer Balances		3. Expenditure \$	4. Authority - Indian Act
	A. Capital \$	B. Revenue \$		
5. Source of funds <input type="checkbox"/> Capital <input type="checkbox"/> Revenue				
6. Recommended			Approved	
_____ Date Recommending Officer			_____ Date Approving Officer	