

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

**Between:  
The Hupacasath First Nation**

As Represented by  
Chief and Council  
(Hupacasath First Nation)

**And**

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

(Collectively the "Parties")

**WHEREAS:**

- A. Hupacasath First Nation has Aboriginal Interests within the Traditional Territory.
- B. The Parties wish to set out a process for consultation regarding forest and range resource development on Crown lands within the Traditional Territory.
- C. The Parties intend this Agreement to assist in achieving stability and greater certainty for forest and range resource development on Crown lands within the Traditional Territory and to assist Hupacasath First Nation in its pursuit of activities to enhance the well-being of its Members.

**THEREFORE THE PARTIES AGREE AS FOLLOWS:**

**ARTICLE 1 - INTERPRETATION**

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

**"Aboriginal Interests"** means:

- (a) asserted aboriginal rights, including aboriginal title; or

- (b) determined aboriginal rights, including aboriginal title, which are recognized and affirmed under section 35(1) of the *Constitution Act, 1982*;

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

**"Band Council Resolution"** means a resolution of Hupacasath First Nation having the form of Appendix D;

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

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

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

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

**"Eligible Volume"** means the volume of Crown timber provided to Hupacasath First Nation originating from the volume reallocation of the of the *Forestry Revitalization Act (Bill 28)*;

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

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

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

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

**"Mediated Agreement"** means the Agreement entered into between British Columbia and Hupacasath First Nation, dated July 19, 2012, which includes a Collaborative Decision Model.

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



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

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

**"RA"** means a reconciliation agreement between British Columbia and Hupacasath 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*;

**"Revenue Sharing Contribution"** means each payment to be made by British Columbia to Hupacasath First Nation under Article 3 of this Agreement;

**"SEA"** means a strategic engagement agreement between British Columbia and Hupacasath First Nation that includes agreement on a consultation process between Hupacasath First Nation and British Columbia in relation to the potential adverse impacts of proposed provincial land and natural resource decisions on Hupacasath First Nation's Aboriginal Interests;

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

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

**"Traditional Territory"** means the traditional territory claimed by Hupacasath First Nation located within British Columbia as identified by Hupacasath First Nation and shown in bold on the map attached in Appendix A.

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

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

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

Appendix A - Map of Traditional Territory;

Appendix B – Refer to Collaborative Decision Model

Appendix C - Revenue Sharing Contribution Methodology;

Appendix D - Band Council Resolution Appointing Delegate;

Appendix E - Statement of Community Priorities Format; and,

Appendix F - Annual Report.

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

**2.1 Purpose and objectives.** The purposes and objectives of this Agreement are:

- (a) to establish a consultation process through which the Parties will meet their respective consultation obligations in relation to potential adverse impacts of proposed forest and range resource development activities, including Administrative and/or Operational Decisions or Operational Plans, on Hupacasath First Nation's Aboriginal Interests;
- (b) to provide a Revenue Sharing Contribution to support the capacity of the Hupacasath First Nation to participate in the consultation process herein, as an accommodation for any adverse impacts to Hupacasath First Nation's Aboriginal Interests resulting from forest and range resource development within the Traditional Territory and so that Hupacasath First Nation may pursue activities that will enhance the social, economic and cultural well-being of its members; and
- (c) to assist in achieving stability and greater certainty for forest and range resource development on Crown lands within the Traditional Territory.

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

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

- (a) make annual Revenue Sharing Contributions, calculated in accordance with Appendix C, to Hupacasath First Nation (or its Designate under section 4.2, as the case may be); and



- (b) pay the annual Revenue Sharing Contribution in two equal instalments, the first to be made on or before September 30<sup>th</sup> and the second to be made on or before March 31<sup>st</sup>.
- 3.2 First Fiscal Year.** Notwithstanding section 3.1, for the First Fiscal Year of the Term, the Revenue Sharing Contribution is deemed to be \$380,981 the first instalment of which will be paid on or before September 30 if the Effective Date is prior to July 31<sup>st</sup> or on or before March 31 if the Effective Date is after July 31<sup>st</sup>.
- 3.3 Prorated amounts.** For the purposes of determining the amount of the Revenue Sharing Contribution for partial BC Fiscal Years, the amount will be prorated to the month in which the Agreement is signed by Hupacasath First Nation; is terminated by either Party under section 13, or; to the end of the month in which the Agreement expires.
- 3.4 Subsequent BC Fiscal Year amounts.** Before November 30<sup>th</sup> of each year during the Term, British Columbia will provide written notice to Hupacasath First Nation of the amount of the Revenue Sharing Contribution for the following BC Fiscal Year and the summary document(s) and calculations identified in Appendix C.
- 3.5 Amount agreed to.** Hupacasath First Nation agrees that the amount set out in the notice provided under section 3.4 will be the amount of the Revenue Sharing Contribution payable under this Agreement for that following BC Fiscal Year.
- 3.6 Changes to provincial revenue sharing calculation formulas.** The Parties agree that if, during the term of this Agreement, British Columbia introduces changes to the provincial forestry revenue sharing calculation formula described in Appendix C to this Agreement, any such changes will be incorporated into the calculation of the Revenue Sharing Contribution provided through this Agreement for the following BC Fiscal Year.

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

- 4.1 Recipient entity.** Unless Hupacasath First Nation notifies British Columbia that it has made an election under to section 4.2, Revenue Sharing Contributions will be paid to Hupacasath First Nation.
- 4.2 Election of Designate.** Hupacasath First Nation may elect to have a Designate receive Revenue Sharing Contributions provided that the Designate:
  - (a) is a registered corporation or society with the legal authority and capacity to receive the funds for the purposes described in section 2.1; and

- (b) is duly appointed to receive the Revenue Sharing Contribution on behalf of Hupacasath First Nation and such appointment is confirmed by a Band Council Resolution of Hupacasath First Nation.

**4.3 Obligations continue.** The election of a Designate under section 4.2 does not relieve Hupacasath First Nation of its obligations under this Agreement.

**4.4 Payment Account.** Hupacasath First Nation or its Designate will:

- (a) establish and, throughout the Term, maintain an account in the name of Hupacasath First Nation (or its Designate, as the case may be) at a Canadian financial institution into which direct deposits can be made by British Columbia for the purpose of receiving monies payable by British Columbia pursuant to this Agreement (the "Payment Account"); and
- (b) provide to British Columbia sufficient address and account information respecting the Payment Account to enable British Columbia to make direct deposit payments to the Payment Account.

**4.5 Requirement to make a payment.** British Columbia may withhold a Revenue Sharing Contribution it would otherwise be required to make until Hupacasath First Nation (or its Designate, as the case may be) has met the requirements set out in section 4.4.

## **ARTICLE 5 - CONDITIONS OF PAYMENT**

**5.1 Reporting and compliance requirements.** For each BC Fiscal Year following the First Fiscal Year of the Term, the requirement to make a Revenue Sharing Contribution is subject to:

- (a) Hupacasath First Nation having published all of the necessary statements and reports before the applicable dates as set out in Article 8 of this Agreement;
- (b) Hupacasath First Nation being in all other respects in compliance with the terms of this Agreement; and
- (c) Revenue Sharing Contributions not having been suspended under Article 13 of this Agreement.

**5.2 Appropriation.** Notwithstanding any other provisions of this Agreement, the payment of money by British Columbia to Hupacasath First Nation pursuant to this Agreement is subject to:

- (a) there being sufficient monies available in an appropriation, as defined in the *Financial Administration Act*, to enable British Columbia in any BC Fiscal Year or part thereof when any such payment may be required, to



- make that payment; and
- (b) Treasury Board not having controlled or limited, pursuant to the *Financial Administration Act*, expenditure under any appropriation referred to in (a).

## **ARTICLE 6 - CONSULTATION**

- 6.1 Satisfaction of consultation obligations.** The Parties agree that subject to 6.3, the Collaborative Decision Model set out in the Mediated Agreement will be the means by which they will fulfill their obligations to consult on proposed Operational Plans or proposed Administrative and/or Operational Decisions and, where appropriate, the means by which British Columbia will identify potential measures to accommodate any potential adverse impacts on the Hupacasath First Nation's Aboriginal Interests resulting from Operational Plans or Administrative and/or Operational Decisions.
- 6.2 Map may be shared.** British Columbia may share the map attached as Appendix A, including digital versions of the map, with other provincial agencies or with a Licensee responsible for information sharing associated with Operational Plans or Administrative and/or Operational Decisions.
- 6.3 SEA or RA applies.** The Parties agree that notwithstanding 6.1:
- (a) if before the Effective Date Hupacasath First Nation enters into a SEA, or RA that includes a consultation process which addresses forest and range management and decision making, the consultation process set out in the SEA or RA will continue after the Effective Date;
  - (b) if after the Effective Date Hupacasath First Nation enters into a SEA, or RA that includes a consultation process which addresses forest and range management and decision making, the consultation process set out in the SEA or RA will supersede and replace the consultation process set out in this Agreement for the term of the SEA or RA;
  - (c) if the SEA or RA referred to in (a) or (b) comes to the end of its term or is terminated prior to the end of the Term, the consultation process set out in the Mediated Agreement will apply for the remainder of the Term unless it is replaced by a subsequent consultation protocol attached to this Agreement as Appendix B; and,
  - (d) if the Mediated Agreement, or the Collaborative Decision Model therein, are terminated prior to the end of the Term, the Hupacasath First Nation agrees that this Agreement will be amended within 60 days of the date of termination of the Mediated Agreement, or the consultation process, to include a consultation process in this Agreement.

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

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

- 7.1 Revenue Sharing Contributions will vary.** Hupacasath First Nation acknowledges that forest revenues received by British Columbia fluctuate and that the Revenue Sharing Contributions under this Agreement will vary over time.
- 7.2 Revenue Sharing Contributions are an accommodation.** Hupacasath First Nation agrees that the Revenue Sharing Contributions made under this Agreement constitute an accommodation for any potential adverse impacts of Administrative and/or Operational Decisions, and any forest or range development practices that may be carried out under an Operational Plans, on Hupacasath First Nation's Aboriginal Interests.
- 7.3 Where consultation process followed.** Hupacasath First Nation agrees that if the Collaborative Decision Model set out in the Mediated Agreement is followed, British Columbia has adequately consulted and has provided an accommodation with respect to potential adverse impacts of Administrative and/or Operational Decisions, and any forest or range development practices that may be carried out under an Operational Plan, on Hupacasath First Nation's Aboriginal Interests.

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

- 8.1 Statement of Community Priorities.** Hupacasath First Nation covenants and agrees that it will:
- (a) within 60 days of the Effective Date, based on the First Fiscal Year Revenue Sharing Contribution, prepare a statement of community priorities for the Term substantially in the form set out in Appendix E that outlines activities it intends to fund to help achieve the socio-economic objectives referred to in section 2.1(b); and
  - (b) before the end of each BC Fiscal Year, consider whether the statement of community priorities identified in subsection (a) should be revised based on the updated Revenue Sharing Contribution for subsequent BC Fiscal Years agreed to under section 3.5.



- 8.2 Annual Report.** Within 90 days of the end of each BC Fiscal Year, Hupacasath First Nation will prepare an annual report, substantially in the form set out in Appendix F, identifying all expenditures made from the Payment Account since the date of the last such report or in the case of the first such report, since the Effective Date of this Agreement, and confirming that, aside from reasonable administrative expenses, all such expenditures were made in furtherance of the purposes and objectives referred to in section 2.1.
- 8.3 Publication.** The statement of community priorities and annual report referred to in sections 8.1 and 8.2 will be published by Hupacasath First Nation in a manner that can reasonably be expected to bring the information to the attention of its communities and the public within 90 days of the end of each BC Fiscal Year.
- 8.4 Audit.** British Columbia may, at its sole discretion and at the sole expense of Hupacasath First Nation, require an audit of the expenditures made from the Payment Account to determine that all such expenditures were made in furtherance of the purposes and objectives referred to in section 2.1.
- 8.5 Delivery of Report.** The annual report referred to in section 8.2 will be provided to British Columbia within 120 days of the end of each BC Fiscal Year.
- 8.6 Continuing Obligations.** Notwithstanding the termination or expiry of this Agreement, the provisions of this Article 8 will continue to apply for 120 days after Hupacasath First Nation receives the final Revenue Sharing Contribution from British Columbia.

## **ARTICLE 9 - SECURITY DEPOSITS**

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

## **ARTICLE 10 – SET OFF**

- 10.1 Set off.** In addition to any other right under this Agreement, British Columbia may set off against any payment that Hupacasath First Nation is entitled to receive under this Agreement, any unfulfilled financial obligations of Hupacasath First Nation to British Columbia arising from a licence entered into as a result of a direct award tenure agreement between Hupacasath First

Nation, or a legal entity controlled by the Hupacasath First Nation, and British Columbia.

- 10.2 Notice.** British Columbia will notify Hupacasath First Nation of the amount of the unfulfilled financial obligation before it exercises its right of set off under section 10.1.

## **ARTICLE 11 - ASSISTANCE**

- 11.1 Assistance.** Stability for land and resource use. The Parties agree that they will make reasonable and good faith efforts to respond promptly and work collaboratively to attempt to resolve issues that may adversely affect, challenge or impede provincially authorized forest and range activities in the Territory.
- 11.2 Cooperation and Support.** Hupacasath First Nation will promptly and fully cooperate with and provide its support to British Columbia in seeking to resolve any action that might be taken by a member of Hupacasath First Nation that is inconsistent with this Agreement.

## **ARTICLE 12 - DISPUTE RESOLUTION**

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

## **ARTICLE 13 - SUSPENSION and TERMINATION**

- 13.1 Suspension of Revenue Sharing Contributions.** In addition to any other right under this Agreement, British Columbia may suspend further Revenue Sharing Contributions under this Agreement where Hupacasath First Nation:



- (a) is in material breach of its obligations under Articles 6, 8 or 11 or Appendix B of this Agreement; or
- (b) has outstanding unfulfilled financial obligations to British Columbia arising from a licence issued further to an agreement between Hupacasath First Nation and British Columbia.

**13.2 Notice of Suspension.** Where Revenue Sharing Contributions are suspended under section 13.1, British Columbia will provide notice to Hupacasath First Nation of the reason for the suspension, including the specific material breach or the outstanding unfulfilled financial obligation on which it relies and the Parties will meet to attempt to resolve the issue giving rise to the suspension.

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

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

- (a) contrary to section 7.2, a Revenue Sharing Contribution provided for under this Agreement does not constitute an accommodation for adverse impacts of such decisions, plans or activities on Hupacasath First Nation's Aboriginal Interests; or
- (b) contrary to section 7.3, by British Columbia or a Licensee following the consultation process described in Appendix B, British Columbia has not adequately consulted with Hupacasath First Nation regarding the potential adverse impacts of such decisions, plans or activities on Hupacasath First Nation's Aboriginal Interests.

**13.5** Subject to section 13.4, neither Party shall terminate this Agreement on the grounds that the other Party has challenged a Forestry Related Land and Resource Decision by way of legal proceedings.

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

**13.7 Meet to attempt to resolve issue.** If a Party gives written notice under section 13.6, the Parties will, prior to the end of the notice period, meet and attempt to resolve any issue that may have given rise to the termination notice.

- 13.8 Effect of Termination.** Where this Agreement is terminated under this Article 13, the Revenue Sharing Contribution for the BC Fiscal Year in which termination becomes effective will be prorated to the termination date.

## **ARTICLE 14 - TERM**

- 14.1 Term.** The term of this Agreement will be three (3) years commencing on the Effective Date unless it is extended under section 14.2 or terminated under Article 13.
- 14.2 Extension of the Term.** At least two months prior to the third anniversary of the Effective Date, the Parties will evaluate the effectiveness of this Agreement and decide whether to extend the Term.
- 14.3 Terms of the Extension.** Where the Parties agree to extend the Term they will negotiate and attempt to reach agreement on the terms of the extension.
- 14.4 Evaluation.** Either Party may, on an annual basis, request the participation of the other Party to review the effectiveness of this Agreement and to consider potential amendments to it.

## **ARTICLE 15 – REPRESENTATIONS and WARRANTIES**

- 15.1 Legal power, capacity and authority.** The Hupacasath First Nation represents and warrants to the Province, with the intent and understanding that they will be relied on by the Province in entering into this Agreement, that it enters into this Agreement for, and on behalf of itself and its members and that as represented by its Chief and Council, it has the legal power, capacity and authority to enter into and to carry out its obligations under this Agreement.

## **ARTICLE 16 - NOTICE and DELIVERY**

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

if to British Columbia:



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

and if to the Hupacasath First Nation:

Chief Brandy Lauder  
Hupacasath First Nation  
PO Box 211  
Port Alberni, BC V9Y 7M7  
Phone: (250) 724-4041  
Fax: (250) 724-1232

**16.2 Change of Address.** Either Party may, from time to time, give notice to the other Party of a change of address or facsimile number and after the giving of such notice, the address or facsimile number specified in the notice will, for purposes of section 16.1, supersede any previous address or facsimile number for the Party giving such notice.

## **ARTICLE 17 - GENERAL PROVISIONS**

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

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

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

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

- (a) an admission of the validity of, or any fact or liability in relation to, any claims relating to alleged past or future infringements of Hupacasath First Nation's Aboriginal Interests;
- (b) an admission or acknowledgement of any obligation to provide any financial, economic or other compensation, including those in this Agreement, as part of British Columbia's obligation to consult and, as appropriate, accommodate; or

- (c) in any way limiting the position the Parties may take in any proceedings or in any discussions or negotiations between the Parties, except as expressly contemplated in this Agreement.
- 17.4 No Fettering.** Nothing in this Agreement is to be construed as interfering with, or fettering in any manner, the exercise by British Columbia or its agencies of any statutory, prerogative, executive or legislative power or duty.
- 17.5 No Implied Waiver.** Any waiver of any term or breach of this Agreement is effective only if it is in writing and signed by the waiving Party and is not a waiver of any other term or breach.
- 17.6 Assignment.** Hupacasath First Nation must not assign, either directly or indirectly, this Agreement or any right of Hupacasath First Nation under this Agreement without the prior written consent of British Columbia.
- 17.7 Emergencies.** Nothing in this Agreement affects the ability of either Party to respond to any emergency circumstances.
- 17.8 Acknowledgment.** The Parties acknowledge and enter into this Agreement on the basis that Hupacasath First Nation has Aboriginal Interests within the Traditional Territory but that the specific nature, scope or geographic extent of those Aboriginal Interests have yet to be determined. 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 Hupacasath First Nation Aboriginal Interests.
- 17.9 Third Parties.** This Agreement is not intended to limit any obligation of forest or range licensees or other third parties to Hupacasath First Nation.
- 17.10 Other Economic Opportunities and Benefits.** This Agreement does not preclude Hupacasath First Nation from accessing forestry economic opportunities and benefits, which may be available to it, other than those expressly set out in this Agreement.
- 17.11 Validity of Agreement.** If any provision of this Agreement or the application of it to any person or circumstance is invalid or unenforceable to any extent, the remainder of this Agreement and the application of it to any person or circumstance will not be affected or impaired and will be valid and enforceable to the extent permitted by law.
- 17.12 Entire Agreement.** This Agreement and any amendment to it constitute the entire agreement between the Parties with respect to the subject matter of this Agreement.
- 17.13 Further Acts and Assurances.** Each Party must perform the acts, execute and deliver the writings, and give the assurances as may be reasonably necessary to give full effect to this Agreement.




**17.14 Execution in Counterpart.** This Agreement may be entered into by a separate copy of this Agreement being executed by each Party and that executed copy being delivered to the other Party by a method provided for in Article 16 or any other method agreed to by the Parties.


**17.15 Amendment in Writing.** No amendment to this Agreement is effective unless it is agreed to in writing and signed by the Parties.

Signed on behalf of:

Hupacasath First Nation

  
Chief Brandy Lauder

Sept 16, 2021  
Date

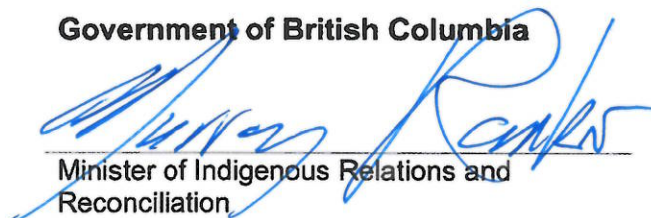
  
Councillor

  
Councillor

  
Witness of Hupacasath First Nation  
signatures

Signed on behalf of:

Government of British Columbia

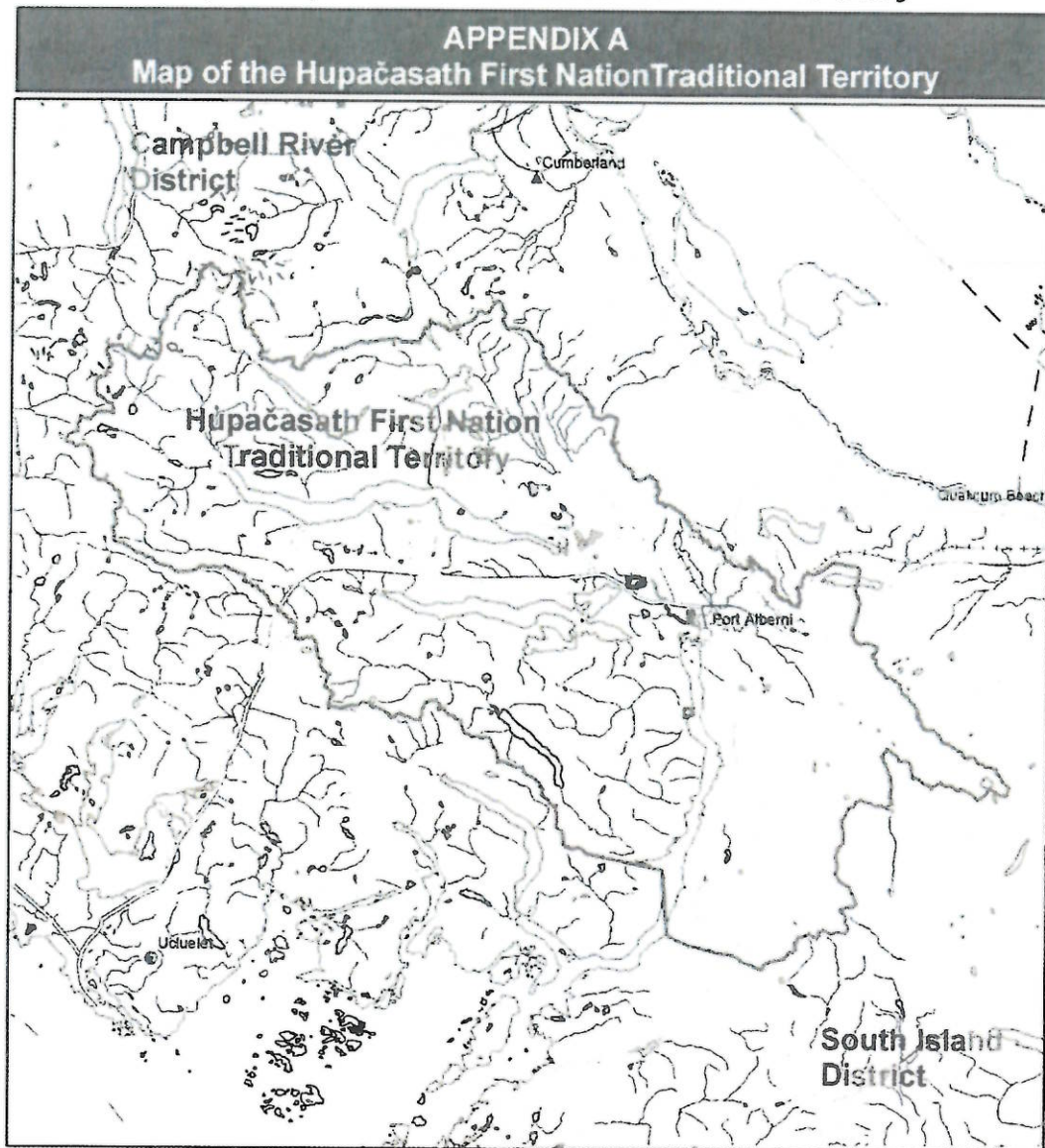
  
Minister of Indigenous Relations and  
Reconciliation

Oct 25 2021  
Date

  
Witness of Minister signature

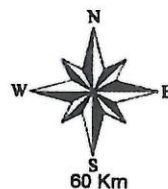
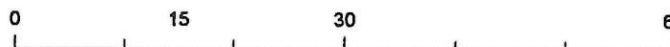


# **APPENDIX A** **Map of Hupačasath First Nation Traditional Territory**



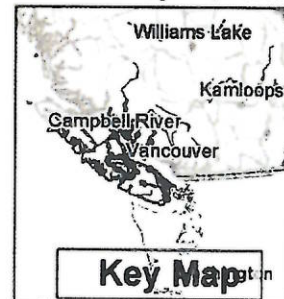
## **Legend: Hupačasath First Nation FCRSA Map**

-  Hupačasath First Nation Boundary (2019)
-  Hupačasath First Nation Indian Reserves



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

Date: July 08, 2021



## **APPENDIX B**

Appendix B is superseded by the Collaborative Decision Model set out in the Mediated Agreement while the Reconciliation Protocol is in effect.



## **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, a summary document will be prepared of the South Island District's forest revenue, defined as the total of stumpage, waste and annual rent payments received by the Crown for the previous 2 BC Fiscal Years. An average amount over 2 years will be calculated for the South Island District.
- 1.1 For the purposes of the summary document in section 1.0 of this Appendix, the stumpage payments from Eligible Volume in Hupacasath First Nation's Forest License will not be included in the calculations of forest revenue.
- 1.2 The amount of the forest revenue attributed to the Hupacasath First Nation's Traditional Territory will be calculated by determining the percent of Hupacasath First Nation's Traditional Territory that falls within the Timber Harvesting Land Base in the South Island 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 three (3) percent of the forest revenue attributed to the Hupacasath First Nation as described in section 1.2 of this Appendix.
- 1.4 If Hupacasath First Nation is not receiving capacity funding for forestry consultation through a SEA or RA, then it will receive \$35,000 or the amount calculated in accordance with section 1.3, whichever is greater, which may be used by Hupacasath First Nation as capacity funding to participate in the consultation process in accordance with section 6.0 of this Agreement.
- 1.5 For each BC Fiscal Year that this Agreement is in effect, the calculations outlined in sections 1.0 to 1.4 of this Appendix will be performed.

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

- 2.0 Subsequent to the release by the Minister of Finance of the previous BC Fiscal Year's public accounts, a summary document will be prepared of Hupacasath First Nation's Forest License forest revenue, defined as the total of stumpage payments received by the Crown for the previous BC Fiscal Year from Eligible Volume within Hupacasath First Nation's Forest License
- 2.1 The Direct Award Forest Tenure Revenue Sharing Component will be calculated by multiplying thirty-five (35) percent of the forest revenue as described in section 2.0 of this Appendix.

- 2.2 Notwithstanding section 2.1 of this Appendix, for any First Nations Woodlot Licences, the Direct Award Forest Tenure Revenue Sharing Component will be calculated by multiplying 70 percent of the forest revenue as described in section 2.0 of this Appendix.
- 2.3 For each Fiscal Year that this Agreement is in effect, the calculations outlined in sections 2.0 and 2.1 of this Appendix will be performed.

### **Forest Revenue Sharing Transition**

- 3.0 The Parties agree that a transition to revenue sharing based entirely on Forest Revenue will be phased in over the Term.
- 3.1 For each BC Fiscal Year that this Agreement is in effect, a portion of the Revenue Sharing Contribution is calculated by adding the total of the Traditional Territory Forest Revenue Sharing Component to the Direct Award Tenure Forest Revenue Sharing Component for that BC Fiscal Year.
- 3.2 For each BC Fiscal Year that this Agreement is in effect, the remaining portion of the Revenue Sharing Contribution is calculated by determining the value of the payments that were made by British Columbia to Hupacasath First Nation in any given full year under the *"Hupacasath First Nation Interim Agreement on Forest & Range Opportunities"* ("the Annual Amount") and applying the following percentages to that Annual Amount:
- 3.2.1 2021/22 BC Fiscal Year: 40 percent;
- 3.2.2 2022/23 BC Fiscal Year: TBD; and
- 3.2.3 2023/24 BC Fiscal Year: TBD.
- 3.3 Notwithstanding section 3.2 of this Appendix, if the Revenue Sharing Transition Calculation for BC Fiscal year 2021/2022 under section 3.1 provides:
- (a) an amount calculated under sections 1.3 and 2.1 of this Appendix that is equal to or greater than the annual payments received under the *"Hupacasath First Nation Interim Agreement on Forest & Range Opportunities"*, then Hupacasath First Nation will receive the annual payments described by the Revenue Sharing Transition Calculation in section 3.1; and
  - (b) an amount calculated under the Revenue Sharing Transition Calculations in sections 3.1 and 3.2 of this Appendix that is greater than the annual payments received under the *"Hupacasath First Nation Interim Agreement on Forest & Range Opportunities"*, then Hupacasath First Nation will receive an annual payment for BC Fiscal Year 2021/2022 that is equal to the annual payment received under the *"Hupacasath First Nation Interim Agreement on Forest & Range Opportunities"*.



## **APPENDIX D**

**Band Council Resolution Appointing  
the Recipient Entity for this Agreement ("Designate")**

## APPENDIX E

### Hupacasath First Nation Statement of Community Priorities

*(Example only)*

Socio-economic Priority	Annual Amount			Specific Outcomes	Measurement Criteria
	2021/2022	2022/2023	2023/2024		