

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

**Between:  
The K'ómoks First Nation**

As Represented by  
Chief and Council  
(the K'ómoks First Nation)

**And**

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

(Collectively the "Parties")

**WHEREAS:**

- A. In 2005, British Columbia and the First Nations Leadership Council, representing the Assembly of First Nations-BC Region, First Nations Summit, and the Union of British Columbia Indian Chiefs entered into a New Relationship and signed the Transformative Change Accord, the purposes of which is to implement a government-to-government relationship based on an effective working partnership, enhanced collaboration, mutual respect and recognition and accommodation of Aboriginal title and rights and achieve the mutual goals of closing the social and economic gap between First Nations and other British Columbians.
- B. In the spirit of the New Relationship and the Transformative Change Accord, British Columbia and K'ómoks First Nation have entered into the Nanwakolas/British Columbia Framework Agreement (SEA), dated December 16, 2009, and renewed December 3, 2012, and the Nanwakolas Reconciliation Protocol (RP), dated July 29, 2011, and amended November 28, 2011. The SEA and RP, amongst other things, evidence a shared commitment to strengthening relationships on a government-to-government basis.
- C. In addition to the SEA and RP, the Province and various Nanwakolas First Nations have entered into previous agreements including Enabling Process April 2001, Land Use Planning Agreement in Principle 2006, and the Clearinghouse Pilot Agreement, to further strengthen government-to-government relationships.
- D. This Agreement, and the benefits flowing from it, will assist the K'ómoks First Nation in achieving progress towards the goals referred to in the previous recitals, and in particular help to address the conditions that contribute to economic challenges among Aboriginal people and to ensure that they can more fully benefit from and contribute to British Columbia's prosperity.

- E. British Columbia recognizes that K'ómoks First Nation has a unique history and its own culture and traditions that help to define it, and that these characteristics, along with its relationship with British Columbia, form an important context for the cooperative efforts needed to improve the K'ómoks First Nation community's well-being.
- F. The Province acknowledges that the K'ómoks First Nation has various Section 35 Rights within its Traditional Territory.
- G. British Columbia intends to consult with the K'ómoks First Nation and to accommodate its Section 35 Rights as appropriate (including accommodation by way of the payments provided through this Agreement), with respect to impacts on the K'ómoks First Nation's Section 35 Rights arising from forest and/or range resource development activities proposed within the K'ómoks First Nation Traditional Territory.
- H. The K'ómoks First Nation intends to fully participate in any consultation or information sharing with British Columbia in accordance with the SEA, in relation to forest and/or range resource development activities proposed within the K'ómoks First Nation's Traditional Territory that may impact the K'ómoks First Nation's Section 35 Rights.
- I. This Agreement is intended to assist in achieving stability and greater certainty for forest and/or range resource development on Crown lands within the Traditional Territory of the K'ómoks First Nation while longer term interests of the K'ómoks First Nation are addressed through other agreements or processes.

## **THEREFORE THE PARTIES AGREE AS FOLLOWS:**

### **1.0 Definitions**

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

- 1.1 “**Administrative and/or Operational Decision**” means a decision made by the Minister or a Delegated Decision Maker related to forest and range resources under provincial legislation as identified in the consultation processes set out in the SEA, while the SEA is in effect.
- 1.2 “**Band Council Resolution**” means a resolution of K'ómoks First Nation having the form of Appendix D.
- 1.3 “**BC Fiscal Year**” means a period beginning on April 1 of a calendar year and ending on March 31 of the next calendar year.
- 1.4 “**Delegated Decision Maker**” and “**DDM**” means a person with authority, as delegated by the Minister and including the Minister, to make statutory decisions with respect to forest and range resources under provincial legislation as amended from time to time.
- 1.5 “**Designate**” has the meaning given to that term in Section 3.1.1.

- 1.6 “**Effective Date**” means the date on which this Agreement has been ratified and signed by each of the Parties.
- 1.7 “**Eligible Forest Tenure Volume**” means volume in a direct award forest tenure under a Forest Tenure Opportunity Agreement that is eligible for forest revenue sharing under the Province’s policy in relation to Crown land and timber volumes referenced in the Forest Revitalization Act, S.B.C.17; and where associated stumpage is appraised through the Market Pricing System, and scaled through the Harvest Billing System. Overharvested volumes and volumes appraised on tabular rates will not be eligible for revenue sharing.
- 1.8 “**First Fiscal Year of the Term**” has the meaning given to that term in Section 3.3.
- 1.9 “**Licensee**” means a holder of a forest tenure or a range tenure.
- 1.10 “**Minister**” means the Minister of Forests, Lands and Natural Resource Operations having the responsibility, from time to time, for the exercise of powers in respect of forests and range matters.
- 1.11 “**Operational Plan**” means a Forest Stewardship Plan, Woodlot Licence Plan, a Range Use Plan, or Range Stewardship Plan (as those terms are defined in forest and range legislation) that has or will have effect in the K’ómoks First Nation’s Traditional Territory.
- 1.12 “**Payment Account**” has the meaning given to that term in Section 3.1.3.
- 1.13 “**RP**” means the Nanwakolas Reconciliation Protocol dated July 29, 2011, and amended from time to time, entered into between British Columbia and K’ómoks First Nation, and other signatories.
- 1.14 “**Revenue Sharing Contribution**” means each payment to be made by British Columbia to the K’ómoks First Nation in accordance with Section 3.0 of this Agreement.
- 1.15 “**SEA**” means the Nanwakolas / British Columbia Framework Agreement, renewed December 3, 2012, and amended from time to time, entered into between British Columbia and the K’ómoks First Nation, and other signatories.
- 1.16 “**Section 35 Rights**” means asserted or proven aboriginal rights of the K’ómoks First Nation, including aboriginal title, and Douglas Treaty rights, recognized and affirmed by Section 35 (1) of the *Constitution Act*, 1982.
- 1.17 “**Forest Tenure Opportunity Agreement**” means an agreement signed between the Minister and a First Nation that provides for the Minister to direct award forest tenure under the *Forest Act*.
- 1.18 “**Term**” has the meaning given to that term in Section 11.1.
- 1.19 “**Timber Harvesting Land Base**” means the portion of the total land area of a management unit considered by Ministry of Forests, Lands and

Natural Resource Operations to contribute to, and be available for, long-term timber supply

- 1.20 “**Traditional Territory**” means the K’ómoks First Nation’s claimed or asserted Traditional Territory as shown on the map attached in Appendix A, which map the K’ómoks First Nation agrees British Columbia may share with another provincial government agency and/or a licensee.
- 1.21 “**Treasury Board**” means the cabinet committee of British Columbia defined in the *Financial Administration Act*.

## **2.0 Purpose and Objectives**

The purposes and objectives of this Agreement are:

- 2.1 In relation to potential impacts on K’ómoks First Nation’s Section 35 Rights resulting from forest and range development in its Traditional Territory, to facilitate the Parties in meeting their respective legal consultation obligations by supporting the capacity of K’ómoks First Nation to participate in consultation process as set out in the SEA which results in appropriate accommodation measures being implemented in addition to providing the Revenue Sharing Contribution in this Agreement to K’ómoks First Nation as an accommodation; and
- 2.2 To provide an opportunity for the K’ómoks First Nation to pursue activities that will enhance and improve the social, cultural and economic well-being of its community and assist the K’ómoks First Nation in achieving progress towards closing socio-economic gaps between the members of Nanwakolas First Nations and non-Aboriginal people in British Columbia.

## **3.0 Forest Revenue Sharing Contribution**

### **3.1 Recipient Entity:**

- 3.1.1 Unless the K’ómoks First Nation elects to have another entity (its “Designate”) receive Revenue Sharing Contributions pursuant to Section 3.1.2, the K’ómoks First Nation will be the recipient of the Revenue Sharing Contributions. Any such election does not relieve the K’ómoks First Nation of its obligations under this Agreement.
- 3.1.2 Where the K’ómoks First Nation chooses to have its Designate receive Revenue Sharing Contributions under this Agreement, British Columbia may withhold payment of the Revenue Sharing Contribution until it is satisfied that the Designate is a registered corporation or society with the legal authority and capacity to receive the funds for the purposes described in Section 2.0 and that it has been appointed by Band Council Resolution documented in Appendix D to receive the Revenue Sharing Contribution on behalf of the K’ómoks First Nation.

- 3.1.3 K'ómoks First Nation will establish and throughout the Term maintain a bank account in the name of K'ómoks First Nation (or the Designate, as the case may be) at a Canadian financial institution into which direct deposits can be made by British Columbia for the purpose of receiving monies payable by British Columbia pursuant to this Agreement (the "Payment Account"). K'ómoks First Nation will provide to British Columbia sufficient address and account information respecting the Payment Account to enable British Columbia to make direct deposit payments to the Payment Account.
- 3.2 Subject to Section 3.1.2 and Section 10.0 of this Agreement, British Columbia will during the Term make annual Revenue Sharing Contributions, calculated in accordance with Appendix C, to the K'ómoks First Nation, or to its Designate, as the case may be, and, subject to Section 3.4 and 3.8, the Revenue Sharing Contribution will be disbursed in two equal payments: the first payment to be paid on or before September 30<sup>th</sup>, and the second payment to be paid on or before March 31<sup>st</sup>.
- 3.3 Notwithstanding Section 3.2, for the BC Fiscal Year 2014/15 (the "First Fiscal Year of the Term") the amount calculated in accordance with Appendix C is deemed to be \$177,626. For further certainty the first payment under this agreement will be on September 30th, 2014.
- 3.4 For the purposes of determining the amount of the Revenue Sharing Contribution for partial BC Fiscal Years, the amount will be prorated for each month or part thereof that this agreement is in effect.
- 3.5 Before November 30<sup>th</sup> of each year during the Term, K'ómoks First Nation will receive written notification from British Columbia of the Revenue Sharing Contribution for the following BC Fiscal Year (including the summary document(s) and calculations identified in Appendix C) and the K'ómoks First Nation agrees that such written notification will have the effect for the purposes of this Agreement of describing the amount of the Revenue Sharing Contribution under this Agreement for that following BC Fiscal Year. The Province agrees that the most up to date timber supply review timber harvesting land base data will be used for the calculations in Appendix C for fiscal year 2015/16 and beyond.
- 3.6 Prior to Section 3.5 being implemented, if requested by K'ómoks First Nation, the Province will share the timber harvesting land base data referred to in that Section by timber supply area management unit and subject to information sharing agreements, by Tree Farm Licence, by forest district and K'ómoks First Nation Traditional Territory with the K'ómoks First Nation. The K'ómoks First Nation will have two weeks to bring any concerns with the data to the Province's attention, and in the event that the data is corrected as a result of input from K'ómoks First Nation, British Columbia will incorporate that corrected data into the Section 3.5 calculations.

- 3.7 For each BC Fiscal Year subsequent to the First Fiscal Year of the Term, the Revenue Sharing Contribution will be provided by British Columbia to the K'ómoks First Nation or its Designate in the manner specified in Section 3.2 only if K'ómoks First Nation has published all of the necessary statements and reports before the appropriate dates as set out in Section 6.0 of this Agreement, is in all other respects in compliance with the terms of this Agreement and this Agreement has not been suspended or terminated pursuant to Section 10.0.
- 3.8 Notwithstanding any other provisions of this Agreement, the payment of money by British Columbia to the K'ómoks First Nation pursuant to this Agreement is subject to:
- 3.8.1 there being sufficient monies available in an appropriation, as defined in the *Financial Administration Act*, to enable British Columbia in any BC Fiscal Year or part thereof when any such payment may be required, to make that payment; and
- 3.8.2 Treasury Board not having controlled or limited, pursuant to the *Financial Administration Act*, expenditure under any appropriation referred to in Section 3.8.1.

#### **4.0 Consultation Process**

- 4.1 The Parties recognize that the K'ómoks First Nation entered into the SEA which includes a consultation process that addresses forest and range management and decision-making. If the SEA is subsequently terminated, or the K'ómoks First Nation withdraws from the SEA prior to the end of the term of this Agreement, this Agreement will be amended within 60 days of the date of termination or withdrawal from the SEA to include a consultation process in this Agreement.
- 4.2 In the event K'ómoks First Nation enters into an Amended RP with British Columbia after the Effective Date of this Agreement that includes a consultation process which addresses forest and range management and decision making, the consultation process set out in the Amended RP will supersede and replace the consultation process set out in the SEA, as the RP so provides. If the Amended RP is subsequently terminated, or the K'ómoks First Nation withdraws, prior to the end of the Term of this Agreement the K'ómoks First Nation agrees that the SEA consultation processes will be used. If there is no SEA in place, this Agreement will be amended within 60 days of the date of termination of the Amended RP to include a consultation process in this Agreement.

## **5.0 Acknowledgments and Covenants by K'ómoks First Nation**

- 5.1 K'ómoks First Nation acknowledges that forest revenues received by British Columbia fluctuate and that the Revenue Sharing Contributions under this Agreement will vary over time.
- 5.2 K'ómoks First Nation agrees that the Revenue Sharing Contributions made under Section 3.0 of this Agreement constitute an accommodation for impacts on K'ómoks First Nation Section 35 Rights of Administrative Decisions, Operational Decisions and/or Operational Plans in the Traditional Territory from May 1, 2014 to the end of the term of this agreement.
- 5.3 Subject to section 5.2, this Agreement does not address or affect any claims by the K'ómoks First Nation regarding impacts on its Aboriginal Interests resulting from past Operational or Administrative Decisions made by British Columbia.
- 5.4 K'ómoks First Nation agrees that during the term of this Agreement, if the consultation process set out in this Agreement is followed, British Columbia has adequately consulted and has provided an accommodation with respect to potential infringements of K'ómoks First Nation's Section 35 Rights in the context of Operational Decisions and Administrative Decisions that British Columbia will make and any forest or range practices that may be carried out under an Operational Plan in the Traditional Territory.

## **6.0 Transformative Change Accord Socio-Economic Issues**

- 6.1 The SEA provides that one of the government-to-government functions under that Agreement is that the parties work towards the implementation of the principles of the Transformative Change Accord, and in addition, Section 6.1 of the SEA commits the Parties to pursue through the Nanwakolas Strategic Forum, opportunities to achieve the goal of closing the social and economic gap between the K'ómoks First Nation and other British Columbians.

The Nanwakolas Strategic Forum established under the terms of the SEA is the appropriate government-to-government body to collaboratively work towards implementing the principles of the Transformative Change Accord and to pursue opportunities to achieve the goal of closing the social and economic gap between the K'ómoks First Nation and other British Columbians. The K'ómoks First Nation covenants and agrees as follows:

- 6.1.1 The K'ómoks First Nation will abide by any performance measures and monitoring and reporting standards developed through the Nanwakolas Strategic Forum to help achieve the goals outlined in Section 6.1 of the SEA, including community priorities funded from the Revenue Sharing Contribution provided in this Agreement.
- 6.1.2 Within 90 days of the end of each BC Fiscal Year, K'ómoks First

Nation or its Designate will prepare and submit any reports agreed to by the Nanwakolas Strategic Forum in the format determined by the Nanwakolas Strategic Forum, which will outline expenditures made from the Payment Account since the last such report.

6.1.3 British Columbia retains the right at its sole discretion, such discretion to be exercised reasonably, to require an audit of expenditures made from the Payment Account to ensure that all such expenditures were made for appropriate purposes under this Agreement, such audit to be at the expense of the K'ómoks First Nation or its Designate.

6.1.4 The documents and reports referred to in Sections 6.1.1, and 6.1.2 will be published by the K'ómoks First Nation or its Designate in a manner that can reasonably be expected to bring the information to the attention of its communities and the public.

6.1.5 The annual report referred to in section 6.1.2 will be provided to British Columbia within 120 days of the end of each BC Fiscal Year.

6.1.6 Notwithstanding the termination or expiry of this Agreement, K'ómoks First Nation or its Designate will continue to comply with the provisions of Section 6.1 of this Agreement until 120 days after it receives the last Revenue Sharing Contribution from British Columbia.

6.2 If K'ómoks First Nation requires funding ("capacity") to engage in consultation processes on forest and range decisions, or with other provincial Ministries where K'ómoks First Nation has entered into an SEA and/or RP with British Columbia, up to \$35,000 annually of the Revenue Sharing Contribution will be used by K'ómoks First Nation for that capacity during the term of this Agreement.

## **7.0 Security Deposits**

7.1 In recognition of K'ómoks First Nation entering into this Agreement, British Columbia may choose not to request a silviculture deposit(s) pertaining to licence(s) entered into as a result of the invitation to apply under a Forest Tenure Opportunity Agreement entered into between K'ómoks First Nation (or a legal entity and controlled by the K'ómoks First Nation) and British Columbia.

7.2 K'ómoks First Nation agrees that British Columbia may apply any payment that K'ómoks First Nation is entitled to receive under this Agreement, to a maximum of the amounts that British Columbia would have obtained in a silviculture deposit, in order to fully or partially satisfy any unfulfilled financial obligations of K'ómoks First Nation to British Columbia arising from a licence(s) entered into as a result of the invitation to apply under a Forest Tenure Opportunity Agreement entered into between K'ómoks First

Nation (or a legal entity controlled by the K'ómoks First Nation) and British Columbia.

- 7.3 Prior to British Columbia applying any payment to satisfy unfulfilled K'ómoks First Nation financial obligations arising from a licence(s) in accordance with Section 7.2, British Columbia will notify the K'ómoks First Nation of the unfulfilled financial obligation(s) and will discuss the proposed action with the K'ómoks First Nation.

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

- 8.1 K'ómoks First Nation will respond immediately to any discussions sought by British Columbia in relation to any acts of intentional interference by members of K'ómoks First Nation with provincially authorized forest and/or range activities and will work co-operatively with British Columbia to assist in resolving any such matters.

## **9.0 Dispute Resolution**

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

## **10.0 Suspension and Termination**

- 10.1 British Columbia may suspend the making of further Revenue Sharing Contributions under this Agreement if it determines, acting reasonably, that K'ómoks First Nation is not fulfilling its obligations under Sections 4 and 6 or Sections 8.1 or 10.3 of this Agreement, or where the K'ómoks First Nation has outstanding unfulfilled financial obligations to British Columbia arising from a licence(s) issued further to an agreement between the K'ómoks First Nation and British Columbia. Upon making any such determination, British Columbia will provide notice to K'ómoks First Nation of the alleged non-compliance, and the Parties will then attempt to resolve their differences.
- 10.2 If the alleged non-compliance by K'ómoks First Nation is not resolved within 60 days of the notice provided in Section 10.1, British Columbia will notify K'ómoks First Nation that the alleged non-compliance remains unresolved and, without limiting the actions that may be taken by British Columbia, may terminate this Agreement.

10.3 If, during the term of this Agreement, K'ómoks First Nation challenges or supports a challenge to an Administrative Decision and/or Operational Decision or an Operational Plan or activities carried out pursuant to those decisions or plans, by way of legal proceedings or otherwise, on the basis that, contrary to Section 5.2, the Revenue Sharing Contribution provided for in Section 3.0 of this Agreement does not provide an accommodation for impacts on K'ómoks First Nation's Section 35 Rights then, without limiting any actions that may be taken by British Columbia, the Revenue Sharing Contribution provided for in Section 3.0 may be suspended or this Agreement may be terminated by British Columbia.

10.4 This Agreement will terminate prior to the end of the Term in any one of the following circumstances; 90 days' written notice of termination is given by one Party to the other; termination occurs in accordance with any of the provisions of Section 10.0; or upon mutual agreement of the Parties. In the event of such early termination of this Agreement, the Revenue Sharing Contribution for the BC Fiscal Year in which termination becomes effective will be prorated to the termination date.

10.5 If a Party gives written notice of its intention to terminate this Agreement effective 90 days from the date of the notice, the Parties will, prior to the end of the 90-day period, meet and will attempt to resolve any issue that may have given rise to the termination notice.

## **11.0 Term**

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

## **12.0 Renewal of the Agreement**

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

## **13.0 Amendment of Agreement**

13.1 Any alteration or amendment to the terms and conditions of the Agreement must be in writing and duly executed by the Parties.

13.2 Subject to Section 13.1, the Parties agree that if changes to the revenue sharing formula or calculations occur pursuant to Section 6.2 and/or 6.4 of Appendix 2, Schedule B of the Nanwakolas Reconciliation Protocol, this agreement will be amended to incorporate these new changes.

13.3 Either Party may request the participation of the other Party to review the effectiveness of this Agreement annually and consider amendments to this Agreement.

#### **14.0 Entire Agreement**

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

#### **15.0 Notice**

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

#### **British Columbia**

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

#### **K'ómoks First Nation**

Chief Rob Everson  
K'ómoks First Nation  
3320 Comox Road  
Courtenay, B.C. V9N 3P8  
Phone: (250) 339-4545  
Fax: (250) 339-7053

#### **16.0 Miscellaneous**

- 16.1 This Agreement shall be interpreted in a manner consistent with provincial and federal law.

- 16.2 This Agreement is not a treaty or a lands claims agreement within the meaning of Sections 25 and 35 of the *Constitution Act, 1982* and does not define or amend aboriginal rights, or limit any priorities afforded to aboriginal rights, including aboriginal title.
- 16.3 This Agreement does not address or prejudice conflicting interests or competing claims between First Nations.
- 16.4 Subject to paragraph 10.3, this Agreement will not limit the positions that a Party may take in future negotiations or court actions.
- 16.5 British Columbia acknowledges and enters into this Agreement on the basis that the K'ómoks First Nation has Section 35 Rights within their Traditional Territory but that the specific nature, scope or geographic extent of Section 35 Rights of the K'ómoks First Nation have yet to be determined. Broader processes engaged in to bring about reconciliation will result in a common understanding of the nature, scope and geographic extent of Section 35 Rights or treaty interests of the K'ómoks First Nation.
- 16.6 References in this Agreement to Crown lands are without prejudice to the K'ómoks First Nation's Aboriginal title and/or rights claims over those lands.
- 16.7 With the exception of matters or decisions dealt with in Section 3.9, this Agreement does not address or affect any claims by the K'ómoks First Nation regarding impacts on its Section 35 Rights resulting from past Operational or Administrative Decisions made by British Columbia prior to the effective date of this Agreement
- 16.8 This Agreement and any decisions made during the term of this Agreement do not change or affect the positions either Party has, or may have, regarding jurisdiction and authorities.
- 16.9 Any reference to a statute in this Agreement includes all regulations made under that statute and any amendments or replacement of that statute and its regulations.
- 16.10 There will be no presumption that any ambiguity in any of the terms of this Agreement should be interpreted in favour of either Party.
- 16.11 The applicable laws of British Columbia and Canada shall govern this Agreement.
- 16.12 This Agreement is not intended to limit any obligation of forest or range Licensees or other third parties to the K'ómoks First Nation.
- 16.13 This Agreement does not exclude the K'ómoks First Nation from accessing forestry economic opportunities and benefits, which may be available to the K'ómoks First Nation, other than those expressly set out in this Agreement.

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

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

Signed on behalf of:

**K'ómoks First Nation**



Chief Rob Everson



Councillor



Councillor

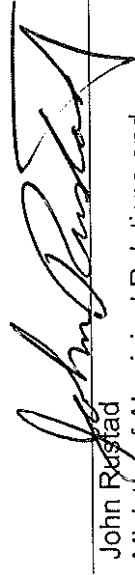
Witness of K'ómoks First Nation signatures

July 25/14

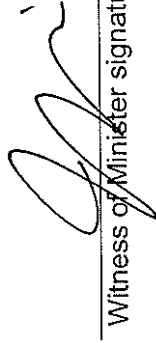
Date

Signed on behalf of:

**Government of British Columbia**



John Rustad  
Minister of Aboriginal Relations and  
Reconciliation



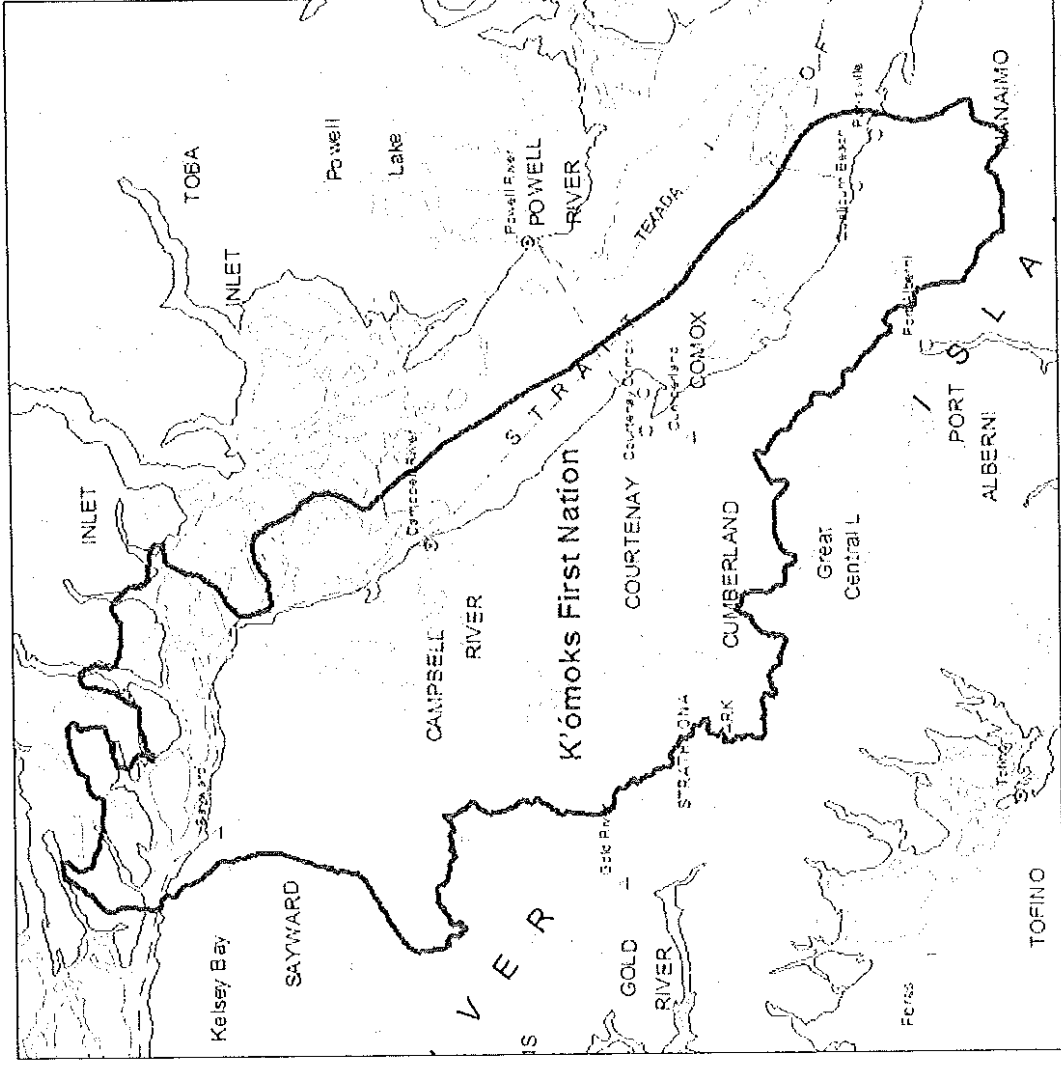
Witness of Minister signature

Sept. 16, 2014

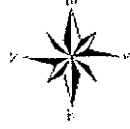
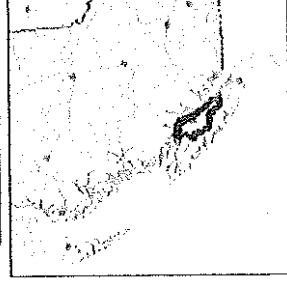
Date

## APPENDIX A

## Appendix A:



## Key Map



0 10 20  $\pm 0$  Kilometers

Date: February 20, 2014

The above was received by the Commission on July 12, 1951.

**APPENDIX B**  
**Consultation**  
**On Operational and Administrative Decisions and Operational Plans**

Appendix B is superseded by the consultation processes set out in the SEA, while the SEA 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 of British Columbia, a summary document will be prepared of Campbell River, North Island-Central Coast, Sunshine Coast, and South Island Districts 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 Campbell River, North Island-Central Coast, Sunshine Coast, and South Island Districts.
- 1.1 For the purposes of the summary document in Section 1.0 of this Appendix, the stumpage, waste and any annual rent payments from K'ómoks First Nation's Eligible First Tenure Volume (if applicable) will not be included in the calculations of forest revenue.
- 1.2 The amount of the forest revenue attributed to the K'ómoks First Nation's Traditional Territory will be calculated by determining the percent of K'ómoks First Nation's Traditional Territory (as shown in Appendix A) that falls within the Timber Harvesting Land Base in the Campbell River, North Island-Central Coast, Sunshine Coast, and South Island Districts, 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 5 percent of the forest revenue attributed to the K'ómoks First Nation as described in Section 1.2 of this Appendix. Should the K'ómoks First Nation cease to be a Party to the RP, Traditional Territory Forest Revenue Sharing Component will be calculated from that point by multiplying 4 percent of the forest revenue attributed to the K'ómoks First Nation as described in Section 1.2 of this Appendix.
- 1.4 Where the calculation in Section 1.3 of this Appendix is less than \$35,000, K'ómoks First Nation will receive a maximum of \$35,000 to provide capacity to participate in the consultation process in accordance with Section 6.2 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.
- 1.6 The Province agrees to discuss with the K'ómoks First Nation potential opportunities to review the revenue sharing contribution methodology that more closely reflects with revenue collected from the K'ómoks First Nation's Traditional Territory.

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

- 2.0 Subsequent to the release by the Minister of Finance of the previous BC Fiscal Year's public accounts of British Columbia, a summary document will be prepared of K'ómoks First Nation's Eligible Forest Tenure Volume (if applicable) forest revenue, defined as the total of stumpage, waste and annual rent payments received by the Crown for the previous BC Fiscal Year.
- 2.1 The Direct Award Forest Tenure Revenue Sharing Component will be calculated by multiplying 75 percent of the forest revenue as described in Section 2.0 of this Appendix, unless K'ómoks First Nation ceases to be a Party to the RP, in which case the Direct Award Tenure Revenue Sharing Component will be calculated from that point by multiplying 50 percent of the forest revenue as described in Section 2.0 of this Appendix.
- 2.2 For each BC Fiscal Year that this Agreement is in effect, the calculations outlined in Sections 2.0 and 2.1 of this Appendix will be performed.

### **Forest Revenue Sharing Transition**

- 3.0 The Parties agree that a transition to revenue sharing based entirely on Forest Revenue will be phased in over the term of the Agreement.
- 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 K'ómoks First Nation in any given full year under the *Comox First Nation Forest Agreement (2005)* ("the Annual Amount") and applying the following percentages to that Annual Amount:
- 3.2.1 2014/15 BC Fiscal Year: 45 percent;
- 3.2.2 2015/16 BC Fiscal Year: 40 percent; and
- 3.2.3 2016/17 BC Fiscal Year: 0 percent.
- 3.3 Notwithstanding section 3.2 of this Appendix, if the Revenue Sharing Transition Calculation for BC Fiscal years 2014/15 and 2015/16 under section 3.1 provides:
1. an amount calculated under sections 1.2 and 2.1 of this Appendix that is equal to or greater than the annual payments received under the *Comox First Nation Forest Agreement (2005)*, then the K'ómoks First Nation shall only receive the annual payments described by the Revenue Sharing Transition Calculation in section 3.1 for BC Fiscal Years 2014/15 and 2015/16;

2. 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 *Comox First Nation Forest Agreement (2005)*, then the K'ómoks First Nation shall only receive an annual payment for BC fiscal Years 2014/15 and 2015/16 that is equal to the annual payment received under the *Comox First Nation Forest Agreement (2005)*.

**APPENDIX D**  
**Band Council Resolution Appointing**  
**the**  
**Recipient Entity for this Agreement (“Designate”)**

## APPENDIX E

### Statement of Community Priorities

(Example only)

| Community Priority                                 | Annual Amount |            |              | Outcomes | Measurement Criteria |
|----------------------------------------------------|---------------|------------|--------------|----------|----------------------|
|                                                    | 2014/2015     | 2015/16    | 2016/17      |          |                      |
| NATURAL RESOURCE MANAGEMENT CONSULTATION PROCESSES | \$ 90,456.90  | \$ 90,000. | \$ 90,000.00 |          |                      |
| CULTURAL ACTIVITIES                                | \$ 35,000.00  | \$ 35,000  | \$ 35,000.00 |          |                      |
|                                                    | \$ 52,169.10  | \$ 15,000  | \$ 15,000.00 |          |                      |
|                                                    | \$            | \$         | \$           |          |                      |
|                                                    | \$            | \$         | \$           |          |                      |
| Total                                              | \$ 177,626.   | \$ 140,000 | \$ 140,000.  |          |                      |

## APPENDIX F

### Statement of Community Priorities

#### Annual Report

(Example only)

| Socio-economic Priority                 | 2014/15<br>Planned<br>Expenditures | 2014/15<br>Actual<br>Expenditures | Outcomes<br>Achieved | Variance<br>Explanation |
|-----------------------------------------|------------------------------------|-----------------------------------|----------------------|-------------------------|
|                                         | \$                                 | \$                                |                      |                         |
|                                         | \$                                 | \$                                |                      |                         |
|                                         | \$                                 | \$                                |                      |                         |
|                                         | \$                                 | \$                                |                      |                         |
|                                         | \$                                 | \$                                |                      |                         |
| Subtotal                                | \$                                 | \$                                | —                    | —                       |
| Carry forward<br>to next fiscal<br>year | \$                                 | \$                                | —                    | —                       |
| Total                                   | \$                                 | \$                                | —                    | —                       |