



FORESTRY FUND AGREEMENT

This Agreement is dated for reference September 1, 2015

BETWEEN:

Her Majesty the Queen in right of the Province of British Columbia, as represented by the Minister of Aboriginal Relations and Reconciliation and the Minister of Forests Lands and Natural Resource Operations

(“the Province”)

AND:

‘Namgis First Nation, on behalf of itself and its Members, as represented by the Chief and Council

(“Namgis”)

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

WHEREAS:

- A. ‘Namgis, the Province and Canada are in the advanced stages of negotiations of an Agreement-in-Principle in accordance with Stage 4 of the British Columbia Treaty Commission process.
- B. The Province, ‘Namgis and Western Forest Products Incorporated entered into the ‘Namgis Forestry and Treaty Enhancement Memorandum of Understanding, dated May 16, 2013 (the “Treaty Enhancement MOU”).
- C. This Agreement will provide ‘Namgis with transitional economic benefits in advance of a Final Agreement and is in the spirit and vision of the New Relationship.

NOW THEREFORE the Parties, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, agree as follows:

ARTICLE 1 - INTERPRETATION

1.1 **Definitions.** In this Agreement:

“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*;

“AIP” means the ‘Namgis Agreement-in-Principle being negotiated by the Parties and Canada in accordance with Stage 4 of the British Columbia Treaty Commission process;

“AIP Date” means the date that the chief negotiators for the Province, ‘Namgis and Canada initial an AIP as part of completing Stage 4 of the British Columbia Treaty Commission process;

“Annual Amount” means the amount determined in accordance with Schedule 2;

“Annual Forestry Fund Amount” means the amount determined by the formula set out in Schedule 2;

“Annual Payment Cap” means:

- (a) \$400,000 for a BC Fiscal Year ending prior to the AIP Date, and
- (b) \$600,000 for a BC Fiscal Year ending after the AIP Date but before the date that the Parties and Canada initial a Final Agreement;

“Annual Volume of Harvested Timber” means the actual annual volume in cubic metres (m³) of all species and all grades of timber, excluding waste and rejects, harvested from the Lands in each BC Fiscal Year except:

- (a) all grade X, Y and Z timber;
- (b) 33% of grade U Douglas Fir and Hemlock; and
- (c) all other species of grade U timber.

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

“Confidential Provisions” means the provisions of this Agreement referred to in 9.1;

“Chief” means a “chief” within the meaning of the *Indian Act*;

“Council” and “Band Council” mean the elected “council” within the meaning of the *Indian Act*;

“Effective Date” means the date on which the ‘Namgis Treaty Settlement Lands Operating Agreement comes into effect;

“Final Agreement” means the Final Agreement to be concluded by the Parties and Canada at the conclusion of Stage 5 of the British Columbia Treaty Commission process;

“Final Agreement Date” means the date on which the Final Agreement comes into effect;

“Forestry Fund” means the fund established by the Province under 5.1;

“Forestry Fund Agreement” means this Agreement;

“Harvest Billing System” means the scale data management and invoicing system used by the Ministry of Forest, Lands and Natural Resource Operations;

“Lands” means those lands within TFL 37 and TFL 39 identified as proposed 'Namgis treaty settlement land and outlined in the maps attached as Schedule 1;

“Member” means an individual who is a “member of the band,” as that phrase is defined in the *Indian Act*, of 'Namgis;

“'Namgis” means 'Namgis First Nation, a “band” as that term is defined in the *Indian Act*;

“'Namgis Treaty Settlement Lands Operating Agreement” means a written agreement between 'Namgis, or its nominee, and Western Forest Products Incorporated which provides for the harvesting of timber on the Lands; and

“Revision Date” means 30 days before the Final Agreement Date.

1.2 Interpretation. For purposes of this Agreement:

- (a) “includes” and “including” are not intended to be limiting;
- (b) the headings are for convenience only, do not form a part of this Agreement and in no way define, limit, alter or enlarge the scope or meaning of any provision of this Agreement;
- (c) unless the context otherwise requires, words expressed in the singular include the plural and *vice versa*;
- (d) any reference to a corporate entity includes any predecessor or successor to such entity;
- (e) any reference to a statute includes all regulations made under it and any amendments or replacement of that statute or its regulations;

- (f) each and every release, covenant and other agreement given, and action to be taken, by the 'Namgis under this Agreement means the 'Namgis acting by and through its Chief and Council, and will be conclusively deemed to have been given, or taken, by the 'Namgis on its own behalf, and for and on behalf of its Members; and
- (g) 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 Schedules. The following Schedules are attached to and form part of this Agreement:

- Schedule "1" – Maps of Lands
- Schedule "2" – Calculation of Annual Amounts and Payments

ARTICLE 2 – PURPOSE

2.1 Purpose. The purpose of this Agreement is to:

- (a) support 'Namgis participation in the 'Namgis Treaty Settlement Lands Operating Agreement;
- (b) provide 'Namgis with economic benefits associated with the Lands in advance of a Final Agreement to enable it to pursue activities that will build governance capacity, develop a sustainable forestry program and enhance the social, economic and cultural well-being of its Members; and
- (c) demonstrate the commitment of the Parties to concluding the AIP and a Final Agreement.

2.2 This Agreement is intended to be a substitute for the "Chief Negotiators' Letter of Understanding" provided for under article 5 of the Treaty Enhancement MOU and the Parties agree that:

- (i) this Agreement satisfies their respective obligations under article 5 of the Treaty Enhancement MOU; and
- (ii) where there is any inconsistency between the terms of this Agreement and those of the Treaty Enhancement MOU, the terms of this Agreement prevail.

ARTICLE 3 – COMING INTO EFFECT AND TERMINATION

3.1 Term. This Agreement comes into effect on the Effective Date and, subject to termination under 3.3 or 3.4, will continue in effect until the fifth (5th) anniversary of the Effective Date or the Revision Date, whichever date first occurs.

- 3.2 Extension of Term.** If before the end of the Term, the Parties agree that there has been substantial progress towards concluding a Final Agreement, the Parties may agree to extend the Term.
- 3.3 Termination of the 'Namgis Treaty Settlement Lands Operating Agreement.** The 'Namgis will notify the Province if the 'Namgis Treaty Settlement Lands Operating Agreement is or will be terminated prior to the end of the Term and in the event of such termination, this Agreement will be deemed to terminate on the date the 'Namgis Treaty Settlement Lands Operating Agreement is terminated.
- 3.4 Termination.** This Agreement may be terminated in writing:
- (a) by the Parties on a date mutually agreed on by the Parties; or
 - (b) by the Province, in its sole discretion, if the AIP Date does not occur on or before the 2nd anniversary of the Effective Date.
- 3.5 Effect of termination.** If this Agreement is terminated under this Article 3, then except as provided in 6.4 and Article 9, the Parties are discharged and released from any further obligations under this Agreement as of the date of termination.

ARTICLE 4 - REPRESENTATIONS AND WARRANTIES

- 4.1 'Namgis Representations.** The 'Namgis 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:
- (a) it enters into this Agreement for, and on behalf of itself and its Members; and
 - (b) it, as represented by its Chief and Council, has the legal power, capacity and authority to enter into and to carry out its obligations under this Agreement on behalf of the 'Namgis and its Members.
- 4.2 Provincial Representations.** The Province represents and warrants to the 'Namgis, with the intent and understanding that they will be relied on by the 'Namgis in entering into this Agreement, that it has the legal power, capacity and authority to enter into this Agreement.
- 4.3 Joint Representations.** 'Namgis and the Province each represent and warrant to the other that they are mandated to negotiate an AIP and a Final Agreement, subject to approval or ratification as applicable.

ARTICLE 5 – FORESTRY FUND

- 5.1 Establishment of Forestry Fund.** The Province will establish a Forestry Fund for the purpose of making payments under this Agreement (the “Forestry Fund”).
- 5.2 Determination of volume.** The Province will determine the Annual Volume of Harvested Timber on the basis of the audited harvest volume information available through the Harvest Billing System.
- 5.3 Annual Forestry Fund Amount.** As soon as practicable after June 30th of each BC Fiscal year, and in any event on or before September 30th of each BC Fiscal year after the Effective Date, the Province will determine the Annual Forestry Fund Amount for the previous BC Fiscal Year in accordance with Schedule 2.
- 5.4 Volume adjustment.** The Parties acknowledge that harvest volume information in the Harvest Billing System is subject to adjustment and in the event that there is an adjustment that results in a different Annual Volume of Harvested Timber, the Annual Forestry Fund Amount will be adjusted to incorporate the difference.
- 5.5 Total Fund amount.** Subject to 5.6 and 5.7, the total amount of the Forestry Fund will be the sum of the Annual Forestry Fund Amounts.
- 5.6 Fund maximum.** Notwithstanding any other provision of this Agreement, or any agreement under 3.2 to extend the Term, the maximum amount of the Forestry Fund will not exceed \$11.5 million.
- 5.7 Final Agreement negotiations.** Notwithstanding 5.6 and 5.7, the Parties may revise the maximum amount of the Forestry Fund during Final Agreement negotiations based on the Parties best estimate of the actual volume of timber that will be harvested over the Term of the Agreement.
- 5.8 Payment.** On the Final Agreement Date 'Namgis will receive the total amount of the Forestry Fund less any Annual Amount payments made under Article 6.

ARTICLE 6 –ANNUAL AMOUNTS

- 6.1 Annual Amount.** On or before September 30th of each BC Fiscal year after the Effective Date, the Province will, subject to 6.2 and 'Namgis compliance with 8.2, pay 'Namgis an Annual Amount for the previous BC Fiscal Year as determined by the Province in accordance with Schedule 2.
- 6.2 Annual Payment Cap.** Subject to 6.3, the Province is not required to pay 'Namgis more than the Annual Payment Cap in any BC Fiscal Year and, in the event that an Annual Amount exceeds the Annual Payment Cap, the excess

amount will added to the Annual Amount for the next BC Fiscal Year which will continue to be subject to the Annual Payment Cap.

- 6.3 Final Agreement initialed.** Once a Final Agreement is initialed by the chief negotiators for the Province, 'Namgis and Canada, 6.2 will not apply.
- 6.4 Continuing obligation.** The Province's obligation under 6.2 to pay an amount in excess of the Annual Payment will continue despite the end of the Term or termination of this Agreement.

ARTICLE 7 – CONDITIONS PRECEDENT

- 7.1 Compliance requirements.** Notwithstanding any other provision of this Agreement, the Province's obligation to make a payment under Articles 5 or 6 is subject to:
- (a) the Province having received from 'Namgis a resolution made by its elected Council authorizing the 'Namgis's representatives named in the resolution to execute this Agreement on behalf of 'Namgis;
 - (b) 'Namgis being in compliance with the terms of this Agreement; and
 - (c) the payment of an Annual Amount not having been suspended under 8.3.
- 7.2 Appropriation.** Notwithstanding any other provision of this Agreement, the payment of money by the Province to 'Namgis 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 the Province in any fiscal year, when any expenditure in respect of an obligation may be required, to make that expenditure; and
 - (b) Treasury board not having controlled or limited, pursuant to the *Financial Administration Act*, expenditure under any appropriation referred to in (a).

ARTICLE 8 – ACKNOWLEDGEMENT AND COVENANT

- 8.1 Acknowledgement.** 'Namgis acknowledge that the economic benefits provided under this Agreement constitute a contribution towards the reconciliation of the Province's and 'Namgis interests in the settlement of 'Namgis Aboriginal Interests through treaty negotiation and that such benefits are derived from forest development activities carried out on the Lands pursuant to the 'Namgis Treaty Settlement Lands Operating Agreement.

- 8.2 Covenant.** In consideration of the economic benefits provided under this Agreement, including the receipt of Annual Amounts prior to the Final Agreement Date in accordance with Article 6, 'Namgis covenants and agrees that during the Term:
- (a) it will not challenge, by way of legal proceedings or otherwise, or support a challenge brought by way of legal proceedings or otherwise, any statutory decision made during the Term with respect to forest development on the Lands or forest development activity carried out on the Lands pursuant to such decision; and
 - (b) it 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 that is inconsistent with (a).
- 8.3 Proceedings inconsistent with covenant.** Notwithstanding any other provision of this Agreement, the Province may suspend or cancel a payment and may terminate this Agreement at any time by written notice where 'Namgis initiates or supports a challenge contrary to 8.2(a).

ARTICLE 9 – CONFIDENTIALITY

- 9.1 Confidential provisions.** The Parties acknowledge and agree that the calculations, and formulas that are set out in Schedule 2 to determine the Annual Forestry Fund Amount and the Annual Amount, and the resulting amounts, are confidential in nature ("Confidential Provisions"), the disclosure of which could reasonably be expected to harm:
- (a) the conduct by the government of British Columbia of relations between that government and an aboriginal government;
 - (b) the conduct of negotiations relating to a treaty between the Parties and Canada; and
 - (c) the financial or economic interests of a public body or the government of British Columbia.
- 9.2 No disclosure.** 'Namgis covenants and agrees that:
- (a) it will not disclose the Confidential Provisions except as provided for in this Agreement;
 - (b) it may only disclose the Confidential Provisions to its employees and professional advisors who are required to know the Confidential Provisions

in order to act on behalf of or advise 'Namgis with respect to this agreement;

- (c) prior to disclosing the Confidential Provisions to its employees or its professional advisors under (b) it will ensure that they have signed an agreement that imposes the same restrictions as this Agreement with respect to the disclosure of the Confidential Provisions;
- (d) it may only disclose the Confidential Provisions to its Members verbally and:
 - (i) will not prepare or distribute any materials containing the Confidential Provisions;
 - (ii) at any meeting where the Confidential Provisions may be discussed, it will require that Members sign a meeting attendance sheet which states in plain language that they have a legal obligation under the Agreement to not disclose Confidential Provisions; and
 - (iii) prior to any verbal disclosure of the Confidential Provisions, it will advise the Members of the legal obligation under the Agreement to not disclose the Confidential Provisions and will emphasize to the Members the importance of maintaining confidentiality with respect to the information provided;
- (e) it will not publish, release or permit to be published or released the Confidential Provisions except with the written consent of the Province and then only to the extent that:
 - (i) the release of the Confidential Provisions is required by law, or
 - (ii) the Confidential Provisions is or becomes publicly known in circumstances that do not involve any breach of this Agreement;
- (f) if it is required to disclose the Confidential Provisions under (e)(i) it will notify the Province as soon as practicable after becoming aware of the disclosure requirement; and,
- (g) it will not copy, store or reproduce the Confidential Provisions unless and until it has established policies and procedures to ensure that:
 - (i) the Confidential Provisions that are disclosed to its employees or professional advisors in accordance with (b) and (c) are not copied or reproduced in any form, and
 - (ii) the Confidential Provisions are “blacked out”/redacted from this Agreement where this Agreement is copied or reproduced in any form.

9.3 Acknowledgement. 'Namgis acknowledges that any unauthorized disclosure of the Confidential Provisions will cause harm to the Province which is not compensable in damages and for which equitable relief, including anticipatory equitable relief, will provide the only appropriate remedy.

ARTICLE 10 – EXPENDITURES and ANNUAL REPORTS

- 10.1 Expenditures.** 'Namgis covenants and agrees that all the monies received under this Agreement, aside from reasonable administrative expenses, will be used to pursue activities that will build governance capacity, develop a sustainable forestry program or enhance the social, economic and cultural well-being of its Members.
- 10.2 Annual report.** Within 90 days of the end of each BC Fiscal Year, 'Namgis will prepare an annual report identifying all expenditures of monies received under this Agreement since the date of the last such report, or in the case of the first such report, since the Effective Date, and will confirm that, aside from reasonable administrative expenses, all such expenditures were made in accordance with 10.1.
- 10.3 Audit.** The Province may, at its sole discretion and at the sole expense of 'Namgis, require an audit of the expenditures made to determine that all such expenditures were made in accordance with 10.1.
- 10.4 Publication.** The annual report referred to in 10.2 will be published:
- (a) by 'Namgis within 90 days of the end of each BC Fiscal Year; and
 - (b) in a manner that can reasonably be expected to bring the information to the attention of its Members and the public.

ARTICLE 11 – VOLUME REVIEW

11.1 Review of Harvest Volume. Either Party may request a meeting with the other to review and discuss any concerns it may have with respect to the volume of timber that has been or is expected to be harvested under the 'Namgis Treaty Settlement Lands Operating Agreement and upon such request, the Parties will meet within 30 days.

ARTICLE 12 - DISPUTE RESOLUTION

- 12.1 Representatives.** If a dispute arises between the Province and 'Namgis regarding the interpretation of a provision of this Agreement, the Parties or their duly appointed representatives will meet as soon as is practicable to attempt to resolve the dispute.
- 12.2 Senior Representatives.** If the Parties are unable to resolve differences at the appropriate level, the interpretation issue will be raised to more senior levels of the Province and the 'Namgis.

- 12.3 Other Means.** The Parties may choose other appropriate approaches to assist in reaching resolution of the interpretation issue.

ARTICLE 13 – NOTICES

- 13.1 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, e-mail or facsimile copier, when received by the Parties at the addresses as follows:

if to the Province:

Deputy Minister
Ministry of Aboriginal Relations and Reconciliation
PO Box 9100, Stn. Prov. Govt.
Victoria BC V8W 9B1

Fax: (250) 387-6073

and if to 'Namgis

'Namgis
PO Box 210
Alert Bay, BC V0N1A0
Attention: Chief Councillor

Fax: (250) 974-5900

- 13.2 Change of Address.** Either Party may, from time to time, give notice to the other 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 13.1, supersede any previous address or facsimile number for the Party giving such notice.


ARTICLE 14 - GENERAL

- 14.1 Entire Agreement.** This Agreement is the entire agreement between the Parties with respect of the subject matter of this Agreement.
- 14.2 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.

- 14.3 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.
- 14.4 Successors.** This Agreement will enure to the benefit of and be binding on the 'Namgis and its successors and the Province.
- 14.5 No Admissions.** Nothing in this Agreement will be construed as:
- (a) an admission by the Province of the validity of, or any fact or liability in relation to, any claim relating to alleged past or future infringements of 'Namgis Aboriginal Interests;
 - (b) an admission or acknowledgment by the Province of any obligation to provide financial, economic or other compensation, including those in this Agreement, as part of the Province'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.
- 14.6 Not a Treaty.** This Agreement does not:
- (a) constitute a treaty or land claims agreement within the meaning of section 25 or 35 of the *Constitution Act, 1982* (Canada); or
 - (b) recognize, affirm, abrogate or derogate from any First Nation's Aboriginal Interests.
- 14.7 No Fettering.** Nothing in this Agreement is to be construed as interfering with, or fettering in any manner, the exercise by the Province or its agencies of any statutory, prerogative, executive or legislative power or duty.
- 14.8 Amendment.** No amendment to this Agreement is effective unless it is agreed to in writing and signed by the Parties.
- 14.9 Governing Law.** This Agreement will be governed by and construed in accordance with the laws of the Province of British Columbia.
- 14.10 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 15 or any other method agreed to by the Parties.
- 14.11** Nothing in this Agreement precludes the Parties from negotiating any economic opportunities or benefits related to other forestry activities in the future.

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

Signed on behalf of the 'Namgis by



Chief Debra Hanuse

August 14, 2015

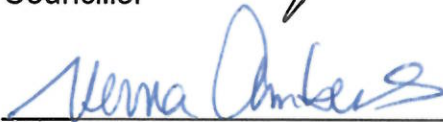
Date of execution



Councillor


August 14, 2015

Date of execution



Witness of 'Namgis signatures

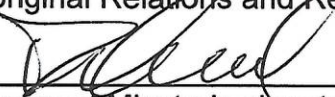
Signed on behalf of Her Majesty the Queen In Right of the Province of British Columbia by




Minister John Rustad
Aboriginal Relations and Reconciliation

Sept. 9, 2015

Date of execution



Witness of Minister's signature



Minister Steve Thomson
Forests Lands and Natural Resource
Operations

Sept 9 2015

Date of execution



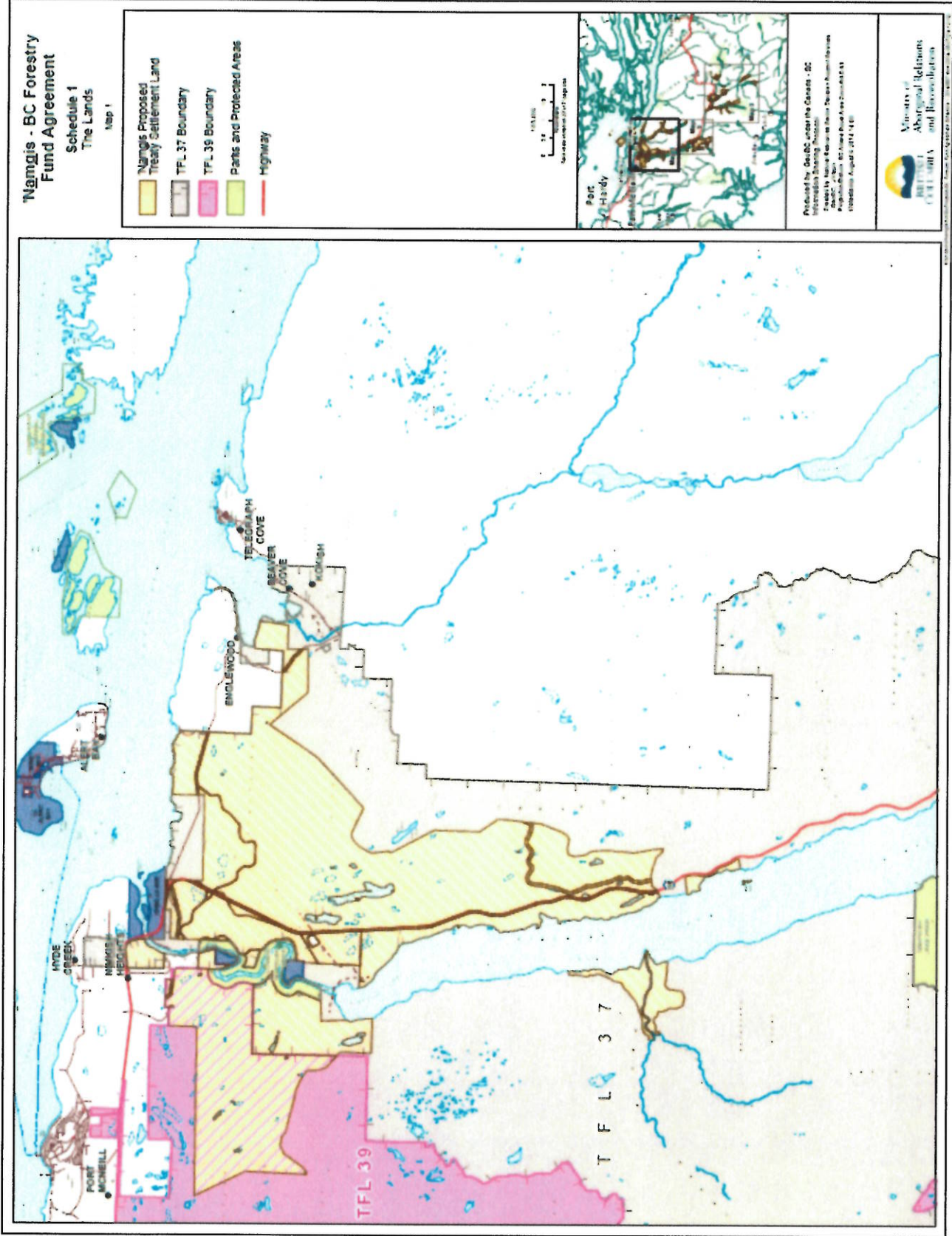
Witness of Minister's signature

Blank page

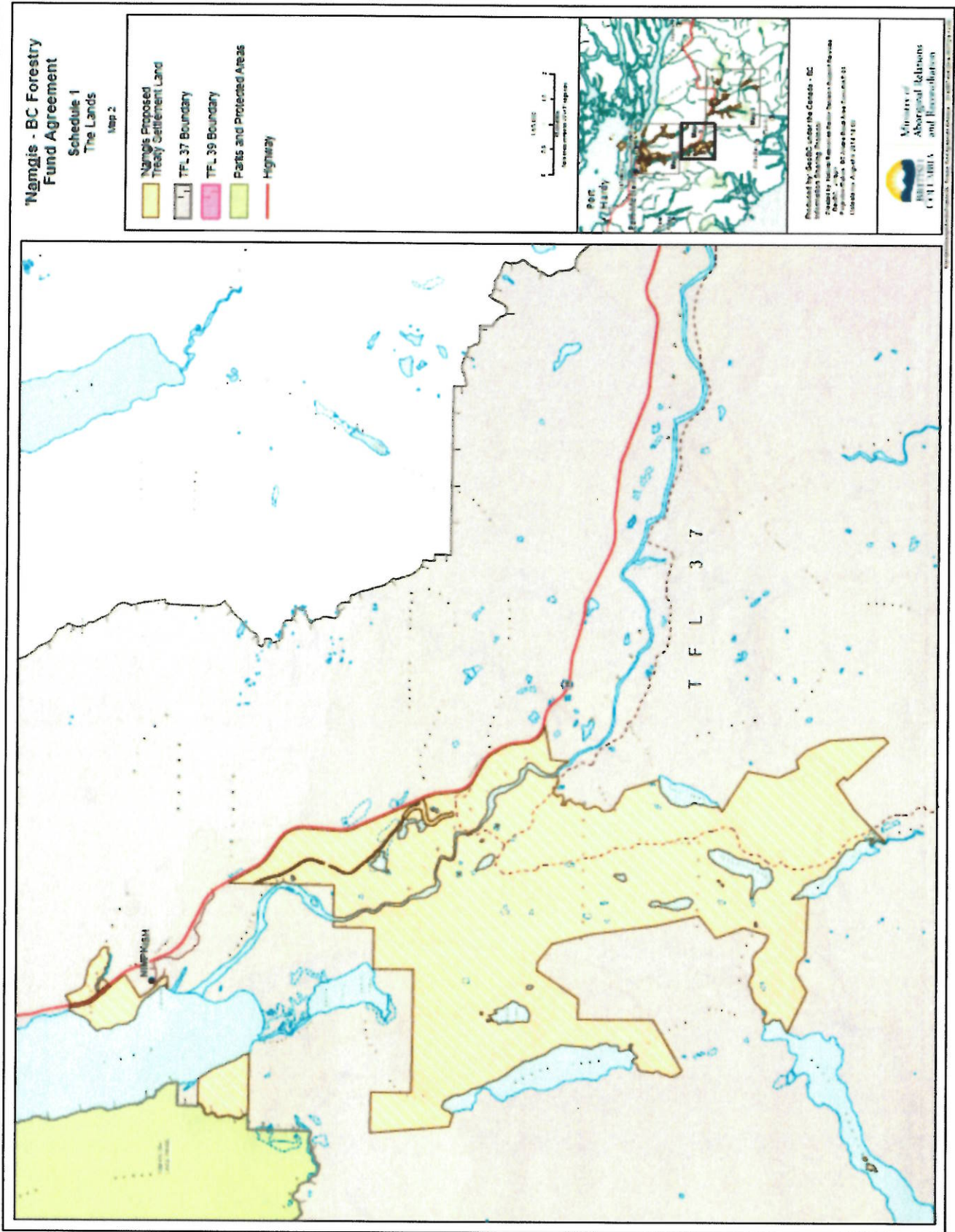
SCHEDULE 1

Map of lands within TFL 37 and TFL 39 identified as proposed 'Namgis treaty settlement land

Date: August 8, 2014



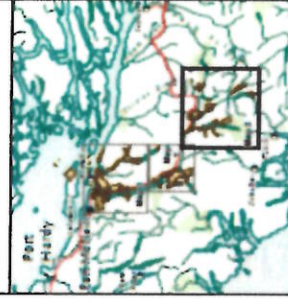
Date: August 8, 2014



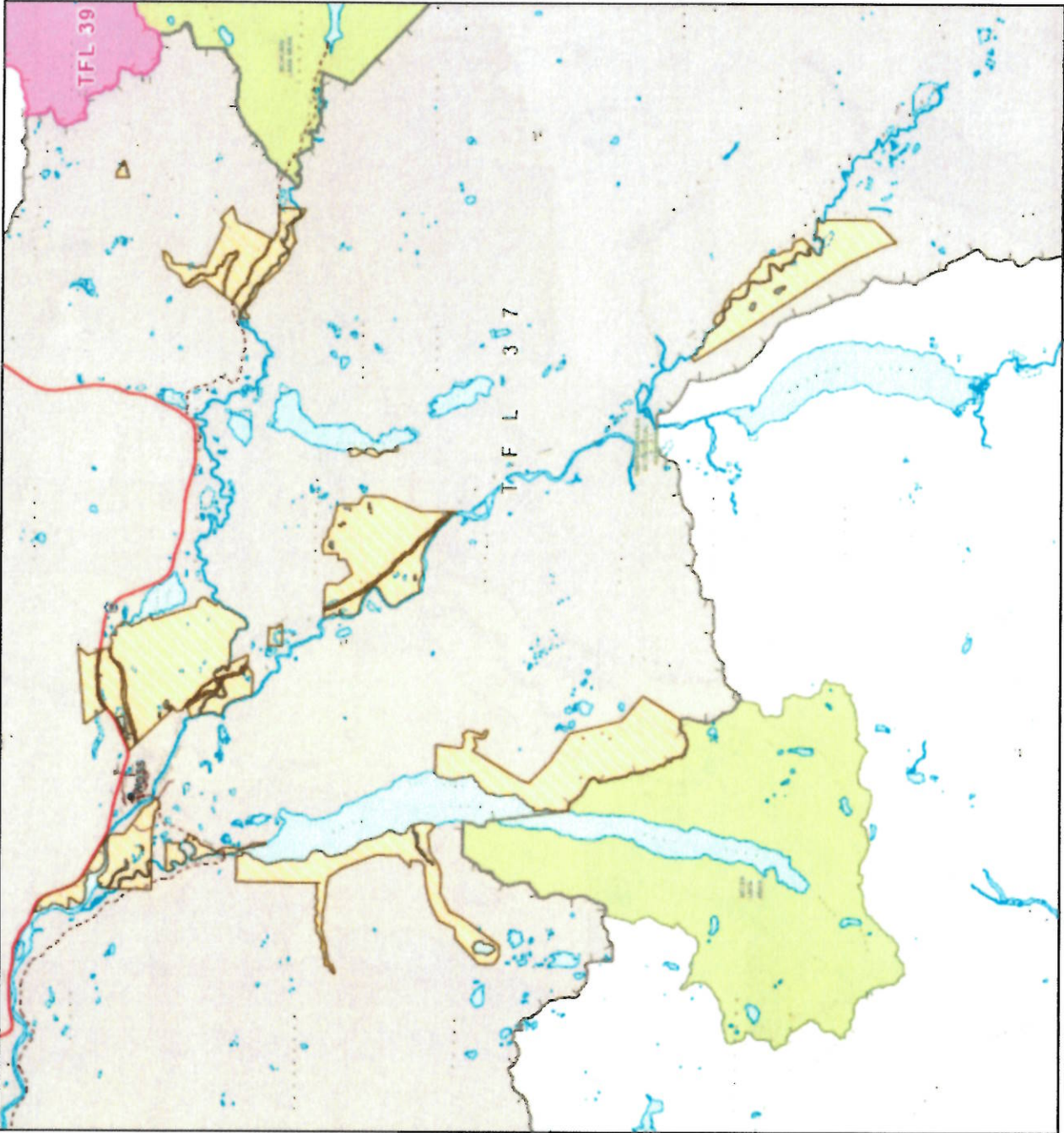
Date: August 8, 2014

Namgis - BC Forestry Fund Agreement Schedule 1 The Lands Map 3

- Namgis Proposed Treaty Settlement Land
- TFL 37 Boundary
- TFL 39 Boundary
- Parks and Protected Areas
- Highway



Produced by GeoBC under the Access to Information Act / Produced by the BC Ministry of Forests, Lands, Natural Resource Operations and Rural Development under the Access to Information Act
Copyright: August 2014 030



CONFIDENTIAL INFORMATION

SCHEDULE 2 – CALCULATION OF ANNUAL AMOUNTS AND PAYMENTS

REDACTED
See Article 9

--- End of Document---