

KWADACHA NATION RECONCILIATION FRAMEWORK AGREEMENT

This Kwadacha Nation Reconciliation Framework Agreement (the “Agreement”) is dated February 16, 2024 (the “Effective Date”)

BETWEEN:

His Majesty the King in Right of the Province of British Columbia,
as represented by the Minister of Indigenous Relations and
Reconciliation

(“British Columbia”)

AND:

Kwadacha Nation, on its own behalf and on behalf of its members

(“Kwadacha”)

(each a “Party”, and collectively the “Parties”)

WHEREAS:

- A. British Columbia and Kwadacha share an interest in improving the socio-cultural and economic well-being of Kwadacha and its members;
- B. The Parties acknowledge the importance of their relationship and are exploring an ongoing relationship of reconciliation;
- C. In November 2008, Kwadacha, British Columbia and BC Hydro entered into the Final Agreement relating to the W.A.C. Bennet Dam.
- D. In March 2017, Kwadacha and British Columbia entered an Agreement Establishing a G2G Table Regarding the Kemess Underground Project. The Parties intend to strengthen their government-to-government relationship in respect of minerals and mining activity in Kwadacha’s territory;
- E. In January 2020, Kwadacha and British Columbia entered the Kwadacha Nation Forestry & Range Consultation and Revenue Sharing Agreement;
- F. In September 2022, British Columbia, Kwadacha and member Nations of the 3Nations Society entered into the 3Nations-BC Regional Partnership Agreement to strengthen community well-being in the Nations by building and restoring healthy connections amongst the families and communities while strengthening the practices of traditional ways, based on wholistic values that are embedded in culture;
- G. In March 2023, British Columbia and Kwadacha entered into the Mackenzie Project Grant Funding Agreement to support healthy communities and members, economic growth, diversification, accessibility, safe access and job creation in the Kwadacha community in a way that also benefits local businesses in forestry and construction, and fosters resiliency;

- H. On November 22, 2023, the Parties entered a Government-to-Government Letter of Agreement with the intended purpose of establishing a Government-to-Government table;
- I. Kwadacha has a long-term vision that includes sustainably using the resources in its territory in a manner that secures direct and meaningful economic benefits for Kwadacha and its members, and ensures that the resources that provide the basis for the exercise of its Aboriginal title, rights, and interests ("**Kwadacha Rights**"), which Kwadacha Rights are recognized and affirmed by section 35(1) of the *Constitution Act, 1982*, are sustained;
- J. Kwadacha has expressed to British Columbia its concerns regarding ongoing impacts to Kwadacha Rights, including (but not limited to) because of: (i) unsustainable forestry practices and harvesting rates; (ii) extensive mining exploration activities and past and forthcoming mining developments; (iii) the construction of the W.A.C. Bennett Dam and the corresponding Williston Reservoir; and (iv) significant infrastructure (including housing) hurdles and needs of its community;
- K. British Columbia wishes to support Kwadacha in addressing challenges in its territory and its community;
- L. British Columbia is committed to working towards the implementation of the United Nations Declaration on the Rights of indigenous Peoples ("**UN Declaration**") and the Truth and Reconciliation Commission Calls to Action, by working in partnership with Indigenous peoples of British Columbia to establish positive government-to-government relationships built on a foundation of respect, rights and reconciliation; and
- M. British Columbia and Kwadacha agree that the outcome of this Agreement is intended to establish the mechanisms by which the Parties will work together in a collaborative, stepwise manner in relation to their negotiations aimed at advancing reconciliation between them, recognizing Kwadacha Rights, including its Right to self-determination, and working to strengthen their government-to-government relationship.

NOW THEREFORE, in consideration of the mutual covenants and agreements contained herein and for other good and valuable consideration, the receipt and sufficiency of which is hereby expressly acknowledged, the Parties hereby agree as follows:

Part 1 – Purpose

- 1.1 **Purpose.** This Agreement sets out a government-to-government engagement process and a stepwise approach to negotiations between the Parties with the goal of using reasonable efforts to reach a term sheet and Immediate Measures Agreement as described in Sections 4.1 and 4.2.
- 1.2 **Further Mandates.** The Parties acknowledge and agree that they will require new or additional mandates and approvals with respect to some of the matters set out in this Agreement. The Parties will explore approaches and seek to co-develop proposals to address matters set out in this Agreement to inform further mandates, and will use reasonable efforts to actively seek and secure such mandates. Notwithstanding the above, the Parties acknowledge that this Agreement does not guarantee the provision of such mandates or approval from their respective decision-makers. If a Party has concerns regarding the efforts being made by the other Party to actively seek and secure such mandates, the Party may request a meeting of the Leadership Table take place within 10 business days to discuss those concerns.

1.3 Stepwise approach to negotiations. The Parties will, immediately upon the execution of this Agreement, establish a government-to-government negotiation table (the “**G2G Table**”) comprised of a Leadership Table and a Technical Table, as set out in Part 6. The G2G Table will seek to reach agreement on innovative solutions to work towards reconciling the Parties’ interests in Kwadacha’s territory, in a stepwise manner, first through the Immediate Measures Agreement contemplated in 4, and then through subsequent government-to-government (“**G2G**”) agreements in accordance with Part 5.

Part 2 – Principles

2.1 Principles. The Parties will be guided by the following principles while carrying out their roles and responsibilities under this Agreement:

- (a) reconciliation is imperative to advancing their relationship, and entails a process of working together in a collaborative, meaningful and effective stepwise manner;
- (b) recognition of the inherent jurisdiction and legal orders of Kwadacha as the starting point for discussions aimed at interactions between British Columbia’s and Kwadacha’s jurisdictions and laws;
- (c) meaningful, incremental steps to achieve mutually beneficial outcomes are integral to advancing reconciliation; and
- (d) a true government-to-government relationship will be achieved when both Parties seek to avoid conflict by systematically moving away from an adversarial relationship to one that encourages communication, collaboration and proactive problem-solving.

2.2 Neighboring First Nations. The Parties acknowledge that neighbouring First Nations groups may have or assert Treaty or Aboriginal rights within Kwadacha’s territory. Where appropriate and agreed-to in advance, Kwadacha may engage with the Province of British Columbia with such neighbouring First Nations to discuss and clarify their respective interests.

2.3 Recognition of Jurisdiction. The Parties recognize their respective decision-making authorities and jurisdictions, and that each Party will make its own decisions based on its own laws, policies, responsibilities, and protocols.

2.4 Shared Decision-Making. The Parties agree to also apply the following guiding principles in advancing their shared decision-making:

- (a) seeking agreement or consistency between decisions can avoid conflict, lead to durable outcomes, and facilitate sustainable economic development in Kwadacha’s territory;
- (b) shared decision-making processes should be designed taking into account the significance of potential impacts (with Kwadacha’s Aboriginal perspective being considered in the assessment of significance);
- (c) shared decision-making processes should also be designed with a view to providing consistency across decisions that have the potential to cause similar impacts, being transparent (subject to confidentiality obligations) and predictable, all while allowing for flexibility as needed;
- (d) the Parties will avoid taking positions and will attempt to resolve issues in an interest-based manner; and

- (e) the Parties will participate in shared decision-making processes in good faith.

Part 3 – Forestry Revenue-Sharing

- 3.1 **Forestry Revenue Sharing.** The Parties aim to conclude, as soon as practicable, and no later than March 31, 2024, a Forest Consultation and Revenue-Sharing Agreement (“FCRSA”) which provides Kwadacha with an annual forestry revenue-sharing payment calculated in accordance with the interim new fiscal policy, for a term of three years.
- 3.2 **Payment Structure.** The Parties acknowledge that the FCRSA payment structure will reflect the highest possible revenue-sharing percentage under the interim new fiscal policy and will allow for increases during the term where such increases are in accordance with the interim new fiscal policy.
- 3.3 **Other Agreements.** For greater certainty, nothing in this Agreement limits the ability of Kwadacha to negotiate other economic benefits related to forestry or other resource development projects.

Part 4 – Immediate Measures Agreement

- 4.1 **Term Sheet.** The Technical Team is tasked with developing a term sheet by April 15, 2024 to capture the Parties intentions regarding each of the matters in Section 4.2, including any recommendations, if applicable, that a matter from Section 4.2 be explored as part of a subsequent G2G agreement as set out in Section 5.2 instead of as part of the Immediate Measures Agreement, and provide same to the Leadership Table for review and approval to seek the necessary mandates to negotiate the Immediate Measures Agreement.
- 4.2 **Immediate Measures Agreement.** The Parties agree to use reasonable efforts to seek appropriate mandates, guided by existing policy where applicable and in accordance with the principles set out in Part 2, and negotiate and seek to reach an Immediate Measures Agreement on the following matters (the “Immediate Measures Agreement”):
 - (a) specific geographic scope for the below listed measures;
 - (b) scope out a stepwise approach to forestry opportunities which includes the following:
 - (i) jointly undertake a comprehensive analysis of the forest sector economy to inform the tasks under 4.2(b)(ii) and application of 4.2(b) (iii);
 - (ii) identify possible new partnerships and other opportunities (including through tenure opportunities) to improve the forest economy in a manner that contributes towards reconciliation of Kwadacha Rights and Crown interests within Kwadacha’s territory;
 - (iii) develop recommendations regarding the implementation of the partnerships or opportunities identified in 4.2(b)(ii), as applicable, including to whom the recommendations are to be made; and
 - (iv) approach to shared decision making in respect to timber planning, including through the setting of the rate and flow of timber harvesting in accordance with ecosystem planning driven by Kwadacha stewardship laws and principles, subject to Section 2.2, initially within Kwadacha’s First Nation Wood Land Licence which would inform recommendations for broader application.

- (c) approaches and funding to:
 - (i) enable Kwadacha and Kwadacha businesses to meaningfully participate in the resource economies and other economies, including tourism, forestry, mining, construction and real estate;
 - (ii) address Kwadacha's critical community infrastructure (including housing and community centre) needs; and
 - (iii) support Kwadacha's community safety and Kwadacha's role as stewards of the land;
- (d) approaches to shared decision-making on Mines Act authorizations and other natural resource decisions as agreed to by the Parties;
- (e) scope out approaches to shared decision-making on environmental assessments for proposed projects, including mines, in Kwadacha's territory;
- (f) scope out approaches to protect and secure atmospheric benefits for Kwadacha in respect of areas of high biodiversity value including forest carbon opportunities within Kwadacha's territory;
- (g) opportunities to improve emergency preparedness, management and resilience of community, including consideration of a secondary egress route from Fort Ware; and
- (h) structures and processes for the Parties to build and enhance their government-to-government relationships in relation to the above.

Part 5 – Future Government-to-Government Agreements

- 5.1 Kwadacha's Priority Areas.** Schedule "A" lists several priority areas identified by Kwadacha, which Kwadacha is interested in discussing and exploring with British Columbia as part of the subsequent G2G Agreements described in Section 5.2 ("**Priority Areas**"). The Parties acknowledge that (i) Schedule "A" is included for information purposes only, (ii) British Columbia has not expressed its views on or agreed to negotiate agreements on these Priority Areas at this time, and (iii) many of the Priority Areas require Canada's participation in negotiations. British Columbia will, however, engage with Kwadacha in good faith discussions on these Priority Areas in accordance with the principles set out in Part 2.
- 5.2 Subsequent G2G Agreement(s).** Upon completing negotiation of the Immediate Measures Agreement, the Parties intend to use reasonable efforts to scope and develop the outline, structure, and core elements of such further G2G agreement(s) as the basis for seeking new or additional mandates (with funding commitments) that may be required. The Parties' efforts in that regard will be focused on continuing to fulfill their respective commitments to continue their work together in a collaborative, stepwise manner towards ongoing reconciliation of Kwadacha Rights and British Columbia interests.
- 5.3 Shared Decision-Making.** Under Section 5.2 negotiate a broader agreement on shared decision-making on forestry matters that incorporates Kwadacha Indigenous knowledge and ecosystem-based decision-making into forestry tenure and AAC allocation decisions.
- 5.4 Involvement of Canada.** The Parties acknowledge and agree that in their discussions aimed at advancing reconciliation, discussions on the need for redress will likely arise. The Parties agree

to discuss and seek to reach agreement on the way the Government of Canada will be asked to join such discussions aimed at finding resolution through a tripartite government agreement.

Part 6 – Structures and Processes

6.1 Composition of G2G Table. The G2G Table will be comprised of a leadership table and a technical table, structured as follows:

- (a) The leadership table will meet as required to discuss and ensure the ongoing progress of negotiations and the effectiveness of the Technical Table. The leadership table will be comprised of the following individuals (the “**Leadership Table**”):

Kwadacha: Chief Darryl McCook
Deputy Chief Rasmussen McCook

British Columbia: Assistant Deputy Ministers, or their acting or delegated staff, from relevant Ministries (as applicable based on the issue before the Leadership Table)

Cory Waters, Chief Negotiator North Area, IRR

- (b) The technical table will work to develop solutions to the priorities identified by the Leadership Table, including strategic approaches to resolve operational issues that may arise. The technical table will be comprised of the following individuals (the “**Technical Table**”), a minimum of two will attend each session:

Kwadacha: Dennis Sterritt, Executive Director
Terry Kuzma, Senior Negotiator
Maya Stano, Legal Counsel

British Columbia: Director Indigenous Relations, Omineca, FOR
Ian Hollingshead, IRR
Rudi Mayser, WLRS
Senior Negotiation Lead, EMLI
Andrea Jarman, Legal Counsel

The Technical Table will invite members of the Leadership Table, as well as senior technical staff with program or subject matter expertise, from each of the Parties to contribute as needed.

- (c) The Parties may, from time to time and on written notice to the other Party, change their appointed representatives to the Leadership Table and Technical Table with such other individuals with similar qualifications and decision-making authority as the individual that they are replacing.
- (d) By agreement, the Parties may invite appropriate representatives of BC Hydro to participate in the Technical Table and the Leadership Table.

6.2 Dispute Resolution. Where an issue related to a topic under this Agreement cannot be adequately addressed, either Party may refer the issue to the Executive Directors or equivalent of the appropriate ministries and the Executive Director of Kwadacha, for direction or assistance. If the issue remains unresolved, the issue may be referred to the Leadership Table and relevant Assistant Deputy Ministers for resolution.

6.3 Information Sharing. The Parties recognize that to further the discussion regarding the topics identified in Part 4 as well as topics which may be discussed in subsequent G2G agreements, the Parties may need to share further information regarding such topics. Where such information is confidential, the Parties may enter into a Confidentiality Agreement prior to sharing the information. After such information is shared, the Parties may meet through the Technical Table and Leadership Table, as appropriate, to discuss the implications thereof to the G2G negotiations undertaken pursuant to this Agreement.

6.4 Kwadacha Knowledge or Information. Where Kwadacha shares information, the disclosure of which would be harmful to the interest of an Indigenous people as described in section 18.1 of the *Freedom of Information and Protection of Privacy Act* (British Columbia), with British Columbia for the purposes of this Agreement and that knowledge or information is identified as such by Kwadacha in writing to British Columbia ("**Kwadacha Knowledge or Information**"):

- (a) British Columbia will make all reasonable efforts to prevent the disclosure of that Kwadacha Knowledge or Information to the public, subject to the *Freedom of Information and Protection of Privacy Act* (British Columbia), or as otherwise required by law; and
- (b) Where British Columbia receives a request under the *Freedom of Information and Protection of Privacy Act* (British Columbia), for disclosure of Kwadacha Knowledge or Information, British Columbia will provide Kwadacha with a notice of the request and the opportunity to express Kwadacha's views regarding the disclosure as set out in sections 23 and 24 of the *Freedom of Information and Protection of Privacy Act* (British Columbia).

This Section 6.4 does not apply to information that is already in the public domain, including Remote Access to Archaeological Data and on other public websites.

6.5 Frequency and Locations of G2G Table Meetings.

- (a) Technical Table meetings may be held:
 - (i) initially, once every two weeks or as otherwise agreed-to by the Parties; and
 - (ii) following the completion of the term sheet in accordance with Section 4.1, at such other intervals as may be agreed to by the Parties from time to time.
- (b) Leadership Table meetings may be held on a quarterly-basis and as may be requested from time to time by one Party to the other.
- (c) The Parties acknowledge a preference for in-person meetings, which meeting locations may include Fort Ware, Prince George, Victoria and Vancouver, however the Parties will also accommodate virtual meetings and hybrid virtual/in-person meetings as needed.

6.6 Capacity Funding. The Parties acknowledge that British Columbia under agreement TP24IFP017 (incorporated by reference into this Agreement) has provided \$100,000 to support the negotiation and implementation of this Agreement ("**Capacity Funding Payments**"), payable in relation to the British Columbia fiscal year of 2023-2024 (ending on March 31, 2024).

6.7 Subsequent Capacity Funding Payments. The Province will make the following funding contributions to Kwadacha under this Agreement:

- (a) For fiscal Year 2023-2024, to be paid on or before March 31, 2024, \$350,000 to support implementation of the Agreement in Fiscal Year 2023-2024;

- (b) For fiscal Year 2024-2025, to be paid on or before June 30, 2024 upon receipt by the Province of a report and workplan as per Section 6.8:
 - (i) \$350,000 to support implementation of this Agreement; and
 - (ii) \$80,000 to support development of a critical community infrastructure feasibility plan; and
- (c) For fiscal Year 2025-2026, to be paid on or before June 30, 2025 upon receipt by the Province of a report and workplan as per Section 6.8, \$350,000 to support implementation of the Agreement in Fiscal Year 2025-2026.

6.8 Reports. British Columbia will provide funding to Kwadacha in the amounts set out in Section 6.7 (b) and (c) for each subsequent Fiscal Year as described in Section 6.7 (b) and (c) subject to Kwadacha having provided British Columbia with a report on or before May 1st of each year of the term of this Agreement, commencing on May 1, 2024, satisfactory to British Columbia, acting reasonably, setting out:

- (a) how the funds provided under this Agreement in respect of the prior Fiscal Year were used in a manner consistent with the purposes of this Agreement; and
- (b) a simple workplan of how the funds to be provided under this Agreement in respect of the current Fiscal Year will be used in a manner consistent with the purposes of this Agreement.

Part 7 – Term and Termination

7.1 Term. The term of this Agreement will commence on the date it is executed and will end on March 31, 2026 unless terminated earlier in accordance with Section 7.2.

7.2 Termination. This Agreement may be terminated prior to March 31, 2026 if:

- (a) the Parties agree that another agreement concluded pursuant to this Agreement effectively incorporates the commitments of this Agreement, such that this Agreement becomes redundant; or
- (b) either Party gives the other Party 60 days' written notice with reasons of their intent to terminate the Agreement, during which 60-day notice period the Parties will use good faith efforts to address the concerns set out in the written notice and thereby avoid termination. If such efforts are unsuccessful within such time period, this Agreement will terminate at the end of the 60 days' notice period.

Part 8 – General Provisions

8.1 Entire Agreement. This Agreement is the entire agreement between the Parties with respect of the subject matter of this Agreement.

8.2 Assignment. Unless the Parties otherwise agree, this Agreement and any rights or obligations under this Agreement may not be assigned, in whole or in part.

8.3 Survival. Section 6.4, 8.3, 8.5, 8.6 and 8.11 will survive termination of this Agreement, unless the Parties expressly terminate or modify the obligations described in these provisions through a subsequent written agreement.

- 8.4 Governing Law.** This Agreement will be governed by and construed in accordance with the laws of the Province of British Columbia.
- 8.5 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 by either Party; and,
 - (b) in any way limiting the position the Parties may take in any proceeding or in any discussion or negotiation between the Parties.
- 8.6 Not a Treaty.** The Parties agree that this Agreement does not:
- (a) constitute a treaty or land claim agreement within the meaning of section 25 and section 35 of the *Constitution Act, 1982*; and
 - (b) define, limit, amend, abrogate or derogate from any of Kwadacha Rights.
- 8.7 Conditions Precedent to Payments.** Notwithstanding any other provisions of this Agreement, the amount of any payment by British Columbia to Kwadacha under the terms of this Agreement is subject to:
- (a) Treasury Board, as defined in the *Financial Administration Act*, not having controlled or limited any expenditure under any appropriation necessary to make such payment; and
 - (b) sufficient monies being available in an appropriation, as defined in the *Financial Administration Act*, to enable British Columbia, in any fiscal year when any payment of money by British Columbia to Kwadacha falls due pursuant to this Agreement, to make that payment.
- 8.8 Amendment.** This Agreement may only be amended by agreement of the Parties in writing.
- 8.9 No Fettering.** Nothing in this Agreement is to be construed as interfering with, or fettering in any manner, the exercise of any decision-making authority.
- 8.10 Execution in Counterpart.** This Agreement may be executed in counterparts and by email, and such counterparts, when executed and delivered, will constitute an original and all such counterparts together will constitute one and the same agreement.
- 8.11 General Interpretation.** In this Agreement:
- (a) if a word or phrase is defined, then its other grammatical forms will have a corresponding meaning;
 - (b) the singular may include the plural and conversely, where context requires it, and a reference to a gender includes all genders;
 - (c) the words "include", "includes" and "including" are to be read as if followed by the words "without limitation";
 - (d) headings are for convenience only and do not form part of this Agreement nor affect its interpretation; and

- (e) where a reference is made to the Parties consulting with each other, discussing, working together collaboratively on, or jointly developing any document, plan or thing, or any other similar phrase, the Parties shall work diligently and in good faith to attempt to reach agreement without undue delay, provided that, for greater certainty, the Parties are not required to reach final agreement in respect of such document, plan or thing.

[Signature Page on Following Page]

IN WITNESS WHEREOF the Parties have executed this Agreement as of the Effective Date:

KWADACHA NATION

Per: 
Chief Darryl McCook

Date: Feb 16 2024


Witness

**PROVINCE OF BRITISH COLUMBIA,
as represented by the Minister of
Indigenous Relations and Reconciliation**

Per: 
Honourable Murray Rankin
Minister of Indigenous Relations and
Reconciliation

Date: Feb. 16, 2024


Witness

SCHEDULE "A"

KWADACHA PRIORITY AREAS

Kwadacha Priority Areas are:

1. avoidance, mitigation and accommodation of unavoidable impacts from resource development activities, including hydro, forestry and mining activities, in Kwadacha's territory, through various means, including:
 - 1.1 equitable revenue sharing;
 - 1.2 resolution of historic issues, including through compensation and, subject to Section 5.4 of the Agreement, redress;
 - 1.3 stewardship in accordance with Kwadacha laws, customs and protocols and land use planning;
 - 1.4 decision-making, including through the negotiation of an assessment framework agreement with the BC Environmental Assessment Office and consent-based agreements on specific proposed projects; and
 - 1.5 resolution of socio-economic and cultural issues associated with or arising from resource development activities;
2. impacts associated with road access to the remote Kwadacha community in Fort Ware, including but not limited to:
 - 2.1 addressing the health and safety risks arising from having only one road accessing the community by building a secondary road access; and
 - 2.2 dust impacts, including from the existing forestry service access road which impacts the health and safety of membership, including vulnerable Elders and youth;
3. critical infrastructure needs, including to address:
 - 3.1 housing shortages, and corresponding overcrowding with resulting health and safety impacts, with a need for new lands to build new housing on;
 - 3.2 housing maintenance issues; and
 - 3.3 community centre needs, as the current community centre is housed in the former band office building which has structural deficiencies, creating community-wide health and safety risks;

4. ongoing cumulative impacts to Kwadacha, its community and members, and its Kwadacha Rights resulting from the BC Hydro W.A.C. Bennett Dam and resulting Williston Reservoir within Kwadacha's territory;
5. impacts to areas of high biodiversity and cultural value within Kwadacha's territory, which requires an ecosystem-based resource management planning process with formalized land use designations within Kwadacha's territory and transfer of corresponding atmospheric benefits to Kwadacha to compensate from lost economic benefits and advance economic reconciliation;
6. advancement of economic development, including through:
 - 6.1 significant new forest tenure opportunities granted to Kwadacha within its territory, including long-term area-based and volume-based tenures in Timber Supply Areas ("TSAs") that intersect with Kwadacha's territory, such as the Mackenzie TSA and other applicable TSAs;
 - 6.2 an economic development fund to advance Kwadacha's self-sufficiency and to facilitate Kwadacha and Kwadacha businesses in meaningfully participating in the resource (including forestry and mining) economies and other economies, including tourism; and
 - 6.3 opportunities to facilitate Kwadacha and Kwadacha businesses meaningfully participating in the economy of the Province of British Columbia;
7. matters regarding wildlife health, population and ecosystems;
8. airport runway concerns, including potential change of active runway location to enable housing developments in the community (current runway cuts the community in half); and
9. other topics identified and agreed to by the Parties as priority areas during the term of this Agreement, including active Kwadacha participation in the review and amendments to British Columbia statutes and regulations.

