

ATMOSPHERIC BENEFIT AGREEMENT

THIS AGREEMENT made the 26 day of June, 2024 (the “**Effective Date**”)

BETWEEN:

HIS MAJESTY THE KING IN RIGHT OF THE PROVINCE OF BRITISH COLUMBIA, as represented jointly by the Ministers of Forests; Environment and Parks; and Indigenous Relations and Reconciliation.

(the “**Province**”)

AND

Tla-o-qui-aht First Nations, as represented by Chief and Council

(the “**First Nation**”)

(Each a “**Party**” and collectively, the “**Parties**”)

RECITALS:

A. The First Nation asserts that

- it has unceded Aboriginal title, responsibilities and rights to land, waters and (life, essence, resources) in the ḥaḥuuli (ha-houlth-ee) of the ḥaḥuuliḥ based on the First Nation’s ongoing relationship with the ḥaḥuuli (ha-houlth-ee) of the ḥaḥuuliḥ and the laws of nature.
- The Ha’wiih are the stewards and traditional representative title holders of the First Nation’s ha-huul-thee (traditional territory), and are duly authorized to make decisions and govern those lands and waters on behalf of the First Nation, pursuant to our own customary system of governance.

B. In 2022, the First Nation and the Province (through the Ministry of Forests and the Ministry of Water, Land and Stewardship) signed a Memorandum of Understanding that included the commitment to explore the feasibility of a forest carbon offset project, noting that carbon offset credit revenue is key to the feasibility of aligning the future use and management of forests in the Haahuulthii of the Tla-o-qui-aht Hawiih with the Land Use Vision of the First Nation.

C. In 2021, the First Nation and the Province (through the Ministry of Indigenous Relations and Reconciliation) signed hisiikcumyiu: Pathway Agreement, which

committed to engaging on a number of topics including atmospheric and resource revenue sharing.

- D. The First Nation wishes to change the management of the Project Site in a manner that will increase the amount of carbon sequestered from the atmosphere on the Project Site and generate Offset Units.
- E. Some or all portions of the Project Site are Crown Land as defined in the *Land Act*, RSBC 1996 c 245.
- F. In order to generate Offset Units from the Project, the EOPR requires persons claiming Offset Units to establish that they have acquired the following rights from every other person who could reasonably have a claim to those rights:
 - (a) entitlement to submit a Project Plan for the Project to the Director under GGIRCA; and
 - (b) entitlement to Offset Units or any other benefits issued in respect of the Project's Project Reductions and Project Removals.
- G. As between them, the Parties intend to clarify the First Nation's rights in respect of Atmospheric Benefits arising from the Project.

Now therefore in consideration of the premises and the covenants and agreements set out below, the Parties agree as follows:

1.0 DEFINITIONS

In this Agreement and in the above Recitals:

"Agreement" means this Atmospheric Benefit Agreement between the Parties, including any Schedules to this Agreement as may be amended from time to time in writing by the Parties;

"Atmospheric Benefits" means reductions in GHG caused by reduction or avoidance of GHG emissions or increases in removals of GHGs from the atmosphere, occurring at the Project Site, resulting from the implementation of the Project;

"Atmospheric Benefit Rights" means any proprietary or contractual entitlement to rights or benefits associated with the Atmospheric Benefits, including any entitlement, subject to rules and regulations applicable to an Emission Offset Program, to obtain Emission Offsets under such program, to seek approval or acceptance of a plan associated with the Project, or to obtain any benefit in respect of the Atmospheric Benefits, but does not include any possessory rights associated with carbon sequestered in Reservoirs;

"Baseline Scenario Emissions and Removals" means the GHG emissions to the atmosphere and removals of GHGs from the atmosphere determined in accordance with,

or assumed by, a Project Plan for the Project, for the purpose of calculating GHG emissions to, and removals from, the atmosphere, that would occur on the Project Site in the absence of the Project;

“Business Days” means all days excluding: Saturday, Sunday, statutory holidays and Monday immediately following a statutory holiday if the statutory holiday falls on a Saturday or Sunday;

“CCA” means an account under section 5 of the BC Carbon Registry Regulation that holds the Province’s allocation of Offset Units under Atmospheric Benefit Agreements and is used to address potential Government Reversal Events or other reversals caused by Provincial land management decisions;

“CCA Share” means the share of Offset Units issued to the CCA in respect of the Project, but for greater certainty does not include issuances to the Contingency Account;

“Contingency Account” has the meaning ascribed to it in GGIRCA;

“Crediting Period” has the meaning ascribed to it in EOPR;

“Director” has the meaning ascribed to it in GGIRCA;

“Effective Date” means the date ascribed on the first page of this Agreement;

“Emission Offset” means any tradable credit, offset or unit that represents an estimated atmospheric benefit from a GHG reduction project and is recognized or issued by an Emission Offset Program and used to offset GHG emissions from other sources, and, for greater clarity, includes an Offset Unit;

“Emission Offset Program” means a voluntary or regulatory program for the recognition or issuance of Emission Offsets, including the program for issuance of Offset Units established under GGIRCA;

“EOPR” means the Emission Offset Project Regulation, B.C. Reg 250/2015;

“First Nation’s Project Plan” means the Project Plan for the Project that is accepted by the Director and any amendments to that Project Plan that are approved by the Director, in accordance with the GGIRCA;

“FCOP” means the British Columbia Greenhouse Gas Offset Protocol: Forest Carbon, established under section 10 of GGIRCA, or such other protocol under section 10 of GGIRCA for forest carbon projects that is established from time to time;

“GGIRCA” means the *Greenhouse Gas Industrial Reporting and Control Act*, SBC 2014 c 29;

“GHG” means any or all of carbon dioxide, methane, nitrous oxide, hydrofluorocarbons, perfluorocarbons, and sulphur hexafluoride;

“Government Reversal Event” means an Impaired Project Reduction caused directly by Provincial government decision making on public land;

“Impaired Project Reduction” has the meaning ascribed to it in EOPR;

“Monitoring Report” has the meaning ascribed to it in EOPR;

“Offset Unit” has the meaning ascribed to it in GGIRCA;

“Park Act” means the *Park Act*, RSBC 1996 c 334;

“Parties” has the meaning ascribed above;

“Project” means the establishment of the conservancies listed in Schedule A by British Columbia order in council 350/2024 and management of same in accordance with the Park Act or other legislation applicable thereto from time to time during the Term. For greater certainty, “Project” includes the conservancies listed in Schedule A in the event that those conservancies, or any portion thereof are converted to another land designation with equivalent protection as a conservancy under the Park Act;

“Project Plan” has the meaning ascribed to it in EOPR;

“Project Reduction” has the meaning ascribed to it in EOPR;

“Project Removal” has the meaning ascribed to it in EOPR;

“Project Report” means a project report prepared in accordance with Division 3 of Part 2 of the EOPR;

“Project Report Period” has the meaning ascribed to it in EOPR;

“Project Site” means the site of the Project as set out in the attached Schedule A.

“Project Start Date” means the “start date” as defined in the EOPR for the Project;

“Proponent” means the First Nation, or, if the First Nation is not, in relation to the Project, the “project proponent” as defined by GGIRCA, the person who is the “project proponent” in relation to the Project as appointed by the First Nation from time to time by resolution of its Council;

“Reservoir” means a place where carbon is sequestered from the atmosphere in vegetation, including trees, and soils, but does not include underground geological formations;

“Reversal Event” has the meaning ascribed to it in EOPR;

“Term” means the term set out in section 10.1;

“Termination Date” means the earlier of:

- (a) 25 years from the earlier of the Project Start Date or acceptance by the Director of the Project Plan; or
- (b) the date this Agreement is terminated under Article 10; and

“Validation Statement” has the meaning ascribed to it in GGIRCA.

2.0 INTERPRETATION

2.1 In this Agreement:

- (a) “includes” and “including” are not intended to be limiting;
- (b) unless the context otherwise requires, references to sections by number or Schedules are to sections or Schedules, as applicable, of this Agreement;
- (c) unless otherwise specified, a reference to an enactment by name means the enactment of the Province by that name, as amended or replaced from time to time;
- (d) a reference to GGIRCA or another enactment includes regulations and other statutory instruments made under the authority of that enactment, including regulations or protocols;
- (e) the headings have been inserted for convenience of reference only and are not intended to describe, enlarge or restrict the scope or meaning of this Agreement or any provision of it; and
- (f) unless the context otherwise requires, words expressed in the singular include the plural and vice versa.

2.2 Schedules to this Agreement are only included for the purpose of the Schedule identified in the main body of the Agreement, and in the event of any conflict between the contents of a Schedule and the main body of the Agreement, the main body prevails.

3.0 PURPOSE OF AGREEMENT

3.1 **Purpose.** This Agreement defines the understanding and agreements between the Parties regarding ownership of Atmospheric Benefits, Atmospheric Benefit Rights, and the carrying out of the Project.

- 3.2 **Non-derogation.** Notwithstanding any other provision in this Agreement, the Parties acknowledge and agree that no provision of this Agreement shall prejudice, limit, or derogate from any Aboriginal or treaty rights or title. Further, nothing in this Agreement does or is intended to create or modify any Aboriginal or treaty rights or title.

4.0 OWNERSHIP OF ATMOSPHERIC BENEFITS

- 4.1 **Assertions and acknowledgements regarding claims to Atmospheric Benefits.** The Parties make the following assertions and acknowledgments as to the ownership of Atmospheric Benefits and Atmospheric Benefits Rights in the Project Site:

- (a) the Province asserts that, except in relation to established Aboriginal title lands, in the absence of any agreement or legislation to the contrary, the Province is the owner of any atmospheric benefits and associated atmospheric benefit rights, on land it owns in fee simple;
- (b) the First Nation asserts that it is the owner of the Atmospheric Benefits and associated Atmospheric Benefit Rights on lands where it claims Aboriginal rights or title;
- (c) the Parties acknowledge that other persons or entities may potentially claim ownership of Atmospheric Benefits and associated Atmospheric Benefit Rights, including:
 - (i) other Indigenous communities with overlapping claims in the Project Site; and
 - (ii) holders of leasehold interests or forest tenures from the Province;
- (d) the Parties assert that despite such potential claims acknowledged under section 4.1(c):
 - (i) holders of leasehold interests or forest tenures granted by the Province do not acquire ownership of Atmospheric Benefits or Atmospheric Benefit Rights as a result of holding such interests or tenures, or as a result of any measures taken as part of Project implementation that restrict harvesting;
 - (ii) no other person or entity has Atmospheric Benefits or Atmospheric Benefit Rights in relation to Project Site; and

- (iii) nothing in this Agreement imposes any obligations or restrictions on the First Nation, the Hawiith, or the First Nation's elected Chief and Council in regards to any such potential claims.

4.2 **Transfer of Province's rights to past Atmospheric Benefits.** Subject to this Agreement and without prejudice to any claims the First Nation has to ownership of Atmospheric Benefits and Atmospheric Benefit Rights independent of this Agreement, effective as of the date of the Validation Statement respecting the First Nation's Project Plan, the Province transfers to the First Nation all legal, beneficial or other interests the Province has in:

- (a) Atmospheric Benefits occurring between the Project Start Date and the date of the Validation Statement in respect of the First Nation's Project Plan; and
- (b) Atmospheric Benefit Rights associated with the Atmospheric Benefits referred to in section 4.2(a).

4.3 **Acquisition of Province's Rights to future Atmospheric Benefits.** Subject to this Agreement and without prejudice to any claims the First Nation has to ownership of Atmospheric Benefits and Atmospheric Benefit Rights independent of this Agreement, the Parties agree that in accordance with this Agreement, the First Nation will acquire any legal, beneficial or other interest the Province would otherwise have in:

- (a) Atmospheric Benefits arising in a Project Report Period starting on or after the date of the Validation Statement respecting the Project Plan and ending on or prior to the Termination Date; and
- (b) Atmospheric Benefit Rights associated with the Atmospheric Benefits referred to in section 4.3(a).

4.4 **Representation and warranty regarding ownership.** The Province represents and warrants as of the Project Start Date and as of the date of any Verification Statement made in respect of Atmospheric Benefits occurring during the Term that it has not transferred to any other party any Atmospheric Benefits or Atmospheric Benefit Rights or entered an agreement with any other party giving them rights whatsoever to the Atmospheric Benefits or Atmospheric Benefit Rights.

4.5 **Termination & removal effects on ownership.** Termination of this Agreement does not affect:

- (a) the First Nation's Atmospheric Benefit Rights in relation to Atmospheric Benefits occurring in a Project Report Period prior to the Termination Date;

- (b) the First Nation's entitlement to have a Project Plan in respect of such rights accepted by the Director; and
 - (c) the First Nation's ownership of Offset Units issued in relation to Atmospheric Benefits occurring in Project Report Periods prior to the Termination Date.
- 4.6 **Atmospheric Benefits occurring outside of Term.** For greater certainty, but without prejudice to any claims the First Nation has to ownership of Atmospheric Benefits and Atmospheric Benefit Rights independent of this Agreement, this Agreement does not provide the First Nation with ownership of Atmospheric Benefits occurring in Project Report Periods after the end of the Term or resulting Atmospheric Benefit Rights regardless of whether those benefits result from the carrying out of the Project.
- 4.7 **Emission Reductions accounting and reporting.** Nothing in this Agreement prohibits the Province from reporting GHG emission reductions or GHG removals occurring on forest land within the political boundaries of the Province of British Columbia, including the Project Site, for the purposes of Provincial GHG inventories or reporting progress towards, or outcomes related to, provincial GHG reduction targets.
- 4.8 **No claim by Carbon Neutral Government.** Notwithstanding section 4.7, the Province will not claim that the Atmospheric Benefits contribute to provincial public sector organizations' requirements under its carbon neutral government program, as legislated under the *Climate Change Accountability Act*, SBC 2007, c 42, unless the Province purchases Offset Units generated by the Project.
- 4.9 **International Rights.** The Parties acknowledge that any rights in relation to internationally transferred mitigation outcomes under Article 6.2 of the Paris Agreement or credits under Article 6.4 of the Paris Agreement or any other instruments created or recognized under international law are outside the jurisdiction of British Columbia and cannot be transferred or affirmed by this Agreement.
- 4.10 **Park Act.** Without fettering the ability of the minister responsible for the Park Act to administer it in accordance with the law, the Parties acknowledge and agree that, in accordance with section 9(9) of the Park Act, the rights and benefits provided under this Agreement will not hinder any development, improvement and use of any parks or conservancies in accordance with section 5(3.1) of the Park Act, respectively.

5.0 PROJECT DEVELOPMENT AND GENERATION AND DIVISION OF OFFSET UNITS

- 5.1 **First Nation to develop Project.** The First Nation represents that as of the Effective Date, the First Nation has carried out a feasibility study regarding the potential to generate Offset Units from implementation of the Project, and if the feasibility study indicates that generation of Offset Units from the Project is commercially viable and the First Nation therefore intends to:
- (a) cause the Proponent to prepare a Project Plan for the Project, and have the Project Plan validated and accepted by the Director, all in accordance with GGIRCA; and
 - (b) cause the Proponent to prepare Project Report(s) for the Project and have those Project Reports verified and submitted to the Director along with an application to the Director for issuance of Offset Units.
- 5.2 **FCOP.** Atmospheric Benefits resulting from the implementation of the Project must be quantified by FCOP. In addition to section 13.16, the Parties acknowledge and agree that, in the event of any changes made by the Province to the FCOP during the Term, including any cancellation or changes in the mandatory application of the FCOP during the Term, each of the Parties remain committed to upholding the scope of benefits and rights provided to the First Nation pursuant to this Agreement, and the Parties therefore agree to promptly meet in the event of any such proposed changes by the Province and use discuss in good faith means to continue such scope of benefits and rights to the First Nation notwithstanding such changes to the FCOP.
- 5.3 **Project to be developed under GGIRCA.** The Parties agree that, unless otherwise agreed-to in advance by the Parties, including as a result of discussions conducted pursuant to section 5.2, the First Nation will not attempt to have a Project Plan for the Project or Project Reports for the Project accepted or approved under any Emission Offset Program other than the program established by GGIRCA and will not attempt to have Offset Units in respect of the Project issued or recognized under any other program.
- 5.4 **Costs.** Subject to any other agreements on funding between the Parties, the Parties agree all costs associated with carrying out feasibility studies, and preparing, validating, verifying and submitting Project Plans, Project Reports and Monitoring Reports, or doing any other thing related to the generation of Offset Units from the Project shall be borne solely by the First Nation.

- 5.5 **No partnership, agency or joint venture.** The Parties acknowledge and agree nothing in this Agreement creates a business partnership, agency or joint venture between them, and neither Party will do anything that indicates or could reasonably be interpreted as indicating that it is an agent, representative or business partner of the other Party.

6.0 TRANSFER OF OFFSET UNITS

- 6.1 **Transfer of Offset Units to the Contingency Account.** The First Nation acknowledges that, to ensure that any Offset Units issued in relation to the Project represent permanent reductions in atmospheric GHG emissions, the Province in issuing Offset Units in respect of the Project will issue a percentage of the Offset Units determined in accordance with FCOP to a Contingency Account held by the Province.
- 6.2 **Transfer of Offset Units to CCA.** Subject to section 6.7, the First Nation agrees that it will cause the Proponent to, immediately upon any issuance of Offset Units associated with the Atmospheric Benefits, transfer to the Province's CCA 20% of the Offset Units issued in respect of the Project, excluding Offset Units issued to the Contingency Account (the "**CCA Share**").
- 6.3 **Use of CCA Share.** For the purposes of ensuring that any Offset Units issued in relation to the Project that are used to offset GHG emissions represent permanent reductions in atmospheric GHG emissions, the Province will manage a portion of the CCA Share for the purpose of mitigating the impact on the atmosphere of any Government Reversal Events.
- 6.4 **Pooled CCA.** The Province may pool the portion of the CCA Share referred to in section 6.3 with Offset Units derived from other projects and use a portion of the pooled Offset Units for the purposes of offsetting emissions to the atmosphere of carbon sequestered as result of those projects, provided that Offset Units from those other projects are also available to mitigate Government Reversal Events associated with the Project.
- 6.5 **Government Reversal Events.** If a Government Reversal Event associated with the Project occurs, the Province will, subject to availability, retire a number of Offset Units equal to the Reversal caused by the Government Reversal Event from the portion of the CCA Share referred to in section 6.3 or the portion of the pooled fund referred to in section 6.4. Alternatively, the Province may fulfill its obligations under this section by canceling or retiring Offset Units from the portion referred to in section 6.3 or 6.4. without applying the units to specific Government Reversal Events.

- 6.6 **Limited liability for Government Reversal Events.** The Province does not warrant the adequacy of its management policies or practices in relation to fully offsetting the impact of Government Reversal Events.
- 6.7 **Change of policy.** The Province represents that it is in the process of reviewing generally applicable Provincial policies and practices in relation to portion of Offset Units generated by a project that constitute the CCA Share, how the CCA Share is used, and how atmospheric benefit sharing agreements should deal with the risk of government decisions causing Government Reversal Events or Impaired Project Reductions, including but not limited to the provision of releases and indemnities. Accordingly, the Province agrees that:
- (a) if, as a result of such review, the Province makes any changes to such policies and practices, the Parties will promptly meet to discuss amendments to this agreement to allow the First Nation to benefit from any such changes to provincial policy; and
 - (b) the Parties will convene promptly after execution of this Agreement and will continue to meet on a regular basis thereafter to consider in good faith reassessing the terms of this Article 6 and in particular the proportion of Offset Units to be contributed by the First Nation to the CCA under Section 6.2, pooling of the CCA under Section 6.4, the release by the First Nation of the Province under Section 8.2(c) and the scope and extent of the indemnity provided by the First Nation to the Province under Article 9.

7.0 NO IMPLIED ENDORSEMENT, WARRANTY OR REPRESENTATIONS

- 7.1 **No endorsement.** The Parties agree that nothing in this Agreement implies an endorsement by the Province of the Project or constitutes an opinion of the Province or any provincial official that:
- (a) the Project would not have been carried out but for the incentive created by Emission Offsets;
 - (b) Baseline Scenario Emissions and Removals represent what would have occurred in the absence of the Project or the absence of the incentive created by Emission Offsets; or
 - (c) the Project or any related Project Plan meets the requirements under GGIRCA or any other Emission Offset Program.

- 7.2 **No warranties.** The Parties agree that the Province does not make any representation or warranty regarding:
- (a) the eligibility of any Project Plan associated with the Project to be accepted under the provisions of GGIRCA or any other Emission Offset Program;
 - (b) the qualification or quantification of the Atmospheric Benefits achieved by the Project under any Emission Offset Program or market relating to Offset Units; or
 - (c) the marketability or value of Offset Units.
- 7.3 **Acknowledgement regarding offset qualification.** The First Nation acknowledges that the First Nation's and Proponent's ability to convert Atmospheric Benefits or Atmospheric Benefit Rights into Offset Units is subject to the requirements of GGIRCA, and this Agreement does not obligate the Province or any other person to issue or allocate Offset Units to the First Nation or Proponent in respect of the Atmospheric Benefits achieved by the Project. Any issuance of Offset Units or acceptance of Project Plans under GGIRCA will be governed solely by GGIRCA.
- 7.4 **Acknowledgement regarding Offset Unit purchase.** The First Nation acknowledges that nothing in this Agreement implies an intention for the Province to purchase or have its agent purchase Offset Units from the Project.

8.0 MANAGEMENT OF THE LAND

- 8.1 **Land Management.** The Parties agree that nothing in this Agreement limits the Province or First Nation's authority to manage the Project Site or imposes conditions on the management of the Project Site.
- 8.2 **Project Risks.** The First Nation:
- (a) acknowledges that wildfire, windfall, insect infestation, drought, flood, disease and human disturbances, including trespass, or disturbances carried out, or authorized, by the First Nation, the Province or a party obtaining rights from the First Nation or the Province, (collectively "**Natural or Human Caused Disturbances**") are risks to the Project, and that Natural or Human Caused Disturbances could result in reductions in Project Reductions and corresponding revenue to the First Nation or Proponent from Offset Unit Sales, or liabilities under law applicable to proponents of emission offset projects;
 - (b) agrees that the Province is not responsible under this Agreement to ensure the continued existence, growth or health of the trees on the

Project Site or continued sequestration of carbon on the Project Site or other non-atmospheric reservoirs; and

- (c) releases the Province, its employees, officers and agents from all claims related to reductions in Atmospheric Benefits, Impairments of Project Reductions, Reversal Events or loss of sequestered carbon to the atmosphere caused by Natural or Human Caused Disturbances.

9.0 INDEMNITY

- 9.1 **Indemnity.** The First Nation will indemnify and save harmless the Province, its officers, employees and agents from and against all losses, liabilities, damages and claims, and all related costs and expenses that the Province or any of its officers, members, employees and agents may sustain, incur, suffer or be put to at any time, either before or after this Agreement ends, which are based upon, arise out of, or occur, directly or indirectly, as a result of this Agreement including any damages or claims relating to the quality, permanence or reversal of the Atmospheric Benefits acquired by the First Nation under this Agreement.

10.0 TERM, TERMINATION, AND WITHDRAWAL

- 10.1 **Term.** The Term of this Agreement is from the Effective Date to the Termination Date unless it is terminated earlier under this section 10.
- 10.2 **First Nation termination.** The First Nation may terminate this Agreement by providing the Province thirty (30) Business Days written notice of termination.
- 10.3 **Termination by Province.** Subject to section 10.5, the Province may terminate this Agreement upon thirty (30) Business Days written notice to the First Nation if:
 - (a) the First Nation is not in material compliance with its obligations under this Agreement;
 - (b) any representation or warranty made by the First Nation in this Agreement is untrue or incorrect;
 - (c) subject to section 10.6 and 13.16, GGIRCA, or regulations under it, are repealed or amended in a manner that no longer authorizes the issuance of Offset Units from the Project;
 - (d) subject to section 10.7, a Project Plan for the Project is not accepted by the Director within five (5) years of its submission to the Director; or

(e) the acceptance of the Project Plan for the Project is revoked in accordance with GGIRCA or the Crediting Period for the Project ends prior to the Termination Date.

10.4 **Effect of Termination.** Termination of this Agreement will not affect any liabilities or obligations of either Party arising before such termination or out of the events causing such termination.

10.5 **Opportunity for collaborative negotiation before termination.** The Province will not terminate under section 10.3 without first providing a reasonable opportunity for collaborative negotiation with the First Nation in accordance with section 12.

10.6 **Engagement on GGIRCA amendments.** The Province will engage the First Nation on proposed amendments to GGIRCA, or regulations under it, that may adversely affect the issuance of Offset Units from the Project or the rights of the First Nation under this Agreement.

10.7 **Delay in Project acceptance.** The Province may not terminate under section 10.3(d) if satisfied that the First Nation is making commercially reasonable efforts to obtain acceptance of a Project Plan for the Project and that there is a reasonable likelihood of Project acceptance.

11.0 COMMUNICATIONS AND INFORMATION EXCHANGE

11.1 **Cooperation in public statements.** The Parties each acknowledge and agree to provide to each other notice of intention to make written public communications relating to this Agreement and provide opportunity to review and comment on such communications before they are published or issued.

12.0 DISPUTE RESOLUTION

12.1 **Initial meeting.** The Parties are committed to seeking, in good faith, to promptly resolve any disputes that may arise in the implementation of this Agreement. Prior to engaging in the process set out in section 12.2, the Parties will meet to discuss and seek consensus on ways to resolve the dispute.

12.2 **Mediation.** If the dispute arising in the implementation of this Agreement is not resolved through collaborative negotiation in accordance with section 12.1 within thirty (30) Business Days of the initial meeting held pursuant to section 12.1, or such longer time agreed-to by the Parties, either Party may, by written notice to the other Party, elect to proceed by mediation under the rules of the ADR Institute of BC. In the event that a Party elects to proceed by mediation, the Parties agree to proceed with the mediation in as timely a manner as reasonably possible.

- 12.3 **Arbitration.** If the dispute remains unresolved within sixty (60) Business Days of the initial meeting held pursuant to section 12.1, or such longer time agreed-to by the Parties, the matter will be referred to a single arbitrator under the *Arbitration Act*, SBC 2020, c 2. The place of arbitration will be Victoria, British Columbia, unless otherwise agreed by the Parties. A decision of an arbitrator under this Agreement, including any decisions as to costs, will be final and binding on the Parties.
- 12.4 **Continued performance obligations.** Each Party agrees to continue performing its obligations under this Agreement while any dispute is being resolved unless and until such obligations are terminated by the termination or expiration of this Agreement.

13.0 MISCELLANEOUS

- 13.1 **Survival.** The following terms of this Agreement survive termination: sections 4.5, 4.6, 4.7, 4.8, 6.3, 6.4, 6.5, 6.6, and Article 9.
- 13.2 **Governing Law.** This Agreement will be governed by and construed and interpreted in accordance with the laws of the Province of British Columbia.
- 13.3 **Amendments.** This Agreement may only be amended by written agreement of the Parties.
- 13.4 **Enurement.** This Agreement will enure to the benefit of and be binding upon the Parties and their respective successors.
- 13.5 **No Assignment.** This Agreement may not be assigned, either in whole or in part, by either Party, except the First Nation may assign its rights under the Agreement to the Proponent.
- 13.6 **Notice.** A notice, document, request, approval, authorization, consent or other communication (each a “**Communication**”) required or permitted to be given or made under this Agreement must be in writing and may be given or made in the following ways, to the addresses or emails referred to in section 13.8:
- (a) delivered personally or by courier;
 - (b) transmitted by email transmission; or
 - (c) mailed by post in Canada in any form which requires a receipt.

13.7 **Notice deemed effective.** A Communication will be considered to have been given or made, and received:

- (a) if delivered personally or by courier, at 9:00 a.m. on the Business Day after the day on which it was received by the addressee or a responsible representative of the addressee;
- (b) if sent by e-mail, at such time as the recipient of the email confirms receipt thereof, excluding automatically generated confirmation of receipt; or
- (c) if mailed in Canada in any form which requires a receipt, when the postal receipt records that it was received.

13.8 **Contact information.** A Communication must be delivered, transmitted to the email address or mailed to the address of the intended recipient set out below:

For: The Province

Attention: Jessica Coster
Executive Director, Strategic Projects

Postal delivery: 7060 Forestry Road
Mesachie Lake, BC, V0R 2N0

E-mail: jessica.coster@gov.bc.ca

For: The First Nation

Attention: Saya Masso,
Manager of Lands and Resources

Postal delivery: #1119 Pacific Rim Highway
P.O. Box 18
Tofino, BC, V0R 2Z0

E-mail: lands@tla-o-qui-aht.org

13.9 **Entire agreement.** This Agreement constitutes the entire agreement and understanding of the Parties pertaining to the subject matter of this Agreement and supersedes any earlier agreements in regards thereto. The Parties agree that there are no oral or written agreements, promises, warranties, guarantees, terms, conditions, representations or collateral agreements whatsoever, express or implied, other than those contained in or contemplated by this Agreement.

- 13.10 **No waiver.** No failure or delay on the part of either Party in exercising any right, power or privilege under this Agreement will operate as a waiver thereof, nor will any single or partial exercise of any right, power or privilege preclude any other or further exercise thereof or the exercise of any other right, power or privilege.
- 13.11 **Further assurances; consents and approvals.** Each Party shall provide such further documents or instruments required by the other Party as may be reasonably necessary or desirable to give effect to this Agreement and to carry out its provisions. Whenever this Agreement requires or contemplates any action, consent or approval, such Party shall act reasonably and in good faith and (unless the Agreement expressly allows exercise of a Party's sole discretion) shall not unreasonably withhold or delay such action, consent or approval.
- 13.12 **Severability.** Any provision in this Agreement which is prohibited or unenforceable will be ineffective, to the extent of such prohibition or unenforceability, without invalidating the remaining provisions of this Agreement.
- 13.13 **Payment of fees and expenses.** Each Party will pay its own fees, expenses and disbursements incurred in connection with the negotiation and finalization of this Agreement.
- 13.14 **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.
- 13.15 **Nature of agreement.** This Agreement is not a treaty or lands claims agreement, and does not recognize or affirm Aboriginal or treaty rights within the meaning of sections 25 and 35 of the *Constitution Act, 1982*.
- 13.16 **Changes in Law.** The Parties agree that if there is a change (including deletion of provisions) in any law, including statute, regulation or directive which materially interferes with the ability of the Parties to carry out this Agreement in accordance with its original intent, the Parties agree to meet to negotiate such changes as may be necessary to carry out the Agreement in accordance with its original intent. The Parties further agree that if the Province amends or replaces treasury board directive 2/15 regarding atmospheric benefit agreements to authorize atmospheric benefit agreements that do not require use of protocols approved by the Province, including FCOP, the Province will, at the request of the First Nation meet with the First Nation to discuss changes to this Agreement including sections 5.2 and 5.3.

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nuukmiis

EXECUTED in the presence of)





hawihtaqumt

SCHEDULE A: PROJECT SITE

ʔaʔukmin Conservancy, consisting of all those parcels or tracts of Crown land, together with all that foreshore or land covered by water, situated in Clayoquot District and contained within the described boundaries as shown on the Official Plan deposited in the Crown Land Registry as Plan 6 Tube 2028; except (1) Crown Granted Mineral Claims District Lots 350, 349, 348 and 335; and (2) a 30 metre right of way centred on all Ministry of Forests permit roads issued under Forest File ID R07654 and R07674. The whole conservancy containing approximately 11 267 hectares.

Unaacuʔ-Hiʔsyakʔis Conservancy, consisting of all those parcels or tracts of Crown land, together with all that foreshore or land covered by water, situated in Clayoquot District and contained within the described boundaries as shown on the Official Plan deposited in the Crown Land Registry as Plan 5 Tube 2028; except (1) Water Licences C116677, C116678 and C043108; (2) Permit PR-15560; (3) Licences of Occupation Crown Land File 1407137 and 0324377; (4) Special Use Permits S19323 and S24858; (5) Environmental Remediation Site 3344; and (6) a 30 metre right of way centred on all Ministry of Forests permit roads issued under Forest File ID R07652, R07653, R07654 and R13813. The whole conservancy containing approximately 12 104 hectares.

Wanačas-Hiʔhuuʔis Conservancy, consisting of all those parcels or tracts of Crown land, together with all that foreshore or land covered by water, situated in Clayoquot District and contained within the described boundaries as shown on the Official Plan deposited in the Crown Land Registry as Plan 7 Tube 2028; except (1) Crown Granted Mineral Claims, District Lots 1299, 1300, 1301 and 1302; (2) Statutory Rights of Way Crown Land File 1401035 and 1401064; (3) Right of Way Plans 43564, 43680 and VIP80205; and (4) Water Licences C112707, C059670, C059671, C059672, C061232, C061233, C061234, C061275, C101985, C110817 and C121259. The whole conservancy containing approximately 5 366 hectares.

