

# Cowichan Nation

## British Columbia

### Government to Government Agreement

#### Cowichan Nation



Cowichan Tribes



Stz'uminus First Nation



Penelakut Tribe



Halalt First Nation



Lyackson First Nation

#### British Columbia



# **Cowichan Nation – British Columbia Government-to-Government Agreement**

This Agreement is dated for reference September 14, 2021

**BETWEEN:**

**Her Majesty the Queen in Right of the Province of British Columbia**, as represented by the Minister of Indigenous Relations and Reconciliation and the Minister of Forest, Lands, and Natural Resources (the **“Province”**)

**AND:**

**Cowichan Nation** as comprised of the members of each of the Cowichan Tribes, Stz’uminus First Nation, Penelakut Tribe, Halalt First Nation, and Lyackson First Nation, and as represented by Cowichan Tribes, Sqtxulenuhw, also known as Chief William C. Seymour Sr., Stz’uminus First Nation, Whul’qul’latza’ aat, also known as Chief Roxanne Harris, Penelakut Tribe, Kwaliimtunaat, also known as Chief Joan Brown, Halalt First Nation, Sulsimutstun, also known as Chief James Thomas, and Lyackson First Nation, Pahalicktun, also known as Chief Richard Thomas, on their own behalf, and on behalf of all other descendants of the Cowichan Nation (**“Cowichan Nation”**)

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

**WHEREAS**

- A. The Province recognizes the existence of Cowichan Nation Title and Rights;
- B. The Province and Cowichan Nation share the interest to continue to foster a deeper collaborative government-to-government relationship that will advance reconciliation, build understanding and shared opportunities, support the co-operative resolution of disputes, and support the advancement of Cowichan Nation’s right to self-determination, including the inherent right of self-government;

- C. The Province and Cowichan Nation share the goals of establishing a government-to-government relationship consistent with the recognition and implementation of Section 35(1) of the *Constitution Act, 1982*, the minimum standards in the *United Nations Declaration on the Rights of Indigenous Peoples*, supported by the *Declaration on the Rights of Indigenous Peoples Act* and the Province's *Draft Principles that Guide the Province of British Columbia's Relationship with Indigenous Peoples* released on May 22, 2018; and
- D. Through this Agreement, the Cowichan Nation and the Province establish structures, processes, and priorities for their government-to-government relationship, as part of further establishing a future based on recognition, respect, and co-operation between Cowichan Nation and the Province.

**THEREFORE WE AGREE AS FOLLOWS:**

**1. Interpretation**

1.1. In this Agreement:

**"Additional Priorities"** has the meaning given to it in section 6.5;

**"Agreement"** means this Cowichan Nation – British Columbia Government-to-Government Agreement;

**"Board"** means the Cowichan Nation – British Columbia Board established in this Agreement;

**"Confidential Information"** has the meaning given to it in section 13.3;

**"Dispute"** means a disagreement about the interpretation or implementation of this Agreement;

**"Effective Date"** means the date this Agreement is fully executed by both Parties;

**"Initial Priorities"** has the meaning given to it in section 6.2;

**"Priorities"** means the Initial Priorities and the Additional Priorities, and "Priority" means any one of the Initial Priorities or Additional Priorities;

**"Senior Representative"** means the Provincial Assistant Deputy Minister appointed by the Province, or the senior official of the Cowichan Nation appointed by Cowichan Nation, to the Solutions Forum;

**"Solutions Forum"** has the meaning given to it in section 9.1;

**“Strategic Issue”** means an issue or disagreement that arises between the Parties that may affect the implementation of this Agreement or the relationship between the Parties pursuant to this Agreement; and

**“Title and Rights”** means Cowichan Nation’s:

- 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*.

## **2. Purpose**

2.1. The purposes of this Agreement are:

- a. to advance reconciliation between the Cowichan Nation and the Province based on recognition and respect of Title and Rights, and the minimum standards in the *United Nations Declaration on the Rights of Indigenous Peoples*;
- b. to develop joint structures and processes for implementing a government-to-government relationship between the Parties;
- c. to identify and advance Priorities the Parties wish to achieve in their government-to-government relationship, including through the negotiation of further agreements; and
- d. to create processes and mechanisms to assist in the co-operative resolution of disputes between the Parties.

## **3. Principles**

3.1. The Parties recognize that the successful implementation of this Agreement will require systematic, timely, creative and disciplined efforts by both Parties. To that end, the Parties agree to the following principles to guide their relationship under this Agreement:

- a. *Recognition*: The Parties’ efforts to implement their government-to-government relationship will be based upon recognition and respect of Title and Rights; meeting the minimum standards of the *United Nations Declaration on the Rights of Indigenous Peoples* and the provisions of the *Declaration on the Rights of Indigenous Peoples Act*; the *Draft Principles that Guide the Province of British Columbia’s Relationship with Indigenous Peoples*; the *Calls to Action of the Truth and Reconciliation Commission*; and the Supreme Court of Canada’s decision in *Tsilhqot’in Nation v. British Columbia, 2014 SCC 44*;

- b. *Co-operation:* To the fullest extent possible, the Parties will avoid adversarial positions and jointly address challenges and achieve progress through a solutions-oriented approach grounded in respectful, good faith engagement, collaborative information-sharing, mutual understanding, openness, and a spirit of collaboration;
- c. *Respect:* The Parties will build understanding and demonstrate respect for each other's jurisdictions, authorities, and decision-making processes, and structure their relationship to ensure timely access to individuals best positioned to provide the required mandates, decision, or direction;
- d. *Diligence:* The Parties commit to focus their government-to-government relationship on the Priorities identified pursuant to this Agreement, and will jointly manage and monitor progress; and
- e. *Balance:* The Parties acknowledge that many of the Priorities identified pursuant to this Agreement have economic, environmental, land use, social, and cultural dimensions, all of which may require consideration in achieving outcomes.

#### **4. Political Forum**

4.1. The Parties will establish a Political Forum, which will be responsible for:

- a. guiding the government-to-government relationship between the Parties;
- b. providing strategic direction and oversight to the Board on implementation of this Agreement;
- c. providing direction to the Board on how to address challenges that may arise in implementation of this Agreement; and
- d. addressing Disputes that are referred to it by the Solutions Forum.

4.2. The Political Forum will consist of:

- a. Chief the Cowichan Tribes;
- b. Chief of the Stz'uminus First Nation;
- c. Chief of the Penelakut Tribe;
- d. Chief of the Halalt First Nation;
- e. Chief of the Lyackson First Nation;
- f. Minister of Indigenous Relations and Reconciliation; and

- g. Minister of Forests, Lands, Natural Resource Operations and Rural Development.
- 4.3. Other provincial ministers (including the Attorney General), or their representatives may be invited to participate in Political Forum meetings from time to time, upon the recommendation of the Board, in accordance with section 5.4.
- 4.4. The Political Forum will operate by consensus.
- 4.5. Unless otherwise agreed by the Parties, the Political Forum will meet annually. The first meeting of the Political Forum will take place within six months of the Effective Date.
- 5. Cowichan Nation – British Columbia Board**
- 5.1. The Parties will establish the Board, which will be responsible for:
- a. implementation of all aspects of this Agreement, including achieving the Priorities identified by the Parties pursuant to this Agreement and negotiating further agreements;
  - b. establishing lead representatives and/or technical working groups to inform and support the implementation of this Agreement;
  - c. overseeing the implementation of any agreements that the Parties may reach as part of implementing this Agreement;
  - d. coordinating the participation of the Cowichan Nation in reviews of provincial laws or policies that the Province may undertake to ensure the alignment of those laws and policies with the *United Nations Declaration on the Rights of Indigenous Peoples* pursuant to the *Declaration on the Rights of Indigenous Peoples Act*;
  - e. attempting to resolve Disputes in accordance with section 8.1;
  - f. undertaking any work that is necessary to implement this Agreement that is not assigned to another entity created under this Agreement;
  - g. providing reports to the Political Forum, and seeking its direction.
- 5.2. The Board will be comprised of two representatives appointed by the Cowichan Nation and two representatives appointed by the Province. The Parties will notify each other in writing of any change of their representatives on the Board.
- 5.3. The Board will operate by consensus and may develop meeting rules and procedures to guide its operations.

5.4. For greater certainty, to assist it in carrying out its responsibilities, the Board may, by consensus, agree to bring additional parties or representatives to meetings (including Political Forum meetings) as may be desirable or required, establish working groups, or identify individual leads to report to the Board in respect of any activity contemplated under this Agreement.

5.5. The first meeting of the Board will occur within 15 days of the Effective Date.

## **6. Priorities**

6.1. The Parties agree to take a staged approach to advancing their government-to-government relationship and deepening reconciliation, and agree that they have a mutual interest in achieving early successes upon which momentum and progress can be built.

6.2. The Parties have identified the following initial priorities (“**Initial Priorities**”) with the goal of making substantial progress in advancing them within the first 12 months following the Effective Date:

- a. building understanding and seeking to advance reconciliation regarding the collective national interests of the Cowichan Nation, including the implementation of Cowichan Nation laws, traditions, customs, and practices;
- b. supporting the further advancement of Cowichan Nation self-determination and self-government;
- c. identifying co-operative processes for decision-making and the co-operative resolution of disputes;
- d. identifying opportunities for economic and socio-cultural well-being; and
- e. advancing reconciliation between the Parties regarding other topics as may be agreed to by the Parties.

6.3. The Parties will co-operatively seek to establish processes and mechanisms, where appropriate, with other Indigenous nations, governments, or third parties that are supportive of advancing the Priorities in this Agreement, or that generally support the work of fostering strong government-to-government relations, reconciliation, and the recognition and implementation of section 35(1) of the *Constitution Act, 1982*.

6.4. Within 60 days of the Effective Date, the Board will establish workplans for advancing each of the Initial Priorities. The workplans will specify information to be shared, actions to be taken, and processes that will be implemented.

- 6.5. The Parties may identify and agree upon additional priorities to be addressed for advancing their government-to-government relationship under this Agreement (“**Additional Priorities**”). At any time, the Parties may agree upon Additional Priorities, including target timelines for making substantial progress on those Additional Priorities.
- 6.6. For greater certainty, the Parties acknowledge that meeting the Priorities agreed upon pursuant to this Agreement may require the negotiation and completion of additional agreements.
- 6.7. At each annual review conducted by the Political Forum pursuant to section 10.1 the Parties will discuss their progress on meeting the Priorities under this Agreement.

## **7. Role of Canada**

- 7.1. The Parties acknowledge that Canada has necessary roles to play in the work of reconciliation, and that fully achieving certain Priorities of their government-to-government relationship may require the involvement of Canada. Accordingly, where the Parties agree it is necessary or desirable, the Parties will co-operatively endeavour to include Canada in the work of achieving a specific Priority.

## **8. Dispute Resolution**

- 8.1. If a Dispute arises, the Dispute will first be referred to the Board for resolution.
- 8.2. In the event the Board cannot resolve the Dispute, the Parties will refer the Dispute to the Solutions Forum.
- 8.3. In the event the Solutions Forum cannot resolve the Dispute, the Solutions Forum will refer the Dispute to the Political Forum for resolution.
- 8.4. The Political Forum may engage a mutually agreed-upon mediator, with each Party paying its own costs of the mediation and one-half of the costs of the mediator, or may attempt to resolve the Dispute by another process that the members of the Political Forum may mutually determine and agree upon.
- 8.5. If all Dispute resolution efforts under this Article 8 are unsuccessful in resolving a particular Dispute, then either Party may elect to terminate this Agreement by providing 90 days’ advance written notice to the other Party.

## **9. Solutions Forum**

- 9.1. The Parties will establish a solutions forum comprised of the Senior Representatives (the “**Solutions Forum**”), which will address:
  - a. challenging or urgent issues arising in the relationship between the Parties;



- b. Strategic Issues that may arise during the implementation of this Agreement;
- c. Disputes referred to dispute resolution in accordance with section 8.3; and
- d. any other matters as the Parties may agree.

9.2. The following principles will guide the work of the Solutions Forum:

- a. early identification of issues of concern, including Strategic Issues, so that early intervention and conflict management can take place;
- b. striving to work by consensus on resolving issues, identifying solutions and implementing those solutions;
- c. either Party may bring a Strategic Issue to the Solutions Forum;
- d. the Senior Representatives will meet as soon as practicable to discuss a matter referred to the Solutions Forum, unless both Senior Representatives otherwise agree;
- e. the Solutions Forum will set its own meeting schedule as appropriate in the circumstances to address the issues identified;
- f. the Senior Representatives may set time limits for addressing any matter referred to them;
- g. meetings of the Senior Representatives may take place by teleconference or in person; and
- h. the Senior Representatives may ask technicians, advisors, or other individuals to attend the Solutions Forum meetings.

## **10. Review**

10.1. The Parties, through the Political Forum, will annually review progress in implementing this Agreement and, as appropriate, identify adjustments or potential amendments.

10.2. Notwithstanding any other provision in this Agreement, any payment of funds by the Province to Cowichan Nation under this Agreement is subject to:

- a. there being sufficient monies available in an appropriate, as defined in the *Financial Administration Act*, R.S.B.C. 1996 c. 138 to enable British Columbia in any fiscal year or part thereof which such payment is required, to make such payment; and

- b. Treasury Board, as defined in the *Financial Administration Act*, R.S.B.C. 1996 c. 138 not having controlled or limited expenditure under any appropriation necessary in order to make such payment.

## **11. Term and Termination**

- 11.1. The term of this Agreement will commence on the Effective Date.
- 11.2. Either Party may terminate this Agreement:
  - a. upon 90 days of a Party providing advance written notice to the other Party, including pursuant to section 8.5, together with a detailed explanation of the reason for termination; or
  - b. by mutual agreement of the Parties, in writing.
- 11.3. If notice for termination is given the Parties will meet within 30 days to understand the reasons for termination and whether any opportunity to avoid termination is possible.

## **12. Representations and Warranties**

- 12.1. Cowichan Nation represents and warrants to the Province, with the intent and understanding that such representations and warranties will be relied on by the Province in entering into this Agreement, that:
  - a. it has the legal power, capacity and authority to enter into this Agreement on its own behalf and on behalf of Cowichan Nation members;
  - b. it has taken all necessary actions and has obtained all necessary approvals to enter into this Agreement for and on behalf of Cowichan Nation members; and
  - c. this Agreement is valid and binding obligation upon them.
- 12.2. The Province represents and warrants to Cowichan Nation, with the intent and understanding that such representations and warranties will be relied on by Cowichan Nation in entering into this Agreement, that it has the authority to enter into this Agreement and that this Agreement is a valid and binding obligation of the Province.

## **13. General**

- 13.1. Each of the Parties confirms that each of its signatories to this Agreement have read and understand the terms and conditions of this Agreement, that it has obtained or has had the opportunity to obtain independent legal advice with respect to the terms and conditions of this Agreement.

- 13.2. The Parties acknowledge that further mandates and approvals are required to fully or partially achieve the Priorities described in this Agreement. Further, any negotiation mandates and any agreements that may be reached between the Parties as result of those negotiations are subject to each Party obtaining all required approvals, including in the case of the Province, any Cabinet and Treasury Board approvals.
- 13.3. The Parties may, by agreement, confirm certain communications or documents as being “with prejudice” and “on the record”, and may agree that certain communications or documents are not Confidential Information.
- 13.4. The Parties acknowledge that information-sharing or engagement with others, including other governments, stakeholders, and the public may be necessary to advance the Priorities, further agreements, or other outcomes under this Agreement in which case the Parties will co-operatively determine how and on what terms that information-sharing or engagement will occur, including the potential of making joint public statements regarding the matters set forth in this Agreement
- 13.5. Any waiver of:
- a. a provision of this Agreement;
  - b. the performance by a Party of an obligation under this Agreement; or
  - c. a default by a Party of an obligation under this Agreement,
- will be in writing and signed by the Party or Parties giving the waiver and will not be a waiver of any other provision, obligation or subsequent default.
- 13.6. Nothing in this Agreement will be construed:
- a. as an admission by either Party of the validity or invalidity of any claim by Cowichan Nation to any of its Title and Rights;
  - b. as establishing, defining, limiting, denying, abrogating or derogating any of Cowichan Nation’s Title and Rights;
  - c. as an acknowledgement or admission by the Province that it has any obligation provide financial or economic accommodate or compensation to the Cowichan Nation; or
  - d. as in any way limiting the position either of the Parties may take in any process or proceeding.
- 13.7. Nothing in this Agreement precludes Cowichan Nation from accessing economic opportunities and benefits which may be available to it.

13.8. The Parties agree that:

- a. this Agreement does not constitute a treaty or land claims agreement within the meaning of Section 25 or 35 of the *Constitution Act, 1982*;
- b. this Agreement does not preclude the right of either Party to engage in further processes to establish the scope or the geographic extent of the Cowichan Nation's Title and Rights; and
- c. the commitments and acknowledgments made in this Agreement regarding the recognition and realization of Cowichan Nation's right to self-determination, including the inherent right to self-government, and the adoption and implementation of the *United Nations Declaration on the Rights of Indigenous Peoples* are made within the context of, and are intended to be consistent with, the recognition and affirmation of the Aboriginal rights of the Aboriginal peoples of Canada provided under Section 35 of the *Constitution Act, 1982*.

13.9. Time is of the essence in this Agreement.

13.10. Except as expressly set out herein, any notice, document or communication required or permitted to be given hereunder will be in writing and delivered in person, by mail, electronic mail, or by facsimile to the Party to which it is to be given as follows:

To the Province:

Deputy Minister  
Ministry of Indigenous Relations and Reconciliation  
P.O. Box Stn. Prov. Govt. Victoria, B.C. V8W 9B1  
Fax: 250.387.6073  
Email: Doug.Caul@gov.bc.ca

To Cowichan Nation:

Cowichan Nation  
c/o Woodward & Company  
Suite 200, 1022 Government Street  
Victoria, BC V8W 1X7  
Phone: 250.383.2356  
Fax: 250.380.6560  
Cell: 250.213-2904  
Email: [drobbins@woodwardandcompan.com](mailto:drobbins@woodwardandcompan.com)


or to such other address in Canada as either Party may advise in writing.


- 13.11. Any notice, document or communication delivered pursuant to this Agreement will be considered to have been given as follows:
- a. If delivered by hand, on the business day when delivered;
  - b. If sent by electronic mail or facsimile before 3:00 p.m. Pacific time on a business day, it is considered to be delivered on the day of transmission;
  - c. If sent by facsimile after 3:00 p.m. Pacific time on a business day, or on a day that is not a business day, it is considered to be delivered on the next business day;  
and
  - d. If sent by regular mail, it is considered to be delivered on the third business day after it is postmarked.
- 13.12. This Agreement may be amended from time to time by mutual agreement of the Parties in writing.
- 13.13. This Agreement will be governed by and construed in accordance with the laws of the Province of British Columbia.
- 13.14. This Agreement, including the implementation of the Solutions Forum, does not affect the jurisdiction or fetter the discretion of any decision-making authority. For greater certainty, nothing in this Agreement will be interpreted in a way that fetters the discretion given to any provincial official in an enactment.
- 13.15. This Agreement will enure to the benefit of and be binding on Cowichan Nation and its successors and the Province.
- 13.16. If any part of this Agreement is void or unenforceable at law:
- a. the invalidity of that part will not affect the validity of the remainder, which will continue in full force and effect and be construed as if this Agreement has been executed without the invalid part; and
  - b. the Parties will negotiate and attempt to reach agreement on a replacement for the part declared or held invalid with a view to achieving the intent of the Parties as expressed in this Agreement.

13.17. This Agreement may be entered into by each of the Parties signing a separate copy of this Agreement (including a photocopy or facsimile copy) and delivering it to the other by electronic mail or facsimile transmission. All executed counterparts taken together will constitute one agreement.

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

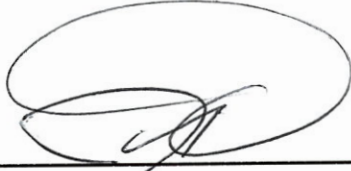
**Signed on behalf of the Cowichan Nation by**

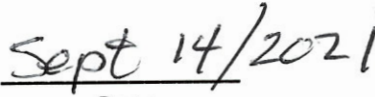
  
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Squxulenuhw, Chief William C. Seymour Sr.  
Cowichan Tribes

  
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Date

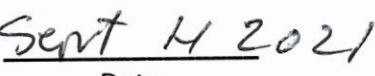
  
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Whul'qu'latza' aat, Chief Roxanne Harris  
Stz'uminus First Nation

  
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Date

  
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Kwaliimtunaat, Chief Joan Brown  
Penelakut Tribe

  
\_\_\_\_\_  
Date

  
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Sulsimutstun, Chief James Thomas  
Halalt First Nation

  
\_\_\_\_\_  
Date

Pahalickton

Pahalickton, Chief Richard Thomas  
Lyackson First Nation

Sept 14/21  
Date

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

Murray Rankin  
Honourable Murray Rankin  
Minister of Indigenous Relations and Reconciliation

Sept 14/21  
Date

Katrine Conroy  
Honourable Katrine Conroy  
Minister of Forest, Lands, Natural Resource  
Operations and Rural Development

Sept 14/21  
Date