

***Gitga'at First Nation
Forest
Consultation and Revenue Sharing Agreement (FCRSA)
(the "Agreement")***

**Between:
The Gitga'at First Nation**

As Represented by
Chief and Council
(the Gitga'at First Nation)

And

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

(Collectively the "Parties")

WHEREAS:

- A. In 2003 Gitga'at First Nation and British Columbia entered into a Forestry Interim Measures Agreement.
- B. In 2005, British Columbia and the First Nations Leadership Council, representing the Assembly of First Nations-BC Region, First Nations Summit, and the Union of BC Indian Chiefs entered into a New Relationship and signed the Transformative Change Accord.
- C. In 2006 the Gitga'at First Nation along with other Coastal First Nations entered into a Strategic Land Use Planning Agreement and a Land and Resource Protocol.
- D. In 2009, in the spirit of the New Relationship and Transformative Change Accord, British Columbia and the Gitga'at First Nation as part of the "Coastal First Nations" entered into a Reconciliation Protocol.
- E. This Agreement, is intended to assist the Parties in achieving progress towards the goals agreed to in the agreements stated above and in particular, help to address the conditions that contribute to economic challenges among Aboriginal people and to ensure that they can more fully benefit from and contribute to British Columbia's prosperity.
- F. British Columbia recognizes that the Gitga'at First Nation has Aboriginal Interests within its Traditional Territory, and this agreement is a bridging step to a future reconciliation of those Aboriginal Interests with Provincial title, rights and interests.
- G. This Agreement is also intended to assist in achieving stability and greater certainty for forest resource development on Crown lands within the claimed Traditional Territory of the Gitga'at First Nation.

THEREFORE THE PARTIES AGREE AS FOLLOWS:

1.0 Definitions

- 1.1 For the purpose of this agreement, the following definitions apply:
- 1.1.1 "Aboriginal Interests" means aboriginal rights including aboriginal title.
 - 1.1.2 "Effective Date" means the date on which this Agreement has been ratified and signed by each of the Parties.
 - 1.1.3 "Engagement Framework" means Schedule B of the Reconciliation Protocol.
 - 1.1.4 "First Fiscal Year of the Term" has the meaning given to that term in section 3.1.
 - 1.1.5 "Fiscal Year" means a period beginning on April 1 of a calendar year and ending on March 31 of the next calendar year.
 - 1.1.6 "Forestry Related Land and Resource Decisions" means an administrative or operational decision, or approval or renewal of a tenure, plan, permit or other authorization related to forest resources under provincial legislation.
 - 1.1.7 "Payment Account" has the meaning given to that term in section 3.4.
 - 1.1.8 "Reconciliation Protocol" means the Reconciliation Protocol signed by the Gitga'at First Nation and British Columbia dated December 10, 2009.
 - 1.1.9 "Revenue Sharing Contribution(s)" means the payment(s) to be made by British Columbia to the Gitga'at First Nation in accordance with Section 3.0 of this Agreement.
 - 1.1.10 "Term" has the meaning given to that term in section 10.1.
 - 1.1.11 "Timber Harvesting Land Base" means the portion of the total land area of a management unit considered by Ministry of Forest, Mines and Lands to contribute to, and be available for, long-term timber supply.
 - 1.1.12 "Traditional Territory" means the Gitga'at First Nation's claimed territory as identified on the map attached in Appendix A.
 - 1.1.13 "Treasury Board" means the cabinet committee of British Columbia defined in the *Financial Administration Act*.

2.0 Purpose and Objectives

- 2.1 The purposes and objectives of this Agreement are:
- 2.1.1 To share forest revenues received by British Columbia with the Gitga'at First Nation from forest resource development activities as an accommodation, where appropriate with respect to potential infringements of Gitga'at First Nation Aboriginal Interests with respect to Forestry Related Land and Resource Decisions;

- 2.1.2 To provide an opportunity for the Gitga'at First Nation to identify and pursue activities that will support the social, cultural and economic well-being of its members;
- 2.1.3 To affirm that the Parties will use the Engagement Framework (Schedule B) contained in the Reconciliation Protocol to assist the Parties to meet their legal obligations to consult and, where appropriate, accommodate with respect to Forestry Related Land and Resource Decisions; and,
- 2.1.4 To reaffirm commitments in the Reconciliation Protocol (Schedule D, Section 1.12) regarding implementation of forestry-related measures and initiatives intended to enable the Gitga'at First Nation to make progress with respect to socioeconomic objectives.

3.0 Forest Revenue Sharing Contribution

- 3.1 During the Term of this Agreement British Columbia will provide a Revenue Sharing Contribution, calculated in accordance with Appendix B, and will make that payment to the Gitga'at First Nation. For the Fiscal Year in which the Effective Date falls (the "First Fiscal Year of the Term") the amount calculated in accordance with Appendix B is deemed to be \$220,160.
- 3.2 Notwithstanding section 3.9, in each Fiscal Year, Revenue Sharing Contributions will be disbursed in two equal payments: the first on or before September 30th and the second payment to be paid on or before March 31st.
- 3.3 In Fiscal Years during which this Agreement is not in effect for the full Fiscal Year, Revenue Sharing Contributions will be prorated for each month that this Agreement is in effect.
- 3.4 The Gitga'at First Nation will establish and maintain a separate bank account at a Canadian financial institution in the name of the Gitga'at First Nation (the "Payment Account") into which the Province can provide Forestry Revenue Sharing Contributions as direct deposits. The Gitga'at First Nation will use the bank account solely for the purposes of this agreement.
- 3.5 Before October 30th of each year during the Term of this agreement, British Columbia will meet with the Gitga'at First Nation through the Coastal First Nations organization to review the Revenue Sharing Contribution for the next Fiscal Year and discuss the calculations for that Fiscal Year.
- 3.6 Before November 30 of each year during the Term of the Agreement British Columbia will provide written notification of the Revenue Sharing Contribution for the next Fiscal Year and Gitga'at First Nation agrees that such written notification will have the effect for the purposes of this agreement of describing the amount of the Revenue Sharing Contribution under this Agreement for the next Fiscal Year.
- 3.7 On the Effective Date, the Gitga'at First Nation will be paid a payment to bridge the period from the date of the last payment to which the Gitga'at First Nation is entitled under its Gitga'at Interim Measures Agreement Regarding Forestry Development to the Effective Date of this Agreement (the "Bridging Amount"),

the payment will be calculated on the basis of the Revenue Sharing Contribution for the First Fiscal Year of this Agreement but prorated for the period from the date of the last payment under the Gitga'at Interim Measures Agreement Regarding Forestry Development to the Effective Date.

- 3.8 Gitga'at First Nation agrees that for the period between the end of the Term of its Gitga'at Interim Measures Agreement Regarding Forestry Development and the Effective Date, it has been adequately consulted and received an accommodation by British Columbia in relation to all Forestry Related Land and Resource Decisions, made during that period that could impact its Aboriginal Interests.
- 3.9 For each Fiscal Year subsequent to the First Fiscal Year of the Term, the Revenue Sharing Contribution will be provided by British Columbia to the Gitga'at First Nation in the manner specified in section 3.4 only if Gitga'at First Nation has published all of the necessary statements and reports before the appropriate dates as set out in section 6.0 of this Agreement, is in all other respects in compliance with the terms of this Agreement and this Agreement has not been suspended or terminated pursuant to section 10.0.
- 3.10 Notwithstanding any other provisions of this Agreement, payments by British Columbia to the Gitga'at First Nation pursuant to this Agreement are subject to:
- 3.10.1 There being sufficient monies available in an appropriation, as defined in the *Financial Administration Act*, to enable British Columbia in any Fiscal Year or part thereof when any such payment may be required, to make that payment; and;
 - 3.10.2 Treasury Board not having controlled or limited, pursuant to the *Financial Administration Act*, expenditure under any appropriation referred to in this Agreement.

4.0 Consultation Process

- 4.1 The Parties will follow the Engagement Framework set out in Schedule B of the Reconciliation Protocol for consultation and decision making related to Forestry Related Land and Resource Decisions within the Traditional Territory.
- 4.2 If the Reconciliation Protocol is terminated before the end of the Term of this Agreement, this Agreement will be amended within 60 days of the date of that termination to include a consultation process.
- 4.3 Funding provided pursuant to Section 11 of the Reconciliation Protocol will be used by the Gitga'at First Nation to support the Engagement Framework established in Schedule B of the Reconciliation Protocol for Forestry Related Land and Resource Decisions within the Traditional Territory, during the Term of this Agreement.

5.0 Acknowledgments and Covenants

- 5.1 The Gitga'at First Nation agrees that the Reconciliation Protocol, Schedule D and the Revenue Sharing Contributions pursuant to this Agreement provide for an accommodation for any potential impacts on Gitga'at First Nation's Aboriginal Interests as a result of Forestry Related Land and Resource Decisions.
- 5.2 The Reconciliation Protocol, Schedule B has identified the process the Parties have agreed to follow to assist in satisfying any legal obligations of British Columbia to consult and, where appropriate, accommodate, in accordance with relevant case law.
- 5.3 Gitga'at First Nation acknowledges that forest revenues received by British Columbia fluctuate and that the Revenue Sharing Contributions under this Agreement will vary over time.

6.0 Community Priorities, Annual Reports and Records

- 6.1 The Gitga'at First Nation has established a fiscal accountability framework that includes:
 - 6.1.1 By March 31 of each year of this Agreement, the Gitga'at First Nation will prepare annual operating work plans and budgets for use of the next Fiscal Year's Revenue Sharing Contribution that will be used in programs, projects or investments that support the social, cultural and economic well-being of its members as identified in section 2.1.2, or achieve the socioeconomic objectives identified in section 2.1.4 (Appendix C);
 - 6.1.2 Financial records will be maintained by the Gitga'at First Nation in accordance with professional accounting practices;
 - 6.1.3 By June 30 of each year of this agreement, the Gitga'at First Nation will complete audited annual financial statements and annual reports summarizing the planned and realized outcomes of any investments and project or program expenditures identified in section 6.1.1; or that have achieved the socioeconomic objectives identified in section 2.1.4; and
 - 6.1.4 The Gitga'at First Nation will make the above documents publically available to Gitga'at First Nation membership and to British Columbia.
- 6.2 The information in the documents referred to in 6.1 will be considered public information by British Columbia.
- 6.3 Notwithstanding the termination or expiry of this Agreement, Gitga'at First Nation will continue to comply with the provisions of section 6.1 until 90 days after it receives the last Revenue Sharing Contribution from British Columbia.

7.0 Stability for Land and Resource Use

- 7.1 Each party will respond immediately to any discussions sought by the other Party regarding any events or actions that adversely affect the achievement of the purposes of this Agreement with respect to Forestry Related Land and Resource Decisions.

8.0 Dispute Resolution

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

9.0 Suspension and Termination

- 9.1 British Columbia may suspend the making of further Revenue Sharing Contributions under this Agreement if it determines, that Gitga'at First Nation is not fulfilling its obligations under sections 4.0 and 6.0 or sections 8.1 or 9.3 of this Agreement, or where the Gitga'at First Nation has outstanding unfulfilled financial obligations to British Columbia arising from a direct award forest tenure issued further to an agreement between the Gitga'at First Nation and British Columbia. Upon making any such determination, British Columbia will provide notice to Gitga'at First Nation of the alleged non-compliance, and the Parties will then attempt to resolve their differences.
- 9.2 If the alleged non-compliance by Gitga'at First Nation is not resolved within 60 days of the notice provided pursuant to section 9.1, British Columbia will notify Gitga'at First Nation that the alleged non-compliance remains unresolved and, without limiting the actions that may be taken by British Columbia, may terminate this Agreement.
- 9.3 If, during the Term of this Agreement, Gitga'at First Nation challenges or supports a challenge to a Forestry Related Land and Resource Decision or activities carried out pursuant to those decisions or plans, by way of legal proceedings or otherwise, on the basis that, contrary to section 5.1, the Revenue Sharing Contribution provided for in section 3.0 of this Agreement does not provide an accommodation for impacts on Gitga'at First Nation's Aboriginal Interests, or suspends its participation in this Agreement pursuant to section 9.6, then, without limiting any actions that may be taken by British Columbia, the Revenue Sharing Contribution provided for in section 3.0 may be suspended and/or this Agreement may be terminated by British Columbia.
- 9.4 This Agreement will terminate prior to the end of the Term in any one of the following circumstances; 90 days' written notice of termination is given by one Party to the other; termination occurs in accordance with any of the provisions of section 9.0; or upon mutual agreement of the Parties. In the event of such early termination of this Agreement, the Revenue Sharing Contribution for the

Fiscal Year in which termination becomes effective will be prorated to the termination date.

- 9.5 If a Party gives written notice of its intention to terminate this Agreement effective 90 days from the date of the notice, the Parties will, prior to the end of the 90-day period, meet and will attempt to resolve any issue that may have given rise to the termination notice.
- 9.6 Gitga'at First Nation may suspend their participation in this Agreement if it determines, acting reasonably, that British Columbia is not fulfilling its obligations under this Agreement, and upon making any such determination, Gitga'at First Nation will provide notice to British Columbia of the alleged non-compliance, and the Parties will then attempt to resolve their differences.
- 9.7 If the alleged non-compliance is not resolved within 60 days of the notice provided in section 9.6, the Gitga'at First Nation will notify that the alleged non-compliance remains unresolved and, without limiting the actions that may be taken by the Gitga'at First Nation, may terminate this Agreement.

10.0 Term

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

11.0 Renewal of the Agreement

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

12.0 Amendment of Agreement

- 12.1 Any alteration or amendment to the terms and conditions of the Agreement must be in writing and duly executed by the Parties.
- 12.2 Either Party may request the participation of the other Party to review the effectiveness of this Agreement annually and consider amendments to this Agreement.

13.0 Entire Agreement

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

14.0 Notice

- 14.1 Any notice or other communication that is required to be given or that a Party wishes to give to the other Party with respect to this Agreement, will be in

writing and will be effective if delivered, sent by registered mail, or transmitted by facsimile to the address of the other Party as in this section of the Agreement.

- 14.2 Any notice or other communications will be deemed to have been given on the date it is actually received, if received before 4:00 p.m. If received after 4:00 p.m., it will be deemed to have been received on the next business day.
- 14.3 The address of either Party may be changed by notice in the manner set out in this section of the Agreement.

British Columbia

Deputy Minister
Ministry of Aboriginal Relations and Reconciliation
P.O. Box 9100 STN PROV GOVT
Victoria B.C. V8W 9B1
Telephone: (250) 356-1394
Fax: (250) 387-6073

Gitga'at First Nation

Chief Arnold Clifton
Gitga'at First Nation
General Delivery, 445 Hayimiisaxaa Way
Hartley Bay, BC V0V 1A0
Telephone: (250) 841-2500
Fax: (250) 841-2541

15.0 Miscellaneous

- 15.1 This Agreement shall be interpreted in a manner consistent with provincial and federal law.
- 15.2 This Agreement is not a treaty or a lands claims agreement within the meaning of sections 25 and 35 of the *Constitution Act, 1982* and does not define or amend aboriginal rights, or limit any priorities afforded to aboriginal rights, including aboriginal title.
- 15.3 This Agreement does not address or prejudice conflicting interests or competing claims between First Nations.
- 15.4 Subject to paragraph 9.3, this Agreement will not limit the positions that a Party may take in future negotiations or court actions.
- 15.5 British Columbia acknowledges and enters into this Agreement on the basis that the Gitga'at First Nation has Aboriginal Interests within their Traditional Territory but that the specific nature, scope or geographic extent of Aboriginal Interests of the Gitga'at First Nation have yet to be determined.
- 15.6 References in this Agreement to Crown lands are without prejudice to the Gitga'at First Nation's Aboriginal title and/or rights claims over those lands.
- 15.7 With the exception of matters or decisions dealt with within the period referred to in section 3.8, this Agreement does not address or affect any claims by the Gitga'at First Nation regarding impacts on its Aboriginal Interests resulting from past Forest Related Land and Resource Decisions made by British Columbia prior to the effective date of this Agreement
- 15.8 This Agreement and any decisions made during the Term of this Agreement do not change or affect the positions either Party has, or may have, regarding jurisdiction and authorities
- 15.9 Any reference to a statute in this Agreement includes all regulations made under that statute and any amendments or replacement of that statute and its regulations.
- 15.10 There will be no presumption that any ambiguity in any of the terms of this Agreement should be interpreted in favour of either Party.
- 15.11 This Agreement is not intended to limit any obligation of forest or range Licensees or other third parties to the Gitga'at First Nation.
- 15.12 This Agreement does not exclude the Gitga'at First Nation from accessing forestry economic opportunities and benefits, which may be available to the Gitga'at First Nation, other than those expressly set out in this Agreement.
- 15.13 Nothing in this Agreement is to be construed as an acceptance of or admission by a Party of the position of the other Party or as an admission of fact or liability.
- 15.14 This Agreement does not constitute an admission of an obligation to provide financial or economic benefits, as provided in this Agreement, as part of the British Columbia's obligation to consult and, where appropriate, accommodate.

- 15.15 Acceptance of the financial and economic benefits provided by British Columbia under this agreement and the Reconciliation Protocol by the Gitga'at First Nation does not necessarily constitute an acknowledgement that British Columbia has fully met its' obligations to consult and, where appropriate accommodate, as described in the relevant case law.
- 15.16 If any part of this Agreement is void or unenforceable at law, that part will be severed from this Agreement and the rest of the Agreement shall remain in effect and fully enforceable.
- 15.17 If any part of this Agreement is void or unenforceable at law, the Parties agree to negotiate and attempt to reach agreement, to the extent reasonably possible and as their respective interests may require, on a replacement for the severed part with a view to achieving the intent of the Parties as expressed in this Agreement.
- 15.18 All headings in this Agreement are for convenience only and do not form a part of this Agreement and are not intended to interpret, define, limit, enlarge, modify or explain the scope, extent or intent of this Agreement or any of its provisions.
- 15.19 In this Agreement, words in the singular include the plural, and words in the plural include the singular unless the context or any specific definition otherwise requires.
- 15.20 The appendices to this Agreement form part of the Agreement.
- 15.21 This Agreement may be entered into by each Party signing a separate copy of this Agreement, including a photocopy or faxed copy, and delivering it to the other Party by fax. Each facsimile will be deemed to be an original for all purposes and all counterparts taken together will be deemed to constitute one document.

Signed on behalf of:
Gitga'at First Nation

Deputy Chief Bruce Reece

Date

Councillor

Councillor

Councillor

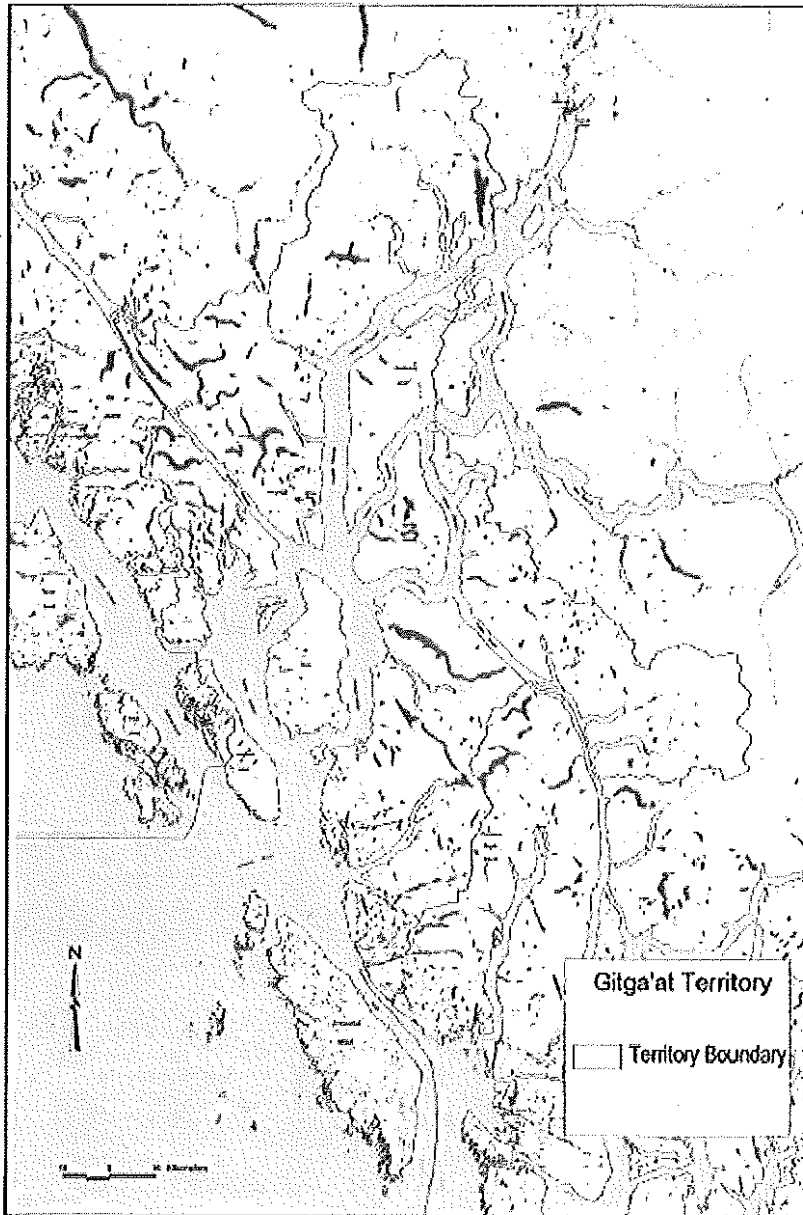
Signed on behalf of:
Government of British Columbia

Minister of Aboriginal Relations and
Reconciliation

Date

Witness of Minister signature

APPENDIX A
Map of Gitga'at First Nation Traditional Territory



APPENDIX B

Revenue Sharing Contribution Methodology

Traditional Territory Forest Revenue Sharing Component

- 1.0 In each Fiscal Year that this Agreement is in effect, and subsequent to the release by the Minister of Finance of the previous Fiscal Year's public accounts of British Columbia, a summary document will be prepared of the North Island and North Coast Districts forest revenue, defined as the total of stumpage, waste and annual rent payments received by the Crown for the previous 2 Fiscal Years. An average amount over 2 years will be calculated for North Island and North Coast Districts.
- 1.1 For the purposes of the summary document in section 1.0 of this Appendix, the stumpage payments from Gitga'at First Nation's Forest License (Gitgaat First Nation's Forest License (A71731)) will not be included in the calculations of forest revenue.
- 1.2 The amount of the forest revenue attributed to the Gitga'at First Nation's Traditional Territory will be calculated by determining the percent of Gitga'at First Nation's Traditional Territory that falls within the Timber Harvesting Land Base in North Island and North Coast Districts, applied against the forest revenue described in section 1.0 of this Appendix. This calculation will prorate for overlapping territories of other First Nations.
- 1.3 The Traditional Territory Forest Revenue Sharing Component will be calculated by multiplying 5 percent of the forest revenue attributed to the Gitga'at First Nation as described in section 1.2 of this Appendix.
- 1.4 Where the calculation in section 1.3 of this Appendix is less than \$35,000, Gitga'at First Nation will receive a maximum of \$35,000.
- 1.5 For each Fiscal Year that this Agreement is in effect, the calculations outlined in sections 1.0 to 1.4 of this Appendix will be performed.

Direct Award Tenure Forest Revenue Sharing Component

- 2.0 Subsequent to the release by the Minister of Finance of the previous Fiscal Year's public accounts of British Columbia, a summary document will be prepared of Gitga'at First Nation's Forest License (Gitgaat First Nation's Forest License (A71731)) forest revenue, defined as the total of stumpage payments received by the Crown for the previous Fiscal Year.
- 2.1 The Direct Award Forest Tenure Revenue Sharing Component will be calculated by multiplying 75 percent of the forest revenue as described in section 2.0 of this Appendix.
- 2.2 For each Fiscal Year that this Agreement is in effect, the calculations outlined in sections 2.0 and 2.1 of this Appendix will be performed.

Forest Revenue Sharing Transition

- 3.0** The Parties agree that new methods to calculate the Revenue Sharing Contribution will be phased in over the next 4 years.
- 3.1** For each Fiscal Year that this Agreement is in effect, a portion of the Revenue Sharing Contribution is calculated by determining the total of the Traditional Territory Forest Revenue Sharing Component and the Direct Award Tenure Forest Revenue Sharing Component for that Fiscal Year ("the sum") and applying the following percentages to that sum:
- 3.2** For each Fiscal Year that this Agreement is in effect, the remaining portion of the Revenue Sharing Contribution is calculated by determining the value of the payments that were made by British Columbia to Gitga'at First Nation in any given full year under the *Gitga'at Interim Measures Agreement Regarding Forestry Development* which expired on March 31, 2010 ("the Annual Amount") and applying the following percentages to that Annual Amount:
- 3.3** The Parties agree that if this Agreement is renewed in accordance with section 12.0 of this Agreement, or this Agreement expires in the 2013/2014 Fiscal Year, the Revenue Sharing Contribution will be the sum of:
- 3.3.1 the Traditional Territory Forest Revenue Sharing Component and the Direct Award Tenure Forest Revenue Sharing Component calculated in this Appendix; and,
 - 3.3.2 50 percent of the value of the Annual Amount identified in section 3.2 of this Appendix.

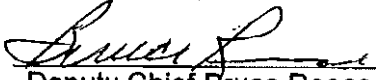
APPENDIX C

Statement of Community Priorities


Community Priority	Annual Revenue Sharing Contribution	Outcomes	Measurement Criteria
Audit and Reporting			
Total \$			

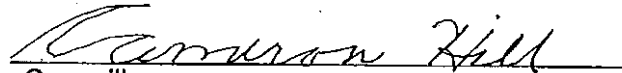
Signed on behalf of:

Gitga'at First Nation


Deputy Chief Bruce Reece

March 29, 2011
Date


Councillor


Councillor

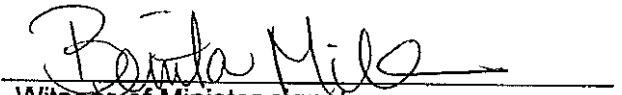
Councillor

Signed on behalf of:

Government of British Columbia


Minister of Aboriginal Relations and
Reconciliation

04.26.11
Date


Witness of Minister signature