

Gwa'sala-'Nakwaxda'xw Nation  
**CONSULTATION ENGAGEMENT FRAMEWORK**

This Agreement is dated for reference December 18, 2017

**BETWEEN:**

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

**AND:**

**Gwa'sala-'Nakwaxda'xw Nation (GNN), on behalf of itself and its Members, as represented by the Chief and Council**

(Collectively referred to as the "Parties" and individually referred to as a "Party")

**WHEREAS:**

- A. GNN asserts aboriginal rights and title to its Traditional Territory;
- B. In the spirit of the New Relationship and the Transformative Change Accord, the Province British Columbia ("Province") and GNN have undertaken a shared commitment to strengthening relationships on a government-to-government basis, and on focusing efforts to close the socio-economic gaps between aboriginal and non-aboriginal people;
- C. In March 2017, the Parties entered into a Cultural Revitalisation and Capacity Building Agreement, which, among other things, included a commitment by the parties to develop an improved consultation engagement process; and
- D. The Parties wish to set out a process for consultation on land and resource matters within the Traditional Territory.

**1. INTERPRETATION**

**1.1. Definitions.**

In this Agreement, the following definitions apply:

**"Agreement"** means this Consultation Engagement Framework.

**"Aboriginal Interests"** means the asserted Aboriginal rights and Aboriginal title of GNN.

**"Applicant"** means a person, corporation, or entity, or their agent that intends to submit or has submitted an Application requiring a Land and Resource Decision.

**“Application”** means a request, proposal or plan:

- a) submitted by an Applicant to a Provincial Agency for a Land and Resource Decision; or
- b) by a Provincial Agency for a Land or Resource Decision.

**“Confidential Information”** means any information provided by a Provincial Agency or GNN under this Agreement which is identified in writing as “Confidential”.

**“Effective Date”** means 45 calendar days after the last date on which this Agreement is fully executed by the Parties.

**“Engagement”** means the consultation process outlined in this Agreement.

**“Engagement Information Package”** or **“EIP”** means the information package described in section 4.2 of this Agreement.

**“Engagement Process”** Means the process that the Parties will follow to conduct Engagement and includes Category 1, Category 2, Category 3, and Special Engagement.

**“GNN Decision Maker”** means an official or designate of GNN that has authority, in accordance with GNN laws and customs, to make a decision within their respective authorities.

**“Information Sharing”** means Applicant or tenure holder engagement with GNN that includes efforts to reasonably: communicate, share information and engage in dialogue; identify and resolve issues; provide and consider information about potential impacts on Aboriginal Interests; or develop working relationships.

**“Land and Resource Decision”** or **“Decision”** means an authorization, administrative decision, operational decision, approval or renewal of a permit, tenure made by a Provincial Agency that pertains to land and marine use or natural resources.

**“Provincial Agency”** means a Provincial ministry, organization or agency that has authority to make Land and Resource Decisions in respect of the Provincial legislation identified in Schedule A, but does not include the Oil and Gas Commission.

**“Provincial Decision Maker”** means an official or designate of a Provincial Agency that has authority to make a Land and Resource Decision in accordance with its legislated mandate.

**“Representative”** means a representative of a Provincial Agency or GNN Lands and Resources Department that is identified by each Provincial Agency and GNN for the purposes of an Engagement.

**“Senior Representative”** means a representative of the Provincial Agency or GNN Lands and Resources Department that is identified by each Provincial Agency and GNN and is more senior than the Representative. The Provincial Agency Senior Representative would not normally be higher than the regional director or executive director level.

**“Table 1” means Appendix C: Table 1 Category 1, 2 and 3 Engagement Steps, Activities and Timelines.**

**“Table 2” means Appendix D: Table 2: Engagement Process Selection Guide for Category 1, 2 and 3, and Special Engagement.**

**“Traditional Territory” means the asserted traditional territory of GNN.**

**1.2. Geographic Area of this Agreement.**

This Protocol applies within the Traditional Territory of GNN identified on the map attached as Appendix A for the purposes of this Agreement.

**1.3. Interpretation. For purposes of this Agreement:**

- a) **“including” means “including, but not limited to” and “includes” means “includes, but not limited to”;**
- b) **the recitals and headings are for convenience only, do not form a part of this Agreement and in no way define, limit, alter or enlarge the scope or meaning of any provision of this Agreement;**
- c) **a reference to a statute includes every amendment to it, every regulation made under it, every amendment made to a regulation made under it and any law enacted in substitution for, or in replacement of, it;**
- d) **words in the singular include the plural, and words in the plural include the singular unless the context or any specific definition requires;**
- e) **in the calculation of time under this Agreement, all references to “days” are to business days from Monday to Friday (except statutory holidays in British Columbia), except that if the time for doing an act falls or expires on a day that is not a business day, the time is extended to the next business day;**
- f) **any reference to a corporate entity includes any predecessor or successor to such entity;**
- g) **there will be no presumption that doubtful expressions, terms or provisions in this Agreement are to be resolved in favour of any Party.**

**1.4. Appendices. The following are the Appendices to and form part of this Agreement:**

- a) **Appendix A – Map of Gwa’sala-’Nakwaxda’xw Nation Traditional Territory**
- b) **Appendix B – List of Applicable legislation**
- c) **Appendix C - Category 1, 2 and 3 Engagement Steps, Activities and Timelines**
- d) **Appendix D - Table 2: Engagement Process Selection Guide for Category 1, 2 and 3, and Special Engagement.**

## 2. PURPOSE

2.1. **Purpose of Agreement.** This Agreement establishes a defined process through which Provincial Agencies and GNN Representatives are to share information, communicate and have discussions with the goal of seeking consensus recommendations in relation to Applications. It is recognized as a step toward shared decision making that is intended to:

- a) establish a more collaborative, coordinated and efficient approach for GNN and Provincial Agency consideration and administration of Applications;
- b) enable Provincial Agencies and GNN, through improved communications, to avoid or reduce the number of land and resource disputes and minimize the need for litigation or other formal dispute resolution procedures;
- c) clarify the role of Applicants and proponents in the Engagement process, recognizing that Applicants and project proponents are often well positioned to provide information and avoid or mitigate impacts or otherwise address and resolve issues; and,
- d) ensuring that the Parties fulfill their obligations for Engagement on Applications and through which the Province can fulfil the duty to consult with, and where appropriate accommodate, GNN on Applications.

## 3. ENGAGEMENT PROCESS

3.1. **Engagement Steps.** For Applications requiring Category 1, Category 2 and Category 3 Engagement, Provincial Agencies and GNN will follow the steps set out in Table 1.

3.2. **Engagement Timelines.** The number of business days allotted for each Engagement process is as follows:

- a) for Category 1 Engagement, a total of 20 business days, as set out in Table 1;
- b) for Category 2 Engagement, a total of 40 business days, or 50 business days if the Engagement Dispute Process (section 7.4) is used, as set out in Table 1;
- c) for Category 3 Engagement, a total of 65 business days, or 75 business days, if the Engagement Dispute Process (section 7.4) is used as set out in Table 1; and,
- d) for Special Engagement, up to 45 business days is available to develop a terms or reference for the Engagement as may be agreed to by the Provincial Agency and GNN in accordance with section 8.5.

3.3. **Selection of Engagement Process.** A guide for selecting the appropriate Engagement Process is provided in the following sections of this Engagement Framework:

- a) Category 1, Category 2 and Category 3 as set out in Table 2; and,

- b) Special Engagement as set out in section 8.1 and in Table 2.
- 3.4. **Multiple Interrelated Authorizations.** Provincial Agency Representatives or GNN Representatives may request that a single, coordinated Engagement Process be followed for Applications that require multiple interrelated Decisions. In such circumstances, the Provincial Agency Representative or GNN Representative should propose an appropriate timeframe for the coordinated Engagement Process based on the guidance in Table 2.
- 3.5. **Shared Engagement Record.** Provincial Agencies and GNN will document their information exchanges and communications via a jointly developed **Shared Engagement Record (“SER”)**, the purpose of which is to document and summarize the process and outcomes of an Engagement, including descriptions of:
- a) information related to the proposed Decision;
  - b) potential impacts on Aboriginal Interests;
  - c) Engagement Process selection;
  - d) GNN issues and concerns; and,
  - e) consensus or non-consensus recommendations, as appropriate.
- 3.6. **Importance of Timelines.** The Parties recognize that respect for the timelines outlined in Table 1 demonstrates their commitment to implement the agreement in good faith, and that timelines contribute to the goal of effective collaboration and decision making.
- 3.7. **Timeline Extensions.** Engagement timelines may be extended by mutual agreement at any time if required due to unexpected circumstances or where additional time is needed for effective review of the Application or to resolve outstanding issues. An extension request must be submitted in writing to the other Party with a rationale, and the Party receiving the request will not unreasonably refuse to consent to the extension request.
- 3.8. **Disagreement on Engagement Process.** If a GNN Representative disagrees with the Engagement Process proposed by the Provincial Agency Representative pursuant to section 4.2 (b) (v) of this Engagement Framework, the GNN Representative may propose in writing a different Engagement Process with supporting rationale for the proposed change. The Representatives will discuss the supporting rationale and attempt to reach agreement on an Engagement Process within the Step 1 Initiation step, as set out in Table 1. Provincial Agency representatives will not unreasonably refuse to consent to proposed changes.
- 3.9. **No Confirmation of Receipt.** In cases where GNN does not confirm receipt of the **Engagement Information Package (“EIP”)** in accordance with section 5.1, the Provincial Agency will reasonably attempt to contact the GNN Representative for confirmation.
- 3.10. **No Response to Engagement Process Proposal.** If a GNN Representative does not respond to an Engagement Process proposal within 10 business days of electronic

transmission by the Provincial Agency, the Engagement Process proposed by the Provincial Agency will apply, and 'Application Review and Recommendations' period (Step 2) will commence.

- 3.11. **No Response to Engagement Request.** If a GNN Representative does not provide input to an Engagement Process within specified timelines, the Provincial Agency may proceed to finalize a SER and make a Land and Resource Decision without further Engagement and upon doing so will provide in writing to GNN notification of the decision taken and an explanation of how the known interests of GNN were taken into account.
- 3.12. **Engagement not Required.** A GNN Representative or GNN Decision Maker may at any time in Engagement process provide to the Provincial Agency written notification that no further Engagement is required. However, where GNN provides such notification subject to certain conditions being met by the Province or the Applicant, further Engagement pursuant to this Engagement Framework is required unless GNN conditions are adopted into the final authorizations.
- 3.13. **Park Permits.** GNN has a Collaborative Management Agreement with BC Parks. The Parties agree that the engagement framework under this Agreement will replace the consultation obligations for park use permit authorizations under the Collaborative Management Agreement. For greater clarity, the engagement framework under this Agreement replaces sections 14, 15 and 30-32 but does not remove or replace the collaborative management provisions of the Collaborative Management Agreement.

#### 4. PROVINCIAL AGENCY RESPONSIBILITIES

- 4.1. **Proponent Engagement.** At the earliest opportunity, the Provincial Agency Representative will inform Applicants of this Engagement Framework and as appropriate, direct or strongly encourage Applicants to undertake Information Sharing prior to submitting an Application.
- 4.2. **Engagement Information Package.** The Provincial Agency Representative will ensure Application information is provided as an EIP to GNN in a timely manner and includes:
  - a) a cover letter or cover email;
  - b) a first draft of a SER that contains:
    - i) a description of the type and characteristics of the potential Land and Resource Decision, including a brief history, if applicable, and context;
    - ii) the identity and contact information of the Applicant;
    - iii) a description of the location or geographic area that will potentially be affected by the Application if approved;

- iv) a preliminary scoping of any potential impacts that may stem from the Application;
- v) the proposed Engagement Process and a supporting rationale for that proposal in accordance with section 3.3; and,
- vi) a package of relevant supporting information and material required by the Provincial Agency to be submitted by the Applicant.

**4.3. Joint Engagement Responsibilities.** The Provincial Agency Representative will communicate and work with GNN Representatives to jointly:

- a) describe and assess potential impacts associated with the Application, including potential impacts of the proposed activity on Aboriginal Interests;
- b) document in the SER GNN concerns and issues related to the proposed activity; and,
- c) in consideration of sections (a) and (b) above, attempt to develop consensus recommendations for consideration by the Provincial Decision Maker and GNN Decision Maker.

**4.4. Interagency Coordination.** For coordinated Engagements referenced in section 3.4, a designated Provincial Agency Representative will coordinate communications and act as lead Representative when the Engagement Process involves more than one Provincial Agency.

**4.5. Sharing of Application Information.** On request, the Provincial Agency Representative will reasonably ensure that all relevant and available information that is necessary for GNN to review potential impacts on GNN's Aboriginal Interests is provided to GNN by the Applicant or the Provincial Agency.

**4.6. SER Documentation.** Following each Engagement discussion or meeting, the Provincial Agency Representative will develop a draft update or proposed final draft of the SER and circulate the draft to the GNN Representative for review and input.

**4.7. SER to Provincial Decision Maker.** The Provincial Agency Representative will present to the appropriate Provincial Decision Maker the final SER including the joint recommendations and, if applicable, any non-consensus recommendations.

**4.8. Decision Notification.** Should an Application be approved by the Province, the Provincial Agency Representative will provide a notice of decision and a digital copy of the authorization to GNN, including reasons for decision in circumstances where the Decision varies from consensus recommendations or the non-consensus recommendations provided by GNN.

## 5. GNN RESPONSIBILITIES

- 5.1. **Confirmation of Receipt.** The GNN Representative will confirm receipt of the EIP or the pre-engagement notification package in a timely manner, within 2 business days following electronic transmission of the EIP.
- 5.2. **Provide Information.** As early as reasonably possible in the Engagement Process, the GNN Representative will identify to the Provincial Agency:
- a) any concerns or issues associated with the Application taking into account the considerations in section 6.1;
  - b) a preliminary summary of any potential impacts upon Aboriginal Interests that may stem from the proposed Decision; and,
  - c) any additional information that is necessary for review of potential impacts on GNN's Aboriginal Interests.
- 5.3. **Joint Engagement Responsibilities.** The GNN Representative will communicate and work with Provincial Agency Representatives to jointly:
- a) describe and assess issues with the Application including the potential impact of the proposed Decision on Aboriginal Interests; and,
  - b) document, in the SER, GNN concerns and issues related to the proposed activity; and,
  - c) in consideration of the sections (a) and (b) above, attempt to resolve issues and seek consensus recommendations for consideration by the Provincial Decision Maker and the GNN Decision Maker.
- 5.4. **SER Documentation.** The GNN Representative will review and contribute to the SER to ensure information, key discussion points and any recommended actions are accurately recorded in working and final drafts of the SER.
- 5.5. **SER to GNN Decision Maker.** The GNN Representative will present the final SER including the joint recommendations and, if applicable, any non-consensus recommendations, to the GNN Decision Maker.

## 6. ENGAGEMENT RECOMMENDATIONS

- 6.1. **Recommendation Considerations.** When reviewing an Application and making recommendations, Provincial Agency and GNN Representatives will consider the following, as required:
- a) any applicable respective laws, policies or customs of the Province and GNN;
  - b) consistency, as appropriate, with any enabled land use plan, marine use plan, forest stewardship plan or protected area management plan;



- c) compatibility with any economic development strategy or plan that has been agreed to by the Parties;
- d) the potential positive and negative environmental, cultural, social and economic effects of the proposed Decision;
- e) any potential adverse effects and impacts on Aboriginal Interests stemming from the proposed activity and any measures that may be developed to avoid, mitigate or otherwise address those effects and impacts; and,
- f) the acceptability of such accommodation measures to GNN.

6.2. **Content of Recommendations.** The recommendations developed by Provincial Agency and GNN Representatives may include some or all of the following:

- a) whether the Application should be approved or rejected;
- b) any recommended conditions or measures that may avoid, mitigate or otherwise address adverse environmental or economic effects; and,
- c) any recommended conditions or measures that may avoid, mitigate or otherwise address potential impacts upon Aboriginal Interests.

6.3. **Consensus.** GNN and Provincial Agency Representatives will work to achieve consensus in their recommendations, and will respect principles of natural justice and procedural fairness. Where consensus recommendations cannot be achieved within the time frame the Parties may either agree to extend the timeline, initiate the Engagement dispute resolution process under section 7.4, or conclude engagement with non-consensus recommendations.

## 7. DISPUTE RESOLUTION

7.1. **Interpretation Dispute Process.** In the event that a dispute between Engagement Representatives is due to a difference of interpretation of this Agreement ("Interpretation Dispute"), the Representatives will at the earliest opportunity forward a description of the issue and a request for guidance to Senior Representatives. The Senior Representatives will make all reasonable efforts to review and provide direction in respect of interpretation disputes in a timely and effective manner.

7.2. **Policy Dispute Process.** Issues arising from review of an Application may relate to policy or administrative issues that extend beyond the scope of the particular Application ("Policy Dispute"). A Policy Dispute will be fully described in the SER, and, upon request of either Representative, will be forwarded to Senior Representatives for further discussion with applicable Provincial Agency Representatives. The Engagement timelines for the Application will not be extended solely for resolution of the Policy Dispute.

- 7.3. **Interim Solutions.** The Senior Representatives will make all reasonable efforts to coordinate resolution of Policy Disputes, including the development of any interim solutions in a timely and effective manner.
- 7.4. **Engagement Dispute Resolution Process.** If the Representatives are unable to reach agreement on a particular Engagement issue or recommendation (“Engagement Dispute”), the Representatives will as early as possible during Step 2 of the Engagement Process:
- a) exchange in writing a full description of the Engagement Dispute, together with any respective concerns and interests and the proposed specific actions that could be taken to address the issues; and,
  - b) discuss the written descriptions via meetings or conference calls and attempt to reach agreement on proposed specific actions.
- 7.5. **No Consensus in Engagement Disputes.** If after following the steps set out in 7.4, the Representatives are unable to reach consensus on an Engagement Dispute, they will forward the written descriptions of the issue to Senior Representatives of the applicable Provincial Agency and GNN for direction and assistance. Senior Representatives will discuss and make all reasonable efforts to attempt to resolve the issue(s) and produce a written summary in the SER within 10 business days for Category 2 and Category 3 Engagement.
- 7.6. **Unresolved Disputes.** If a dispute remains unresolved after completing the steps in sections 7.4 and 7.5, the remaining points of dispute must be documented in the SER and the Provincial and GNN Decision Makers may proceed to make a decision and upon doing so will provide in writing to the other Party notification of the decision taken and how the views of the other Party were addressed.

## 8. SPECIAL ENGAGEMENT

- 8.1. **Applicability.** Development of a Special Engagement process is required when:
- a) the Application is associated with a project that requires multiple interrelated Decisions;
  - b) review of the Application is associated with a higher level Land and Resource Decision that will require collaborative planning and consideration and development of extensive existing and new information; or,
  - c) engagement requires a customized process that, as appropriate, is either more streamlined or more comprehensive than is provided for under standard types of Engagement.
- 8.2. **Use of Table 2.** A list of Decisions typically requiring a Special Engagement process are listed in Table 2.

- 8.3. **Investigative Use Permits Exempt.** For clarity, Investigative Use Permits do not require a Special Engagement process.
- 8.4. **Mines Process.** If the Chief Inspector of Mines establishes an advisory committee or regional advisory committee under section 9 of the *Mines Act* in the Traditional Territory, GNN will reasonably participate in those committees to conduct consultation on related Applications. For clarity, where GNN participates in an advisory committee or regional advisory committee, that participation constitutes Special Engagement under this Agreement, and, section 8.5 of the Agreement will not apply.
- 8.5. **Documentation of Special Engagement Process.** Where a Special Engagement process is applied in accordance with section 8.1 , the Parties will work to jointly develop, within 45 business days, a separate terms of reference through which relevant Provincial Agencies and GNN will conduct Engagement.
- 8.6. **If No Process is Established.** If the relevant Provincial Agencies and GNN cannot agree to an Engagement process and Terms of Reference within 45 business days of initiating discussions, the Provincial Agencies or GNN may request use of the Engagement Dispute Process described in sections 7.4 and 7.5. If the dispute cannot be resolved and an agreed to process cannot be established within 10 business days, the Provincial Agency will consult with GNN on the basis of British Columbia's consultation procedures in effect at the time and the applicable case law respecting consultation obligations.

## 9. ANNUAL PRE-ENGAGEMENT NOTIFICATION (REPLACEMENTS)

- 9.1. **Initiation of Process.** To support Engagement workload planning and with the goal of achieving process efficiencies, the Provincial Agency may prepare and send advance notice to GNN of tenure and permit replacements that are likely to be upcoming in the next 6 months or year. The notification package will include:
- a) a cover letter explaining the purpose of the package and requesting a response from GNN Engagement Representative; and,
  - b) a table or spreadsheet, organized chronologically by the date of expected Land and Resource Decision, listing expected tenure and permit replacements for the upcoming calendar year. The table or spreadsheet may identify for each tenure, permit or authorization:
    - i) file numbers;
    - ii) tenure, permit or authorization type and sub-type;
    - iii) total tenure area;
    - iv) purpose and sub-purpose;
    - v) expiry date and expected new issuance date

- vi) proposed length of term; and,
- vii) a map or .kmz file showing the location of the potential Land and Resource Decisions in relation to GNN's Traditional Territory.

9.2. **GNN Response.** Within 30 business days following the date that the notification package is received by GNN, GNN will review the list of expected authorizations and provide to the Provincial Agency a response identifying which items on the list will require Engagement along with a preliminary selection of Engagement Process and supporting rationale. Final selection of Engagement Process will occur following submission of the EIP for the replacement.

## 10. ENGAGEMENT COMMUNICATIONS

10.1. **Electronic Communications.** Provincial Agencies and GNN will exchange Engagement information using digital and electronic methods whenever possible and appropriate. Electronic transfer of information via email and File Transfer Protocol (FTP) are the preferred method for exchanging information.

10.2. **Points of Contact.** Provincial Agencies and GNN will identify primary and alternate email points of contact for Engagement communications.

10.3. **Paper Copies.** Despite section 10.1, if GNN requests specific information in hard copy to effectively review an Application, Provincial Agencies will either:

- a) provide the required information; or,
- b) where appropriate, direct Applicants to provide the requested information in hard copy directly to the GNN.

## 11. INFORMATION AND CONFIDENTIALITY

11.1. **Information.** The Parties will support Engagement by sharing relevant information and knowledge and will, at the time of disclosure:

- a) assist the other Party in interpreting the information, determining the current and future use of the information and the terms under which it may be reproduced or shared, in whole or in part, with any other party; and,
- b) make all reasonable efforts to maintain the confidentiality of the information provided by the other Party and prevent its disclosure to the public, in particular information identified as Confidential Information.

11.2. **GNN's Confidential Information.** British Columbia acknowledges that GNN is a custodian of cultural and other information that may be:

- a) confidential or sensitive in nature; or,
- b) owned by individuals and must be managed according to the owner's wishes.

**11.3. Disclosure of GNN's Confidential Information.** British Columbia acknowledges that the disclosure of information referenced in section 11.2 to any other party requesting such information under the *Freedom of Information and Protection of Privacy Act* could:

- a) Be reasonably expected to harm the relations between British Columbia and GNN as an aboriginal government; or,
- b) Result in damage to or interfere with the conservation of:
  - i) fossil sites, natural sites or sites that have an anthropological or heritage value;
  - ii) an endangered, threatened or vulnerable species, subspecies or race of plants, vertebrates or invertebrates; or,
  - iii) any other rare or endangered living resources.

**11.4. Freedom of Information.** If British Columbia receives a request under the *Freedom of Information and Protection of Privacy Act* or is otherwise required by law to disclose the information received from GNN, British Columbia will provide GNN with notice of the request and the opportunity to discuss and work to resolve any issues associated with the proposed disclosure.

**11.5. Additional Conditions.** The Parties acknowledge that:

- a) section 11.1 does not apply to information that is already in the public domain, including the Remote Access to Archaeological Data (RAAD) database and on other public websites; and,
- b) the disclosure of Confidential Information may be restricted under provincial law or subject to additional conditions on disclosure.

## **12. REPRESENTATIONS AND WARRANTIES**

**12.1. GNN Representations.** GNN represents and warrants to British Columbia, with the intent and understanding that they will be relied on by British Columbia 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 its Members;
- b) it has taken all necessary actions and has obtained all necessary approvals to enter into this Agreement for and on behalf of its Members; and
- c) this Agreement is valid and binding obligation upon it.

**12.2. Provincial Representations.** British Columbia represents and warrants to GNN with the intent and understanding that they will be relied on by GNN 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 British Columbia.

### 13. FUNDING

- 13.1. **Funding.** In order to effectively implement this Agreement, British Columbia will, for the initial three (3) year term of this Agreement, supplement GNN's resources, by providing GNN with capacity funding, payable as follows:
- a) \$100,000 dollars within sixty (60) days of the Effective Date; and
  - b) \$100,000 dollars per year within thirty (30) days of the first and second anniversaries of the Effective Date.
- 13.2. **Use of Funding.** Funding provided by British Columbia under 13.1 will be utilized by GNN to fund its participation in, and implementation of, this Agreement.
- 13.3. **Funding under Other Agreements.** British Columbia may consider revenue received by GNN under other agreements in determining the funding under this Agreement where it is extended under 13.1.
- 13.4. **Additional Funding.** Nothing in this Agreement precludes GNN from:
- a) accessing funding that may be available through Other Provincial Agencies, a non-governmental body, another level of government;
  - b) working with British Columbia to identify additional funding to support the priorities of the Parties outside of this agreement; or
  - c) negotiating revenue-sharing agreements with proponents.
- 13.5. **Reporting on Funding.** To be eligible for payments under 13.1, GNN will prepare a fiscal year-end report containing information about implementation of this Agreement during the prior fiscal year, and will provide that report to British Columbia thirty (30) days prior to each anniversary of this Agreement.
- 13.6. **Conditions Precedent To Funding.** Notwithstanding any other provision in this Agreement, any payment of funds by British Columbia to GNN under this Agreement is subject to:
- a) 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 such payment is required, to make such payment; and
  - b) Treasury Board, as defined in the Financial Administration Act, not having controlled or limited expenditure under any appropriation necessary in order to make such payment.

#### 14. TERM, TERMINATION AND WITHDRAWAL

- 14.1. **Term.** The term of this Agreement will be 3 years commencing on the Effective Date, unless it is extended under section 14.2 or terminated under section 14.4.
- 14.2. **Renewal of Term.** At least [8] months prior to the third anniversary of the Effective Date, the Parties will evaluate the effectiveness of this Agreement; and decide whether to extend the term.
- 14.3. **Terms of the Renewal.** Where the Parties agree to extend the term of the Agreement they will negotiate and attempt to reach agreement on the terms of the extension, including terms relating to the provision of funds to support the implementation of the Agreement extension.
- 14.4. **Termination.** Notwithstanding section 14.1, this Agreement may be terminated in writing by either Party on ninety (90) calendar days' notice or on a date mutually agreed to by the Parties.
- 14.5. **Resolution of Termination.** In recognition of the enduring value of a government-to-government relationship between the Parties, the Parties will:
- a) on notice of termination, provide the other Party with the reasons for termination; and
  - b) within the period prior to the termination of this Agreement taking effect, pursue the opportunities presented by this Agreement, including Dispute Resolution under section 7, to resolve the basis for termination.
- 14.6. **Effect of Termination.** Where this Agreement is terminated under section 14.4:
- a) GNN will, where it has received funding from British Columbia to implement this Agreement, remit any unspent funds to British Columbia within thirty (30) business days of the termination of or withdrawal from this Agreement taking effect;
  - b) Section 11 of this Agreement related to Confidentiality and Freedom of Information survives the termination of this Agreement;
  - c) GNN will inform the Provincial Agencies that
    - i) this Agreement has been terminated and that it cannot be relied on to fulfill British Columbia's obligation to consult GNN;
    - ii) the common law duty to consult and, where appropriate, accommodate will apply in the event of section 14.6(c)(i) or 14.6(c)(ii), as the case may be.

## 15. FORMAL NOTICE AND DELIVERY

15.1. **Notices.** Any notice, document, statement or report under this Agreement must be in writing, and will be deemed validly given to and received by the other Party, if served personally, on the date of personal service or, if delivered by mail, e-mail or facsimile copier, when received as follows:

if to British Columbia:

Minister of Indigenous Relations and Reconciliation  
Ministry of Indigenous Relations and Reconciliation  
P.O. Box 9100 STN PROV GOVT  
Victoria B.C. V8W 9B1  
Telephone: (250) 356-1394  
Fax: (250) 387-6594  
Email: ABR.Minister@gov.bc.ca

and if to the GNN:

Chief Paddy Walkus  
Gwa'Sala-'Nakwaxda'xw Nation  
PO Box 998  
Port Hardy, BC V0N 2P0  
Telephone: (250) 949-8343  
Fax: (250) 949-7402  
Email: paddywalkus@gmail.com

15.2. **Change of Address.** Either Party may, from time to time, give written or e-mail notice to the other Party of any change of address or facsimile number of the Party giving such notice and after the giving of such notice, the address or facsimile number therein specified will, for purposes of this Agreement be conclusively deemed to be the address or facsimile number of the Party giving such notice.

15.3. **Electronic Notice.** The Parties agree that they will utilize electronic and other methods of communication for the purposes of Engagement whenever practicable and appropriate.

## 16. GENERAL

16.1. **Not a Treaty.** This Agreement does not:

- a) constitute a treaty or land claims agreement within the meaning of section 25 or 35 of the Constitution Act, 1982 (Canada); or
- b) affirm, recognize, abrogate or derogate from any GNN Aboriginal Interests.

16.2. **Acknowledgement.** The Parties acknowledge and enter into this Agreement on the basis that GNN asserts Aboriginal rights, including Aboriginal title, within GNN Traditional Territory but that the specific nature, scope or geographic extent of those



Aboriginal rights have yet to be determined. The Parties intend that broader processes that may be engaged in to bring about reconciliation may lead to a common understanding of the nature, scope and geographic extent of GNN Aboriginal Interests.

16.3. **No Admissions.** Nothing in this Agreement will be construed as:

- a) an admission of the validity of, or any fact or liability in relation to, any claims relating to alleged past or future infringements of GNN's Aboriginal Interests;
- b) an acknowledgement of any obligation to provide any financial, economic or other compensation, including those in this Agreement, as part of British Columbia's obligation to consult and, as appropriate, accommodate; or
- c) as in any way limiting the position the Parties may take in any negotiations or in any discussions or negotiations between the Parties, except as expressly contemplated in this Agreement.

16.4. **Entire Agreement.** This Agreement and any amendment to it constitute the entire agreement between the Parties with respect to the subject matter of this Agreement, unless otherwise agreed in writing by the Parties.

16.5. **Amendment.** This Agreement may be amended by the Parties in writing as follows:

- a) any amendment to this Agreement, by the Minister of Aboriginal Relations and Reconciliation, on behalf of British Columbia and Chief and Council of GNN;

16.6. **Validity of Agreement.** 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 had 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.

16.7. **Further Acts and Assurances.** Each of the Parties will, upon the reasonable request of the other, make, do, execute or cause to be made, done or executed all further and other lawful acts, deeds, things, devices, documents, instruments and assurances whatever for the better and absolute performance of the terms and conditions of this Agreement.

16.8. **No Implied Waiver.** 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 giving the waiver and will not be a waiver of any other provision, obligation or subsequent default.

- 16.9. **Assignment.** GNN will not assign, either directly or indirectly, this Agreement or any right of GNN under this Agreement without the prior written consent of British Columbia.
- 16.10. **Governing Law.** This Agreement will be governed by and construed in accordance with the laws of British Columbia.
- 16.11. **Execution in Counterpart.** This Agreement may be entered into by each Party signing a separate copy of this Agreement (including a photocopy or facsimile copy) and delivering it to the other Party by facsimile or electronic transmission.
- 16.12. **Legislated Timelines Prevail.** If the process and timelines of an Engagement Process conflict with a process or timeline specified in legislation, the legislative process or timeline will prevail to the extent of the conflict.
- 16.13. **No Fettering.** Nothing in this Agreement will be interpreted in a way that would affect or unlawfully interfere with any legislative authority of British Columbia or fetter the discretion given to any decision-making authority.
- 16.14. **Annual Review.** The Parties will review implementation of the Engagement Framework on an annual basis and undertake discussions with the goal of improving the efficiency and effectiveness of the Engagement Framework.

16.15. **Emergency Provisions.** Nothing in this agreement affects the ability of the Parties to respond to any emergency circumstances.


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

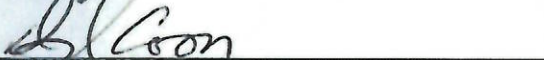
Signed on behalf of GNN by

  
\_\_\_\_\_  
Chief

  
\_\_\_\_\_  
Councillor

  
\_\_\_\_\_  
Councillor

  
\_\_\_\_\_  
Councillor

  
\_\_\_\_\_  
Councillor

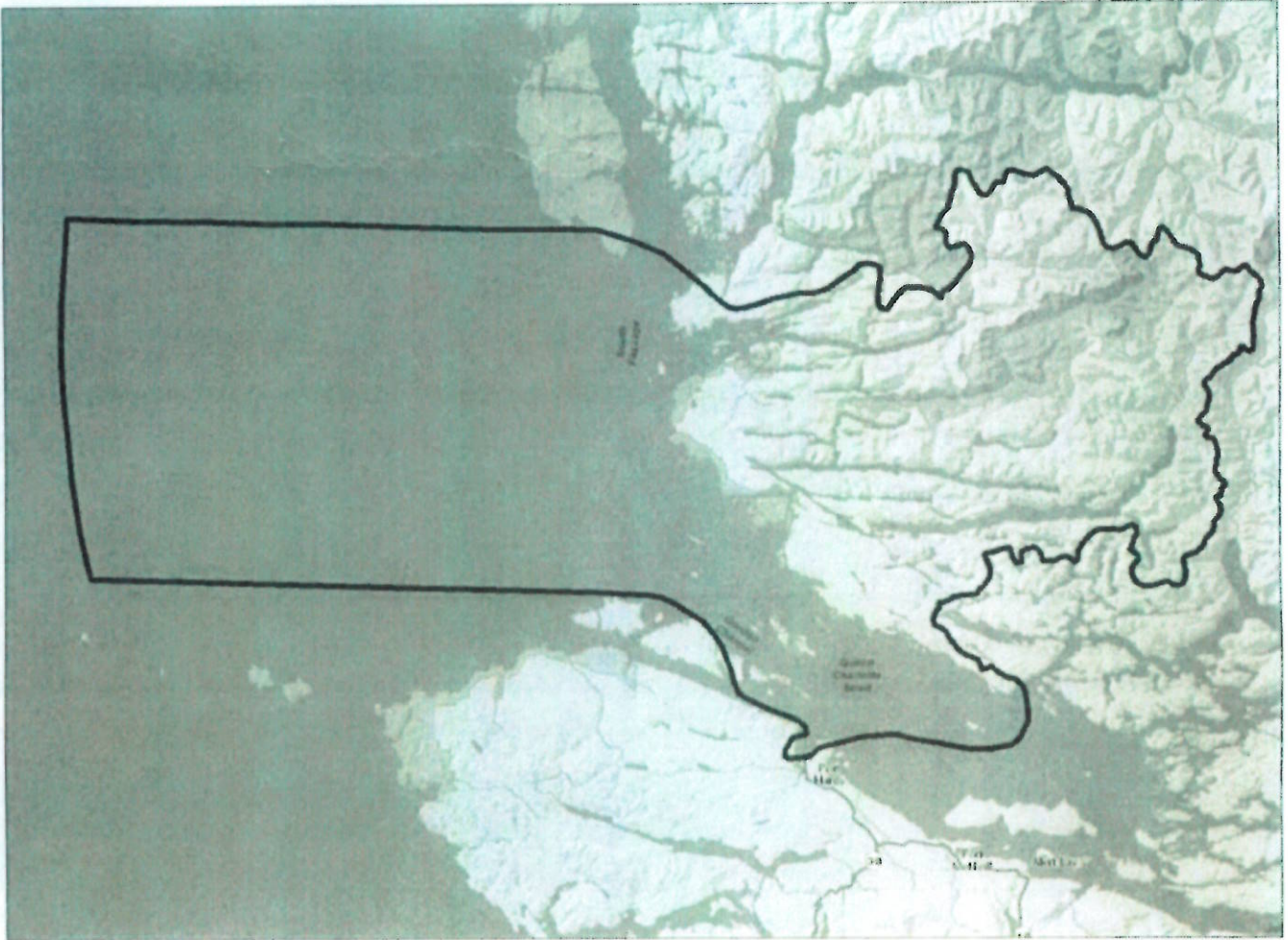
Signed on behalf of Her Majesty the Queen In  
Right of the Province of British Columbia by as  
represented by the Minister of Indigenous  
Relations and Reconciliation

  
\_\_\_\_\_

The Honorable Minister,  
Scott Fraser, MLA

**Appendix A**

Map of the Gwa'sala-'Nakwaxda'xw Nation Traditional Territory



## Appendix B

### Provincial Legislation Associated with Provincial Land and Resource Decisions:

*Forest Act*  
*Forest and Range Practices Act*  
*Land Act*  
*Lands Parks and Housing Act*  
*Integrated Pest Management Act*  
*Environmental Management Act*  
*Park Act*  
*Protected Areas of BC Act*  
*Wildlife Act*  
*Heritage Conservation Act, Archaeology permits*<sup>1</sup>  
*Mines Act*  
*Coal Act*  
*Mineral Tenure Act*  
*Fish and Seafood Act*  
*Water Sustainability Act*

---

<sup>1</sup> This Schedule applies to permits issued pursuant to the Heritage Conservation Act that are in relation to archaeological sites only.

**APPENDIX C**

**Table 1: Category 1, 2 and 3 Engagement Steps, Activities and Timelines**

Process Step	Activities	Business Days		
		C1	C2	C3
Pre-Engagement by Applicant (where applicable)	<p>The Provincial Agency Representative will, as appropriate, direct or strongly encourage Applicants to undertake Information Sharing in accordance with section 4.1.</p> <p>If a letter of support or non-opposition accompanies the Application as per section 3.12, Engagement is not required. Otherwise, the Provincial Agency Representative will prepare an Engagement Information Package (EIP) per section 4.2.</p>	Not Applicable		
Step 1 Initiation	<p>The Provincial Agency Representative will send the EIP to GNN in accordance with section 4.2. The proposed Engagement Process should be determined using the guide provided in Table 2.</p> <p>The GNN Representative will confirm receipt of the EIP in accordance with section 5.1. Next, the GNN Representative will respond to the Engagement Process proposal in accordance with 5.2. See sections 3.8 - 3.11 for further clarification on concluding this step.</p>	5	10	10
Step 2 Application Review and Recommendation	<p>The Representatives will continue to share information and engage via discussions, meetings and other communications to:</p> <ul style="list-style-type: none"> <li>• Fulfill their joint and respective Engagement responsibilities in accordance with sections 4.3 - 4.6 and sections 5.3 and 5.4;</li> <li>• Develop Recommendations, as described in section 6;</li> <li>• If required, initiate any Dispute Resolution processes in accordance with section 7.1 - 7.4.</li> </ul>	10	25	50
Step 3 Conclusion	<p>The Representatives will jointly finalize the SER in accordance with 3.5. If required, the Representatives will conclude any Engagement Dispute Resolution steps in section 7.1 - 7.4. Unless there are outstanding steps required as per section 7.5, the Representatives will submit the final SER to their respective Decision Makers in accordance with sections 4.7 and 5.5.</p>	5	5	5
Step 4 Dispute Resolution (where applicable)	<p>If required, the Representatives and any applicable Senior Representatives will undertake Engagement Dispute Resolution steps in accordance with section 7.5. The Representatives will submit the final SER to their respective Decision Makers in accordance with sections 4.7 and 5.5.</p>	0	10	10
	<b>Total Number of Business Days</b>	20	40-50	65-75

## APPENDIX D

Table 2: Engagement Process Selection Guide for Category 1, 2 and 3, and Special Engagement

**Category 1** This category typically applies in cases where reasonable Information Sharing has occurred prior to submission of an Application, there has been a reasonable amount of time for review of such information, and GNN's concerns related to impacts to its Aboriginal Interests stemming from the Application have been resolved to the satisfaction of the Provincial Decision Maker.\* This category also typically includes applications for minor amendments to existing tenures; small scale operational level plans and permits; temporary and/or small structures; short term activities; investigative permits; authorizations related to access.

[\*Where GNN disagrees with the Provincial Decision to engage at Category 1, the Parties will follow the process established in section 3.8 of this Agreement]

Decisions that typically fall within Category 1 are as follows:

**Forests – *Forest Act & Forest and Range Practices Act***

Forestry Road and Cutting Permits where Information Sharing has occurred  
Forestry Licence to cut (Maximum 2000 m3)

**Archaeology – *Heritage Conservation Act***

Section 14 investigation and inspection permits

**Lands, Parks – *Lands Act & Parks Act***

Licence of Occupation associated with forestry operations or forestry tenures where Information Sharing has occurred  
Investigative use permits with negligible physical impact  
Replacements of tenure, permits or certificates where requested as per section 9 of this Agreement  
Park Use Permit Replacements with no changes

**Mines – *Mines Act, Mineral Tenure Act and Coal Act***

Extending the term of a permit by up to 2 years  
Conducting induced polarization (IP) surveys where an exploration permit is already held  
IP surveys and exploration drilling in the area permitted for disturbance of an operating, producing mine, including all associated authorizations to support those activities (e.g., SUP, Cutting Permits, Water Licence).  
Activities with small new ground disturbance or effect on the uses, including: exploration activities – temporary work camps, helicopter supported drilling  
Mineral exploration, placer or construction aggregate on private land unless effects extend onto Crown Land  
Date Extension of Notice of Work (NoW) permits  
Date Extension of leases (mineral, placer, coal)  
Deemed Authorizations are excluded from all Categories

***Environmental Management Act & Integrated Pest Management Act***

Hazardous waste facility approval on private land  
Waste discharge regulation schedule 2 activities – all sizes on private land, and small on Crown Land  
Waste discharge regulation schedule 1 activities – small  
Operational certificates if GNN has no outstanding concerns with the plan

**Water – *Water Sustainability Act***

New Water licences<sup>2</sup>; domestic >1234m<sup>3</sup>/yr, power purposes (residential) and agriculture less than 5 acre feet - unless works constitute a 'change in and about a stream.

<sup>2</sup> Water licence application sourced from an aquifer or a stream as defined by the Water Sustainability Act.

Water licence amendment; change in base flow requirements.  
Section 24 – Permit over Crown Land.  
Section 10 use approval when FN hold a water licence downstream of application site.  
Section 62 – drilling authorization  
Section 31 – abandonment of water rights involving works on Crown Land or storage

**Fish & Wildlife – *Wildlife Act***

Changes to hunting regulations that apply to GNN hunters (e.g., public health and safety)  
Wildlife transporter licences and management plans

**Marine Plant Harvesting – *Fisheries Act***

Marine plant harvesting licences

---

**Category 2** This category typically includes applications for tenures for new mid-scale operational activities; major amendments to existing tenures; mid-scale industrial activities; mid-scale non-temporary structures; or activities associated with landscape level planning. Decisions that typically fall within Category 2 are as follows:

**Forests – *Forest Act and FRPA***

Forestry Road and Cutting Permits where reasonable efforts to conduct Information Sharing have not occurred  
Replacements or extensions of Forestry tenures/licences, special use permits, FSPs  
Amendments to licences  
Recreation sites & trails decisions

**Archaeology – *Heritage Conservation Act***

Section 12 site alteration permits

**Mines – *Mines Act, Mineral Tenures Act and Coal Act***

Activities with small new ground disturbance or effect on the uses, including: exploration activities – temporary work camps, drilling, trenching or test pitting with or without explosives, including all associated authorizations to support those activities (e.g., SUP, Cutting Permits, Water Licence, etc.) and excluding temporary work camps and helicopter-supported drilling  
Reopening of existing roads or trails within or to the mineral property  
Underground exploration with no new surface dumps or with small area dumps  
Mineral exploration, placer or construction aggregate on Crown land  
New dimension stone quarries  
Existing and new under 200,000 tonnes of paydirt per year placer mining operations  
Helicopter support drilling requiring 50 m3 of timber cutting  
Coal licence and lease applications  
Mining and placer lease applications  
Bulk sample less than 1,000 tonnes of mineralized rock. Or 5,000 tonnes of coal

**Lands, Parks – *Land Act & Park Act***

Investigative Use Permits where there is ground or water disturbance  
Agriculture decisions  
Interpretive sites, recreation sites and recreation trails  
Land Act and Park Act authorizations for small site permits - campsites, storage sites, helipads  
New Adventure Tourism tenures  
Park Use Permits that are compatible with applicable Park Management Plans

**Environmental Protection – *Integrated Pest Management Act & Environmental Management Act***

Five year Forest Pest Management plans (vegetation management / insect outbreaks)  
Vegetation Management of Rights-of-Ways with public access



Hazardous Waste facility approval on Crown Land under EA threshold  
Waste Discharge Regulation Schedule 2 activities<sup>3</sup> – large on Crown Land  
Waste Discharge Regulation Schedule 1 activities – large  
Operational certificates if outstanding GNN concerns with the plan

**Water – *Water Sustainability Act & Dike Maintenance Act***

Any contemplated decision/proposal that would result in a 'change in and about a stream'<sup>4</sup>.  
New Dikes, major dike repairs/reconstruction (*Dike Maintenance Act*).  
New Water licences – agriculture greater than 5 acre feet (6,167 m<sup>3</sup>), industrial & commercial less than 5 acre feet and land improvement.  
Section 11 – Change Approval

**Fish & Wildlife - *Wildlife Act & Fisheries Act***

Possession of life wildlife – new long term care facilities (e.g., zoo, rehabilitation center)  
High disturbance fish and wildlife projects (e.g., collaring, wildlife transplants)  
Disposition of new guide territory certificate

---

**Category 3** This category typically includes decisions that are strategic in nature; can be administrative; associated with significant new developments or multi-permit projects; expected to result in significant site disturbance; tenures for major operational activities; associated with regional scale planning; or that may have large, permanent impacts. Decisions that typically fall within Category 3 are as follows:

**Forestry – *Forest Act and FRPA***

New and Major Amendments to Forest Stewardship Plans  
New Forestry Special Use Permits  
Forestry Licence to cut (major)

**Mines – *Mines Act***

Activities with potential for significant new ground disturbance or effects on other uses, including: new permanent or long term access development associated with advanced exploration with over 10 km in length including all associated authorizations to support those activities (e.g., SUP, Cutting Permits, Water Licence, etc.  
Bulk samples greater than 1,000 tonnes of mineralized rock or 5,000 tonnes of coal  
New placer operations with production of 200,000 tonnes to 500,000 tonnes of paydirt per year

**Lands & Parks – *Land Act & Park Act***

New Tourism Resorts (including fishing lodges), or significant expansion of existing resorts  
Crown Land Sales  
New permanent infrastructure  
New Aquaculture Tenures

**Environmental Protection – *Environmental Management Act***

Hazardous Waste facility approvals on Crown Land exceeding the major projects threshold under the *EA*  
Solid and Liquid Waste Management Plans

**Water – *Water Sustainability Act & Dike Maintenance Act***

New Water licences for mine operations; water works (local community drinking water); storage (dams); power purposes (commercial and general (section 19(2)), all other industrial and commercial greater than 5 acre feet.

---

<sup>3</sup> Refers to the Waste Discharge Regulation of the Environmental Management Act. Can be viewed online at: [http://www.bclaws.ca/Recon/document/id/freeside/50\\_320\\_2004](http://www.bclaws.ca/Recon/document/id/freeside/50_320_2004)

<sup>4</sup> Refers to the Water Act: [http://www.bclaws.ca/civix/document/id/complete/statreg/96483\\_01](http://www.bclaws.ca/civix/document/id/complete/statreg/96483_01)

---

**Special Engagement** Refer to section 8.1 of this agreement regarding applicability of a Special Engagement process. Decisions typically requiring a Special Engagement process include:

- Timber Supply Analysis and Allowable Annual Cut Determinations
- New Land Use Orders and Major Amendments
- Life of significant mining projects (e.g. amendments, closure plans as well as the development phase).
- Water Sustainability Plan