

**Kwaw-kwaw-Apilt First Nation Forest & Range  
Consultation and Revenue Sharing Agreement (FCRSA)  
(the "Agreement")**

**Between:**

**Kwaw-kwaw-Apilt First Nation,  
as represented by Chief and Council  
(Kwaw-kwaw-Apilt First Nation)**

**And:**

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

(each a "Party" and collectively the "Parties")

**WHEREAS:**

- A. Kwaw-kwaw-Apilt First Nation has Aboriginal Interests within the Territory.
- B. British Columbia is committed to working towards the implementation of the *United Nations Declaration on the Rights of Indigenous Peoples* (UNDRIP) and the Truth and Reconciliation Commission (TRC) Calls to Action, by working in partnership with Indigenous peoples of British Columbia to establish positive government-to-government relationships built on a foundation of respect, rights, and reconciliation.
- C. The *Declaration on the Rights of Indigenous Peoples Act* provides a framework for how UNDRIP will be implemented in British Columbia. British Columbia intends to take all measures necessary to ensure the laws of British Columbia are consistent with UNDRIP in accordance with that Act.
- D. The Parties intend this Agreement to assist in achieving stability and greater certainty for forest and range resource development on Crown lands within the Territory by setting out a process for consultation regarding such development, and to provide a Revenue Sharing Contribution to assist Kwaw-kwaw-Apilt First Nation in its pursuit of activities to enhance the well-being of its Members.

**THEREFORE THE PARTIES AGREE AS FOLLOWS:**

**ARTICLE 1 - INTERPRETATION**

- 1.1 Definitions.** For the purposes of this Agreement, including the recitals, the following definitions apply:

**“Aboriginal Interests”** means:

- (a) asserted aboriginal rights, including aboriginal title; or
- (b) determined aboriginal rights, including aboriginal title, that are recognized and affirmed under section 35(1) of the *Constitution Act, 1982*;

**“Administrative and/or Operational Decision”** means a decision made by the Minister or a Delegated Decision Maker related to forest and range resources under provincial legislation that is included in the List of Decisions as defined and set out in Appendix B;

**“Band Council Resolution”** means a resolution of Kwaw-kwaw-Apilt First Nation having the form of Appendix D;

**“BC Fiscal Year”** means a period beginning on April 1 of a calendar year and ending on March 31 of the next calendar year;

**“Delegated Decision Maker”** means a person with authority to make statutory decisions with respect to forest and range resources under provincial legislation as amended from time to time;

**“Designate”** means the entity described in section 4.2;

**“Effective Date”** means the day after the current FCRSA between Kwaw-kwaw-Apilt First Nation and the Province, effective until December 22<sup>nd</sup>, 2023, expires if this Agreement has been fully executed by the Parties by that time. If this Agreement is not fully executed by the December 23<sup>rd</sup>, 2023, the “Effective Date” means the last date on which this Agreement has been fully executed by the Parties;

**“Eligible Volume”** means the volume of Crown timber provided to Kwaw-kwaw-Apilt First Nation in a direct award tenure under Section 47.3 of the *Forest Act* originating from the volume reallocation of the *Forestry Revitalization Act* that is appraised through the Market Pricing System;

**“First Fiscal Year of the Term”** means the BC Fiscal Year in which the Effective Date falls;

**“Forest Tenure Opportunity Agreement”** means an agreement signed between the Minister and a First Nation that provides for the Minister to direct award forest tenure under the *Forest Act*;

**“Licensee”** means a holder of a forest tenure or a range tenure;

**“Matrix”** means the table set out in section 1.10 of Appendix B;

**“Member”** means any person who is a member of the Kwaw-kwaw-Apilt First Nation.

**“Minister”** means the Minister of Forests, having the responsibility, from time to time, for the exercise of powers in respect of forests and range matters;

**“Operational Plan”** means a Forest Stewardship Plan, Woodlot Licence Plan, a Range Use Plan, or Range Stewardship Plan, as those terms are defined in provincial forest and range legislation;

**“Payment Account”** means the account described in subsection 4.4(a);

**“RA”** means a reconciliation agreement between British Columbia and Kwaw-kwaw-Apilt First Nation that creates a foundation for the reconciliation of aboriginal rights and/or aboriginal title with Crown sovereignty but is not a treaty in the meaning of section 35(1) of the *Constitution Act, 1982*;

**“Revenue Sharing Contribution”** means each payment to be made by British Columbia to Kwaw-kwaw-Apilt First Nation under Article 3;

**“SEA”** means a strategic engagement agreement between British Columbia and Kwaw-kwaw-Apilt First Nation that includes agreement on a consultation process between Kwaw-kwaw-Apilt First Nation and British Columbia in relation to the potential adverse impacts of proposed provincial land and natural resource decisions on Kwaw-kwaw-Apilt First Nation’s Aboriginal Interests;

**“Term”** means the term of this Agreement as set out in section 14.1;

**“Timber Harvesting Land Base”** means the portion of the total land area of a management unit considered by the Ministry of Forests, Lands, Natural Resource Operations and Rural Development to contribute to, and be available for, long-term timber supply;

**“Territory”** means the geographic area identified by Kwaw-kwaw-Apilt First Nation as their traditional territory located in British Columbia and as shown on the map attached in Appendix A.

**1.2 Interpretation.** For the purposes of this Agreement:

- (a) “includes” and “including” are not intended to be limiting;
- (b) the recitals and headings are inserted for convenience of reference only, do not form part of this Agreement and are not intended to define, enlarge or restrict the scope or meaning of this Agreement or any provision of it;
- (c) any reference to a statute in this Agreement includes all regulations made under that statute and any amendments or replacement of that statute or its regulations;
- (d) unless the context otherwise requires, words expressed in the singular include the plural and *vice versa*;
- (e) any reference to a corporate entity includes any predecessor or successor to such entity; and
- (f) there will be no presumption that doubtful expressions, terms or provisions in this Agreement are to be resolved in favour of any Party.

**1.3 Appendices.** The following Appendices and Schedule are attached to and form part of this Agreement:

- A. Appendix A - Map of Territory;
- B. Appendix B - Consultation Process
  - i. B - Schedule 1 – List of Decisions;
- C. Appendix C - Revenue Sharing Contribution Methodology;
- D. Appendix D - Band Council Resolution Appointing Delegate; and
- E. Appendix E - Annual Report.

## **ARTICLE 2 - PURPOSE AND OBJECTIVES**

**2.1 Purpose and objectives.** The purposes and objectives of this Agreement are:

- (a) to establish a consultation process the Parties will use to consult on potential adverse impacts of proposed forest and range resource development activities, including Administrative and/or Operational Decisions or Operational Plans, on Kwaw-kwaw-Apilt First Nation's Aboriginal Interests;
- (b) to provide a Revenue Sharing Contribution to support the capacity of the Kwaw-kwaw-Apilt First Nation to participate in the consultation process under this Agreement and as a contribution towards any accommodation that may be required in respect of potential impacts of forest and range decisions and operations within the Territory on Kwaw-kwaw-Apilt First Nation's Aboriginal Interests;
- (c) to enhance the social, economic and cultural well-being of Members; and
- (d) to assist in achieving greater stability and certainty for forest and range resource development within the Kwaw-kwaw-Apilt First Nation's Territory.

## **ARTICLE 3 - REVENUE SHARING CONTRIBUTIONS**

**3.1 Calculation and timing of payments.** Subject to sections 3.2 to 3.4, section 4.5 and Articles 5 and 11, during the Term, British Columbia will:

- (a) make annual Revenue Sharing Contributions, calculated in accordance with Appendix C, to Kwaw-kwaw-Apilt First Nation (or its Designate under section 4.2, as the case may be); and
- (b) pay the annual Revenue Sharing Contribution in two equal instalments, the first to be made on or before September 30 and the second to be made on or before March 31.

**3.2 First Fiscal Year.** Notwithstanding section 3.1, for the First Fiscal Year of the Term the Revenue Sharing Contribution is deemed to be:

\$44,815;

the first instalment of which will be paid on or before September 30<sup>th</sup>, 2023 based on the FCRSA currently in place, and the second instalment would be paid on or before March 31<sup>st</sup>, 2024 if this Agreement is signed prior to March 15<sup>th</sup>, 2024.

**3.3 Prorated amounts.** For the purposes of determining the amount of the Revenue Sharing Contribution for partial BC Fiscal Years, the amount will be prorated from

- (a) the start of the month in which the Agreement is signed by Kwaw-kwaw-Apilt First Nation;
- (b) the end of the month in which the Agreement is terminated by either Party under Article 11, or;
- (c) the end of the month in which the Agreement expires.

**3.4 Payment of prorated amounts.** If the amount of the Revenue Sharing Contribution is prorated under section 3.3(b) or section 3.3(c) as a result of termination or expiry of the Agreement that takes effect:

- (i) prior to July 31, British Columbia will pay the full amount of the Revenue Sharing Contribution for that BC Fiscal Year in one instalment on or before September 30; and
- (ii) on or after July 31, British Columbia will adjust the second instalment for that BC Fiscal Year accordingly.

**3.5 Subsequent BC Fiscal Year amounts.** Before January 31 of each year during the Term other than the First Fiscal Year of the Term, British Columbia will provide written notice to Kwaw-kwaw-Apilt First Nation of the amount of the Revenue Sharing Contribution for the following BC Fiscal Year and the summary document(s) and calculations identified in Appendix C.

**3.6 Amount agreed to.** Kwaw-kwaw-Apilt First Nation agrees that the amount set out in the notice provided under section 3.5 will be the amount of the Revenue Sharing Contribution payable under this Agreement for that following BC Fiscal Year.

## **ARTICLE 4 - DELIVERY OF PAYMENTS**

**4.1 Recipient entity.** Unless Kwaw-kwaw-Apilt First Nation notifies British Columbia that it has made an election under to section 4.2, Revenue Sharing Contributions will be paid to Kwaw-kwaw-Apilt First Nation.

- 4.2 Election of Designate.** Kwaw-kwaw-Apilt First Nation may elect to have a Designate receive Revenue Sharing Contributions provided that the Designate:
- (a) is a registered corporation or society with the legal authority and capacity to receive the funds for the purposes described in section 2.1; and
  - (b) is duly appointed to receive the Revenue Sharing Contribution on behalf of Kwaw-kwaw-Apilt First Nation and such appointment is confirmed by a Band Council Resolution of «First Nation».
- 4.3 Obligations continue.** The election of a Designate under section 4.2 does not relieve Kwaw-kwaw-Apilt First Nation of its obligations under this Agreement.
- 4.4 Payment Account.** Kwaw-kwaw-Apilt First Nation or its Designate will:
- (a) establish and, throughout the Term, maintain an account in the name of Kwaw-kwaw-Apilt First Nation (or its Designate, as the case may be) at a Canadian financial institution into which direct deposits can be made by British Columbia, for the purpose of receiving monies payable by British Columbia pursuant to this Agreement (the "Payment Account"); and
  - (b) provide to British Columbia sufficient address and account information respecting the Payment Account to enable British Columbia to make direct deposit payments to the Payment Account.
- 4.5 Requirement to make a payment.** British Columbia may withhold a Revenue Sharing Contribution it would otherwise be required to make until Kwaw-kwaw-Apilt First Nation (or its Designate, as the case may be) has met the requirements set out in section 4.4.

## **ARTICLE 5 - CONDITIONS OF PAYMENT**

- 5.1 Reporting requirements.** For each BC Fiscal Year following the First Fiscal Year of the Term, the requirement to make a Revenue Sharing Contribution is subject to:
- (a) Kwaw-kwaw-Apilt First Nation having published all of the necessary statements and reports before the applicable dates as set out in Article 8; and
  - (b) Revenue Sharing Contributions not having been suspended under Article 11.
- 5.2. Appropriation.** Notwithstanding any other provisions of this Agreement, the payment of money by British Columbia to Kwaw-kwaw-Apilt First Nation pursuant to 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 BC

Fiscal Year or part thereof when any such payment may be required, to make that payment; and

- (b) Treasury Board not having controlled or limited, pursuant to the *Financial Administration Act*, expenditure under any appropriation referred to in (a).

## **ARTICLE 6 - CONSULTATION**

- 6.1 Satisfaction of consultation obligations.** Subject to section 6.3, the process set out in Appendix B will be the means by which British Columbia will fulfill its obligation to consult on proposed Operational Plans or proposed Administrative and/or Operational Decisions and, where appropriate, the means by which British Columbia and Kwaw-kwaw-Apilt First Nation will identify potential measures to accommodate any potential adverse impacts on Kwaw-kwaw-Apilt First Nation's Aboriginal Interests resulting from Operational Plans or Administrative and/or Operational Decisions.
- 6.2 Map may be shared.** British Columbia may share the map attached as Appendix A, including digital versions of the map, with provincial agencies or with a Licensee responsible for information sharing associated with Operational Plans or Administrative and/or Operational Decisions.
- 6.3 SEA or RA applies.** Notwithstanding 6.1:
- (a) if before the Effective Date Kwaw-kwaw-Apilt First Nation enters into a SEA, or RA that includes a consultation process that addresses forest and range management and decision making, the consultation process set out in the SEA or RA will continue after the Effective Date;
  - (b) if on or after the Effective Date Kwaw-kwaw-Apilt First Nation enters into a SEA, or RA that includes a consultation process that addresses forest and range management and decision making, the consultation process set out in the SEA or RA will supersede and replace the consultation process set out in this Agreement for the term of the SEA or RA; and
  - (c) if the SEA or RA referred to in (a) or (b) comes to the end of its term or is terminated prior to the end of the Term, the consultation process set out in Appendix B will apply for the remainder of the Term.
- 6.4 Capacity funding.** The Parties acknowledge and agree that to assist Kwaw-kwaw-Apilt First Nation to engage in consultation under this Agreement and in consultation under any SEA or RA that addresses but does not provide capacity funding for forest and range related consultation, British Columbia will provide to Kwaw-kwaw-Apilt First Nation, under section 1.4 of Appendix C, capacity funding of no less than \$35,000 per annum.

## ARTICLE 7 - ACKNOWLEDGMENTS AND COVENANTS

- 7.1 Revenue Sharing Contributions will vary.** Kwaw-kwaw-Apilt First Nation acknowledges that forest and range revenues received by British Columbia fluctuate and that the Revenue Sharing Contributions under this Agreement will vary over time.
- 7.2 Revenue Sharing Contributions are accommodation.** Kwaw-kwaw-Apilt First Nation agrees that the Revenue Sharing Contributions made under this Agreement constitute a contribution towards any accommodation that may be required for any potential adverse impacts of Administrative and/or Operational Decisions, and any forest or range development practices that may be carried out under an Operational Plan, on Kwaw-kwaw-Apilt First Nation's Aboriginal Interests.
- 7.3 Where consultation process followed.** Kwaw-kwaw-Apilt First Nation agrees that if the consultation process set out in this Agreement is followed, British Columbia has consulted, and this will be the process through which British Columbia will identify potential accommodation measures to address the potential adverse impacts of Administrative and/or Operational Decisions, and any forest or range development practices that may be carried out under an Operational Plan, on Kwaw-kwaw-Apilt First Nation's Aboriginal Interests.

## ARTICLE 8 - ANNUAL REPORTS AND RECORDS

- 8.1 Annual Report.** Within 90 days of the end of each BC Fiscal Year, Kwaw-kwaw-Apilt First Nation will prepare an annual report, substantially in the form set out in Appendix E, identifying all expenditures made from the Payment Account since the date of the last such report or in the case of the first such report, since the Effective Date, and confirming that, aside from reasonable administrative expenses, all such expenditures were made in furtherance of the purposes and objectives referred to in section 2.1.
- 8.2 Publication.** Kwaw-kwaw-Apilt First Nation will publish the annual report referred to in section 8.1 in a manner that can reasonably be expected to bring the information to the attention of Kwaw-kwaw-Apilt First Nation's communities and the public within 90 days of the end of each BC Fiscal Year.
- 8.3 Continuing Obligations.** Notwithstanding the termination or expiry of this Agreement, the provisions of this Article 8 will continue to apply for 90 days after Kwaw-kwaw-Apilt First Nation receives the final Revenue Sharing Contribution from British Columbia.



## **ARTICLE 9 - ASSISTANCE**

**9.1 Cooperation and Support.** Kwaw-kwaw-Apilt First Nation will work in partnership with British Columbia and in a timely manner to discuss and seek to resolve issues in relation to any action that might be taken by a Member that is inconsistent with this Agreement.

## **ARTICLE 10 - DISPUTE RESOLUTION**

**10.1 Dispute Resolution Process.** If a dispute arises between British Columbia and Kwaw-kwaw-Apilt First Nation regarding the interpretation of a provision of this Agreement:

- (a) duly appointed representatives of the Parties will meet as soon as is practicable to attempt to resolve the dispute;
- (b) if the Parties' representatives are unable to resolve the dispute, the issue will be referred to more senior representatives of British Columbia and Kwaw-kwaw-Apilt First Nation; and
- (c) if the dispute cannot be resolved by the Parties directly under subsections (a) or (b), the Parties may agree to other appropriate approaches to resolve the issue.

## **ARTICLE 11 - SUSPENSION and TERMINATION**

**11.1 Suspension of Revenue Sharing Contributions.** British Columbia may suspend further Revenue Sharing Contributions under this Agreement where Kwaw-kwaw-Apilt First Nation is in material breach of its obligations under this Agreement.

**11.2 Notice of Suspension.** Where Revenue Sharing Contributions are suspended under section 11.1, British Columbia will provide notice to Kwaw-kwaw-Apilt First Nation of the reason for the suspension, including the specific material breach on which British Columbia relies, and the Parties will meet to attempt to resolve the issue giving rise to the suspension.

**11.3 Termination following suspension.** If the issue giving rise to the suspension of Revenue Sharing Contributions is not resolved within 60 days after notice is provided under section 11.2, British Columbia may terminate the Agreement by written notice.

**11.4 Termination by Either Party.** This Agreement may be terminated by either Party on ninety (90) days' written notice or on a date mutually agreed on by the Parties.

**11.5 Meet to attempt to resolve issue.** If a Party gives written notice under section 11.4, the Parties will, prior to the end of the notice period, meet and attempt to resolve any issue that may have given rise to the termination notice.

## **ARTICLE 12 – TERM**

- 12.1 Term.** The term of this Agreement will be three (3) years commencing on the Effective Date unless the term is extended under section 12.2 or terminated under Article 11.
- 12.2 Extension of the Term.** At least two 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.
- 12.3 Terms of the Extension.** Where the Parties agree to extend the Term they will negotiate and attempt to reach agreement on the terms of the extension.
- 12.4 Evaluation.** Either Party may, on an annual basis, request the participation of the other Party to review the effectiveness of this Agreement and to consider potential amendments to it.

## **ARTICLE 13 – REPRESENTATIONS and WARRANTIES**

- 13.1** British Columbia represents and warrants to Kwaw-kwaw-Apilt First Nation, with the intent and understanding that the Kwaw-kwaw-Apilt First Nation will rely on such representations and warranties in entering into this Agreement, that British Columbia has the authority to enter into this Agreement.
- 13.2** Kwaw-kwaw-Apilt First Nation represents and warrants to British Columbia, with the intent and understanding that British Columbia will rely on such representations and warranties in entering into this Agreement, that:
- (a) Kwaw-kwaw-Apilt First Nation has the legal power, capacity and authority to enter into this Agreement on behalf of the Members;
  - (b) Kwaw-kwaw-Apilt First Nation has taken all necessary actions and has obtained all necessary approvals to enter into this Agreement on behalf of the Members; and
  - (c) this Agreement is a valid and binding obligation upon Kwaw-kwaw-Apilt First Nation.

## **ARTICLE 14 - NOTICE and DELIVERY**

**Delivery of Notices.** Any notice, document, statement or report contemplated under this Agreement must be in writing and will be deemed validly given to and received by a Party, if delivered personally, on the date of delivery, or, if delivered by mail, email or facsimile, when received by the Party at the following address:

if to British Columbia:

Deputy Minister  
Ministry of Indigenous Relations and Reconciliation  
P.O. Box 9100 STN PROV GOVT  
Victoria B.C. V8W 9B1  
Fax: (250) 387-6594

and if to the Kwaw-kwaw-Apilt First Nation:

Chief Randy Leon  
Kwaw-kwaw-Apilt First Nation  
Building 3-7201 Vedder Road  
Chilliwack BC V2R 4L9  
Telephone: 604-824-5117  
Fax: 604-858-2716

**14.1 Change of Address.** Either Party may, from time to time, give notice to the other Party of a change of address, email or facsimile number and after the giving of such notice, the address, email or facsimile number specified in the notice will, for purposes of section 14.1, supersede any previous address, email or facsimile number for the Party giving such notice.

## **ARTICLE 15 - GENERAL PROVISIONS**

**15.1 Governing law.** This Agreement will be governed by and construed in accordance with the laws of British Columbia.

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

- (a) constitute a treaty or a lands claims agreement within the meaning of sections 25 or 35 of the *Constitution Act, 1982* (Canada); or
- (b) establish, affirm, recognize, abrogate or derogate from any of Kwaw-kwaw-Apilt First Nation's Aboriginal Interests.

**15.3 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 Kwaw-kwaw-Apilt First Nation's Aboriginal Interests;
- (b) an admission or 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) in any way limiting the position the Parties may take in any proceedings or in any discussions or negotiations between the Parties, except as expressly contemplated in this Agreement.

**15.4 No Fettering.** Nothing in this Agreement is to be construed as interfering with, or fettering in any manner, the exercise by British Columbia or its agencies of any statutory, prerogative, executive or legislative power or duty.

**15.5 No Implied Waiver.** Any waiver of any term or breach of this Agreement is effective only if it is in writing and signed by the waiving Party and is not a waiver of any other term or breach.

**15.6 Assignment.** Kwaw-kwaw-Apilt First Nation must not assign, either directly or indirectly, this Agreement or any right of Kwaw-kwaw-Apilt First Nation under this Agreement without the prior written consent of British Columbia.

**15.7 Emergencies.** Nothing in this Agreement affects the ability of either Party to respond to any emergency circumstances.

**15.8 Acknowledgment.** The Parties acknowledge and enter into this Agreement on the basis that Kwaw-kwaw-Apilt First Nation has Aboriginal Interests within the Territory but that the specific nature, scope or geographic extent of those Aboriginal Interests have yet to be established. 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 Kwaw-kwaw-Apilt First Nation Aboriginal Interests.

**15.9 Third Parties.** This Agreement is not intended to limit any obligation of Licensee or other third parties to Kwaw-kwaw-Apilt First Nation.

**15.10 Other Economic Opportunities and Benefits.** This Agreement does not preclude Kwaw-kwaw-Apilt First Nation from accessing forestry economic opportunities and benefits, which may be available to it, other than those expressly set out in this Agreement.

**15.11 Validity of Agreement.** If any provision of this Agreement or the application of it to any person or circumstance is invalid or unenforceable to any extent, the remainder of this Agreement and the application of it to any person or circumstance will not be affected or impaired and will be valid and enforceable to the extent permitted by law.

**15.12 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.

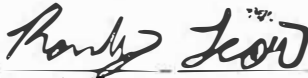
**15.13 Further Acts and Assurances.** Each Party must perform the acts, execute and deliver the writings, and give the assurances as may be reasonably necessary to give full effect to this Agreement.

**15.14 Execution in Counterpart.** This Agreement may be entered into by each Party executing a separate copy of this Agreement and delivering that executed copy to the other Party by a method provided for in Article 14 or any other method agreed to by the Parties.

**15.15 Amendment in Writing.** No amendment to this Agreement is effective unless it is agreed to in writing and signed by the Parties.

Signed on behalf of:

**Kwaw-kwaw-Apilt First Nation**



Chief Randy Leon

11/30/2023

Date



Councillor Sandra Hudson

Councillor



Witness of Kwaw-kwaw-Apilt First Nation  
signatures

Signed on behalf of:

**Government of British Columbia**

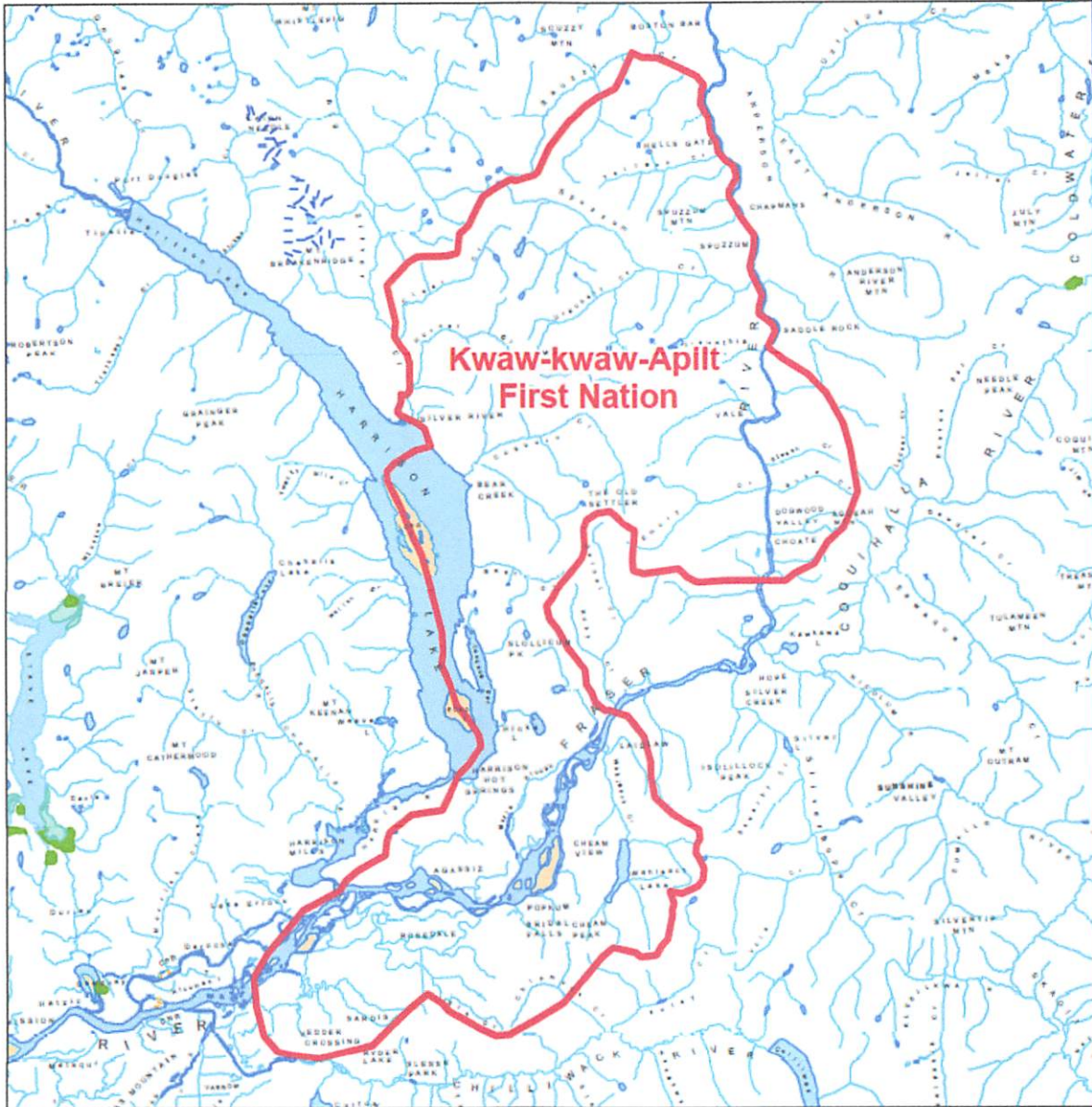


Minister of Indigenous Relations and  
Reconciliation

January 29, 2024

Date

## Appendix A: Map of the Kwaw-kwaw-Apilt First Nation Traditional Territory



**Key Map**

Forest and Range Consultation and Revenue Sharing Agreement Boundary

0 5 10 20 Kilometers

Date: March 17, 2015

This map has been prepared for information purposes only and is not intended to create, recognize, limit or deny any aboriginal rights, including title, that any First Nations may have, or impose any obligations on British Columbia or alter the legal status of resources within the Province or the existing legal authority of British Columbia.



## **APPENDIX B**

### **Consultation Process for Administrative and/or Operational Decisions and Operational Plans within Kwaw-kwaw-Apilt First Nation Territory**

- 1.1 British Columbia will consult with Kwaw-kwaw-Apilt First Nation on proposed Administrative and/or Operational Decisions and Operational Plans that may potentially adversely impact Kwaw-kwaw-Apilt First Nation's Aboriginal Interests within the Territory, in accordance with this Appendix B.
- 1.2 Kwaw-kwaw-Apilt First Nation will fully participate in information sharing and/or consultation with British Columbia, Licensees or proponents regarding proposed Administrative and/or Operational Decisions or Operational Plans within the Territory in accordance with this Appendix B.
- 1.3 In order to facilitate consultation, the Parties will use section 1.10 of this Appendix to determine which proposed Administrative and/or Operational Decisions and Operational Plans will require consultation, as well as the appropriate level of consultation for those decisions and plans.
- 1.4 The level of consultation required for the types of Administrative and/or Operational Decisions and Operational Plans listed in Schedule 1 (the "List of Decisions") will be the level indicated in the column of Schedule 1 headed "Consultation Level", unless the Parties agree to a different consultation level under section 1.11 of this Appendix.
- 1.5 If on or before January 31<sup>st</sup> a Party requests that the List of Decisions or the consultation level for a type of decision or plan set out in it be revised for a subsequent BC Fiscal Year, the Parties will discuss that request and if the Parties agree to a revision, update the List of Decisions on or before March 31<sup>st</sup> of the current fiscal year.
- 1.6 If British Columbia becomes aware of proposed Administrative and/or Operational Decisions or Operational Plans not contained in the List of Decisions that will have effect within the Territory of Kwaw-kwaw-Apilt First Nation during the current fiscal year, British Columbia will notify the Kwaw-kwaw-Apilt First Nation of those decisions or plans and the Parties will, with reference to the criteria set out in the Matrix, seek to agree on the consultation levels that will be applicable to those decisions or plans.
- 1.7 If the Parties cannot agree upon which consultation level in section 1.10 of this Appendix should apply to a particular or any Operational or Administrative Decision or Operational Plan, then British Columbia will consult with Kwaw-kwaw-Apilt First Nation on the basis of British Columbia's consultation procedures in effect at the time as well as the applicable case law respecting consultation obligations.
- 1.8 In reviewing and responding to a proposed Administrative and/or Operational Decision or Operational Plan submitted to them, Kwaw-kwaw-Apilt First Nation will, unless otherwise agreed by the Parties, provide the party (i.e. British Columbia, Licensee or proponent) that supplied the proposed decision or plan to them, with all reasonably available information that will identify any potential adverse impacts to their Aboriginal Interests that may occur as a result of the proposed Administrative and/or Operational Decision or Operational Plan within the Territory or forest or range resource development practices that may be carried out pursuant to that decision or plan.

1.9 If a proposed Administrative and/or Operational Decision or Operational Plan is submitted to Kwaw-kwaw-Apilt First Nation and no response is received within the consultation period set out in section 1.10 of this Appendix for the consultation level applicable to the proposed Administrative and/or Operational Decision or Operational Plan, then British Columbia may proceed to make a decision regarding the decision or plan.

1.10 The Parties agree that:

- (a) as set out in the table below (the “Matrix”) there will be six (6) potential levels of consultation for a proposed Administrative and/or Operational Decision or Operational Plan;
- (b) subject to the List of Decisions, the appropriate consultation level for a proposed Administrative and/or Operational Decision or Operational Plan will be determined by reference to the criteria set out in the Matrix; and
- (c) the consultation period applicable to a consultation level is the period referred to in the Matrix, the List of Decisions or as otherwise agreed to by the Parties, whichever period is the longest.



| Level   | Description   | Intent  |
|---|---|---|
| <b>1. Information Sharing:</b> prior to formal consultation process | Referral to Kwaw-kwaw-Apilt First Nation during planning to provide opportunity to incorporate Aboriginal Interests prior to submitting plan/request to Delegated Decision Maker. | Proponent or Licensee engages directly with Kwaw-kwaw-Apilt First Nation, and provides summary of communications to British Columbia.   |
| <b>2. Available on Request</b>                                      | Type of notification whereby British Columbia informs Kwaw-kwaw-Apilt First Nation they will not be sending out information.  | British Columbia notifies on an annual basis which decision(s) fall in this category. Kwaw-kwaw-Apilt First Nation can request more detail if they wish.  |
| <b>3. Notification</b>  | Notify in writing Kwaw-kwaw-Apilt First Nation about an upcoming decision and provide overview information. Would be an opportunity for comment.                                  | British Columbia provides Kwaw-kwaw-Apilt First Nation base level information and a short reasonable time (21-30 calendar day consultation period determined by the Parties) to comment. Limited follow-up. |



|  |   |  |
|--|---|--|
| <b>4. Expedited Consultation Process</b> | Where there is an imminent threat to a resource value (e.g. mountain pine beetle spread control) an expedited consultation process is undertaken.   | Intense but short timeline (about 10 calendar days). A justification for shortening the period would be given by describing the imminent threat. May require a meeting.  |
| <b>5. Normal Consultation</b>            | Follow on "normal" track for consultation guided by up-to-date consultation policy. Meetings to resolve issues where possible and make decision in a timely manner.   | Intent to follow this course in most circumstances. Usually a 30 – 60 calendar day consultation period. May involve meaningful discussion of accommodation options where appropriate. British Columbia will notify Kwaw-kwaw-Apilt First Nation of the final decision where requested by the Kwaw-kwaw-Apilt First Nation. |
| <b>6. Deep Consultation</b>              | Use reasonable effort to inform in an accessible manner and to engage in full discussions around the proposed decision. Make reasonable efforts to accommodate where necessary. Preliminary assessments may indicate a significant Aboriginal Interest and a significant impact to that interest. | Would involve meaningful discussion of suitable accommodation options and interim solutions where appropriate. May require extended timelines. British Columbia will provide the Kwaw-kwaw-Apilt First Nation with the final decision and rationale in writing.  |

- 1.11 The Parties may agree to increase or decrease the consultation level for a specific proposed Administrative and/or Operational Decision or Operational Plan where detailed Aboriginal Interest information is provided that indicates a different consultation level is appropriate.
- 1.12 Unless requested by the Kwaw-kwaw-Apilt First Nation, British Columbia is not obligated to inform the Kwaw-kwaw-Apilt First Nation of the Delegated Decision Maker's decision where the consultation level in respect of the proposed decision was level three (3) or lower.

## **Schedule 1 – List of Decisions**

## **APPENDIX C**

### **Revenue Sharing Contribution Methodology**

#### **Territory Forest Revenue Sharing Component**

- 1.0 In each BC Fiscal Year that this Agreement is in effect, and subsequent to the release by the Minister of Finance of the previous BC Fiscal Year's public accounts, a summary document will be prepared of the Chilliwack Natural Resource District forest revenue District forest revenue, defined as the total of stumpage, waste and annual rent payments received by the Crown for the previous 2 BC Fiscal Years. An average amount over 2 years will be calculated for the Chilliwack Natural Resource District forest revenue Forest District.
- 1.1 For the purposes of the summary document in section 1.0 of this Appendix, the stumpage payments from Eligible Volume in Kwaw-kwaw-Apilt First Nation's Forest License (if applicable) will not be included in the calculations of forest revenue.
- 1.2 The amount of the forest revenue attributed to the Kwaw-kwaw-Apilt First Nation's Territory will be calculated by determining the percent of Kwaw-kwaw-Apilt First Nation's Territory that falls within the Timber Harvesting Land Base in the Chilliwack Natural Resource District forest revenue Forest District, 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 Territory Forest Revenue Sharing Component will be calculated by multiplying (8,9,10) percent of non BC Timber Sales forest revenue attributed to the Kwaw-kwaw-Apilt First Nation and (11,12,13) percent of BC Timber Sales forest revenue, as described in section 1.2 of this Appendix.
- 1.4 If Kwaw-kwaw-Apilt First Nation is not receiving capacity funding for forestry consultation through a SEA or RA, then it will receive \$35,000 or the amount calculated in accordance with section 1.3, whichever is greater, which may be used by Kwaw-kwaw-Apilt First Nation as capacity funding to participate in the consultation process in accordance with section 6.0 of this Agreement.
- 1.5 For each BC 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 BC Fiscal Year's public accounts, a summary document will be prepared detailing of Kwaw-kwaw-Apilt First Nation's Forest License (if applicable) forest revenue, defined as the total of stumpage payments received by the Crown for the previous BC Fiscal Year from Eligible Volume within the Forest Licence.

- 2.1 The Direct Award Forest Tenure Revenue Sharing Component will be calculated by multiplying (35/50/75) 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**

- 3.1 For each BC Fiscal Year that this Agreement is in effect, a portion of the Revenue Sharing Contribution is calculated by adding the total of the Territory Forest Revenue Sharing Component to the Direct Award Tenure Forest Revenue Sharing Component for that BC Fiscal Year.
- 3.2 For each BC 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 Kwaw-kwaw-Apilt First Nation in any given full year under the Kwaw-kwaw-Apilt First Nation *Forest and Range Opportunity Agreement* ("the Annual Amount") and applying the following percentages to that Annual Amount:
  - 3.2.1 2023/24 BC Fiscal Year 40 percent;
  - 3.2.2 2024/25 BC Fiscal Year 40 percent
  - 3.2.3 2025/26 BC Fiscal Year 40 percent
- 3.3 Notwithstanding section 3.2 of this Appendix, if the Revenue Sharing Transition Calculation for those BC Fiscal years under section 3.1 provides:
  - (a) an amount calculated under sections 1.3 and 2.1 of this Appendix that is equal to or greater than the annual payments received under the *Kwaw-kwaw-Apilt First Nation Forest and Range Opportunity Agreement*, then Kwaw-kwaw-Apilt First Nation will receive the annual payments described by the Revenue Sharing Calculation in section 3.1 for those BC Fiscal Years; or
  - (b) an amount calculated under the Revenue Sharing Transition Calculations in sections 3.1 and 3.2 of this Appendix that is greater than the annual payments received under the *Kwaw-kwaw-Apilt First Nation Forest and Range Opportunity Agreement*, then Kwaw-kwaw-Apilt First Nation will receive an annual payment for those BC fiscal Years that is equal to the annual payment received under the *Kwaw-kwaw-Apilt First Nation Forest and Range Agreement*.

**APPENDIX D**  
**Band Council Resolution Appointing the**  
**Recipient Entity for the Kwaw-kwaw-Apilt First Nation FCRSA**

## APPENDIX E

### Annual Report

*(Example only)*

| Socio- economic Priority | 2019/2020 Planned Expenditures | 2019/2020 Actual Expenditures | Outcomes Achieved | Variance Explanation |
|--------------------------|--------------------------------|-------------------------------|-------------------|----------------------|
|                          |                                |                               |                   |                      |
|                          |                                |                               |                   |                      |
|                          |                                |                               |                   |                      |
|                          |                                |                               |                   |                      |
|                          |                                |                               |                   |                      |
|                          |                                |                               |                   |                      |
|                          |                                |                               |                   |                      |
|                          |                                |                               |                   |                      |
|                          |                                |                               |                   |                      |

### Confirmation

In accordance with section 8.1 of the Kwaw-kwaw-Apilt First Nation Forest & Range Consultation and Revenue Sharing Agreement, Kwaw-kwaw-Apilt First Nation confirms that aside from reasonable administrative expenses, all actual expenditures were made for the purpose of furthering the purposes and objectives set out in section 2.1 of the Agreement.

Signed this \_\_\_\_\_ day of \_\_\_\_\_

\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Name) On behalf of Kwaw-kwaw-Apilt First Nation

# First Nations Revenue Sharing Summary Sheet -2023/24\*\*\*\*

## Kwaw-kwaw-Apilt First Nation

Chief and Council

Building 10-7201 Vedder Road

Chilliwack, BC V2R 4G4

Phone: (604) 824-2420 Fax: (604) 824-0278

## Agreement Name:

*Kwaw-kwaw-Apilt First Nation Forest Consultation and Revenue Sharing Agreement*

Expire Date: December 22, 2023

## (A X B) District Forest Revenue:

| District                                       | Forest District Revenue: Non-BCTS and BCTS (Stumpage, Waste, Annual Rent) * |              | First Nation Traditional Territory within the THLB (prorated for overlap) | Revenue Sharing Percentages: Non-BCTS and BCTS | First Nation Share of Forest District Revenue |
|--|---|--------------|---|--|---|
| DCK  | Non-BCTS  | \$15,535,713 | 2.29%   | 9%   | \$32,035                                      |
|  | BCTS  | \$4,500,300  |   | 12%  | \$12,373                                      |
| <b>Total Share of Forest Revenue Non-BCTS:</b> |   |              |   |  | <b>\$32,035</b>                               |
| <b>Total Share of Forest Revenue BCTS:</b>     |   |              |   |  | <b>\$12,373</b>                               |
| <b>Total Share of Non-BCTS and BCTS:</b>       |   |              |   |  | <b>\$44,408</b>                               |

\*Average audited forest revenues 2020/21 and 2021/22

## (C) Direct Award Stumpage Returned Component

| First Nation Direct Award Licence                        | Total Stumpage paid on Licence** | Revenue Sharing Percentages | First Nation Share of Forest Revenue |
|--|----------------------------------|-----------------------------|--------------------------------------|
| A90236   | \$813                            | 50%                         | \$407                                |
| Stumpage Returned  |                                  |                             | \$407                                |
| Forest District Revenue                                  |                                  |                             | \$44,408                             |
| <b>Total Revenue Sharing for First Nation (A x B) +C</b> |                                  |                             | <b>\$44,815</b>                      |

\*\*Stumpage paid in fiscal year 2021/22. If \$0, no stumpage was paid in fiscal year 2021/22, but licence is eligible.

\*\*Only stumpage paid on Bill 28 volumes will be included; a proportional adjustment will be made for licences with combined volume sources.

## Transition Scheme

| Revenue Sharing Approach          | Annual Amount | 2023/24 Transition Percentages*** | Revenue Sharing Payment |
|-----------------------------------|---------------|-----------------------------------|-------------------------|
| Annual Amount of Previous FRA/FRO | \$22,455      | N/A                               | N/A                     |
| Annual Activity Model Amount      | \$44,815      | 100%                              | \$44,815                |
| <b>Annual Amount</b>              |               |                                   | <b>\$44,815</b>         |

\*\*\*Transition only applies where the Annual Activity Amount is less than the previous FRA/FRO Annual Amount.

Where the Annual Transition Amount exceeds the previous Annual FRA/FRO Amount, the First Nation will receive an amount equivalent to the Annual FRA/FRO Amount.

## Current Payment

**Total Yearly Amount 2023/24\*\*\*\***

**\$44,815**

\*\*\*\*All FCRSA payments will be prorated to the month in which the agreement is in effect – Please note expiry date above.



July 20<sup>th</sup>, 2023

Dear Chief Randy Leon and Council, Kwaw-kwaw-Apilt First Nation:

The Forest and Range Consultation and Revenue Sharing Agreement (FCRSA) between Kwaw-kwaw-Apilt First Nation and the Province of British Columbia is due to expire on December 22<sup>nd</sup>, 2023. I am writing to initiate communications regarding the potential of a FCRSA renewal and to ensure that your community is aware of changes to the FCRSA program under the province's [New Fiscal Framework](#).

As you might be aware, in March 2022, the Province released the [Declaration on the Rights of Indigenous Peoples Action Plan](#), which commits to co-developing with Indigenous Peoples a new fiscal framework that supports the operation of Indigenous governments and new policy frameworks for resource revenue-sharing.

In April 2022, the Province [announced](#) an intention to co-develop a new forestry revenue sharing model with First Nations as a next step towards a new fiscal framework.

A webpage has been [created](#) to host information on the New Fiscal Framework and Forestry Revenue Sharing co-development processes, including links to information and engagement opportunities, and a Discussion Paper that shares the Province's initial thinking on the vision and purpose of the work. The Discussion Paper was shared with First Nation communities last Fall with an invitation to provide comments by January 31, 2023. The comments have now been received, and a 'What We Heard Report' has been released. The Province is continuing to engage First Nations, and a Draft Options Paper will be released sometime in late summer or early fall.

While that work is taking place, the April 2022 announcement included immediate interim changes to the FCRSA program, including increases to forest district revenue sharing levels and revised draft wording in the agreements to address some of the common concerns Indigenous groups have been bringing forward.

For your consideration, please find attached:

- Your Revenue Sharing Summary Sheet for fiscal year 23/24 outlining how much revenue sharing Kwaw-kwaw-Apilt First Nation would receive for fiscal 23/24 if an FCRSA is renewed (\$44,815);
- A draft FCRSA agreement for your consideration; and
- A summary table outlining the key changes from the previous agreement language to the current agreement language to support your review.





If you have any questions or would like to discuss a potential FCSRA in more detail, please don't hesitate to let me know.

Thank you,  
Dave

David Fawcett (he/him)  
Senior Resource Coordination Officer  
Ministry of Indigenous Relations and Reconciliation  
P: (236) 468-3875  
E: [david.fawcett@gov.bc.ca](mailto:david.fawcett@gov.bc.ca)