

**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

Her Majesty the Queen in Right of the Province of British Columbia
as represented by the Minister of Indigenous Relations and Reconciliation
 (“British Columbia”)

(Collectively the “Parties”)

WHEREAS:

- A. Kwaw-kwaw-Apilt First Nation has Aboriginal Interests within the Traditional Territory.
- B. The Parties wish to set out a process for consultation regarding forest and range resource development on Crown lands within the Traditional Territory.
- C. The Parties intend this Agreement to assist in achieving stability and greater certainty for forest and range resource development on Crown lands within the Traditional Territory and to assist Kwaw-kwaw-Apilt First Nation in its pursuit of activities to enhance the well-being of its Members.
- D. Canada has endorsed the United Nations Declaration on the Rights of Indigenous Peoples (UN Declaration) and has made a commitment to follow through on the Truth and Reconciliation Commission (TRC) Calls to Action.
- E. The Province of British Columbia has enacted the *Declaration on the Rights of Indigenous People Act* (DRIPA) and is reviewing policies, programs and legislation to determine how to bring the principles of the UN Declaration into action.

THEREFORE THE PARTIES AGREE AS FOLLOWS:

ARTICLE 1 - INTERPRETATION

1.1 Definitions. For the purposes of this Agreement, the following definitions apply:

“Aboriginal Interests” means:

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

“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 First Annual List and/or Annual List 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” and **“DDM”** 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 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 (Bill 28)*, 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 as a part of section 1.10 of Appendix B;

“Minister” means the Minister of Forests, Lands and Natural Resource Operations and Rural Development 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 of this Agreement;

“**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 set out in section 14.1;

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

“**Traditional Territory**” means the traditional territory claimed by Kwaw-kwaw-Apilt First Nation located within British Columbia as identified by Kwaw-kwaw-Apilt First Nation and shown in bold black on the map attached in Appendix A.

1.2 Interpretation. For 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:

Appendix A - Map of Traditional Territory;

Appendix B - Consultation Process

B - Schedule 1 – List of Decisions;

Appendix C - Revenue Sharing Contribution Methodology;

Appendix D - Band Council Resolution Appointing Delegate;

Appendix E - Statement of Community Priorities Format; and,

Appendix F- 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 through which the Parties will meet their respective consultation obligations in relation to 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 First Nation to participate in the consultation process herein, as an accommodation for any adverse impacts to Kwaw-kwaw-Apilt First Nation's Aboriginal Interests resulting from forest and range resource development within the Traditional Territory and so that Kwaw-kwaw-Apilt First Nation may pursue activities that will enhance the social, economic and cultural well being of its members; and
- (c) to assist in achieving stability and greater certainty for forest and range resource development on Crown lands within the Traditional Territory.

ARTICLE 3 - REVENUE SHARING CONTRIBUTIONS

3.1 Calculation and timing of payments. Subject to section 4.5 and Articles 5 and 13, 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 30th and the second to be made on or before March 31st.

3.2 First Fiscal Year. Notwithstanding section 3.1, for the First Fiscal Year (April 1, 2020 to March 31, 2021), of the Term, the Revenue Sharing Contribution is deemed to be **\$17,500** (total revenue share of the First Fiscal Year at \$35,000 prorated to the 6 of months covered by the Agreement: October 2020 to March 31, 2021) the first instalment of which will be paid on or before September 30, 2020 if the Effective Date is prior to July 31st or on or before March 31, 2021 if the Effective Date is after July 31st.

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 to the month in which the Agreement is signed by Kwaw-kwaw-Apilt First Nation; is terminated by either Party under section 13, or; to the end of the month in which the Agreement expires.

3.4 Subsequent BC Fiscal Year amounts. Before November 30th of each year during 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.

3.5 Amount agreed to. Kwaw-kwaw-Apilt First Nation agrees that the amount set out in the notice provided under section 3.4 will be the amount of the Revenue Sharing Contribution payable under this Agreement for that following BC Fiscal Year.

3.6 Changes to provincial revenue sharing calculation formulas. The Parties agree that if, during the term of this Agreement, British Columbia introduces changes to the provincial forestry revenue sharing calculation formula described in Appendix C to this Agreement, any such changes will be incorporated into the calculation of the Revenue Sharing Contribution provided through this Agreement for the 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 Kwaw-kwaw-Apilt 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 and compliance 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 of this Agreement;
- (b) Kwaw-kwaw-Apilt First Nation being in all other respects in compliance with the terms of this Agreement; and
- (c) Revenue Sharing Contributions not having been suspended under Article 13 of this Agreement.

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.** The Parties agree that subject to 6.3, the process set out in Appendix B of this Agreement will be the means by which they will fulfill their obligations to consult on proposed Operational Plans or proposed Administrative and/or Operational Decisions and, where appropriate, the means by which British Columbia will identify potential measures to accommodate any potential adverse impacts on the 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 other 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.** The Parties agree that 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 which 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 after the Effective Date Kwaw-kwaw-Apilt First Nation enters into a SEA, or RA that includes a consultation process which 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 of this Agreement 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, Kwaw-kwaw-Apilt First Nation will, under 1.4 of Appendix C, receive 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 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 an accommodation.** Kwaw-kwaw-Apilt First Nation agrees that the Revenue Sharing Contributions made under this Agreement constitute an accommodation 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 Plans, on Kwaw-kwaw-Apilt First Nation's Aboriginal Interests from September 29, 2020 to the end of this agreement.
- 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 adequately consulted and has provided an accommodation with respect to 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 - COMMUNITY PRIORITIES, ANNUAL REPORTS and RECORDS

- 8.1 Statement of Community Priorities.** Kwaw-kwaw-Apilt First Nation covenants and agrees that it will:
- (a) within 60 days of the Effective Date, based on the First Fiscal Year Revenue Sharing Contribution, prepare a statement of community priorities for the Term substantially in the form set out in Appendix E that outlines activities it intends to fund to help achieve the socio-economic objectives referred to in section 2.1(b); and
 - (b) before the end of each BC Fiscal Year, consider whether the statement of community priorities identified in subsection (a) should be revised based on the updated Revenue Sharing Contribution for subsequent BC Fiscal Years agreed to under section 3.5.
- 8.2 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 F, 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 of this Agreement, 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.

- 8.3 Publication.** The statement of community priorities and annual report referred to in sections 8.1 and 8.2 will be published by Kwaw-kwaw-Apilt First Nation in a manner that can reasonably be expected to bring the information to the attention of its communities and the public within 90 days of the end of each BC Fiscal Year.
- 8.4 Audit.** British Columbia may, at its sole discretion and at the sole expense of Kwaw-kwaw-Apilt First Nation, require an audit of the expenditures made from the Payment Account to determine that all such expenditures were made in furtherance of the purposes and objectives referred to in section 2.1.
- 8.5 Delivery of Report.** The annual report referred to in section 8.2 will be provided to British Columbia within 120 days of the end of each BC Fiscal Year.
- 8.6 Continuing Obligations.** Notwithstanding the termination or expiry of this Agreement, the provisions of this Article 8 will continue to apply for 120 days after First Nation receives the final Revenue Sharing Contribution from British Columbia.

ARTICLE 9 - SECURITY DEPOSITS

- 9.1 Silviculture Deposit.** In consideration of Kwaw-kwaw-Apilt First Nation entering into this Agreement, British Columbia may choose not to require a silviculture deposit pertaining to a licence entered into as a result of a direct award tenure agreement entered into between Kwaw-kwaw-Apilt First Nation, or a legal entity controlled by the Kwaw-kwaw-Apilt First Nation, and British Columbia.

ARTICLE 10 – SET OFF

- 10.1 Set off.** In addition to any other right under this Agreement, British Columbia may set off against any payment that Kwaw-kwaw-Apilt First Nation is entitled to receive under this Agreement, any unfulfilled financial obligations of Kwaw-kwaw-Apilt First Nation to British Columbia arising from a licence entered into as a result of a direct award tenure agreement between Kwaw-kwaw-Apilt First Nation, or a legal entity controlled by the Kwaw-kwaw-Apilt First Nation, and British Columbia.
- 10.2 Notice.** British Columbia will notify Kwaw-kwaw-Apilt First Nation of the amount of the unfulfilled financial obligation before it exercises its right of set off under section 10.1.

ARTICLE 11 - ASSISTANCE

11.1 Non-interference. Kwaw-kwaw-Apilt First Nation agrees it will not support or participate in any acts that frustrate, delay, stop or otherwise physically impede or interfere with provincially authorized forest activities.

11.2 Cooperation and Support. Kwaw-kwaw-Apilt First Nation will promptly and fully cooperate with and provide its support to British Columbia in seeking to resolve any action that might be taken by a member of First Nation that is inconsistent with this Agreement.

ARTICLE 12 - DISPUTE RESOLUTION

12.1 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 assist in reaching resolution of the issue.

ARTICLE 13 - SUSPENSION and TERMINATION

13.1 Suspension of Revenue Sharing Contributions. In addition to any other right under this Agreement, British Columbia may suspend further Revenue Sharing Contributions under this Agreement where Kwaw-kwaw-Apilt First Nation:

- (a) is in material breach of its obligations under Articles 6, 8 or 11 or Appendix B of this Agreement; or
- (b) has outstanding unfulfilled financial obligations to British Columbia arising from a licence issued further to an agreement between Kwaw-kwaw-Apilt First Nation and British Columbia.

13.2 Notice of Suspension. Where Revenue Sharing Contributions are suspended under section 13.1, British Columbia will provide notice to Kwaw-kwaw-Apilt First Nation of the reason for the suspension, including the specific material breach or the outstanding unfulfilled financial obligation on which it relies and the Parties will meet to attempt to resolve the issue giving rise to the suspension.

13.3 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 13.2, British Columbia may terminate the Agreement at any time by written notice.

13.4 Proceedings inconsistent with acknowledgments. Notwithstanding any other provision of this Agreement, British Columbia may suspend Revenue Sharing Contributions and may terminate this Agreement at any time by written notice where Kwaw-kwaw-Apilt First Nation challenges or supports a challenge to an Administrative and/or Operational Decision, an Operational Plan or activities carried out pursuant to those decisions or plans, by way of legal proceedings or otherwise, on the basis that:

(a) contrary to section 7.2, a Revenue Sharing Contribution provided for under this Agreement does not constitute an accommodation for adverse impacts of such decisions, plans or activities on Kwaw-kwaw-Apilt First Nation's Aboriginal Interests; or

(b) contrary to section 7.3, by British Columbia or a Licensee following the consultation process described in Appendix B, British Columbia has not adequately consulted with First Nation regarding the potential adverse impacts of such decisions, plans or activities on Kwaw-kwaw-Apilt First Nation's Aboriginal Interests.

13.5 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.

13.6 Meet to attempt to resolve issue. If a Party gives written notice under section 13.5, 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.

13.7 Effect of Termination. Where this Agreement is terminated under this Article 13, the Revenue Sharing Contribution for the BC Fiscal Year in which termination becomes effective will be prorated to the termination date.

ARTICLE 14 - TERM

14.1 Term. The term of this Agreement will be three (3) years commencing on the Effective Date unless it is extended under section 14.2 or terminated under Article 13.

14.2 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.

14.3 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.

14.4 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 15 – REPRESENTATIONS and WARRANTIES

15.1 Legal power, capacity and authority. The Kwaw-kwaw-Apilt First Nation represents and warrants to the Province, with the intent and understanding that they will be relied on by the Province in entering into this Agreement, that it enters into this Agreement for, and on behalf of itself and its members and that as represented by its Chief and Council, it has the legal power, capacity and authority to enter into and to carry out its obligations under this Agreement.

ARTICLE 16 - NOTICE and DELIVERY

16.1 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 copier, when received by the Parties at the addresses as follows:

if to British Columbia:

Deputy Minister
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

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

Chief Randy Leon
Kwaw-kwaw-Apilt First Nation
Bldg #10, 3rd Floor 7201 Vedder Rd
Chilliwack, BC, V2R 4G5
Telephone: 604-824-5117
Fax: 604-858-2716

16.2 Change of Address. Either Party may, from time to time, give notice to the other Party of a change of address or facsimile number and after the giving of such notice, the address or facsimile number specified in the notice will, for purposes of section 16.1, supersede any previous address or facsimile number for the Party giving such notice.

ARTICLE 17 - GENERAL PROVISIONS

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

17.2 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) affirm, recognize, abrogate or derogate from any Kwaw-kwaw-Apilt First Nation's Aboriginal Interests.

17.3 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.

17.4 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.

17.5 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.


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

- 17.7 Emergencies.** Nothing in this Agreement affects the ability of either Party to respond to any emergency circumstances.
- 17.8 Acknowledgment.** The Parties acknowledge and enter into this Agreement on the basis that Kwaw-kwaw-Apilt First Nation has Aboriginal Interests within the Traditional Territory but that the specific nature, scope or geographic extent of those Aboriginal Interests 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 First Nation Aboriginal Interests.
- 17.9 Third Parties.** This Agreement is not intended to limit any obligation of forest or range licensees or other third parties to Kwaw-kwaw-Apilt First Nation.
- 17.10 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.
- 17.11 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.
- 17.12 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.
- 17.13 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.
- 17.14 Execution in Counterpart.** This Agreement may be entered into by a separate copy of this Agreement being executed by each Party and that executed copy being delivered to the other Party by a method provided for in Article 16 or any other method agreed to by the Parties.

17.15 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




Date



Councillor




Councillor



Witness of Kwaw-kwaw-Apilt First Nation
signatures

Signed on behalf of:

Government of British Columbia

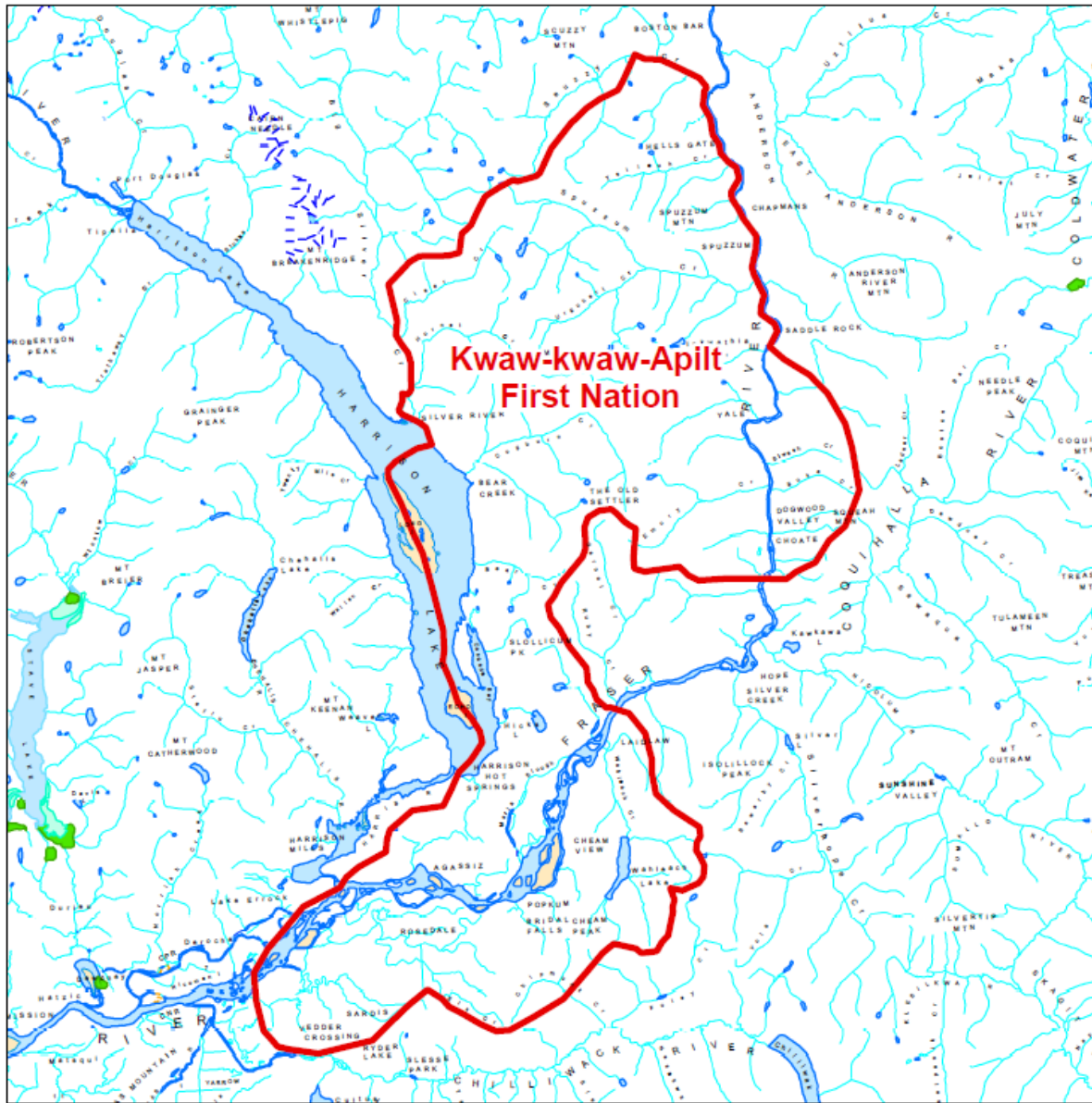


Minister of Indigenous Relations and
Reconciliation

December 23, 2020

Date

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



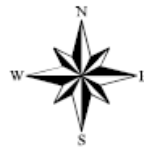
Key Map

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 and Operational Plans within First Nation Traditional 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 Traditional 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 Traditional Territory in accordance with this Appendix B.
- 1.3 In order to facilitate consultation, the Parties will use the Matrix set out in 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 31st 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 31st 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 Traditional 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 Traditional 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
1. Information Sharing: prior to formal consultation process	Proponent or tenure holder engages Kwaw-kwaw-Apilt First Nation during planning to provide opportunity to incorporate Aboriginal Interests prior to submitting plan/request to Decision Maker.	Proponent or tenure holder engages directly with Kwaw-kwaw-Apilt First Nation and provides summary of communications to British Columbia.
2. Available on Request	Type of notification whereby British Columbia informs Kwaw-kwaw-Apilt First Nation they will not be sending out information.	Kwaw-kwaw-Apilt First Nation can request from British Columbia more detailed information about decisions made at this level.

Level	Description	Intent
3. Notification	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.
4. Expedited Consultation Process	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.
5. Normal Consultation	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.
6. Deep Consultation	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, the Province 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

As per Section 1.3 - Chilliwack Natural Resource Operations District					
List of Decisions					
Decision Category	Decision	Delegated Decision Maker ¹	Consultation Level	Consultation Period	Comments/Pending Decisions
ADMINISTRATIVE DECISIONS					
Allowable Annual Cut (AAC) at the Timber Supply Area	Timber supply reviews for AAC Cut (AAC) determination	Chief Forester	5	24 months total	
AAC	AAC apportionment	Minister Forests, Lands and Natural Resource Operations	5	30-60 days	
Tree Farm Licence (TFL)	Management plan approval	Deputy Chief Forester	3	21-30 days	
TFL	Timber supply reviews for AAC Cut (AAC) determination	Chief Forester	5	24 months total	
TFL	Deletion of Crown land	Minister Forests, Lands and Natural Resource Operations	5	30-60 days	
TFL	TFL consolidation, and subdivision	Minister Forests, Lands and Natural Resource Operations	3	21-30 days	
TFL	TFL replacement	Minister Forests, Lands and Natural Resource Operations	5	30-60 days	
TFL/ Forest Licence (FL)	Licence transfer	Minister Forests, Lands and Natural Resource Operations	3	21-30 days	
FL	Forest licence/Non-replaceable forest licence (NRFL) Issuance	Regional Executive Director	5	30-60 days	
FL	Forest licence/Non-replaceable forest licence (NRFL) extension	Regional Executive Director	3	21-30 days	
FL	FL consolidation, and subdivision	Regional Executive Director	3	21-30 days	
FL	FL replacement	Regional Executive Director	5	30-60 days	
Community Forest Agreement (CFA)	Timber supply reviews for AAC determination	Regional Executive Director	5	60 days	
CFA	CFA management plan approvals	Regional Executive Director	5	30-60 days	
CFA	CFA management plan amendments	Regional Executive Director	3	21-30 days	
CFA	Probationary CFA transition into a CFA	Regional Executive Director	3	21-30 days	

Decision Category	Decision	Delegated Decision Maker ¹	Consultation Level	Consultation Period	Comments/Pending Decisions
CFA	Boundary/Area amendment	Regional Executive Director (legislation indicates DM or RED but currently it is the RED)	3	21-30 days	
CFA/ Woodlot Licence (WL)	Establishment and advertising of WL area. Establishment of CFA area	District Manager	5	30-60 days	
WL	Timber supply reviews for AAC determination	District Manager	5	60 days	
WL	WL plan approvals	District Manager	5	30-60 days	
WL	WL plan amendments	District Manager	3	21-30 days	
WL	Boundary/Area amendment	District Manager	3	21-30 days	
WL	First Nations direct award of WL	District Manager	5	30-60 days	
WL	WL replacement	Regional Executive Director	5	30-60 days	
Timber Licence (TL)/WL/Forestry Licence to Cut (FLTC)	Licence transfer	Regional Executive Director	3	21-30 days	
TL	Extension	Regional Executive Director	5	30-60 days	
First Nation Woodland Licence (FNWL)	FNWL through treaty or interim measures agreement	Regional Executive Director	3	21-30 days	
Land Act	Issue new <i>Land Act</i> Tenure over previously un-impacted site/submerged land generally related to forestry activities. Examples may include dryland sort and foreshore lease tenures	Minister Forests, Lands and Natural Resource Operations or designate	5	30-60 days	
Land Act	<i>Land Act</i> tenure amendments related to forestry activities. Examples may include dryland sort and foreshore lease tenures	Minister Forests, Lands and Natural Resource Operations or designate	3	21-30 days	
Special Use Permits (SUP)	Issue new permit over previously un-impacted site. Examples may include logging camps, log sorts, and log dumps	District Manager	5	30-60 days	
SUP	SUP amendment/ replacement/ issuance over previously developed site. Examples may include logging camps, log sorts, and log dumps	District Manager	3	21-30 days	
Government Actions Regulation Orders (GARS)	Generally GARS serve to protect lands from development	District Manager	3	21-30 days	

Decision Category	Decision	Delegated Decision Maker¹	Consultation Level	Consultation Period	Comments/Pending Decisions
Old Growth Management Areas (OGMA)	Establishment of OGMA. OGMA serve to protect existing old growth stands from harvest or alternatively serve to recruit old growth from younger stands	District Manager	2	n/a	
Old Growth Management Areas (OGMA)	Amendment of OGMA.	District Manager	2-3	0-30 Days	Licensee led information sharing according to the nature/significance of the amendment as per the consultation procedures. Supplemental consultation by MNRO may occur based on the outcome of licensee lead information sharing.
Recreation Sites and Trails (RST)	The establishment of new interpretive forest sites, recreation sites and recreation trails and their objectives. (Section 56 FRPA)	Sites and Trails BC Assistant Deputy Minister	3	21-30 days	
RST	Dis-establish recreation sites and trails	Sites and Trails BC Assistant Deputy Minister	2	0-30 days	
RST	Authorize trail construction (Section 57 FRPA)	Sites and Trails BC Regional Manager/ District Recreation Officer	3	21-30 days	
RST	Protection of recreation resources on Crown land (Section 58 FRPA) - Protect a recreation resource or to manage public recreation use	Sites and Trails BC Regional Manager	1-2	0-30 days	
OPERATIONAL DECISIONS					
TFL/FL/CFA/WL/FNWL	Cutting permit (CP) issuance	District Manager	1-5	0-60 days	Supplemental consultation by FLNRO (above level 1) may occur based on the outcome of licensee lead information sharing.
TFL/FL/CFA/WL/FNWL	Road permit (RP) issuance	District Manager	1-5	0-60 days	Supplemental consultation by FLNRO (above level 1) may occur based on the outcome of licensee lead information sharing.
TFL/FL/CFA/WL/FNWL	CP/RP minor amendments	District Manager	1-2	10-30 days	Generally no consultation obligations with these minor amendments. Licensee led information sharing in exceptional situations according to the nature/significance of the amendment as per the consultation procedures.
BC Timber Sales (BCTS) TSL/RP	TSL/RP issuance	Timber Sales Manager	5	30-60 days	Consultation is done at the Operational Plan Review stage prior to Timber Sale Licence and Road Permit Issuance. Supplementary consultation is done when required as per the consultation procedures.
Road Use Permit (RUP) Issuance	RUP over existing Forest Service Roads for industrial use	District Manager	2-5	0-60 days	

Decision Category	Decision	Delegated Decision Maker ¹	Consultation Level	Consultation Period	Comments/Pending Decisions
Forest Stewardship Investment	Sustainable forest management planning; management unit and watershed level strategies/plans; resource inventories; monitoring; decision support; stand treatments; recreation, etc. Intended to improve the economic and ecological stability of the forest land base	District Manager	1-5	0-60 days	Consultation levels guided by the <i>Land Based Investment First Nations Information Sharing Guidelines 2013</i>
Free Use Permits	Free Use Permits for First Nations' traditional and cultural activities	District Manager	2	n/a	
Misc. Forest Tenure	Authority to harvest timber by Crown agents. (<i>Forest Act</i> Sec 52) May be used FSR realignments, heli pad clearing for BCTS, research branch destructive sampling, and parks staff	District Manager and Timber Sales Manager	2	n/a	
Misc. Forest Tenure	Permit to grow and/or harvest Christmas trees on Crown land. Often in association with compatible land use such as BC Hydro power line right of ways	District Manager	2	n/a	
Occupant Licence to Cut (OLTC,)/FLTC	Licence to cut issuance (minor cutting, small scale salvage, recreation sites and trails)	District Manager and Regional Executive Director	2	n/a	
FLTC	Salvage permit (i.e. commercial operators seeking cedar)	District Manager	3	21-30 days	
OLTC/ FLTC	Community wildfire protection.(FLTC) Non-emergency licence to cut for wildfire prevention	Regional Executive Director	3	21-30 days	
OLTC/ FLTC	OLTC issuance. Tree removal required for new infrastructure/ facilities installations. Most are consulted on in association with Land Act tenures	District Manager	2	n/a	
OLTC/ FLTC	Forestry licence to cut issuance by BC Timber Sales	Timber Sales Manager	2	n/a	
OPERATIONAL PLANS					
TFL/FL/CFA/WL/FNWL	Forest Stewardship Plan (FSP) /Woodlot Licence Plan (WLP) review and approval, including major amendments to FSP	District Manager	5	30-60 days	Supplemental consultation by FLNRO may occur based on the outcome of licensee lead information sharing.
TFL/FL/CFA/WL/FNWL	FSP and WLP extensions	District Manager	3	21-30 days	
Range Tenure	Range use plan or stewardship plan issuance	District Manager	5	30-60 days	
Range Tenure	Range use plan or range stewardship plan extensions	District Manager	3	21-30 days	

APPENDIX C

Revenue Sharing Contribution Methodology

Traditional 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, 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.
- 1.1 For the purposes of the summary document in section 1.0 of this Appendix, the stumpage payments from Kwaw-kwaw-Apilt First Nation's Forest License (A90236) 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 Traditional Territory will be calculated by determining the percent of Kwaw-kwaw-Apilt First Nation's Traditional Territory that falls within the Timber Harvesting Land Base in the Chilliwack Natural Resource 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 Traditional Territory Forest Revenue Sharing Component will be calculated by multiplying 3 percent (4 percent when signatory of a SEA) of the forest revenue attributed to the Kwaw-kwaw-Apilt First Nation 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 of Kwaw-kwaw-Apilt First Nation's Forest License (FL A90236) forest revenue, defined as the total of stumpage payments received by the Crown for the previous BC Fiscal Year.
- 2.1 The Direct Award Forest Tenure Revenue Sharing Component will be calculated by multiplying 35 percent (50 percent when signatory of a SEA) of the forest revenue as described in section 2.0 of this Appendix.

- 2.2 For each Fiscal Year that this Agreement is in effect, the calculations outlined in sections 2.0 and 2.1 of this Appendix will be performed.

Forest Revenue Sharing Transition

- 3.0 The Parties agree that a transition to revenue sharing based entirely on Forest Revenue will be phased in over the Term.
- 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 Traditional 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 Tenure Opportunity Agreement* (“the Annual Amount”) and applying the following percentages to that Annual Amount:
- 3.2.1 2020/21 BC Fiscal Year: 40 percent; and
 - 3.2.2 2021/22 BC Fiscal Year: TBD percent; and
 - 3.2.3 2022/23 BC Fiscal Year: TBD percent.
- 3.3 Notwithstanding section 3.2 of this Appendix, if the Revenue Sharing Transition Calculation for BC Fiscal years 2020/21, 2021/22 and 2022/23 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 Tenure Opportunity Agreement*, then Kwaw-kwaw-Apilt First Nation will receive the annual payments described by the Revenue Sharing Transition Calculation in section 3.1 for BC Fiscal Years 2020/21, 2021/22 and 2022/23; and
 - (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 Tenure Opportunity Agreement*, then Kwaw-kwaw-Apilt First Nation will receive an annual payment for BC fiscal Years 2020/21, 2021/22 and 2022/23 that is equal to the annual payment received under the *Kwaw-kwaw-Apilt First Nation Tenure Opportunity Agreement*.

APPENDIX D

Band Council Resolution Appointing the Recipient Entity for this Agreement (“Designate”)

APPENDIX E

Kwaw-kwaw-Apilt First Nation Statement of Community Priorities

(Example only)

Socio-economic Priority	Annual Amount			Specific Outcomes	Measurement Criteria
	2020/2021	2021/2022	2022/2023		

APPENDIX F

Kwaw-kwaw-Apilt First Nation Statement of Community Priorities

Annual Report

(Example only)

Socio-economic Priority	2020/2021 Planned Expenditures	2020/2021 Actual Expenditures	Outcomes Achieved	Variance Explanation

Confirmation

In accordance with section 8.2 of the 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