

ECONOMIC AND COMMUNITY DEVELOPMENT AGREEMENT

{00525974.1}

ECONOMIC AND COMMUNITY DEVELOPMENT AGREEMENT

This Agreement is dated the 27 day of March, 2023.

BETWEEN:

MOWACHAHT/MUCHALAHT FIRST NATION, on behalf of itself and its Members, as represented by Chief and Council
("Mowachaht/Muchalaht")

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", together referred to as the "Parties")

Whereas:

- A. The Parties are committed to aligning and strengthening their government-to-government relationship, consistent with the *United Nations Declaration on the Rights of Indigenous Peoples*, supported by the *Declaration on the Rights of Indigenous Peoples Act*, S.B.C. 2019, c. 44 and British Columbia's *Draft Principles that Guide the Province of British Columbia's Relationship with Indigenous Peoples*, and with the recognition and implementation of section 35(1) of the *Constitution Act, 1982* and relevant case law;
- B. The Parties wish to enter into this Agreement to establish terms regarding mineral tax revenue-sharing for the Myra Falls Mine; and
- C. The Parties acknowledge that the arrangements set out in this Agreement are a step towards reconciliation.

Now, therefore, the Parties agree as follows:

Section 1 Definitions

1.1 In this Agreement:

"Aboriginal Rights" means the asserted or determined Aboriginal rights, including Aboriginal title, recognized and affirmed by section 35(1) of the *Constitution Act, 1982*;

“Agreement” means this Economic and Community Development Agreement in relation to the Project, including all of its appendices, annexes and schedules;

“Band Council Resolution” means a resolution made by a “council of the Band” within the meaning of the *Indian Act*, R.S.C. 1985, c. 1-5;

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

“Consultation Process” means the consultation process described in subsection 11.1;

“Dispute” means any disagreement regarding the interpretation or implementation of this Agreement for which a written Notice of Dispute is given in accordance with subsection 13.5, but does not include a disagreement that relates to consultations regarding Government Actions or to the calculation of Revenue Sharing Payments;

“Effective Date” means the date first referenced above;

“Freedom of Information and Protection of Privacy Act” means the *Freedom of Information and Protection of Privacy Act*, R.S.B.C. 1996, c. 164;

“Government Actions” means all authorizations, permits, licences, approvals, Crown land dispositions, whatsoever entered into or otherwise taken by British Columbia, in relation to the Project;

“Member” means an individual who is a member of the Mowachaht/Muchalaht First Nation as shown in its band list, as that term is defined under the *Indian Act*, R.S.C. 1985, c. 1-5;

“Mine Fiscal Year” means a “fiscal year of a mine” as defined in the *Mineral Tax Act*;

“Mineral Tax Act” means the *Mineral Tax Act*, R.S.B.C. 1996, c. 291, as amended from time to time;

“Net Mineral Tax Revenue” means the total amount of tax, penalty and interest paid by the Operator under the *Mineral Tax Act* in respect of the Project, less the total amount of tax, penalty and interest refunded and interest paid to the Operator under the *Mineral Tax Act* in respect of the Project;

“Notice of Dispute” means a written notice provided by a Party in accordance with subsection 13.5;

“Notice to Arbitrate” means a notice provided by a Party in accordance with subsection 13.10;

“Notice to Mediate” means a notice provided by a Party in accordance with subsection 13.9;

“Notice to Terminate” means a written notice to terminate this Agreement provided by a Party in accordance with subsection 10.5;

“Operator” means the “operator”, as defined in the *Mineral Tax Act*, of the Project;

“Payment Account” means the account established pursuant to subsection 1.12 of Schedule 2 to receive Revenue Sharing Payments under this Agreement;

“Payment Statement” means the statement in respect of the Project containing the tax information that British Columbia will provide to Mowachaht/Muchalaht under subsection 1.3 of Schedule 2;

“Project” means the Myra Falls Mine project described in Section 1.1 of Schedule 1;

“Project Area” means the Myra Falls Mine Project Area referenced in the map legend and shown on the map that forms part of Schedule 1;

“Revenue Sharing Payments” means the payments to be made by British Columbia to Mowachaht/Muchalaht pursuant to Section 2 and in accordance with Schedule 2, and “Revenue Sharing Payment” means any one such payment; and

“Term” has the meaning given to that term in Section 9.

Section 2 Purpose

2.1 The purpose of this Agreement is to:

- (a) strengthen the government-to-government relationship between the Parties;
- (b) support Mowachaht/Muchalaht’s socio-economic priorities;
- (c) create greater certainty for the Project and for the Parties;
- (d) confirm the processes that the Parties will follow to fulfil their respective legal and constitutional obligations regarding consultation associated with the Project; and

- (e) set out the basis by which mineral tax revenue derived from the Project will be shared by British Columbia with Mowachaht/Muchalaht.

Section 3 Confidential Information

3.1 Confidential information

- (a) Subject to subsections 3.1(b) and (c), Mowachaht/Muchalaht will keep confidential any information provided in connection with this Agreement that British Columbia marks as "confidential", including Payment Statements and any information that relates to tax payments under the *Mineral Tax Act*, and will not disclose such information to any other person except as required by law.
- (b) Notwithstanding subsection 3.1(a), Mowachaht/Muchalaht may disclose information marked as "confidential" where British Columbia has provided written consent in advance, or where Mowachaht/Muchalaht has otherwise independently obtained the information, except for any information that relates to tax payments under the *Mineral Tax Act*.
- (c) Notwithstanding subsection 3.1(a) or any other provision of this Agreement, Mowachaht/Muchalaht may disclose confidential information to Mowachaht/Muchalaht's advisors, including legal, financial, tax and other professional advisors, provided that those advisors agree in writing to keep the information confidential.
- (d) Notwithstanding subsection 3.1(a) or any other provision of this Agreement, Mowachaht/Muchalaht may disclose to Members the amount of actual and projected Revenue Sharing Payments made under this Agreement.
- (e) Mowachaht/Muchalaht acknowledges that British Columbia has informed Mowachaht/Muchalaht of the confidentiality requirements under the *Mineral Tax Act*.
- (f) Where Mowachaht/Muchalaht shares knowledge or information with British Columbia for the purposes of this Agreement, including for the purposes of negotiating this Agreement, and that knowledge or information is identified in writing as confidential or sensitive:
- i. British Columbia will make all reasonable efforts to prevent the disclosure of that information to the public, subject to the *Freedom of Information and Protection of Privacy Act*, or as otherwise required by law; and
 - ii. Where British Columbia receives a request under the *Freedom of Information and Protection of Privacy Act* for disclosure of confidential or sensitive information received from the Mowachaht/Muchalaht, British

Columbia will provide Mowachaht/Muchalaht with written notice of the request and the opportunity to express Mowachaht/Muchalaht's views regarding the disclosure.

Section 4 Reports

- 4.1** If requested by British Columbia, Mowachaht/Muchalaht will provide a summary report once per fiscal year, substantially in the form set out in Schedule 4 or in the form provided to the Members, regarding the projects or initiatives to which Revenue Sharing Payments were allocated in the previous fiscal year.
- 4.2** The Parties agree that British Columbia has no liability to Mowachaht/Muchalaht or the Members for the management of the Payment Account, or the allocation or use of monies in the Payment Account.

Section 5 Certainty

- 5.1** The Parties agree that the Revenue Sharing Payments provided under this Agreement are an economic accommodation and constitute a component of any accommodation or compensation that may be required for any impacts or infringements to Mowachaht/Muchalaht's Aboriginal Rights resulting from:
- (a) the Government Actions that enable the Myra Falls Mine to be brought out of care and maintenance and into production; and
 - (b) any Government Actions taken following the Effective Date.
- 5.2** If Mowachaht/Muchalaht impedes or effectively stops the operation of the Project by way of:
- (a) obtaining relief in an application or legal proceeding; or
 - (b) challenging or impeding the right of British Columbia or the Operator, or any of their respective employees, contractors, agents, representatives or invitees, to gain access to the Project to carry out activities associated with the development and operations of the Project,
- then the Parties may exercise their rights under Section 10.
- 5.3** Mowachaht/Muchalaht and British Columbia will work together collaboratively in seeking to resolve any actions by or involving Mowachaht/Muchalaht Members that challenge or impede access by British Columbia or an Operator, or any of their respective employees, contractors, agents, representatives or invitees, to the Project to carry out activities associated with the development and operations of the Project.

Section 6 Further Revenue Sharing

- 6.1** If after the Effective Date British Columbia changes its mineral tax revenue sharing policy to increase the maximum percentage of mineral tax revenue that may be shared by British Columbia under this Agreement or with First Nations with existing mineral tax revenue sharing agreements, British Columbia will provide written notice to Mowachaht/Muchalaht as soon as practicable after the change and the Parties will negotiate in good faith an amendment to this Agreement to reflect that policy change, in accordance with the policy.
- 6.2** For greater certainty and subject to subsection 15.11, this Agreement and the calculation of Revenue Sharing Payments pursuant to subsection 1.2 of Schedule 2 to this Agreement will not be affected by any changes to British Columbia's mineral tax revenue sharing policy that result in a decrease in the maximum percentage of mineral tax revenue that may be shared with First Nations, unless otherwise agreed to in writing by the Parties.

Section 7 Continuing Obligations

- 7.1** The Parties' covenants, rights and obligations set out in subsections 3.1 and 5.1, and this Section 7 will survive and will remain fully binding and enforceable on the Parties, despite the expiration of the Term or any termination of this Agreement.

Section 8 Assignment

- 8.1** Mowachaht/Muchalaht will not assign, either directly or indirectly, this Agreement or any right of Mowachaht/Muchalaht under this Agreement without the prior written consent of British Columbia, such consent not to be unreasonably withheld.

Section 9 Term

- 9.1** The Term of this Agreement will commence on the Effective Date and will continue for as long as the tax, interest and penalties payable by an Operator in respect of the Project are subject to payment or reassessment under the applicable legislation.
- 9.2** Despite subsection 9.1, the Parties may:
- (a) agree in writing to terminate this Agreement in its entirety on an earlier date;
or
 - (b) exercise their respective rights to terminate this Agreement pursuant to Section 10 [Suspension of Revenue Sharing Payments and Termination].

Section 10 Suspension of Revenue Sharing Payments and Termination

10.1 British Columbia may suspend the Revenue Sharing Payments to Mowachaht/Muchalaht where:

- (a) Mowachaht/Muchalaht directly or indirectly impedes or effectively stops operation of the Project as per subsection 5.2; or
- (b) any representation or warranty made by Mowachaht/Muchalaht in this Agreement is untrue or incorrect.

10.2 Where Revenue Sharing Payments are suspended under subsection 10.1:

- (a) British Columbia will provide written notice to Mowachaht/Muchalaht of the issue or non-compliance giving rise to any suspended Revenue Sharing Payment under subsection 10.1 prior to suspending any payment;
- (b) within ten (10) days of Mowachaht/Muchalaht receiving the notice under subsection 10.2(a), either Party may provide a written request to discuss the reasons giving rise to the suspension of Revenue Sharing Payments and the Parties will meet to attempt to resolve the issue through unassisted collaborative negotiation;
- (c) British Columbia will make any Revenue Sharing Payments it would otherwise have been required to make within sixty (60) days of the day the cause for the suspension is remedied;
- (d) where the Parties have engaged in unassisted collaborative negotiation under subsection 10.2(b) and the issue that gave rise to the suspension of the Revenue Sharing Payments is not resolved within thirty (30) days of the request under subsection 10.2(b), either Party may provide Notice to Terminate in accordance with subsection 10.5; and
- (e) where neither Party has made a request under subsection 10.2(b), either Party may provide Notice to Terminate in accordance with subsection 10.5.

10.3 If the Revenue Sharing Payments are suspended under subsection 10.1 and this Agreement is terminated under subsection 10.4, Mowachaht/Muchalaht will be deemed to have fully released and discharged British Columbia from all of its obligations in respect of the suspended Revenue Sharing Payments.

10.4 This Agreement may be terminated prior to the end of the Term:

- (a) by Mowachaht/Muchalaht on the grounds set out in subsection 10.8;
- (b) by British Columbia on the grounds set out in subsection 10.9;

- (c) by mutual agreement of the Parties; or
 - (d) by a Party providing ninety (90) days' notice to the other Party.
- 10.5** Where a Party intends to terminate under subsection 10.4, 10.8 or 10.9 that Party must issue a Notice to Terminate to the other Party that provides:
- (a) ninety (90) days notice of the intent to terminate; and
 - (b) the reasons for terminating.
- 10.6** A Party may rescind a Notice to Terminate at any time prior to expiration of the ninety (90) day period.
- 10.7** If a Party issues a Notice to Terminate under subsection 10.8 or 10.9 the other Party will have ninety (90) days to cure any actual breach. The Parties will, within fifteen (15) days of the Notice to Terminate having been delivered, make every reasonable effort to meet to discuss the circumstances which gave rise to the written Notice to Terminate in order to determine whether there is a basis for rescinding the Notice including, upon request of one or both of the Parties, by a meeting between the Parties' executive representatives.
- 10.8** Mowachaht/Muchalaht may terminate this Agreement where:
- (a) British Columbia is not in compliance with its obligations under this Agreement; or
 - (b) any representation or warranty made by British Columbia in this Agreement is untrue or incorrect.
- 10.9** British Columbia may terminate this Agreement where:
- (a) Mowachaht/Muchalaht is not in compliance with its obligations under this Agreement;
 - (b) Mowachaht/Muchalaht impedes or effectively stops operation of the Project, as per subsections 5.2 and 10.1(a) and in accordance with the process in subsection 10.2; or
 - (c) any representation or warranty made by Mowachaht/Muchalaht in this Agreement is untrue or incorrect as per subsection 10.1(b) and in accordance with the process in subsection 10.2.
- 10.10** Except as provided in Section 7, where a Notice to Terminate is not withdrawn within ninety (90) days, the Parties will be released and discharged from their

obligations under this Agreement.

Section 11 Consultation on Government Actions

- 11.1** The process by which the Parties agree that British Columbia will consult on proposed Government Actions contemplated or proposed after the Effective Date and, where appropriate, the means by which British Columbia will identify potential measures to accommodate any potential adverse impacts to Mowachaht/Muchalaht's Aboriginal Rights resulting from the proposed Government Action is set out in Schedule 3.
- 11.2** Mowachaht/Muchalaht agrees that if the Consultation Process is followed in respect of a Government Action, British Columbia will have consulted, and where appropriate, will have identified potential measures to accommodate potential adverse impacts of that Government Action on Mowachaht/Muchalaht's Aboriginal Rights.

Section 12 Representations and Warranties

- 12.1** Mowachaht/Muchalaht represents and warrants to British Columbia, with the intent and understanding that such representations and warranties will be relied on by British Columbia in entering into this Agreement, that:
- (a) it has the legal power, capacity and authority to enter into this Agreement and to make the covenants, acknowledgements and representations in this Agreement on its own behalf and on behalf of its Members;
 - (b) it has obtained or had the opportunity to obtain the advice of its own financial, legal, tax and other professional advisors with respect to this Agreement;
 - (c) it enters into this Agreement for, and on behalf of all of its Members, and that the Agreement is a valid and binding obligation of Mowachaht/Muchalaht and its Members; and
 - (d) the applicable resolution authorizing entry into this Agreement by Mowachaht/Muchalaht has not been varied, amended, repealed or replaced without notice to British Columbia.
- 12.2** British Columbia represents and warrants to Mowachaht/Muchalaht, with the intent and understanding that such representations and warranties will be relied on by Mowachaht/Muchalaht in entering into this Agreement, that:
- (a) it has taken all necessary actions and obtained all necessary approvals to enter into this Agreement;
 - (b) it has the legal power, capacity and authority to carry out its obligations in accordance with the terms of this Agreement; and

(c) this Agreement is a valid and binding obligation of British Columbia.

Section 13 Dispute Resolution

- 13.1** The Parties will endeavour to resolve any Disputes in a co-operative, effective and timely manner.
- 13.2** The Parties may agree to vary a procedural requirement contained in this Section 13 as it applies to a particular Dispute.
- 13.3** The Parties agree to use the processes set out in this Section 13 to attempt to resolve all Disputes, including any Dispute that may give rise to a right to terminate pursuant to subsection 10.4, prior to either Party issuing a Notice of Termination.
- 13.4** For greater certainty, the processes set out in this Section 13 will not be used:
- (a) once a Notice to Terminate has been issued;
 - (b) to resolve a disagreement relating to consultation and accommodation in respect of Government Actions under Section 11; or
 - (c) to resolve a disagreement regarding the calculation of Revenue Sharing Payments.
- 13.5** Any Party may give a written Notice of Dispute to the other Party which includes a summary of the particulars of the dispute.
- 13.6** The Parties will meet and will attempt to resolve the Dispute through the following unassisted collaborative process:
- (a) within fifteen (15) working days, or within a longer timeframe agreed by the Parties, the authorized representatives of the Parties will make every reasonable effort to meet and attempt to resolve the Dispute; and
 - (b) if the Dispute remains unresolved, and upon request by one or both of the Parties, the Parties' executive representatives will make every reasonable effort to meet within fifteen (15) working days, or within the timeframe agreed by the Parties, and attempt to resolve the Dispute.
- 13.7** No Party may commence a court proceeding concerning a Dispute prior to completion of the unassisted collaborative process pursuant to subsection 13.6, except:
- (a) to prevent the loss of a right of action due to the expiration of a limitation

period;

(b) to obtain interlocutory or interim relief; or

(c) if the matter is considered by the Party to be of an urgent nature.

13.8 Where a Dispute is not resolved through unassisted collaborative process pursuant to subsection 13.6, the Parties may:

(a) exercise their respective rights, including any right to issue a Notice to Terminate; or

(b) by agreement of the Parties, undertake further efforts to resolve the Dispute through one or both of mediation or arbitration, as set out below.

13.9 The following will apply to any mediation that the Parties agree to pursue:

(a) the Party that issued the Notice of Dispute will prepare a Notice to Mediate that states the issue that the Parties have agreed to put to mediation;

(b) the Parties will appoint a mediator who is neutral, objective and experienced in mediation within thirty (30) days of the issuance of the Notice to Mediate. If the Parties cannot agree on the appointment, Mediate BC, or its successor organization, will appoint the mediator from a roster maintained by that organization;

(c) the mediator's role is to facilitate discussion, understanding and dispute resolution between the Parties. The mediator will not have any authority to impose a solution on the Parties;

(d) the mediation will terminate at the earliest of:

i. the expiration of thirty (30) days after the appointment of the mediator or any longer period agreed to by the Parties,

ii. the withdrawal from the mediation of a Party by notice in writing to the mediator, provided that no Party may withdraw until after the first meeting with the mediator,

iii. the date on which the Parties agree in writing to terminate the mediation, or

iv. the date on which the Parties sign a written agreement resolving the Dispute;

(e) the Parties will:

- i. on request of the other Party, provide timely disclosure of sufficient information and documents to enable a full examination of the subject matter being negotiated, with the exception of privileged documents and subject to applicable information and privacy legislation and other laws imposing confidentiality requirements,
 - ii. make every reasonable effort to appoint negotiating representatives with sufficient authority to reach an agreement, or with ready access to such authority, and
 - iii. negotiate in good faith;
- (f) the mediation process and all its related proceedings will be and will remain confidential, unless the Parties agree otherwise;
- (g) a Party may withdraw from mediation at any time by providing written notice of its intent to the mediator, subject to subsection 13.9(d)(ii);
- (h) the mediation will not restrict in any way the positions that each Party may take in any dispute, arbitration or court proceeding;
- (i) the mediator will not issue a report or make any recommendations unless requested to do so in writing by the Parties;
- (j) any agreement reached through mediation will be recorded in writing, signed by authorized representatives of the Parties and delivered to the Parties; and
- (k) the Parties will each bear the costs of their own participation, representation and appointments in the mediation. The Parties will share equally all common costs of the mediation, including fees of the mediator, costs of meeting rooms, actual and reasonable disbursements incurred by the mediator and fees of Mediate BC.

13.10 The following will apply to any arbitration that the Parties agree to pursue:

- (a) the Party that issued the Notice of Dispute will prepare a Notice to Arbitrate that states the issue the Parties have agreed to put to arbitration;
- (b) the Parties will appoint an arbitrator who is neutral, objective and experienced in arbitration within thirty (30) days of the issuance of the Notice to Arbitrate. If the Parties cannot agree on the appointment, the British Columbia International Commercial Arbitration Centre, or its successor organization, will appoint the arbitrator from a roster maintained by that organization;
- (c) the arbitration process and all its related proceedings will be and will remain

confidential, unless the Parties agree otherwise;

(d) subject to the exceptions in applicable arbitration legislation, the decision of the arbitrator is final and binding on the Parties for the term of this Agreement; and

(e) except as otherwise ordered by the arbitrator:

- i. the Parties will each bear the costs of their own participation, representation and appointments in the arbitration, and
- ii. the Parties will share equally all common costs of the arbitration, including fees of the arbitrator, costs of hearing and meeting rooms, actual and reasonable disbursements incurred by the arbitrator and administration fees of the British Columbia Commercial Arbitration Centre or other appointing authority.

13.11 The Parties may agree to alternative approaches to assist in reaching resolution of the Dispute.

13.12 Nothing in this Section 13 creates a cause of action where none otherwise exists.

Section 14 Notice and Delivery

14.1 Where in this Agreement any notice or other communication is required to be given by any of the Parties, it will be made in writing. It will be effectively given:

- (a) by personal delivery to the address of the Party set out below, on the date of delivery;
- (b) by pre-paid registered mail to the address of the set out below, on the date the registered mail is delivered;
- (c) by facsimile, to the facsimile number of the Party set out below, on the date the facsimile is received; or
- (d) by electronic mail (email) with the subject line "Myra Falls ECDA – (topic)" to the email addressees set out below, on the date the email is sent.

14.2 The address and email or facsimile number of each Party is:

(a) Mowachaht/Muchalaht:

Mowachaht/Muchalaht First Nation
Band Office
100 Ouwatin Road, PO Box 459, Gold River, BC, V0P1G0

Attention: Administrator/CEO

Email: azar.kamran@yuquot.ca; cfo@yuquot.ca

(b) British Columbia:

Ministry of Indigenous Relations and Reconciliation
2957 Jutland Road
Victoria, BC V8T 5J9
Fax: (250) 387-6073
Attention: Assistant Deputy Minister,
Negotiations and Regional Operations Division

14.3 Any Party may at any time give notice to the other Party of any change of address, facsimile number or email address in accordance with subsection 14.1.

Section 15 General Provisions

15.1 The Parties agree that this Agreement does not:

- (a) constitute a treaty or land claim agreement within the meaning of sections 25 and 35 of the *Constitution Act, 1982*;
- (b) create, expand, amend, define, affirm, recognize, limit, deny, abrogate, extinguish, replace or derogate from any Aboriginal Rights;
- (c) prevent Mowachaht/Muchalaht from bringing a court action, claim or proceeding for past, present, or future infringements of Mowachaht/Muchalaht's Aboriginal Rights in connection with the Project, or arising from a Project accident or malfunction or a breach of any applicable laws and regulations that results or could result in adverse effects on Mowachaht/Muchalaht's Aboriginal Rights; or
- (d) prevent British Columbia from relying on payments made under this Agreement under Schedule 2 and consultation carried out in accordance with the Consultation Process in response to a claim of past, present, or future infringements of Mowachaht/Muchalaht's Aboriginal Rights in connection with the Project.

15.2 This Agreement does not change or affect the position any Party has, or may have, regarding its jurisdiction, responsibilities and decision-making authority.

15.3 This Agreement is not intended to be interpreted in a manner that would affect or fetter the discretion of any decision-making authority.

15.4 No partnership, joint venture, agency, fiduciary or employment relationship will be

deemed to be created by this Agreement or by any actions of the Parties under this Agreement.

- 15.5** Except as contemplated in this Agreement, this Agreement does not limit the position any Party may take in any legal or administrative proceedings or in any discussions or negotiations between the Parties.
- 15.6** Nothing in this Agreement is to be construed as an acceptance of or admission by any Party of the position of the other Party or as an admission of liability and without limiting the foregoing, this Agreement is not to be construed as an admission of:
- (a) the validity of, or any fact or liability in relation to, any claims for compensation for alleged past or future infringements of Aboriginal Rights of any kind whatsoever or whensoever arising in relation to such assertions; or
 - (b) an obligation to provide financial or economic benefits, as provided in this Agreement, as part of British Columbia's obligation to consult and, as appropriate, accommodate in relation to Government Action relating to the Project.
- 15.7** Nothing in this Agreement precludes Mowachaht/Muchalaht from:
- (a) continuing to negotiate, implement and take steps to enforce any revenue and benefits-sharing agreements with the Operator, proponents and other governments;
 - (b) accessing economic opportunities and benefits, which may be available other than those expressly set out in this Agreement; or
 - (c) participating in government programs for which Mowachaht/Muchalaht or Members may be eligible.
- 15.8** This Agreement and any amendment to it constitute the entire Agreement between the Parties with respect to the subject matter of this Agreement, unless otherwise agreed in writing by the Parties.
- 15.9** This Agreement may be amended by written agreement duly executed by the Parties.
- 15.10** The funds received under this Agreement are not, and are not intended to be, considered as own source revenue for any purpose related to federal funding arrangements, either in a treaty or non-treaty agreements.
- 15.11** Notwithstanding any other provision of this Agreement, Revenue Sharing Payments to be provided by British Columbia to Mowachaht/Muchalaht are

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 such payment is required, to make such payment; and
- (b) Treasury Board, as defined in the *Financial Administration Act*, not having controlled or limited expenditure under any appropriation necessary in order to make such payment.

Section 16 Interpretation

- 16.1** This Agreement is to be interpreted so that all the provisions are given as full effect as possible.
- 16.2** This Agreement will be governed by and construed in accordance with the applicable laws of British Columbia and Canada.
- 16.3** If any part of this Agreement is void or unenforceable at law, it shall be severed from this Agreement and the rest of the Agreement shall remain in effect and fully enforceable.
- 16.4** If any part of this Agreement is void or unenforceable at law, the Parties agree to negotiate and attempt to reach agreement, to the extent reasonably possible and as their respective interests may require, on a replacement for the severed part with a view to achieving the intent of the Parties as expressed in this Agreement. The Parties may agree to refer the matter to the dispute resolution process set out in Section 13.
- 16.5** All headings in this Agreement are for convenience only and do not form a part of this Agreement and are not intended to interpret, define, limit, enlarge, modify or explain the scope, extent or intent of this Agreement or any of its provisions.
- 16.6** In this Agreement, words in the singular include the plural and words in the plural include the singular unless the context or any specific definition otherwise requires.
- 16.7** The use of the word "including" is to be read as not limiting the generality of the preceding term or phrase.
- 16.8** In this Agreement, any reference made to a statute includes all regulations made under that statute and any amendments or replacements.
- 16.9** No term, condition, covenant or other provision of this Agreement will be considered to have been waived by the Parties unless such waiver is expressed in writing by the Parties.

- 16.10** All references in this Agreement to a designated section or other subdivision or to an appendix or schedule are to the designated section or other subdivision of, or appendix or schedule to, this Agreement.
- 16.11** Any reference to a corporate entity includes and is also a reference to any corporate entity that was a predecessor to, or that is a successor to, such entity.
- 16.12** This Agreement may be executed in counterparts. A counterpart may be delivered by e-mail attachment (Portable Document Format File), facsimile or other electronic means, which shall be as effective as hand delivery of the original executed counterpart.
- 16.13** There will be no presumption that any ambiguity in any of the terms of this Agreement should be interpreted in favour of any Party.

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

**HIS MAJESTY THE KING IN RIGHT OF THE
PROVINCE OF BRITISH COLUMBIA,**
as represented by the
Minister of Indigenous Relations and Reconciliation



Honourable Minister Murray Rankin

March 27, 2023

Date

MOWACHAHT/MUCHALAHT FIRST NATION, as
represented by



tayiihawit Chief Michael Maquinna

March 6, 2023

Date

SCHEDULE 1

Myra Falls Mine Project Description

Section 1 Project Description

1.1 The "Project" means:

- (a) all works, undertakings, facilities and activities identified in the Mines Act Permit M-36 issued by the Chief Inspector of Mines to the Operator and located in the area depicted as the "Project Area" in the map in Section 2 of this Schedule 1;
- (b) all access roads and transmission line right of ways associated with the Project for which the Operator holds a permit, authorization or other form of tenure and all associated infrastructure, operating sites, pit and dump areas and facilities;
- (c) any changes, modifications or alterations to the works, undertakings, facilities or activities set out in subsections 1.1(a) and (b), so long as such changes, modifications or alterations occur within the Project Area shown in Schedule 1 or the area subject to an ancillary permit, authorization or other form of tenure held by the Operator; and
- (d) all matters relating to the exploration, planning, permitting, construction, maintenance, repair, operation and reclamation of the Project described in subsections 1.1(a) to (c).

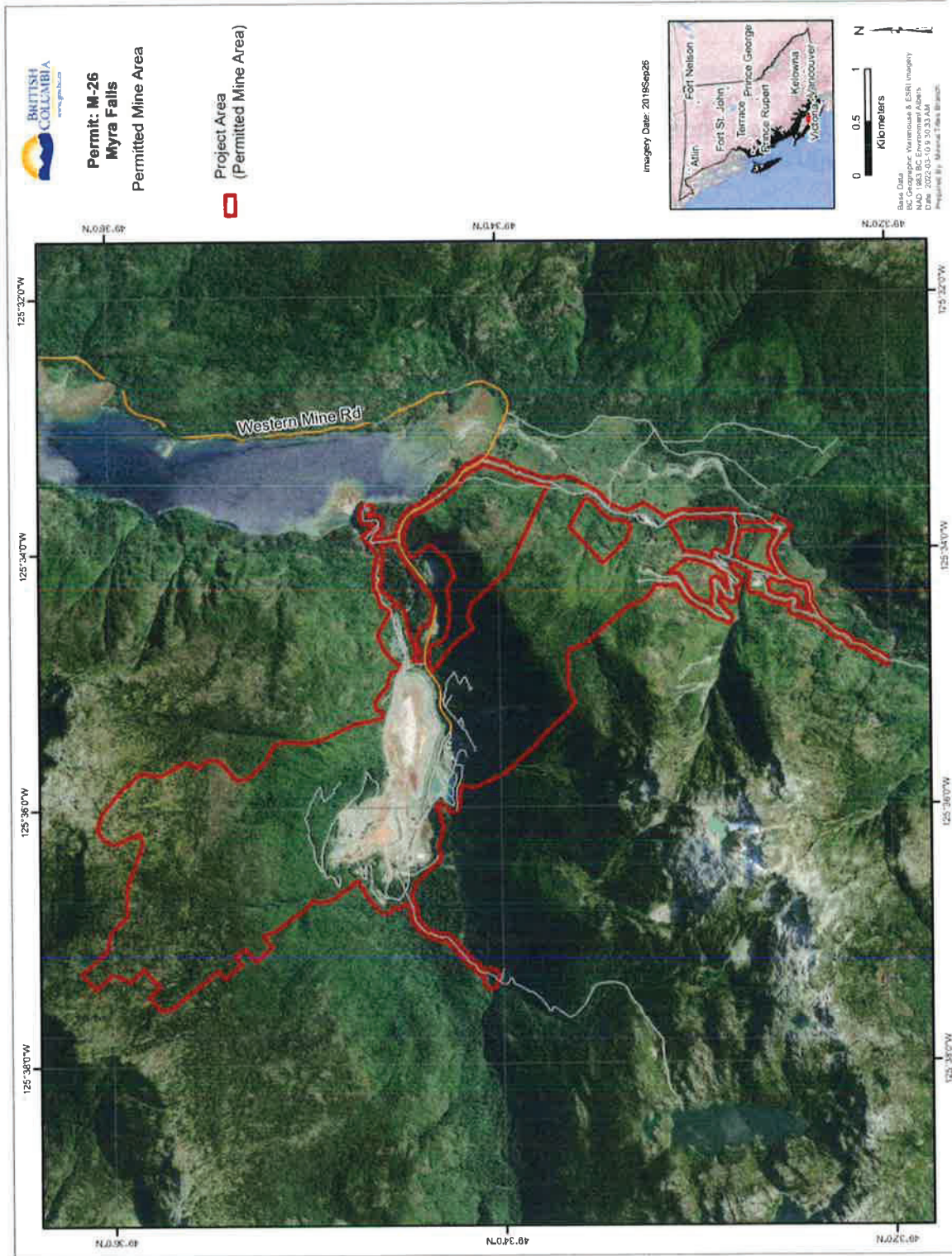
1.2 The Parties recognize that the Operator may propose a change, modification or alteration to the Project that will expand the mine and revise the Project Area shown in Schedule 1 and agree that:

- (a) any Government Actions required to approve such proposals will be the subject of consultation with Mowachaht/Muchalaht and, where appropriate, accommodation;
- (b) nothing in this Schedule or the Agreement is to be interpreted or deemed as providing Mowachaht/Muchalaht's support for any Government Actions required to approve such proposals; and
- (c) where the Project is changed by Government Actions, the Parties may agree to amend the Project Area map that forms part of this Schedule 1 to reflect the new Project Area boundaries.

1.3 Unless the Parties otherwise agree in writing, this Agreement will not apply to:

- (a) exploration, construction or mining activities located or undertaken by the Operator outside of the Project Area; or
- (b) any expansion of the Project within the Project Area that triggers a new and separate environmental assessment to be conducted for the proposed expansion under the relevant environmental assessment legislation and regulations.

2.0 Project Area Map (Permitted Mine Area) – Myra Falls Mine



SCHEDULE 2

Payment Provisions

Section 1 Definitions

1.1 In this Schedule:

“Net Mineral Tax Revenue” has the meaning set out in Section 1 of the Agreement;

“Overpayment” means an amount paid by British Columbia under this Schedule that exceeds the amount Mowachaht/Muchalaht was entitled to receive, which may occur if an Operator has paid more tax than required in a previous BC Fiscal Year or British Columbia has shared more tax than required in a previous BC Fiscal Year, or due to any other adjustments; and

“Underpayment” means a Revenue Sharing Payment that was less than the amount Mowachaht/Muchalaht was entitled to receive due to the inclusion of any tax, interest, or penalties paid by the Operator that was less than the amount required in a previous BC Fiscal Year, or any other adjustments.

1.2 **Revenue Sharing Payment.** British Columbia will provide Revenue Sharing Payments to Mowachaht/Muchalaht calculated as follows:

- (a) 6.64 % of the Net Mineral Tax Revenue; and
- (b) any adjustment for Overpayments or Underpayments pertaining to any previous BC Fiscal Year(s).

1.3 **Payment Statements.** Within one hundred and fifty (150) days after the end of each BC Fiscal Year during the term of this Agreement, British Columbia will provide Mowachaht/Muchalaht with a Payment Statement containing the following information:

- (a) the Net Mineral Tax Revenue received in the BC Fiscal Year;
- (b) the amount of any Overpayment or Underpayment if applicable; and
- (c) the amount of the Revenue Sharing Payment.

1.4 **Timing of Revenue Sharing Payments.** If the Revenue Sharing Payment for a BC Fiscal Year is a positive amount, British Columbia will, within one hundred and eighty (180) days after the end of the BC Fiscal Year for which the Revenue Sharing Payment is calculated, pay Mowachaht/Muchalaht by depositing the

Revenue Sharing Payment into Mowachaht/Muchalaht's Payment Account established under subsection 1.12.

- 1.5 Recovery of Overpayment.** If, in a BC Fiscal Year, the Revenue Sharing Payment is negative due to an Overpayment, British Columbia may pay up to fifty (50) percent of the amount that would have been paid to Mowachaht/Muchalaht in the absence of the Overpayment and apply the remaining amount of the Overpayment in future years until the Overpayment amount is recovered.
- 1.6 No Further Operator Payments.** If the Operator is no longer responsible for making payments under the *Mineral Tax Act* such that there will be no subsequent Revenue Sharing Payments to Mowachaht/Muchalaht, British Columbia will notify Mowachaht/Muchalaht of:
- (a) any Underpayment and will pay the Underpayment within one hundred and eighty days (180) of the end of the BC Fiscal Year; and
 - (b) any Overpayment that remains outstanding and may deduct the Overpayment from any amounts that may be payable to Mowachaht/Muchalaht under any other agreement with British Columbia.
- 1.7 End of Term.** If the term of this Agreement ends other than on the last day of a BC Fiscal Year, no payment will be payable to Mowachaht/Muchalaht in relation to that portion of the BC Fiscal Year after the date on which the term of this Agreement ends.
- 1.8 Fluctuations in Revenues.** Mowachaht/Muchalaht acknowledges that the mineral tax and revenues under the *Mineral Tax Act* may fluctuate and that the Net Mineral Tax Revenue may vary over time.
- 1.9 Changes to Act.** If, during the term of this Agreement, British Columbia makes changes to the *Mineral Tax Act* tax regime that will have the effect of reducing the Net Mineral Tax Revenue, British Columbia shall promptly notify Mowachaht/Muchalaht and the Parties will discuss potential alternative revenue sharing opportunities.
- 1.10 Reliance on Operator Information.** Mowachaht/Muchalaht acknowledges that British Columbia is entitled to rely on information provided by the Operator and that, while British Columbia will use reasonable efforts to ensure the accuracy of the information, the determination of the Net Mineral Tax Revenue is based on approximations and is therefore subject to imprecision.
- 1.11 Disclaimer.** British Columbia makes no representation or warranty as to the accuracy of the information provided by the Operator and no proceeding lies against British Columbia in relation to any claim that the information provided by the Operator was inaccurate.

1.12 Bank Account. Mowachaht/Muchalaht will:

- (a) maintain in its name a bank account at a Canadian financial institution for the purpose of receiving Revenue Sharing Payments;
- (b) provide British Columbia with information regarding the account established under subsection 1.12(a) to enable British Columbia to directly deposit the Revenue Sharing Payments;
- (c) notify British Columbia of any change to the information provided under subsection 1.12(b), which will be evidenced by band council resolution which British Columbia will be entitled to rely on; and
- (d) maintain the bank account established under subsection 1.12(a) until twelve (12) months after the receipt of the last Revenue Sharing Payment.

1.13 Delivery of Payments

- (a) British Columbia will make Revenue Sharing Payments to Mowachaht/Muchalaht by depositing the payments directly into the bank account established under subsection 1.12(a).
- (b) Mowachaht/Muchalaht may designate an entity under subsection 1.14 to receive Revenue Sharing Payments under subsection 1.13(a) and, if such a designation is made, Mowachaht/Muchalaht will notify British Columbia.
- (c) All payments which British Columbia is obliged to make pursuant to the Agreement are to be remitted to the bank account established under subsection 1.12(a).
- (d) For greater certainty, British Columbia will not be obligated to make any payments under this Agreement until Mowachaht/Muchalaht has complied with subsection 1.12 to the reasonable satisfaction of British Columbia.

1.14 Mowachaht/Muchalaht may settle a trust to receive the Revenue Sharing Payments, and if so, will provide to British Columbia a legal opinion stating that:

- (a) the trust is validly settled and consistent with the terms of this Agreement;
- (b) the trust has been settled to provide for the professional management and investment of the trust property for the purpose of benefitting Mowachaht/Muchalaht and its Members;
- (c) the trust provides for an annual audit; and

- (d) the trust requires that the trustees notify British Columbia in the event that there is a change to:
- i. the beneficiaries of the trust, or
 - ii. the primary purpose of the trust as identified in subsection 1.14(b) above.
- 1.15** The trustees of a trust settled in accordance with subsection 1.14 are required to be legally capable of accepting the rights granted and obligations imposed under subsection 1.14.
- 1.16** If settling a trust in accordance with subsection 1.14, Mowachaht/Muchalaht will provide to British Columbia a copy of the trust indenture and full name, address and account information respecting the trust.
- 1.17** British Columbia will not be obligated to make any payments to a trust established by Mowachaht/Muchalaht until subsection 1.14 has been complied with to the reasonable satisfaction of British Columbia.
- 1.18** If the trust identified in subsection 1.14 is terminated pursuant to its terms and there remains undistributed trust property upon termination, Mowachaht/Muchalaht agrees to cause that trust property to be settled on a successor trust with terms and objectives consistent with those of the original trust described in subsection 1.14, or settled in a bank account as described in subsection 1.12.
- 1.19** If there is any disagreement about the amount of a Revenue Sharing Payment:
- (a) Mowachaht/Muchalaht may give notice to British Columbia;
 - (b) the Parties will meet as soon as practicable to discuss the matter of concern;
and
 - (c) British Columbia will review the matter and take any remedial actions required.

SCHEDULE 3

CONSULTATION PROCESS

1. Definitions

In this Schedule:

“Working Days” means any day other than a Saturday or Sunday, National Indigenous Peoples Day or a statutory holiday in British Columbia;

“Information Package” has the meaning given to that term in subsection 2(2) of this Schedule; and

“Mines Act Permit Regulation” means *Mines Act Permit Regulation, B.C. Reg. 99/2013*.

2. Consultation Initiation

- (1) When a Provincial Agency receives an application for a Government Action, the Provincial Agency will propose the type of Government Action in accordance with the Criteria Table in Appendix “A” of this Schedule based on a determination of which set of criteria best describes the potential impacts on Mowachaht/Muchalaht associated with the Government Action.
- (2) The Provincial Agency will initiate the Consultation Process by providing an Information Package to Mowachaht/Muchalaht that will include the following:
 - (a) relevant background information and a description of the proposed Government Action(s);
 - (b) location of the proposed Government Action(s) within the Project Area, and any associated GIS-based information;
 - (c) application(s) and any supporting materials including studies and technical reports submitted by the Operator to the Province or prepared by the Province;
 - (d) a description of potential impacts on Mowachaht/Muchalaht’s Aboriginal Rights, and measures to mitigate and/or accommodate identified impacts to those Aboriginal Rights;

- (e) the primary contact information for the Provincial Agency;
 - (f) identification of the Government Action as Type 1, Type 2 or Type 3 along with a rationale for the selection; and
 - (g) a timeline for the Consultation Process consistent with the timelines established in this Schedule for the selected type of Government Action.
- (3) Where multiple Government Actions are considered at the same time, Provincial Agencies will endeavor to include a description of all Government Actions within a single Information Package to support Mowachaht/Muchalaht decision making.
 - (4) If Mowachaht/Muchalaht does not agree with the Type of Government Action identified pursuant to subsection 2(2)(f) Mowachaht/Muchalaht may, within ten (10) Working Days of receiving the Information Package, provide the Provincial Agency with a written request that the Type of Government Action be changed and will provide the Provincial Agency with information supporting such a request, including potential impacts to Mowachaht/Muchalaht's Aboriginal Rights from the Government Action.
 - (5) The Provincial Agency will consider such requests and if the request is not accepted, will meet either by phone, video conference or in person with Mowachaht/Muchalaht representatives within ten (10) Working Days, subject to Mowachaht/Muchalaht's availability, to discuss the request.
 - (6) Upon making a decision on the Type of Government Action, the Parties will initiate the Consultation Process steps and their related timing.

3 Type 1

- (1) Where Mowachaht/Muchalaht receives an Information Package concerning a Government Action identified as Type 1, Mowachaht/Muchalaht may, within twenty (20) Working Days from the date the Information Package is received by Mowachaht/Muchalaht, provide a response to the Provincial Agency identifying any concerns, comments or suggested mitigations in response to the Information Package.
- (2) The relevant statutory decision maker may make a decision with respect to the application for a Government Action after the expiry of the fifteen (15) Working Day period, unless the Provincial Agency and Mowachaht/Muchalaht agree in writing to an extension of time for further Mowachaht/Muchalaht review, in which case, the statutory decision maker may make a decision after the expiry of the extension period.

4 Type 2

- (1) Where Mowachaht/Muchalaht receives an Information Package concerning a Government Action identified as Type 2, Mowachaht/Muchalaht may, within twenty-two (22) Working Days from the date the Information Package is received by Mowachaht/Muchalaht, provide a response to the Provincial Agency:
 - (a) identifying any concerns, comments or suggested mitigations in response to the Information Package;
 - (b) providing a detailed description of any additional information that Mowachaht/Muchalaht requests in order to understand the impacts of the proposed Government Action on Mowachaht/Muchalaht 's Aboriginal Rights; and
 - (c) requesting a meeting with the Provincial Agency to further discuss the proposed Government Action.
- (2) The relevant statutory decision maker may make a decision with respect to the proposed Government Action:
 - (a) before the expiry of the twenty-two (22) Working Days if Mowachaht/Muchalaht indicates in writing that they have no concern with, or no position on, the proposed Government Action; or
 - (b) after the expiry of the twenty-two (22) Working Day period, unless the Provincial Agency and Mowachaht/Muchalaht agree in writing to an extension of time for further Mowachaht/Muchalaht review or to arrange a meeting between Mowachaht/Muchalaht and the Provincial Agency, in which case, the statutory decision maker may make a decision after the expiry of the extension period.
 - (c) If Mowachaht/Muchalaht provided specific concerns, comments or suggested mitigation measures in relation to the Information Package, the relevant statutory decision maker or the Provincial Agency will notify Mowachaht/Muchalaht in writing of the decision made regarding the proposed Government Action including any measures taken to respond to concerns, comments or suggested mitigation measures made by Mowachaht/Muchalaht.

5 Type 3

- (1) Where Mowachaht/Muchalaht receives an Information Package concerning a Government Action identified as Type 3,

Mowachaht/Muchalaht may provide a response to the Provincial Agency within twenty-two (22) Working Days from the date the Information Package is received by Mowachaht/Muchalaht that:

- (a) identifies any concerns, comments or suggested mitigations in response to the Information Package; and
 - (b) provides a detailed description of any additional information that Mowachaht/Muchalaht requires in order to understand the impacts of the proposed Government Action on Mowachaht/Muchalaht's Aboriginal Rights.
- (2) Alternatively, Mowachaht/Muchalaht may provide the Provincial Agency with notice that no further consultation is required.
- (3) Within twenty-two (22) Working Days of receiving a response from Mowachaht/Muchalaht under subsection 5(1) of this Schedule, the Provincial Agency and Mowachaht/Muchalaht will make reasonable efforts to meet either by phone, video conference or in person. Following the meeting, reasonable efforts will be made by both Parties to:
- (a) utilize any existing committees or tables as appropriate (e.g. the mine development review committee, major mines permitting process); and
 - (b) provide available additional technical information requested by Mowachaht/Muchalaht under subsection 5(1)(b) of this Schedule to properly understand the proposed Government Action(s) and the potential impact on Mowachaht/Muchalaht's Aboriginal Rights.
- (4) The Parties will work collaboratively to develop recommendations on proposed mitigations and accommodations through any meetings undertaken through subsection 5(3) of this Schedule.
- (5) At the end of twenty-two (22) Working Days from receiving a response from Mowachaht/Muchalaht under subsection 5(1) of this Schedule, the Provincial Agency will make reasonable efforts to provide Mowachaht/Muchalaht with a summary of potential mitigations and accommodations that have been jointly discussed by the Parties and the summary will be provided to the relevant statutory decision maker.
- (6) Within twenty (20) Working Days of receiving the summary under subsection 5(5) of this Schedule, unless the Provincial Agency and Mowachaht/Muchalaht agree in writing to an extension of time for further Mowachaht/Muchalaht review, Mowachaht/Muchalaht will make reasonable efforts to prepare and provide to the Provincial Agency a consultation report that includes:

- (a) any additional proposed mitigations or accommodations that address any impacts to Aboriginal Rights identified by Mowachaht/Muchalaht; and
 - (b) if required, any additional submissions regarding Mowachaht/Muchalaht's views on the proposed Government Action(s).
- (7) If Mowachaht/Muchalaht includes any additional submissions in the consultation report under subsection 5(6) of this Schedule either Party may request an issue resolution meeting with the relevant provincial representative.
 - (8) Where a meeting is requested to address outstanding issues, the Parties will meet with the relevant provincial representative, and attempt to resolve the issue in question within twenty (20) Working Days from British Columbia receiving submissions through subsection 5(7) of this Schedule.
 - (9) If an issue remains unresolved after the meeting referred to in subsection 5(8) of this Schedule, each Party will notify the other in writing of the outstanding points of disagreement and any consensus recommendations that may have been reached during the meeting. The record of the outstanding issues will be submitted to the statutory decision maker.
 - (10) The relevant statutory decision maker or the Provincial Agency will notify Mowachaht/Muchalaht in writing of the decision made regarding the proposed Government Action including any measures taken to respond to concerns, comments and suggested mitigation measures provided by Mowachaht/Muchalaht and how such concerns, comments and suggested mitigation measures were considered in reaching the decision.

Appendix A: Criteria Table

1. Criteria Table

- 1.1 The Criteria Table contains criteria for determining whether the proposed Government Action Type 1, Type 2 or Type 3 for the purposes of the Consultation Process set out in Section 11 and Schedule 3 of this Agreement.

Type 1: Criteria

Negligible potential impact on Aboriginal Rights, such as:

- Negligible potential physical impact on land
- Negligible potential fish and wildlife impact
- Long-standing replacements of existing tenures understood to have created negligible previous impact on Aboriginal Rights
- Maintenance of existing infrastructure, but excluding herbicide use or road deactivation

Type 2: Criteria

Minor to Moderate potential impact on Aboriginal Rights, such as:

- Minor to moderate potential fish and wildlife impact
- Minor to moderate potential impact on Mowachaht/Muchalaht's access
- Minor to moderate potential land alteration or disturbance
- Long-standing replacements of existing tenures understood to have created a minor to moderate previous impact on Aboriginal Rights

Type 3: Criteria

Serious impacts on Aboriginal Rights, such as:

- Serious potential fish and wildlife impacts
- Serious potential water and land impacts
- Serious potential land alteration or disturbance
- Major new access structures
- Aboriginal activities or rights potentially displaced/irreplaceable in a specific area
- Long-standing replacements of existing tenures understood to have created serious previous impact on Aboriginal Rights

- 1.2 In circumstances where criteria from two or more engagement types apply, the engagement level will default to the higher level, unless the Parties agree to the lower level applying.

1.3 The following Government Actions, which are deemed authorizations under the *Mines Act Permit Regulation, B.C. Reg. 99/2013* will be considered Type 1 for the purposes of the Consultation Process:

- (a) induced polarization (IP) surveys using exposed electrodes where an exploration permit is held;
- (b) mineral drill programs and IP surveys in the permitted area of disturbance of the Mine; and
- (c) extending the term of mineral exploration activities by up to two years.

