

INCREMENTAL TREATY AGREEMENT

THIS AGREEMENT dated effective the 31 day of March, 2023.

BETWEEN:

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

(the "**Province**")

AND:

K'ÓMOKS FIRST NATION, on behalf of itself and its Members, as represented by the
Chief and Council

AND:

TLOWITSIS FIRST NATION, on behalf of itself and its Members, as represented by
the Chief and Council

AND:

CAPE MUDGE INDIAN BAND aka Wei Wai Kai First Nation, on behalf of itself
and its Members, as represented by the Chief and Council

AND:

CAMPBELL RIVER INDIAN BAND aka WEI WAI KUM FIRST NATION, on
behalf of itself and its Members, as represented by the Chief and Council

(collectively, the "**Recipients**")

WHEREAS:

- A. The Recipients, the Province and the Government of Canada are negotiating Treaties in accordance with the British Columbia Treaty Process.
- B. The Province is committed to true, lasting reconciliation with the Recipients through renewed government-to-government relationships based on recognition of rights, respect, cooperation and partnership.
- C. The Recipients are pursuing a forestry business opportunity in partnership, and expect to continue to work together on other matters of mutual interest.
- D. In furtherance of the Province's reconciliation goals, to maintain momentum in Treaty negotiations and to support relationship building among the Recipients, the Province has agreed to contribute to the Recipients a transitional amount **of funds** in advance of Treaty to support its economic development opportunities; and

E. The Province and the Recipients wish to set out the terms and conditions respecting the Province's contribution in this Agreement.

NOW THEREFORE in consideration of the premises and covenants set out in this Agreement and for other good and valuable consideration (the receipt and sufficiency of which is hereby acknowledged by the parties), the parties agree as follows:

DEFINITIONS

1.01 In this Agreement:

- (a) "Agreement" means this contribution agreement, as may be amended, restated, replaced or supplemented from time to time;
- (b) "Business Day" means a day, other than a Saturday or Sunday, on which Provincial government offices are open for normal business in British Columbia;
- (c) "Contribution" means the funds paid or payable by the Province to the Recipients pursuant to this Agreement.
- (d) "Effective Date" means the date indicated on the first page of this Agreement;
- (e) "Event of Default" means any event of default described in section 11.01 of this Agreement;
- (f) "FAA" means the *Financial Administration Act*, R.S.B.C. 1996, c.138;
- (g) "Project" means all Recipients entering into a Purchase and Sale Agreement for shares in a forestry business to be held by the Recipients on a proportional basis within a limited partnership;
- (h) "Report" means the report provided by the Recipients to the Province in accordance with section 5.01;
- (i) "Section 35 Rights" has the meaning set out in section 12.02;
- (j) "Term" means the term of this Agreement described in section 2.01; and
- (k) "Termination Date" has the meaning set out in section 2.01.

1.02 Capitalized terms defined in the recitals to this Agreement and used in this Agreement have the definitions given in the recitals.

TERM

2.01 The term of this Agreement commences on the Effective Date and ends on the date on which this agreement is terminated in accordance with section 11.02 (the "**Termination Date**").

CONTRIBUTION

3.01 The Contribution consists of an aggregate \$29,900,000 in the following proportions:

- a. \$5,794,620 to K'ómoks First Nation as an advance on treaty Economic Development Funds;
- b. \$3,211,260 to Tlowitsis First Nation as an advance on treaty capital transfer;
- c. \$10,764,000 to We Wai Kai First Nation as an advance treaty capital transfer; and
- d. \$10,130,120 to Wei Wai Kum First Nation as an advance on treaty capital transfer.

3.02 The Contributions are payable upon execution of this Agreement.

STIPULATIONS

- 4.01 Each Recipient must apply its proportionate share of the Contribution solely for purposes of acquiring its proportionate share in the Project.
- 4.02 Without limiting section 11.02 or any other right of the Province in law or in equity, the Province may require a Recipient to pay to the Province any amount of its proportionate share of the Contribution which the Recipient has used in contravention of section 4.01.
- 4.03 Unless otherwise agreed in writing by the Province, each Recipient must repay to the Province within 60 days of the Termination Date any portion of its proportionate share of the Contribution that has not been expended by the Recipient for the Project on the Termination Date.

REPORTS

- 5.01 The Recipients will provide to the Province, within three months of the full expenditure of the Contribution, a report that summarizes the Project scope, describes the results achieved, explains any discrepancies between the results and the planned or expected results and contains such other information as the Province may specify in writing to the Recipients.
- 5.02 The Recipients will not include any information in the Report which constitutes "personal information" within the meaning of the *Freedom of Information and Protection of Privacy Act* (British Columbia).

AUDIT

- 6.01 The Recipients will establish and maintain for a period of not less than seven years from the expiration or termination of this Agreement accurate books of account and records, following generally accepted accounting principles, in relation to the Project, including but not limited to: all expenditures and revenues, all contracts and agreements, invoices, receipts and other records relating to Recipients' use and expenditure of the Contribution.

INDEMNITY

- 7.01 Each Recipient agrees to indemnify and save harmless the Province and its employees and agents from any losses, claims, damages, actions, causes of action, costs and expenses that the Province or any of its employees or agents may sustain, incur, suffer or be put to at any time during or following the Term which are based upon, arise out of or occur, directly or indirectly, by reason of, (a) any breach or inaccuracy of any representation or warranty

made by the Recipient in this Agreement; or (b) any breach or failure by the Recipient to perform or fulfil any covenant, condition, or obligation of the Recipient contained in this Agreement; or (c) any act or omission by the Recipient or by any of the Recipient's agents, employees, officers, directors or subcontractors in connection with this Agreement, including any act or omission that results in a third party intellectual property infringement claim against the Province.

PUBLIC STATEMENTS

- 8.01 The Recipients will not make any public statements or communications about the Contribution or otherwise with respect to this Agreement or any Province involvement in the Project without the Province's prior written approval, which may be withheld by the Province at its discretion.
- 8.02 The Recipients will ensure that the Province
- (a) is provided any relevant materials relating to any proposed public statement or communications in advance of any approval referenced in section 8.01;
 - (b) is given a reasonable opportunity to review such materials; and
 - (c) gives its prior approval regarding the content and timing of all such public communications.

REPRESENTATIONS AND WARRANTIES

- 10.01 Each of the Recipients represent and warrants to the Province, with the intent that the Province will rely on such representations and warranties in entering into this Agreement, that:
- (a) it is in good standing and has the power and capacity to accept, execute and deliver this Agreement;
 - (b) this Agreement is binding upon, and enforceable against, the Recipient in accordance with its terms;
 - (c) all information, certificates, statements, documents and Reports furnished or submitted by the Recipient in connection with this Agreement will be true and accurate on the date of delivery and will remain true and accurate throughout the Term;
 - (d) the Recipient has sufficient trained staff and resources in place to fulfil its obligations under this Agreement;
 - (e) the Recipient will administer the Contribution for the Project in compliance with its covenants and obligations under this Agreement; and
 - (f) there are no actions or proceedings pending (including appeals or applications for review) or to its knowledge threatened, before any court, arbitrator, administrative agency or governmental body which, if determined against it, would result in a change occurring in its properties, assets, condition (financial or

otherwise), business or operations which would materially adversely affect its ability to fulfil its obligations under this Agreement.

- 10.02 If any representation, warranty, certificate, document or Report becomes untrue or inaccurate during the Term, the Recipients shall promptly advise the Province.
- 10.03 The provisions of sections 10.01 and 10.02 will continue in full force and effect notwithstanding the fulfillment by the Recipients of any or all of its obligations under this Agreement or the grant by the Province to the Recipients of any or all of the monies that the Province has agreed to provide to the Recipients pursuant to this Agreement.

DEFAULT

- 11.01 Any of the following will constitute an Event of Default of the Recipients under this Agreement:
- (a) The Recipients fail to comply with a provision of this Agreement;
 - (b) any representation or warranty made by the Recipients in this Agreement is untrue or inaccurate; or
 - (c) any information, statement, certificate, report or other document furnished or submitted by or on behalf of the Recipients pursuant to or as a result of this Agreement is materially untrue or inaccurate.
- 11.02 If an Event of Default occurs the Province may at its discretion and without limitation:
- (a) terminate this Agreement by written notice from the Province to the Recipients;
 - (b) if the Province believes, in its discretion, that the Event of Default is capable of being cured by the Recipients:
 - (i) by written notice to the Recipients, require that the Event of Default be remedied within a time period specified in the notice;
 - (ii) the Recipients must provide the Province with written notice of such cure by the conclusion of the time period specified in the notice and include, in particularity and in detail, reasonable detail of how the Event of Default has been cured;
 - (c) by written notice to the Recipients request that the parties enter into dispute resolution in accordance with section 23.01; or
 - (d) specify amounts, not to exceed in total the Contribution, that have not been accounted for and applied by the Recipients, that, within 60 business days of actual or deemed receipt by the Recipients of notice given by the Province to the Recipients, will become due and be payable by the Recipients to the Province.

RECONCILIATION

- 12.01 The Recipients acknowledge and agree that the Contribution will be considered an advance settlement payment by the Province in respect of the Recipients' Section 35 Rights and will be offset against any amount that the Province agrees to pay under their respective Treaty, comprehensive reconciliation agreement, or similar agreement or must pay under a court award.
- 12.02 This Agreement:
- (a) does not constitute a treaty or land claim agreement within the meaning of section 25 and section 35 of the *Constitution Act, 1982*; and
 - (b) does not define, limit, amend, abrogate or derogate from any of the Recipients' Aboriginal or treaty rights recognized and affirmed under section 35 of the *Constitution Act, 1982* ("Section 35 Rights").
- 12.03 Nothing in this Agreement nor the provision of any funds under this Agreement will be construed as:
- (a) an admission by the Province that any decision of the Province or its agents or officials has or will result in an infringement of any of the Recipients' Section 35 Rights; or
 - (b) an admission by the Province that it has an obligation to provide financial, economic, or other accommodation or compensation for any infringement of any of the Recipients' Section 35 Rights or as part of the obligation of the Province to consult and, as appropriate, accommodate.

NOTICES

- 13.01 Any notice, document, statement, report or demand desired or required to be given or made pursuant to this Agreement must be in writing and may be delivered by courier, by personal delivery or by electronic transmission (including by facsimile or email) from either party as follows:

- (a) if to the Province:

Ministry of Indigenous Relations and Reconciliation
P.O. Box 9100 Stn. Prov. Gvt.
Victoria, B.C. V8W 9B1
Email: Heinz.Dyck@gov.bc.ca
Attention: Heinz Dyck

- (b) and if to the Recipients:

K'ómoks First Nation
3330 Comox Road
Comox, British Columbia
Canada, V9N 3P8
Attention: Chief Ken Price

Tlowitsis First Nation
1345 Bute Crescent
Campbell River, British Columbia
Canada, V9H 1G6
Attention: Chief John Smith

We Wai Kai First Nation
690 Headstart Cres
Campbell River, British Columbia
Canada, V9H 1P9
Attention: Chief Ronnie Chickite

Wei Wai Kum First Nation
1650 Old Spit Road
Campbell River, British Columbia
Canada, V9W 3E8
Attention: Chief Chris Roberts

- 13.02 Any such communication will be conclusively deemed validly given to and received by the intended recipient on the day on which it was so delivered or transmitted unless received after 5:00 pm (local time in the place of receipt) in which case it will be deemed to be given on the next business day.
- 13.03 Either party may, from time to time, give written notice to the other party of any change of address or email of the party giving such notice and after the giving of such notice, the address or email therein specified will, for purposes of this Agreement be conclusively deemed to be the address or email of the party giving such notice.

APPROPRIATION

- 14.01 Notwithstanding any other provision of this Agreement, the payment of money by the Province to the Recipients pursuant to this Agreement is subject to:
- (a) there being sufficient monies available in an appropriation, as defined in the FAA, to enable the Province in any fiscal year or part thereof when any such payment may be required, to make that payment; and
 - (b) Treasury Board, as defined in the FAA, not having controlled or limited, pursuant to the FAA, expenditure under any appropriation referred to in section 14.01(a).

RELATIONSHIP

- 15.01 The Recipients will not be a dependant contractor or employee of the Province under this Agreement.
- 15.02 The Recipients will not, in any manner whatsoever, commit or purport to commit the Province to the payment of money to any person, firm or corporation in connection with this Agreement.

NON-WAIVER

- 16.01 No term or condition of this Agreement and no breach by one party of any such term or condition will be deemed to have been waived unless such waiver is in writing signed by the other party.
- 16.02 The written waiver by one party of any breach by the other party of any term or condition of this Agreement will not be deemed a waiver of such term or condition or of any subsequent breach by the other party of the same or any other term or condition of this Agreement.

ENTIRE AGREEMENT

- 17.01 This Agreement constitutes the entire agreement between the parties with respect to the subject matter of this Agreement.

FURTHER ACTS AND ASSURANCES

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

TIME OF ESSENCE

- 19.01 Time will be of the essence of this Agreement.

SURVIVAL OF PROVISIONS

- 20.01 Sections 3.01, 4.01, 4.02, 5.01, 5.02, 6.01, 7.01, 8.01, 8.02, 10.01, 10.02, 10.03, 11.01, 11.02, 12.01, 12.02, 12.03, 13.01, 13.02, 14.01, 15.01, 15.02, 16.01, 16.02, 18.01, 20.01, 21.01, 21.08, 23.01, 23.02, 23.03 and any other sections of this Agreement which by their nature are intended to survive the termination of this Agreement and all of the rights and remedies of the Province, either at law or in equity, will survive any expiration or sooner termination of this Agreement.

INTERPRETATION

- 21.01 This Agreement will be governed by and construed in accordance with the laws of the Province of British Columbia and the federal laws of Canada applicable therein.
- 21.02 The headings appearing in this Agreement have been inserted for reference and as a matter of convenience and in no way define, limit or enlarge the scope of any provision of this Agreement.
- 21.03 Any reference to a statute in this Agreement, whether or not that statute has been defined, includes all regulations at any time made under or pursuant to that statute and amendments to that statute.
- 21.04 This Agreement will be interpreted and construed with such changes in number and gender as the context so requires.

- 21.05 If any provision in this Agreement is determined to be invalid, illegal or unenforceable, in whole or in part, it will be severable from this Agreement and the remaining provisions will not be affected and will continue in full force and effect to the extent permitted by law.
- 21.06 Any reference to the Province's "discretion" means the Province's sole, absolute and unfettered discretion.
- 21.07 The terms "section" and "schedule" refer to sections and schedules within this Agreement.
- 21.08 Nothing in this Agreement is to be construed as interfering with, or fettering in any manner, the exercise by the Province of any statutory power or duty.

ASSIGNMENT

- 22.01 The Recipients will not, without the prior written consent of the Province assign, either directly or indirectly, this Agreement or any right of the Recipients under this Agreement.
- 22.02 This Agreement will enure to the benefit of and be binding upon the Recipients and their successors and permitted assigns and the Province and its assigns.

DISPUTE RESOLUTION

- 23.01 In the event of any dispute between the parties arising out of or in connection with this Agreement, the following dispute resolution process will apply unless the parties otherwise agree in writing:
- (a) the parties must initially attempt to resolve the dispute through collaborative negotiation;
 - (b) if the dispute is not resolved through collaborative negotiation within 15 Business Days of the dispute arising, the parties must then attempt to resolve the dispute through mediation; and
 - (c) if the dispute is not resolved through mediation within 30 Business Days of the commencement of mediation, the dispute must be referred to and finally determined by arbitration under the *Arbitration Act* (British Columbia) and:
 - (i) the arbitration will be administered by the Vancouver International Arbitration Centre and will be conducted in accordance with its Rules of Arbitration;
 - (ii) there will be a single arbitrator;
 - (iii) British Columbia law is the applicable law; and
 - (iv) the decision of the arbitrator will be final and binding on the parties.
- 23.02 Unless the parties otherwise agree in writing, an arbitration or mediation under section 23.01 will be held in Victoria, British Columbia.
- 23.03 Unless the parties otherwise agree in writing or, in the case of an arbitration, the arbitrator otherwise orders, the parties must share equally the costs of a mediation or arbitration

under section 23.01 other than those costs relating to the production of expert evidence or representation by counsel.

COUNTERPARTS AND ELECTRONIC DELIVERY

24.01 This Agreement may be entered into by each party signing a separate copy of this Agreement and delivering it to the other party. When taken together, they will be treated as one and the same agreement. Delivery of a signature page by electronic means (including by facsimile or in PDF format) will be as valid and effective as delivery of an original. A party that delivers a signature page by electronic means agrees to provide an original signed counterpart if requested to do so by the other party.

IN WITNESS WHEREOF the parties hereto have executed this Agreement as set out below.

SIGNED on behalf of the **PROVINCE OF**)
BRITISH COLUMBIA by a duly authorized)
representative of the Minister of)
Indigenous Relations and Reconciliation)
this 31 March, 2023)



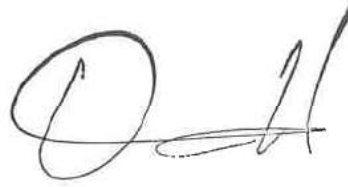
) _____
For the Minister of Indigenous Relations
and Reconciliation

SIGNED on behalf of **K'ÓMOKS FIRST NATION**)
by a duly authorized)
representative)
this 31 March, 2023:)



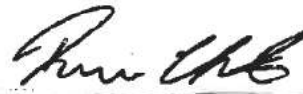
) _____
For K'ómoks First Nation

SIGNED on behalf of **TLOWITSIS FIRST NATION**
by a duly authorized)
representative)
this 30th March, 2023:)



) _____
For Tlowitsis First Nation

SIGNED on behalf of **WE WAI KAI FIRST NATION**
by a duly authorized)
representative)
this 30th March, 2023:)



) _____
For We Wai Kai First Nation

SIGNED on behalf of **WE WAI KUM FIRST NATION**
by a duly authorized)
representative)
this ____ March, 2023:)



) _____
For Wei Wai Kum First Nation