

UPPER NASS LAXYIP STRATEGIC ENGAGEMENT AGREEMENT (the “Agreement”)

This Agreement is dated for reference September 12, 2018 (“Effective Date”)

AMONG:

Upper Nass Watershed Simgiigyet, as represented by the Hereditary Chiefs on their own behalf and on behalf of their respective house (“**Wilp**”) members (collectively referred to in this Agreement as “**Upper Nass**”)

AND:

Gitxsan Treaty Society, a society incorporated under the *Societies Act*, S.B.C. 2015, c.18 (“**GTS**”)

AND:

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

(Each referred to as a “Party” and collectively referred to as the “**Parties**”)

WHEREAS:

- A. The Parties are interested in developing new ways to realign and strengthen the relationship between Upper Nass and the Province, respectful of Gitxsan hereditary structures, Gitxsan ‘Ayookw’ (set of laws), and Gitxsan aboriginal rights and title (“Gitxsan Aboriginal Rights and Title”) within the Upper Nass Laxyip (as outlined in the map in Appendix A).
- B. The Parties intend to implement the Agreement as a bridging step towards reconciliation and a constructive step towards creating a positive and enduring relationship between Upper Nass and the Province and ultimately between the Gitxsan and the Province.

NOW THEREFORE the Parties agree as follows:

1. INTERPRETATION

1.1 The following are the Appendices to and form part of this Agreement:

- Appendix A – Map of Upper Nass Laxyip
- Appendix B – Laxyip Engagement Framework (“Engagement Framework”)
- Appendix C – Facilitator Terms of Reference (“Terms of Reference”)

2. PURPOSE

2.1 The purpose of this Agreement is to establish governance structures that allow for a stabilized government-to-government relationship and facilitate further reconciliation between the Province and Upper Nass by:

- a. enabling meaningful, effective and efficient consultation process regarding Land and Resource Decisions through the Engagement Framework to fulfill the obligations of each Party as it pertains to consultation; and
- b. the Parties working collaboratively to make progress on joint initiatives (“Joint Initiatives”) that include:
 - i. economic opportunities including resource revenue sharing, forestry tenure opportunities, forestry business opportunities;
 - ii. collaborative land management and environmental stewardship; and
 - iii. human resource capacity development to support governance and economic initiatives.

3. LAXYIP ENGAGEMENT FRAMEWORK

3.1 The Parties will use the Engagement Framework attached as Appendix B when consulting on proposed strategic, administrative or operational decisions related to land and resource use made by Natural Resource Sector Ministries, including plans, approvals or renewals of tenures, certificates, permits or other authorizations (“Land and Resource Decisions”) within Upper Nass Laxyip during the term of this Agreement.

3.2 The following Ministries are participants to this Agreement:

- a. Ministry of Indigenous Relations and Reconciliation

- b. Ministry of Forests, Lands, Natural Resource Operations and Rural Development;
- c. Ministry of Energy, Mines and Petroleum Resources; and
- d. Ministry of Environment and Climate Change Strategy.

(“Natural Resource Sector Ministries”)

3.3 The Parties agree that the Upper Nass Laxyip Facilitator will:

- a. co-ordinate the engagement process under the Engagement Framework on behalf of the Upper Nass in accordance with the Laxyip Facilitator Terms of Reference attached as Appendix C; and
- b. be the primary liaison with Upper Nass Simgiigyets and Wilp members in the Upper Nass Laxyip responsible for conveying Gitxsan interests and concerns to the Province.

3.4 The Parties agree the Engagement Framework will constitute the means by which the Province will seek to fulfill its obligation for meaningful consultation on Land and Resource Decisions within the Upper Nass Laxyip.

4. ROLES AND RESPONSIBILITIES

4.1 The Upper Nass Watershed Simgiigyets are responsible for:

- a) nominating an individual for the Upper Nass Laxyip Facilitator position;
- b) ensuring the Upper Nass Laxyip Facilitator performs the responsibilities set out in the Terms of Reference;
- c) engaging with the Upper Nass Laxyip Facilitator to provide information on Gitxsan interests and concerns regarding proposed Land and Resource Decisions within the Upper Nass Laxyip in cooperation with all Upper Nass Watershed Simgiigyets of the Upper Nass Laxyip; and
- d) nominating other Upper Nass Watershed Simgiigyets representatives to participate in the evaluation discussions described in sections 5.1 and 5.2, as required.

4.2 GTS is responsible for:

- a) hiring the Upper Nass Laxyip Facilitator nominated by Upper Nass Watershed Simgiigyets;

- b) paying the fees and agreed expenses of the Upper Nass Laxyip Facilitator; and
- c) facilitating communication and collaboration between the Upper Nass Laxyip Facilitator and the Laxyip facilitators of other Gitxsan watersheds participating in similar projects.

5. REPORTING

- 5.1 The Upper Nass Laxyip Facilitator will maintain a record of progress and activities, and submit quarterly status reports to the Parties as specified in the Terms of Reference.
- 5.2 The Parties will meet quarterly or as needed to have an open, reflective and constructive discussion regarding quarterly status reports submitted by facilitators, implementation of the Agreement, and progress on Joint Initiatives.

6. FUNDING

- 6.1 For the period of this Agreement following the Effective Date, the Province will pay to GTS, on behalf of the Upper Nass Simgiigyet, a total amount of \$225,000 for the purpose of hiring the Upper Nass Laxyip Facilitator and performing obligations under this Agreement, as follows:
 - a. \$75,000 within 30 days of the Effective Date; and
 - b. \$75,000 annually, on or before June 9th during the remainder of the term of the Agreement.

7. TERM AND TERMINATION

- 7.1 The term of the Agreement will commence on the Effective Date and will expire June 9th 2021, unless terminated earlier in accordance with section 7.2.
- 7.2 Either the Province or Upper Nass may terminate this Agreement by providing 30 days written notice to the other parties stating reasons for the termination.

8. GENERAL PROVISIONS

- 8.1 This Agreement is not a treaty or lands claims Agreement within the meaning of section 25 or 35 of the *Constitution Act, 1982* (Canada), and does not affirm, recognize, establish, define, limit, amend, abrogate or derogate from any rights recognized and affirmed by section 35(1) of the *Constitution Act, 1982*.
- 8.2 This Agreement does not change or affect the positions any party has, or may have, regarding its jurisdiction, responsibilities and/or decision-making authority, nor is it to be interpreted in a manner that would affect or unlawfully interfere with that decision-making authority.

- 8.3 This Agreement, including the appendices to the Agreement and any amendment to it, constitute the entire Agreement between the Parties with respect to the subject matter of this Agreement. Any amendment to this Agreement must be agreed to in writing by the Parties.
- 8.4 If any part of this Agreement is void or unenforceable at law:
- a) the invalidity of that part will not affect the validity of the remainder, which will continue in full force and effect and be construed as if this Agreement had been executed without the invalid part; and
 - b) the Parties will negotiate and attempt to reach Agreement on a replacement for the part declared or held invalid with a view to achieving the intent of the Parties as expressed in this Agreement.
- 8.5 Nothing in this Agreement affects the ability of the Parties to respond to any emergency circumstances.
- 8.6 The Province represents and warrants to Upper Nass Simgiigyet and GTS with the intent and understanding that they will be relied on by Upper Nass Simgiigyet and GTS in entering into this Agreement, that it has the authority to enter into this Agreement and to make the covenants and representations in this Agreement that this Agreement is a valid and binding obligation of the Province.
- 8.7 GTS represents and warrant to the Province, with the intent and understanding that they will be relied on by the Province in entering into this Agreement, that:
- a) it is a duly incorporated society under the Society Act, and that it is in good standing;
 - b) it has the legal power, capacity and authority to enter into this Agreement for and on behalf of itself and to engage in the structures and processes under this Agreement on behalf of its members; and
 - c) this Agreement is valid and binding obligation upon it.
- 8.8 Upper Nass Simgiigyet each represent and warrant to the Province that they have the authority to enter into this Agreement and to engage in the structures and processes under this Agreement on behalf of their Wilp members and that this Agreement is a valid and binding obligation on them.
- 8.9 This Agreement may be executed in counterparts and/or facsimile by the Parties and all of the counterparts taken together constitute one Agreement.

Signed on behalf of **Upper Nass Watershed Simgiigyet** by:

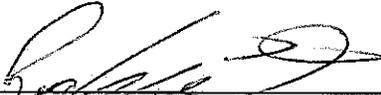


Djogaslee (Ted Mowatt)

Date

Gyologyet (Fedelia O'Brien)

Date



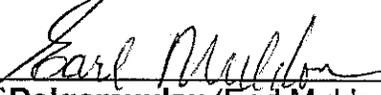
Ltus (Roy Wilson)

Date



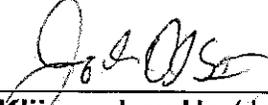
Wii Minosik (Larry Skulsh)

Date



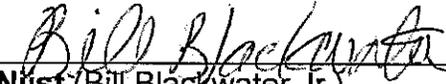
Delgamuukw (Earl Muldon)

Date



Kliiyem Lax Ha (John Olson)

Date



Niist (Bill Blackwater Jr.)

Date

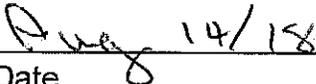
Wiigoobl (Don Wahlstrom)

Date

Signed on behalf of the **Gitxsan Treaty Society** by:



Brian Williams – Authorized Representative of **GTS**



Date

Signed on behalf of:

Government of British Columbia



Trish Balcaen
Assistant Deputy Minister
Ministry of Indigenous
Relations and Reconciliation

SEPT 12/18
Date


Witness

APPENDICES

APPENDIX B Laxyip Engagement Framework

1. Pre-engagement / Information Sharing

- 1.1 The Province will encourage applicants to contact the Upper Nass Laxyip Facilitator to engage with Upper Nass Simgiigyets and share information early in the engagement process. The Upper Nass Laxyip Facilitator will facilitate early engagement with appropriate Simgiigyets and Wilp members, and is encouraged to share information about the early engagement with the Province.

2. Consultation Initiation – Province provides information to Upper Nass Laxyip Facilitator

- 2.1 When the Province receives and reviews an application for a Land and Resource Decision within the Upper Nass Laxyip that may have an adverse effect on Gitksan Aboriginal Rights, recognized and affirmed by section 35(1) of the *Constitution Act, 1982* and determines that it is required to consult with Gitksan, the Province will prepare and provide to the Upper Nass Laxyip Facilitator an information package in the form of a shared engagement record, which will be sent by email and include the following information:

- a) location, nature and extent of proposed activity;
- b) known Gitksan interests;
- c) potential impacts to Gitksan Aboriginal Rights; and
- d) the Province's suggested depth, timeline and approach to engagement.

- 2.2 The Upper Nass Laxyip Facilitator will review the shared engagement record, identify the relevant Wilp and share the information package with the appropriate Upper Nass Simgiigyets or delegate(s).

- 2.3 The Upper Nass Laxyip Facilitator will respond in writing (by email or other means) as soon as possible within 30 calendar days of receiving the shared engagement record to:

- a) confirm the Upper Nass Simgiigyets' intentions to engage in consultation on the matter, and to request additional information or clarification relating to the application(s) or timelines if necessary; or
- b) to indicate that Upper Nass Simgiigyets have no interest in further consultation.

2.4 If the Province does not receive a response within 30 calendar days or where Upper Nass indicates no interest in further consultation, the Province may proceed to decision on the proposed decision(s).

3. Further Engagement

3.1 Where Upper Nass confirms that it intends to engage in consultation, the Parties will, within 60 calendar days from the date Upper Nass received the shared engagement record, have further discussions including making reasonable efforts to satisfy requests by the other party to meet in person with affected Simgiigyet, delegates or members.

3.2 The Parties will engage as reasonably required to discuss:

- a) The Upper Nass Simgiigyet's concerns and any recommendations by Upper Nass Simgiigyet or their delegates to avoid, mitigate, or otherwise address potential impacts to Gitxsan Aboriginal Rights;
- b) the Province's views regarding potential adverse impacts to Gitxsan Aboriginal Rights and any Upper Nass Simgiigyet proposals or recommendations;
- c) shared or respective interests; and
- d) any proposed measures to address those concerns including but not limited to:
 - i. non-economic accommodation measures such as avoidance or mitigation measures;
 - ii. potential for economic accommodation; and
 - iii. a decision not to authorize a particular activity.

3.3 Where the proposed decision carries the potential for serious adverse impacts to Gitxsan Aboriginal Rights, and more time is reasonably required, the Parties will extend consultation for an additional time period, including target end date, to be determined by the Parties.

3.4 The Province and the Upper Nass Laxyip Facilitator will make available to the Province's statutory decision maker and the Upper Nass Simgiigyet a shared

engagement record documenting the engagement process, Upper Nass Simgiigyet concerns, and recommended mitigation or accommodation measures.

- 3.5 Where the Parties are unable to reach agreement on appropriate accommodation tools to meaningfully address the concerns raised by Upper Nass, the Province will provide Upper Nass with written reasons within the shared engagement record why Upper Nass's accommodation proposals have not been accepted.

4. Decision

- 4.1 Provincial statutory decision makers will consider all relevant information including the shared engagement record when making the decision.

APPENDICES

APPENDIX C Upper Nass Laxyip Facilitator Terms or Reference

1. Upper Nass Laxyip Facilitator:

Name: Linda Matthews

Phone: (250) 842-6780 Ext.341

Email: lmatthews@gitxsan.ca

2. Upper Nass Laxyip Facilitator Responsibilities

2.1 The Upper Nass Laxyip Facilitator will report to the Upper Nass Watershed Simgiigyets. The Upper Nass Laxyip Facilitator will act as the key contact for the Province on consultation matters within the Upper Nass Laxyip.

2.2 The Upper Nass Laxyip Facilitator is responsible for:

- a) providing organizational and logistical leadership and technical support to the Simgiigyets and Wilp members to support their participation in the Engagement Framework and accurately record their interests and concerns;
- b) facilitating engagement, exchange of information and maintaining and distributing records of engagement activities between Provincial staff, Simgiigyets, and Wilp members to support implementation of the Engagement Framework;
- c) coordinating training and other learning opportunities;
- d) coordinating engagement with Simgiigyets and Wilp members on Provincial policy initiatives;
- e) coordinating communication and meetings as needed with Simgiigyets and the Province to achieve progress on Joint Initiatives laid out in Sec. 2.1 b);
- f) attending workshop sessions with Laxyip facilitators of the other Gitxsan watersheds participating in related Agreements and GTS to discuss implementation of the Agreement, share information, and identify areas for collaboration; and

- g) maintaining a record of progress and activities, and submitting quarterly status reports to the Parties setting out:
 - i. the proposed Land and Resource Decisions referred to the Upper Nass Laxyip Facilitator using the Engagement Framework during the previous quarter; and
 - ii. the Simgiigyets or other individuals contacted in respect of each proposed Land and Resource Decision, and whether or not responses have been provided to the Upper Nass Laxyip Facilitator.

2.3 Duties that support implementation of the Agreement include:

- a) Coordinating consultation between the Province and the Simgiigyets including:
 - i. receiving and distributing Provincial consultation information;
 - ii. supporting and summarizing Simgiigyets discussion and responses;
 - iii. facilitating engagement between the Province and Simgiigyets; and
 - iv. ensuring agreed upon timelines and engagement processes are adhered to.
- b) Leading communication, planning and reporting within the Laxyip including:
 - i. Setting up regular meetings with Simgiigyets of the Laxyip including logistical support and preparation of agendas, information packages and meeting and decision notes.
 - ii. Coordinating with respect to internal Gitksan governance disputes by facilitating information sharing, assisting to schedule meetings, or other communications as needed between Simgiigyets and if necessary the Province.