

**Witset First Nation
Forest & Range
Consultation and Revenue Sharing Agreement (FCRSA)
(the “Agreement”)**

**Between:
Witset First Nation**

As Represented by
Chief and Council
(Witset First Nation)

And

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

(Collectively the “Parties”)

WHEREAS:

- A. Witset First Nation has Aboriginal Interests within the Traditional Territory.
- B. The Parties wish to set out a process for consultation regarding forest and range resource development on Crown lands within the Traditional Territory.
- C. The Parties intend this Agreement to assist in achieving stability and greater certainty for forest and range resource development on Crown lands within the Traditional Territory and to assist Witset First Nation in its pursuit of activities to enhance the wellbeing of its Members.
- D. British Columbia has committed to adopting and implementing the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) and is reviewing policies, programs and legislation to determine how to bring the principles of UNDRIP into action.

THEREFORE THE PARTIES AGREE AS FOLLOWS:

ARTICLE 1 - INTERPRETATION

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

“Aboriginal Interests” means:

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

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

“Band Council Resolution” means a resolution of Witset First Nation having the form of Appendix D;

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

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

“Designate” means the entity described in section 4.2;

“Effective Date” means the last date on which this Agreement has been fully executed by the Parties;

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

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

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

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

“Matrix” means the table set out as a part of section 1.10 of Appendix B;

“Minister” means the Minister of Forests, Lands, Natural Resource Operations and Rural Development having the responsibility, from time to time, for the exercise of powers in respect of forests and range matters;

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

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

“RA” means a reconciliation agreement between British Columbia and Witset First Nation that creates a foundation for the reconciliation of aboriginal rights and/or

aboriginal title with Crown sovereignty but is not a treaty in the meaning of section 35(1) of the *Constitution Act, 1982*;

“Revenue Sharing Contribution” means each payment to be made by British Columbia to Witset First Nation under Article 3 of this Agreement;

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

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

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

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

1.2 Interpretation. For purposes of this Agreement:

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

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

Appendix A - Map of Traditional Territory;

Appendix B - Consultation Process

B - Schedule 1 – List of Decisions;

Appendix C - Revenue Sharing Contribution Methodology;
Appendix D - Band Council Resolution Appointing Delegate;
Appendix E - Statement of Community Priorities Format; and,
Appendix F- Annual Report.

ARTICLE 2 - PURPOSE AND OBJECTIVES

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

- (a) to establish a consultation process through which the Parties will meet their respective consultation obligations in relation to potential adverse impacts of proposed forest and range resource development activities, including Administrative and/or Operational Decisions or Operational Plans, on Witsset First Nation's Aboriginal Interests;
- (b) to provide a Revenue Sharing Contribution to support the capacity of the First Nation to participate in the consultation process herein, as an accommodation for any adverse impacts to Witsset First Nation's Aboriginal Interests resulting from forest and range resource development within the Traditional Territory and so that Witsset First Nation may pursue activities that will enhance the social, economic and cultural well being of its members; and
- (c) to assist in achieving stability and greater certainty for forest and range resource development on Crown lands within the Traditional Territory.

ARTICLE 3 - REVENUE SHARING CONTRIBUTIONS

3.1 Calculation and timing of payments. Subject to section 4.5 and Articles 5 and 13, during the Term, British Columbia will:

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

3.2 First Fiscal Year. Notwithstanding section 3.1, for the First Fiscal Year of the Term, the Revenue Sharing Contribution is deemed to be \$568,103, the first instalment of which will be paid on or before September 30, 2019 if the Effective Date is prior to July 31st or on or before March 31, 2020 if the Effective Date is after July 31st.

- 3.3 Prorated amounts.** For the purposes of determining the amount of the Revenue Sharing Contribution for partial BC Fiscal Years, the amount will be prorated to the month in which the Agreement is signed by Witset First Nation; is terminated by either Party under section 13, or; to the end of the month in which the Agreement expires.
- 3.4 Subsequent BC Fiscal Year amounts.** Before November 30th of each year during the Term, British Columbia will provide written notice to Witset First Nation of the amount of the Revenue Sharing Contribution for the following BC Fiscal Year and the summary document(s) and calculations identified in Appendix C.
- 3.5. Amount agreed to.** Witset First Nation agrees that the amount set out in the notice provided under section 3.4 will be the amount of the Revenue Sharing Contribution payable under this Agreement for that following BC Fiscal Year.

ARTICLE 4 - DELIVERY OF PAYMENTS

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

4.5 Requirement to make a payment. British Columbia may withhold a Revenue Sharing Contribution it would otherwise be required to make until Witset First Nation (or its Designate, as the case may be) has met the requirements set out in section 4.4.

ARTICLE 5 - CONDITIONS OF PAYMENT

- 5.1 Reporting and compliance requirements.** For each BC Fiscal Year following the First Fiscal Year of the Term, the requirement to make a Revenue Sharing Contribution is subject to:
- (a) Witset First Nation having published all of the necessary statements and reports before the applicable dates as set out in Article 8 of this Agreement;
 - (b) Witset First Nation being in all other respects in compliance with the terms of this Agreement; and
 - (c) Revenue Sharing Contributions not having been suspended under Article 13 of this Agreement.
- 5.2. Appropriation.** Notwithstanding any other provisions of this Agreement, the payment of money by British Columbia to Witset First Nation pursuant to this Agreement is subject to:
- (a) there being sufficient monies available in an appropriation, as defined in the *Financial Administration Act*, to enable British Columbia in any BC Fiscal Year or part thereof when any such payment may be required, to make that payment; and
 - (b) Treasury Board not having controlled or limited, pursuant to the *Financial Administration Act*, expenditure under any appropriation referred to in (a).

ARTICLE 6 - CONSULTATION

- 6.1 Satisfaction of consultation obligations.** The Parties agree that subject to 6.3, the process set out in Appendix B of this Agreement will be the means by which they will fulfill their obligations to consult on proposed Operational Plans or proposed Administrative and/or Operational Decisions and, where appropriate, the means by which British Columbia will identify potential measures to accommodate any potential adverse impacts on the Witset First Nation's Aboriginal Interests resulting from Operational Plans or Administrative and/or Operational Decisions.
- 6.2 Map may be shared.** British Columbia may share the map attached as Appendix A, including digital versions of the map, with other provincial agencies or with a Licensee responsible for information sharing associated with Operational Plans or Administrative and/or Operational Decisions.

6.3 SEA or RA applies. The Parties agree that notwithstanding 6.1:

- (a) if before the Effective Date Witset First Nation enters into a SEA, or RA that includes a consultation process which addresses forest and range management and decision making, the consultation process set out in the SEA or RA will continue after the Effective Date;
- (b) if after the Effective Date Witset First Nation enters into a SEA, or RA that includes a consultation process which addresses forest and range management and decision making, the consultation process set out in the SEA or RA will supersede and replace the consultation process set out in this Agreement for the term of the SEA or RA; and
- (c) if the SEA or RA referred to in (a) or (b) comes to the end of its term or is terminated prior to the end of the Term, the consultation process set out in Appendix B of this Agreement will apply for the remainder of the Term.

6.4 Capacity funding. The Parties acknowledge and agree that to assist Witset First Nation to engage in consultation under this Agreement and in consultation under any SEA or RA that addresses but does not provide capacity funding for forest and range related consultation, Witset First Nation will, under 1.4 of Appendix C, receive capacity funding of no less than \$35,000 per annum.

ARTICLE 7 - ACKNOWLEDGMENTS AND COVENANTS

- 7.1 Revenue Sharing Contributions will vary.** Witset First Nation acknowledges that forest revenues received by British Columbia fluctuate and that the Revenue Sharing Contributions under this Agreement will vary over time.
- 7.2 Revenue Sharing Contributions are an accommodation.** Witset First Nation agrees that the Revenue Sharing Contributions made under this Agreement constitute an accommodation for any potential adverse impacts of Administrative and/or Operational Decisions, and any forest or range development practices that may be carried out under an Operational Plans, on Witset First Nation's Aboriginal Interests.
- 7.3 Where consultation process followed.** Witset First Nation agrees that if the consultation process set out in this Agreement is followed, British Columbia has adequately consulted and has provided an accommodation with respect to potential adverse impacts of Administrative and/or Operational Decisions, and any forest or range development practices that may be carried out under an Operational Plan, on Witset First Nation's Aboriginal Interests.

ARTICLE 8 - COMMUNITY PRIORITIES, ANNUAL REPORTS and RECORDS

- 8.1 Statement of Community Priorities.** Witset First Nation covenants and agrees that it will:
- (a) within 60 days of the Effective Date, based on the First Fiscal Year Revenue Sharing Contribution, prepare a statement of community priorities for the Term substantially in the form set out in Appendix E that outlines activities it intends to fund to help achieve the socio-economic objectives referred to in section 2.1(b); and
 - (b) before the end of each BC Fiscal Year, consider whether the statement of community priorities identified in subsection (a) should be revised based on the updated Revenue Sharing Contribution for subsequent BC Fiscal Years agreed to under section 3.5.
- 8.2. Annual Report.** Within 90 days of the end of each BC Fiscal Year, Witset First Nation will prepare an annual report, substantially in the form set out in Appendix F, identifying all expenditures made from the Payment Account since the date of the last such report or in the case of the first such report, since the Effective Date of this Agreement, and confirming that, aside from reasonable administrative expenses, all such expenditures were made in furtherance of the purposes and objectives referred to in section 2.1.
- 8.3. Publication.** The statement of community priorities and annual report referred to in sections 8.1 and 8.2 will be published by Witset First Nation in a manner that can reasonably be expected to bring the information to the attention of its communities and the public within 90 days of the end of each BC Fiscal Year.
- 8.4. Audit.** British Columbia may, at its sole discretion and at the sole expense of Witset First Nation, require an audit of the expenditures made from the Payment Account to determine that all such expenditures were made in furtherance of the purposes and objectives referred to in section 2.1.
- 8.5. Delivery of Report.** The annual report referred to in section 8.2 will be provided to British Columbia within 120 days of the end of each BC Fiscal Year.
- 8.6. Continuing Obligations.** Notwithstanding the termination or expiry of this Agreement, the provisions of this Article 8 will continue to apply for 120 days after Witset First Nation receives the final Revenue Sharing Contribution from British Columbia.

ARTICLE 9 - SECURITY DEPOSITS

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

ARTICLE 10 – SET OFF

10.1 Set off. In addition to any other right under this Agreement, British Columbia may set off against any payment that Witset First Nation is entitled to receive under this Agreement, any unfulfilled financial obligations of Witset First Nation to British Columbia arising from a licence entered into as a result of a direct award tenure agreement between Witset First Nation, or a legal entity controlled by the Witset First Nation, and British Columbia.

10.2 Notice. British Columbia will notify Witset First Nation of the amount of the unfulfilled financial obligation before it exercises its right of set off under section 10.1.

ARTICLE 11 - ASSISTANCE

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

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

ARTICLE 12 - DISPUTE RESOLUTION

12.1 Dispute Resolution Process. If a dispute arises between British Columbia and Witset First Nation regarding the interpretation of a provision of this Agreement:

- (a) duly appointed representatives of the Parties will meet as soon as is practicable to attempt to resolve the dispute;
- (b) if the Parties' representatives are unable to resolve the dispute, the issue will be referred to more senior representatives of British Columbia and Witset First Nation; and

- (c) if the dispute cannot be resolved by the Parties directly under subsections (a) or (b), the Parties may agree to other appropriate approaches to assist in reaching resolution of the issue.

ARTICLE 13 - SUSPENSION and TERMINATION

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

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

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

13.3 Termination following suspension. If the issue giving rise to the suspension of Revenue Sharing Contributions is not resolved within 60 days after notice is provided under section 13.2, British Columbia may terminate the Agreement at any time by written notice.

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

- (a) contrary to section 7.2, a Revenue Sharing Contribution provided for under this Agreement does not constitute an accommodation for adverse impacts of such decisions, plans or activities on Witset First Nation's Aboriginal Interests; or
- (b) contrary to section 7.3, by British Columbia or a Licensee following the consultation process described in Appendix B, British Columbia has not adequately consulted with First Nation regarding the potential adverse impacts of such decisions, plans or activities on Witset First Nation's Aboriginal Interests.

- 13.5 Termination by Either Party.** This Agreement may be terminated by either Party on ninety (90) days written notice or on a date mutually agreed on by the Parties.
- 13.6 Meet to attempt to resolve issue.** If a Party gives written notice under section 13.5, the Parties will, prior to the end of the notice period, meet and attempt to resolve any issue that may have given rise to the termination notice.
- 13.7 Effect of Termination.** Where this Agreement is terminated under this Article 13, the Revenue Sharing Contribution for the BC Fiscal Year in which termination becomes effective will be prorated to the termination date.

ARTICLE 14 - TERM

- 14.1 Term.** The term of this Agreement will be two (2) years commencing on the Effective Date unless it is extended under section 14.2 or terminated under Article 13.
- 14.2 Extension of the Term.** At least two months prior to the third anniversary of the Effective Date, the Parties will evaluate the effectiveness of this Agreement and decide whether to extend the Term.
- 14.3 Terms of the Extension.** Where the Parties agree to extend the Term they will negotiate and attempt to reach agreement on the terms of the extension.
- 14.4 Evaluation.** Either Party may, on an annual basis, request the participation of the other Party to review the effectiveness of this Agreement and to consider potential amendments to it.

ARTICLE 15 – REPRESENTATIONS and WARRANTIES

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

ARTICLE 16 - NOTICE and DELIVERY

- 16.1 Delivery of Notices.** Any notice, document, statement or report contemplated under this Agreement must be in writing and will be deemed validly given to and received by a Party, if delivered personally, on the date of delivery, or, if delivered

by mail, email or facsimile copier, when received by the Parties at the addresses as follows:

if to British Columbia:

Deputy Minister
Ministry of Indigenous Relations and Reconciliation
P.O. Box 9100 STN PROV GOVT
Victoria B.C. V8W 9B1
Telephone: (778) 974-2080
Fax: (250) 387-6594

and if to the Witset First Nation:

Chief Sandra George
Witset First Nation First Nation
Suite #3, 205 Beaver Road
Smithers, BC V0J 2N1
Telephone: 250-847-2133
Fax: 250-847-9291

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

ARTICLE 17 - GENERAL PROVISIONS

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

17.2 Not a Treaty. This Agreement does not:

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

17.3 No Admissions. Nothing in this Agreement will be construed as:

- (a) an admission of the validity of, or any fact or liability in relation to, any claims relating to alleged past or future infringements of Witset First Nation's Aboriginal Interests;

- (b) an admission or acknowledgement of any obligation to provide any financial, economic or other compensation, including those in this Agreement, as part of British Columbia's obligation to consult and, as appropriate, accommodate; or
- (c) in any way limiting the position the Parties may take in any proceedings or in any discussions or negotiations between the Parties, except as expressly contemplated in this Agreement.

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

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

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

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

17.8 Acknowledgment. The Parties acknowledge and enter into this Agreement on the basis that Witset First Nation has Aboriginal Interests within the Traditional Territory but that the specific nature, scope or geographic extent of those Aboriginal Interests have yet to be determined. The Parties intend that broader processes that may be engaged in to bring about reconciliation may lead to a common understanding of the nature, scope and geographic extent of First Nation Aboriginal Interests.

17.9 Third Parties. This Agreement is not intended to limit any obligation of forest or range licensees or other third parties to Witset First Nation.

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

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

17.12 Entire Agreement. This Agreement and any amendment to it constitute the entire agreement between the Parties with respect to the subject matter of this Agreement.

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


17.14 Execution in Counterpart. This Agreement may be entered into by a separate copy of this Agreement being executed by each Party and that executed copy being delivered to the other Party by a method provided for in Article 16 or any other method agreed to by the Parties.

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

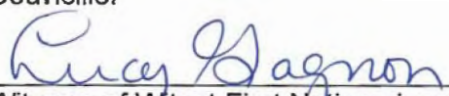
Signed on behalf of:

Witset First Nation


Chief Sandra George


Date

Councillor

Councillor

Witness of Witset First Nation signatures

Signed on behalf of:

Government of British Columbia



Minister of Indigenous Relations and
Reconciliation

March 31, 2020

Date



Witness of Minister signature

APPENDIX B

Consultation Process for Administrative and/or Operational and Operational Plans within First Nation Traditional Territory

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

impacts to their Aboriginal Interests that may occur as a result of the proposed Administrative and/or Operational Decision or Operational Plan within the Traditional Territory or forest or range resource development practices that may be carried out pursuant to that decision or plan.

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

1.10 The Parties agree that:

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



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

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

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

Schedule 1 – List of Decisions

List of Decisions - Witset. FCRSA Appendix B Supplement					
Decision Category¹ (see footnotes)	Decision² (see footnotes)	Decision Type	Delegated Decision Maker	Consultation Level³ (see footnotes)	Comments
Allowable Annual Cut Decisions at Timber Supply Area Level	Timber supply reviews (TSR)	Admin	Chief Forester	6	3 stages - TSR process initiation, data package and timber supply analysis report
	AAC apportionment	Admin	Minister	6	
Community Forest Agreement (CFA)	Minister offers CFA	Admin	Minister	5	
	CFA area recommendation by DM; expansion of CFA area	Admin	District Manager	5	
	CFA timber supply review (TSR)	Admin	District Manager	3	
	CFA management plan approval and amendments	Admin	District Manager	3 or 5	new plan approval = level 5 amendment to increase AAC = level 5 amendment to decrease AAC = level 3
	CFA tenure boundary amendment	Admin	Delegated Decision Maker	5	
First Nation Woodland Licence (FNWL)	FNWL area selection and changes to boundary; FNWL offer to FN	Admin	Delegated Decision Maker	5	
	FNWL management plan approval and amendments	Admin	Delegated Decision Maker	3 or 5	new plan approval = level 5 amendment to increase AAC = level 5 amendment to decrease AAC = level 3

	FNWL Forest Stewardship Plan or Woodlot Licence Plan approval and amendments	Operational	Delegated Decision Maker	5	
General Forest Tenure Admin	Non Replaceable Forest Licence issuance or extension	Admin	Regional Executive Director	5	
	Forest Licence Replacement	Admin	Regional Executive Director	3	
	Forest Licence consolidation/subdivision	Admin	Minister	5	
	Forest Licence <i>Forest Act</i> Section 18 Transfers between Timber Supply Areas	Admin	Regional Executive Director	5	
	Forest Tenure Transfers	Admin	Regional Executive Director	3	
	Forest licence crediting of volume between licences; (Cut Control Regulation Division 5)	Admin	Regional Executive Director or District Manager	3	allows volume transfers between forest licenses, TSLs that specify an AAC and major forestry license to cuts (require lay-out & reforestation)
	New Forest Stewardship Plan	Operational	District Manager	6	as per FSP business/consultation process in effect at District level
	Forest Stewardship Plan extension	Operational	District Manager	6	
	Forest Stewardship Plan amendments requiring approval	Operational	District Manager	2 or 5	as per FSP business/consultation process in effect at District level (level 2 if amendment is for adding a new party to the FSP with no FDU change)
	Cutting Permit (blanket salvage): new permits or amendments	Operational	District Manager	3	

	Cutting Permit issuance (stand alone permit)	Operational	District Manager	5	as per post-FSP business/consultation process in effect at District level
	Road Permit issuance and amendment	Operational	District Manager	5	as per post-FSP business/consultation process in effect at District level
	Occupant Licence To Cut issuance	Operational	District Manager	3	level 3 for stand-alone permits
	Forestry Licence to Cut and master licence to cut issuance	Operational	District Manager	3	Forest salvage, community wildfire protection, misc purposes ; as per SSS/FLTC consultation process in effect at District level
	Special Use Permit issuance, amendment, replacement, transfer	Operational	District Manager	2, 3 or 5	Replacement = level 2 Transfer = level 2 Amendment = level 3 New issuance (stand alone) = level 3 New issuance (included in block planning packages) = level 5 as per post-FSP business/consultation process in effect at District level
	Free Use Permit issuance	Operational	District Manager	2	Annual advisory: i.e. First Nation cultural use, firewood, etc.
Woodlot Licence	New woodlot opportunity	Admin	Regional Executive Director	5	
	Woodlot top-ups (area increase)	Admin	District Manager	3	
	Woodlot boundary change	Admin	District Manager	2	
	Woodlot licence replacement	Admin	District Manager	2	
	New woodlot management plan and/or amendment to existing management plan	Admin	District Manager	3	(includes AAC recommendation)

	New Woodlot Licence Plan submission and/or amendment to existing plan	Operational	District Manager	3	
	Woodlot licence transfer	Admin	District Manager	2	
	Woodlot licence 1 CP	Operational	District Manager	2 or 3	level 2 if associated with management plan consultation < 1 year old level 3 if not associated with management plan consultation < 1 year old
	Woodlot private land deletions	Admin	Minister	2	
Forest Health/Silviculture	Chemical treatments for silviculture purposes (requires Pest Management Plan)	Admin/Operational	Delegated Decision Maker	1,5	
	Pest Management Plan (forest health purposes)	Admin/Operational	Delegated Decision Maker	1,5	
Recreation	Development of new recreation sites or trails	Admin	Regional Executive Director/District Manager	5	
	De-commission plan for recreation sites	Admin	Regional Executive Director	3	
	Set recreation site objectives	Operational	District Manager	5	Includes trail objective setting
Government Action Regulation	Government actions regulation order	Admin	Delegated Decision Maker	5	(i.e. Visual quality objectives, old growth management areas, wildlife habitat areas/measures, etc. See GARegulations for full listing)
Range	New license issuance and associated Range Use Plan (RUP)	Admin	District Manager	5	(re-issuance of relinquished tenure or no previous tenure)

	Non-replaceable permit issuance (max 10 year term) and/or RUP	Admin	District Manager	5	re-issuance of relinquished tenure or no previous tenure
	Range license replacement	Admin	Minister	2	Advisory upon occurrence
	Range tenure transfer	N/a	N/a	2	Advisory upon annual roll-up; tenure holder process
	Grazing lease replacement	Admin	Minister	3	
	Grazing lease transfer	n/a	n/a	2	Advisory upon occurrence
	Tenure boundary amendments	Admin	District Manager	3	
	AUM adjustment	Admin	District Manager	2 or 3	adjustments > 10% of current authorized level = level 3 adjustments <= 10% of current authorized level = level 2 (advisory upon occurrence)
	New Range Use Plan (RUP)	Operational	District Manager	2 or 3	contains no or smaller scale proposed developments = level 2 contains larger scale proposed developments = level 3
	RUP extension	Admin	District Manager	2	
	RUP amendments (major)	Operational	District Manager	2 or 3	amendments not including larger scale proposed developments or changes to operational regime = level 2 amendments altering operational regime of including larger scale proposed developments = level 3
	Range developments not in RUP	Operational	District Manager	2 or 3	small scale (eg .fencing <250m) = level 2 large scale (eg .fencing >250m) = level 3

	Pest Management Plan (for invasive plants only)	Operational	Regional Executive Director	1,5	plan prepared at Branch/Regional level
BC Timber Sales	TSL issuance and associated access	Operational	Timber Sale Manager	5	as per BCTS annual operatng plan consultation process
Landbase Investment Strategy (LBIS)	Stand treatments to meet timber objectives	Operational	Delegated decision maker	varies	as per treatment type

Notes to matrix:

¹ This consultation matrix does not apply to Administrative or Operational Decisions associated with multi permitted, non-forestry related projects (i.e. mine, clean energy project, etc).

² Further to clause 1.11 of Appendix B, where a determination has been made with a consultation level 4 or higher, the Moricetown Band request to only be informed of the outcome of decision(s) with background shading under this column.

³ To clarify timelines specified in Appendix B the following apply for the duration of this supplement: Level 3 = 30 calendar days; level 4 = 10 calendar days, level 5 = 60 calendar days

APPENDIX C

Revenue Sharing Contribution Methodology

Traditional Territory Forest Revenue Sharing Component

- 1.0 In each BC Fiscal Year that this Agreement is in effect, and subsequent to the release by the Minister of Finance of the previous BC Fiscal Year's public accounts, a summary document will be prepared of the DKM, DSS, and DND District forest revenue, defined as the total of stumpage, waste and annual rent payments received by the Crown for the previous 2 BC Fiscal Years. An average amount over 2 years will be calculated for the DKM, DSS, and DND Forest Districts.
- 1.1 For the purposes of the summary document in section 1.0 of this Appendix, the stumpage payments from Eligible Volume in Witset First Nation's Forest License (if applicable) will not be included in the calculations of forest revenue.
- 1.2 The amount of the forest revenue attributed to the Witset First Nation's Traditional Territory will be calculated by determining the percent of Witset First Nation's Traditional Territory that falls within the Timber Harvesting Land Base in the DKM, DSS, and DND Forest Districts, applied against the forest revenue described in section 1.0 of this Appendix. This calculation will prorate for overlapping territories of other First Nations.
- 1.3 The Traditional Territory Forest Revenue Sharing Component will be calculated by multiplying (3) percent of the forest revenue attributed to the Witset First Nation as described in section 1.2 of this Appendix.
- 1.4 If Witset First Nation is not receiving capacity funding for forestry consultation through a SEA or RA, then it will receive \$35,000 or the amount calculated in accordance with section 1.3, whichever is greater, which may be used by Witset First Nation as capacity funding to participate in the consultation process in accordance with section 6.0 of this Agreement.
- 1.5 For each BC Fiscal Year that this Agreement is in effect, the calculations outlined in sections 1.0 to 1.4 of this Appendix will be performed.

Direct Award Tenure Forest Revenue Sharing Component

- 2.0 Subsequent to the release by the Minister of Finance of the previous BC Fiscal Year's public accounts, a summary document will be prepared detailing of Witset First Nation's Forest License (if applicable) forest revenue, defined as the total of stumpage payments received by the Crown for the previous BC Fiscal Year from Eligible Volume within the Forest Licence.
- 2.1 The Direct Award Forest Tenure Revenue Sharing Component will be calculated by multiplying (35) percent of the forest revenue as described in section 2.0 of this Appendix.

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

Forest Revenue Sharing Transition

- 3.0 The Parties agree that a transition to revenue sharing based entirely on Forest Revenue will be phased in over the Term.
- 3.1 For each BC Fiscal Year that this Agreement is in effect, a portion of the Revenue Sharing Contribution is calculated by adding the total of the Traditional Territory Forest Revenue Sharing Component to the Direct Award Tenure Forest Revenue Sharing Component for that BC Fiscal Year.
- 3.2 For each BC Fiscal Year that this Agreement is in effect, the remaining portion of the Revenue Sharing Contribution is calculated by determining the value of the payments that were made by British Columbia to Witset First Nation in any given full year under the Witset First Nation *Forest and Range Opportunity Agreement* (“the Annual Amount”) and applying the following percentages to that Annual Amount:
- | | |
|------------------------------|----------------------|
| 3.2.1 2019/20 BC Fiscal Year | 40 percent; |
| 3.2.2 2020/21 BC Fiscal Year | 0 percent.(or “TBD”) |
| 3.2.3 2021/22 BC Fiscal Year | 0 percent (or “TBD”) |
- 3.3 Notwithstanding section 3.2 of this Appendix, if the Revenue Sharing Transition Calculation for BC Fiscal years 2019/20, 2020/21 and 2021/22 under section 3.1 provides:
- (a) an amount calculated under sections 1.3 and 2.1 of this Appendix that is equal to or greater than the annual payments received under the *Witset First Nation Forest and Range Opportunity Agreement*, then Witset First Nation will receive the annual payments described by the Revenue Sharing Calculation in section 3.1 for BC Fiscal Years 2019/20, 2020/21 and 2021/22; and
 - (b) an amount calculated under the Revenue Sharing Transition Calculations in sections 3.1 and 3.2 of this Appendix that is greater than the annual payments received under the *Witset First Nation Forest and Range Opportunity Agreement*, then Witset First Nation will receive an annual payment for BC fiscal Years 2019/20, 2020/21 and 2021/22 that is equal to the annual payment received under the *Witset First Nation Forest and Range Agreement*.

APPENDIX D

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

APPENDIX E

Witset First Nation Statement of Community Priorities

(Example only)

Socio-economic Priority	Annual Amount			Specific Outcomes	Measurement Criteria
	2014/2015	2015/2016	2016/2017		

2012/2013 Revenue Sharing Contribution \$To Be Determined

2013/2014 Revenue Sharing Contribution \$To Be Determined

2014/2015 Revenue Sharing Contribution \$To Be Determined

APPENDIX F

X First Nation Statement of Community Priorities

Annual Report

(Example only)

Socio-economic Priority	2014/2015 Planned Expenditures	2014/2015 Actual Expenditures	Outcomes Achieved	Variance Explanation

Confirmation

In accordance with section 8.2 of the Agreement, First Nation confirms that aside from reasonable administrative expenses, all actual expenditures were made for the purpose of furthering the purposes and objectives set out in section 2.1 of the Agreement.

Signed this _____ day of _____:

(Signature)

(Name) On behalf of (First Nation)