

XATŚŪLL FIRST NATION PRE-TREATY LAND AGREEMENT

This Agreement is dated for reference October 30, 2024.

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:

Xatśūll First Nation, on behalf of itself and its Members, as represented by the Chief and Council

(the “**Xatśūll**”)

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

WHEREAS:

- A. Xatśūll, together with the Tsq’escen’ First Nation, the Stswecem’c Xget’tem First Nation, and the Williams Lake First Nation (known collectively as the Northern Secwepemc te Qelmucw, or NStQ), through its Chief and Council, asserts that it has used, occupied, governed and exercised exclusive ownership of their Traditional Territory from time immemorial;
- B. British Columbia has committed to implement the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) and passed legislation to adopt UNDRIP by setting out a process to align BC’s laws with UNDRIP;
- C. NStQ, the Province and Canada have entered into Stage 5 of the British Columbia Treaty Commission process, Negotiation to Finalize a Treaty; and
- D. The Parties wish to create momentum in the Treaty negotiations in order to conclude a Final Agreement.

NOW THEREFORE the Parties agree as follows:

ARTICLE 1 - INTERPRETATION

1.1 Definitions. In this Agreement:

“Aboriginal Rights” means asserted or determined aboriginal rights, including aboriginal title, which are or may be recognized and affirmed by section 35 of the *Constitution Act, 1982*;

“Adjacent Land” means the property legally described as [REDACTED]

“BC Hydro and Water Costs” means the costs associated with providing electricity to the Manufactured Home located on the Lands, and connecting the Manufactured Home to a water supply;

“Closing Date” means the closing date under and defined in the Offer to Purchase, which as of the date of this Agreement is December 2, 2024;

“Designated Company” means 1507159 B.C. Ltd. (Inc. No. BC 1507159) with its registered office at 3405 Mountain House Road, Williams Lake, BC V2G 5L4 and its records office at Suite 205 – 1544 Marine Drive, West Vancouver, BC V7V 1H8;

“Driveway Easement” means an easement that may be registered on the Lands after the Closing Date that provides for access between the Adjacent Land and a public highway, in a location approximately the same as the driveway existing on Lands on the date of this Agreement;

“Effective Date” means the date on which the Final Agreement takes effect;

“Final Agreement” means the Final Agreement to be concluded by the Parties and Canada at the conclusion of Stage 5 of the British Columbia Treaty Commission process;

“Lands” means:

- (a) the Lands described in the Offer to Purchase;
- (b) the Manufactured Home; and
- (c) includes all appurtenances, rights of way, easements, buildings, improvements or other fixtures benefiting the Lands;

“Lease Agreement” means the lease agreement between the Province, Xat’sūll and the Designated Company for the lease of the Lands to Xat’sūll or its Designated Company by the Province, effective as of the Closing Date;

“Manufactured Home” means the manufactured home located on the Lands and described in Schedule C of the Offer to Purchase;

“Member” means any person who is on the Xat’sūll membership list;

“NStQ” means Xat’sūll, together with the Tsq’escen’ First Nation, the Stswecem’c Xget’tem First Nation, and the Williams Lake First Nation, also known collectively as the Northern Secwepemc te Qelmucw;

“Offer to Purchase” means the Offer to Purchase dated for reference July 11, 2024 between:

- (a) His Majesty the King in right of the Province of British Columbia, as represented by the Minister of Water, Land and Resource Stewardship and the Minister of Indigenous Relations and Reconciliation, as purchaser; and
- (b) [REDACTED] as vendors;

“Proceeding” includes any claim, demand, cause of action, action, suit or other proceeding, including any expenses, legal fees, damages, costs or other liability, incurred, directly or indirectly, arising out of or in connection with the foregoing;

“Proposed NStQ Treaty Settlement Lands” means the lands identified in paragraph 3.1.1 of the Lands Chapter of the NStQ Agreement-in-Principle and as identified for illustrative purposes in Appendix B of the NStQ Agreement-in-Principle;

“Provincial Official” means:

- (a) the Province or any minister, public official, employee, contractor, agent or representative of the Province;
- (b) any Provincial government corporation or any director, officer, employee, agent or representative of a government corporation; or
- (c) any person acting as a decision maker under any enactment of the Province; and

“Traditional Territory” means, for the purposes of this Agreement, the statement of intent area filed by the NStQ and accepted by the British Columbia Treaty Commission.

1.2 Interpretation. For purposes of this Agreement:

- (a) “Agreement” means this Pre-Treaty Land Agreement, and includes the Schedules and any agreement, document or instrument executed or delivered pursuant to this Agreement;
- (b) “including” means “including, but not limited to” and “includes” means “includes, but not limited to”;
- (c) the recitals and headings are for convenience only, do not form a part of this Agreement and in no way define, limit, alter or enlarge the scope or meaning of any provision of this Agreement;
- (d) words importing gender include the masculine, feminine or neuter gender and words in the singular include the plural and vice versa;
- (e) 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;
- (f) a reference to a statute includes every amendment to it, every regulation made under it, every amendment made to a regulation made under it and any law enacted in substitution for, or in replacement of, it;
- (g) any reference to the delivery on the Closing Date of an agreement, document or instrument “in the form” of an attached schedule means an agreement, document or instrument substantially in that form with such changes, additions or deletions as may be agreed by the representatives of the Parties;
- (h) each and every acknowledgement, agreement, release or other covenant given, and action to be taken, by Xatśúll under this Agreement means Xatśúll acting by and through its Chief and Council, and will be conclusively deemed to have been given, or taken, by Xatśúll on its own behalf, and for and on behalf of its Members; and
- (i) 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 Schedules. The following are the Schedules to this Agreement:

- Schedule “1” – Environmental Reports

ARTICLE 2 – RECONCILIATION AND PURPOSE

- 2.1 **Reconciliation.** The Parties acknowledge and agree that:
- (a) in the spirit of reconciliation and to advance Final Agreement negotiations, the Lands purchased by the Province and leased to the Designated Company on an interim basis will constitute an advance contribution by the Province towards the reconciliation of the Province's and the Xat'sül'l's interests through treaty negotiations and, as such, if the Lands become an element of the Final Agreement, the purchase price of the Lands paid under the Offer to Purchase and the BC Hydro and Water Costs will be counted as a portion of the Province's contribution towards the Final Agreement; and
 - (b) none of the cost of due diligence prior to purchasing the Lands, the cost of any remediation of pre-existing contamination on the Land and the costs set out in section 7.1(b) or section 7.2, nor the value of the Lease Agreement will be counted as a portion of the Province's contribution towards the Final Agreement.
- 2.2 **Reassessment.** If either of the Parties is reasonably of the view there is a material impact to the value of the Lands prior to the Effective Date, then the Parties will work cooperatively to reassess the value of the Lands and will make good faith efforts to reach resolution to address the change in a fair and reasonable way, which may include Canada, provided that the impact was not caused by Xat'sül'l or the Designated Company or their respective employees, agents, contractors, subtenants, invitees, permittees, successors or assigns.
- 2.3 **Purpose.** The purpose of this Agreement is to:
- (a) demonstrate the commitment of the Parties to concluding a Final Agreement; and
 - (b) in the spirit of reconciliation, provide the benefits and assurances set out in this Agreement.

ARTICLE 3 - COMING INTO EFFECT AND TERMINATION

- 3.1 **Coming into Effect.** This Agreement comes into effect on the Closing Date and terminates on the Effective Date.
- 3.2 **Termination.** Notwithstanding section 3.1, this Agreement:
- (a) may be terminated in writing before the Closing Date by the Parties on a date mutually agreed on by the Parties;

- (b) will terminate automatically where the Lands are not transferred to the Province on or before the Closing Date; or
- (c) may be terminated by either Party if:
 - (i) Xatsūll formally withdraws in writing from the treaty negotiation process; or
 - (ii) the Final Agreement is not signed by the authorized representative of Xatsūll, the Province or Canada, or is not approved, given effect, declared valid and given the force of law under federal and provincial law.

3.3 **Non-Renewal of Lease Agreement.** In the event the Parties do not renew the Lease Agreement, the Lease Agreement will terminate in accordance with its terms and the Parties will discuss the status of the Lands, including their transfer to Xatsūll under another form of reconciliation agreement or the purchase of the Lands by Xatsūll, prior to any sale of the Lands to a third party.

ARTICLE 4 - REPRESENTATIONS AND WARRANTIES

4.1 **Xatsūll Representations.** Xatsūll 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:

- (a) it enters into this Agreement for, and on behalf of, its Members;
- (b) its Members have provided it with a mandate to negotiate a Final Agreement;
- (c) on satisfaction or waiver of the conditions precedent under section 5.4, it will, as represented by its Chief and Council, have the legal power, capacity and authority to enter into and to carry out its obligations under this Agreement on behalf of Xatsūll and its Members;
- (d) on satisfaction or waiver of the conditions precedent under section 5.4, the Designated Company has the legal power, capacity and authority to enter into and to carry out its obligations under each agreement and transaction to which it is a party in accordance with this Agreement; and
- (e) the Province has fulfilled its obligation to consult with Xatsūll in relation to the Lease Agreement.

4.2 **Provincial Representations.** The Province represents and warrants to Xatsūll, with the intent and understanding that they will be relied on by Xatsūll in entering into this Agreement, that:

- (a) it has the legal power, capacity and authority to enter into this Agreement;

- (b) it has appropriated sufficient monies to enable it to make the expenditures to conclude the Offer to Purchase and to pay the costs set out in section 7.1 and section 7.2 ; and
- (c) on satisfaction or waiver of the conditions precedent under section 5.1 and section 5.2, it will have the legal power, capacity and authority to lease the Lands to the Designated Company as contemplated by the Lease Agreement.

ARTICLE 5 – CONDITIONS PRECEDENT

- 5.1 **Band Council Resolution.** Prior to the execution of this Agreement, Xatśūll will deliver to the Province a resolution made by its elected Council approving and authorizing Xatśūll's representatives named in the resolution to execute on behalf of Xatśūll the Lease Agreement and this Agreement.
- 5.2 **Conditions Precedent in favour of the Province.** The Province's obligation to complete this Agreement is subject to:
- (a) there being sufficient monies available in an appropriation, as defined in the *Financial Administration Act*, to enable the Province in any fiscal year, when any expenditure in respect of an obligation may be required, to make that expenditure;
 - (b) the representations and warranties of Xatśūll under this Agreement being true and correct on and up to the Closing Date; and
 - (c) the satisfaction or waiver of any conditions precedent under the Offer to Purchase and Lease Agreement.
- 5.3 **Waiver of Conditions Precedent.** The conditions precedent set out in section 5.2 are for the sole benefit of the Province and may be waived by the Province on written notice to Xatśūll.
- 5.4 **Conditions Precedent in favour of Xatśūll.** Xatśūll's obligation to complete this Agreement is subject to:
- (a) the representations and warranties of the Province under this Agreement being true and correct on and up to the Closing Date; and
 - (b) the Province becoming the owner of the Lands on or before the Closing Date.
- 5.5 **Waiver of Conditions Precedent.** The conditions precedent set out in section 5.4 are for the sole benefit of Xatśūll and may be waived by Xatśūll on written notice to the Province.

ARTICLE 6 – LEASE AGREEMENT

- 6.1 **Lease Agreement.** The Parties acknowledge and agree that the Province will make good faith efforts to seek approval to grant a lease of the Lands pursuant to the provisions of the Lease Agreement for the nominal value of \$10.00.

ARTICLE 7 – TRANSACTION AND OTHER COSTS

- 7.1 **BC Hydro and Water.** As soon as possible, and no later than within 6 months of the Closing Date:
- (a) the Province will take all necessary steps for electricity and water to be connected to the Manufactured Home and will pay for the BC Hydro and Water Costs; and
 - (b) forthwith upon the execution of this Agreement the Province will, at no cost to Xat'sūll, ensure all archaeological assessments that are required for the poles conveying the electricity to be installed are undertaken.
- 7.2 **Transaction and Other Costs.** The Province will pay for:
- (a) installing an effluent filter on the tank outlet, and installing 3 speed levelers in the distribution box of the septic system, and
 - (b) surveying and registration of the Driveway Easement.

ARTICLE 8 – LAND PROTECTION AND WATER LICENCE MEASURES

- 8.1 **Mineral Tenures.** The Province will, as soon as practicable, seek the appropriate authorities to prevent the recording of any further mineral or placer claims in relation to the subsurface resources on or under the Lands as part of the broader No Registration Reserve under the *Mineral Tenure Act* covering the Proposed NStQ Treaty Settlement Lands.
- 8.2 **Water Licence.** The parties agree that the point of diversion under Water Licence F049845 may be relocated onto the Lands and that there will be an apportionment under such water licence as follows: (a) for the Lands, irrigable land will be 18.0 acres, 45 acre-feet of water (55,506.60 m³/yr), and (b) for the Adjacent Land, irrigable land will be 11.6 acres, 29 acre-feet of water (35,770.92 m³/yr).

ARTICLE 9 – OTHER COVENANTS

- 9.1 **Other Xatsūll Covenants.** Xatsūll acknowledges and agrees that, during the term of this Agreement and subject to Article 10, the Lands are subject to provincial and local government laws, including applicable zoning, land use, land development and property tax laws, and at no time during the term of this Agreement will Xatsūll challenge the applicability of provincial laws to the Lands.
- 9.2 **Neighbouring Property Access:** Xatsūll acknowledges and understands that access from a public road to the Adjacent Land is through the Lands and agrees that if the Parties conclude a Final Agreement that includes the Lands, that the right of access to and from the Adjacent Land through the Lands will continue. For greater certainty, Xatsūll acknowledges and understands that the Province anticipates registering the Driveway Easement on the Lands. The Province agrees to provide Xatsūll with drafts of the Driveway Easement for Xatsūll's review and input before it is finalized, and to comply with 8.1(c) of the Lease Agreement.

ARTICLE 10 – STATUS OF LANDS ON EFFECTIVE DATE

- 10.1 **Transfer of Lands on Effective Date.** As part of the NStQ Final Agreement negotiations, the Province will offer to transfer the Lands to Xatsūll on the Effective Date.
- 10.2 **Status of Lands and Subsurface Rights in the Final Agreement.** As part of Final Agreement negotiations, the Parties will negotiate the status of the Lands as "NStQ Treaty Settlement Lands" as if the Lands were included in the definition of that term in the NStQ Agreement-in-Principle. If the Parties conclude a Final Agreement and the Lands become Treaty Settlement Lands, the subsurface resources beneath the Lands will be included, if owned by the Province.
- 10.3 **Interests in Final Agreement.** The Parties acknowledge and agree that the terms of this Agreement and the Lease Agreement will not prejudice the Parties' position with respect to the encumbrances on the Land under the Final Agreement, including their continuation or removal.
- 10.4 **Repairs and Cleanup.** The Province will make reasonable efforts to ensure the vendors make the manufactured home rodent free, clean the rodent droppings, and repair the interior door slab and hardware in the front and rear bedrooms.

ARTICLE 11 – XATSŪLL CLAIMS AND OVERLAPPING CLAIMS

- 11.1 **Other First Nations' Litigation.** In the event of any Proceeding brought by any other aboriginal group against the Province or any Provincial Official with respect

to the Lease, Xatśūll will provide the Province with reasonable assistance in support of its defence of the Proceeding, the nature and extent of which will be agreed between the Parties.

- 11.2 **Provincial Consultation Obligations.** The Province confirms that it is satisfied that, with respect to the lease of the Lands, it has fulfilled any consultation obligations it may have with respect to assertions of Aboriginal Rights to the Lands by First Nations other than Xatśūll.

ARTICLE 12 - DISPUTE RESOLUTION

- 12.1 **Representatives.** If a dispute arises between the Province and Xatśūll regarding the interpretation of a provision of this Agreement, or whether a Party is in breach of this Agreement, the Parties or their duly appointed representatives will meet as soon as is practical to attempt to resolve the dispute.
- 12.2 **Senior Representatives.** If the Parties are unable to resolve differences at the appropriate level, the interpretation issue will be raised to more senior levels of the Province and Xatśūll.
- 12.3 **Other Means.** Either Party may choose other appropriate approaches to assist in reaching resolution of the interpretation issue which may include mediation or arbitration, or both.

ARTICLE 13 - NOTICES

- 13.1 **Notices.** Any notice, document, statement, report, demand or grant that any Party may be required or may desire to give to any other Party under this Agreement must be in writing, unless otherwise specified in this Agreement, and will be deemed validly given to and received by the addressee, if served personally, on the date of personal service or, if delivered by mail, e-mail or facsimile copier, when received as follows

if to the Province:

Deputy Minister
Ministry of Indigenous Relations and Reconciliation
P.O Box 9100 Stn. Prov. Gvt.
Victoria, B.C. V8W 9B1
Fax: (250) 387-6073

and if to Xatśūll:

Xatśūll First Nation
3405 Mountain House Road
Williams Lake, BC V2G 5L5
Attention: Chief Rhonda Phillips
Email: bandadmin@xatsull.com
Phone: (250) 989-2323

- 13.2 **Change of Address.** Either Party may, from time to time, give notice to the other Party of any change of address, email address or facsimile number of the Party giving such notice and after the giving of such notice, the address, email address or facsimile number will, for purposes of this Agreement be conclusively deemed to be the address, email address or facsimile number of the Party giving such notice.

ARTICLE 14 - GENERAL

- 14.1 **Entire Agreement.** This Agreement is the entire agreement between the Parties in respect of the subject matter of this Agreement and, except as set out in this Agreement, there is no representation, warranty, collateral agreement, condition, right or obligation affecting this Agreement.
- 14.2 **Further Acts and Assurances.** Each of the Parties will, upon the reasonable request of the other Party, do such further lawful acts or deliver such further documents in a timely fashion as are reasonably required in order to fully perform and carry out the terms of this Agreement.
- 14.3 **No Implied Waiver.** Any waiver of a provision of this Agreement, the performance by a Party of an obligation under this Agreement or a default by a Party of an obligation under this Agreement will be in writing and signed by the Party giving the waiver and will not be a waiver of any other provision, obligation or subsequent default.
- 14.4 **Assignment.** Unless the Parties otherwise agree, this Agreement and any rights or obligations under this Agreement may not be assigned, in whole or in part by either Party.
- 14.5 **Successors.** This Agreement will extend to, is binding upon and enures to the benefit of the Parties, their heirs, executors, administrators, successors and permitted assigns.
- 14.6 **No Admissions.** Nothing in this Agreement will be construed as:

- (a) an admission by the Province of the validity of any claim by Xatsūll to a specific treaty or aboriginal right or aboriginal title within the meaning of section 35 of the *Constitution Act, 1982*;
- (b) an acknowledgement by the Province that it has an obligation to provide financial or economic accommodation to Xatsūll; or
- (c) in any way limiting the position either Party may take in treaty or reconciliation negotiations except as expressly set out herein.

14.7 **Not a Treaty.** This Agreement does not:

- (a) constitute a treaty or land claims agreement within the meaning of section 25 or 35 of the *Constitution Act, 1982*; or
- (b) recognize, affirm, define, deny, limit or amend any Aboriginal Rights or any responsibilities of the Parties except as set out in this Agreement.

14.8 **No Fettering.** Nothing in this Agreement will be interpreted in a way that fetters the discretion given to any Provincial Official in an enactment.

14.9 **Amendment.** This Agreement may be amended from time to time by the Parties in writing.

14.10 **Governing Law.** This Agreement will be governed by and construed in accordance with the laws of the Province of British Columbia.

14.11 **Execution in Counterpart.** This Agreement may be entered into by each Party signing a separate copy of this Agreement (including a photocopy, email or facsimile copy) and delivering it to the other Party by email or facsimile transmission.

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

Signed on behalf of the XATSÜLL
FIRST NATION by:




Chief Rhonda Phillips




Witnessed by
Print Name: GORDON KEENER

Signed on behalf of His Majesty the
King In Right of the Province of British
Columbia by:



Mark Lofthouse
Chief Negotiator
Ministry of Indigenous Relations
and Reconciliation



Witnessed by
Print Name:

Schedule 1 – Environmental Reports

Environmental Site Assessment Reports

Stage 1 Preliminary Site Investigation (PSI): [REDACTED]
[REDACTED]: July 3 2024, prepared by McElhanney Ltd.

Stage 2 Preliminary Site Investigation and Remediation: [REDACTED]
[REDACTED]: October 25 2024, prepared by McElhanney Ltd.

Water Study Reports

Groundwater Supply Well Assessment for [REDACTED] V2:
September 19 2024, prepared by Western Water Associates Ltd.