

**Collaboration Terms of Reference (Revised: June 5, 2018)**  
(Agreement)

**BETWEEN:**

**LAX KW'ALAAMS INDIAN BAND**, as represented by Mayor and Council (Lax Kw'alaams)

**AND**

**METLAKATLA FIRST NATION** as represented by Chief and Council (Metlakatla)

**AND**

**HER MAJESTY THE QUEEN IN RIGHT OF THE PROVINCE OF BRITISH COLUMBIA**  
as represented by the  
Environmental Assessment Office (EAO)

(Collectively referred to as the "Parties" and individually referred to as "Party")

**1. Definitions**

"Aboriginal Interests" means the asserted or determined Aboriginal rights, including title, of Lax Kw'alaams and Metlakatla.

"Project" means a proposed or certified project located within the areas of Prince Rupert Harbour, and between Chatham Sound and the Tsimpsean Peninsula, that is reviewable pursuant to the *Environmental Assessment Act* (Act), that the Parties agree shall be administered pursuant to the terms of this Agreement.

"Decision-Maker(s)" is the person(s) duly authorized by each Party to make decisions regarding an Environmental Assessment (EA).

**2. Purpose**

- 2.1. To work collaboratively to enhance Lax Kw'alaams and Metlakatla's roles within the environmental assessment process (EA Process), including environmental monitoring, compliance and enforcement in relation to Projects;
- 2.2. To conduct effective, transparent, and rigorous EAs that are responsive to the interests of Lax Kw'alaams and Metlakatla, and the statutory obligations of the EAO, leading to the best possible information for decision makers; and
- 2.3. To enhance government-to-government relationship between the Parties, including the EA Process.

**3. Principles**

- 3.1. **Government-to-Government Relationship** – The Parties recognize the importance of their government-to-government relationships and their respective accountabilities to their constituents. Each government makes its own decisions regarding proposed

projects consistent with the Crown's constitutional obligations and Indigenous stewardship obligations. The Parties will strive to implement the United Nations Declaration on the Rights of Indigenous Peoples, including where possible through this Agreement.

- 3.2. **Mutual Accountability** – Each Party is responsible for its effective participation in EA processes and will work with the other Parties to advance decision-making, including by identifying and achieving efficiencies in the EA Process.
- 3.3. **Transparency** – The Parties will establish a collaborative EA Process that is clear and predictable, where information is shared and available.
- 3.4. **Fairness** – In carrying out their duties and responsibilities under this Agreement, the Parties will respect the consideration of third-party interests and administrative fairness obligations. The EAO will ensure that EAs are transparent and predictable, and give fair consideration to all interests.
- 3.5. **Consensus** – While recognizing each Party's respective mandate and authorities, the Parties will seek to arrive at consensus decisions by engaging in respectful deliberation in a collective effort to come to a common agreement on issues arising in this Agreement.

#### 4. **Collaboration Structures, Membership and Roles**

##### 4.1. **Leadership Table**

- 4.1.1. The Parties will establish a Leadership Table comprised of the Mayor of Lax Kw'alaams, the Chief Councillor of Metlakatla, and the EAO's Assistant Deputy Minister of EA Operations, or their delegate(s) who will be deemed to have the necessary authority to fully participate in the Leadership Table on their behalf.
- 4.1.2. The Leadership Table will be responsible for:
  - a. Identifying which proposed reviewable projects will be a Project under the terms of this Agreement;
  - b. Ensuring the implementation of this Agreement, including the appointment of representative(s) to the Collaboration Team and oversight;
  - c. Seeking to resolve issues as referred by the Collaboration Team;
  - d. Seeking consensus on Decision Package (as described in Section 5 of this Agreement);
  - e. Inviting other applicable government agencies to participate, where appropriate;
  - f. Informing proponents of this Agreement as early as possible; and
  - g. Discussing key findings, recommendations, and any non-consensus items described in the Decision Package, as necessary, such as any non-consensus items identified by the Collaboration Team with an aim to seeking a consensus decision on the issue(s) prior to referral of the Decision Package to Decision Makers.
- 4.1.3. Each Party will ensure that their appointed representative(s) has sufficient access to internal resources to carry out its responsibilities under this Agreement.

4.1.4. For other decisions under the Act, the Parties will seek to adhere to the Principles of this Agreement proportionate to the decision, as appropriate.

## 4.2. Collaboration Team

4.2.1. The Collaboration Team may invite representatives from other government agencies to participate in the Collaboration Team.

4.2.2. Each Party will notify the other Parties upon any changes to their representative(s) on the Collaboration Team.

4.2.3. The Collaboration Team will be responsible for:

- a. Developing and carrying out a Collaboration Plan for each Project in accordance with this Agreement;
- b. Seeking clarification or additional information from the proponent, as may be needed to assist the Collaboration Team in undertaking its work;
- c. Making reasonable efforts to resolve issues together;
- d. Keeping the Leadership Table apprised of key issues throughout the EA Process;
- e. Seeking consensus throughout the EA Process by:
  - i. Using a shared document to track outstanding issues (see Appendix C for a sample consensus tracking table);
  - ii. Proactively engaging with the proponent and relevant EA working group members as necessary to resolve issues as early as possible;
  - iii. Identifying potential solutions;
  - iv. Identifying and recording strategic policy issues;
  - v. Regularly reviewing and adapting the EA Process, including timelines, as required to support necessary interactions, engagement, coordination, consensus, and each Party's decision-making processes;
  - vi. Preparing a Decision Package;
  - vii. Developing and implementing a Post-EA Collaboration Plan; and
  - viii. Documenting any non-consensus items from the Leadership Table to form part of the official record which each Party may consider in its decision-making process.

4.2.4. For each Project, the Collaboration Team will develop and implement a Collaboration Plan that describes the steps by which the Parties will work collaboratively to conduct the EA, including timeframes and milestones to allow for consensus decision-making at all stages of the EA.

4.2.5. Where an EA for a Project is already underway, collaboration activities set out in a Collaboration Plan will apply to the EA going forward from the time the Project is accepted for administration under the terms of this Agreement.

4.2.6. The Collaboration Team will fulfill its mandate by seeking consensus on key elements of the EA and post-EA Certificate activities described in this Agreement, which may include:

- a. The review of the Draft Project Description, including providing comments to the proponent prior to or at the time of issuance of the Section 10 Order;
- b. The Section 11 Order;
- c. The Application Information Requirements (AIR);

- d. Recommendations on whether the Application submitted by the proponent addresses the AIR and consultation requirements;
- e. Milestones within the Application Review period to ensure that:
  - i. The issues have been adequately addressed; and
  - ii. The Leadership Table has adequate time to engage in discussions, if necessary, on potential impacts;
- f. Recommendations for suspension or extension of the legislated timelines;
- g. The potential impacts of the Project on Lax Kw'alaams and Metlakatla's Aboriginal Interests;
- h. Proposed EA Certificate conditions aimed at mitigating potential impacts to Lax Kw'alaams and Metlakatla's Aboriginal Interests;
- i. The Decision Package;
- j. The Post-EA Certificate Collaboration Plan;
- k. Any post-EA Certificate recommendations for further action related to compliance and monitoring; and
- l. Other post-EA Certificate decisions as determined by the Parties.

## **5. Decision Package**

- 5.1. The Collaboration Team will deliver to the Leadership Table a Decision Package which will include the assessment report prescribed by the Act, and which may include:
  - a. The Aboriginal Consultation Report;
  - b. A Table of Conditions;
  - c. The Certified Project Description;
  - d. Any additional information required to assess the Application;
  - e. A record of unresolved issues; and
  - f. Materials that Lax Kw'alaams and Metlakatla consider relevant to arriving at a decision for the Project EA.

## **6. Working Group Participation**

- 6.1. Lax Kw'alaams and Metlakatla will continue to participate in the EA working group through their technical representatives, including attending meetings, and providing comments and input within the review periods applicable to the working group.

## **7. Funding**

- 7.1. To support this Agreement, the EAO will seek to support the capacity of Lax Kw'alaams and Metlakatla to participate in EAs and fulfil the commitments herein. The EAO recognizes that a key aspect to support effective participation is the development of internal capacity.
- 7.2. Any funding by British Columbia towards clause 7.1 will be subject to necessary approvals and appropriation, and in accordance with relevant legislation.
- 7.3. The Parties will develop an annual work plan and budget forecast for funds that are provided to support this Agreement.

## **8. Issue Resolution Process**

- 8.1. Where the Collaboration Team is unable to reach consensus on key issues during the EA Process, a Party may initiate the Issue Resolution Process by providing written notice (Notice) to the Leadership Table that includes a description of the issue(s) to be resolved. The Issues Resolution Process cannot be triggered less than 10 days prior to the anticipated date the EAO Decision Package will be referred to Decision Makers.
- 8.2. Each Party may provide suggested measures to resolve the issue(s) in a manner that is consistent with the principles and terms of this Agreement.
- 8.3. The Leadership Table may meet to attempt to resolve the outstanding issue(s) within 10 days of receiving the Notice.
- 8.4. Where the Leadership Table is unable to resolve the issue, the outstanding points of disagreement will be documented to form part of the official record for each Party's Decision-Maker(s).

## **9. Monitoring, Compliance and Enforcement**

- 9.1. Lax Kw'alaams and Metlakatla will have an ongoing active and central role in Projects regulated by the Act in the areas of Prince Rupert Harbour, and between Chatham Sound and the Tsimpsean Peninsula.
- 9.2. The Post-EA Certificate Collaboration Plan will outline how Lax Kw'alaams and Metlakatla will participate in any monitoring, compliance, and enforcement activities pertaining to Projects, which may include:
  - a. The review and acceptance of management plans;
  - b. The selection of an independent environmental monitor, as specified by the EA Certificate;
  - c. Information sharing specific to Project monitoring compliance and enforcement activities;
  - d. The review of Project related monitoring and compliance self-assessment reports;
  - e. The review of EAO inspection records once finalized and, as necessary, making recommendations for further action; and
  - f. Future compliance and enforcement activities across all relevant enforcement agencies.
- 9.3. Nothing in this Agreement precludes or prevents Lax Kw'alaams or Metlakatla from benefitting from provincial programs related to monitoring that may exist from time to time. The Parties will seek to align Lax Kw'alaams and Metlakatla participation in such programs with the ongoing involvement in compliance monitoring of certified Projects.

## **10. Confidentiality**

- 10.1. The Parties will balance the sensitivity and confidentiality of information, particularly culturally significant information to the Parties, while managing information in a manner that is consistent with the *Freedom of Information and Protection of Privacy Act*.

10.2. The Parties acknowledge that, where matters discussed could materially impact the proponent's or other third-party interests, the EAO must share the discussions with the proponent or affected third party, consistent with Section 3.4 of this Agreement.

10.3. The EAO will advise the Collaboration Team in advance of disclosing information to the proponent or any affected third party.

## **11. Representations and Warranties**

11.1. Lax Kw'alaams and Metlakatla each represent and warrant to the EAO, with the intent and understanding that the EAO will rely on them in entering into this Agreement, that:

- a. It has the legal power, capacity and authority to enter into this Agreement on its own behalf and on behalf of its members; and
- b. This Agreement is a valid and binding obligation upon it.

11.2. The EAO represents and warrants to Lax Kw'alaams and Metlakatla, with the intent and understanding that Lax Kw'alaams and Metlakatla will rely on them in entering into this Agreement, that it has the authority to enter into this Agreement and that this Agreement is a valid and binding obligation upon the EAO.

## **12. General Provisions**

12.1. The Parties agree that this Agreement does not define, limit, amend, abrogate or derogate from any of Lax Kw'alaams and Metlakatla's Aboriginal Interests.

12.2. Nothing in this Agreement interferes with the decision-making authority or jurisdiction of any Party, or fetters the discretion of any decision-making authority.

12.3. This Agreement will commence upon execution, and may be amended by agreement of the Parties in writing.

12.4. Following any changes to the Act or its regulations, the Parties will review the Agreement, and may amend or terminate the Agreement.

12.5. The term of this Agreement will be three years from its execution.

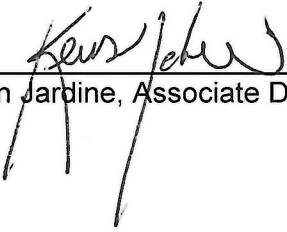
12.6. This Agreement may be entered into by each Party signing a separate copy of this Agreement and delivering it to the other Party by facsimile or email transmission.

12.7. Any Party may terminate this Agreement prior to the end of the term by providing written notice of intent to the other Parties for a period of thirty (30) days. During this period, the Parties will meet to discuss the circumstances which gave rise to the notice.

12.8. Withdrawal from this Agreement prior to the end of its term by one of either Lax Kw'alaams or Metlakatla does not preclude the ability of the EAO to continue implementation of this Agreement with the remaining Party.


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

**Environmental Assessment Office**

  
\_\_\_\_\_  
Kevin Jardine, Associate Deputy Minister


June 5, 2018  
Date:

**Lax Kw'alaams Indian Band**

  
\_\_\_\_\_  
Mayor John Helin

June 5, 2018  
Date:

**Metlakatla First Nation**

  
\_\_\_\_\_  
Chief Councillor Harold Leighton

June 5, 2018  
Date:

