

INDIVIDUAL AGREEMENT  
ON  
FIRST NATION LAND MANAGEMENT

*BETWEEN*

**COWICHAN TRIBES**

*AND*

**HER MAJESTY THE QUEEN IN RIGHT OF CANADA**

## TABLE OF CONTENTS

1. INTERPRETATION.....	3
2. INFORMATION PROVIDED BY CANADA .....	4
3. TRANSFER OF LAND ADMINISTRATION .....	4
4. ACCEPTANCE OF TRANSFER OF LAND ADMINISTRATION .....	5
5. OPERATIONAL FUNDING .....	5
6. TRANSFER OF REVENUES .....	6
7. NOTICE TO THIRD PARTIES OF TRANSFER OF ADMINISTRATION .....	6
8. INTERIM ENVIRONMENTAL ASSESSMENT PROCESS .....	7
9. AMENDMENTS.....	7
10. NOTICES BETWEEN THE PARTIES.....	7
11. DISPUTE RESOLUTION .....	8
12. DATE OF COMING INTO FORCE.....	9
<b>SIGNATURE BLOCK.....</b>	<b>9</b>
ANNEX "A" - FUNDING PROVIDED BY CANADA .....	10
ANNEX "B" -DETAILS FOR THE REVENUE MONEYS TRANSFER .....	11
ANNEX "C" - LIST OF INTERESTS AND LICENCES GRANTED BY CANADA.....	12
ANNEX "D" - LIST OF ALL EXISTING INFORMATION IN CANADA'S POSSESSION RESPECTING ANY ACTUAL OR POTENTIAL ENVIRONMENTAL PROBLEMS WITH THE FIRST NATION LANDS .....	13
ANNEX "E" - LIST OF OTHER MATERIAL INFORMATION PROVIDED BY CANADA THAT MATERIALLY AFFECTS INTERESTS AND LICENSES .....	14
ANNEX "F" - INTERIM ENVIRONMENTAL ASSESSMENT PROCESS.....	15
ANNEX "G" - DESCRIPTION OF COWICHAN TRIBES FIRST NATION LAND...17	

**THIS AGREEMENT** made in duplicate this \_\_\_\_ day of \_\_\_\_\_, 20\_\_.

**INDIVIDUAL AGREEMENT  
ON  
FIRST NATION LAND MANAGEMENT**

***BETWEEN:***

**COWICHAN TRIBES**, as represented by their Chief and Council (hereinafter called the “Cowichan Tribes” or the “First Nation”)

***AND***

**HER MAJESTY THE QUEEN IN RIGHT OF CANADA**, (hereinafter called “Canada”) as represented by the Minister of Indian Affairs and Northern Development (hereinafter called “the Minister”)

(the “Parties”)

**WHEREAS** the Framework Agreement on First Nation Land Management was signed by Canada and fourteen first nations in 1996 (the “Framework Agreement”) and was ratified and brought into effect by the *First Nations Land Management Act*, S.C. 1999, c. 24 (the “Act”);

**AND WHEREAS** the First Nation has been added as a signatory to the Framework Agreement by an adhesion signed by the First Nation and Canada on September 30, 2004;

**AND WHEREAS** the First Nation and Canada wish to provide for the assumption by the First Nation of responsibility for the administration of Cowichan Tribes First Nation Land in accordance with the Framework Agreement and the Act;

**AND WHEREAS** clause 6.1 of the Framework Agreement and subsection 6(3) of the Act require the First Nation to enter into an individual agreement with the Minister for the purpose of providing for the specifics of the transfer of administration;

**AND WHEREAS** subsection 6(3) of the Act further requires that the individual agreement provide for the date and other terms of the transfer to the First Nation of Canada’s rights and obligations as grantor of interests and licenses in or in relation to the land, the environmental assessment process that will apply to projects until the enactment of applicable First Nation laws, and any other relevant matter;

**AND WHEREAS** clause 6.1 of the Framework Agreement further requires that the individual agreement settle the actual level of operational funding to be provided to the First Nation;

**NOW THEREFORE**, in consideration of the exchange of promises contained in this Agreement and subject to its terms and conditions, the Parties agree as follows:

## 1. INTERPRETATION

### 1.1 In this Agreement,

“Act” means the *First Nations Land Management Act*, S.C. 1999, c.24, as amended;

"this Agreement" means this Individual Agreement on First Nation Land Management, including the Annexes attached hereto, and any documents incorporated by reference, all as amended from time to time;

"Cowichan Tribes First Nation Land" means the land to which the Land Code will apply and more specifically means the Reserves known as Cowichan Indian Reserve No. 1 (06779), Theik Indian Reserve No. 2 (06800), Kil-pah-las Indian Reserve No. 3 (06801), Est-Patrolas Indian Reserve No. 4 (06802), Tzart-lam Indian Reserve No. 5 (06803), Kakalatza Indian Reserve No. 6 (06804), Skutz Indian Reserve No. 7 (06805), Skutz Indian Reserve No. 8 (06806), and Cowichan Indian Reserve No. 9 (06807) as described in the Land Description Report(s) referred to in Annex “G” and includes all the interests in and resources of the land that are within the legislative authority of Parliament, but does not include the Excluded Land;

“Excluded Land” means land excluded from the application of the Land Code pursuant to section 7(1)(d) of the Act, the description of which is set out in Land Description Report(s) referred to in Annex “G”;

“Fiscal Year” means Canada’s fiscal year as defined in the *Financial Administration Act*, R.S.C. 1985, c. F-11, as amended;

"Framework Agreement" has the same meaning as in the Act;

“Funding Arrangement” means an agreement between Canada and the Cowichan Tribes, or between Canada and a Tribal Council of which the First Nation is a member, for the purpose of providing funding, during the Fiscal Year(s) identified in that agreement, for the programs and services referred to in that agreement;

“Indian Act” means the *Indian Act*, R.S.C. 1985, c. I-5, as amended;

“Land Code” means the Quw'utsun Tumuhw (Land Code of the Cowichan Tribes), developed in accordance with clause 5 of the Framework Agreement and section 6 of the Act;

“Minister” means the Minister of Indian Affairs and Northern Development and his or her duly authorized representatives;

“Operational Funding” means the resources to be provided by Canada to the Cowichan Tribes pursuant to clause 30.1 of the Framework Agreement to

manage First Nation lands and make, administer and enforce its laws under a land code, and includes financial resources, as described in clause 27 of the Framework Agreement, to establish and maintain environmental assessment and environmental protection regimes;

“Operational Funding Formula” means the method approved by Canada for allocating to First Nations such Operational Funding as may have been appropriated by Parliament for that purpose.

- 1.2 Unless the context otherwise requires, words and expressions defined in the Framework Agreement, the Act or the *Indian Act* have the same meanings when used in this Agreement.
- 1.3 This Agreement is to be interpreted in a manner that is consistent with the Framework Agreement and the Act.
- 1.4 In the event of any inconsistency or conflict between the wording in any Article set out in the main body of this Agreement and the wording in any Annex attached hereto, the wording set out in the Article shall prevail.

## **2. INFORMATION PROVIDED BY CANADA**

- 2.1 In accordance with clause 6.3 of the Framework Agreement, the Minister has provided the First Nation with the following information:
  - (a) a list, attached as Annex “C”, and copies, or access to copies, of all the interests and licences granted by Canada in or in relation to the Cowichan Tribes First Nation Land that are recorded in the Reserve Land Register and the Surrendered and Designated Lands Register;
  - (b) a list, attached as Annex “D”, and copies of all existing information in Canada’s possession, respecting any actual or potential environmental problems with the Cowichan Tribes First Nation Land; and
  - (c) a list, attached as Annex “E”, and copies of any other information in Canada’s possession that materially affects the interests and licences mentioned in clause 2.1(a).
- 2.2 The First Nation hereby acknowledges that it has received or been provided access to all the documents referred to in clause 2.1.

## **3. TRANSFER OF LAND ADMINISTRATION**

- 3.1 The Parties acknowledge that, as of the date the Land Code comes into force, the First Nation shall have the power to manage the Cowichan Tribes First Nation Land in accordance with section 18 of the Act and clause 12 of the Framework Agreement.
- 3.2 As provided in subsection 16(3) of the Act, Canada hereby transfers to the

First Nation all of the rights and obligations of Canada as grantor in respect of the interests and licences in or in relation to Cowichan Tribes First Nation Land that exist on the coming into force of the Land Code.

- 3.3 As of the date the Land Code comes into force, the First Nation shall be responsible for, among other responsibilities identified in this Agreement, the Framework Agreement and the Act, the following:
- (a) the collection of all rents and other amounts owing, payable or accruing pursuant to any instrument granting an interest or a license in or in relation to Cowichan Tribes First Nation Land; and
  - (b) the exercise of any power and authorities, and performance of any covenants, terms and conditions, under the instruments referred to in paragraph (a) which, but for the transfer, would have been Canada's responsibility.
- 3.4 The Parties acknowledge that the transfer of administration referred to in this Agreement is subject to section 39 of the Act, which provides for the continuation of the application of the *Indian Oil and Gas Act*.

#### **4. ACCEPTANCE OF TRANSFER OF LAND ADMINISTRATION**

- 4.1 The First Nation hereby accepts the transfer of land administration described in Article 3 of this Agreement, including, without limitation, the transfer of all the rights and obligations of Canada as grantor of the interests and licenses referred to in clause 3.2 of this Agreement.
- 4.2 As of the date the Land Code comes into force, and in accordance with the Framework Agreement and section 18 of the Act:
- (a) the land management provisions of the *Indian Act*, as listed in clause 21 of the Framework Agreement and section 38 of the Act, cease to apply and Canada retains no powers and obligations in relation to Cowichan Tribes First Nation Land under these provisions;
  - (b) the First Nation shall commence administering Cowichan Tribes First Nation Land pursuant to its Land Code.

#### **5. OPERATIONAL FUNDING**

- 5.1 In accordance with clause 30.1 of the Framework Agreement, and subject to appropriation by Parliament and the approval of the Treasury Board of Canada, Canada shall provide Operational Funding to the Cowichan Tribes as indicated in Annex "A" in accordance with the Operational Funding Formula as amended from time to time.

- 5.2 The Operational Funding referred to in clauses 5.1 will be incorporated by the Parties into the Cowichan Tribes's Funding Arrangement in effect in the year in which the payment is to be made. For greater certainty, payment of Operational Funding will be subject to the terms and conditions of the Funding Arrangement into which it is incorporated.
- 5.3 The Cowichan Tribes acknowledges that all obligations of Canada to fund the Cowichan Tribes First Nation, as required by Part V (Environment) and Part VI (Funding) of the Framework Agreement, have been addressed by the Operational Funding Formula.

## **6. TRANSFER OF REVENUES**

- 6.1 Following the date that the Land Code comes into force, Canada shall transfer the revenue moneys referred to in section 19 of the Act and clause 12.8 of the Framework Agreement to the First Nation in accordance with the provisions set out in Annex "B".
- 6.2 Revenue moneys transferred pursuant to clause 6.1 shall be deposited in the First Nation's account at such financial institution as the First Nation may direct by notice in writing.
- 6.3 For greater certainty, the transfer of the revenue moneys does not release the First Nation from its commitment to reimburse Canada for any amount paid as a result of a default under any loan entered into by the First Nation or any of its members and guaranteed by Canada in accordance with the terms and conditions relating to ministerial loan guarantees.
- 6.4 For greater certainty, all Indian moneys deemed to be capital moneys pursuant to section 62 of the *Indian Act* are not to be transferred to the First Nation pursuant to this Agreement.

## **7. NOTICE TO THIRD PARTIES OF TRANSFER OF ADMINISTRATION**

- 7.1 Immediately following approval of the Land Code and this Agreement by the members of the First Nation, the First Nation shall give written notice (the "Notice of Transfer of Administration"), by registered mail, to each holder of an interest or a licence in or in relation to Cowichan Tribes First Nation Land that is listed or referred to in Annex "C".
- 7.2 The Notice of Transfer of Administration shall state that
  - (a) the administration of Cowichan Tribes First Nation Land and Canada's rights in Cowichan Tribes First Nation Land, other than title, have been transferred to the First Nation effective the date the Land Code comes into force;
  - (b) the holder of the interest or license shall pay to the First Nation, all

amounts owing, payable or due under the interest or licence on or after that date; and

- (c) as of that date, the First Nation shall be responsible for the exercise of the powers and authorities, and the performance of any covenants, terms and conditions, under that instrument which, but for the transfer of administration, would have been Canada's responsibility.

7.3 The Cowichan Tribes shall deliver to Canada a copy of every Notice of Transfer of Administration and a copy of every acknowledgement of receipt of the Notice of Transfer of Administration received by the First Nation within 30 days of the issuance or receipt of the same.

7.4 The Notice obligations set out in this Article do not apply in respect of a holder of an interest or license who is a member of the First Nation.

## **8. INTERIM ENVIRONMENTAL ASSESSMENT PROCESS**

8.1 As of the date the Land Code comes into force, the environmental assessment process set out in Annex "F" shall apply to projects on Cowichan Tribes First Nation Land until the coming into force of First Nation laws enacted in relation to that subject.

## **9. AMENDMENTS**

9.1 This Agreement may be amended by agreement of the Parties.

9.2 Any amendment to this Agreement shall be in writing and executed by the duly authorized representatives of the Parties.

## **10. NOTICES BETWEEN THE PARTIES**

10.1 Any notice or other official communication under this Agreement between the Parties shall be in writing addressed to the Party for whom it is intended.

10.2 The notice referred to in clause 10.1 shall be effective using any one of the following methods and shall be deemed to have been given as at the date specified for each method:

- (a) by personal delivery, on the date upon which notice is delivered;
- (b) by registered mail or courier, the date upon which receipt of the notice is acknowledged by the other party; or
- (c) by facsimile or electronic mail, the date upon which the notice is transmitted and receipt of such transmission by the other party can be confirmed or deemed.



10.3 The addresses of the Parties for the purpose of any notice or other official communication are:

Canada:

Director, Lands and Economic Development  
Department of Indian Affairs and Northern Development  
British Columbia Region

600-1138 Melville Street  
Vancouver, BC V6E 4S3

Facsimile: 604-775-7149

Cowichan Tribes

Chief and Council

5760 Allenby Road  
Duncan, BC V9L 5J1

Facsimile: 250-748-1233

## **11. DISPUTE RESOLUTION**

11.1 For greater certainty, any dispute arising from the implementation, application or administration of this Agreement may be resolved in accordance with the Dispute Resolution provisions set out in Part IX of the Framework Agreement.

## **12. DATE OF COMING INTO FORCE**

12.1 The Parties acknowledge that the members of the First Nation have voted to approve the Land Code and this Agreement in accordance with the Framework Agreement and the Act.

12.2 This Agreement shall be effective as of the date on which the last of the Parties signs this Agreement.

12.3 The Parties acknowledge that the signing of this Agreement alone does not bring the Land Code into force, and that the First Nation is not an operational First Nation under the First Nations Land Management regime until the Land Code comes into force in accordance with the provisions of the Land Code, the Framework Agreement and the Act.

**IN WITNESS WHEREOF**, the duly authorized representatives of the First Nation have signed this Agreement on behalf of the First Nation on \_\_\_\_\_, 20\_\_, and the Minister of Indian Affairs and Northern Development has signed this Agreement on behalf of Her Majesty the Queen in right of Canada, on \_\_\_\_\_, 20\_\_.

Her Majesty the Queen in right of  
Canada, as represented by the  
Minister of Indian Affairs and  
Northern Development

Cowichan Tribes

\_\_\_\_\_  
Chief

\_\_\_\_\_  
Minister of Indian Affairs and  
Northern Development

\_\_\_\_\_  
Councillor

\_\_\_\_\_  
Councillor

\_\_\_\_\_  
Councillor

\_\_\_\_\_  
Councillor

## ANNEX "A"

### FUNDING PROVIDED BY CANADA

- (a) For the Fiscal Year 2016-2017, the First Nation shall be paid (i) Operational Funding specified in the table below prorated based on the number of months from the date that the Land Code comes into force to the end of that Fiscal Year, and (ii) the amount specified in the table below for transitional and environmental funding.
- (b) Subject to appropriation by Parliament and the approval of the Treasury Board of Canada, Operational Funding for Fiscal Years after 2016-2017, and any transitional and environmental funding for Fiscal Year 2017-2018, will be calculated and provided in accordance with the Operational Funding Formula applicable at that time.

OPERATIONAL FUNDING	
First Fiscal Year	\$ \$251,636 (This amount shall be prorated in accordance with paragraph (a) above)  and  <b>\$ 75,000.00 (Transitional and Environmental Funding)</b>
Second Fiscal Year	Operational Funding and any transitional and environmental funding to be determined in accordance with the Operating Funding Formula applicable at that time.
Subsequent Fiscal Year(s) _____	Operational Funding to be determined in accordance with the Operating Funding Formula applicable at that time.

## ANNEX "B"

### DETAILS FOR THE REVENUE MONEYS TRANSFER

1. As of the 12th day of July 2016, Canada is holding \$495,349.79 of revenue moneys for the use and benefit of the First Nation or its members. This amount is included for information purposes only and is subject to change.
2. **Initial Transfer.** Within thirty (30) days of the Land Code coming into force, Canada shall transfer to the First Nation all revenue moneys collected, received or held by Canada for the use and benefit of the First Nation or its members.
3. **Subsequent Transfers.** Canada shall, on a semi-annual basis, transfer to the First Nation any interest that is paid into the First Nation's revenue moneys account thereafter pursuant to subsection 61(2) of the *Indian Act*. This includes any interest paid on capital moneys of the First Nation while these moneys, if any, are being held in Canada's Consolidated Revenue Fund. The first such subsequent transfer shall be made in the month of April or October, whichever month comes first after the month of the initial transfer.

## **ANNEX “C”**

### **LIST OF INTERESTS AND LICENCES GRANTED BY CANADA**

All interests and licenses granted by Canada in or in relation to the Cowichan Tribes First Nation Land that are recorded in the Reserve Land Register and the Surrendered and Designated Lands Register are listed in reports that are available for review at the Cowichan Tribes First Nation Land Management Office located at 5760 Allenby Road, Duncan, BC V9L 5J1:

#### Reserve General Abstract Reports for:

- Cowichan Indian Reserve No. 1
- Theik Indian Reserve No. 2
- Kil-pah-las Indian Reserve No. 3
- Est-Patrolas Indian Reserve No. 4
- Tzart-lam Indian Reserve No. 5
- Kakalatzza Indian Reserve No. 6
- Skutz Indian Reserve No. 7
- Skutz Indian Reserve No. 8
- Cowichan Indian Reserve No. 9

#### Lawful Possessors Reports for:

- Cowichan Indian Reserve No. 1
- Theik Indian Reserve No. 2
- Kil-pah-las Indian Reserve No. 3
- Est-Patrolas Indian Reserve No. 4
- Tzart-lam Indian Reserve No. 5
- Skutz Indian Reserve No. 7
- Skutz Indian Reserve No. 8
- Cowichan Indian Reserve No. 9

#### Lease or Permits Reports for:

- Cowichan Indian Reserve No. 1
- Cowichan Indian Reserve No. 9

The above reports identify all interests or licenses granted by Canada that are registered in the Indian Lands Registry System (ILRS). The following is a list of interests granted by Canada that have not been registered or are pending registration in the ILRS. Copies of these interests shall be provided to the First Nation.

Nil

## **ANNEX “D”**

### **LIST OF ALL EXISTING INFORMATION IN CANADA’S POSSESSION RESPECTING ANY ACTUAL OR POTENTIAL ENVIRONMENTAL PROBLEMS WITH THE FIRST NATION LANDS**

- Executive Summary. Cowichan Tribes - Phase I Environmental Site Assessment Cowichan Valley, BC. Prepared for Cowichan Tribes . Prepared by Golder Associates Ltd., May 31, 2013.
- Phase I Environmental Site Assessment Addendum. Prepared for Cowichan Tribes, Duncan, British Columbia. Prepared by Golder Associates Ltd, March 17, 2016

**ANNEX “E”**

**LIST OF OTHER INFORMATION PROVIDED BY CANADA THAT MATERIALLY  
AFFECTS INTERESTS AND LICENSES**

Nil

## ANNEX "F"

### INTERIM ENVIRONMENTAL ASSESSMENT PROCESS

- (1) In this Annex,
  - (a) "CEAA (1992)" means the *Canadian Environmental Assessment Act*, S.C. 1992, c. 37 [repealed, 2012, c. 19, s. 66], as it read immediately prior to its repeal;
  - (b) "CEAA 2012" means the *Canadian Environmental Assessment Act*, 2012, S.C. 2012, c. 19, s. 52, as amended from time to time.
- (2) This Annex sets out the environmental assessment process that will apply to projects on First Nation Land until the enactment and coming into force of First Nation Laws on that subject.
- (3) The First Nation shall conduct an assessment process in respect of every project on First Nation Land consistent with:
  - (a) CEAA (1992), or
  - (b) CEAA 2012.
- (4) Notwithstanding clause (3), the First Nation is not required to conduct an additional environmental assessment if the First Nation decides to adopt an environmental assessment that Canada conducts in respect of that project.
- (5) If the First Nation elects to use a process consistent with CEAA (1992), the following applies:
  - (a) When the First Nation is considering the approval, regulation, funding or undertaking of a project on First Nation Land that is not described in the exclusion list as defined in CEAA (1992), the Council of the First Nation shall ensure that an environmental assessment of the project is carried out in accordance with a process that is consistent with that of CEAA (1992). Such assessment shall be carried out as early as practicable in the planning stages of the project before an irrevocable decision is made.
  - (b) The First Nation shall not approve, regulate, fund, or undertake the project unless the Council has concluded, taking into consideration the results of the environmental assessment, any economically and technically feasible mitigation measures identified as necessary during the assessment, and any public comments received during the assessment, that the project is unlikely to cause any significant adverse environmental effects or that any such effects are justifiable under the circumstances.



(c) If the First Nation approves, regulates, funds, or undertakes the project, the First Nation shall ensure that all mitigation measures referred to paragraph (b) above are implemented at its expense or it is satisfied that another person or body will ensure their implementation. The Council shall also consider whether a follow-up program, as defined in CEAA (1992), is appropriate in the circumstances and if so, shall design a follow-up program and ensure its implementation.

(6) If the First Nation elects to use a process that is consistent with CEAA 2012, the following applies unless it is inconsistent with any amendments made to CEAA 2012 in the future or any legislation that replaces CEAA 2012:

(a) If the project is a “designated project” as defined in CEAA 2012, the First Nation shall conduct an environmental assessment of that project in accordance with a process that is consistent with that of CEAA 2012.

(b) If the project is a “project” as defined in section 66 of CEAA 2012, the First Nation shall not carry out the project on First Nation Land, or exercise any power or perform any duty or function conferred on it under the Land Code or a First Nation law that would permit the project to be carried out, in whole or in part, on First Nation Land, unless the Council of the First Nation determines that the carrying out of the project

(i) is not likely to cause significant adverse environmental effects as defined in CEAA 2012; or

(ii) is likely to cause significant adverse environmental effects and the Council decides that those effects are justified in the circumstances.

(7) All processes shall be conducted at the expense of the First Nation or of the proponent of the project.

(8) The provisions in this Annex are without prejudice to any environmental assessment process that the First Nation may develop in accordance with the Act and the Framework Agreement for incorporation in First Nation laws respecting environmental assessment.

## **ANNEX “G”**

### **DESCRIPTION OF COWICHAN TRIBES FIRST NATION LAND**

The following Land Descriptions – Prepared by Cade Brown of Natural Resources Canada under First Nation Land Management are available for review at the Cowichan Tribes First Nation Land Management Office located at 5760 Allenby Road, Duncan, BC V9L 5J1:

- Cowichan Indian Reserve No. 1
- Theik Indian Reserve No. 2
- Kil-pah-las Indian Reserve No. 3
- Est-Patrolas Indian Reserve No. 4
- Tzart-lam Indian Reserve No. 5
- Kakalatzza Indian Reserve No. 6
- Skutz Indian Reserve No. 7
- Skutz Indian Reserve No. 8
- Cowichan Indian Reserve No. 9