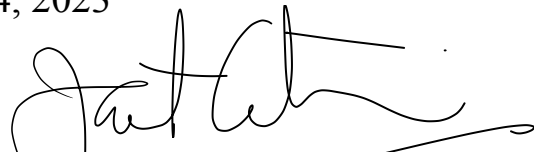


PROVINCE OF BRITISH COLUMBIA

ORDER OF THE LIEUTENANT GOVERNOR IN COUNCIL

Order in Council No. 283

, Approved and Ordered May 4, 2023



Lieutenant Governor

Executive Council Chambers, Victoria

On the recommendation of the undersigned, the Lieutenant Governor, by and with the advice and consent of the Executive Council, orders that approval is given to the Minister of Indigenous Relations and Reconciliation to enter into, on behalf of the government, the Tripartite Agreement that is substantially in the form attached to this order.



Minister of Indigenous Relations and Reconciliation



Presiding Member of the Executive Council

(This part is for administrative purposes only and is not part of the Order.)

Authority under which Order is made:

Act and section: *FNCIDA Implementation Act, S.B.C. 2012, c. 21, s. 2*

Other: _____

TRIPARTITE AGREEMENT

This agreement is made as of <Month Day, Year> between:

Squamish Nation, as represented by its council

(“**Squamish Nation**”)

and:

His Majesty in right of Canada, as represented by the
Minister of Indigenous Services

(“**Canada**”)

and:

His Majesty in right of British Columbia, as represented by
the Minister of Indigenous Relations and Reconciliation

(“**British Columbia**”).

Background:

- A. FNCIDA provides that the Governor in Council may make regulations to govern commercial and industrial undertakings on certain Indian reserve lands.
- B. Squamish Nation has requested by resolution of its council that the Minister of Indigenous Services recommend to the Governor in Council the making of certain Regulations governing residential tenancies in manufactured home parks and other residential developments on certain of its reserve lands.
- C. The Regulations specify certain Provincial Officials by whom powers will be exercised and duties will be performed.
- D. The parties wish to set out their agreement as to certain matters relating to the administration and enforcement of the Regulations by Provincial Officials and intend that this is an agreement under s. 5(1)(b) of FNCIDA.

In consideration of the mutual covenants in this agreement, the parties agree as follows:

1. INTERPRETATION

1.1 Definitions

1.1.1 In this agreement:

1.1.1.1 **“Enactment”** has the meaning given it in the *Interpretation Act*, (BC);

1.1.1.2 **“First Nation”** has the meaning given it in FNCIDA;

1.1.1.3 **“FNCIDA”** means the *First Nations Commercial and Industrial Development Act* (Canada);

1.1.1.4 **“Incorporated Laws”** has the meaning given it in the Regulations;

1.1.1.5 **“Management Committee”** means the committee established under section 3.1;

1.1.1.6 **“Project Lands”** means the lands described in Schedule A;

1.1.1.7 **“Provincial Official”** means a minister of the Crown in right of British Columbia, a person employed by British Columbia, or a person appointed to, or employed by, a provincial body; and

1.1.1.8 **“Regulations”** means the *Squamish Nation Residential Tenancy Regulations* (Canada), or any part of those regulations.

1.1.2 Words used in this agreement and not otherwise defined have the same meaning as in FNCIDA or the Regulations, as the case may be.

1.2 Agreement Structure

1.2.1 These are the parts of this agreement: article (1.), section (1.1), subsection (1.1.1), paragraph (1.1.1.1), and subparagraph (1.1.1.1(a)). Unless stated otherwise, any reference in this agreement to an article, section, subsection, paragraph, or subparagraph means the appropriate part of this agreement.

1.2.2 While an attachment to this agreement labelled as a “Schedule” forms part of this agreement, an attachment labelled as an “Appendix” is included only for the parties’ information and does not form part of this agreement.

1.3 Interpretation and Scope

- 1.3.1 This agreement is governed by and interpreted in accordance with the laws of British Columbia and Canada and, in the case of conflict, is governed by the common law rules regarding conflict between federal and provincial laws.
- 1.3.2 A word in the singular form may be read in the plural form if the context allows it and a word in the plural form may be read in the singular form if the context allows it.
- 1.3.3 The words include, includes, and including are to be read as if they are followed by the phrase “without limitation”.
- 1.3.4 Any reference to a statute or regulation means that statute or regulation as changed or replaced over time. Any reference to a British Columbia law as an Incorporated Law in the Regulations means that law as adapted by the Regulations.
- 1.3.5 Any reference to a minister, federal official, or Provincial Official is to be read to include a reference to any person who succeeds the minister or official in the performance of his, her, or their duties.
- 1.3.6 There is to be no presumption that any ambiguity in any of the terms of this agreement should be interpreted in favour of or against any party.
- 1.3.7 If any provision of this agreement is determined to be invalid or unenforceable in whole or in part, the invalidity or unenforceability is to attach only to that provision and everything else in this agreement will continue in full force and effect.
- 1.3.8 Headings and subheadings are for convenience only, do not form part of this agreement and do not define, limit, alter or enlarge the scope or meaning of any provision of this agreement.

1.4 No Admissions

- 1.4.1 The fact that all or a part of an Enactment is or is not incorporated by reference in the Regulations does not constitute an assertion or admission by any party that the Enactment, or part of it, does or does not apply of its own force to the Project Lands. For greater certainty, the incorporation by reference in the Regulations of a provincial “regulation” (as defined in the *Interpretation Act* (BC)) made under a particular provincial “Act” (as defined in the *Interpretation Act* (BC)) does not constitute an assertion or admission by

any party that that regulation, or any other regulation made under the same Act, does or does not apply of its own force to the Project Lands.

1.5 Term

1.5.1 This agreement commences on the date written on page one of this agreement and, subject to section 8.5, remains in force until the date the Regulations are repealed or are changed to cease to apply to the Project Lands.

2. OBJECTIVES

2.1 Shared Objectives

2.1.1 In entering into this agreement, the parties acknowledge that they share the following objectives:

2.1.1.1 to allow residential tenancies on the Project Lands to be regulated under the Incorporated Laws in substantially similar a manner as if the Project Lands were provincial fee simple lands;

2.1.1.2 to cooperate with each other to develop harmonious working relationships; and

2.1.1.3 to resolve any issues that might arise in relation to the application of the Regulations to the Project Lands in the most expeditious and cost-effective manner possible, consistent with a co-operative and harmonious working relationship between the parties.

3. MANAGEMENT COMMITTEE

3.1 Establishment and Purpose

3.1.1 The parties will establish a Management Committee as a forum for the parties to discuss, with the intent to resolve, any issues with the administration and operation of the Regulations and the implementation of this agreement including matters associated with:

3.1.1.1 any amendments or proposed amendments to Enactments, the Project Lands or the Regulations;

3.1.1.2 the exchange of information;

3.1.1.3 costs associated with the administration of the Regulations; and

3.1.1.4 the resolution of any disputes arising under this agreement.

3.2 Operation

3.2.1 The Management Committee will:

3.2.1.1 consist of three people – one appointed by each party – or their delegates;

3.2.1.2 establish its own procedures and operating guidelines consistent with this agreement;

3.2.1.3 endeavour to operate by consensus;

3.2.1.4 record any recommendations that it makes to the parties in writing; and

3.2.1.5 meet within a reasonable time after a request by any party.

3.2.2 If the Management Committee is unable to resolve an issue before it, it will advise the parties accordingly.

3.2.3 Meetings will be conducted by teleconference or videoconference, unless the Management Committee decides otherwise.

3.2.4 Any member of the Management Committee may invite additional persons to attend meetings.

3.2.5 Each party will bear its own costs for its participation in the Management Committee.

3.2.6 For greater certainty, the Management Committee is intended to resolve issues that the parties have not been able to resolve through regular communications. Nothing in this agreement is intended to preclude such communications.

3.2.7 If, after the effective date of this agreement, a regulation under FNCIDA is enacted to apply the Incorporated Laws to the reserve lands of another First Nation in British Columbia and the related agreement required under section 5(1)(b) of FNCIDA contemplates the establishment of a forum similar to the Management Committee, the parties will review and consider amending this agreement to enable the Management Committee and that forum to meet

jointly to address matters of common interest associated with the administration and operation of the Incorporated Laws and the implementation of the agreements.

4. INFORMATION SHARING

4.1 Notice by British Columbia

4.1.1 Subject to being able to maintain Cabinet confidence and if not otherwise statutorily required to provide certain information to a party, British Columbia will notify the other parties of any:

4.1.1.1 changes to the Incorporated Laws of which it is aware;

4.1.1.2 new Enactment made under an Enactment specified in Schedule 2 of the Regulations of which it is aware; and

4.1.1.3 judicial or quasi-judicial proceeding relating to Canada's authority to incorporate an Enactment in the Regulations or to the validity of the Regulations of which it is aware.

4.2 Notice by Canada

4.2.1 Subject to being able to maintain Cabinet confidence, Canada will consult with the other parties about any proposed changes to the Regulations.

4.3 Notice by Squamish Nation

4.3.1 Subject to being able to maintain Council confidence, Squamish Nation will:

4.3.1.1 notify the other parties of lands that it wishes to add to or remove from the Regulations; and

4.3.1.2 notify the other parties of any intention to enact a law regarding residential tenancy, manufactured home parks, within the Project Lands, or any matter that may affect the Regulations.

5. THE PROJECT LANDS

5.1 Additions to the Project Lands

- 5.1.1 At least 6 months before Squamish Nation intends for the Regulations to apply to any additional lands, Squamish Nation will provide written notice to British Columbia and Canada with a description and plan of the lands, including their location, size, and estimated number of rental units or manufactured home sites on or to be constructed upon the lands.
- 5.1.2 Canada will not add such additional lands to the Regulations without the prior consent of British Columbia. If consent is given, the parties will amend this agreement to include such additional lands as Project Lands.

6. EXERCISE OF POWERS AND PERFORMANCE OF DUTIES

6.1 Equal Enforcement

- 6.1.1 Where the Regulations incorporate by reference an Enactment that provides for the administration and enforcement by Provincial Officials specified in the Regulations, British Columbia:
- 6.1.1.1 agrees that those Provincial Officials specified in the Regulations may administer and enforce the Regulations; and
 - 6.1.1.2 will endeavour to cause those Provincial Officials to provide substantially the same level of administration and enforcement as the Provincial Official provides from time to time in similar situations in the administration and enforcement of that Enactment off-reserve.
- 6.1.2 This section is not to be interpreted so as to fetter the discretion of any Provincial Official acting under the Regulations.

6.2 Prosecutions

- 6.2.1 Prosecutions of offences under the Regulations will be in accordance with the *Crown Counsel Act*, RSBC 1996, c 87 (*Crown Counsel Act*).
- 6.2.2 Subject to subsection 6.2.1, the parties recognize that this agreement does not alter the authority and discretion of the Assistant Deputy Attorney General of the British Columbia Criminal Justice Branch (also known as the British Columbia Prosecution Service) who is charged with carrying out the functions and responsibilities in section 2 of the *Crown Counsel Act* including the

approval and conduct of all prosecutions of offences and the initiation of, response to, and conduct of all appeals and other proceedings in respect of any prosecution.

6.3 Dispute Resolution Proceedings

6.3.1 British Columbia and Squamish will upon request negotiate and attempt to reach agreements in relation to residential tenancy matters on the Project Lands involving Squamish members, to provide for:

6.3.1.1 cultural safety and/or cultural awareness training of Residential Tenancy Branch staff, including dispute resolution arbitrators;

6.3.1.2 measures to help Squamish members navigate the dispute resolution process; and

6.3.1.3 opportunities to settle disputes between Squamish tenants and the Squamish Nation (or its agencies) using alternate dispute resolution processes.

6.3.2 For greater certainty, the opportunities to settle disputes contemplated in Section 6.3.1.3 are in addition to, and do not amend, replace or limit, any opportunities or rights tenants or landlords may already have under provincial legislation.

6.3.3 Agreements contemplated under Section 6.3.1 may be subject to cost sharing or contribution agreements with Canada.

7. REVENUES AND COSTS

7.1 Revenues

7.1.1 All money collected under Enactments incorporated by reference in the Regulations, including fines and administrative monetary penalties collected in the course of enforcing the Regulations, will be collected and managed by British Columbia, or the Provincial Official specified in the Incorporated Law, in accordance with provincial law.

7.2 Costs

7.2.1 Subject to any cost sharing or contribution agreements the parties may negotiate or enter into, each party is responsible for its own costs under this agreement and neither Canada nor Squamish Nation has agreed to be

responsible for costs incurred by British Columbia, or the Provincial Official specified in the Incorporated Law, in the administration and enforcement of the Regulations. This is not intended to limit or otherwise affect the power to impose or collect fees, charges or other amounts under an Incorporated Law.

- 7.2.2 Subject to any cost sharing or contribution agreements the parties may negotiate or enter into and notwithstanding subsection 7.2.1, the parties acknowledge that it is not intended that British Columbia incur significant additional costs associated with the administration and enforcement of the Regulations and if British Columbia believes that it has, the parties will discuss and attempt to resolve the issue at the request of British Columbia.
- 7.2.3 Nothing in subsections 7.2.1 or 7.2.2 is intended to preclude cost sharing or contribution agreement discussions or negotiations associated with the administration and enforcement of the Regulations or any other regulation under FNCIDA enacted to apply the Incorporated Laws to the reserve lands of another First Nation in British Columbia directly between British Columbia and Canada.

8. INDEMNITIES

8.1 Definitions

8.1.1 The following definitions apply in this article:

8.1.1.1 **“Expenses”** includes:

- (a) legal fees, expenses and disbursements reasonably incurred by an Indemnified Party, whether charged by lawyers retained by British Columbia or another Indemnified Party or incurred as a result of legal services provided directly by British Columbia’s Ministry of Attorney General, reasonably attributable to a claim by a Third Party; and
- (b) salaries of Provincial Officials reasonably attributable to conducting or managing a claim by a Third Party;

8.1.1.2 **“Indemnified Party”** means British Columbia, a Provincial Official or provincial body, or an agent or contractor of any of them (including retired Provincial Officials); and

8.1.1.3 **“Third Party”** means a person other than Canada, Squamish Nation, or an Indemnified Party.

8.2 General Indemnity for British Columbia from Canada

8.2.1 Notwithstanding section 7.2, Canada will indemnify the Indemnified Parties for all damages, losses, and Expenses arising directly or indirectly from Third Party claims relating to:

8.2.1.1 any challenge to the constitutionality or validity of the Regulations or the authority or power of any Indemnified Party to administer or enforce the Regulations, whether or not the allegations relating to the challenge are groundless, false, an abuse of process or otherwise without merit; or

8.2.1.2 the administration and enforcement of any provision of the Regulations, if the claim is attributable to an adaptation to an Enactment made by the Regulations,

regardless of whether Canada has conduct of all or part of the claim.

8.2.2 The indemnity in subsection 8.2.1 does not apply to the extent that:

8.2.2.1 a British Columbia “regulation” (as defined in the *Interpretation Act* (BC)) incorporated by reference in the Regulations is beyond the authority of its enabling “Act” (as defined in the *Interpretation Act* (BC));

8.2.2.2 an Enactment incorporated by reference in the Regulations is contrary to the *Canadian Charter of Rights and Freedoms*; or

8.2.2.3 the Indemnified Party has, in relation to the conduct that is the subject-matter of the claim, acted in bad faith or engaged in conduct that constitutes bad faith:

(a) a marked and flagrant departure from the standard of conduct of a reasonable person acting in the circumstances at the time of the alleged misconduct; or

(b) wanton and reckless conduct, or an omission, that constitutes in effect an utter disregard for harmful, foreseeable and avoidable consequences.

8.3 Procedures for Third Party Claims

8.3.1 On becoming aware of any claim in respect of which an Indemnified Party may seek indemnification under this agreement, British Columbia must promptly

- notify Canada and Squamish Nation in writing of the claim. Any delay by British Columbia in notifying Canada or Squamish Nation of a claim does not relieve their respective obligations under this agreement, except to the extent that party is prejudiced by the delay.
- 8.3.2 After providing notice under subsection 8.3.1, British Columbia will determine whether it will conduct all or a portion of the defence of the claim or will request Canada to assume conduct of all or a portion of the claim. British Columbia and Canada may discuss how to defend the claim, including the extent of any joint participation in defence of the claim and how costs of such joint participation are to be addressed.
- 8.3.3 If British Columbia requests Canada to assume conduct of all or a portion of the claim under subsection 8.3.2, Canada will decide whether it will assume the requested conduct. If Canada decides to defend all or a portion of the claim as requested:
- 8.3.3.1 it will give notice to British Columbia of its intention to do so, and will confirm the scope of any joint participation;
 - 8.3.3.2 it will vigorously defend all or the portion of the claim for which it assumes conduct;
 - 8.3.3.3 it will obtain British Columbia's agreement before advancing any legal positions on behalf of the provincial official or provincial body acting as the decision-maker;
 - 8.3.3.4 except as agreed in relation to joint participation in defence of a claim, it will not be responsible for any costs incurred by any Indemnified Parties in defending the claim after giving notice under subparagraph 8.3.3.1;
 - 8.3.3.5 the other parties agree to cooperate fully with Canada in respect of the defence; and
 - 8.3.3.6 subsections 8.3.4 to 8.3.7 apply.
- 8.3.4 Canada will inform British Columbia regarding the appointment of counsel to defend the claim or portion of the claim for which it is responsible and will keep British Columbia and Squamish Nation informed of the progress of the claim, or portion of the claim, for which it is responsible, on a regular basis. Canada will consult with British Columbia on the substantive legal positions to be advanced in defence of the claim.

- 8.3.5 Canada may enter into a settlement of the claim if it obtains the written consent of British Columbia, on behalf of itself or any Indemnified Party, in advance. A request for consent must state that it is being delivered under this agreement. Consent must not be unreasonably withheld, delayed, or conditioned. No party is to be required to admit liability as part of a proposed settlement.
- 8.3.6 If, within ten business days after Canada's request for consent from British Columbia under subsection 8.3.5, British Columbia fails to give its written consent to the proposed settlement of the claim, unless British Columbia is entitled to withhold its consent on the basis that the proposed settlement requires an admission of liability by an Indemnified Party, Canada may require British Columbia to assume the defence of the claim or the portion of the claim for which it is responsible. In these circumstances, whether or not Canada decides to require British Columbia to assume defence of the claim, or portion of the claim, Canada is responsible in respect of the claim only for the amount for which Canada could have made settlement, plus its costs of defending the claim or portion of the claim up to the date that Canada provided British Columbia with notice under subsection 8.3.5.
- 8.3.7 To the extent that Canada and British Columbia agree to the joint participation of British Columbia in the defence of the claim, British Columbia:
- 8.3.7.1 will inform Canada and Squamish Nation of the appointment of counsel to be involved in jointly defending the claim;
 - 8.3.7.2 will keep Canada and Squamish Nation informed of the progress of its joint participation in the claim; and
 - 8.3.7.3 will consult with Canada on the substantive legal positions to be advanced but reserves the right to advance its own legal positions in defence of the claim.
- 8.3.8 If Canada determines that it will not conduct the defence of the claim, British Columbia must defend the claim vigorously and subsections 8.3.9 and 8.3.10 apply.
- 8.3.9 Canada and Squamish Nation must cooperate fully with British Columbia in respect of the defence of the claim.
- 8.3.10 British Columbia may enter into a settlement of a claim if it obtains the written consent of Canada, in advance, which consent must not be unreasonably

withheld, delayed, or conditioned. No party is to be required to admit liability as part of a proposed settlement.

8.3.11 Squamish Nation may apply to seek status as a party in any legal proceedings with respect to a claim, but does so at its own cost. The party or parties defending the legal proceedings will provide their consent to any such application and must reasonably cooperate with Squamish Nation in defending the claim.

8.3.12 Nothing in this section precludes the Attorney General of British Columbia from participating in a claim pursuant to the *Constitutional Question Act* (BC) or limits the arguments the Attorney General of British Columbia may make if the Attorney General of British Columbia elects to so participate.

8.4 Arbitration of Indemnity

8.4.1 The parties agree to refer any dispute as to whether a claim is properly the subject matter of an indemnity, or the amount of any indemnity payable under this article, to a single arbitrator under the *Arbitration Act* (BC). If the parties to the dispute cannot agree on an arbitrator within 20 business days of the referral, then the arbitrator will be appointed by the Vancouver International Arbitration Centre, or its successor or similar body if neither is available.

8.4.2 The decision of the arbitrator is final and binding on the parties to the arbitration.

8.4.3 The cost of the arbitrator will be paid equally by each party to the arbitration unless the arbitrator orders a different division.

8.5 Survival

8.5.1 The provisions of this article survive the termination of this agreement and the parties' rights and obligations as set out in this article continue despite the termination of this agreement.

9. GENERAL PROVISIONS

9.1 Delivery

9.1.1 Any notice or request for consent to be given to a party under this agreement must be delivered, in writing, by fax, email or personal delivery to the following addresses:

To Canada:

Director, Lands and Economic
Development
Indigenous Services Canada
600 – 1138 Melville Street
Vancouver, BC
V6E 4S3

Fax: (604) 775-7149

Email:

To Squamish Nation:

Squamish Nation
320 Seymour Blvd.
North Vancouver, BC
V7J 2J3

Fax: (604) 980-4523

Email:

To British Columbia:

Executive Director
Implementation & Legislation Unit
Ministry of Aboriginal Relations and
Reconciliation
PO Box 9100 Stn Prov Govt
Victoria, BC
V8W 9B1

Fax: (250) 356-2591

Email:

9.1.2 A party may change its contact information by means of a notice delivered in accordance with this section, and such change will take effect immediately upon that notice being delivered.

9.1.3 If the delivery date is disputed, then it is conclusively deemed to be delivered on the day of transmission, if sent by fax or email, or on the day delivery is made, if hand-delivered (including by courier).

9.2 Entire Agreement

9.2.1 This agreement sets out the entire agreement among the parties, and no other undertakings, representations, or promises, express or implied, have been made by the parties on the matters dealt with by this agreement.

- 9.2.2 This agreement, or any amendment to it, may be executed in one or more counterparts, each of which is considered to be an original but all of which together constitute one and the same instrument.
- 9.2.3 Any amendments to this agreement must be in writing and must be executed in the same manner as this agreement.
- 9.2.4 Any waivers of any obligation under this agreement must be in writing. A written waiver from Canada is only effective if it is signed by a person who is appointed to, or acting at, a Director level or higher.

9.3 Confidentiality

- 9.3.1 To the extent permitted by and in accordance with applicable laws, each party will keep confidential any information identified as confidential that is communicated to it by or on behalf of any other party.

9.4 Failure to Exercise

- 9.4.1 Failure by a party to exercise any of its rights, powers or remedies under this agreement, or any delay in doing so, does not constitute a waiver of those rights, powers or remedies. The single or partial exercise of a right, power or remedy does not prevent its subsequent exercise or the exercise of any other right, power or remedy.

9.5 Enurement & Assignment

- 9.5.1 This agreement benefits and binds each party's heirs, successors, and other legal representatives.
- 9.5.2 This agreement may not be assigned.

9.6 First Nation Authority

- 9.6.1 Squamish Nation represents that its council, at a duly convened meeting and by a duly executed resolution, authorized Squamish Nation's signatory to execute this agreement on Squamish Nation's behalf.

The parties make this agreement as of the date on the top of page 1.

HIS MAJESTY IN RIGHT OF CANADA

Minister of Indigenous Services

**HIS MAJESTY IN RIGHT OF BRITISH
COLUMBIA**

Minister of Indigenous Relations and
Reconciliation

SQUAMISH NATION

Squamish Nation's authorized signatory

Schedule A – Project Lands

- Province of British Columbia, Seaichem Indian Reserve No. 16, Lot 6, as shown on Plan of Survey No. 99312 deposited in the Canada Lands Survey Records at Ottawa, Ontario
- Province of British Columbia, Capilano Indian Reserve No. 5, Lot 395, as shown on Plan of Survey No. 109581 deposited in the Canada Lands Survey Records at Ottawa, Ontario
- Province of British Columbia, Capilano Indian Reserve No. 5, Lot 357, as shown on Plan of Survey No. 98248 deposited in the Canada Lands Survey Records at Ottawa, Ontario
- Province of British Columbia, Kitsilano Indian Reserve No. 6, Lots 1, 2 and 3, as shown on Plan of Survey No. 95942 deposited in the Canada Lands Survey Records at Ottawa, Ontario