

DRAFT

INDIVIDUAL AGREEMENT
ON
FIRST NATION LAND MANAGEMENT

BETWEEN

XENI GWET'IN FIRST NATIONS GOVERNMENT

AND

HIS MAJESTY THE KING 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 MONEYS	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	9
12. DATE OF COMING INTO FORCE.....	9
SIGNATURE BLOCK.....	10
ANNEX "A" - FUNDING PROVIDED BY CANADA	11
ANNEX "B" - DETAILS FOR THE TRANSFER OF MONEYS.....	12
ANNEX "C" - LIST OF INTERESTS AND LICENCES GRANTED BY CANADA.....	13
ANNEX "D" - LIST OF ALL EXISTING INFORMATION IN CANADA'S POSSESSION RESPECTING ANY ACTUAL OR POTENTIAL ENVIRONMENTAL PROBLEMS WITH THE FIRST NATION LANDS	14
ANNEX "E" - LIST OF OTHER MATERIAL INFORMATION PROVIDED BY CANADA THAT MATERIALLY AFFECTS INTERESTS AND LICENCES	15
ANNEX "F" - INTERIM ENVIRONMENTAL ASSESSMENT PROCESS.....	16
ANNEX "G" - DESCRIPTION OF XENI GWET'IN FIRST NATIONS GOVERNMENT LAND.....	18

THIS AGREEMENT made this ____ day of _____, 20__.

**INDIVIDUAL AGREEMENT
ON
FIRST NATION LAND MANAGEMENT**

BETWEEN:

XENI GWET'IN FIRST NATIONS GOVERNMENT, as represented by their Chief and Council (hereinafter called the "Xeni Gwet'in First Nations Government" or the "First Nation")

AND

HIS MAJESTY THE KING IN RIGHT OF CANADA, (hereinafter called "Canada") as represented by the Minister of Indigenous Services (hereinafter called the "Minister")

(the "Parties")

WHEREAS Canada and 13 First Nations signed the Framework Agreement on First Nation Land Management (the "Framework Agreement") on February 12, 1996 in relation to the management by those First Nations of their lands, and other First Nations have signed the Framework Agreement after that date;

AND WHEREAS the *Framework Agreement on First Nation Land Management Act* (the "Act") provides that the Framework Agreement has the force of law;

AND WHEREAS the First Nation has been added as a signatory to the Framework Agreement by an adhesion signed by the First Nation on July 27, 2020.

AND WHEREAS the First Nation and Canada wish to provide for the assumption by the First Nation of responsibility for the administration of Xeni Gwet'in First Nations Government Land in accordance with the Framework Agreement and the Act;

AND WHEREAS clause 6.1 of the Framework Agreement requires the First Nation and the Minister to enter into an individual agreement for the purpose of providing for the specifics of the transfer of administration;

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 *Framework Agreement on First Nation Land Management Act*, 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;

"Xeni Gwet'in First Nations Government Land" means the land to which the Land Code will apply and more specifically means the reserves known as Chilco Lake Indian Reserve No. 1 (08262), Garden Indian Reserve No. 2 (08264), Garden Indian Reserve No. 2A (08265) and Tsunnia Lake Indian Reserve No. 5 (08268) as described in the Land Description Reports 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 4.16 of the Framework Agreement and more specifically means the reserves known as Chilco Lake Indian Reserve No. 1A (08263), Lohbiee Indian Reserve No. 3 (08266), Tanakut Indian Reserve No. 4 (08267) and Lezbye Indian Reserve No. 6 (08269) as described in the Land Description Reports 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 Xeni Gwet'in First Nations Government, 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 Xeni Gwet'in First Nations Government Land Code, developed in accordance with clause 5 of the Framework Agreement;

“Minister” means the Minister of Indigenous Services and his or her representatives;

“Operational Funding” means the resources to be provided by Canada to the Xeni Gwet’in First Nations Government 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 The Minister has, to the best of the Minister’s knowledge, provided the First Nation with the information required by clause 6.3 of the Framework Agreement, namely:
 - (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 Xeni Gwet’in First Nations Government 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 Xeni Gwet’in First Nations Government 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 has, in writing, acknowledged receipt of all the information provided to it by the Minister.

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 Xeni Gwet'in First Nations Government Land in accordance with clause 12 of the Framework Agreement.
- 3.2 As provided in section 8 of the Act, all of the rights and obligations of Canada as grantor in respect of the interests and licences in or in relation to Xeni Gwet'in First Nations Government Land that exist on the coming into force of the Land Code shall be transferred to the First Nation 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 and the Framework Agreement, the following:
- (a) the collection of all rents and other amounts owing, payable or accruing pursuant to any instrument granting an interest or a licence in or in relation to Xeni Gwet'in First Nations Government 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 clauses 3.1 and 3.2 of the Framework Agreement, which addresses the applicability 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 licences 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:
- (a) the land management provisions of the *Indian Act*, as listed in clause 21 of the Framework Agreement cease to apply and Canada retains no powers and obligations in relation to Xeni Gwet'in First Nations Government Land under these provisions; and
 - (b) the First Nation shall commence administering Xeni Gwet'in First Nations Government 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 Xeni Gwet'in First Nations Government 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 clause 5.1 will be incorporated by the Parties into the Xeni Gwet'in First Nations Government'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.

6. TRANSFER OF MONEYS

- 6.1 Following the date that the Land Code comes into force, Canada shall transfer the revenue and capital moneys referred to in clause 12.8 of the Framework Agreement to the First Nation in accordance with the provisions set out in Annex "B".
- 6.2 Revenue and capital 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 and capital 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.

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 Xeni Gwet'in First Nations Government 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 Xeni Gwet'in First Nations Government Land and Canada's rights in Xeni Gwet'in First Nations Government Land, other than title, will be transferred to the First Nation effective the date the Land Code comes into force;

- (b) the holder of the interest or licence 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 Xeni Gwet'in First Nations Government 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 licence 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 Xeni Gwet'in First Nations Government Land until the First Nation's environmental assessment process is developed.

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
Indigenous Services Canada, BC Region
600–1138 Melville Street
Vancouver, British Columbia V6E 4S3
Fax: (604) 775-7149

Xeni Gwet'in First Nations Government:

General Delivery
Nemiah Valley, British Columbia V0L 1X0
Fax: (250) 394-7043

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.

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 First Nation Land Management until the Land Code comes into force in accordance with the provisions of the Land Code and the Framework Agreement.

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 Indigenous Services has signed this Agreement on behalf of His Majesty the King in right of Canada, on _____, 20____.

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

Xeni Gwet'in First Nations Government

Chief Roger William

Regional Director General, BC Reg
for the Minister of Indigenous Servi

Councillor James Lulua Jr.

Councillor Margaret Lulua

ANNEX "A"

FUNDING PROVIDED BY CANADA

- (a) The amount of Operational Funding by Fiscal Year is shown in the table below. The amount shall be prorated based on the number of months from the date the Land Code comes into force to the end of the Fiscal Year, and the First Nation shall be paid the prorated amount for that year. Transitional Funding will be provided for the year the Land Code comes into force and for the subsequent Fiscal Year, as shown in the table below.
- (b) Operational Funding will increase 1% annually over the term of the Memorandum of Understanding which ends March 31, 2023.
- (c) Subject to appropriation by Parliament and the approval of the Treasury Board of Canada, Operational Funding for Fiscal Years after March 31, 2023, will be calculated and provided in accordance with the Operational Funding Formula as amended from time to time.

OPERATIONAL FUNDING	
2023-2024 Fiscal Year	\$283,313 (This amount shall be prorated in accordance with paragraph (a) above) and \$ 75,000.00 - One time Transitional Funding per 1 st Fiscal Year
Subsequent Fiscal Year(s)	Subject to paragraph (c) above, Operational Funding will be calculated and paid each Fiscal Year based on the Operational Funding Formula as amended from time to time.

ANNEX "B"

DETAILS FOR THE TRANSFER OF MONEYS

1. As of the ___ day of _____, _____, Canada is holding \$ _____ of revenue moneys and \$ _____ of capital 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 and capital moneys collected, received or held by Canada for the use and benefit of the First Nation or its members.
3. **Subsequent Transfers.** Following an initial transfer of moneys, Canada shall, on a semi-annual basis, transfer to the First Nation all revenue and capital moneys that are subsequently collected or received by Canada for the use and benefit of the First Nation or its members. 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.

Note: This information is confidential to Xeni Gwet'in First Nations Government and its members, and will be provided directly to the Land Code Coordinator. This information will be inserted at a later date, when the Individual Agreement is reviewed by Chief and Council.

ANNEX "C"

LIST OF INTERESTS AND LICENCES GRANTED BY CANADA

All interests and licences granted by Canada in or in relation to the Xeni Gwet'in First Nations Government 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 Xeni Gwet'in First Nations Government Land Management Office located at General Delivery Nemiah Valley British Columbia V0L 1X0:

Reserve General Abstract Reports for:

- Chilco Lake Indian Reserve No. 1 (08262)
- Chilco Lake Indian Reserve No. 1A (08263)
- Garden Indian Reserve No. 2 (08264)
- Garden Indian Reserve No. 2A (08265)
- Lohbiee Indian Reserve No. 3 (08266)
- Tanakut Indian Reserve No. 4 (08267)
- Tsunnia Lake Indian Reserve No. 5 (08268)
- Lezbye Indian Reserve No. 6 (08269)

Lawful Possessors Reports for:

- Nil

Lease or Permits Reports for:

- Nil

The above reports identify all interests or licences 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 XENI GWET’IN FIRST NATIONS GOVERNMENT LANDS

Executive Summary – Phase 1 Environmental Site Assessment – Xenigwet’in First Nations Government, _____ – prepared by [name of consultants to be inserted here] – [date of report to be inserted here].

The complete Phase 1 Environmental Site Assessment report is available for review at the Xenigwet’in First Nations Government Land Management Office located at General Delivery Nemiah Valley British Columbia V0L 1X0.

Alternatively, the documents are also available for review online at <https://www.xenigwetin.ca/>

NOTE: Annex D will be updated to insert the name of the consultants, date of the report once it is finalized by the Joint Management Committee.

ANNEX “E”

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

- Information regarding upcoming rent reviews – TBC
- Information regarding any outstanding rents – TBC
- Information regarding instruments that have recently expired or will expire imminently – TBC
- Information pertaining to the end of term provisions for any active instruments – TBC
- Information regarding any corrections to individual land holdings – TBC
- Information regarding unregistered Timber, Sand and Gravel Permits – TBC

NOTE: Annex E will be updated to include information, such as upcoming rent reviews, outstanding rents, instruments that have recently expired or will expire imminently, end of term provisions for any active instruments, corrections to individual land holdings, and timber, sand and gravel permits, if any.

ANNEX "F"

INTERIM ENVIRONMENTAL ASSESSMENT PROCESS

The Framework Agreement specifies that the First Nation and the Minister will address in the Individual Agreement how to conduct environmental assessments on First Nation land on an interim basis until the First Nation's environmental assessment process is developed. This Annex describes that interim environmental assessment process.

The interim process is intended to be broadly consistent with requirements of the federal environmental assessment process but without imposing requirements that are only appropriate to federal organizations and departments.

- 1) The First Nation shall carry out an environmental assessment in circumstances where federal environmental assessment legislation would likely require Canada to carry out an environmental assessment for a project on federal lands.
- 2) When the First Nation must conduct an environmental assessment of a proposed project, the First Nation shall ensure that the environmental assessment is carried out in the early planning stages of the project, before the First Nation makes an irrevocable decision that would allow the project to proceed (i.e. approve, regulate, fund or undertake the project). The environmental assessment shall be conducted at the expense of the First Nation or proponent of the project.
- 3) The First Nation shall not approve, regulate, fund, or undertake the project unless the First Nation has determined that:
 - a. the project is unlikely to cause any significant adverse environmental effects; or
 - b. that those effects are justifiable under the circumstances,taking into consideration:
 - the results of a required environmental assessment;
 - any economically and technically feasible mitigation measures identified as necessary during the assessment; and
 - any public comments received during the assessment.
- 4) If the First Nation approves, regulates, funds, or undertakes the project, the First Nation shall conduct project monitoring, review implementation of approved mitigation measures, and follow-up programs as the First Nation considers necessary.
- 5) If a project on First Nation land is also subject to a federal or provincial

environmental assessment process, the First Nation must make its own determination in accordance with Section 3 above, but may:

- a. agree with the Province, Canada, or both on a harmonized environmental assessment process appropriate to that project, taking into account the Framework Agreement's principle that the First Nation's environmental assessment process be used where a federal environmental assessment is required; or
- b. use the environmental assessment completed by the Province, Canada, or both, in substitution for undertaking a First Nation-led environmental assessment process.

ANNEX "G"

DESCRIPTION OF XENI GWET'IN FIRST NATIONS GOVERNMENT LAND

The following Land Descriptions prepared by Matthew Mooy of Natural Resources Canada under First Nation Land Management are available for review at the Xenigwet'in First Nations Government Land Management Office located at General Delivery Nemiah Valley British Columbia V0L 1X0.

NOTE: Annex G will be updated to include the Field Book Numbers for the Land Description Reports for each reserve listed below once the reports are approved by ISC and the First Nation and recorded by NRCAN in the Canada Lands Survey Records (CLSR).

- Chilco Lake Indian Reserve No. 1 (08262)
- Chilco Lake Indian Reserve No. 1A (08263)
- Garden Indian Reserve No. 2 (08264)
- Garden Indian Reserve No. 2A (08265)
- Lohbiee Indian Reserve No. 3 (08266)
- Tanakut Indian Reserve No. 4 (08267)
- Tsunnia Lake Indian Reserve No. 5 (08268)
- Lezbye Indian Reserve No. 6 (08269)

The documents are also available for review online using the links below: <https://www.xenigwetin.ca>