

**CONSERVATION INVESTMENTS AND INCENTIVES AGREEMENT**

THIS AGREEMENT made this <sup>2<sup>nd</sup></sup> day of <sup>May</sup>, 2007 (the "Effective Date").

AMONG:

**COAST CONSERVATION ENDOWMENT FUND FOUNDATION**  
(the "Foundation")

AND:

**COAST ECONOMIC DEVELOPMENT SOCIETY**  
(the "Society")

AND:

**The Nature Conservancy ("TNC"), The William and Flora Hewlett Foundation**  
(the "Hewlett Foundation"), **The Gordon and Betty Moore Foundation**  
(the "Moore Foundation"), **David and Lucile Packard Foundation**  
(the "Packard Foundation"), **The Rockefeller Brothers Fund** (the "Rockefeller Fund")  
and **Tides Canada Foundation** ("Tides Canada")  
(each a "Private Funder", and collectively the "Private Funders")

WHEREAS:

- A. The Foundation is a not-for-profit society incorporated in British Columbia which is a registered charity under the *Income Tax Act* of Canada (as defined below) and that has been recognized by the United States Internal Revenue Service as a public charity described in section 501(c)(3) and 509(a) of the Internal Revenue Code;
- B. The Society is a not-for-profit society incorporated in British Columbia;
- C. The Foundation will administer an endowment fund, the available income from which will be used to fund Conservation activities in accordance with this Agreement and the purposes of the Foundation and the Society will administer an economic development funding program, in accordance with this Agreement and the purposes of the Society. Together, the programs and funds of the Society and Foundation will collectively be referred to as the "Conservation Investments and Incentives Initiative";
- D. Each of the Private Funders, other than Tides Canada, are US 501(c)(3) not for profit corporations organized under the laws of one of the states or districts of the United States of America and based in the United States. Tides Canada is a Canadian public foundation with charitable status in Canada and US 501(c)(3) and 509(a) status in the United States;

- E. British Columbia has indicated that it intends to implement the initial elements of Ecosystem Based Management (defined below as "EBM") throughout the Project Area, except Haida Gwaii (Queen Charlotte Islands) and in the South Kalum Exception, as set out in Schedule A;
- F. British Columbia has entered into or is seeking to enter into Land Use Planning Agreements with First Nations in the Project Area as set out in Schedule B;
- G. British Columbia has announced that all areas identified for protection on the map attached as Schedule C will receive legislated protection substantially in the form attached, either under the *Protected Areas of British Columbia Act* or the *Park Act*, as Class A provincial parks, or as a conservancy;
- H. Through government-to-government discussions, and informed by the EBM Working Group, British Columbia has indicated that it will work collaboratively with the Participating First Nations to achieve full implementation of EBM. British Columbia's goal is to implement EBM in the Project Area by March 31, 2009 as evidenced by the Protocol Agreements and Agreement-in-Principle attached as Schedule D.;
- I. British Columbia and the Council of the Haida Nation are currently engaged in land use planning discussions that may lead to consensus in respect of land use planning, protection areas and implementation of EBM on Haida Gwaii (Queen Charlotte Islands);
- J. The parties wish to achieve the economic development and conservation outcomes set out in Schedule E; and,
- K. The parties wish to enter into this Agreement to confirm the commitments made by the Foundation, the Society, and the Private Funders with respect to certain contributions to be made by the Private Funders, Canada and British Columbia to the Foundation and the Society (attached as Schedule F).

NOW THEREFORE this Agreement witnesses that, in consideration of the covenants herein contained, the parties agree as follows:

## 1. INTERPRETATION

### 1.1 Definitions

1.1.1 In this Agreement, unless the context otherwise requires:

- (a) "**Agency Agreement**" means a written agreement consistent with the terms of this Agreement between the Foundation or the Society and another entity, including a First Nation, whether or not such First Nation is a "qualified donee" as such term is defined in the *Income Tax Act*;

- (b) "**Board of Directors**" means the board of directors of either the Foundation or the Society as the context so requires;
- (c) "**Business Day**" means any day other than Saturday, Sunday or a day on which the banker of either the Foundation or the Society is not open for business in Vancouver, British Columbia;
- (d) "**Conservation**" means preservation or enhancement of the natural environment;
- (e) "**Conservation Planning Projects**" means regionally-focused Conservation planning projects including EBM planning, training or capacity development projects that are jointly proposed by a minimum of two Participating First Nations, are aimed at addressing First Nation Conservation planning needs and otherwise meet the Foundation requirements for funding under this Agreement;
- (f) "**EBM**" means an adaptive, systematic approach to managing human activities guided by the EBM Handbook, that seeks to ensure the co-existence of healthy, fully functioning ecosystems and human communities;
- (g) "**EBM Handbook**" means the CIT Ecosystem-Based Management Planning Handbook, March 2004;
- (h) "**EBM Working Group**" means the EBM Working Group established by British Columbia on October 30, 2006;
- (i) "**Financing Table**" means the allocation of the Foundation Contribution and the Society Contribution attached as Schedule G;
- (j) "**First Nation**" means a First Nation of British Columbia whose Traditional Territory, or a portion thereof, is within the Project Area;
- (k) "**Foundation Contribution**" means the sum of \$60,000,000.00, if any, paid to the Foundation or the Foundation Escrow Account by the Private Funders in accordance with the terms of section 2.2.1 of this Agreement and specifically excludes Foundation Contribution Income;
- (l) "**Foundation Contribution Income**" means all income earned on the Foundation Contribution, whether interest, dividends or realized capital gains net of allowable costs and taxes;
- (m) "**Foundation Escrow Account**" means an account held by an independent third party escrow holder, to which the Foundation Contribution will be paid in accordance with the terms of section 2.2.1 of this Agreement;
- (n) "**Foundation Escrow Agreement**" is an agreement entered into by the Private Funders and the Foundation with an independent third party escrow holder with

respect to the terms upon which the funds held within the Foundation Escrow Account will be administered;

- (o) **"Funders' Threshold"** means:
  - (i) the Private Funders are satisfied that the Initial Implementation Steps for EBM have been completed;
  - (ii) at least 2.025 million hectares of the Project Area is a Protected Area; and
  - (iii) EBM is in the process of being implemented throughout the Project Area except on Haida Gwaii (the Queen Charlotte Islands) and in the South Kalum Exception.
- (p) **"Income Tax Act"** means the *Income Tax Act* R.S.C. 1985 (5<sup>th</sup> Supp.), c.1 as amended from time to time;
- (q) **"Initial Implementation Steps for EBM"** means:
  - (i) for all of the Traditional Territory of First Nations in the North and Central Coast regions within the Project Area as shown on Schedule B:
    - (a) an EBM Working Group is established and funded by British Columbia;
    - (b) an EBM operational implementation plan has been developed and adopted; and
  - (ii) for all of the North and Central Coast regions of the Project Area, an initial suite or suites of legal objectives to implement EBM which demonstrate British Columbia's best efforts to ensure that as many of the management objectives set out in Schedule A as possible are established by Ministerial Order under the *Land Act*.
- (r) **"Initial Directors"** means the directors of the Foundation and of the Society appointed by the members of the Foundation and of the Society respectively, within 90 days of the execution of this Agreement;
- (s) **"Internal Revenue Code"** means the Internal Revenue Code of the United States of America, as amended from time to time;
- (t) **"Internal Revenue Service"** means the United States Internal Revenue Service;
- (u) **"Land and Resource Forum"** means government-to-government forum(s) within the Project Area, where British Columbia and Participating First Nations will meet

to discuss issues of mutual concern, including the implementation of EBM, in accordance with any applicable terms of reference, protocols, or other agreements;

- (v) **"Land Use Planning Agreement"** means an agreement entered into by British Columbia, by Canada, or both, and one or more Participating First Nations that identifies land use zones, commits to EBM, and defines objectives, strategies and practices for the management of cultural and natural resources throughout that portion of the Participating First Nation's Traditional Territory that lies within the Project Area, other than the South Kalum exception;
- (w) **"Notice of Non-Compliance"** has the meaning attributed to it in section 11.2.1;
- (x) **"Notice of Condition Subsequent"** has the meaning attributed to it in section 11.3.2;
- (y) **"Participating First Nation"** means:
  - (i) for the purposes of the Foundation and the Foundation Contribution, a First Nation that has entered into a Land Use Planning Agreement covering all of its Traditional Territory that is a part of the Project Area or a First Nation that has entered into a treaty and has accepted EBM over all of its Traditional Territory that is part of the Project Area;
  - (ii) for the purposes of Canada's contribution to the Society, a First Nation that has Traditional Territory, within the Project Area; and
  - (iii) for the purposes of British Columbia's contribution to the Society, a First Nation that has signed a Land Use Planning Agreement or treaty respecting some or all of its Traditional Territory, within the Project Area.
- (z) **"Project Area"** means the Central Coast and North Coast LRMP areas, the Traditional Territory of Haida Gwaii, and the portions of the Traditional Territory of the Haisla and the Gitga'at that are included in the South Kalum LRMP, all as outlined on the map attached as Schedule C hereto;
- (aa) **"Project Review Committee"** means the respective committees of the Board of Directors of each of the Foundation and the Society that may be established pursuant to section 8.2.1 hereof;
- (bb) **"Protected Area"** means those portions of the Project Area shown on the map attached as Schedule C as a Protected Area or proposed Protected Area, that have been set aside and legislated under federal law as a National Park, or British Columbia's *Park Act*, and *Protected Areas of British Columbia Act*, as a

British Columbia Class A park or conservancy. Areas identified as established by Order in Council will not be considered Protected Areas until fully legislated.

- (cc) "**Regional Economic Development Planning Projects**" means regionally focused economic development planning projects that are jointly proposed by a minimum of two Participating First Nations, are aimed at addressing the First Nations' planning needs and otherwise meet the Society's requirements for funding under this Agreement;
- (dd) "**Reply**" has the meaning attributed to it in section 11.2.1;
- (ee) "**Reply to Notice of Condition Subsequent**" has the meaning attributed to it in section 11.3.2;
- (ff) "**Society Contribution**" means the sum of \$60,000,000.00 contribution made by Canada and British Columbia together, and includes all income earned thereon, whether interest, dividends or realized capital gains paid to the Society by British Columbia and Canada pursuant to section 2.1;
- (gg) "**South Kalum Exception**" means the portion of the Haisla Traditional Territory and the Gitga'at Traditional Territory that is in the Project Area and is included in the South Kalum Land and Resource Management Plan;
- (hh) "**Sustainable**" means an activity that can be sustained over many years, without any significant adverse impacts on the environment and without diminishing the ability of other people, other species or future generations to survive and prosper.
- (ii) "**Traditional Territory**" means an area where a Participating First Nation has claimed or proven aboriginal or treaty rights that are recognized and affirmed under section 35(1) of the *Constitution Act, 1982*.

## 1.2 Currency

- 1.2.1 All dollar amounts referred to in this Agreement are stated in Canadian Dollars, unless expressly stated otherwise, and any payment contemplated by this Agreement will be made by cash, certified cheque, bank draft or any other method that provides immediately available funds.
- 1.2.2 All payments due on a particular day must be received and available on the due date.

## 1.3 Headings

- 1.3.1 The division of this Agreement into sections and paragraphs and the insertion of headings are for convenience of reference only and will not affect the construction or interpretation of this Agreement.

## 2. CONTRIBUTION CONDITIONS

### 2.1 Society Contribution Conditions

2.1.1 Canada and British Columbia have committed that they will each contribute \$30,000,000 to the Society through a Performance and Accountability Agreement in order to establish a fund which, for convenience of reference will be known as the "Coastal Opportunities Fund." Canada has indicated that its commitment is subject to parliamentary approval. British Columbia has indicated that its commitment to make any payment in support of this Agreement is subject to:

- (a) there being sufficient monies available in an appropriation, as defined in the *Financial Administration Act*, to enable British Columbia, in any fiscal year or part thereof, when any payment of money by British Columbia falls due under this Agreement, to make that payment; and
- (b) Treasury Board, as defined in the *Financial Administration Act*, not having controlled or limited, under the *Financial Administration Act*, expenditure under any appropriation referred to in subsection (a) of this section.

2.1.2 The Society Contribution pursuant to section 2.1.1 will include up to \$2,000,000 for Regional Economic Development Planning Projects and \$58,000,000 that will be used by the Society to create economic development outcomes consistent with Schedule E. The Board of Directors will develop and provide criteria to Participating First Nations as to how to develop proposals to obtain funding from the \$2,000,000 portion of the Society Contribution for Regional Economic Development Planning Projects. The Society will endeavour to allocate the \$58,000,000 to Participating First Nations in accordance with Schedule G.

2.1.3 The Society shall make its best efforts to expend the Society Contribution within 7 years of the funds being transferred to the Society (the "Termination Date"). Should any of the original Society Contribution not be spent by the Termination Date, the Board of Directors will transfer any remaining funds to such person(s) as is selected by the Board, provided that person agrees to use that income and capital for purposes consistent with the purposes of this Agreement and the outcomes set out in Schedule E.

### 2.2 Foundation Contribution Conditions

2.2.1 On the later of within 20 days of the execution of the Province's Performance and Accountability Agreement with the Coast Economic Development Society or the payment of British Columbia's \$30,000,000.00, the Private Funders will contribute \$2,000,000 of the Foundation Contribution to the Foundation to fund Conservation

Planning Projects. Within 30 days after notice from the Foundation to the Private Funders of (a) the receipt of the entirety of the Society Contribution by the Society and (b) the completion of the Initial Implementation Steps for EBM, the Private Funders will contribute the remaining \$58,000,000 of the Foundation Contribution to the Foundation Escrow Account. Notwithstanding anything in this Agreement to the contrary, if the remaining payment of the Foundation Contribution does not become payable until after March 1, 2008, the portion of this payment for which The Nature Conservancy is responsible shall be limited to an amount not to exceed US\$35,000,000.

- 2.2.2 Each Private Funder is liable only for the contribution amounts set out opposite its name on Schedule F, and in no case is any Private Funder jointly or severally liable for the entire Foundation Contribution or any part of the Foundation Contribution in excess of the contribution amounts set out opposite its name on Schedule F. Any tax imposed by Canada, British Columbia, or any other taxing authority on the transfer of funds from the Foundation Escrow Account must be paid out of the Foundation Contribution or Foundation Contribution Income and may not serve to increase the amount of the Foundation Contribution or otherwise impose on the Private Funders any obligations other than those explicitly set out in this Agreement.
- 2.2.3 The funds held in the Foundation Escrow Account cannot be distributed until:
- (a) the Funders' Threshold has been met, except to the extent that a portion of the Foundation Contribution Income can be used to fund the operational and administrative expenses of the Foundation up to 1% of the Foundation Contribution; and
  - (b) the Foundation has received a determination letter from the Internal Revenue Service recognizing that the Foundation is a public charity described in section 501(c)(3) and 509(a) of the Internal Revenue Code.
- 2.2.4 Once the requirements of section 5.5.2 have been satisfied, the Foundation can commence funding EBM Conservation Planning Projects in accordance with this Agreement. The Foundation will ensure that the Initial Directors will develop and provide criteria to Participating First Nations as to how to develop proposals to obtain funding from the \$2,000,000 portion of the Foundation Contribution for EBM Conservation Planning Projects.
- 2.2.5 Once the Funders' Threshold and other requirements of 2.2.3 and of section 5.5.2 have been met, that portion of the Foundation Contribution and a proportionate amount of Foundation Contribution Income allocated by the Financing Table to Participating First Nations other than the Council of the Haida Nation will be released from the Foundation Escrow Account and distributed to the Foundation in one or more instalments as First Nations become Participating First Nations.

- 2.2.6 The funds held in the Foundation Escrow Account for the Council of the Haida Nation will be released from the Foundation Escrow Account and distributed to the Foundation when:
- (a) the requirements of section 2.2.5 have been met;
  - (b) the Private Funders have reviewed any Land Use Planning Agreement reached between British Columbia and the Council of the Haida Nation to determine whether a commitment to EBM substantially consistent with the protocol signed by North Coast First Nations (see Schedule D) has been made;
  - (c) 50% of any Protected Areas proposed on Haida Gwaii (the Queen Charlotte Islands) in that Land Use Planning Agreement has been created through legislation.
- 2.2.7 The Foundation Contribution shall be held as a permanent endowment by the Foundation such that these funds will be held and invested in perpetuity and only the Foundation Contribution Income may be expended in accordance with this Agreement net of any fees or expenses related to the establishment and administration of the Foundation Escrow Account. The Foundation will endeavour to allocate the Foundation Contribution Income in accordance with each Participating First Nation's proportionate allocation in Schedule G. A decision to increase the amount of funds held in perpetuity must be approved by the members of the Foundation.
- 2.2.8 All funds held in the Foundation Escrow Account, including any Foundation Contribution Income, less any fees or expenses related to the establishment and administration of the Foundation Escrow Account and not transferred to the Foundation in accordance with this Agreement by June 30, 2008, by reason of the Funders' Threshold not being met or otherwise, must be returned to the Private Funders by August 31, 2008.
- 2.2.9 Any funds returned to the Private Funders must be returned to the Private Funders pro rata, in the same proportion that each Private Funder's portion of the Foundation Contribution stands to the total Foundation Contribution.
- 2.2.10 The Foundation shall provide the Private Funders timely notice of when conditions and requirements for disbursements from the Foundation Escrow Account have been satisfied.

### **3. GOVERNANCE**

#### **3.1 Required Policies**

- 3.1.1 The Foundation and the Society will each adopt an investment policy, a finance and audit policy, a conflict of interest policy, a Code of Ethics for directors and employees, an insurance policy, a grants policy, a compliance policy addressing tax, accounting

and other regulatory requirements. The Foundation and the Society may adopt such other policies as they deem appropriate from time to time, provided that no such policy may conflict with the terms of this Agreement.

- 3.1.2 The Foundation and the Society will make reasonable commercial efforts to purchase and maintain throughout the term of this Agreement the following policies of insurance with insurers licensed to do business in Canada:
- (a) Commercial General Liability Insurance with a limit of not less than \$2,000,000 covering the respective operations of the Foundation and the Society. British Columbia, Canada and the Private Funders will be added as additional insureds and the policy shall contain a cross liability clause. The policy shall provide the additional insureds with 30 days' prior written notice of cancellation or material change;
  - (b) Fiduciary Liability Insurance with a limit of not less than \$5,000,000.

Evidence of the above noted coverage will be provided to the Private Funders within 120 days of the Effective Date of this Agreement.

### **3.2 Operating Expenses and Remuneration**

- 3.2.1 The Board of Directors of each of the Foundation and Society may expend funds in accordance with section 6.1 to satisfy those expenses that are reasonably and necessarily incurred in order to allow the Board of Directors to perform its obligations in relation to the purposes of the Foundation and the Society.
- 3.2.2 A director of either the Foundation or Society must not accept remuneration from the Foundation or the Society other than remuneration for reasonable travel and out of pocket expenses necessarily incurred by the Director in discharging his or her duties. The Foundation and the Society will each ensure that these restrictions are adhered to.
- 3.2.3 Notwithstanding 3.2.2, a director of the Society may receive a daily amount, established by the Board of Directors of the Society, for each day in which a director of the Society performs directorial services for the Society. In establishing a daily amount to be received by a director, the Board of Directors of the Society is to be guided by comparable rates of daily remuneration for public bodies in British Columbia of a similar size and scope.

### **3.3 Members**

- 3.3.1 Within 90 days of the Effective Date of this Agreement, British Columbia, the Private Funders, and Participating First Nations will appoint members of each of the Foundation and the Society as follows:

- (a) British Columbia will nominate two (2) voting members;
- (b) Private Funders will nominate two (2) voting members;
- (c) Participating First Nations will nominate two (2) voting members; and
- (d) Participating First Nations will nominate two (2) non-voting members

all in accordance with the Bylaws of the Foundation and the Society.

- 3.3.2 In the event the Funders' Threshold is not met by June 30, 2008 and the funds in the Foundation Escrow Account are returned to the Private Funders, the Private Funders will immediately revoke their nominations of members for both the Foundation and the Society and the Foundation and the Society will take such steps as are necessary to amend their respective bylaws to remove the Private Funders as Nominating Entities (as defined in the bylaws of each of the Foundation and the Society).

#### **3.4 Bylaws**

- 3.4.1 The Private Funders acknowledge their receipt and approval of the constitution and bylaws of the Foundation and the Society.
- 3.4.2 The Foundation and the Society each acknowledge their receipt and approval of the other's constitution and bylaws.

### **4. INVESTMENT GUIDELINES**

#### **4.1 Investment Screens**

- 4.1.1 The Foundation and the Society will each ensure that their respective investment policies and guidelines include a screening process that takes into consideration social, environmental and aboriginal elements. The screening process may incorporate both positive and negative screens. Without limiting the generality of the foregoing, the Foundation and the Society both agree that they will not invest in the following industries:

- (a) those that produce military weapons or weapons-related products;
- (b) those that produce tobacco products;
- (c) those that produce nuclear power; and
- (d) those that involve gambling or gambling-related products or services.

#### **4.2 Investment Manager**

- 4.2.1 The Foundation and the Society will each retain external independent investment managers for the purpose of managing the respective assets of the Foundation and the Society.

**4.3 Maximum Dollar Amount per Investment Manager**

- 4.3.1 The Foundation and the Society will each ensure that no more than \$40,000,000.00 in aggregate, from either, or both of, the Foundation or the Society, is managed by a single investment manager.

**4.4 Expertise of Investment Managers**

- 4.4.1 The Foundation and the Society will only retain investment managers which have proven financial track records and are capable of implementing social, environmental and aboriginal screens. Preference will be given to managers with significant expertise in implementing screens.

**5. OPERATIONAL COMMITMENTS**

**5.1 Staffing**

- 5.1.1 The Foundation and the Society each agree that they will ensure that they have adequate staff to conduct their respective operations and comply with this Agreement.

**5.2 Consents and Approvals**

- 5.2.1 The Foundation and the Society will each obtain all necessary approvals, consents, registrations, licences and other permits necessary to conduct their respective operations and to comply with this Agreement, and will each ensure that all activities for which funding is provided are also conducted in accordance with all necessary approvals, consents, registrations, licences and other permits.
- 5.2.2 In the case of the Foundation, the requirements set out in section 5.2.1 include, but are not limited to, an obligation to ensure that its charitable registration under the *Income Tax Act* and its status as a charitable organization described in section 501(c)(3) and 509(a) of the Internal Revenue Code are maintained in good standing. The Foundation shall advise British Columbia, Canada and the Private Funders immediately in writing of any notice from Canada Revenue Agency, or from any provincial or local tax authority, or the U.S. Internal Revenue Service that its tax status has been changed, or is being challenged, questioned or reviewed.
- 5.2.3 This Agreement does not operate as an approval, consent, registration, license, permit or other statutory authority which the Society, the Foundation, or the recipient of a grant or party to an Agency Agreement may be required to obtain from British Columbia (or any of its officials or agencies) in order to conduct their operations or comply with this Agreement.

- 5.2.4 Nothing in this Agreement is to be construed as interfering with the exercise by any government (or its officials or agencies) of any statutory power or duty.

### **5.3 Strategic Plans**

- 5.3.1 For the purposes of public accountability, the Foundation and the Society will each require that their respective Boards of Directors must prepare their respective strategic plans in accordance with this section and consistent with the outcomes established in Schedule E.

- 5.3.2 Each of the Foundation and the Society will:

(a) every year, establish a 3 year strategic plan for the Foundation and for the Society respectively, that is not inconsistent with recommendations of the Land Use Plan Agreements, considers and makes use of and/or leverages other existing economic development funding available in the Project Area that has purposes similar to this Agreement, includes a process to receive and consider public interest, and includes goals and outcomes and specific measurable performance indicators for each year of the strategic plan relating to the fulfillment of the purposes of the Foundation or Society, as appropriate;

(b) publish each strategic plan prepared under this section in a manner that can reasonably be expected to bring the plan to the attention of the public; and

(c) provide a copy of each strategic plan to the Private Funders.

- 5.3.3 Each of the Foundation and the Society will require their respective Boards of Directors to prepare and make the first strategic plan available publicly by the earlier of eight months after the Effective Date of this Agreement or four months after the naming of the new Board of Directors. The Strategic Plan must be made public before the date on which the Foundation or the Society, as the case may be, makes any of the payments contemplated by this Agreement.

- 5.3.4 Each of the Foundation and the Society will require their respective Boards of Directors to prepare and make the second and each subsequent strategic plan available publicly before the first day of each fiscal year of the Foundation or the Society, as the case may be.

### **5.4 Reporting Requirements**

- 5.4.1 Within 4 months following the end of their respective fiscal years, the Foundation and the Society will each:

- (a) prepare an annual report for that fiscal year just ended; and
- (b) include audited financial statements for that fiscal year just ended, that are prepared in accordance with generally accepted accounting principles.

5.4.2 Each of the Foundation and the Society, as the case may be, will:

- (a) in each of their respective annual reports,
  - (i) report on the goals, outcomes and performance measures set by the Board of Directors for the fiscal year to which the report applies, indicate the extent to which those goals, outcomes and performance measures have been achieved, and describe how those achievements fulfilled the stated purposes of the Foundation or Society, as the case may be;
  - (ii) compare the actual results for the fiscal year to which the report applies with the projected results identified in the strategic plan for that fiscal year;
  - (iii) include the audited financial statements for the fiscal year to which the report applies; and
  - (iv) subject to compliance with all applicable privacy legislation and the *Society Act*, include a report for the Foundation or Society, as appropriate, on its operational expenses and on all approved grant and other funding applications, together with a short summary of the purpose of each approved grant, the status of the project against the grant or Agency Agreement terms, and actual expenses incurred and distributed during the fiscal year to which the annual report applies;
- (b) publish each annual report in a manner that can reasonably be expected to bring the annual report to the attention of the public; and
- (c) provide a copy of each annual report to the Private Funders.

## 5.5 Requirements Prior to Distributions

5.5.1 Other than as permitted under this Agreement, the Society and the Foundation may only distribute funds to Participating First Nations.

5.5.2 Prior to the distribution of any funds by the Society or the Foundation, the members of the Society and the Foundation appointed in accordance with section 3.3.1 must have approved by special resolution the following:

- (a) the Initial Directors of the Society and the Foundation;

- (b) the policies required under section 3.1.1 hereof;
- (c) the operational commitments in section 5.1.1 hereof; and
- (d) strategic plans developed in accordance with section 5.3 hereof.

## **5.6 Audit**

- 5.6.1 The Foundation and the Society each must, at each general meeting, appoint an auditor who is an individual authorized to be an auditor under sections 42 and 43 of the *Society Act*, to audit the respective accounts, transactions and financial statements of the Foundation or Society for the forthcoming fiscal year.
- 5.6.2 The accounts, transactions and financial statements of the Foundation and Society must, at least once in every year, be audited and reported on by the auditor and the costs of the audit must be paid by the Foundation or the Society, as the case may be.

## **5.7 Record Keeping**

- 5.7.1 The Foundation and Society will maintain their respective books, documents and other records with respect to this Agreement and the use of the Foundation Contribution, the Foundation Contribution Income and Society Contribution in full compliance with the *Income Tax Act* and *Society Act*, including but not limited to, records pertaining to all costs and expenses incurred and revenues received related to this Agreement, and the investment of the Foundation Contribution and Society Contribution as applicable.
- 5.7.2 The Private Funders shall have the right at all reasonable times, upon reasonable prior written notice, subject to compliance with all applicable privacy legislation and the *Society Act*, to inspect, audit and copy such books, documents and records in order to verify compliance with the terms of this Agreement.

## **5.8 Compliance with Laws and Regulations**

- 5.8.1 The Foundation and the Society each, in connection with any transaction contemplated by this Agreement, will take reasonable steps to ensure compliance with all laws, permits, regulations, orders and established policies.
- 5.8.2 The Foundation will not violate the *U.S. Foreign Corrupt Practices Act* and other anti-bribery laws or any applicable anti-terrorism laws. The Foundation will not commit, attempt to commit, advocate, facilitate, or participate in terrorist acts, nor has it committed, attempted to commit, facilitated, or participated in terrorist acts. The Foundation will take reasonable steps to ensure that it does not and will not knowingly provide, material support or resources to any individual or entity that

commits, attempts to commit, advocates, facilitates, or participates in terrorist acts, or has committed, attempted to commit, facilitated, or participated in terrorist acts.

## **5.9 Representations and Warranties**

- 5.9.1 The Society and Foundation each respectively represent and warrant to the Private Funders, with the intent that the Private Funders will rely thereon in entering into this Agreement, that:
- (a) there are no actions or proceedings pending (including appeals or applications for review) or to its knowledge threatened, before any court, arbitrator, administrative agency or governmental body which, if determined against it, would result in a change occurring in its properties, assets, condition (financial or otherwise), business or operations that would materially adversely affect its ability to fulfil its obligations under this Agreement;
  - (b) it has the power and capacity to accept, execute and deliver this Agreement; and
  - (c) this Agreement is binding upon, and enforceable against it in accordance with its terms.
- 5.9.2 All representations, warranties, covenants and agreements made in this Agreement and all certificates and other documents delivered by or on behalf of the Society or the Foundation, respectively, are material and will conclusively be deemed to have been relied upon by the Private Funders, notwithstanding any prior or subsequent investigation by the Private Funders.
- 5.9.3 The provisions of sections 5.9 will continue in full force and effect notwithstanding the fulfillment by the Private Funders, the Society or the Foundation of any or all of their obligations under this Agreement.
- 5.9.4 All statements contained in any certificate or other document delivered by or on behalf of the Society or the Foundation to the Private Funders under, or in connection with, this Agreement will be deemed to be representations and warranties by the Society or Foundation, respectively, under this Agreement.

## **6. COST ALLOCATION**

### **6.1 Operational and Administrative Costs**

- 6.1.1 The Foundation and the Society will each bear their own operational and administrative costs and will each maintain their respective books, documents and records.
- 6.1.2 The Foundation and the Society may share staff and resources pursuant to written contractual agreements, provided the costs for the same are allocated to the Foundation and to the Society, as appropriate, and provided the Foundation and the

Society maintain, at all times, their separate operations and status as independent entities.

- 6.1.3 All operational and administrative costs of the Foundation and the Society will be funded out of the Foundation Contribution Income and the income earned on the Society Contribution, respectively. The combined operational and administrative costs of the two entities for any particular year cannot exceed 2% of the funds under management by the Foundation and the Society at the outset of that fiscal year. The operational and administrative costs of the Society cannot exceed 1% of the Society Contribution and the Foundation Contribution until such time as the Foundation receives funds from the Foundation Escrow Account.
- 6.1.4 The operational and administrative costs of the Foundation for any particular year must not exceed 1% of the Foundation Contribution.
- 6.1.5 The Foundation and the Society must ensure that operational and administrative costs are minimized to the greatest extent possible, while also ensuring that there is adequate funding to permit the Foundation and the Society to meet their operational objectives.

## **7. ACTIVITIES ELIGIBLE AND NOT ELIGIBLE FOR FUNDING**

### **7.1 Activities Eligible for Funding from the Foundation**

- 7.1.1 The Foundation may only provide funding in accordance with the *Income Tax Act* in the form of grants and Agency Agreements and grants or Agency Agreements from the Foundation Contribution Income will be awarded only for Conservation initiatives connected with the Project Area to be performed by, or on behalf of, Participating First Nations. The Foundation will not provide funding that is to be used to promote British Columbia, Canada, or the Private Funders, provided that the foregoing will not prevent the Foundation from acknowledging the contributions of British Columbia, Canada and the Private Funders.
- 7.1.2 All Conservation initiatives in Protected Areas must be consistent with any management plans that have been developed and approved for those Protected Areas. Conservation initiatives in respect of EBM must not be inconsistent with any land and resource management objectives, particularly those which have been adopted through Ministerial order or regulatory power.
- 7.1.3 No grant or Agency Agreement for any capital project may exceed \$250,000.00.
- 7.1.4 The Conservation initiatives for which grants or Agency Agreements may be provided are as follows:
  - (a) science, research, and monitoring for Conservation matters;

- (b) Conservation, Protected Area, and cultural zone resource planning and management consistent with EBM;
- (c) Participating First Nation participation in joint Conservation management initiatives;
- (d) programs to protect or interpret biophysical or cultural resources in Protected Areas or areas of specific biological or cultural significance;
- (e) monitoring compliance with Conservation management plans;
- (f) habitat restoration activities;
- (g) EBM Conservation capacity building for Participating First Nations; and
- (h) such other Conservation and resource management activities that are consistent with the Foundation's constitution and the *Income Tax Act*.

## **7.2 Activities Not Eligible for Funding from the Foundation**

7.2.1 The Foundation will not use the Foundation Contribution Income for any of the following purposes:

- (a) any financial costs or obligations incurred by Participating First Nations with respect to any consultations with any government or corporation concerning that government or corporation's duty to consult or accommodate, except in support of protection area management or other Conservation management initiatives;
- (b) open net-cage finfish aquaculture;
- (c) costs associated with meeting any statutory obligations of the provincial or federal governments or other entities, except in support of EBM Conservation capacity building for Participating First Nations;
- (d) political activities as defined by the Income Tax Act or for any other purpose or activity inconsistent with the Foundation's registered charitable status under the Income Tax Act;
- (e) any activity inconsistent with section 501(c)(3) and 509(a) of the Internal Revenue Code;
- (f) any activity inconsistent with the Foundation's constitution;
- (g) any activity or expenditure for initiatives not consistent with provincial laws, permits, regulations, established policies, formal recommendations of Land and Resource Forums, orders and/or approvals; or

- (h) any activity inconsistent with any EBM land and resource management objectives.

### **7.3 Activities Eligible for Funding from the Society**

- 7.3.1 The Society will only use the Society Contribution in accordance with its constitution to support environmentally sound and Sustainable economic development activities for Participating First Nations. The Society will not provide funding that is to be used to promote British Columbia, Canada or the Private Funders, provided that the foregoing will not prevent the Society from acknowledging the contributions of British Columbia, Canada and the Private Funders.
- 7.3.2 In considering whether a project is environmentally sound and Sustainable, the Society will consider the overall environmental impact of the project, including whether any use of natural resources involved is Sustainable and whether steps have been taken to minimize the release of any pollutants. Priority will be given to projects that have positive environmental or social impacts, direct or indirect.
- 7.3.3 The Society may provide funding for Sustainable businesses and the infrastructure and planning for regional projects necessary to support Sustainable businesses.
- 7.3.4 Examples of businesses that may be eligible as Sustainable businesses include:
  - (a) shellfish aquaculture;
  - (b) fisheries;
  - (c) technology and communications;
  - (d) wildlife viewing;
  - (e) nutraceuticals;
  - (f) mushroom harvesting;
  - (g) non-timber forest products;
  - (h) tourism, including cruises and wildlife viewing;
  - (i) EBM-compliant forestry operations;
  - (j) non-nuclear and non-carbon burning energy projects;
  - (k) green building projects;

- (l) small scale, non-toxic, subsurface rock, mineral or gem extraction projects; and
- (m) economic development capital corporations that utilize funding standards consistent with this Agreement.

#### **7.4 Activities Not Eligible for Funding from the Society**

7.4.1 The Society will not disburse the Society Contribution for any of the following:

- (a) any activity inconsistent with any EBM land and resource management objectives;
- (b) any activity that is not Sustainable, with particular regard to fish and wildlife stocks in the Project Area;
- (c) any activity associated with the large scale extraction of subsurface resources;
- (d) any financial costs or obligations incurred by Participating First Nations with respect to any consultations with any government or corporation concerning that government or corporation's duty to consult or accommodate;
- (e) fishing licences for stocks targeted for harvest reduction by federal or provincial agencies;
- (f) open net-cage finfish aquaculture;
- (g) trophy hunting for game;
- (h) bear and/or carnivore hunting;
- (i) costs associated with meeting statutory obligations of the provincial or federal governments or other entities;
- (j) political activities as defined by the *Income Tax Act*;
- (k) any activity inconsistent with the Society's constitution; or
- (l) any activity or expenditure for initiatives not consistent with provincial laws, permits, regulations, established policies, orders and/or approvals.

### **8. PROJECT APPROVAL PROCESS**

#### **8.1 Responsibility for Project Approval**

- 8.1.1 Each of the Foundation and the Society will be responsible for ensuring that any project respectively approved for funding by them is approved in accordance with this Agreement.

## **8.2 Project Review Committee**

- 8.2.1 The Foundation and the Society may each establish a Project Review Committee to provide advice and assistance regarding grant and other funding proposals.

## **8.3 Funding Approvals by the Project Review Committee**

- 8.3.1 The Foundation and the Society may each delegate grant and other funding approvals of up to \$500,000.00 (per grant or funding agreement) to their respective Project Review Committees, if established.

## **9. GRANT AND FUNDING APPLICATION PROCESS**

### **9.1 Participating First Nation Review**

- 9.1.1 The Foundation and the Society will only fund projects that have been internally reviewed by the applicant Participating First Nation to ensure that the project meets the stated purposes of the Foundation or the Society and to ensure that viable Conservation or economic development benefits will result from the activities to be conducted in furtherance of the application.

### **9.2 Endorsement by First Nation Band Council**

- 9.2.1 All applications for funding by a Participating First Nation to either the Foundation or the Society must first be endorsed either by an entity wholly or partially owned by the band council, where the band council has delegated authority to that entity by band council resolution, or directly through a band council resolution of the band council of the Participating First Nation.

### **9.3 Society Grant Applications**

- 9.3.1 The Society will review grant and other funding applications from businesses controlled by Participating First Nations, individual Participating First Nation members, Participating First Nation band councils, and other First Nation entities endorsed as set out in section 9.2.1.
- 9.3.2 All grant and other funding applications shall be in writing, and shall include the following:

- (a) a concept summary that sets out the Sustainable attributes of the project to be funded; and
- (b) a comprehensive and viable business plan.

9.3.3. If a Participating First Nation does not submit grant and other funding applications that results in funding being approved, then the Board of Directors of the Society has the discretion to provide technical expertise to the Participating First Nation in order to satisfy section 9.3.1 and 9.3.2 hereof.

#### **9.4 Foundation Grant Applications**

9.4.1 The Foundation will require written grant applications for all funding.

9.4.2 A Foundation grant application must set out sufficient particulars about the proposed grant to allow the Foundation to satisfy itself that the grant falls within its constitutional purposes, is permitted under this Agreement, and complies with the *Income Tax Act* and sections 501(c)(3) and 509(a) of the *Internal Revenue Code*.

### **10. GRANT AND FUNDING DUE DILIGENCE**

#### **10.1 Prerequisites for Foundation Funding**

10.1.1 Prior to funding a grant or other funding application, the Foundation must ensure:

- (a) the project is consistent with the constitution of the Foundation;
- (b) the project is eligible under this Agreement;
- (c) the project is well conceived and appears to be appropriately administered;
- (d) the applicant has the management and capacity to complete the project;
- (e) the Foundation has sufficient information about objectives, activities and expenses related to the project to ensure that it can satisfy its obligations under the *Income Tax Act* and the *Internal Revenue Code*; and
- (f) the project has received any required statutory permits or approvals.

#### **10.2 Prerequisites for Society Funding**

10.2.1 Prior to funding any grant or other funding application, the Society must ensure:

- (a) the project is consistent with the constitution of the Society;

- (b) the project is eligible under this Agreement;
- (c) if the funding is for a business, the business appears to have a viable and comprehensive business plan and appropriate management in place to execute the plan;
- (d) if the funding is for the development of infrastructure or business capacity, the project has tangible and measurable benefits and appropriate management controls;
- (e) the project appears to have appropriate technical assistance to ensure its success; and
- (f) the project has received any required statutory permits or approvals.

### **10.3 Approved Grants and Funding Applications**

- 10.3.1 Once a grant or other funding application has been approved, then the Foundation or the Society, as applicable, must ensure that the recipient signs a written grant or funding agreement in the standard form required by the Foundation or the Society, as the case may be, which sets out the terms and conditions of the grant or funding, including compliance with the applicable terms and conditions of this Agreement, and the reporting requirements, both financial and otherwise, and the timing thereof, required of the recipient.
- 10.3.2 The grant or funding agreement must provide for the retraction, refunding and/or reimbursement of funds advanced pursuant to any such agreement by the Foundation or the Society, as the case may be, in the event that the recipient breaches the grant or funding agreement.
- 10.3.3 The reporting requirements for any grant made by the Foundation or funding recipient under an agreement with the Foundation must meet or exceed the requirements of the *Income Tax Act* and the *Internal Revenue Code*. The reporting requirements for the Foundation and the Society must meet or exceed the requirements imposed on the Foundation and the Society herein, such that the Foundation and the Society shall be able to provide the information required under section 5.4 of this Agreement.

### **10.4 Reporting Obligations**

- 10.4.1 Once a grant or other funding application has been approved and the funding provided, the Foundation and the Society will ensure, and the grant or funding agreement will provide, that the recipient of such funding will report on its progress against the project's objectives on a regular basis and must respond as requested prior to consideration of further funding for that project.

10.4.2 The Foundation and the Society will each ensure that the performance of recipients of funding is monitored to the extent necessary to satisfy the Foundation or the Society, as the case may be, that the terms and conditions outlined in the grant or other funding agreement are being followed.

## 11. REMEDIES

### 11.1 Injunctive Relief

11.1.1 Each of the parties agree that the other parties would be damaged in the event that any of the provisions of this Agreement are not performed in accordance with their specific terms. All parties agree that British Columbia, Canada and the Private Funders are entitled to an injunction or injunctions to prevent substantial non-compliance with any of the provisions of this Agreement by the Foundation or the Society and to specifically enforce this Agreement and the terms and provisions hereof, in addition to any other remedy to which they may be entitled at law or in equity.

### 11.2 Non-Compliance with Agreement

11.2.1 The parties agree that any non-compliance with this Agreement will be dealt with in the following manner:

- (a) The party alleging the non-compliance must deliver a notice in writing to the party asserted to be in non-compliance with this Agreement which specifies the non-compliance (the "**Notice of Non-Compliance**"). A copy of the Notice of Non-Compliance must be provided to all other parties.
- (b) The party receiving the Notice of Non-Compliance must respond in writing within ten (10) Business Days of the delivery of the Notice of Non-Compliance to the party issuing the Notice of Non-Compliance and must either confirm or deny the alleged non-compliance (the "**Reply**"). A copy of the Reply must be provided to all other parties.
- (c) If the Notice of Non-Compliance is confirmed, then the party receiving the Notice of Non-Compliance must include in its Reply its proposed method of resolving the non-compliance.
- (d) If the party issuing the Notice of Non-Compliance is content with the proposed method of resolving the non-compliance described in the Reply, then it will

confirm its response in writing to the party issuing the Reply within ten (10) Business Days the responding party must resolve the matter in accordance with its Reply, and the non-compliance will have been resolved with respect to that party. A copy of this response must be provided to all other parties.

- (e) If the Notice of Non-Compliance is denied or the resolution proposed in the Reply is not completed in a timely manner, then the alleging party and the responding party must conduct a mediation as described in section 11.4 hereof by no later than three (3) months after the date the Notice of Non-Compliance was issued.
- (f) If the alleged non-compliance is not resolved at the mandatory mediation described in section 11.2.1 (e), then the alleging party and the responding party must pursue an arbitration in accordance with section 11.5 hereof and the result of such arbitration will be binding upon all parties hereto.

11.2.2 The foregoing notwithstanding, a party shall not be prohibited from obtaining a preliminary or temporary restraining order or injunction during the dispute process described above.

### 11.3 Park Status

11.3.1 If legislation designating a Protected Area is repealed and not replaced or the Conservation protection under such legislation is diminished and an area of equal or greater biodiversity values is not legislatively protected within the Project Area, it will represent a condition subsequent which will permit the Private Funders to act pursuant to section 11.3.2.

11.3.2 If a Private Funder alleges a condition subsequent to this Agreement as described in section 11.3.1, such Private Funder must deliver a notice in writing to all parties specifying the condition subsequent (the "**Notice of Condition Subsequent**"). The Foundation must provide a response in writing to all parties within ten (10) Business Days of the delivery of the Notice of Condition Subsequent and must either confirm or deny the alleged breach (the "**Reply to Notice of Condition Subsequent**"). If

(a) the Foundation denies the condition subsequent, then the parties must conduct an arbitration in accordance with section 11.5 within four (4) months of the delivery of the Reply to Notice of Condition Subsequent and in the event the arbitrator finds a condition subsequent then the Private Funders may require the return from the Foundation of that portion of the Foundation Contribution that is proportional to the loss of biodiversity values resulting from the condition subsequent; or

(b) if the Foundation confirms the condition subsequent, then the Private Funders may require the return from the Foundation of that portion of the Foundation Contribution that is proportional to the loss of biodiversity values resulting from the condition subsequent.

#### 11.4 Mediation

11.4.1 Any dispute arising among the parties to this Agreement pursuant to section 11.2.1 (e) hereof will be referred to a single mediator who will conduct a mediation. The party issuing the Notice of Non-Compliance and the party issuing the Reply must attend such mediation; all other parties may attend such mediation at their discretion. The single mediator will be selected by the parties or, failing such selection, pursuant to the Domestic Commercial Arbitration Rules of Procedure of the British Columbia International Commercial Arbitration Centre.

#### 11.5 Arbitration

11.5.1 Any dispute arising among the parties to this Agreement to which section 11.2.1 (f) or section 11.3.3 apply will be referred to a single arbitrator who will conduct an arbitration pursuant to the *Commercial Arbitration Act* of British Columbia. The decision of such arbitrator will be final and binding on the parties. The single arbitrator will be selected by the parties or, failing such selection, pursuant to the Domestic Commercial Arbitration Rules of Procedure of the British Columbia International Commercial Arbitration Centre.

#### 11.6 Non-Compliance

11.6.1 Any of the following will constitute non-compliance with this Agreement by the Foundation or Society, respectively:

- (a) failure to comply with a material provision of this Agreement, including the representations and warranties;
- (b) a change occurs with respect to any one or more, including all, of the properties, assets, condition (financial or otherwise), business or operations of the Society or the Foundation which, in the opinion of a Private Funder, materially adversely affects the ability of the Society or the Foundation to fulfil its obligations under this Agreement;
- (d) an order is made or a resolution is passed or a petition is filed for the liquidation or winding up of the Society or the Foundation;
- (e) the Society or the Foundation becomes insolvent or bankrupt or makes an assignment for the benefit of its creditors or otherwise acknowledges its insolvency; and
- (f) the Society or the Foundation substantially ceases to operate prior to the expiry of this Agreement.

## **12. MISCELLANEOUS**

### **12.1 Public Announcements**

12.1.1 The parties will consult with one another and coordinate any public announcements in respect of the transactions contemplated in this Agreement and the Foundation and the Society will give notice in writing to British Columbia, Canada and the Private Funders at least 14 days in advance of any official ceremony to be held in connection with their activities.

### **12.2 Entire Agreement**

12.2.1 This Agreement (including the documents referred to herein) constitutes the entire agreement among the parties and supersedes any prior understandings, agreements or representations by or among the parties, written or oral, to the extent they related in any way to the subject matter of this Agreement.

### **12.3 Governing Law and Jurisdiction**

12.3.1 The governing law of this Agreement is that of British Columbia, and British Columbia will be the forum for all disputes hereunder and the parties agree to submit to jurisdiction and venue as provided in this Agreement. The parties to this Agreement agree that TNC shall not be required to register extra-provincially in order to enforce this Agreement in British Columbia and waive any defense or claim that TNC may not proceed in any court, mediation or arbitration because it has not extra-provincially registered in British Columbia.

### **12.4 Enurement**

12.4.1 This Agreement enures to the benefit of and be binding upon the parties hereto and their respective successors and permitted assigns. Nothing in this Agreement, either expressed or implied, is intended to or shall confer upon any other person or entity any legal or equitable right, benefit or remedy of any nature. No party may assign either this Agreement or any of its rights, interests, or obligations hereunder without the prior written approval of all other parties. Notwithstanding the foregoing, TNC may assign this agreement and all of its rights, interests and obligation hereunder to a Canadian non-profit society and any Private Funder may assign this Agreement and all of its rights, interests and obligations hereunder to any other Private Funder.

### **12.5 Further Acts**

12.5.1 Each party hereto will execute and deliver all such further documents and do all such further acts or things as may be reasonably necessary or desirable from time to time to give effect to the transactions contemplated under this Agreement.

12.5.2 For greater certainty, section 12.5.1 does not require an approval, consent, registration, license, permit or other statutory authority be given by any government (or any of its officials or agencies).

## **12.6 Amendment**

12.6.1 Any amendment or waiver of, or any consent given under, any provision of this Agreement shall be in writing and, in the case of an amendment, signed by the parties. The parties may amend this Agreement by an agreement in writing signed by all parties. No course of dealing and no failure or delay by a party in exercising any power, remedy, discretion, authority or other right under this Agreement shall impair, or be construed to be a waiver of or an acquiescence in that or any other power, remedy, discretion, authority or right under this Agreement, or in any manner preclude its additional or future exercise.

## **12.7 Severability**

12.7.1 The invalidity of any paragraph, section or part of this Agreement will not affect any other paragraph, section or part of this Agreement, but this Agreement will be construed as if such invalid paragraph, section or part were omitted.

## **12.8 Time of the Essence**

12.8.1 Time is of the essence.

12.8.2 If the deadline for performance under this Agreement falls on a day that is not a Business Day, then the deadline for performance will be extended until the next Business Day.

## **12.9 Notice**

12.9.1 All notices, requests, demands, claims, and other communications must be in writing. Any notice, request, demand, claim, or other communication will be deemed duly given seven Business Days after it is sent by registered or certified mail, return receipt requested, postage prepaid, and addressed to the intended recipient as set forth below:

- (a) The Nature Conservancy  
Attn: Attorney for Canada Program  
Attn: Director of Canada Program  
The Nature Conservancy  
4245 North Fairfax Drive, Suite 100  
Arlington, VA 22203  
Fax: 703-841-0128
- (b) The William and Flora Hewlett Foundation  
2121 Sand Hill Road  
Menlo Park, CA 94025  
Fax: (650) 234-4501
- (c) The Gordon and Betty Moore Foundation  
P.O Box 29910  
San Francisco, CA 94129-0910  
Fax: (415) 561-7707
- (d) David and Lucile Packard Foundation  
300 Second Street  
Los Altos, California 94022  
Fax: (650) 948-5793
- (e) The Rockefeller Brothers Fund  
437 Madison Avenue, 37th floor  
New York, New York 10022-7001  
Fax: (212)812-4299
- (f) Tides Canada Foundation  
680-220 Cambie Street  
Vancouver BC  
V6B 2M9  
Fax: (604)647-6612
- (g) Foundation  
3000 Royal Centre (PO Box 11130)  
1055 West Georgia Street  
Vancouver BC  
V6E 3R3  
Attention: Chair, Board of Directors
- (h) Society  
3000 Royal Centre (PO Box 11130)  
1055 West Georgia Street  
Vancouver BC  
V6E 3R3  
Attention: Chair, Board of Directors

12.9.2 Any party may send any notice, request, demand, claim or other communication to the intended recipient at the address or fax number set forth above using any other

means (including personal delivery, fax, ordinary mail, overnight courier), but no such notice, request, demand, claim or other communication will be deemed to have been duly given unless and until it is actually received by the intended recipient. Any party may change the address or fax number to which notices, requests, demands, claims or other communications are to be delivered by giving the other parties notice in the manner set forth in this Agreement.

## **12.10 Construction**

12.10.1 The parties have participated jointly in the negotiation and drafting of this Agreement. In the event an ambiguity or question of intent or interpretation arises, this Agreement will be construed as if drafted jointly by the parties and no presumption or burden of proof will arise favouring or disfavouring any party by virtue of the authorship of any of the provisions of this Agreement. The language used in this Agreement will be deemed to be the language chosen by the parties to express their mutual intent, and no rule of strict construction will be applied. Any reference to any law will be deemed also to refer to all rules and regulations promulgated thereunder, unless the context requires otherwise.

## **12.11 Incorporation of Schedules**

12.11.1 The schedules identified in this Agreement are incorporated by reference and made a part of this Agreement.

## **12.12 Counterparts**

12.12.1 This Agreement may be executed in one or more counterparts (including separate signature pages by fax) each of which will be deemed to be an original, but all of which together will constitute one and the same instrument and, notwithstanding the date of execution, will be deemed to bear the Effective Date.

## **13.1 No Agency, Joint Venture or Partnership**

13.1.1 No legal partnership, joint venture or agency is established by this Agreement. No party is authorized or empowered to act as an agent, employee, or representative of any other, nor transact business or incur obligations in the name of any other party or for the account of the other party. No party shall be bound by any acts, representations, or conduct of any other.

## **14.1 Liability**

14.1.1 The Foundation and the Society shall each be solely responsible for the payment of any and all claims for loss, personal injury, death, property damage, or otherwise, arising out of any act or omission of their respective employees or agents in

connection with the performance of this Agreement or any grants or Agency Agreements related to this Agreement.

- 14.1.2 The Foundation and the Society each agree to indemnify and hold British Columbia, Canada and the Private Funders harmless from any and all claims, loss, damages, costs and expenses, including legal fees through the appellate levels, made against or incurred by British Columbia, Canada or the Private Funders arising out of work performed by the Foundation or the Society or their respective employees or agents in connection with this Agreement, or arising out of any act or omission of the Foundation or the Society, or their respective employees or agents.

**15.1 Agreement Remains in Effect**

- 15.1.1 This Agreement will be in effect on the Effective Date and will remain in effect unless all parties agree in writing to terminate the Agreement.
- 15.1.2 All representations, warranties, covenants, agreements, rights and obligations of the parties that are set out in this Agreement shall remain in full force and effect after the Foundation Contribution and Society Contribution are made, in each case until and unless there is an explicit written waiver or release of such representation, warranty, covenant, agreement, right or obligation by the beneficiary thereof.

**Signatures appear on the following page**

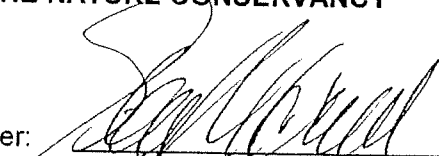
**COAST CONSERVATION ENDOWMENT  
FUND FOUNDATION**

Per:   
Authorized Signatory

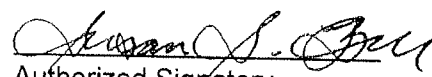
**COAST ECONOMIC DEVELOPMENT  
SOCIETY**

Per:   
Authorized Signatory

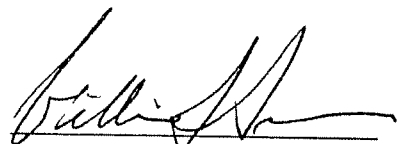
**THE NATURE CONSERVANCY**

Per:   
Authorized Signatory

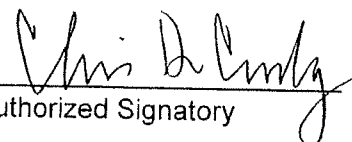
**THE WILLIAM AND FLORA HEWLETT  
FOUNDATION**

Per:   
Authorized Signatory

**THE GORDON AND BETTY MOORE  
FOUNDATION**

Per:   
Authorized Signatory

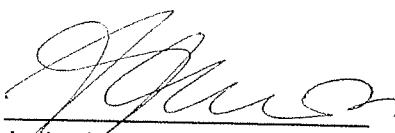
**DAVID AND LUCILE PACKARD  
FOUNDATION**

Per:   
Authorized Signatory

**THE ROCKEFELLER BROTHERS FUND**

Per:   
Authorized Signatory

**TIDES CANADA FOUNDATION**

Per:   
Authorized Signatory

**Schedule A – Initial Suite of Management Objectives that will provide the Initial Suite of Ecosystem Based Management**

The proposed Management Objectives are posted for consultation as draft Ministerial Orders, at the following website:

<http://ilmbwww.gov.bc.ca/lup/lrmp/coast/cencoast/objectives/index.html>

The management objectives are known as:

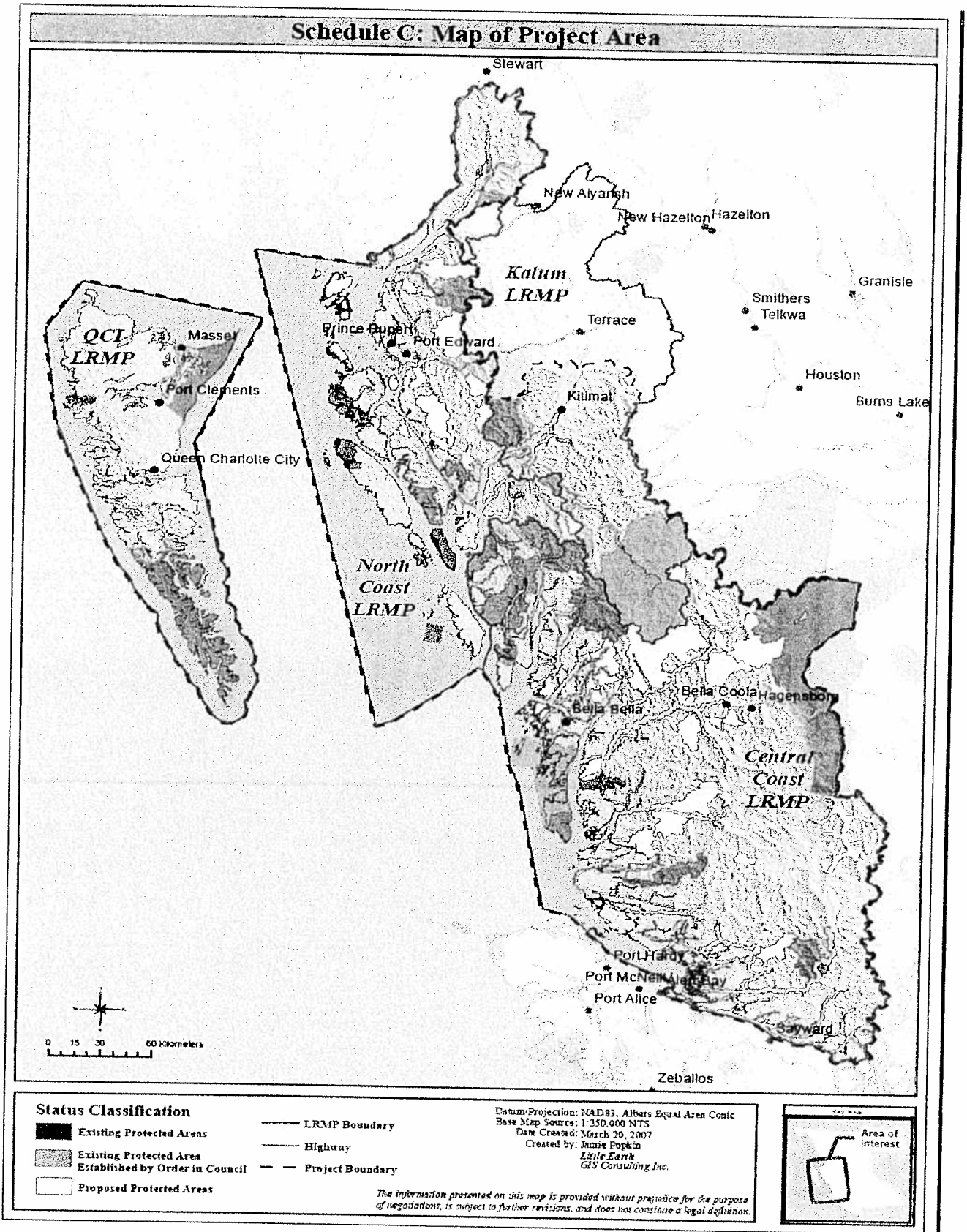
"Proposed Land Use Objectives Relating to the Central and North Coast of B.C." and,  
"Proposed Land Use Objectives Relating to the Central Coast of B.C."

Following consultation, British Columbia has announced that it intends to finalize and implement the management objectives as Ministerial Orders of the Minister of Agriculture and Lands under authority of section 93.4 of the *Land Act*.

**Schedule B****First Nations that British Columbia has Entered into or is Seeking to Enter into Land Use Planning Agreements**

British Columbia has entered into or is seeking to enter into Land Use Planning Agreements with the following Central Coast (CC), North Coast (NC) and Haida Gwaii (HG) First Nations:

1. Gitga'at (CC and NC)
2. Haisla (CC and NC)
3. Kitasoo (CC and NC)
4. Heiltsuk (CC)
5. Wuikinuxv (CC)
6. Metlakatla (NC)
7. Da'naxda'xw (CC)
8. Gwa'Sala-Nakwaxda'xw (CC)
9. Kwiakah (CC)
10. Mamalidikula-Que'Qwa'Sot'Em (CC)
11. We Wai Kai (Cape Mudge) (CC)
12. We Wai Kum (Campbell River) (CC)
13. Namgis (CC)
14. Tlowitsis (CC)
15. Gitxaala (NC)
16. Kitselas (NC)
17. Kitsumkalum (NC)
18. Homalco (CC)
19. Lax Kw'alaams (NC)
20. Nuxalk (CC)
21. Ulkatcho (CC)
22. Gwawaenuk (CC)
23. Tsawataineuk (CC)
24. Kwicksutaineuk-Ah-Kwa-mish (Gilford Island) (CC)
25. Council of the Haida Nation (HG)
26. Nisga'a (Nisga'a Treaty)



**Schedule D**

KNT – BC Land Use Planning Agreement in Principle, March 27, 2006

Land and Resource Protocol Agreement between Coastal First Nations (Turning Point) and BC, March 23, 2006

Sustainable Land Use Planning Agreement between Gitxaala Nation and BC, October 2, 2006

Confidential Draft for Discussion purposes only  
**Schedule E – Conservation and Economic Development Outcome Statements**

The goal of the Conservation Investment and Incentives Initiative will be to achieve the following economic development and conservation outcomes in the Project Area.

**Economic Development Outcomes**

The purpose of the Coastal Opportunity Fund is to promote a more diversified and sustainable economy in the Project Area by:

<b>Economic Development Outcomes</b>	<b>Sample Performance Measures</b>
Growing Participating First Nations' economic share of commercial activities, such as shellfish aquaculture, tourism, and cultural products	# of new start-up businesses or expansions in commercial activities
Increasing the number of businesses owned by First Nations communities or individuals living in the Project Area	#of businesses owned by First Nations in the project area
Increasing investment in First Nations sustainable business partnerships (i.e., leverage)	Amount of new investment in First Nations sustainable business partnerships
Contributing towards a stable or increasing population in the Project Area and its communities	Population as measured by census
increasing participation in, and contributions towards, the provincial economy	Increase in the region's share of provincial GDP
improving employment levels and decreasing unemployment rates	Employment levels, unemployment rate
increasing average annual incomes	First Nation income levels in the Project Area
increasing the capacity of Aboriginal communities to realize sustainable economic development or diversification opportunities (including increased access to skills development/ training)	Number of students obtaining education levels or certifications which provide economic development or diversification opportunities
Enhancing the economic infrastructure of the North and Central Coast to support Aboriginal business within the Project Area	# of new facilities or infrastructure that can be utilized by multiple businesses (e.g. economic development corporations, tourism marketing organizations, airstrips, docks, shell or finfish processing plants, etc.)

### Conservation Outcomes

The purpose of the Foundation and the Coast Conservation Endowment Fund will be to:

Conservation Outcomes	Sample Performance Measures
Study, document, and interpret ecosystem function and processes within their Traditional Territories	
Enhance First Nations' ability to apply their knowledge about ecological systems and function to the management of ecosystems, protected areas, lands and resources	Protected Area management plans developed or amended by, or with, First Nations assistance
Collaborative actions will sustain and enhance the biodiversity, productive capacity and resilience of ecosystems in the Project Area to ensure the sustainability of cultural and traditional resources, such as fish, wildlife and Cedar in perpetuity	Hectares of enhanced land Harvest levels of fish, wildlife and cedar Maintenance of stable wildlife populations Number of species at risk recovered
Maintain, restore or enhance habitats and ecosystem productivity in protected areas to ensure populations of migratory birds are maintained or enhanced, species at risk or of special concern to Participating First Nations are stabilized, and enhanced where possible, and productive riparian areas are maintained and restored	Hectares of habitat for migratory birds, species at risk, or species of special concern to First Nations enhanced or restored Hectares of Riparian areas restored
Provide First Nations with the capacity to participate effectively in the management of protected areas and ecosystems within the Project Area	Protected Area management plans developed or amended by, or with, First Nations assistance
Provide Participating First Nations with the capacity to develop a suite of programs or projects to restore damaged habitat in their Traditional Territories	Hectares of land restored through First Nation restoration projects Maintenance of stable wildlife populations Number of species at risk recovered
Provide Participating First Nations with capacity to maintain a permanent base of jobs – seasonal or full time – to support conservation planning, research, monitoring and interpretation	# of First Nation jobs in conservation

**Schedule F****Private Funders' Liabilities for Foundation Contribution**

**A. Amount of Private Funder Contributions.** The amount each Private Funder is obligated to contribute to the Foundation Contribution in accordance with the terms set forth in this Agreement are as follows (including credits for past contributions identified below):

The Rockefeller Brothers Fund	\$881,523 (CAD)
The William and Flora Hewlett Foundation	\$6,850,024 (CAD)
The David and Lucile Packard Foundation	\$5,994,358 (CAD)
The Gordon and Betty Moore Foundation	\$5,876,822 (CAD)
Tides Canada Foundation	\$1,393,456 (CAD)
The Nature Conservancy	\$39,003,817 (CAD), but in no event to exceed \$35,000,000 (US)

**B. \$2,000,000 Conservation Planning Projects Payment.** The contributions from the amounts listed above for the following Private Funders will be used to pay the \$2,000,000 (Canadian) payment to the Foundation for Conservation Planning Projects described in Section 2.2.1 of this Agreement (the "Planning Payment") in the following order: Tides Canada Foundation: \$1,300,000 (CAD), The William and Flora Hewlett Foundation: \$350,000 (CAD) and The David and Lucile Packard Foundation: \$350,000 (CAD).

**C. \$58,000,000 Escrow Payment.** The Private Funders funds (as listed in section A above) remaining after the \$2,000,000 EBM Conservation Planning Projects payment has been made shall be used to pay the \$58,000,000 payment to the Foundation Escrow Account described in Section 2.2.1. of this Agreement (the "Escrow Payment").

**D. Return of Funds.** Any funds returned to the Private Funders must be returned to the Private Funders pro rata, in the same proportion that each Private Funder's portion of the Foundation Contribution stands to the total Foundation Contribution.

## Schedule G

## Notional Allocations for First Nations under CIII

First Nation	Private Funder Portion for Conservation	Public Funder Portion for Economic Development
Gitanyow	\$737	\$1,400
Gitga'at	\$4,003,382	\$3,038,246
Gwawaaineuk	\$170,904	\$298,905
Haida	\$9,068,380	\$9,379,189
Haisla	\$3,881,674	\$3,934,368
Heiltsuk	\$9,754,178	\$8,012,630
Homalko	\$487,703	\$867,556
Kitasoo	\$6,406,575	\$4,191,876
Kitkatla	\$2,253,335	\$2,961,520
Kitselas	\$100,816	\$185,976
KNT – Da'naxda'xw, Gwa'Sala-Nakaxa'xw, Kwiakah, Mamalidikula- Que'Qwa'Sot'Em, We Wai kai, We Wai Kum, Namgis, Tlowitsis	\$4,989,198	\$6,176,559
Kwicksutaineuk	\$518,577	\$709,174
Nisga'a	\$1,536,895	\$2,529,136
Nuxalk	\$4,823,956	\$4,541,060
Tsawataineuk	\$469,232	\$857,589
Coastal Tsimshian:		
Lax Kw'alaams	\$3,379,897	\$4,118,212
Metlakatla	\$2,253,264	\$2,745,475
Ulkatcho	\$1,054,492	\$1,202,658
Wuikinuxw	\$2,846,805	\$2,248,471
Regional initiatives	\$2,000,000	\$2,000,000
Total	\$60,000,000	\$60,000,000