

**ULKATCHO GOVERNMENT
and
ULKATCHO BUSINESSES**

**GOVERNANCE AND FISCAL AGREEMENT (“Agreement”)
EXECUTIVE SUMMARY**

Introduction

- The goal of the Governance and Fiscal Agreement (the “Agreement”) is to promote and enable responsible and sustainable economic development for a healthy and prosperous future between the Ulkatcho government and Ulkatcho businesses.
- The Agreement would govern the operation and management of Ulkatcho’s economic development and Ulkatcho Businesses.
- Ulkatcho and all of Ulkatcho’s current Businesses would sign the Agreement and all new Ulkatcho Businesses would sign on to the Agreement when they are created.

Structure

Part 1 – Interpretation

- Interpretation principles and other definitions which affect the draft Agreement are set out in Schedule 2 of the Agreement.

Part 2 – Guiding Principles

This Part outlines Ulkatcho’s economic development vision to :

- (a) actively seek, secure and promote economic initiatives that will enhance the quality of life and prosperity of the Ulkatcho First Nation and Ulkatcho First Nation members;
- (b) develop diverse, environmentally sustainable and profitable businesses for the Ulkatcho First Nation and Ulkatcho First Nation members that respect the history, culture and traditions of the Ulkatcho First Nation;
- (c) exercise Ulkatcho’s inherent right to access to the natural resources of the lands and waters within the traditional territory of the Ulkatcho First Nation in accordance with strategic plans developed from time to time by the Ulkatcho First Nation; and
- (d) assist in building the capacity of Ulkatcho First Nation members to be successful entrepreneurs.

To achieve this vision the draft Agreement requires that:

- (a) Ulkatcho Businesses operate free from political interference;
- (b) Ulkatcho Businesses operate transparently and be held accountable to their owners, the Ulkatcho First Nation; and

- (c) Ulkatcho Businesses operate profitably without relying on the resources of the Ulkatcho and attempt to maximize employment, training and contracting opportunities for other Ulkatcho Businesses and Ulkatcho members.

Part 3 – Business Planning

- Part 3 sets out the business planning processes.
- Ulkatcho Businesses must prepare a five year business plan that describes performance/expectations of existing businesses.
- Business plans must also be prepared for any new Ulkatcho business before a business is actually implemented. The business planning process is intended to ensure that each new business opportunity has been thought through carefully and that the business fits within the overall strategic direction for Ulkatcho’s economic development. The comprehensive business plan is a detailed analysis of the business opportunity which addresses all the important considerations necessary for implementing a business opportunity.
- This Part also requires that business mandates be established for existing Ulkatcho businesses and sets limits on the activities that these businesses can engage in.
- The draft Agreement contemplates that a developments limited partnership would be created. Although Council would provide the business mandates, the directors the board of developments general partner (“Developments Board”) would be responsible for oversight of Ulkatcho Businesses;
- The roles of Council, the Developments Board and the board of directors of the operating general partners (“Operating Boards”) under the current draft Agreement are set out in attached Schedule “A”.

Part 4 – Board Appointments

- This Part establishes the composition, term and removal of members of the board of directors of the Ulkatcho Businesses, including the Development Board and the Operating Boards.
- It is proposed that the Developments and Operating Boards be comprised of between 5 and 8 directors, each of whom have business experience or expertise in an area that Ulkatcho First Nation businesses are involved in or a related and relevant background (including finance, accounting or legal), provided that at least two of the individuals must be Ulkatcho First Nation members. **[Membership input desired]**
- The directors would be appointed by Council for staggered terms to promote and maintain continuity of the Boards, and directors could also be reappointed.
- While Council would have the discretion to not reappoint a director, during their terms, directors would only be removed for cause, in accordance with a complaints review policy developed by Council, which could be attached as a Schedule to the Agreement.

Part 5 – Annual Planning

- This Part deals with annual planning requirements that Ulkatcho Businesses must exchange between themselves and Ulkatcho. These annual plans will set out things like budgets for the business, activities that the business expects to carry out in the next year (and five years), expected profit returns, potential capital investments and employment/training targets for Ulkatcho members.
- The developments board would approve its own annual plan, with input from Council, and the developments board would approve each of the operating limited partnership's individual annual plans. Each Ulkatcho Business must submit its annual plan in accordance with certain timelines to ensure that the planning and approval process works in a timely and efficient manner.

Part 6 – Major Decisions

- It is important that major decisions relating to Ulkatcho's businesses are not made without some form of input from Ulkatcho and the developments limited partnership. Typically, major decisions are those that relate to *structural* changes or *operational* anomalies (not in the normal course of business operations) as set out in Schedule 4.
- Major *structural* decisions of the developments board or operating entity could not be made without the prior approval of Council and only after receiving a directive from Council under Part 7.
- Major *strategic* decisions of the developments board could not be made without the prior approval of Council by resolution.
- Major *strategic* decisions of an operating entity could not be made without the prior approval of the developments board.

Part 7 – Directives

- It is important that if there are matters that are unable to be accommodated through the regular business planning mechanisms in the draft Agreement, that Council be able to provide assistance and input.
- This Part establishes the process by which Council gives direction to Ulkatcho businesses on structural changes and other specified matters, subject to the prohibitions contained in Part 11.
- Directives may be issued by Council on those matters recognized in the draft Agreement and the constating documents of Ulkatcho businesses as falling within the mandate of Council relative to Ulkatcho's economic development.

Part 8 – Distributions

- As part of the business planning process, this Part describes how distributions of available cash are made between Ulkatcho Businesses and Ulkatcho and is tied to the annual planning process for Ulkatcho Businesses.
- If at the end of a fiscal year an operating general partner determines that the applicable operating limited partnership has “available cash” those funds would be paid to the developments limited partnership. The definition of “available cash” is intended to ensure that Ulkatcho businesses have sufficient resources to expand and grow their business operations.
- If at the end of a fiscal year the developments general partner determines that the developments limited partnership has “available cash”, then it is proposed that those funds would be paid to a trust established by Ulkatcho that it approved by its members.
[Membership input desired]

Part 9 – Trust

- The draft Agreement requires that Ulkatcho develop a Trust to administer:
 - available cash under Part 8;
 - all future benefits under the Blackwater Participation Agreement; and
 - funds to be received under current and future resource or revenue sharing agreements, including Forest Consultation and Revenue Sharing Agreements, Economic and Community Development Agreements and BC Lottery Agreements.**[Membership input desired]**
- It is proposed that the terms of the Trust will be set out in an agreement that will be
 - developed based on Ulkatcho First Nation membership input and feedback received in person and electronically through a consultation process in future meetings and
 - approved by a majority vote through a referendum at which not less than [◆%] of Ulkatcho First Nation members over the age of 18 participate.**[Membership input desired]**
- **[Council is also seeking input on what an appropriate threshold would be for membership approval/amendment of the Agreement]**

Part 10 - Reporting

- It is critical that reporting between Ulkatcho and its members, the economic development planning group, the economic development officer and Ulkatcho Businesses is set out in a fair and transparent manner.
- This Part provide that

- at least quarterly, the developments limited partnership will report to Council on its financial and operational circumstances, and
- at least monthly, each operating limited partnership will report to the developments limited partnership on its financial and operational circumstances.

Part 11 – Dispute Resolution

- This Part establishes the obligation to attempt to resolve any disputes as quickly and inexpensively as possible. The details of the dispute resolution process are set out in Schedule 3 and the process is intended to ensure that any disputes that have the potential of impeding Ulkatcho’s economic development will be resolved in a timeline manner.

Part 12 – Prohibitions

- It is important to describe thresholds on how the various parties can act so that the relationship between business and politics can be managed in a fair and transparent manner.
- To ensure the proper interaction between business and politics
 - a senior member of government must not interfere with an operational decision of an Ulkatcho Business or a decision made by an officer, manager or employee of an Ulkatcho Business made within the scope of his or her authority in the normal course of business, and
 - Ulkatcho agrees not to engage in business directly as proprietor, with a number of limited exceptions.

Potential Schedules

- Schedule 1 – Parties.
- Schedule 2 – Definitions and interpretation principles.
- Schedule 3 – Dispute resolution.
- Schedule 4 – Major Decisions.
- Schedule 5 – Complaints Policy

SCHEDULE “A”
RESPONSIBILITIES UNDER THE ULKATCHO FIRST NATION GOVERNANCE AND
FISCAL AGREEMENT (“Agreement”)

Council:

Council has the following responsibilities relating to Ulkatcho First Nation businesses:

- (a) reviewing the development of new business opportunities that are consistent with the Ulkatcho Strategic Plan;
- (b) directing that business plans be prepared for new opportunities approved by Council;
- (c) directing that new business opportunities that are approved be implemented;
- (d) appointing an individual to be a director on the developments board and where necessary, removing an individual as a director on the developments board;
- (e) considering an annual plan for the developments limited partnership;
- (f) approving significant structural changes to and significant strategic decisions by the development limited partnership that are designated as a Major Decision under the Agreement; and
- (g) approving significant structural changes to an operating limited partnership or an operating general partner designated as a Major Decision under the Agreement;

- (a) Council and other senior members of government are prohibited from interfering with an operational decision of an Ulkatcho First Nation business, or
- (b) a decision of an officer, manager or employee of an Ulkatcho First Nation business made within the scope of his or her authority in the normal course of business.

Developments Board

The developments board has the following responsibilities relating to Ulkatcho First Nation businesses:

- (a) if requested by Council, researching and developing new business opportunities for consideration by Council;
- (b) if directed by Council, preparing business plans for new opportunities for consideration by the community economic development planning group and approval by Council;
- (c) appointing an individual to be director on an operating board and where necessary, removing an individual as a director on an operating board;
- (d) considering and approving a 5 year business plan for each operating limited partnership, and any updates;
- (e) approving an annual plan for the development limited partnership and each operating limited partnership;
- (f) approving a significant operational decision of an operating limited partnership or an operating general partner designated as a Major Decision under the Agreement;
- (g) providing comments to an operating limited partnership or an operating general partner with respect to an unbudgeted expenditure;

- (h) receiving distributions of available cash from an operating limited partnership;
- (i) reporting to Council on the financial and operational circumstances of the development limited partnership;
- (j) identifying and, as directed by Council applying for grants or funding available from Canada, British Columbia or other persons for First Nations economic development, other types of economic development or developing business opportunities;
- (k) assist Ulkatcho First Nation businesses, in accordance with the Agreement, to develop appropriate governance and fiscal policies and procedures including, as applicable:
 - a. a human resources and personnel policy providing for the preferential hiring of Ulkatcho First Nation members, subject to demonstrable levels of skill and experience necessary for the position;
 - b. terms of reference for the operating board, individual members of the operating board and the chairperson of the operating board
 - c. operating board governance guidelines;
 - d. code of conduct and conflict of interest guidelines;
 - e. director travel and expense guidelines;
 - f. terms of reference for appropriate committees, including human resources, governance and compliance, finance, audit and risk management;
 - g. committee operating guidelines; and
 - h. annual operating board performance evaluation guidelines; and
- (l) perform any additional duties or exercise any additional powers assigned to the developments board by Council.

Operating Boards

Each operating board has the following responsibilities relating to Ulkatcho First Nation businesses:

- (a) overseeing the operations of the applicable operating limited partnership or company;
- (b) ensuring that the operations of the applicable operating limited partnership implements the vision of the Ulkatcho First Nation's economic development in accordance with the guiding principles set out in the Agreement;
- (c) developing, adopting and implementing written operational policies and procedures that may be necessary or desirable for the better and more efficient operation of the applicable operating limited partnership, including the policies and procedures referred to in paragraph (k) above;
- (d) preparing and updating a five year business plan for the applicable operating limited partnership or company for consideration and approval by the developments board;
- (e) recommending a proposed annual plan for the applicable operating limited partnership or company to the developments board for approval;
- (f) reporting to the developments board on the financial and operational circumstances of the applicable operating limited partnership; and
- (g) any other responsibilities set out in the Agreement, the constating documents of the operating limited partnership or operating general partner or any applicable law.