

The Shareholder/Corporation Contract:

A Tool for Strengthening Co-operation
and Accountability in Community Forestry

2016



British Columbia
**Community
Forest**
Association

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Authors



Abstract

In British Columbia, community forest agreements can be held by a variety of community based organizations and institutions. This guide is specifically intended for the shareholders and directors of community forest corporations. It explains how a well-written contract will help communities to clarify their roles and responsibilities, and ultimately lead to accountability and collaboration at all levels of the organization. Our purpose here is to provide a tool (a contract template) for use by both new and existing community forests that will help them establish appropriate rules and practices to manage the business relationship between their shareholders and the corporation. Along the way, we outline some of the background on effective community forest governance, explaining why it is best kept at arm's length from community politics.



Preface

Community forestry is an innovative form of forest management, through which local communities gain the right to manage local forests for local benefit. A community forest in British Columbia can be described as a forestry operation managed by a local government, community group, First Nation or community-held corporation for the benefit of the entire community. Community forestry is about fostering greater local control over the decisions affecting use of local forests, generating local employment and educational opportunities. It ensures the monetary and non-monetary benefits derived from local forest resources are influenced by local values and interests. Every community forest is unique and each one strives to return benefits as defined by the local community. The community forest agreement is a long term, area based tenure. In 2016 there are 57 community forests in British Columbia serving over 80 communities.

A primary objective of the BC Community Forest Association's (BCCFA) is to provide mechanisms for networking, information sharing, problem solving and education among community forest organizations. To this end the Community Forestry Guidebook was published in 2004 in partnership with the Forum for Research and Extension in Natural Resources (Forrex). The Guidebook drew upon the practical experience and wisdom of operational community forests and was the BCCFA response to the need to get information and resources to communities that were working to establish community forests. In 2012 the BCCFA again partnered with Forrex to publish the Community Forestry Guidebook II. The Guidebook II was developed to address the evolving priorities of community forests for management and governance information and tools. Both Guidebooks continue to support BCCFA educational outreach activities; however the information needs of community forests continue to grow and tools to address emerging issues are required. This guide is designed as a supplement

to the Guidebook II, and fills a gap in the information necessary for effective governance.

When it comes to operating a successful community forest, the old saying, “don’t sweat the little things,” is bad advice. The first community forests began operating in British Columbia in the early 2000s. Since then it has become evident that the truly successful community forests are those that clearly spell out a structured relationship between their shareholders (more often than not municipal governments and [or] First Nations) and the community businesses they have created. Details really *do* matter when it comes to running a viable community forest operation.

Smoothly functioning community forests operate within an institutional framework that carefully specifies who makes the strategic decisions and who makes the management decisions. Such community forests have established rules and practices that crucially reinforce the roles and responsibilities laid out in their legal governing structures. These rules and practices, in turn, help to shape a business culture that clearly addresses corporate organization and management challenges on an ongoing basis.

Various types of legal entities are capable of holding a community forest agreement such as societies, cooperatives or limited partnerships (for more examples, see Chapter 3 in Mulkey and Day [2012]). When the chosen vehicle is a corporation with shareholders, a lack of clarity in the roles and responsibilities between the corporation’s shareholders and its board of directors can often undermine the effectiveness of the corporation’s operation. This supplement to the Community Forestry Guidebook II provides information on how to avoid this hazard. Chapter 1 presents an overview of community forest organizational governance and builds the case for the inclusion of key components needed to ensure a well-functioning business environment. Chapter 2 is a step-by-step guide for the development of a Shareholder/Corporation Contract. Chapter 3 contains a Contract template for adaptation by community forest organizations.

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About the British Columbia Community Forest Association

The British Columbia Community Forest Association (the “Association”) is a not-for-profit society formed in 2002 by the network of operating community forests in our province. The Association was created to provide a unified voice for the interests of all British Columbia communities engaged in community forest management, as well as to offer support for those seeking to establish community forests. Association members include First Nations, local governments, and non-profit organizations that represent communities throughout British Columbia.

One of the Association’s primary objectives is to provide mechanisms for networking, information-sharing, problem-solving, and education among community forest organizations. To this end, we published the Community Forestry Guidebook in 2004, which drew on the practical experience and wisdom of operational community forests at that time. In 2012, the Association published the Community Forestry Guidebook II, which addressed the evolving needs of community forest organizations on forest management and governance issues. The information in these two guidebooks remains useful today, and you are encouraged to use them to supplement the information provided here.

For more information on the Association’s current programs, services, and partnerships, go to www.bccfa.ca.

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Part I

COMMUNITY FOREST GOVERNANCE

Whenever a group of people come together with a stated goal or purpose, the need for governance immediately arises. Attempting to steer an organization without an established governance protocol is akin to sailing a ship without a rudder. Any organization without it is almost guaranteed to eventually founder, or even fail.

So what is governance? Quite simply it's a collection of policies and procedures that determine who in the organization has power and over what (see Figure 1). Governance of a community forest corporation, for example, is the job of its board of directors, whereas its management is delegated to a senior manager who is hired by and works for the board. The owners of a community forest corporation, called shareholders, have a limited role in its governance and management. Shareholders appoint directors to the board and receive the financial profits or dividends of the corporation (see sidebar, "The Nuts and Bolts of Effective Governance"). Other shareholder rights include the ability to periodically receive minutes and financial reports, to inspect the corporation's financial records, and to have access to conflict resolution measures.

The success of an organization's governance structure hinges on its implementation. To maintain the health of any organization, it's crucial to constantly monitor governance criteria and, when necessary, to update these criteria to ensure their proper application.

This is why it is critical to set out in careful detail the relationships between the shareholders, the corporation, and its board of directors and managers. These expectations and directives are usually found in a community forest organization's "constating documents"—more commonly referred to as its articles of incorporation—which simply means its originating or estab-

THE NUTS AND BOLTS OF EFFECTIVE GOVERNANCE*

The key to understanding effective governance is in clearly distinguishing between governance and management. The essence of what a board of directors does is to set out what gets achieved; how that gets done is up to management.

Effective governance is centred on two necessary and complementary dimensions—governing and managing. With this approach, the board's primary job is to govern and management's job is to manage and operate. When an organization functions effectively, its board and management work as partners in these areas, yet are clear on their different roles and responsibilities.

A community forest organization board fulfils its leadership responsibility by: identifying the goals or results to be achieved annually by the organization; and setting the conditions and constraints that must be satisfied by management.

Within this effective governance approach, a board spends its time focussing on outcomes and "what we have achieved to date," rather than on "what we are doing right now." Board governance is enabled through the organization's: vision statement;

strategic plan that includes annual goals, strategies, and outcomes; budget; and policy framework.

The board of directors turns these over to staff, who use them to develop an operational plan and to guide their day-to-day activities.

A board of directors does not approve operational affairs—that is, the details of how something gets done. This is left to management, akin to "staying out of the kitchen"—restaurant patrons don't tell the chef how to make the soup they've ordered—their job is to place their order, taste it when it arrives, then decide whether it's satisfactory.

* Excerpted from Community Forest Guidebook II (Mulkey and Day [editors] 2012).

lishing documentation (see sidebar, “Articles of Incorporation and Corporate Governance”).

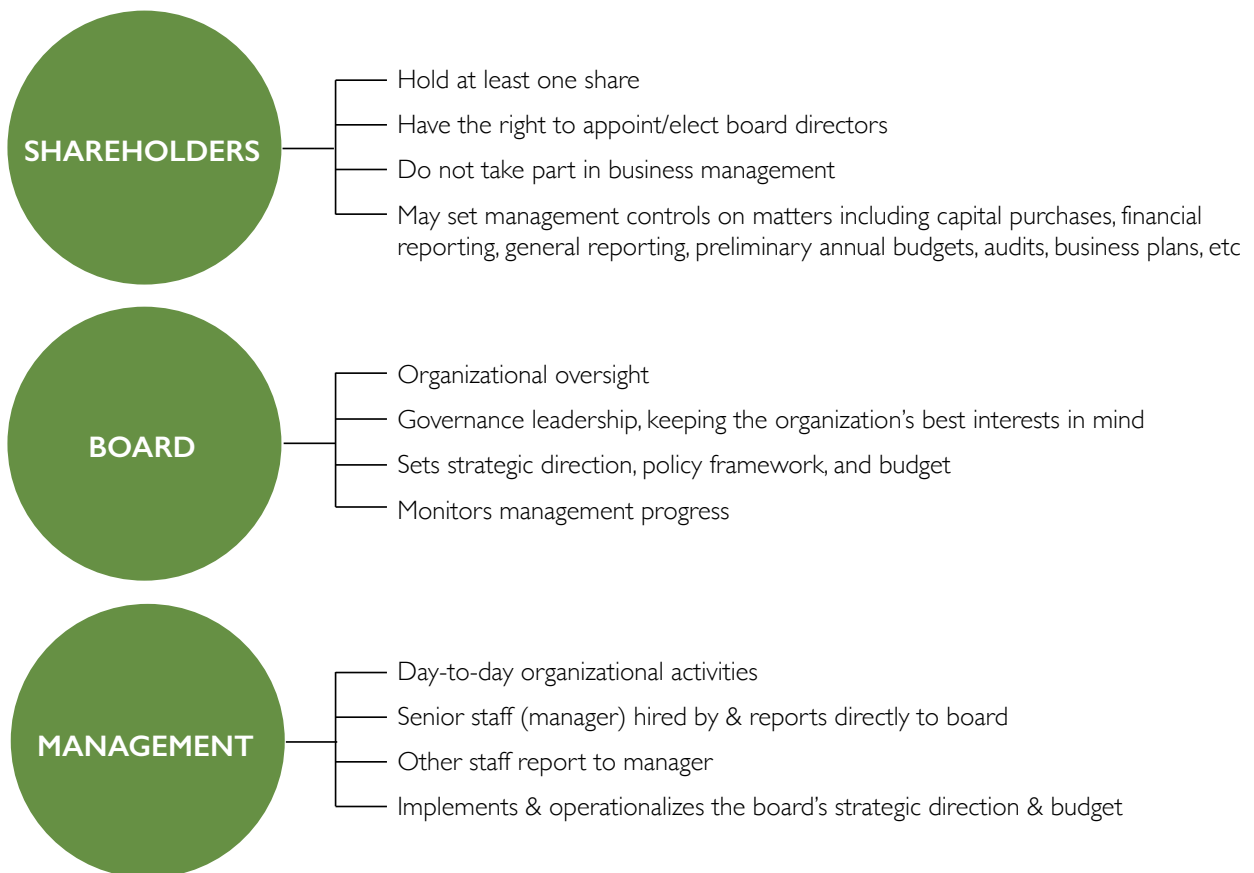
During the start-up of a community forest, the need for a sophisticated and effective governance structure is often given insufficient attention, and for perfectly understandable reasons. For example, establishing a community forest involves significant cost and complexity; however, dedicated community volunteers, who bring tremendous enthusiasm but not always sufficient time or capacity to the task, put together the initial applications. In many cases, “off the shelf” generic boilerplate is often used for the articles of incorporation, which inevitably fails to offer the detail necessary to address a community’s unique context and needs.

Effective governance documentation will clearly spell out: decision-making responsibilities; checks

and balances; opportunities for discussion and dissent; and levels of accountability among and between shareholders, boards of directors, and management. A properly constituted contract can play a vital, practical role in clarifying the issues that may be missing from a community forest’s articles of incorporation, providing the detail required to effectively govern the relationship between shareholders, the governing board of directors of the community forest corporation, and the manager of the community forest’s day-to-day, operational activities.

A Case for Arm’s Length Governance

Through the Association’s extension work with community forests, we frequently discover gaps in a community forest’s governing documents



that lead to problems, ranging from the merely irritating to the potentially catastrophic. These problems can often be attributed to a lack of clarity regarding the precise nature of the legal and practical relationships between shareholders, governing boards of directors, and management. The roles and responsibilities of, and relationships between, these three groups are seldom carefully defined at the outset, which can lead to weak accountability and conflict once a community forest is operational.

The situation is made worse when there is no specific mandate to keep local politics at arm's length from the day-to-day management of the business. This is particularly troublesome when community forest shareholders are represented by municipal and First Nation councils.

Although community forests are businesses, they may be created for reasons other than maximizing profit for their shareholders. Given the shareholders of many community forests are public bodies (e.g., local governments and First Nations), the desire to create jobs locally or to engage in environmental stewardship are naturally deemed of high importance. In this often-politicized context, however, it may be forgotten that a community forest must remain economically viable to support and contribute to its shareholders' social or environmental goals. Research tells us that for a business to thrive and generate profits, particularly a forestry business that has long-term planning horizons, it must have a defined strategic direction and be separated from community politics (Troster et al. 2008). Political goals, objectives and time frames differ from those of a successfully functioning business.

This highlights the importance of a well-established system of corporate governance. "Rule continuity"—policies, terms of reference, proper reporting, and documentation of previous decisions—helps maintain the trust and allegiance of employees, customers, and partners. A successful community forest thus requires a functional,

Articles of Incorporation and Corporate Governance

When the selected legal structure is a corporation, the community forest organization requires articles of incorporation, also known as "constating documents," under the province's Business Corporations Act.* These documents must be approved by the incorporators.

More than simply a legal requirement, properly drafted and implemented, a community forest's constating documents set out the rules that govern the relationship between the corporation and its shareholders. These rules involve: the proceedings at meetings of shareholders and voting; the election and removal of directors and the proceedings of the board; appointments of officers; conflicts; determination of dividends; and accounting records. The articles must contain the restrictions on the corporation's business (if any) and the powers to be exercised by the organization, as well as its share structure, name, and incorporation number. Together this provides the framework necessary to ensure the efficient operation of the community forest organization. The constating documents combined with their implementation is known as corporate governance.

* Province of British Columbia. 2002. Business Corporations Act [SBC 2002] c. 57. Queen's Printer, Victoria, B.C. http://www.bclaws.ca/civix/document/id/complete/statreg/02057_00

effective corporate governance system, which in turn requires an operating environment that is stable and predictable. This is crucial when shareholder representatives change with relative frequency, primarily through elections of the shareholder who appoint the representatives.

Why is a Contract Important?

Given the extensive duties and responsibilities required to maintain and operate a forestry business, and the associated risks and liabilities involved in doing so, it is prudent for shareholders of corporations to clearly identify those requirements and who should carry them out. A carefully constructed contract that describes the relationship between shareholders, directors, and managers of an organization can assist in ensuring that powers, rights, and obligations are clearly understood. A contract can also support key relationships among shareholders, directors, and managers and establish the foundation for achieving desired results, while protecting the organizations' assets and resources.

A well-crafted contract can:

- guarantee a successful board, by clearly identifying roles, and by specifying its powers and accountability;
- set out clear business objectives that serve to effectively connect the community forest to community objectives;
- encourage positive dialogue;
- support continuing education among board members; and
- ensure corporate performance is regularly evaluated.

To help shape a stable, predictable operating environment, we have created a contract template, which incorporates the best practices we have observed through our work with dozens of community forests over the years. The contract is a practical, working document based on a standard Limited Partnership contract and adapted for use by an organizational structure that includes the relationship between a corporation with shareholders and its board of directors. It is designed to supplement the direction set out in a community forest's constating documents.

The contract template may be helpful for several reasons. It clarifies expectations. It ensures shareholders are guaranteed a regular flow of important information on the business, programs, and financial status of their community forest. This means the board and management are able to plan their reporting on budgets and strategic direction, rather than responding to *ad hoc* requests for information from shareholders, which can lead to confusion, frustration, and a general lack of efficiency in business operations. For example, a requirement for an annual meeting can be stipulated, giving the shareholders and governing board a chance to have a conversation that clarifies plans and budgets. This allows shareholders to address proposed budget priorities that might affect their dividends, and to learn the rationale for or against specific expenditures.

All this assists in building accountability, particularly for directors but for management as well. A thoughtful contract establishes trust between the parties, enhanced by clear parameters, rules, and procedures that everyone understands and agrees to adhere to.

Summary

Well-run community forests can and do play a vital role in communities and First Nations in British Columbia. One of the keys in ensuring a community forest achieves—and continues to achieve over time—the goals and aspirations of its shareholders, is a solid, detailed governance structure. The contract template offered here is a potentially useful tool, one that some community forests may be able to merge into their existing documentation with little revision. In other cases, it may serve as a helpful guide, providing a sug-

gested structure that makes it easier to develop specific clauses to address unique circumstances. It is intended to provide general direction, to inform, to streamline, and ideally to reduce the time and expense required to develop a contract that best suits the particular needs of a given community forest corporation.

We urge any community forest that contemplates using our contract template to have it reviewed by legal counsel before implementation.



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Part 2

GUIDE TO THE SHAREHOLDER / COMMUNITY FOREST CORPORATION CONTRACT

Introduction

The contract template will provide you with the components of an effective agreement to manage the business relationship between the community forest corporation (CFC) and its shareholder, most likely a municipality or a First Nation. It reflects practices that have proven useful in communities across British Columbia in the past several years.

We hope that the general information and step-by-step direction provided here will help you to streamline your agreement process and to reduce your expenses as you develop your community forest business. Please understand, however, that this template is only a general guide. You need to ensure that your contract addresses the unique and specific circumstances of your community forest. We encourage you to seek an independent legal advisor to review your contract before it is finalized. The “the devil is in the details” and a well-written contract will minimize or eliminate disagreement between the parties in the future.

Components of the Shareholder/Community Forest Corporation Contract

The following sections, which mirror the sections in the Shareholder/Community Forest Corporation contract, provide background information and guidance that should help you draft a practical, working document.

1. BACKGROUND

The section is meant to provide a context for your contract—it names the contracting parties and describes the relationship between the parties. It may contain a broad statement of their shared principles and the common purpose of the parties entering into the contract. The parties may include any background information they regard as relevant. Although these paragraphs *do not* form part of the contract, the context provided here will allow for a greater understanding of the document as a whole. It emphasizes the common ground that should be able to sustain a positive relationship and that serves the best interests of the community. Should future conflicts arise, this section may help to remind the parties of the reasons why they initially entered into the agreement.

2. DEFINITIONS

The definitions *do* form part of the contract and are important for the interpretation of its provisions. The definitions must be used consistently throughout the contract to maintain the clarity of the contractual rights and obligations of the parties and to avoid disagreements over the interpretation of those rights and obligations.

3. LIST OF SCHEDULES

The schedules listed in this section also form part of the contract and supplement the terms contained in the main body of the contract; that is, whether to:

- provide a copy of another document specifically referred to in the contract (B.C. Ministry of Forests, Lands and Natural Resource Operations' Goals for the Community Forest Contract Program and British Columbia Community Forest Association's 18 Indicators);
- further define a particular responsibility (Code of Conduct of a Director);
- provide a specific form (i.e., Confidentiality, Consent and Conflict Disclosure Statement Form; Indemnification of Director); or
- provide greater understanding and guidance as to how a particular contractual obligation may be fulfilled (Director Suitability Requirements).

The schedules are included as attachments at the end of the main body of the contract for quick reference and to keep the main contract a manageable size.



Note that this contract template includes schedules considered basic to all community forests. Your situation may require the attachment of other documents, such as subcontracts that affect or interact with the contractual relationship between the parties of the main contract. Please refer to the next section for more discussion regarding this particular matter.

4. PRECEDENCE OF THIS AGREEMENT

This contract is intended to carefully and thoroughly address the rights and responsibilities of the parties. A well-written, detailed contract will prove invaluable to the management of their business relationship and deserves the necessary time and attention in its drafting.

This paragraph urges upon the parties an understanding of the importance of this contract. It is meant to be their ultimate governing document, subject only to one important legal qualification that arises from the provincial *Business Corporations Act*. The Act strictly prohibits a corporation from carrying on business or exercising powers restricted by its articles of incorporation. It is important, therefore, to review this contract in conjunction with the incorporating documents of the parties. If matters stated in any of the incorporating documents would restrict the conduct of business necessary to the parties, the parties will want to amend their articles of incorporation to avoid this conflict.

If any subsisting agreements or subcontracts interact with the business conducted between the CFC and the Shareholder, you will need to ensure that no conflicts occur between the terms of this contract, the contracts or agreements appended as schedules, and the contracting parties' incorporating documents. Legal advice can be invaluable, and is recommended, in drafting your main contract.

5. ROLES AND RESPONSIBILITIES OF THE PARTIES

Interference by one party in the role and responsibilities of the other party is a frequent cause for conflict in community forestry. It is therefore wise to define the jurisdiction of each party as clearly as possible.

5.1 Role of the Shareholder

This section does two important things:

1. it states that the Shareholder shall not participate in the governance or management of the CFC; and
2. it outlines the Shareholder's role in the creation of the CFC's Board of Directors and the mechanism by which people become Board members.

This contract template assumes that the Municipal Shareholder initially created the CFC and is responsible for appointing persons to its Board of Directors or, in any event, at least to its first Board; however, your contracting parties may have agreed to a different model of Board and a different process for filling Board positions, such as by continued appointment via a committee or an election at large.

Whatever your agreement, keep in mind that the collective character of this Board will be responsible for the CFC's governance, strategic planning, and goal setting. Therefore, this contract template includes a schedule called the "Directors Suitability Requirements." This schedule urges the parties to consider the importance of appointing people to the Board who represent a broad spectrum of the community and who will bring diversity and varied skill sets and talents. Such a Board will better serve the larger interests of the community.

5.2 Role of the Board of Directors

This section confirms the Board's role related to all matters of governance, strategic planning, and goal setting. Importantly, it states clearly that the

Board will *not* participate in the operation and management of the CFC except through its role in providing strategic direction, policy, and an annual budget.

6. MANAGEMENT OF THE CFC

The clarification of the roles of both the CFC and the Shareholder does not address who actually is responsible for the day-to-day operations of the community forest. This section makes it clear that the Board is responsible for hiring the General Manager for this purpose.

7. DIRECTORS

The CFC's incorporating documents make general provisions for the appointment of directors. The parties, however, may want to include provisions that specify:

- the number of directors;
- composition of the Board (i.e., members from the public, members from the municipality; combination of elected and appointed members);
- length of term for a director; and
- maximum years of service for any one director.

Although this contract template contemplates Board appointments, your parties may want to elect Board members, or have a combination of elected and appointed members.

7.1 The Executive of the Board

The parties may also want to designate the person who has the authority to speak on behalf of the Board. This ensures a well-functioning Board that collectively acts in the best interests of the community it serves. Although much debate and disagreement can occur around the Board table, once its vote determines the outcome of any matter, this becomes a decision of the entire Board and must be respected by every director.

7.2 Directors to Act in Accordance with the Terms of this Contract

All directors must understand that, regardless of their background or how they were appointed or elected to the Board, it is their legal duty to act in the best interests of the company and carry out its intent as stated in the contract.

This paragraph provides direction concerning the directors' responsibility to act in the best interests of the CFC by acting in accordance with the terms of this contract. Such a provision may be helpful should dissent arise between directors, who may then take certain courses of action that would not be considered as in the best interests of the CFC or in accordance with existing policies, goals, and strategic direction. It provides for the management of disagreement while permitting the operation and business to continue in a timely way. You may want your contract to further specify the limitation on the exercise of an individual director's powers (i.e., by stating that no individual director may act on behalf of the Board without express authority of the Board).

7.3 Removal of Directors Who Fail to Act in Accordance with Terms

Incorporating documents often describe the election and appointment of directors but not the terms or procedures for removing directors who fail to perform their duties or comply with the rules and regulations governing the corporation or society. In these circumstances, it is helpful to describe the particular circumstances and method for removing directors. For example, consider whether other exit procedures may be required, such as: final payment of director remuneration, reimbursements for costs and expenses, return of corporation or society property, and exit letters reminding directors of their ongoing duties, if any (e.g., duty of confidentiality).

7.4 Documents to be Provided by Directors

Here you will provide a list of the documents

included as schedules. For example, the Conduct, Confidentiality, Consent and Personal Interest Disclosure Form that is presented in this document as Schedule C. This piece is recommended for signing by all members of the Board of Directors to ensure they have a clear understanding of their role and responsibilities.

8. GOVERNANCE OVER THE AFFAIRS OF THE CFC

This section provides the rules by which Board meetings are called and how these meetings are organized and conducted.

8.1 Meetings of the Board of Directors

The articles of incorporation of any company usually contain general rules and regulations for the conduct of its affairs; however, the parties may want to manage the timing and requirements for conducting meetings in a particular way. It may be prudent to specify the roles and responsibilities of management (if any) at meetings and for recording meetings.

8.2 Quorum for Board Meetings

The definition of a "quorum" for any Board meeting is an important consideration. Determine the number of Board members who must be present before any business transactions can be conducted on behalf of the CFC.

8.3 Decision-making Process of the Board

This section specifies the process by which Board decisions are made, such as through consensus or a simple majority vote. Although any approach may be adopted, it is wise to designate a procedure that will resolve an impasse in the decision-making process.

8.4 Specific Major Matters Requiring Board Approval

Again, the articles of incorporation set out general responsibilities to supervise and conduct the affairs of the business, but they may not include

sufficient detail concerning the operation of your particular CFC. A listing of the type of decisions requiring Board approval is a good way to further differentiate the role of the Board from that of CFC management.

The Shareholder may also wish to place restrictions on the powers of the Board. From the Shareholder's perspective, these restrictions may concern:

- placing limits on borrowing;
- placing limits on capital expenditures;
- limiting the power to allot or issue shares;
- undertaking other business (other than the business for which the company was incorporated);
- entering into joint ventures or partnerships;
- entering into or terminate certain contracts;
- buying or selling property or other capital;
- making distributions of capital or monies; and
- changing auditors and/or accounting procedures.



Such decisions could affect the CFC's capital assets and other resources and thus the success of the business. Therefore, it is important for the Shareholder to consider these restrictions carefully when determining the powers of the Board.

8.5 Indemnity for Directors and Others

The province's *Business Corporations Act* requires corporations to indemnify its directors or officers against financial harm or loss.

9. REPORTING REQUIREMENTS

This section should describe the CFC's responsibility to report regularly to the Shareholder on certain matters, such as when and how it reports on fiscal matters, banking requirements, and (or) annual and business plans, and any other controls shareholders wish to place on the financial management, accounting, and reporting requirements. This should include whether and how these controls may be altered, and the requirements and timing for reporting on expenditures and accounting for profits. Since these requirements will be specific to your particular community forest business, it is advisable to consult a financial and (or) service provider when developing these provisions. These provisions are likely to include:

- reporting capital expenditures;
- adopting a certain financial reporting system;
- providing quarterly reports;
- providing minutes of Board of Directors' meetings;
- reporting on an annual basis;
- conducting an annual audit;
- banking procedures and handling of money;
- developing business plans;
- completing the Annual Assurance of Compliance Certificate; and
- reporting on any litigation matters or any conduct that may have an adverse effect on the CFC.

10. DISTRIBUTION OF PROFITS

The approach of each community forest to their profit distribution will reflect their organizational model, leadership, decision-making process, and community history and involvement. This approach also needs to take into account the CFC's budget, its long-term goals, and its ongoing financial requirements for day-to-day operations, necessary capital expenditures, and potential emergencies.

Your community will expect to see a distribution of the CFC's profits; therefore, an agreement between the parties along with well-written, clear policy guidelines will assist in maintaining a good relationship between the CFC and the community at large.

The ways in which profit distribution can be accomplished is as varied as the communities themselves. For example, will the Board of Directors or a sub-committee adjudicate the applications? Or, will the funds be transferred to an external organization such as a community foundation? The statement you make in this contract creates the opportunity to clearly outline your process at the commencement of your undertaking and before the accumulation of any surplus of funds in your CFC. You can always review your process as circumstances change.

11. ASSET PROTECTION

11.1 Insurance

This provision affirms the wise practice of ensuring appropriate insurance is carried by the CFC on all of its assets.

11.2 Limitation of Encumbrances

This section ensures that insurance policies will remain available to protect the CFC's assets, a provision that protects the best interests of the CFC, the Shareholder, and the community.

12. ISSUANCE OF ADDITIONAL EQUITY SECURITIES

This section restricts the Board's ability to create and issue any more shares in the CFC without the written approval of the Shareholder. The Shareholder will likely want this legitimate limitation on the CFC's power contained in the Contract.

13. COMMUNITY ENGAGEMENT



Under the terms of the licence agreement, the CFC is responsible to engage community stakeholders in its forestry business to obtain input on its operations, and to provide information on its stewardship of the community forest and subsequent annual financials. Such engagement is to take place no less than once annually.

Community participation is the cornerstone of community forestry. The inclusion of this section provides the parties with an opportunity to contractually commit to the principles of transparency, including accountability to and meaningful involvement of the community, and an ongoing scheduled public reporting process. The section cites the use of the "British Columbia Ministry of Forests, Lands and Natural Resource Operations' Goals for the Community Forest Contract Program" and the "British Columbia Community Forest Association's 18 Indicators," which provide a comprehensive list of matters on which to report.

14. AMENDMENT AND TERMINATION OF CONTRACT

Like any other agreement that establishes and enhances a formal business relationship, planning for what will happen when that relationship ends is an important consideration. The termination provisions typically describe how the agreement may be terminated, the method of termination, and its effect upon the parties. Agreements may be terminated upon bankruptcy or receivership, uncured default or other irreconcilable differences, or the agreement's end of term. Beyond confidentiality and indemnity obligations, which survive termination, what other obligations will remain? For example, will the parties require terms of payment for services?

15. CONFLICT RESOLUTION

The ability of the contracted parties to work constructively with each other and to serve the greater community together is vital to the success of the CFC. Nevertheless, given the diversity of opinions that will inevitably exist between the parties and on the Board, disagreements are likely to arise. A clearly articulated dispute-resolution mechanism can assist the parties in more quickly and efficiently moving towards resolution of the conflict. A community forest operation with the capacity to resolve differences will increase its long-term sustainability.

This contract template suggests three levels of engagement in a comprehensive approach to conflict resolution:

1. resolution by consultation and negotiation;
2. mediation by independent third party who has no decision-making authority; and
3. binding arbitration or legal proceedings.

The contract template then sets out the process and timetable to implement this approach. The parties are encouraged to carefully determine

the kind of process(es) that would work best for them, beginning with a structured opportunity to consult and negotiate in an attempt to overcome the impasse. The approach also incorporates the ability to quickly and decisively involve outside assistance for resolution so that CFC operations will be affected as little as possible.

16. GENERAL

Certain standard clauses are included in most, if not all, contracts, and are considered as part of the best practices in drafting such documents. These clauses can provide further clarification on a matter not comfortably included into a preceding section, or address issues that may be subject to "common law" approaches to contract interpretation developed historically by courts.

16.1 Notices

This provision establishes the way in which parties give each other notice of matters required under the contract.

16.2 Severability

This provision confirms that if any part of the contract is unenforceable or invalid, the balance of the contract remains in good standing, and provides an example of a reaction to developed common law as it related to contracts. A strict common law interpretation would see the entire contract become null and void if part of a contract was unenforceable or invalid.

16.3 Further Assurances

This provision confirms that parties always agree to sign any other documents that may be required to carry out the terms of this contract.

16.4 Governing Law

This provision confirms that the laws of British Columbia govern this contract, notwithstanding that another party or Director may be registered in or reside in another province.

16.5 Waiver

Under this provision, the parties agree that failure to fulfil any contract terms will not be interpreted as a waiver of that term, unless both parties provide a written statement confirming that it should be waived.

16.6 Freedom of Information Legislation

This provision confirms the parties understand that, if the Shareholder is a “local government body,” then it has obligations to comply with freedom of information legislation. The CFC contractually confirms its cooperation to comply with the legislation to which the Shareholder is subject. The sections of the *Freedom of Information and Protection of Privacy Act* specifically referred to (i.e., Sections 32–36) relate to the disclosure of information (other than contract information) the contracted parties may have about an identifiable individual—an issue that could arise for a Director of a corporation that has contracted with a public body.

16.7 Entire Contract

This provision confirms that this contract contains the entire agreement between the parties and that no other agreement exists on which either party can rely. This is actually quite significant, as it prevents a conflict arising if either party makes a claim such as “but you had agreed to...” or “you said you would...” If it is not in the contract, it is not part of the agreement between the parties. This is why it is important to append to this contract (as schedules) any other contracts, agreements, or memorandums of understanding on which the parties expect to rely.

16.8 Binding Nature of Contract

If one of the parties ever transfers their interests in the community forest entity, this provision confirms that the new party is bound by this contract. Of course, with any transfer of interest, prudence dictates that a new contract would be signed between the remaining party and the new party, even if just to confirm the terms of this contract.

17. SCHEDULES

This is where the schedules will be attached—after the signature page of the contract.

Provided at the end of the template are the following three documents:

Schedule A Goals and Indicators

Recommendations for reporting to the community and shareholder based on the Ministry of Forests, Lands and Natural Resource Operations - Goals of the Community Forest Program and the BCCFA 18 Indicators

Schedule B Director Suitability Requirements

Community forest boards of directors require a broad range of expertise. Although having board members with forest industry experience is always valuable, community forestry is different than traditional forestry and requires diverse skills and competencies.

Schedule C Conduct, Confidentiality, Consent and Personal Interest Disclosure Form

This piece is recommended for signing by all members of the Board of Directors to ensure a they have a clear understanding of their role and responsibilities.

PART 3

THE SHAREHOLDER / COMMUNITY FOREST CORPORATION CONTRACT TEMPLATE

This template is provided to help you to streamline your agreement process and to reduce your expenses. We want you to not have to “reinvent the wheel”, but you will need to adjust it to reflect the the unique and specific circumstances of your community forest. Remember that “the devil is in the details” and a well-written contract will minimize or eliminate disagreement between the parties in the future.

**CONTRACT BETWEEN THE SHAREHOLDER AND
THE COMMUNITY FOREST CORPORATION**

*We urge any community forest that contemplates using our contract template to have it reviewed by legal
counsel before implementation.*

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**CONTRACT BETWEEN THE SHAREHOLDER AND
THE COMMUNITY FOREST CORPORATION**

THIS CONTRACT is made as of the _____ day of _____, 20____.

BETWEEN: NAME _____Municipality of
 [ADDRESS]
 (hereinafter referred to as the **“Shareholder”**)

AND NAME _____Community Forest Corporation
 [ADDRESS]
 (hereinafter referred to as the **“CFC”**)

1. BACKGROUND

- 1.1 The Municipality of _____ is a valid and subsisting corporation, pursuant to the laws of the Province of British Columbia.
- 1.2 The CFC is a valid and subsisting corporation, pursuant to the laws of the Province of British Columbia.
- 1.3 The CFC was incorporated for the purpose of operating a managed community forest to serve the residents of _____.
- 1.4 The Shareholder is the sole shareholder of all issued and outstanding shares in the capital stock of the CFC and it wishes to contract with the CFC to set out the terms and conditions under which they shall manage the business relationship between them.
- 1.5 The Parties agree that Community Forestry involves three pillars of sustainable development—economic, social, and environmental sustainability—and they seek to manage local control over and enjoy the benefits offered to their community by its local forest resources.
- 1.6 The Parties wish to enter into this Contract to better clarify their rights, obligations, expectations, decision-making processes, and methods of governance and operation of the CFC so as to institute the best practices known to be effective in this undertaking and to better meet the objectives of both the Shareholder and the CFC.

THEREFORE IN CONSIDERATION of their respective undertakings, mutual covenants and promises herein, the Parties hereby agree each with each other as follows:

2. DEFINITIONS

- (a) **"Affiliate"** has the same meaning as has been designated to that term in the BCBCA;
- (b) **"Contract"** means this Contract between the Shareholder and the CFC;
- (c) **"BCBCA"** means the *Business Corporations Act* (British Columbia), as amended from time to time, and every statute that may be substituted therefore, and in the case of any such amendment or substitution, any reference in this Contract to the *BCBCA* shall be read as referring to the amended or substituted provisions thereof;
- (d) **"Board"** means the Board of Directors of the CFC;
- (e) **"Business"** means, any and all activities, whether direct or indirect, for the purposes of managing a community forest tenure, operating a forestry-based business enterprise, and enhancing economic opportunity and promoting good forest stewardship within the community forest land base and in the community served by the CFC;
- (f) **"Business Day"** means any day except a Saturday or Sunday and legal holidays for Canadian chartered banks and credit unions in British Columbia;
- (g) **"Chair"** means the Chair of the Board of the CFC;
- (h) **"CFC"** means _____ and includes any successor resulting from any amalgamation, merger, arrangement or other reorganization of or including the CFC or any continuance under the laws of another jurisdiction;
- (i) **"Community"** means _____.
- (j) **"Incorporating Documents"** means the articles of incorporation pursuant to which the CFC is incorporated and its by-laws, together with any amendments thereto or replacements thereof;
- (k) **"Directors"** means the persons who are, from time to time, elected or appointed to the Board of the CFC and a **"Director"** means any one of them;
- (l) **"Environmental Laws"** means the common law and any applicable federal, provincial, state, municipal and local laws, statutes, ordinances, by-laws, regulations and orders, directives and decisions, approvals of all governmental authorities or administrative or regulatory agency related to environmental, health, occupational safety and product liability matters, in effect from time to time;
- (m) **"FOIPPA"** means the *Freedom of Information and Protection of Privacy Act* R.S.B.C. 1996, Chap. 165, as amended from time to time;
- (n) **"Local Government Body"** means "local government body" as defined in Schedule 1 to the *FOIPPA*;
- (o) **"Officers"** are persons appointed by the Board to fulfill certain functions
- (p) **"Parties"** means the parties to this Contract, and **"Party"** means one of them;
- (q) **"Person"** means any individual, partnership, joint venture, syndicate, sole proprietorship, CFC or corporation with or without share capital, trust, trustee, executor, administrator,

or other legal personal representatives, regulatory body or agency, government or governmental agency, authority or entity howsoever designated or constituted;

- (r) **“Personal Information”** means “personal information” as defined in Schedule 1 to the *FOIPPA*;
- (s) **“Purchase”** includes any purchase, acquisition or other arrangement by which a Person obtains beneficial ownership of a security from another Person, whether or not for value, and any Contract to effect any of the foregoing; and the words **“purchased”**, **“purchasing”** and similar words have corresponding meanings;
- (t) **“Shareholder”** means the Municipality of _____ which holds shares/securities of the CFC and which is a party to this Contract (along with their respective successors or permitted assigns);
- (u) **“Shares”** means shares of any class in the share capital of the CFC;
- (v) **“Subsidiary”** has the same meaning as has been designated to that term in the *BCBCA* and **“Subsidiaries”** means more than one subsidiary;
- (w) **“Transfer”** includes any sale, exchange, assignment, gift, bequest, disposition, mortgage, charge, pledge, encumbrance, grant of a security interest or other arrangement by which possession, legal title or beneficial ownership passes from one Person to another, or to the same Person in a different capacity, whether or not for value, and any Contract to effect any of the foregoing; and the words **“Transferred”**, **“Transferring”** and similar words have corresponding meanings;
- (x) Any words or phrases defined elsewhere in this Contract shall have the particular meaning assigned thereto. Words (including defined terms) using or importing the singular number include the plural and *vice versa* and words importing one gender only shall include all genders and words importing persons in this Contract shall include individuals, partnerships, companies and any other entities, legal or otherwise.
- (y) The headings used in this Contract are for ease of reference only and shall not affect the meaning or the interpretation of this Contract.
- (z) All accounting terms not defined in this Contract shall have the meanings generally ascribed to them under Canadian generally accepted accounting principles.

3. SCHEDULES

The following schedules attached to this Contract shall form part of this Contract:

Schedule 1 – British Columbia Ministry of Forests, Lands and Natural Resource Operations’ Goals for the Community Forest Program and British Columbia Community Forest Association’s 18 Indicators

Schedule 2 – Director Suitability Requirements

Schedule 3 – Director Consent, Conflict Disclosure, Confidentiality and Code of Conduct Form

Schedule 4 – Indemnification of a Director

4. PRECEDENCE OF THIS CONTRACT

In the event of any conflict between the provisions of this Contract and the Incorporating Documents or any Contract to which the CFC or a Shareholder is or becomes a party, the provisions of this Contract shall prevail and govern to the extent permitted by law. The Shareholder shall promptly procure all necessary proceedings and vote as is required so as to cause the Incorporating Documents to be amended in order to resolve such conflict in favour of the provisions of this Contract as legally allowed.

5. ROLES AND RESPONSIBILITIES OF THE PARTIES

5.1 Role of the Shareholder

- (a) The Shareholder's role is to appoint the Directors to the Board of the CFC. The Shareholder shall not participate in the governance or management of the business of the CFC.
- (b) The Shareholder shall set up a committee consisting of representatives of both the Shareholder and of the CFC, for the purpose of recruiting Directors for the Board of CFC.
- (c) The Shareholder is committed to appointing individuals who represent a broad spectrum of interests and values from the community in order to ensure fair and equitable balance of all local interests. (Refer to: Schedule 2 – Director Suitability Requirements.)

5.2 Role of Board of Directors

The Board's role is to govern the CFC in the best interests of the corporation. Additional foundation statements such as mission and purpose of the organization give direction to corporation and who it serves, including the community and all stakeholders. The Board shall be responsible for making policy related to governance, developing the strategic plan and setting goals expected of the CFC. It shall not participate in the management and operations of the CFC except through Board policy, goals and strategic direction.

6. MANAGEMENT OF THE OPERATIONS OF THE CFC

The Board shall hire the General Manager of the CFC, whose responsibility is to perform the duties of the day-to-day management of the CFC in accordance with the strategic plan and goals set by the Board. The Board may, from time to time, appoint such other management positions as it shall deem necessary, which appointees shall have the authority and shall perform such duties as may from time to time be prescribed by the Board.

7. DIRECTORS

7.1 Composition of the Board

There shall be up to [add #] Directors, according to the following composition.

7.2 Term of Appointment

Each Director shall be appointed for a term of _____ year (s). The maximum service of any Director shall be _____ years, unless otherwise approved by a special resolution of the Shareholders.

7.3 The Executive of the Board

The Executive of the CFC shall be selected at the first meeting of a new board of directors from among themselves and shall be:

President
Vice-President
Treasurer
Secretary

The Chair is the sole public spokesperson of the Board and of the CFC, or as determined otherwise by the Board of Directors. It is the Board as a whole, not individual Directors, which set policy and direction. Therefore, while Directors are entitled to express any contrary opinions or views held on matters under discussion or consideration by the Board, once the Board has made a decision, all Directors shall respect and support that decision.

7.4 Directors to Act in Accordance with the Terms of This Contract

The Directors, acting in the best interests of the CFC, shall at all times promptly:

- (a) vote as it is their responsibility to do (or if more convenient execute written consent resolutions provided they are executed by all Directors); and
- (b) take all such steps as may be reasonably within their powers, so as to cause the CFC to act in the manner contemplated by this Contract and so as to fully implement the terms of this Contract and, to the extent permitted by law, shall cause their respective nominees as Directors to so act.

7.5 Removal of Directors Who Fail to Act in Accordance with Terms

If a Director refuses to exercise his or her discretion to vote and act as a Director (other than a Director abstaining from voting as required by law or voting in accordance with the requirements of the *BCBCA* and the Incorporating Documents) so as to fully carry out the terms of this Contract, then the Shareholder shall promptly convene a meeting of Shareholders and take all action authorized to remove such Director from the Board and provide a replacement Director in accordance with Section 5.1.

Documents to be provided by Directors Schedule A – Goals and Indicators

Schedule B - Director Suitability Requirements

Schedule C – Director Accountability Agreement - Conduct, Confidentiality, Consent and Personal Interest Disclosure Form

8. GOVERNANCE OVER THE AFFAIRS OF THE CFC

8.1 Meetings of the Board of Directors

The Board shall meet at least once every _____ months (or as determined by the Board). The CFC shall provide notice of each Board meeting (a "Meeting") to its Directors in accordance with the Incorporating Documents together with an agenda of the items to be discussed and a brief description of each such item. Except in circumstances where all Directors have waived in writing their right to advance notice of a Meeting or if waiting the required notice period would be reasonably likely to expose the CFC to undue risk of damage or loss, the CFC shall give at least five (5) Business Days advance notice to Directors of all Meetings. Directors may participate in any Meeting by telephone conference call or in any manner by which all participants in the meeting can reasonably communicate with one another, and any Director so participating shall be considered to be present for the purposes of quorum and voting at such Meeting. The CFC shall provide each Director with copies of the minutes of each Meeting within 30 days of each such Meeting.

8.2 Quorum for Board Meetings

A quorum for the transaction of business at any Meeting of the Board shall be _____ Directors, conclusively determined at the commencement of the Meeting. If a quorum is not present at the commencement of a Board meeting, then the Directors present may not transact any business and such Directors shall be deemed to have adjourned such meeting to the same time and place on the same day the following week. If a quorum is not present at such adjourned meeting, then the Directors who are present shall be deemed to be a quorum and may transact all business which a full quorum might have transacted with respect to the items set forth in the notice (or accompanying documentation) provided to the Directors in connection with the originally scheduled meeting of the Board.

8.3 Decision-making Process of the Board

The parties recognize that decision making through consensus is more likely to be durable because of its ability to balance the differing values of the community. They are therefore committed to working towards consensus in its decision-making process.

However, should a deadlock arise, it may be resolved with a majority vote. Each Director, including the Chair, shall have one vote.

8.4 Specific Major Matters Requiring Shareholder Approval

The CFC shall not, without the written approval of the Shareholder:

- (a) allot or issue any additional equity securities of the CFC, purchase, redeem or acquire any shares of the CFC, or make a declaration or payment of dividends on any shares of the CFC, unless required under the rights, privileges, restrictions and conditions attached to the shares in question as at the date of this Contract;
- (b) increase or decrease the authorized capital of the CFC or alter the share capital of the CFC;
- (c) undertake or proceed with any matter, other than an incidental matter, that is outside of the ordinary course of the Business;

- (d) allow any of the shares or securities of the CFC to be qualified for distribution to the public or listed for trading on a recognized securities exchange;
- (e) amalgamate, consolidate or merge or enter into a Contract to amalgamate, consolidate or merge the CFC or its Subsidiaries with any Person;
- (f) enter into any joint venture or partnership with any Person;
- (g) incorporate, purchase, acquire, fund, sell, or dispose of any Subsidiary or Affiliate, whether wholly or partially owned by the CFC;
- (h) sell, lease, exchange or otherwise dispose of any of the property of the CFC outside of the ordinary course of the Business;
- (i) subject to the provisions herein regarding distribution of net profits, distribute any monies or assets of the CFC outside of the ordinary course of the Business;
- (j) make an assignment for the benefit of any of the CFC's creditors generally;
- (k) institute proceedings for the winding-up, reorganization or dissolution of the CFC or any Affiliates;
- (l) change the nature of the Business;
- (m) continue the CFC under the laws of another jurisdiction;
- (n) adopt any Directors' Contract other than this Contract;
- (o) make a proposal to the CFC's Directors to change the CFC's auditors;
- (p) change the CFC's significant accounting practices;
- (q) make any substantial expenditures in a fiscal year unless they are in accordance with an annual operating and capital expenditure budget approved by the Board for that fiscal year;
- (r) make any capital expenditures or leasing commitments exceeding \$10,000 (in aggregate) which are not included in the CFC's budget for that year previously approved by the Board;
- (s) commence any process to effect a public offering of its securities;
- (t) permit the pledging or hypothecation of any Voting Equity Securities by a Shareholder;

8.5 Indemnity for Directors and Others

Subject to the limitations set forth in the *BCBCA* or otherwise at law, and in addition to any existing provisions which may be contained in the Incorporating Documents and any indemnity Contracts between the CFC and any of its Directors, the CFC shall to the fullest extent possible indemnify any Director or officer of the CFC, a former Director or officer of the CFC, or any person who acts or has acted at the CFC's request as a director or officer of a body corporate of which the CFC is or was a shareholder, and his/her heirs and other personal representatives, against all costs, charges and expenses, including any amount paid to settle an action or satisfy a judgment, actually and reasonably incurred by him/her, including an amount paid to settle an action or satisfy a judgment in a civil, criminal or administrative action or proceeding to which he/she was made a party by reason of being or having been a Director, or officer of the CFC or such body corporate and any costs related thereto, including legal costs and disbursements on a solicitor and his/her own client basis, if:

- (a) he/she has acted honestly and in good faith with a view to the best interests of the CFC; and

- (b) in the case of any criminal or administrative action or proceeding, he/she had reasonable grounds for believing that his/her conduct was lawful. Nothing in this Section shall limit the right of any person entitled to claim any indemnity apart from the provisions of this Section. If under applicable law, any payment by the CFC under such indemnity requires the approval of any court, then the CFC at its own expense shall promptly take all necessary proceedings to obtain such approval.

9. REPORTING REQUIREMENTS

The CFC shall provide to the Shareholder in a timely manner:

- (a) *Capital Purchases:* A report of all capital purchases or expenditures of \$_____ or greater, which purchase/expenditure must be approved by a 75% majority of the Directors in writing.
- (b) *Financial Reporting System:* The financial reporting system adopted by the CFC must be approved by the Shareholders in writing.
- (c) *Quarterly Reports:* Quarterly financial reports shall be delivered to the Shareholder prior to the end of the month next following. The quarterly financial reports shall include prepared profit and loss statements, balance sheet, cash flow projections and any cost and sales reports generated by the CFC.
- (d) *Minutes of Board of Directors Meetings:* The CFC shall provide the Shareholder with a copy of the minutes of each meeting of Directors of the CFC within 60 days thereof.
- (e) *Annual Reporting:* The CFC shall report annually to the Shareholder and to the community on its progress on the British Columbia Ministry of Forests, Lands and Natural Resource Operations' Goals for the Community Forest Contract Program and the Corporation's status as relates to the British Columbia Community Forest Association's 18 Indicators.
- (f) *Annual Budget/Preliminary Budget:* At least 30 days prior to the end of each fiscal year, a preliminary annual budget for the CFC and within 30 days after the beginning of each fiscal year, the CFC shall provide the Shareholder with an annual budget for the CFC which has been approved by the Board.
- (g) *Annual Audit:* The CFC shall be the subject of an annual audit as required by the BCBCA unless, waived in writing by the Shareholder, and the annual report shall be provided to the Shareholder within 90 days of the end of each fiscal year.
- (h) *Business Plans:* A copy of any business plan which has been approved by the Directors, within 30 days of such approval shall be provided to the Shareholder.
- (i) *Statutory Compliance Certificate:* Within 21 days of each fiscal quarter end, a certificate signed by the General Manager of CFC shall be provided to the Shareholder stating that:
 1. CFC, its Subsidiaries (if any), and any partnership of which the CFC is a general partner, has/have paid all taxes, premiums, contributions and payments required to be deducted at source, paid and/or remitted under the *Income Tax Act (Canada)*, *Excise Tax Act (Canada)*, *Canada Pension Plan*, *Employment Insurance Act (Canada)*, *Income Tax Act (British Columbia)*, *Workers Compensation Act (British Columbia)*, *Social Services Tax Act (British Columbia)* or applicable regulations thereto (or any applicable or similar legislation in other jurisdictions in which CFC/Subsidiary/partnership (as applicable) carries on its business or operates) have been deducted, paid and remitted (as the case may be) to the proper authority;

2. the CFC and its Subsidiaries (if any), and any partnership of which CFC is a general partner is/are in compliance with all applicable Environmental Laws and compliant with all British Columbia forest management legislation and regulations.
 3. The financial reports to be provided above, shall conform to Canadian generally accepted accounting principles and include, where applicable, CFC's Subsidiaries and any partnership of which the CFC is a general partner.
- (j) *Litigation*: A summary of any substantial litigation (pending, threatened or otherwise) or other proceedings against CFC, any of its Subsidiaries, or any partnership of which CFC is a general partner before any court, tribunal or administrative agency, promptly after the Corporation becomes aware of same.
- (k) *Material Adverse Effect*: Notice of any default, breach, acceleration, modification or cancellation of any Contract, arrangement or other transaction or matter that may result in a material adverse effect to CFC, within 5 days after CFC becomes aware of same.
- (l) *Merger*: Notice of the intention to effect a change of control, sale of assets, reorganization, amalgamation, consolidation, merger or Contract to amalgamate, consolidate or merge the Corporation or its Subsidiaries with any Person, promptly after CFC becomes aware of same.

10. DISTRIBUTION OF PROFITS

The Parties agree that the following is their policy and process regarding the distribution of the net proceeds of the CFC:

[Provide a statement of this policy and process.]

11. ASSET PROTECTION

11.1 Insurance

CFC shall maintain, and shall ensure that its Subsidiaries (if any) maintain, fire and casualty insurance policies with sufficient coverage to allow replacement of any of their respective insurable properties that might be damaged or destroyed and insurance policies for comprehensive general liability insurance (including bodily injury, death and property damage) for amounts which meet commercially reasonable standards.

11.2 Limitation on Encumbrances

CFC shall not grant a security interest in, borrow on the security of, hypothecate, assign or dispose of any of the insurance policies referred to in this Section or any part thereof except to the extent that such policies are charged or encumbered from time to time by security instruments granted by the Corporation in good faith to its lenders for genuine corporate borrowing purposes approved by the Board.

12. ISSUE OF ADDITIONAL EQUITY SECURITIES

12.1 Shareholder Consent Required

CFC shall not create, allot, issue, sell or resell any Equity Securities without having first received the consent of the Shareholder to all of the terms and conditions of the proposed allotment, issuance, sale or re-sale of Equity Securities.

13. COMMUNITY ENGAGEMENT

The CFC shall ensure that its governance over the operations of the CFC shall be conducted in an honest and transparent manner.

The CFC acknowledges it is accountable to the Community and, as such, shall engage and consult with the community and all stakeholders in community forestry, in a meaningful way, for input to its operations.

Further, the CFC shall report annually to the community, as required by the terms of the Community Forest Agreement Licence, on its progress on the British Columbia Ministry of Forests, Lands and Natural Resource Operations' Goals for the Community Forest Program and the CFC's status as relates to the British Columbia Community Forest Association's 18 Indicators (see Schedule 1).

Such public consultation and reporting shall occur on not less than an annual basis.

14. AMENDMENT AND TERMINATION OF CONTRACT

15.1 Amendment

This Contract may only be amended by an instrument in writing duly executed all of the Parties.

15.2 Termination Events

This Contract shall cease and determine on the occurrence of any of the following events, namely:

- (a) the bankruptcy or receivership of the CFC or the passing of a resolution by the CFC for its winding up or dissolution pursuant to the *BCBCA*, S.B.C. 2002, Chapter 57 as amended or any similar provision enacted in substitution therefor, or upon dissolution of the CFC by Order of the Lieutenant-Governor in Council pursuant to Section 422 of the *BCBCA* or any similar provision enacted in substitution thereof;
- (b) the execution of a Contract of termination in writing by all Directors; or
- (c) the execution of a Contract replacing this Contract.

15.3 Surviving Obligations

No termination of this Contract shall affect the right of any party to whom money is owed hereunder at the time of termination to receive that money according to the provisions hereof or to affect any other rights or obligations hereunder of the parties that would, by its context, survive termination.

15. CONFLICT RESOLUTION

15.1 Commitment to Conflict Resolution

The Parties are committed to resolving conflicts, as may arise between them, in accordance with a clearly articulated conflict resolution policy that shall contain three levels of engagement:

1. resolution by consultation and negotiation;
2. mediation by independent third party who has no decision making authority; and
3. binding arbitration or legal proceedings through the Courts.

15.2 Referral to Consultation and Negotiation

If two or more Parties fail to agree on any matters referred to in this Contract or if an issue or a dispute arises between the Parties in any matter arising out of this Contract, either Party may by notice to the other Party set out, in reasonable detail, the particulars of the dispute, and request the forming of negotiation committee. This committee shall deal only with the conflict with respect to which it was created and shall be composed of _____ nominee(s) of each Party. A Party wishing to participate in such a negotiation process must, within two (2) Business Days of receiving notice that a dispute has been referred to negotiation under this section, give notice to the other Party of the identity of its nominee to the negotiation committee. The members of the negotiation committee shall use reasonable commercial efforts to determine a fair and equitable solution to the dispute then at issue. A unanimous resolution reached by the members of a negotiation committee and

communicated by them in writing to the Parties shall be binding on the Parties and shall be implemented.

15.3 Third-Party Mediation

If no resolution with respect to a matter, issue or dispute is communicated by the negotiation committee within ten (10) Business Days after notice referring the matter to a Negotiation Panel was given in accordance with the above, the matter shall be referred to mediated negotiation with the assistance of a neutral person appointed by the British Columbia International Commercial Arbitration Centre administered under its Mediation Rules.

15.4 Place of Mediation

All mediation proceedings shall be conducted in _____, unless all Parties otherwise agree.

15.5 Timely Decision

Any matter referred to mediation shall be dealt with on an expeditious basis with the Parties using all commercially reasonable efforts to obtain and implement a timely resolution of their disputes arising in connection with this Contract.

15.6 Period of Exclusivity

Any Party may at any time after a matter referred to mediation has been outstanding for 120 Business Days, calculated from the date on which the matter is first referred to mediation, refer the matter to binding arbitration or commence proceedings in the Supreme Court of British Columbia to have the dispute determined therein, whereupon all formal mediation proceedings shall terminate.

15.7 Survival

This conflict resolution process shall survive any termination of this Contract and shall continue to be binding upon the Parties, their permitted successors and permitted and be enforceable against them.

16. GENERAL

16.1 Notices

Any notice, payment or other communication required or permitted to be given or served pursuant to this Contract shall be in writing and shall be delivered personally or forwarded by first class pre-paid mail to the Party concerned addressed to the addresses set out on the first page of this Contract or to any other address as may from time to time be notified in writing by any of the Parties hereto. Any notice, payment or other communication shall be deemed to have been given, if delivered by hand on the day delivered, and if mailed, seven (7) Business Days following the date of posting; provided that

should there be at the time of mailing or within seven (7) Business Days thereafter a mail strike, slowdown or other labour dispute that might affect delivery by the mails, then the notice, payment or other communication shall be effective only when actually delivered.

16.2 Severability

Should any part of this Contract be declared or held to be invalid or unenforceable for any reason, that defect shall not affect the validity of the remainder of this Contract which shall continue in full force and effect and be construed as if this Contract had been executed without the invalid portion and it is hereby declared the intention of the Parties that this Contract would have been executed without reference to any portion that may, for any reason, be hereinafter declared or held invalid.

16.3 Further Assurances

The Parties shall execute all other documents and instruments and do all other things necessary to implement and carry out the terms of this Contract.

16.4 Governing Law

This Contract shall be construed and the powers and provisions herein contained shall be administered, exercised and given effect to according to the laws of the Province of British Columbia and the rights and obligations of all Parties hereunder shall be regulated by the laws of the Province of British Columbia notwithstanding that any of the Directors may now or any time be resident or domiciled elsewhere than in the Province of British Columbia.

16.5 Waiver

Failure by any Party to insist in any one or more instances upon the strict performance of any one of the covenants contained herein shall not be construed as a waiver or relinquishment of such covenant. No waiver by any Party of any such covenant shall be deemed to have been made unless expressed in writing and signed by the waiving Party.

16.6 Freedom of Information Legislation

The Parties acknowledge and agree that the Shareholder is a Local Government Body and as such has certain obligations respecting public access to information concerning its business and affairs and the protection Personal Information. Each of the Parties shall use its reasonable commercial efforts to cooperate with any Party that is a Local Government Body in the fulfillment of its obligation to comply with the *FOIPPA*, including the requirements of Sections 32 to 36, inclusive.

16.7 Entire Contract

This document herein constitutes the entire Contract between the Parties and supersedes all previous communications, representations and Contracts whether verbal or written, between the Parties with respect to the subject matter hereof.

16.8 Binding Nature of this Contract

This Contract shall be binding upon the Parties hereto and, upon their successors and assigns as this contract within the parameters allowed in this Contract.

IN WITNESS WHEREOF the Parties hereto executed this Contract effective as of the date first set out on the front of this Contract.

SIGNED AND DELIVERED by
Municipality of by its authorized signatory(ies)

Authorized Signatory

Authorized Signatory

SIGNED AND DELIVERED by
Community Forest Corporation by its authorized signatory(ies)

Authorized Signatory

Authorized Signatory

17. Schedules

Schedule A – Goals and Indicators

Ministry of Forests, Lands and Natural Resource Operations - Goals of the Community Forest Program

This form of tenure is intended to provide new opportunities for community management of Crown forest land. By providing communities with greater flexibility to manage local forests, government seeks to:

- provide long-term opportunities for achieving a range of community objectives, values and priorities
- diversify the use of and benefits derived from the community forest agreement area
- provide social and economic benefits to British Columbia
- undertake community forestry consistent with sound principles of environmental stewardship that reflect a broad spectrum of values
- promote community involvement and participation
- promote communication and strengthen relationships between Aboriginal and non-Aboriginal communities and persons
- foster innovation
- advocate forest worker safety

BC Community Forest Association Indicators

The BC Community Forest Association (BCCFA) sends an annual survey to all members to report on 18 indicators that measure the benefits of the community forest program across the province. Communities are now using their data on each indicators to report to their community on their activities and progress.

1. The number of jobs the community forest creates
2. The total economic activity generated by the community forest
3. The cash and in-kind contributions made by the community forest
4. The additional funds leveraged by those contributions
5. The active role the community forests play in the forest sector through harvesting
6. The support for the full spectrum of milling and manufacturing facilities
7. Investments in the future economic return of the forest through intensive silviculture
8. Efforts to diversify the economic activities of the community forest.
9. The accountability of the community forest agreement holder to the local community
10. The range and depth of engagement with different sectors of the community

11. Investments in education
12. Investments in recreation
13. Proactive efforts to reduce the wildfire hazard to communities
14. Forest worker safety.
15. The breadth and depth of First Nation involvement in community forests.
16. The management of sensitive areas
17. Investments in forest stewardship incremental to legal requirements
18. Compliance with environmental standards.

Schedule B - Director Suitability Requirements*

Community forest boards of directors require a broad range of expertise. Although having board members with forest industry experience is always valuable, community forestry is different than traditional forestry and requires diverse skills and competencies. It is also essential that new board members understand how the organization and its board works.

Recruitment in 20 Words or Less

Know the experience and skills needed for the board, establish a process, find the right people, and orient them well.

Useful skills, knowledge, and experience to consider when recruiting board members

- Experience working as part of a group and participating in group decision making.
- Ability to communicate clearly and sensitively with people.
- Experience in conflict management and consensus decision making.
- Experience managing the operations of a small- to medium-sized commercial or non-profit entity.
- Previous experience as a member of a Board of Directors of a commercial or non-profit entity.
- Experience operating a business.
- Experience in accounting or financial activities.
- Experience managing legal issues.
- Experience dealing with staffing, personnel, and recruitment and with the legalities of contract development and management.
- Experience developing and organizing communications, such as marketing, website management, and working with the local press.
- Knowledge and experience in forest management and addressing forestry issues.
- Experience managing consultation and stakeholder involvement processes with local communities and First Nation interests.
- Experience and knowledge of non-timber resource areas, such as recreation, biodiversity, and environmental sustainability.

*Excerpt from the Community Forestry Guidebook II

Schedule C – Director Accountability Agreement - Conduct, Confidentiality, Consent and Personal Interest Disclosure Form

This document is in three sections and is intended to support accountability of each member of (THE ORGANIZATION) Board of Directors to the highest of standards for organizational governance.

Section 1 - Confidentiality and Consent

TO: (THE ORGANIZATION)

I hereby certify that:

1. I am not less than eighteen years of age;
2. I am not of unsound mind and have not been so found by a court in Canada or elsewhere; and
3. I do not have the status of a bankruptcy.

I hereby:

- consent to my election or appointment from time to time as a director of the Corporation
- consent to the holding of meetings of directors or any committees of directors of which I am a member by means of such telephone or other communications facilities as permit all persons participating in the meetings to hear each other
- acknowledge and declare that I am a resident of Canada
- undertake to advise the Corporation in writing of any change in my status as a resident of Canada.

In return for (THE ORGANIZATION) giving me access to confidential information in the form of draft proposals, draft legislation, draft regulations, briefing materials, correspondence or verbal communication for the purposes of involvement in the affairs of the (THE ORGANIZATION), I agree to keep confidential the documents and information that I obtain from this access or a result of this involvement. The discussion must not mention the specific wording of the draft proposals, draft legislation, draft regulations, briefing materials, correspondence or verbal communication.

Nothing in this agreement prevents me from disclosing confidential information or a confidential document:

1. to a person who has executed a confidentiality agreement with the (THE ORGANIZATION) similar to this one,
2. if the disclosure is required by law, or
3. if the information has first been made public by the (THE ORGANIZATION).

If confidential information or a confidential document is made public by someone other than me, I may discuss the information or document that has been made public with any person as long as I do not, in that discussion, disclose any confidential information or document that has not already been made public.

Section 2 - Code of Conduct

The Code of Conduct sets out the conditions for the attitudes, behaviors and actions expected of an individual on the board of the (THE ORGANIZATION).

In fulfilling my responsibilities as a board member of the (THE ORGANIZATION) I agree to:

1. Exercise the duties of care, diligence and skill.
2. Respect the confidentiality of board discussions and discussions.
3. Abide by all board policies governing board member behaviour, practices, decisions and actions.
4. Respect and abide by the board's governing principles.
5. Honour my obligations to attend all board meetings and where this is not possible, notify the Chair in advance of my inability to attend.
6. Support the work of the (THE ORGANIZATION) by attending (THE ORGANIZATION) events.
7. Come to board meetings having read the materials relevant to the board meeting agenda.
8. Abide by the board's meeting rules and by the method or process agreed to for conducting board meetings.
9. To avoid where possible any conflict of interest and when it is not possible to do so, declare to all board members the real or potential conflict.
10. Abide by any policy or rules of the board regarding conflict of interest which include the annual signing and submission of the Disclosure Statement.
11. Exercise and discharge the powers and duties of a director honestly and in good faith.
12. Respect the right of each member to contribute his/her position or opinion to board discussion and discussions, even though I might disagree with them.
13. Refrain from behaviour which undermines the board's integrity, discussions, decision making.
14. Ensure that my views and opinions are expressed in board discussions and to honour the principle that a board decision made fairly is the position on the matter decided.
15. To participate and contribute to building and maintaining a strong, healthy productive and effective functioning board.
16. Use board agendas and meeting to voice my disagreement with board positions and decisions and not attempt to undermine the board by using public forums or special interest groups or mechanisms to voice my disagreement.
17. Respect and honour the governing principles that board members will avoid communication with staff other than the General Manager on matters related to administration or operations.
18. Not use my position as a board member to obtain employment with the (THE ORGANIZATION) for myself, family members or close colleagues.

Section 3 - Personal Interest Disclosure Statement

Purpose

The purpose of a Personal Interest Disclosure Statement is to allow (THE ORGANIZATION) board of directors to declare personal interests and activities in order to manage for real or perceived conflict of interest. This form is an important component of the (THE ORGANIZATION) Conflict of Interest Policy.

Process

Members of the (THE ORGANIZATION) board of directors will complete the Disclosure Statement by listing employer, contracts, memberships, and other affiliations that may present a real or perceived conflict of interest. Please also list associations that do not fall within these categories.

Employment

State employer (and/or major contracts) and briefly describe the nature of your work:

Organizations and Memberships

State all clubs, Societies, Organizations and other memberships relevant to the (THE ORGANIZATION):

Other Interests

List any additional information that is potentially of interest to the purpose of Conflict of Interest Policy:

I acknowledge that the information contained in this form is complete and accurate.

Print name

Signature

Date



CONTACT US

British Columbia Community Forest Association

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