

**LOWER KOOTENAY CUSTOM ELECTION LAW, 2018**

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## WHEREAS

**A.** Lower Kootenay has an inherent Aboriginal right to govern its members;

**B.** Lower Kootenay's Aboriginal right to self-government is recognized and affirmed by section 35 of the *Constitution Act 1982*;

**C.** Prior to 1980, Lower Kootenay was required to hold its Council elections and regulate Council members' conduct in accordance with the *Indian Act* and its associated regulations;

**D.** Since 1980, Lower Kootenay has exercised its Aboriginal right to self-government by enacting and following its own laws that set out the customs of Lower Kootenay with regard to Council elections and the regulation of Council member's conduct, which are as follows:

- *Lower Kutenai Indian Band Custom Election Regulations* (1980),
- *Governing Body Band Custom Election Regulation* (1986),
- *Lower Kootenay Indian Band Custom Election Regulations* (1994),
- *Lower Kootenay Indian Band Custom Election Regulations* (1995),
- *Lower Kootenay Indian Band Custom Election By-law* (1998),
- *Lower Kootenay Indian Band Custom Election By-law* (2004),
- *Lower Kootenay Indian Band Custom Election By-law* (2008), and
- *Lower Kootenay Indian Band Custom Election By-law* (2012);

**E.** Lower Kootenay has a vision of being a "stable, independent, self-governing authority, providing principled leadership to a dynamic community of caring, healthy members, from a secure resource base;

**F.** Lower Kootenay shares in the Ktunaxa Nation vision of having strong, healthy members and communities, speaking their languages and celebrating who they are and their history in their ancestral homelands, working together, and managing their lands and resources as a self-sufficient, self-governing nation;

**G.** The Lower Kootenay membership looks to their Council as leaders and role models and expect their Council to act in the best interests of the whole of Lower Kootenay when carrying out their roles;

**H.** The Lower Kootenay membership has determined that the vision of Lower Kootenay must be further advanced if Lower Kootenay repeals the *Lower Kootenay Indian Band Custom Election By-law* (2012) and replaces it with a new Law that:

- provides for improved certainty, transparency and accountability with regard to the management of elections and Council conduct, and
- addresses and clarifies gaps and ambiguities in the *Lower Kootenay Indian Band Custom Election By-law* (2012), and

I. Lower Kootenay held a vote by secret ballot on the \_\_\_\_\_ day of \_\_\_\_\_, 2018 at which both:

- fifty percent (50%) plus one (1) of all Lower Kootenay electors voted, and
- fifty percent (50%) plus one (1) of those Lower Kootenay electors who participated in the vote, voted to repeal the *Lower Kootenay Indian Band Custom Election By-law* (2012) and to approve this Law;

**NOW THEREFORE** Lower Kootenay duly enacts as follows:

### **PART 1: CITATION**

1. This Law may be cited as the *Lower Kootenay Custom Election Law, 2018*.

### **PART 2: DEFINITIONS, INTERPRETATION AND APPLICATION**

#### **Definitions**

2. For the purposes of this Law:

"Arbitrator" means an arbitrator appointed in accordance with section 111 for the purpose of hearing election appeals;

"apparent conflict of interest" means a situation where a reasonable and well-informed person would perceive that:

(a) a Council member's ability to exercise their Council duty must be affected by their private interests, or

(b) a personal or business activity that a Council member is involved in outside their role on Council must interfere with their fulfillment or performance of a Council duty or conflict with the interests of Lower Kootenay;

"applicant" means a person who submits a Notice of Appeal;

"by-election" means an election required for the purpose of filling a vacant position on Council;

"candidate" means an elector who the electoral officer declares as a candidate in a Notice of Nomination Results;

"Chief" means a person who the electoral officer declares as elected to the office of Chief in a Declaration of Election Results;

"conflict of interest" means a situation where a Council member:

(a) performs a Council duty and at the same time knows or ought reasonably to know that in the performance of the Council duty there is an opportunity to benefit their private interests, or

(b) participates in a personal or business activity outside their role on Council that may interfere with the fulfillment or performance of their Council duties, or conflict with the interests of Lower Kootenay;

"Council Accountability Panel" means a panel composed of those persons set out in section 165;

"Council" means the sum of all those persons who the electoral officer declares as elected to into the offices of Chief or Councillor in a Declaration of Election Results;

"Council resolution" means a formal motion moved by a Council member, seconded by another Council member and approved by a majority of a quorum of Council at a duly convened meeting of Council;

"Councillor" means a person who the electoral officer declares as elected to the office of Councillor in a Declaration of Election Results;

"Declaration of Election Results" means a Declaration of Election Results in the form set out in Schedule "A" Forms;

"debt" means any sum of money that is owed by a member to Lower Kootenay:

(a) through either lending or revenue receivable by Lower Kootenay that is one (1) or more days overdue to be paid to Lower Kootenay, or

(b) that consists of either unpaid and overdue rent payments, mortgage payments, or payments for services in relation to buildings, structures or property registered as belonging to Lower Kootenay in the Indian Lands Registry System that is maintained by the government of Canada;

"election" means an election held pursuant to this Law for positions on Council;

"election day" means a date set either by the Council pursuant to section 20 or 163, or by an electoral officer pursuant to paragraph 47(1)(a), for conducting an election;

"electoral officer" means a person appointed by Council resolution to conduct an election under this Law;

"elector" means a person who is a member and is at least eighteen (18) years old on or before an election or by-election day;

"electors' list" means the list of all electors maintained by either the membership clerk or electoral officer, as applicable;

"electronic voting platform" means computer software that directs a computer to perform and monitor the required tasks for a person to either register to vote or vote in an election or by-election using an electronic device, such as a computer or mobile phone;

"honorarium" means compensation paid by Lower Kootenay to:

- (a) the Chief, for acting as the principal contact person and spokesperson for the Council;
- (b) the Chief or a Councillor, for carrying out of any civic or ceremonial duties of the Council at public events; and
- (c) the Chief or a Councillor, for his or her preparation for, attendance at, and participation in:
  - (i) regularly scheduled Council meetings,
  - (ii) meetings with local, provincial and federal government representatives,
  - (iii) meetings of any regional, provincial or national aboriginal organizations or associations, including: the Ktunaxa Nation Council Society's executive council and sectoral councils, the Union of British Columbia Indian Chiefs, the Assembly of First Nations or the First Nations Summit,
  - (iv) Lower Kootenay community meetings held for the purpose of reporting back to community members on activities being undertaken by Council and the Lower Kootenay administration, or
  - (v) training sessions that will assist the Chief in understanding how to fulfil his or her duties on Council;

“immediate family” means a person’s grandmother, grandfather, mother, father, sister, brother, child, spouse or common-law partner, whether by blood, marriage or adoption;

“*Indian Act*” means the *Indian Act*, R.S.C., 1985, c. I-5;

“indemnification” means the payment of amounts required or incurred:

(a) to defend an action or prosecution brought against a Council member in connection with the exercise or intended exercise of the Council member’s official powers or the performance or intended performance of the Council member’s official duties or functions, or

(b) to satisfy a judgement, award or penalty imposed in an action or prosecution referred to in paragraph (a);

"Lower Kootenay" means Lower Kootenay, as recognized under the *Indian Act* and as represented by Council, also known as the “Lower Kootenay Band”, “Lower Kootenay Indian Band” and “Yaqaan Nukiy”;

"Lower Kootenay business entity” means a corporation, partnership, joint venture or any other unincorporated association or organization, the financial transactions of which are consolidated in the annual financial statements of Lower Kootenay;

"member" means a person whose name appears on the Lower Kootenay membership list that is compiled in accordance with the *Indian Act*;

"Notice of Appeal" means a Notice of Appeal in the form set out in Schedule “A” Forms;

“Notice of Election” means a Notice of Election in the form set out in Schedule “A” Forms;

"Notice of Nomination Meeting" means a Notice of Nomination Meeting in the form set out in Schedule “A” Forms;

“Notice of Nomination Results and All Candidates Forum” means a Notice of Nomination Results and All Candidates Forum in the form set out in Schedule “A” Forms;

“ordinarily resident on reserve” means to either ordinarily reside or habituate in a home located on a tract of land that is set apart by Canada as lands reserved for the use and benefit of Lower Kootenay, within the meaning of subsection 91(24) of the *Constitution Act, 1867* and section 2(1) of the *Indian Act*;

“polling clerk” means a person appointed as a polling clerk by the electoral officer, who must not be a member;

"polling site" means a building, hall or room used as a site for voting to take place;

"private interests" include all of a person's personal and business interests and the personal and business interests of:

- (a) their immediate family;
- (b) a person under the age of eighteen (18) years in respect of whom they or their spouse is acting as parent or guardian;
- (c) a dependent adult in respect of whom they or their spouse is acting as a guardian or caregiver;
- (d) a person, other than themselves, who is financially dependent upon them or their spouse or on whom that person is financially dependent; and
- (e) any entity in which that person has a controlling interest;

"quorum of Council" means a majority of the whole of Council;

"scrutineer" means a person appointed by a candidate in accordance with section 59 to observe the conduct of voting and the counting of ballots at an election or by-election on that candidate's behalf;

"VIN" means a unique voter identification number that is issued to each elector for use during online voting.

## **Interpretation**

### **3. In this Law:**

- (a) where the electoral officer or Arbitrator is required to publish a notice or provide a notice to members, they must:
  - (i) post that notice at:
    - (A) a conspicuous spot within the principal administrative offices of Lower Kootenay,
    - (B) all other locations designated by the electoral officer or Arbitrator, as applicable, and
    - (C) on the website of Lower Kootenay; and

- (ii) mail or deliver that notice to each elector at the mailing or email address set out next to their name on the electors' list;
- (b) the use of the word "must" denotes an obligation that, unless this Law provides to the contrary, must be carried out as soon as practicable after this Law comes into effect or the event that gives rise to the obligation occurs;
- (c) unless it is otherwise clear from the context, the use of the word "including" means "including, but not limited to" and the use of the word "includes" means "includes, but is not limited to";
- (d) headings and subheadings are for convenience only, do not form a part of this Law and in no way define, limit, alter or enlarge the scope or meaning of any provision of this Law;
- (e) a reference to a statute includes every amendment to it, every regulation made under it and any law enacted in substitution for or replacement of it;
- (f) a reference to a government office includes every successor government office and a reference to a government official includes every successor government official;
- (g) unless it is otherwise clear from the context, the use of the singular includes the plural and the use of the plural includes the singular;
- (h) where a time is expressed to begin or end at, on or with a specified day, or to continue to or until a specified day, the time includes that day;
- (i) where a time is expressed to begin after or to be from a specified day, the time does not include that day; and
- (j) where anything is to be done within a time after, from, or before a specified day, the time does not include that day.

**4.** For greater certainty, Schedule "A" is deemed to be a part of this Law.

## **Application**

**5.** This Law applies to every election and by-election of every Council, and to every Council.

**6.** Where any law or regulation of Canada or the Province or any other Lower Kootenay law or by-law applies to any matter covered by this Law, compliance with this Law does not relieve the person from also complying with the provisions of the other applicable laws or regulations.

7. If any provision of this Law is held invalid by a court of competent jurisdiction, the invalid provision must be severed from and must not affect the remaining provisions of this Law.

## **PART 3: COUNCIL**

### **Composition of Council**

8. (1) Subject to subsection (2), Lower Kootenay must be governed by a Council consisting of:

(a) one (1) Chief, who will undertake a full-time position in office and whose seat will be voted on separately from other positions on Council; and

(b) four (4) Councillors, each of whom will undertake their duties in office on an as needed basis;

(2) A Council must not be comprised of more than two (2) Council members who are immediate family to one another.

### **Increase in Number of Councillors**

9. After the date this Law becomes effective, the number of Councillors on Council must increase by one (1) Councillor for every increase of fifty (50) members up to a maximum of nine (9) Councillors.

### **Term of Office**

10. (1) Subject to subsections (2) – (4), the term of office for a Council member is three (3) years and commences at 11:59pm thirty (30) days after the Declaration of Election Results is posted in accordance with this Law.

(2) Despite subsection (1) and subject to subsection (3), a person elected under this Law holds office until 11:59pm thirty (30) days after the Declaration of Election Results is posted for the following election for that office.

(3) Despite subsection (1), a person who is elected in a by-election must commence their position in office immediately after the Declaration of Election Results is posted and hold their position in office for the remainder of the term of office of that Council member to whom the newly elected person replaces.



(4) For greater certainty, in the event of any appeal of an election result, a Council member must be entitled to remain in office until such time as the appeal has been determined and, thereafter, subject to the appeal decision.

### **Oath of Office, Confidentiality Agreement and Conflict of Interest Agreement**

**11.** (1) No later than two (2) weeks after a Declaration of Election Results is posted in accordance with this Law, a newly elected Council member must sign an Oath of Office, Confidentiality Agreement and Conflict of Interest Agreement in the form set out in Schedule “A” Forms and provide those signed documents to the director of operations.

(2) If a newly elected Council member does not comply with subsection (1):

(a) that person is deemed to have withdrawn their appointment to office;

(b) the electoral officer must declare the candidate with the next highest number of votes to be elected;

(c) no by-election is required; and

(d) the electoral officer must prepare or cause to be prepared, post and deliver to each elector a revised Declaration of Election Results, in the same manner and form as set out in section 106 but with a statement setting out:

(i) the name of the person who failed to comply with subsection (1),

(ii) that the person who failed to comply with subsection (1) is deemed to have withdrawn their appointment to office, and

(iii) the name of the candidate with the next highest number of votes, who is declared to be elected.

### **Duties of Council**

**12.** Council, and each Chief or Councillor acting in their individual capacities as office holders, must:

(a) carry out the duties and functions prescribed to them in any law of Canada, in this Law, in any law, by-law or policy of Lower Kootenay, and in any trust document under which that Chief or Councillor acts as a trustee for members as beneficiaries; and

(b) uphold their fiduciary duties to members.

### **Indemnification of Council**

**13.** Lower Kootenay must not provide indemnification for a Chief or Councillor against an action or prosecution brought against that Chief or Councillor, including reasonable legal costs incurred in relation to the proceeding unless the following conditions have been met:

(a) each elector is provided at least ten (10) days written notice of a community meeting to determine whether a Council member shall benefit from an indemnification, with details regarding the location, date and time of that meeting, as well as instructions on how members who cannot attend in person may participate in that meeting;

(b) a community meeting is held, and accessible to all members either in person or electronically not attend, where the director of operations discloses to members the details of the legal action against the Chief or Councillor;

(c) the Chief or Councillor who wishes to benefit from the indemnification attends that community meeting and explains to members why they should benefit from an indemnification; and

(d) a majority of those electors who are present at that community meeting vote either verbally or by show of hands in favour of an indemnification for that Chief or Councillor.

## **PART 4: COUNCIL REPORTING, HONORARIUMS & EXPENSES**

### **Council Honorariums**

**14.** Subject to section 16, Lower Kootenay must pay an honorarium to its Council members as follows:

(a) to the Chief, fifty-two thousand dollars (\$52,000) annually, made in bi-weekly equal payments on the same dates as payroll is processed for Lower Kootenay employees; and

- (b) to each Councillor, twenty dollars (\$20) per hour, up to a maximum of two hundred dollars (\$200) per calendar day and not to exceed one thousand dollars (\$1,000) per calendar month.

### **Council Travel Expenses**

**15.** Where it is necessary for a Council member to travel more than fifty kilometers (50km) in the performance of their duties, and the costs of that travel are not paid for by another entity, Lower Kootenay must compensate the Council member for the costs of their travel in the same manner and form in which Lower Kootenay employees are reimbursed for their work-related travel expenses.

### **Council Reports Required for Honorariums to be Paid**

**16.** (1) Council must provide a Council Report to members as follows, and Lower Kootenay must not make an honorarium payment to the Chief or to any Councillor unless Council is in good standing with regard to providing such Council Reports:

- (a) in person at a community meeting, at least one (1) time per calendar month; and
- (b) in writing, delivered to each elector at their last known mailing address, at least one (1) time per every second calendar month.

(2) The following matters must be included in a Council Report:

- (a) the date, time, location and duration of any meetings or events attended by each Council member since the previous Council Report, as well as any time spent preparing for those meetings or events;
- (b) purpose of the meeting or event attended;
- (c) any decisions made or actions taken by the Council member at that meeting or event; and
- (d) details regarding how that decision or action may impact Lower Kootenay members.

### **Register of Council Reports & Member Access to Council Reports**

**17.** The director of operations must maintain a register of all Council Reports, in chronological order, and make such reports available to members upon request.

### **Review of Council Remuneration Amounts**

**18.** Adjustments to the honorarium amounts for Council members must:

(a) not be made more than one (1) time per calendar year; and

(b) be approved in writing by a majority of those persons who are members of the Council Accountability Roster, on the advice of the Lower Kootenay Finance and Audit Committee.

## **PART 5: ELECTION AND BY-ELECTION DATES**

### **Initial Elections Following Enactment of this Law**

**19.** Elections must be held on a rotating basis in the following initial order:

(a) the first election held under this Law must take place in November 2018 for the position of Chief and the two (2) Councillor positions that expire on December 31, 2018; and

(b) the second election held under this Law must take place in November 2020 for the two (2) Councillor positions that expire on December 31, 2020.

### **Setting of Election and By-Election Dates**

**20.** At least sixty-five (65) days before a Council member has been in office for a period of four (4) years since being elected, and no later than fifteen (15) days after the date on which a by-election is required to fill a vacant position on Council, Council must pass a Council resolution in the form set out in Schedule “A” Forms, setting a date for that election or by-election to take place.

## **PART 6: APPOINTMENT OF ELECTORAL OFFICER / DEPUTY ELECTORAL OFFICER, AND DESIGNATION OF POLLING SITES**

### **Appointment of Electoral Officer, Deputy Electoral Officer and Designation of Polling Sites**

**21.** (1) At least sixty-five (65) days before a Council member has been in office for a period of four (4) years since being elected, and no later than fifteen (15) days after the date a by-election is required to fill a vacant position on Council, Council must pass and publish a copy of a Council resolution in the form set out in Schedule “A” Forms to:

(a) designate the locations of polling sites;

(b) appoint an electoral officer; and

(c) where desirable to Council, appoint a deputy electoral officer.

(2) If Council does not complete the duties set out in subsection (1), the director of operations must immediately complete those duties on behalf of Council.

(3) Where a deputy electoral officer is appointed, that person has authority to fulfill any obligations of the electoral officer set out in this Law as delegated to them by the electoral officer.

### **Eligibility to be Electoral Officer or Deputy Electoral Officer**

**22.** An electoral officer or deputy electoral officer must be a person who:

(a) either:

(i) has experience in the conduct of elections, or

(ii) has training in the conduct of elections;

(b) is not a member or the immediate family of a member;

(c) is not an employee or a full-time contractor of:

(i) Lower Kootenay, or

(ii) a Lower Kootenay business entity; and

(d) does not have a vested interest in the outcome of the election.

### **Acceptance of Appointment as Electoral Officer or Deputy Electoral Officer**

**23.** A person who wishes to accept an appointment as electoral officer or deputy electoral officer must, before assuming their office complete, sign and provide the director of operations with an Oath of Office in the form set out in Schedule "A" Forms.

### **Term of Appointment for Electoral Officer and Deputy Electoral Officer**

**24.** The term of an electoral officer's or deputy electoral officer's appointment commences on the date they comply with section 23 and continues until the later of thirty (30) days after the:

(a) closing of polls on election day; or

(b) finalization of all appeals under this Law relating to the election over which they preside.

### **Electoral Officer / Deputy Electoral Officer Orientation**

25. Upon the commencement of an electoral officer's or deputy electoral officer's term in office, the director of operations must provide them with, and they must attend, a review of their duties under this Law and a copy of the electors' list.

### **Duties of Electoral Officer**

26. The electoral officer has a duty to complete those duties and obligations this Law states must be completed by an electoral officer.

### **Electoral Officer's Remuneration**

27. The director of operations has authority to approve an electoral officer's remuneration.

28. An electoral officer's remuneration must be reported in the annual financial statements of Lower Kootenay.

## **PART 7: PRE-NOMINATION PROCEDURES**

### **Membership Clerk's Duty to Maintain Electors' List**

29. The membership clerk must maintain an up to date electors' list at all times, which must be in alphabetical order and contain each elector's:

- (a) surname, given name and middle name; and
- (b) last known phone number, mailing address and email address.

### **Elector's Duty to Provide Up to Date Contact Information**

30. Each elector must ensure the membership clerk has their correct legal name, and up to date phone number, mailing address and email address.

### **Duty to Provide Electors' List to Electoral Officer & Electoral Officer's Duty to Maintain It**

**31.** At least sixty (60) days before a scheduled election day, the director of operations must provide a copy of the electors' list to the electoral officer, and thereafter the electoral officer must update the electors' list as required.

### **Electoral Officer Duty to Maintain Electors' List**

**32.** The electoral officer must maintain a copy of the electors' list that contains additional columns for:

- (a) documenting whether:
  - (i) an elector is sent a mail-in ballot package,
  - (ii) a mail-in ballot package is received from an elector,
  - (iii) an elector votes through online voting,
  - (iv) an elector is given a ballot at a polling site, and
  - (v) a ballot is received from an elector at a polling site; and
- (b) documenting any notes the electoral officer may need to enter on the electors' list.

### **Duty to Make Redacted Electors' List Available**

**33.** (1) At least sixty (60) days before a scheduled election day, the electoral officer must ensure a redacted copy of the electors' list is made available to members by publishing it, and on written request from a member, by making it available to that member electronically.

(2) The redacted copy of the electors' list must be:

- (a) in alphabetical order; and
- (b) not contain any personal information of electors, except each elector's surname, given name and middle name.

### **Authorized Uses for Electors' List and Redacted Electors' List**

**34.** The redacted electors' list may only be used by members, solely for the purposes of challenging a person's status as an elector.

**35.** The elector's list may only be used by an electoral officer, deputy electoral officer or polling clerk, solely for the purposes of carrying out their duties under this Law.

## **Revisions to Electors' List**

**36.** (1) The electoral officer has exclusive authority to revise the electors' list where it is demonstrated that the name of:

- (a) an elector is omitted from the list;
- (b) an elector's name or contact information is incorrectly set out on the list; or
- (c) a person who is not qualified to be an elector is named on the elector's list.

(2) For the purposes of subsection (1),

(a) a person may demonstrate the name of an elector is omitted from the electors' list by presenting the electoral officer evidence the person:

- (i) is named on the membership list, and
- (ii) will be at least eighteen (18) years of age on election day;

(b) a person may demonstrate the name of a person not qualified to be an elector is included in the electors' list by presenting the electoral officer evidence the person:

- (i) is not on the membership list, or
- (ii) will not be at least eighteen (18) years of age on election day.

(3) Where the electoral officer is considering whether to remove a person's name from the electors' list, before making such decision they must:

- (a) contact that person and advise them a challenge is being made to the inclusion of their name on the electors' list;
- (b) advise that person of the manner in which and timeframe within which they may submit to the electoral officer proof of their age and status as a member; and
- (c) provide that person a reasonable opportunity to submit proof of their age and status as a member.

## **Preparation of Notice of Nomination Meeting**



**37.** At least fifty-five (55) days before a scheduled election day, the electoral officer must prepare a Notice of Nomination Meeting, setting out:

- (a) a statement that Council set an election day;
- (b) the date of the scheduled election day;
- (c) the location of each polling site;
- (d) the date, time, location and duration of the nomination meeting;
- (e) the offices that must be filled on Council;
- (f) the definition of an elector;
- (g) a statement setting out a person may confirm the inclusion of their name on the electors' list by contacting the electoral officer;
- (h) a statement that each elector may nominate or second no more than two (2) candidates each for the election;
- (i) instructions for how an elector may nominate a candidate or second the nomination of a candidate;
- (j) the eligibility requirements for a person to be a candidate as set out in section 39;
- (k) a statement advising electors candidates must be present at the nomination meeting to accept their nominations;
- (l) a statement that electors may obtain a copy of this Law and Nomination Forms from the electoral officer; and
- (m) the name and contact information for the electoral officer.

**Publication and Delivery of Notice of Nomination Meeting**

**38.** At least fifty-five (55) days before a scheduled election day, the electoral officer must publish and deliver a Notice of Nomination Meeting to members, along with copies of a blank Nomination Form.

**PART 8: CANDIDATE ELIGIBILITY, NOMINATION PROCEDURES, AND ALL CANDIDATES FORUMS**

## **Eligibility to be a Candidate / Eligibility to Remain a Member of Council**

**39.** (1) Subject to subsection (2), to be eligible for nomination as a candidate, and to remain eligible to act as a Council member, a person must:

- (a) be an elector;
- (b) not have been convicted of an indictable criminal offence;
- (c) not have a civil court judgment against them, or a criminal conviction in respect of any matter involving theft or fraud;
- (d) not have been removed from a position on Council within three (3) years prior to the date of the nomination meeting;
- (e) if it is a by-election, not be the person who resigns or is removed from their position on Council, prompting the holding of the by-election;
- (f) not be in arrears for any debt to Lower Kootenay or a Lower Kootenay business entity, unless:
  - (i) they have a debt repayment agreement that is entered into at least six (6) months before election day, and
  - (ii) they are in good standing in relation to their debt repayment agreement; and
- (g) if that person is a Council member, not be employed by Lower Kootenay or a Lower Kootenay business entity during their term in office.

(2) For the purposes of the first election held under this Law, subsection (1)(f) is deemed to be satisfied if the candidate or Council member is in good standing with regard to a debt repayment agreement entered into on or before the date of that election.

## **Requirement to Resign from Lower Kootenay or Lower Kootenay Business Entity Employment if Elected**

**40.** Where an employee of either Lower Kootenay or a Lower Kootenay business entity is declared elected they must either take an unpaid leave of absence or resign from their position as an employee, effective on the date they take office as a Council member and continuing for the duration of that term in office.

## **Nomination of Candidates**

**41.** (1) An elector may move or second the nomination of no more than two (2) candidates for an election by:

(a) completing and signing a Nomination Form in front of a witness who is at least eighteen (18) years of age, having that witness sign that Nomination Form and ensuring that Nomination Form is received by the electoral officer by the close of the nomination meeting;

(b) completing and signing a Nomination Form in the presence of the electoral officer at the nomination meeting and providing it to the electoral officer; or

(c) orally advising the electoral officer at the nomination meeting of the elector's moving or seconding of a nomination.

(2) An elector must not move or second the nomination of themselves as a candidate for Council.

## **Nomination Meeting**

**42.** The electoral officer must hold a nomination meeting which must:

(a) commence any time after 5:30pm but before 7:00pm;

(b) be open for a period of not less than two (2) hours; and

(c) be held at least forty (40) days before a scheduled election day.

**43.** At a nomination meeting, the electoral officer must:

(a) declare the nomination meeting open for acceptance of nominations;

(b) keep the nomination meeting open for a period of not less than two (2) hours, after which time the electoral officer must close the nomination meeting;

(c) ensure all relevant materials are available at the nomination meeting to confirm whether a person is an elector;

(d) ensure copies of a Candidate Declaration are available at the nomination meeting for distribution to persons nominated;

(e) chair the nomination meeting;

- (f) ensure written minutes are taken of all business that takes place at the nomination meeting;
- (g) maintain order at all times and cause to be removed any person who is disrupting or otherwise interfering with conduct of the nomination meeting;
- (h) before closing the nomination meeting:
  - (i) read out the names of each person named to be nominated and the names of the persons who move and second their nomination, and
  - (ii) confirm whether each person nominated intends to accept their nomination; and
- (i) ensure the name of each person nominated and the names of the persons who move and second their nomination are recorded in the minutes of the nomination meeting.

### **Accepting Nominations**

**44.** (1) The electoral officer must only accept the nomination of a candidate if:

- (a) they are eligible under section 39 to be a candidate;
- (b) they comply with section 40;
- (c) no later than five (5) days after the nomination meeting, the person being nominated provides the electoral officer with:
  - (i) a Candidate Declaration, affirming they meet the eligibility requirements set out in section 39, and
  - (ii) a letter signed by the director of finance of Lower Kootenay and by a finance officer of each Lower Kootenay business entity stating the nominee does not owe a debt to Lower Kootenay or a Lower Kootenay business entity, as applicable.

(2) Where an elector is nominated for the positions of both Chief and Councillor in the same election, the electoral officer must only accept one of those nomination, in accordance with the wishes of the elector who is nominated.

### **Acclamation or Announcement of Election**

**45.** At the end of a nomination meeting, the electoral officer must:

(a) if the number of persons nominated to serve on Council does not exceed the number to be elected, declare those persons nominated to be elected by acclamation, conditional on them complying with paragraph 44(c);

(b) if the number of persons nominated to serve on Council exceeds the number to be elected, announce:

(i) that the number of persons nominated exceeds the number to be elected,

(ii) that an election must be held, and

(iii) the name of each person who must be declared a candidate in the election, conditional on those persons complying with paragraph 44(c).

**46.** If, the electoral officer declares at a nomination meeting that:

(a) a person is elected by acclamation, conditional on them complying with paragraph 44(c) and the person fails to comply with that section, the electoral officer must not acclaim them to be elected;

(b) if a person must be declared a candidate in the election, conditional on that person complying with paragraph 44(c) and the person fails to comply with that section, the electoral officer must not accept that person as a candidate.

### **Insufficient Nominations**

**47.** (1) If, immediately after the close of a nomination meeting, the electoral officer determines the number of nominations for available positions on Council remains less than the number required to fill those positions, the electoral officer must immediately:

(a) reschedule the election day to be held no later than fourteen (14) days after the date set by Council under section 20;

(b) schedule a second nomination meeting to be held no later than fourteen (14) days after the date of the first nomination meeting;

(c) make an announcement to those present at the nomination meeting setting out:

(i) that insufficient nominations have been received to fill all available Council positions,

(ii) the date the election day must be moved to, so a second nomination meeting may be held for further nominations to be made, and

(iii) the date of the second nomination meeting; and

(a) prepare a notice setting out that insufficient nominations have been received, and the date of the second nomination meeting that must be held for the receipt of additional nominations and publish that notice;

(d) hold that second nomination meeting in accordance with this Part.

(2) For greater certainty, if a second nomination meeting is called and held in accordance with subsection (1), those persons declared as candidates at both the first and second nomination meetings must be considered candidates in the election.

### **Setting Date of All Candidates Forum**

**48.** No later than six (6) days after the date of a final nomination meeting, the electoral officer must:

(a) arrange the date, time and place for an All Candidates Forum, which must:

(i) take place no later than fourteen (14) days after the date on which the Notice of Nomination Results and All Candidates Forum is posted, and

(ii) not commence earlier than 5:30pm or later than 7:30pm; and

(b) contact each candidate to advise them of the date, time and place for the All Candidates Forum.

### **Notice of Nomination Results and All Candidates Forum**

**49.** No later than six (6) days after the date of a final nomination meeting, the electoral officer must:

(a) confirm whether each nominee has complied with paragraph 44(c);

(b) if a nominee has failed to comply with paragraph 44(c), advise the nominee they will not be declared a candidate in the election and the reason for why they will not be declared a candidate in the election;

(c) if a nominee has complied with paragraph 44(c) and the nominee is eligible to be a candidate in accordance with section 39, advise the nominee they have been declared a candidate in the election;

(d) prepare or cause to be prepared a Notice of Nomination Results and All Candidates Forum setting out:

(i) the date and time on which a nomination meeting was held, including the times at which it was opened and closed,

(ii) the names of those persons the electoral officer declares to be candidates in the election,

(iii) if persons have been elected by acclamation, the names of those persons, the title of the office to which they are elected by acclamation, and a statement that there will not be an election to follow in relation to those positions in office,

(iv) the date, time and location of the All Candidates Forum and an invitation for members to submit any questions they want to ask candidates at the All Candidates Forum to the electoral officer, along with instructions on how to submit such questions to the electoral officer;

(v) details regarding the manner in which electors who are unable to attend the All Candidates Forum in person may participate electronically by either video or teleconference; and

(vi) the name and contact information for the electoral officer; and

(e) publish the Notice of Nomination Results and All Candidates Forum.

### **Withdrawal of Candidate**

**50.** A candidate may withdraw their candidacy by completing a Withdrawal of Candidacy Form and delivering it to the electoral officer.

### **Candidate Duty to Attend and Participate in All Candidates Forum**

**51.** (1) All candidates must attend and participate in the All Candidates Forum.

(2) Where a Candidate does not attend and participate in the All Candidates Forum, they are deemed to be withdrawing their candidacy, unless they are not in attendance due to serious illness or injury to themselves or an immediate family member, in which case they must:

(a) notify the electoral officer of their inability to attend and the reasons for their inability to attend; and

(b) provide the electoral officer with their written responses to all questions being asked at the All Candidate's Forum.

## **All Candidates Forum**

**52.** The electoral officer must hold an All Candidates Forum on the date and at the time and location set out in the Notice of Nomination Results and All Candidates Forum.

**53.** The electoral officer must:

- (a) ensure electors who are unable to attend the All Candidates Forum in person are provided an opportunity to participate electronically by either video or teleconference;
- (b) moderate the All Candidates Forum;
- (c) ensure each candidate is provided no more than ten (10) minutes to speak in relation to their election platform;
- (d) ask the candidates questions submitted by electors, or questions that directly relate to the role of Council or the affairs of Lower Kootenay, and allow each candidate equal response time; and
- (e) open the floor to electors who may ask questions directly related to the role of Council or the affairs of Lower Kootenay;
- (f) provide each elector who takes the floor no more than a total of two (2) minutes on the floor; and
- (g) allow each candidate equal response time to elector questions.

## **All Candidates Forum Meeting Minutes**

**54.** (1) The electoral officer must ensure minutes are taken at the All Candidates Forum setting out each question asked and the answers provided by each candidate.

(2) At the request of an elector, the electoral officer must provide the elector with the minutes of an All Candidates Forum.

## **Maintenance of All Candidates Forum Meeting Minutes**

**55.** The director of operations must maintain a copy of the All Candidates Forum meeting minutes for at least three (3) years following the All Candidates Forum and at the request of an elector, provide the elector with those minutes.

## **PART 9: CAMPAIGNING RULES**



## **Illegal Campaigning**

**56.** A person engages in illegal campaigning if they do any of the following:

(a) provide payment to a person, lend money to a person, or offer, agree or promise to do anything for a person:

(i) to induce that person to vote or refrain from voting, or to refrain from voting for or against a particular candidate, or

(ii) to reward that person for having voted or refrained from voting, or refrained from voting for or against a particular candidate;

(b) intimidates or lies to a person for any of the following purposes:

(i) to persuade or compel that person to vote or refrain from voting, or refrain from voting for or against a particular candidate, or

(ii) for having voted or refrained from voting, or refrained from voting for or against a particular candidate;

(c) they are current members of Council or employees of Lower Kootenay and they use Lower Kootenay resources for campaigning that are not available to other candidates for campaigning.

## **PART 10: PRE-ELECTION PROCEDURES**

### **Notice of Election**

**57.** At least twenty-eight (28) days before a scheduled election day, the electoral officer must:

(a) prepare or cause to be prepared a Notice of Election that sets out:

(i) the date of the scheduled election day,

(ii) the names of all candidates nominated for the election;

(iii) the names of any candidates who have withdrawn their candidacy in accordance with section 50;

(iv) the location of the polling sites,

(v) that polling sites are open from 8:00 a.m. to 8:00 p.m. on election day,

- (vi) a statement setting out how electors may confirm their names on the electors' list,
  - (vii) a statement setting out how electors may vote by mail-in ballot, including the date by which the electoral officer must receive mail-in ballots,
  - (viii) if online voting is being used, a statement setting out how electors may vote by online ballot,
  - (ix) a statement setting out that an elector may obtain the electors' list and a copy of this Law from the electoral officer, and
  - (x) the contact information for the electoral officer;
- (b) publish the Notice of Election; and
  - (c) provide the Notice of Election to each elector.

### **Preparation of Voting Materials and Election day Arrangements**

**58.** No later than least twenty-eight (28) days before a scheduled election day, the electoral officer must ensure all necessary preparations are completed for the proper conduct of an election, including:

- (a) preparing voting instructions, which must:
  - (i) be printed clearly;
  - (ii) state that each elector must select their desired candidate by placing an "X" or other legible mark that clearly indicates the candidate they intend to vote for in the box beside the candidate's name;
  - (iii) state the maximum number of candidates for whom each elector may vote;
  - (iv) state that where an elector does any of the following actions, their ballot must be considered spoiled:
    - (A) uses a mark that does not clearly indicate the candidate they intended to vote for,
    - (B) marks, tears, defaces or does anything else to their ballot that identifies who they are, or
    - (C) makes a mark beside the names of more candidates than the maximum number for whom each elector may vote;

(b) preparing copies of each Withdrawal of Candidacy received by the electoral officer;

(c) preparing ballots, which must:

(i) contain on the front of the ballot:

(A) the name of each candidate, appearing in alphabetical order by the candidate's surname, followed by their given name, unless two candidates have the same name, in which case their names must appear in a form chosen by them that distinguishes their identities, and

(B) boxes corresponding to each candidate's name for electors to mark indicating their vote; and

(ii) contain on the back of the ballot the electoral officer's initials, in a place that allows the ballot to be folded in a manner exposing the electoral officer's initials without exposing information contained on the front of the ballot; and

(d) appointing polling clerks and have each polling clerk complete an Oath of Office in the form set out in Schedule "A" Forms.

### **Appointment of Scrutineers**

**59.** (1) Each candidate has a right to appoint two (2) scrutineers to attend at each polling site.

(2) A candidate must appoint a scrutineer no later than the time at which polls open on a scheduled election day by providing the electoral officer with a written notice setting out the name of the scrutineer.

(3) A person must not act as a scrutineer unless they are appointed in accordance with subsection (2).

(4) Lower Kootenay is not responsible for, and must not provide, any remuneration to a scrutineer for their services as a scrutineer.

## **PART 11: VOTING BY MAIL-IN BALLOT**

### **Distribution of Mail-in Ballot Packages**

**60.** (1) At least twenty-eight (28) days before a scheduled election day, the electoral officer must mail or deliver the following documents to each elector who is not ordinarily resident on Lower Kootenay reserve lands:

- (a) a copy of the Notice of Nomination Meeting;
- (b) an unmarked ballot;
- (c) an inner postage paid return envelope addressed to the electoral officer at a postal box located in Creston, British Columbia;
- (d) a second inner envelope marked "ballot" for insertion of the completed ballot;
- (e) a Voter Declaration Form; and
- (f) a letter of instruction for voting by mail-in ballot, which must set out:
  - (i) the method of voting by mail in ballot,
  - (ii) that the mail-in ballot must be received by the electoral officer before the close of polls on election day;
  - (iii) that if a mail-in ballot is not received by the electoral officer before the close of polls on election day, it will not be counted in the vote results; and
  - (iv) a statement advising electors that they may vote in person at any polling site on election day if they either:
    - (A) return their mail-in ballot to the electoral officer or polling clerk at the polling site, or
    - (B) swear a written declaration before the polling clerk, electoral officer, a justice of the peace, notary public, or commissioner for taking oaths stating that they have lost their ballot.

(2) At the request of an elector who is ordinarily resident on Lower Kootenay reserve lands, which request must be made at least ten (10) days before election day, the electoral officer must immediately deliver to that elector those documents set out in subsection (1) at their last known mailing address.

### **Lost Mail-in Ballots**

**61.** (1) An elector who loses their mail-in ballot, or does not receive their mail-in ballot, may obtain another mail-in ballot package by swearing a written declaration before a polling clerk, electoral officer, a justice of the peace, notary public, or commissioner for taking oaths stating they

have lost their ballot, and providing such sworn statement to the electoral officer at least ten (10) days before election day.

(2) Where an elector complies with subsection (1), the electoral officer must provide that person with those documents set out in subsection 60(1).

### **Documenting Distribution of Mail-in Ballots**

**62.** The electoral officer must make a mark next to each elector's name on the electors' list to whom a mail-in ballot package is mailed or delivered, indicating:

- (a) that a mail-in ballot package has been mailed or delivered to that elector;
- (b) the date on which the mail-in ballot package is mailed or delivered to that elector; and
- (c) where necessary, that the mail-in ballot package was a replacement sent in accordance with subsection 61(2).

### **Voting by Mail-in Ballot**

**63.** To vote by mail-in ballot, an elector must:

- (a) mark their ballot with an "X" or other legible mark that clearly indicates the candidates they intend to vote for;
- (b) fold the ballot so as to conceal the front of the ballot and expose the electoral officer's initials on the back of the ballot;
- (c) place the ballot in the ballot envelope and seal the ballot envelope;
- (d) complete and sign the Voter Declaration Form before a witness who is over the age of eighteen (18) years and have the witness sign and complete the declaration;
- (e) place the sealed ballot envelope and declaration in the return envelope pre-addressed to the electoral officer; and
- (f) ensure the ballot is delivered to the electoral officer before the closing of polls on election day.

### **Assistance Marking Mail-in Ballot**

**64.** Where a person is unable to personally complete the mail-in ballot procedure due to a disability or illiteracy:

(a) they may enlist an assistant to mark the mail-in ballot forms on their behalf and in accordance with their instructions; and

(b) if an assistant is used, the assistant must:

(i) attest in writing on the Voter Declaration Form that the person making the vote is the person whose name is set out in the Voter Declaration Form and that the ballot is marked according to the directions of that person, and

(ii) provide their name, address and phone number for the electoral officer on the Voter Declaration Form.

### **Receipt and Storage of Mail-in Ballots**

**65.** After the electoral officer has received a mail-in ballot, the electoral officer must store the mail-in ballot package in a secure location until the close of polls on election day.

**66.** The electoral officer is personally responsible for the safekeeping of mail-in ballot packages until such time as the mail-in ballots are deposited in a ballot box in accordance with Part 14.

## **PART 12: VOTING IN PERSON**

### **Polling Hours**

**67.** Each polling site must be open on election day from 8:00am until 8:00pm.

### **Preparation of Polling Sites**

**68.** Prior to the opening of polls on election day, the electoral officer must:

(a) ensure polling clerks are available at each polling site;

(b) designate the place or places at a polling site from where a scrutineer may make observations, which must not be a location in which a scrutineer can view the inside of a voting compartment;

(c) ensure a process is in place for ongoing communication by telephone or other effective means between all polling sites and any provider of an electronic voting platform on election day to ensure that the electors' list at each polling site is kept updated and current;

(d) ensure each polling site is supplied with:

(i) an updated copy of the electors' list;

(ii) a sufficient number of ballots for each elector to vote;

(iii) a ballot box constructed so ballots can be inserted into it but cannot be withdrawn unless the seal on the ballot box is opened; and

(iv) voting compartments that allow electors to mark their ballots free from observation by others, each of which must contain:

(A) instruments for marking ballots,

(B) a copy of the voting instructions, and

(C) a copy of each Withdrawal of Candidacy form received by the electoral officer before the opening of polls.

### **Entitlement to be Present at Polling Sites**

**69.** A person is entitled to be present at a polling site during election day if that person is:

(a) the electoral officer;

(b) a polling clerk;

(c) a scrutineer; or

(d) an elector who is engaged in voting.

### **Orderly Voting at Polling Sites**

**70.** The electoral officer or polling clerk assigned to a polling site must maintain peace and good order in that polling site and may cause to be removed from the polling site any person who:

(a) is not entitled to be present at the polling site;

(b) attempts to influence electors; or

(c) in any way interferes with or disrupts the orderly conduct of the vote.

**71.** The electoral officer and polling clerks must allow only one (1) elector at a time into each voting compartment, unless an elector is receiving special assistance, in which case the electoral officer or polling clerk and the witness may be present in the voting compartment with that elector.

### **Verification of Ballot Boxes**

**72.** Immediately before the commencement of voting on election day, the electoral officer or polling clerk in charge of a polling site must:

- (a) open each ballot box at that polling site;
- (b) call such electors as may be present to witness each ballot box is empty and the sealing of each ballot box;
- (c) lock and properly seal the ballot box in a manner preventing it from being opened without breaking the seal;
- (d) sign the seal on each ballot box and have the witness sign the seal on each ballot box;
- (e) place the ballot box in public view for reception of ballots; and
- (f) complete a Declaration of Ballot Box Sealing and have the witness sign that Declaration of Ballot Box Sealing.

### **Secret Ballot and No Proxies Allowed**

**73.** An election must be by secret ballot and an elector must not vote by proxy or authorize another person to vote on their behalf.

### **Deadline for Voting on Election Day**

**74.** At 8:00 p.m. on election day, the electoral officer or polling clerk must:

- (a) close the doors that provide access to the polling site at which they preside; and
- (b) provide each elector who is in the polling site an opportunity to vote, after which time the doors may be re-opened but a person must not be entitled to vote.

### **Right to Vote**

**75.** The electoral officer and each polling clerk must permit every person to vote who attends a polling site for the purpose of voting, provided the person:



- (a) is an elector;
- (b) has not already voted; and
- (c) if he or she has been provided a mail-in ballot but has not voted by mail-in ballot, complies with paragraph 76(c).

### **Provision of Ballots at Polling Site**

**76.** For each person who enters a polling site, the electoral officer or polling clerk in charge of that polling site must:

- (a) determine whether the person is an elector by confirming their identity either:
  - (i) by obtaining a document from that person verifying their identity, which may be a status card or any photographic identification card issued by either Canada or a Province, or
  - (ii) by having two (2) other electors confirm that person's identity;
- (b) if the person is an elector, check the electors' list and check for any email from the provider of the electronic voting platform to ensure they have not already voted;
- (c) if the person is an elector and has been provided a mail-in ballot but has not voted by mail-in ballot, require the person to either:
  - (i) return their mail-in ballot to the electoral officer or polling clerk, or
  - (ii) provide a written declaration to the electoral officer or polling clerk sworn before the polling clerk, electoral officer, a justice of the peace, notary public, or commissioner for taking oaths stating that they have lost their ballot;
- (d) if the person is an elector and the person has not already voted:
  - (i) provide them a ballot, folded in a manner that exposes the electoral officer's initials without exposing the information contained on the front of the ballot;
  - (ii) advise the elector that they must not take the ballot out of the polling site and that if they do take the ballot out of the polling site, they forfeit their right to vote at that election, and
  - (iii) make a mark on the electors' list indicating that the elector has been provided a ballot.

**77.** Upon the request of an elector, the electoral officer or polling clerk in charge of the polling site must explain the method of voting to the elector.

## **Refusal to Issue Ballot**

**78.** The electoral officer or a polling clerk may refuse to issue a person a ballot if:

- (a) the person's name is not on the electors' list and they are not entitled to be on the electors' list; or
- (b) the person is an elector who has been provided a mail-in ballot and refuses to comply with paragraph 76(c).

## **Voting at Polling Site**

**79.** Subject to sections 82 and 83, each elector who receives a ballot at a polling site must:

- (a) proceed immediately to a voting compartment;
- (b) make a mark in the box beside each of the elector's desired candidate's names on the ballot with an "X" or other legible mark that clearly indicates the candidate they intend to vote for;
- (c) fold the ballot in a manner that conceals the names of the candidates and the elector's marks and exposes the initials of the electoral officer; and
- (d) immediately return to the electoral officer or polling clerk with the ballot.

**80.** Upon receiving a completed ballot, the electoral officer or polling clerk must:

- (a) without unfolding the ballot or in any way disclosing the marks made by the elector on the ballot, verify the electoral officer's initials on the outside of the ballot;
- (b) observe the elector depositing the ballot in the ballot box;
- (c) make a mark on the electors' list indicating the elector has voted; and
- (d) advise the electronic voting platform service provider the elector has voted.

**81.** After an elector's ballot is deposited in a ballot box, the elector must forthwith leave the polling site.

## **Special Assistance in Marking Ballot at Polling Site**

**82.** Where an elector is unable to vote in the manner set out in sections 79 to 81 they may request that the electoral officer or polling clerk to assist by marking their ballot in a manner consistent with their wishes and placing the ballot in the ballot box.

**83.** Where the electoral officer or polling clerk assists an elector in marking their ballot as per the request of an elector, they must make an entry next to the elector's name on the electors' list indicating:

- (a) that the electoral officer or polling clerk marked that person's ballot at their request; and
- (b) the reasons for the elector's request.

### **Spoiled Ballots**

**84.** An elector who has inadvertently spoiled their ballot when marking it is entitled to receive another ballot after they return the spoiled ballot to the electoral officer or polling clerk.

**85.** If an elector returns a ballot to the electoral officer or polling clerk and states they are declining to vote, their ballot is deemed a spoiled ballot.

**86.** If the electoral officer or polling clerk receives a spoiled ballot from an elector, they must:

- (a) take the spoiled ballot from the elector;
- (b) unless the elector is declining to vote, provide the elector a new ballot;
- (c) make a note on the electors' list indicating that the elector has returned a spoiled ballot; and
- (d) where applicable, make a note on the electors' list indicated that the elector has been provided with a new ballot.

### **Electors Who Fail to Return Ballot**

**87.** If an elector fails to return their ballot to the electoral officer or polling clerk:

- (a) the ballot must be deemed cancelled;
- (b) the electoral officer or polling clerk must make a note on the electors' list next to the elector's name indicating the elector failed to return the ballot and the ballot has been cancelled;
- (c) the electoral officer or polling clerk must advise each polling site and the electronic voting platform service provider the elector received a ballot and failed to return that ballot; and

(d) the elector who failed to return their ballot is not entitled to another vote unless they return their cancelled ballot to the electoral officer or a polling clerk and receive a new ballot.

## **PART 13: ONLINE VOTING**

### **Electronic Voting Platform Requirements**

**88.** If Lower Kootenay uses online voting, the electronic voting platform permitting that online voting must:

- (a) be provided by an independent third-party service provider;
- (b) at minimum, require the same verification declaration as is used for mail-in ballots and the use of a unique VIN for each elector;
- (c) keep online voting results secret at all times and encrypt them in a manner in which they can never be revealed except to the electoral officer;
- (d) generate and provide automated e-mail notifications in real-time to the electoral officer upon voting completion by electors;
- (e) receive notifications in real time from the electoral officer and polling clerks on election day indicating an elector has voted in person; and
- (f) generate and provide detailed activity reports to the electoral officer on a daily basis and upon request.

### **Electronic Voting Processes**

**89.** Prior to the opening of online polls, an electronic voting platform must be populated with the electors' list.

**90.** Electronic voting must begin and close at the hour and date specified in a Notice of Election.

**91.** An electronic voting platform must not assign more than one VIN to each elector.

**92.** When a person signs into an electronic voting platform to vote, the provider of the electronic voting platform must:

- (a) record and provide the electoral officer with the person's name and the date and time their online ballot is received; and

(b) place their online ballot in an electronic ballot box.

**93.** Once an elector has voted either electronically or in person at a polling station:

(a) the electronic voting platform must not allow any person to vote again using that elector's VIN; and

(b) the electoral officer and polling clerks must not allow that elector to vote in any other manner.

**94.** After the close of polls, an electronic voting platform must:

(a) seal the electronic ballot box;

(b) remove the option to vote electronically; and

(c) provide the electronic voting results to the electoral officer.

## **PART 14: COLLECTION AND DEPOSIT OF BALLOTS**

### **Receipt of Mail-in Ballots**

**95.** After the last mail delivery on election day, the electoral officer must ensure all mail-in ballot packages are retrieved from the mail.

### **Opening and Deposit of Mail-in Ballots**

**96.** Once the polls have closed on election day and the electoral officer has received all mail-in ballots they must, in the presence of at least one (1) elector and any of the candidates or their scrutineers who wish to attend:

(a) open each mail-in ballot package;

(b) view the Voter Declaration Form in each mail-in ballot package to confirm the sender of the mail-in ballot package is an elector;

(c) if the sender of the mail-in ballot package is an elector, confirm they have not already voted either in person or electronically;

(d) if the sender of the mail-in ballot package has already voted in person or electronically, place the mail-in ballot package in a separate envelope designated for such purpose;

(e) if the sender of the mail-in ballot package has not already voted in person or electronically, make a mark beside their name on the electors' list indicating a mail-in ballot has been received from them;

(f) if the sender of the mail-in ballot package has not already voted in person or electronically:

(i) open their mail-in ballot envelope, retrieve the ballot inside of it, and without unfolding the ballot deposit the ballot in the ballot box; and

(ii) place a mark on the electors' list opposite the name of the elector indicating that the elector has voted.

**97.** Immediately after section 96 has been complied with, the electoral officer must:

(a) ensure that at least one (1) elector who was present during the opening of mail-in ballots and deposit of those mail-in ballots into the ballot box completes and signs a Statement of Witness Regarding Mail-in Ballots; and

(b) complete and sign a Declaration of Electoral Officer Regarding Mail-in Ballots.

### **Delivery of Ballot Boxes to Electoral Officer**

**98.** Immediately after the close of polls on election day:

(a) each polling clerk presiding at a poll other than the poll that the electoral officer is presiding over must immediately:

(i) seal the ballot box at that polling site in a manner that no further ballots may be deposited in that ballot box,

(ii) initial the seal, and

(iii) transport the sealed ballot box to the electoral officer at the polling site at which the electoral officer is presiding; and

(b) the electoral officer and each polling clerk must complete a Declaration of Electoral Officer/Polling Clerk Regarding Regular Polls.

## **PART 15: COUNTING OF BALLOTS**

### **Recording of Electronic Votes**

**99.** After the close of the polls, the deposit of all mail-in ballots into a ballot box and after all ballot boxes have been received from each polling site, the electoral officer must, in the presence of at least one (1) elector and any of the candidates or their scrutineers who wish to attend:

- (a) announce the results of the online vote, if any;
- (b) record the number of votes cast by online vote for each candidate on a ballot count form; and
- (c) complete a Declaration of Electoral Officer Regarding Electronic Ballots.

### **Counting of Ballots**

**100.** Immediately after the announcement and recording of online vote results, and in the presence of at least one (1) elector and any of the candidates or their scrutineers who wish to attend, the electoral officer must:

- (a) open each ballot box;
- (b) examine each ballot;
- (c) provide any candidate or scrutineer present with an opportunity to view each ballot, and:
  - (i) if any conditions set out in section 101 exist:
    - (A) announce the ballot as rejected and the reasons for why the ballot must be rejected,
    - (B) if an objection is made by a candidate or scrutineer to the electoral officer's intention to reject the ballot, the electoral officer must allow that candidate or scrutineer to provide reasons for their objection, and then consider the basis of that candidate or scrutineer's objection,
    - (C) if either no candidate or scrutineer objects to the rejection, or the ballot is rejected after the electoral officer considers a candidate or scrutineer's objection, the electoral officer must declare the ballot rejected, endorse the back of that rejected ballot indicating the reason for which the ballot is rejected and the name of any person who objected to that rejection, and sign that endorsement, and
    - (D) place the ballot in an envelope retained for the purpose of holding rejected ballots;

(ii) in all other cases:

(A) place marks on the tally sheet beside the names of each person for whom the elector marking that ballot voted, and

(B) place the ballot in an envelope retained for the purpose of holding accepted ballots; and

(d) after all ballots have been assessed and either rejected or accepted, count the number of votes cast for each candidate, as indicated on the ballot count form; and

(e) record the following information on the ballot count form:

(i) the total number of ballots cast for each candidate, and

(ii) the total number of ballots cast that are rejected.

### **Duty to Reject Certain Ballots**

**101.** The electoral officer must reject any ballot:

(a) not bearing the initials of the electoral officer;

(b) on which more votes are cast than an elector is entitled to cast;

(c) which has been torn, defaced, or is otherwise dealt with in a material way by which an elector may be identified;

(d) which is not marked with an "X" or other legible mark that clearly indicates the persons an elector intends to vote for; or

(e) on which no vote is cast by an elector.

### **Tie Vote**

**102.** If the electoral officer cannot determine a successful candidate due to an equal number of votes being cast in favor of a candidate, and the tie must be broken to determine which candidate must be declared elected into a position, the electoral officer must:

(a) establish a time and place for the conduct of a recount, which must be no later than twenty-four (24) hours from the closing of polls on election day;

(b) announce the time and place for the conduct of the recount in the presence of all those present at the polling site; and



(c) at the time and location established by the electoral officer, and in the presence of all candidates and their agents who wish to attend, conduct a re-count of all ballots in the same manner and form as is required by this Part.

**103.** If a recount fails to determine a successful candidate, the electoral officer must cast ballots in order to break the tie by:

(a) placing the name of each candidate having the same number of votes on an unused separate ballot and placing each ballot in a receptacle;

(b) without looking, drawing as many ballots as there are positions available; and

(c) announcing the name of that candidate whose name appears on the ballot as having another valid vote.

### **Objections to Final Tally**

**104.** (1) Immediately after all of the ballots are counted, a candidate who is present for the complete duration of the ballot count may raise an objection to the final tally.

(2) Despite subsection (1), a candidate may only make one (1) objection to the final tally and there may only be a maximum of two (2) recounts.

(3) Where an objection is raised under subsection (1) and the final tally separates the elected candidate from the second-place candidate by no more than five (5) votes, the electoral officer must conduct a re-count of all valid ballots in accordance with this Part.

### **Announcement of Chief and Councillors**

**105.** (1) Subject to subsection (2), immediately after completing a count of all ballots, the electoral officer must:

(a) where one of the positions available is the office of Chief, announce the name of the candidate who received the greatest number of votes elected into the office of Chief; and

(b) announce the names of other candidates receiving the greatest numbers of votes for the available positions of Councillor elected into offices of Councillor.

(2) Where a candidate has the highest number of votes for a position but they already have more than one (1) immediate family member on Council, the electoral officer must announce the person with the next highest number of votes to be elected into that position in office.

## **Announcement and Declaration of Election Results**

**106.** Within three (3) days of completing a count of all ballots, the electoral officer must:

- (a) prepare or cause to be prepared a Declaration of Election Results;
- (b) publish a copy of the Declaration of Election Results; and
- (c) mail or deliver the Declaration of Election Results to each elector at the mailing or email address set out next to their name on the electors' list.

## **Retention / Destruction of Ballots and Ballot Count Forms**

**107.** After the electoral officer has counted all ballots, he or she must place into separate envelopes:

- (a) all valid ballots;
- (b) all rejected ballots;
- (c) all spoiled ballots; and
- (d) all unused ballots.

**108.** The electoral officer must ensure each envelope of ballots is sealed and marked on the outside with:

- (a) a short description of the contents of the packet;
- (b) the date of the election;
- (c) the name and contact information of the electoral officer; and
- (d) the signature of the electoral officer, placed over the seal of the envelope.

**109.** The electoral officer must retain all ballots and voting materials until the later of:

- (a) two (2) months from the date on which an election is held; or
- (b) the date a decision on an appeal is rendered in relation to an election.

**110.** The electoral officer must destroy all ballots and materials:

- (a) as soon as practicable after the date in section 109 has passed; and
- (b) in the presence of two (2) witnesses who must make a Declaration of Destruction of Voting Materials, setting out that they witnessed the destruction of the ballots and materials.

## **PART 16: ELECTION APPEALS ARBITRATOR**

### **Appointment of Arbitrator**

**111.** At least fifty-five (55) days before a scheduled election day, Council must appoint an Arbitrator by Council resolution.

**112.** An Arbitrator must:

- (a) be an independent third party who is a practicing member of one of the Law Societies of the Federation of Law Societies of Canada; and
- (b) not have previously acted for Lower Kootenay in any matter, except as an Arbitrator.

### **Oath of Office**

**113.** The Arbitrator must execute an Oath of Office in the form set out in Schedule “A” Forms that states they will:

- (a) abide by the rules established in this Law and any other Lower Kootenay law or by-law relating to Council elections;
- (b) fulfill all duties and responsibilities of an Arbitrator as set out in this Law;
- (c) carry out their duties and responsibilities faithfully, honestly, impartially and to the best of their abilities;
- (d) not accept anything of value from a member, including money, offers of employment, gifts or travel;
- (e) not discriminate against anyone;
- (f) avoid conflicts of interest and the apparent conflicts of interest;

(g) keep confidential, both during and after the term of their office, any matter or information which, under this Law or under any other law of Canada, the Province or Lower Kootenay is considered confidential in nature; and

(h) withdraw from their position if they have a vested interest in the matter at issue.

### **Powers of the Arbitrator**

**114.** (1) An Arbitrator has exclusive authority to:

(a) determine the time, place and date of an appeal hearing;

(b) determine whether an appeal hearing is open to members or the public;

(c) hold an appeal hearing using any combination of written, electronic or verbal submissions;

(d) determine the rules and procedures to be followed in the conduct of an appeal hearing which must be consistent with the rules and procedures set out in this Law;

(e) determine questions of law and fact arising in the course of an appeal hearing;

(f) order the production of documents that are material and relevant to an appeal hearing from the electoral officer or polling clerk, applicant, or person to whom the appeal relates;

(g) determine the admissibility, relevance and weight of evidence and the manner in which such evidence is to be admitted;

(h) render final and binding decisions regarding appeals; and

(i) fulfill any of the duties and responsibilities of an Arbitrator under this Part.

(2) For greater certainty, an Arbitrator does not have the power to:

(a) compel a person other than the electoral officer or polling clerk, applicant, or person to whom the appeal relates to testify at an appeal hearing or produce documents; or

(b) order any relief not specifically permitted by this Law.

### **Remuneration of Arbitrator**

**115.** Council must:

- (a) set the amount of remuneration of an Arbitrator; and
- (b) pay all disbursements related to an appeal hearing, except costs of the applicant and interveners.

## **PART 17: ELECTION APPEALS ARBITRATION PROCESS**

### **Application for Appeal**

**116.** Within ten (10) business days following the posting of a Declaration of Election Results, any candidate who ran in the election, and any elector who voted in the election, may appeal the results of that election by delivering to the Arbitrator:

- (a) a completed Notice of Appeal in the form set out in Schedule “A” Forms;
- (b) an affidavit sworn before a notary public or other person authorized to be a commissioner for taking oaths in British Columbia, setting out that the facts alleged in the Notice of Appeal are true;
- (c) all evidence supporting the facts set out in the Notice of Appeal; and
- (d) a non-refundable application fee in the amount of one hundred dollars (\$100).

### **Grounds for Appeal**

**117.** An appeal under section 116 must be made on one or more of the following grounds:

- (a) a candidate is ineligible for nomination under section 39;
- (b) a candidate or representative of a candidate participated in illegal campaigning under section 56;
- (c) a person who is not an elector cast a vote and their vote materially affected the outcome of the election; or
- (d) the electoral officer or a polling clerk failed to fulfill their responsibilities under this Law in a manner that materially affected the outcome of the election.

### **Rejection of Notice of Appeal**

**118.** (1) An Arbitrator may preliminarily reject a Notice of Appeal if, in his or her sole opinion, either:

(a) that Notice of Appeal fails to set out clear grounds for appeal; or

(b) the evidence submitted in support of that Notice of Appeal, if believed to be true, could not reasonably be sufficient proof that the grounds for appeal alleged in that Notice of Appeal exist.

(2) Where an Arbitrator rejects a Notice of Appeal under subsection (1), they must provide the person making the appeal written reasons for their decision to reject that Notice of Appeal.

### **Evidence at an Appeal**

**119.** Evidence at an appeal hearing may include any type of proof presented by a person in support of facts they claim to be true, including:

(a) documents, such as letters, printed copies of emails, receipts, or pictures;

(b) written statements of witnesses that are sworn to be true, signed, dated and witnessed by a third party;

(c) digital photographs, digital audio recordings or digital video recordings; or

(d) any other evidence that the Arbitrator determines is material and relevant to the appeal hearing.

### **Right to Participate in an Appeal**

**120.** The applicant, and any person against whom an allegation is made in a Notice of Appeal, has a right to:

(a) make submissions to an Arbitrator regarding a matter on appeal; and

(b) have someone represent them at an appeal hearing, such as an agent, advocate, lawyer, friend or immediate family.

### **Delivery of Notice of Appeal to Affected Persons**

**121.** Upon receipt and acceptance of a Notice of Appeal, an Arbitrator must deliver the following documents in person or by registered mail to the electoral officer, director of operations, and each person against whom an allegation is made in the Notice of Appeal:

- (a) a copy of the Notice of Appeal;
- (b) copies of all evidence supporting the facts set out in the Notice of Appeal; and
- (c) a written statement setting out:
  - (i) the manner in which the appeal hearing must be held,
  - (ii) instructions for how each recipient may obtain a copy of this Law; and
  - (iii) any rules or instructions set by the Arbitrator regarding the appeal hearing process.

### **Duty to Provide Written Statement in Relation to Notice of Appeal**

**122.** A person who receives a copy of a Notice of Appeal from the Arbitrator under section 121 and who has information directly related to the allegations set out in the Notice of Appeal must, within fourteen (14) days of receiving the Notice of Appeal, deliver to the Arbitrator and to the applicant, either in person or by registered mail:

- (a) a written statement of the information held by them that relates directly to the allegations set out in the Notice of Appeal; and
- (b) copies of all evidence supporting the facts set out in that written statement.

### **Summary Dismissal**

**123.** Any time following the fourteenth (14th) day after the Arbitrator delivers a Notice of Appeal in accordance with section 121, the Arbitrator may make an order to dismiss the appeal because he or she has determined that:

- (a) it is frivolous, vexatious, trivial or not in good faith;
- (b) it relates to matters that are outside the Arbitrator's jurisdiction; or
- (c) any of the requirements in section 116 have not been met.

**124.** Before dismissing an appeal without a hearing, an Arbitrator must:

(a) deliver a written notice to the applicant, in person or by registered mail, setting out the Arbitrator's intention to dismiss the appeal and the reasons for why he or she intends to dismiss the appeal; and

(b) provide the applicant with an opportunity to make written submissions with regard to the Arbitrator's intention to dismiss the appeal, or to provide additional information required under section 116, as applicable.

**125.** If the Arbitrator makes an order to dismisses an appeal because it is frivolous, vexatious, trivial or not in good faith:

(a) the Arbitrator may order the applicant to pay all or a portion of the costs of the appeal hearing to Lower Kootenay, including the fees and disbursements of the Arbitrator, the costs of the affected candidates, or both; and

(b) the amount of costs set out in that order are deemed to be a debt owed by the applicant to Lower Kootenay.

### **Failure to Appear or Participate in Appeal Hearing**

**126.** If a person against whom an allegation is made in a Notice of Appeal fails to provide a response to the Arbitrator in accordance with section 122 and the Arbitrator is satisfied that a Notice of Appeal was delivered to that person, the Arbitrator may proceed with the appeal hearing without further notice to that person and without providing further opportunity to that person to be heard.

### **Appeal Hearing Process and Decision of Arbitrator**

**127.** (1) Within thirty (30) days of receiving a Notice of Appeal, an Arbitrator must hold an appeal hearing and make one of the following orders:

(a) that sufficient evidence exists to prove it is more likely than not one of the grounds of appeal has been met, therefore the election or the election of a specific candidate, as applicable, must be put aside;

(b) that sufficient evidence does not exist to prove it is more likely than not one of the grounds of appeal has been met, therefore the election or the election of the specific candidate, as applicable, must be upheld and the appeal must be dismissed.

(2) An Arbitrator has the power to award costs.

**128.** If an Arbitrator makes a decision under paragraph 127(a) and:



(a) the decision is to put aside the election of a specific candidate, the electoral officer must declare the candidate with the next highest number of votes to be the successful candidate for that position; and

(b) the decision is to put aside the election results as a whole, Council must either:

(i) direct the electoral officer who administered the election to which the appeal relates to conduct a by-election in accordance with this Law; or

(ii) appoint a new electoral officer in the same manner and form as set out in Part 6 and instruct the new electoral officer to conduct a by-election in accordance with this Law.

### **Written Reasons and Publication of Decision**

**129.** Within ten (10) days of an Arbitrator making a decision under section 127, the Arbitrator must:

(a) prepare written reasons for his or her decision, and where a candidate has been replaced with a candidate who has the next highest number of votes, such written decision must include details regarding that replacement;

(b) deliver their written decision to the applicant and to each person who received a copy of the Notice of Appeal under section 121; and

(c) publish the written reasons for decision.

### **Arbitrator's Decision Final and Binding**

**130.** The decision of the Arbitrator is final and not subject to appeal or judicial review.

## **PART 18: COUNCIL MEETING PROCEDURES**

### **Openness of Council Meetings & Electronic Attendance by Members**

**131.** Members have a right to attend all Council meetings, except those portions of a Council meeting held in camera, unless that in camera portion of the Council meeting pertains to the rights or interests of an individual member in which case Council must allow that individual member to attend during that portion of the Council meeting.

**132.** The director of operations must ensure all members are provided access to Council meetings by way of electronic attendance, such as teleconference or videoconference.

**133.** Where a member disrupts a Council meeting, the Chairperson may expel them from the remainder of that Council meeting.

### **First Meeting of Council**

**134.** The first meeting of a newly elected Council must take place no later than one (1) month after the electoral officer posts a Declaration of Election Results.

### **Subsequent Meetings of Council**

**135.** After the first meeting of a new Council, regularly scheduled Council meetings must take place at the Lower Kootenay administration office:

- (a) at least two (2) times per month and as often as is necessary for Council to address the business or affairs of Lower Kootenay; and
- (b) on dates and at times set by Council.

### **Special Meeting of Council**

**136.(1)** Where urgent matters arise in the business or affairs of Lower Kootenay and it is necessary to address those matters before the next regularly scheduled Council meeting, two (2) Council members may, acting together, summon a special meeting of Council by providing each Council member at least twenty-four (24) hours written notice of the date, time and location of that special meeting of Council, and a summary of the urgent matter that must be discussed.

(2) A notice under subsection (1) must be delivered by to each Council member either at an email address or at a texting phone number that is provided by each Council member for such purpose.

### **Council Member's Duty to Attend Council Meetings & Perform Functions of Office**

**137.(1)** Council members must not be absent from three (3) or more Council meetings, either consecutively or within any twelve (12) month period, unless:

- (a) such absence is due to illness or incapacity of the Council member and the Council member who must be absent provides notification of such absence to the Chairperson before the Council meeting;
- (b) Council makes a majority vote at the Council meeting approving the Council member's absence, which approval should not be unreasonably denied; and

(c) the reasons for the Council member's absence, along with the results of Council's vote to approve their absence, is documented in the Council meeting minutes for that Council meeting.

(2) When Council makes a decision under paragraph (1)(b), within twenty-four hours (24hrs) of that decision being made the Chairperson must notify the Council member to whom the decision relates of the decision that was made and the reasons for that decision.

### **Notice of Council Meetings**

**138.** At least seven (7) days prior to the holding of a regularly scheduled Council meeting, the director of operations must publish a notice setting out the date, time and location of that meeting.

### **Director of Operations to be Chairperson**

**139.** The director of operations is the chairperson for Council meetings.

**140.** The chairperson is responsible for:

- (a) calling a Council meeting to order;
- (b) introducing agenda items;
- (c) determining the order of speakers for each agenda item; and
- (d) maintaining order in the Council meeting.

### **Council Meeting Agendas**

**141.** For every agenda for a Council meeting, the order of business must be as follows:

- (a) reading and adoption of the agenda;
- (b) reading and adoption of previous Council meeting minutes;
- (c) presentations by guest speakers who are paid by Lower Kootenay to be present at the Council meeting;
- (d) unfinished business;

(e) new business; and

(f) adjournment.

### **Notice to Members Regarding Agenda and Members Right to Copy of Agenda**

**142.**(1) At least seven (7) days prior to a Council meeting, the director of operations must prepare and publish the Council meeting agenda.

(2) Each member has a right to view Council meeting agendas and at the request of a member, the director of operations must provide that member a copy of a Council meeting agenda.

### **Right to Add Items to Council Meeting Agenda**

**143.** Items may be added to the Council meeting agenda by any Council member, the director of operations, or a member who wishes to add an item related to the governance of Lower Kootenay or some other item Council has exclusive authority over.

### **Motions**

**144.** Any Council member may make or second a motion at a Council meeting and every motion at a Council meeting must be made and seconded before it is voted upon.

### **Approval of Motions / Voting**

**145.**(1) Subject to subsection (3), all motions before Council must be decided by a majority vote of those Council members present who are not in a conflict of interest with regard to the decision being made.

(2) Where a Council member refuses to vote on a motion, that Council member is deemed to have voted against that motion, unless they are refusing to vote due to a declared conflict of interest.

(3) The chairperson must not be entitled to vote unless the votes are equal in which case the Chairperson must cast a deciding vote.

### **Withdrawal of Motions at Council Meetings**

**146.** Once a motion is on the table and is open for consideration, it may only be withdrawn by an approved motion to withdraw it.

### **Council Meeting Minutes**

**147.**The director of operations is responsible for ensuring minutes are taken at Council meetings and for maintaining copies of all Council meeting minutes.

**148.**The minutes of a Council meeting must:

- (a) provide a summary, not verbatim transcripts, of Council discussions;
- (b) reflect that Council deliberated before making a decision, which might include documentation of a brief summary of the options considered, or pros and cons raised; and
- (c) identify any motions made, and the outcome of any votes taken or consensus reached, but not identify how the vote was split in a majority decision, or how individual Council members voted, unless a Council member asks their vote go on record in which case that person's vote must be documented.

### **Storage of, and Access to, Council Meeting Minutes**

**149.**The director of operations must store all Council meeting minutes in a secure area or computer system.

**150.** Members have a right to access and view Council meeting minutes, and upon request to the director of operations, the director of operations must provide a member access to Council meeting minutes.

### **In Camera Sessions at Council Meetings**

**151.**For the purposes of this section, “*in camera*” means the part of a Council meeting held in private and closed both to Council members who are in a conflict of interest with regard to the topic of discussion and to any other person to whom the *in camera* matter does not relate.

**152.**Council may approve a motion to order that a portion of, or whole, Council meeting be held *in camera* if Council is satisfied that either:

- (a) the order is necessary to address a conflict of interest of a Council member;
- (b) the order is necessary to maintain the confidentiality of information relating to human resources, including Council's oversight of the director of operations employee performance;
- (c) the order is necessary to protect the privacy of an individual band member; or
- (d) the order is necessary to protect the safety of a person.

**153.** Where Council approves a motion under section 152, the reasons for that decision must be documented in the Council meeting minutes.

### **In Camera Session Meeting Minutes**

**154.** The chairperson must appoint someone to take separate minutes at an *in camera* session that:

- (a) set out the names of those persons who were in attendance at the *in camera* session;
- (b) set out the names of any person who is granted permission by those in attendance at the *in camera* session to view the minutes;
- (c) provide a summary, not verbatim transcripts, of discussions;
- (d) reflect that Council deliberated before making a decision, which might include documentation of a brief summary of the options considered, or pros and cons raised; and
- (e) identify any motions made, and the outcome of any votes taken or consensus reached but not identify how the vote was split in a majority decision, or how individual Council members voted, unless a Council member asks their vote go on record in which case that person's vote must be documented.

### **Storage of, and Access to, In Camera Session Meeting Minutes**

**155.** The director of operations must store all *in camera* Council meeting minutes in a secure area or computer system.

**156.** Unless required to do so by law, the director of operations must not allow anyone who is not a Council member, except those persons who were privy to the *in camera* session and who are granted permission by those in attendance at the *in camera* session, access to *in camera* meeting minutes.

## **PART 19: RESIGNATION OF CHIEF OR COUNCILLORS**

### **Notice of Resignation**

**157.(1)** A Council member may resign from office by submitting a signed, written letter to Council at a regularly scheduled meeting of Council, setting out:

- (a) that they are resigning; and

(b) the effective date of their resignation, which must be no earlier than sixty (60) days from the date the letter is delivered to Council.

(2) Where a Council member submits a written letter of resignation in accordance with subsection (1):

(a) they cannot retract their resignation; and

(b) their resignation is effective on the effective date of resignation set out in their written letter of resignation.

## **PART 20: MID-TERM VACANCIES AND BY-ELECTIONS**

### **Vacancies**

**158.** The office of a Council member must be deemed vacant if the Council member:

(a) resigns from office, or is deemed to have resigned from office under this Law;

(b) dies; or

(c) is absent from three (3) or more Council meetings, either consecutively or within any twelve (12) month period either without complying with paragraph 137(a) or without Council approval under paragraph 137(b).

### **By-Election Required**

**159.** In the event the office of a Council member is vacant and more than sixteen (16) months remain in that Council member's term, a by-election for that vacant position must be held.

### **By-Election Not Required**

**160.** In the event that the office of a Council member is vacant and less than sixteen (16) months remain in their term of office, a by-election must not be held, unless such by-election is necessary to maintain quorum on Council, in which case a by-election must be held.

### **Appointment of Interim Chief**

**161.** In the event that the office of Chief is vacant and less than sixteen (16) months remain in their term of office, Council must appoint a Councillor to be Chief for the remainder of their terms in office.

### **Councillor as Candidate for Chief in By-Election**

**162.**(1) If a current Councillor wishes to be a candidate for Chief in a by-election, they must resign their position in office in writing to Council before the Notice of Nomination Meeting for the by-election is published.

(2) A resignation under subsection (1) is final and binding.

(3) The position of a Councillor who resigns under subsection (1) must be deemed vacant and the vacant position must be voted on during the by-election.

### **Date of By-Election and Appointment of Electoral Officer**

**163.** Within fifteen (15) days of a by-election being required under this Law, Council must:

(a) set the date for the by-election; and

(b) appoint the electoral officer to conduct the by-election.

### **Rules and Procedures for By-Election**

**164.** The rules and procedures for conducting a by-election must be the same as those used for conducting an election.

## **PART 21: COUNCIL ACCOUNTABILITY**

### **Composition of Council Accountability Panel**

**165.**(1) Subject to subsection (2), a Council Accountability Panel must be comprised of five (5) persons appointed by the director of operations, each of whom must not be immediate family of the Council member under consideration and who must not be in a conflict of interest on the matter being decided, including:

(a) at least two (2) members selected from the Council Accountability Roster;

(b) where possible, two (2) Council members; and

(c) where possible, one (1) Elder, being a member who has reached the age of sixty-five (65).

(2) Where it is not possible for two (2) Council members or one (1) Elder to be on a Council Accountability Panel, the director of operations may appoint additional members from the Council Accountability Roster.



## **Selection of Members for Council Accountability Roster**

**166.** The Council Accountability Roster shall be comprised of seven (7) electors who must meet the same eligibility criteria as required for Council under section 39, each of whom must be selected by electors in the same manner as Council are elected and each of whom must hold office for the same terms as Council.

## **Openness of Council Accountability Panel Meetings**

**167.** Meetings of the Council Accountability Panel regarding accountability and removal orders of a Council member are open to all members, each of whom has a right to attend as a silent observer.

## **Grounds for Progressive Accountability Actions**

**168.** A Council member may be subject to accountability actions, up to and including immediate removal from their positions in office, if during their current term in office:

- (a) they fail to comply with an order made under section 182;
- (b) they breach their Oath of Office, Confidentiality Agreement or Conflict of Interest Agreement;
- (c) they breach or fail to perform their duties or obligations set out in any Lower Kootenay law, by-law or policy;
- (d) they miss a Council meeting without consent of the rest of Council;
- (e) they miss more than three (3) community meetings in a row;
- (f) they miss a Lower Kootenay Annual General Meeting or other community meeting at which they are required to report back to members;
- (g) they make a promise to a member regarding that member's access to benefits, services or funding, without authority from Council to make such promises;
- (h) they make commitments to third parties or sign documents on behalf of Lower Kootenay without authority from Council to make such commitments or sign such documents;
- (i) they engage in physical violence or any other unwanted or inappropriate conduct directed at any of the following persons, that the person finds offensive and harmful and that a reasonable person would view as unwelcome or offensive:

- (i) a member;
- (ii) employees or a contractor of Lower Kootenay;
- (iii) a director, manager or employee of a Lower Kootenay business entity; or
- (iv) any person while present on Lower Kootenay reserve lands, or at the place of business of a Lower Kootenay business entity.

### **Petitions Regarding Loss of Confidence**

**169.** (1) A Council member may be subject to removal from office if they lose the confidence of members, as evidenced by a petition that:

- (a) is signed by at least thirty (30) electors; and
- (b) sets out each of those elector's full names, membership numbers, phone numbers and either their mailing or email addresses.

(2) Where a petition is submitted to Council regarding loss of confidence in a Council member, that Council member may defeat that petition by providing to the director of operations their own petition that:

- (a) is signed by at least thirty (30) electors who support that Council member's position in office continuing; and
- (b) sets out each of those elector's full names, membership numbers, phone numbers and either their mailing or email addresses.

### **Mandatory Report by Council Members Regarding Grounds for Accountability Action or Eligibility of a Council Member to Hold Office**

**170.** A Council member must make a written to the director of operations if they have reason to believe another Council member:

- (a) has participated in conduct that provides grounds for accountability action as set out in section 168; or

(b) is no longer eligible to hold office under section 39.

### **Report by Member Regarding Grounds for Accountability Action or Eligibility of a Council Member to Hold Office**

**171.** A member may make a written report to the director of operations if they:

- (a) have reason to believe a Council member participated in conduct that provides grounds for accountability action as set out in section 168;
- (b) have reason to believe the Council member is no longer eligible to hold office under section 39; or
- (c) wish to request the removal of a Council member from office due to a loss of confidence in that Council member and they have a petition to submit that meets the criteria set out in section 169.

### **Requirements in Written Report Regarding Grounds for Accountability Action or Eligibility to Hold Office**

**172.** A report under section 170 or 171 must set out:

- (a) the name of the Council member to whom the allegation or loss of confidence relates;
- (b) either:
  - (i) the specific paragraph in section 168 to which the allegation relates,
  - (ii) that they wish to seek the removal of that Council member by petition, or
  - (iii) the eligibility criteria under section 39 to which the allegation relates;
- (c) where relevant, a description of the allegation, including the names of any witnesses to the alleged circumstances; and
- (d) where relevant, any supporting documentation.

### **Addition of Report to Council Meeting Agenda, Notice of Report as an Agenda Item, and Distribution of Report**

**173.** Where the director of operations receives a written report under section 170 or 171, they must:

- (a) ensure a copy of that report is distributed to every Council member;
- (b) add a review of that report to the agenda for the next Council meeting, unless the report relates to a loss of confidence in a Council member, in which case they must add a review of the report to the agenda for the next Council meeting that will occur after three (3) months has passed since the provision of that report under paragraph (a);
- (c) contact the following people and advise them of the date, time and location of the Council meeting at which the report must be considered:
  - (i) the person who made the report, and
  - (ii) where the report is made in relation to a loss of confidence in the Council member, each person whose signature is set out in the petition; and
- (d) the director of operations must prepare and publish a copy of that report, with the name of the person making the report redacted from it.

#### **Duty of Petitioners to Authenticate Signatures and Director of Operations to Document the Authentication of Petitioner's Signatures**

**174.** (1) Every person whose name is set out on a petition regarding their loss of confidence in a Council member or their support of a Council member's position in office continuing must, on or before the date of the Council meeting at which the report will be considered by Council, confirm the authenticity of their signatures with the director of operations in a form and manner acceptable to the director of operations.

(2) The director of operations must maintain a written record of all contacts with petitioners under subsection (1), setting out the name of each petitioner who authenticates' their signature on a petition, as well as how such authentication of signatures occurs.

#### **Review of Reports**

**175.** (1) Where a report is distributed that relates to a loss of confidence in a Council member:

- (a) Council must provide the Council member who is subject of the report three (3) months from the date of its distribution under paragraph 173(a) to provide their own petition in accordance with subsection 169(2); and

(b) after three (3) months has passed since the provision of a report under paragraph 173(a), Council must consider that report and determine whether each elector has confirmed the authenticity of their signature in accordance with section 174.

(2) Where a report is distributed that relates to an allegation under section 168 or to a Council member's eligibility to hold office:

the Council member who is the subject of the report must:

(i) provide his or her perspective on the allegation or eligibility criteria; and

(ii) either:

(A) admit in full to the facts set out in the report,

(B) admit to some of the facts set out in the report, specifying which facts are admitted and which facts are denied, or

(C) deny the allegations in the report.

### **Allegation Admitted or Signatures on Petition for Removal Confirmed**

**176.**(1) Where a Council member admits in full to allegations in a report and the report relates to:

(a) conduct that is subject to accountability action under section 168, the director of operations must either:

(i) convene a Council Accountability Panel, or

(ii) where the grounds for disciplinary action are under subparagraph 168(g) or (i) and both the person directly impacted by the Council member's conduct and the Council member are in agreement, arrange for a meeting at which those parties can negotiate an agreed remedy to the Council member's behavior, and if that negotiation fails convene a Council Accountability Panel; or

(b) that Council member's eligibility to hold office under section 39, that Council member is deemed to have resigned their position in office.

(2) Where every person whose signature is on a petition regarding a loss of confidence in a Council member confirms their signature on that petition that Council member is deemed to have resigned their position in office, unless the Council member to whom the petition relates has provided their own petition in accordance with subsection 174(a) and every person whose signature

is on that petition has confirmed their signature on it, in which case the petition for removal is deemed to be dismissed.

### **Allegation Partially Admitted or Denied**

**177.**Where a Council member admits in part to, or denies, an allegation in a report, Council must:

- (a) consider the report;
- (b) determine whether to initiate an investigation into the allegation, taking into consideration whether an investigation is required in the best interests of Lower Kootenay; and
- (c) make a decision by Council resolution on whether to initiate an investigation into the allegation.

### **Factors to Consider in Ordering an Investigation**

**178.**To determine under section 177 whether an investigation is in the best interest of Lower Kootenay, Council must consider all relevant factors, including whether:

- (a) the alleged conduct is serious in nature;
- (b) a finding that the alleged conduct is proven is likely to result in a significant accountability order being made;
- (c) considerable harm has been caused by the alleged conduct to Lower Kootenay, a member or membership at large;
- (d) the alleged conduct involves the use, or threatened use, of a weapon or physical violence, harassment or bullying;
- (e) the Council member has relevant previous accountability actions against them; or
- (f) the alleged conduct is criminal in nature.

### **Appointment of Investigator**

**179.**If Council orders an investigation under section 177, they must pass a Council resolution appointing an independent investigator.

### **Obligation to Cooperate and Failure to Cooperate**

**180.** (1) A Council member who is under investigation must cooperate with the investigator and provide the investigator all details relating to the allegation against him or her.

(2) A Council member who is under investigation and fails to comply with subsection (1) is deemed to be admitting to the allegations against him or her, in which case the director of operations must convene a Council Accountability Panel and that Council Accountability Panel must make an order under section 182, or that person must be deemed to have resigned under subparagraph 176(1)(b), as applicable.

### **Investigation Process**

**181.** In conducting an investigation under this Part, the investigator must:

- (a) explain to the Council member under investigation, the processes the investigator will follow in their conduct of the investigation;
- (b) complete their investigation within twenty-one (21) days from the date Council appoints them;
- (c) be as thorough as necessary in their investigation, given the circumstances;
- (d) be fair and impartial in their investigation, providing both the person who made the allegations and the Council member under investigation equal treatment in evaluating the allegations;
- (e) be sensitive to the interests of all parties involved, and maintain confidentiality;
- (f) be focused on finding facts and evidence, including interviews of the person making the allegations, the Council member who is subject of the allegations, and any witnesses; and
- (g) when their investigation is concluded, provide to Council and the director of operations a report setting out whether the investigator determined the evidence shows there is not a single doubt the allegations in the report are true, including the reasons for the investigator's decision.

### **Accountability Action Orders**

**182.**(1) Where an investigator's report concludes the evidence shows there is not a single doubt grounds for accountability action exist under section 168:

- (a) the director of operations must:
  - (i) set the date, time and location for the Council Accountability Panel meeting,

(ii) provide each member of the Council Accountability Panel, and the Council member to whom the investigator's report relates, at least two (2) weeks' notice of that meeting, along with a copy of the investigator's report; and

(iii) ensure notice of the date, time and location of that meeting is published; and

(b) the Council Accountability Panel must give the Council member to whom the investigator's report relates an opportunity to speak and then make one (1) or more of the following orders:

(i) that the Council member pay the costs of the investigation;

(ii) that the Council member pay restitution costs to a person who has suffered a direct loss as a result of their actions;

(iii) that the Council member pay reparation costs to a person directly impacted by their actions, in order to make amends with that person for the wrong done by the Council member to that person;

(iv) that the Council member provide members with a public apology acknowledging his or her wrongdoing;

(v) that the Council member be issued a verbal warning;

(vi) that the Council member be issued a written warning;

(vii) that the Council member be suspended from Council for a specified period of time, not exceeding sixty (60) days, without honorarium;

(viii) that the Council member undertake volunteer work for Lower Kootenay for a specified number of hours, not to exceed fifty (50) hours, and to be completed within a specified period of time, not to exceed six (6) months, with details regarding how the Council member must report back to members regarding that volunteer work; or

(ix) that the Council member be removed from office, the details of which must be provided to the Minister of Indigenous and Northern Affairs Canada.

(2) In making an order under subsection (1), the Council Accountability Panel must consider the following factors:

(a) the need to ensure member's confidence in the integrity of Council;

(b) the responsibility of Council as a whole to act in the best interests of Lower Kootenay;



- (c) the need to deter a Council member, and all members of current and future Councils, from committing similar actions;
- (d) the nature and gravity of the action that has been proven;
- (e) the impact upon any specific and direct victims to the Council member's actions;
- (f) whether similar allegations have been proven against the Council member in the past and the number and frequency of such similar proven allegations; and
- (g) whether the Council member has acknowledged their actions and taken independent steps to disclose and redress their wrong.

### **Chief or Councillor Deemed to Resign for Failure to Maintain Eligibility Criteria**

**183.** Where an investigator's report concludes there is not a single doubt a Council member no longer meets the eligibility criteria set out in section 39, that Council member is deemed to have resigned their position in office.

### **Reasons for Decision**

**184.** Where the Council Accountability Panel makes an order under section 182, they must provide the Council member who is the subject of that order with reasons for their decision.

### **Notice of Order Made Under this Part**

**185.** Where the Council Accountability Panel makes an order under section 182, the director of operations must ensure that a notice setting out the decision and reasons for decision is published.

## **PART 22: AMENDMENTS**

### **Approval of Amendments**

**186.** Amendments to this Law must be approved by members at a ratification vote held in accordance with the *Lower Kootenay Custom Election Law Ratification Document, 2018*.

### **Limitation on Frequency of Amendments**

**187.** A ratification vote to consider amendments to this Law must not be held:

- (a) any more than one (1) time in any given four (4) year period; or

(b) anytime within one hundred and twenty (120) days of a scheduled election day.

## **PART 23: GENERAL**

### **Administrative Procedures**

**188.**The Council from time to time may approve administrative procedures necessary to implement this Law.

### **Effective Date**

**189.**The *Lower Kootenay Indian Band Custom Election By-law (2012)* is hereby repealed and replaced with this Law.

**190.**The effective date of this Law must be the date that it is both approved by members and published in the *First Nations Gazette*.

## **SCHEDULE "A" FORMS**

**Form 1 Lower Kootenay Council Resolution – Election Day**

**COUNCIL RESOLUTION**

**WHEREAS** Lower Kootenay has an inherent Aboriginal right to govern its members and Lower Kootenay’s Aboriginal right to self-government is recognized and affirmed by Canada in section 35 of the *Constitution Act 1982*;

**AND WHEREAS** the culture, values and development of Lower Kootenay are best advanced by the value of democracy and the selection of leadership on the basis of democratic elections;

**AND WHEREAS** Lower Kootenay members voted in favour of the *Lower Kootenay Custom Election Law, 2018* in a vote by secret ballot on the \_\_\_\_\_ day of \_\_\_\_\_, 2018;

**AND WHEREAS** [either (a) the term of office for Council is set to expire on <date>, Council deems it necessary to set a date for an election to take place **OR** (b) a position on Council became vacant on <date> and Council deems it necessary to set a date for an election to take place];

**WE DO HEREBY RESOLVE** to set the date of Lower Kootenay Council election day as follows:

**Election Day:** \_\_\_\_\_

A quorum of Council consists of \_\_\_ members of Council.

\_\_\_\_\_  
Chief XXXX

\_\_\_\_\_  
Councillor XXXX

\_\_\_\_\_  
Councillor XXXX

\_\_\_\_\_  
Councillor XXXX

\_\_\_\_\_  
Councillor XXXX

**Form 2 Lower Kootenay Council Resolution – Designation of Polling Sites and Appointment of Electoral Officer [and Deputy Electoral Officer]**

**COUNCIL RESOLUTION**

**WHEREAS** Lower Kootenay has an inherent Aboriginal right and to govern its members and Lower Kootenay’s Aboriginal right to self-government is recognized and affirmed by Canada in section 35 of the *Constitution Act 1982*;

**AND WHEREAS** the culture, values and development of Lower Kootenay are best advanced by the value of democracy and the selection of leadership on the basis of democratic elections;

**AND WHEREAS** Lower Kootenay members voted in favour of the *Lower Kootenay Custom Election Law, 2018* in a vote by secret ballot on the \_\_\_\_\_ day of \_\_\_\_\_, 2018;

**AND WHEREAS** on [date], pursuant to the *Lower Kootenay Custom Election Law, 2018*, Council set the date for an election of Council as follows:

**Election Day:** \_\_\_\_\_

**AND WHEREAS** pursuant to the *Lower Kootenay Custom Election Law, 2018*, Council must pass a Council resolution designating the locations of polling sites for an election and appointing an electoral officer;

**WE DO HEREBY RESOLVE:**

(a) to set the locations for polling sites as follows:

**Polling Site 1:** \_\_\_\_\_

**Polling Site 2:** \_\_\_\_\_

(b) to appoint [Name] as the electoral officer for Lower Kootenay, which appointment must commence on the date that [Name] provides the director of operations with written acceptance of this appointment and a completed and signed Oath of Office in Form 3 (**attached to this Resolution**) and continuing until the later of:

- (i) thirty (30) days after the closing of polls on election day; and
- (ii) thirty (30) days after the finalization of all appeal actions relating to Council Election over which they preside.

A quorum of Council consists of \_\_\_ members of Council.

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Chief XXXX

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Councillor XXXX

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Councillor XXXX

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Councillor XXXX

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Councillor XXXX

**Form 3 Electoral Officer / Deputy Electoral Officer / Polling Clerk Oath of Office**

**ELECTORAL OFFICER / DEPUTY ELECTORAL OFFICER / POLLING CLERK**

**OATH OF OFFICE**

I, \_\_\_\_\_, AGREE TO:

1. act as [electoral officer / deputy electoral officer / a polling clerk] for Lower Kootenay in relation to an election held in accordance with the *Lower Kootenay Custom Election Law, 2018*;
2. uphold and comply with the *Lower Kootenay Custom Election Law, 2018*;
3. fulfill my duties and responsibilities as set out in the *Lower Kootenay Custom Election Law, 2018*;
4. carry out my duties and responsibilities faithfully, honestly, impartially and to the best of my ability;
5. keep confidential all personal information I collect in carrying out my duties as [the electoral officer / deputy electoral officer / a polling clerk]; and
6. always act in the best interests of Lower Kootenay in carrying out my duties and responsibilities.

Date: \_\_\_\_\_

Name: \_\_\_\_\_

Signature: \_\_\_\_\_

Witness Name: \_\_\_\_\_

Witness Signature: \_\_\_\_\_

**Form 4 Notice of Nomination Meeting**

**NOTICE OF NOMINATION MEETING**

**TAKE NOTICE THAT** the Council of Lower Kootenay has called a Council Election to be held on [date] in accordance with the *Lower Kootenay Custom Election Law, 2018* and that the polling sites for the election must be as follows:

**[List Polling Sites]**

**AND TAKE NOTICE THAT** the following positions must be filled on Council:

**[List Positions]**

**AND TAKE NOTICE THAT** all Members of Lower Kootenay who must be at least 18 years of age as of the date of Council Election are electors;

**AND TAKE NOTICE THAT** a Nomination Meeting must be held for the nomination of candidates for Council Election as follows:

**Date:** \_\_\_\_\_

**Time:** \_\_\_\_\_

**Location:** \_\_\_\_\_

**AND TAKE NOTICE THAT** pursuant to the *Lower Kootenay Custom Election Law, 2018*, each elector may nominate or second up to two (2) electors to be a candidate by:

- (a) completing a Nomination Form, signing the Nomination Form in front of a witness and having that witness sign the Nomination Form, and ensuring the Nomination Form is received by the electoral officer by the close of the Nomination Meeting, or
- (b) attending at the nomination meeting in person and making their nominations known to the electoral officer;

**AND TAKE NOTICE THAT** pursuant to the *Lower Kootenay Custom Election Law, 2018*, to be eligible for nomination as a candidate, and to be eligible to act as a Council member, a person must:

- (a) be an elector;
- (b) not have been convicted of an indictable criminal offence;



(c) not have been removed from a position on Council within the three (3) years prior the date of the nomination meeting;

(d) if it is a by-election, not be the person who resigns or is removed from their position on Council, prompting the holding of the by-election;

(e) not have a civil court judgment against them or a criminal conviction in respect of any matter involving theft or fraud;

(f) not be in arrears for any debt to Lower Kootenay or a Lower Kootenay business entity, unless:

(i) they have a debt repayment agreement that is entered into at least six (6) months before election day, and

(ii) they are in good standing in relation to their debt repayment agreement; and

(g) if the candidate is employed with Lower Kootenay or a Lower Kootenay business entity, they must agree at the time of nomination to either take an unpaid leave of absence or resign from that employment immediately after being sworn into office.

**AND TAKE NOTICE THAT** a person who wishes to be a candidate must be present at the Nomination Meeting to accept their nominations;

**AND TAKE NOTICE THAT** electors may contact [Name of electoral officer] located at [address] in [City], British Columbia or by telephone at [Ph. Number], to obtain a copy of the *Lower Kootenay Custom Election Law, 2018*, or a Nomination Form.

For more information on nomination procedures or Council Election process, please contact:

XXXX  
**Electoral Officer**  
[Address], British Columbia  
Ph/Txt: XXXX  
Fax: XXXX  
Email: XXXX  
Website: XXXX

## Form 5 Nomination Form

### LOWER KOOTENAY COUNCIL ELECTION CANDIDATE NOMINATION FORM

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#### Instructions:

An election for Lower Kootenay Council is underway. If you are a Lower Kootenay member who is or must be at least eighteen (18) years of age on [election day], you are entitled to move or second the nomination of a candidate. To move or second a nomination, you must:

- (a) complete this Nomination Form;
- (b) sign this Nomination Form; and
- (c) ensure this Nomination Form is received by the electoral officer by the close of the Nomination Meeting, which must be held on [date] from [commencement time] until [closing of meeting time] at [location].

You may deliver this Nomination Form to the electoral officer by either:

- (a) mail courier or hand delivery to [address]; or
- (b) hand delivery at the Nomination Meeting.

**NOTE THAT A NOMINATION FORM THAT IS RECEIVED BY THE ELECTORAL OFFICER AFTER THE CLOSE OF THE NOMINATION MEETING WILL NOT BE ACCEPTED.**

---

#### Personal Information of Person Being Nominated

Name : \_\_\_\_\_ For the position of: \_\_\_\_\_

Telephone Number: \_\_\_\_\_ Address: \_\_\_\_\_

Email Address: \_\_\_\_\_ Status Number: \_\_\_\_\_

#### Personal Information of Person Making Nomination

Name : \_\_\_\_\_ Telephone Number: \_\_\_\_\_

Address: \_\_\_\_\_ Email Address: \_\_\_\_\_

Status Number: \_\_\_\_\_ Signature: \_\_\_\_\_

**Personal Information of Person Seconding Nomination**

Name : \_\_\_\_\_ Telephone Number: \_\_\_\_\_

Address: \_\_\_\_\_ Email Address: \_\_\_\_\_

Status Number: \_\_\_\_\_ Signature: \_\_\_\_\_

**FOR OFFICE USE ONLY:**

**The person being nominated has submitted a Candidate Declaration Form**

**YES / NO**

**The person being nominated has submitted a letter signed by the Lower Kootenay Director of Finance and the finance officer of each Lower Kootenay business-entity confirming that either he or she does not owe a debt to such entity, or that he or she does owe a debt to such entity but is in good standing with regard to a repayment agreement:**

**YES / NO**

**SIGNATURE OF ELECTORAL OFFICER:**

**DATE:**

**Form 6 Candidate Declaration**

I, \_\_\_\_\_, member, Membership Number \_\_\_\_\_, DECLARE THAT:

1. I accept my nomination to be a candidate for a position on the Lower Kootenay Council;
2. I am an elector;
3. I have not been convicted of an indictable criminal offence;
4. I have not been removed from a position on Council within the three (3) years before [date of the nomination meeting];
5. I do not have a criminal conviction in respect of any matter involving theft or fraud;
6. Either: (*Tick Applicable Box*)
  - I am not in arrears for any debt to Lower Kootenay or a Lower Kootenay business entity; **or**
  - I am in arrears for a debt to [Lower Kootenay or a Lower Kootenay business entity - specify] but I have a debt repayment agreement that I entered into at least six (6) months before [date of election] and I am in good standing in relation to that debt repayment agreement, which is attached to this declaration; and
7. **If relevant:** I am employed by [Lower Kootenay or a Lower Kootenay business entity - specify] as [position] and I agree that if I am elected into a position on Lower Kootenay Council, I will either take an unpaid leave of absence or resign from my position as [position] immediately upon being sworn in to office and will not work for Lower Kootenay or a Lower Kootenay business entity for my entire term of office.

Date: \_\_\_\_\_

Name: \_\_\_\_\_

Signature: \_\_\_\_\_

Witness Name: \_\_\_\_\_

Witness Signature: \_\_\_\_\_



**Form 7 : Notice of Nomination Results and All Candidates Forum**

**NOTICE OF NOMINATION RESULTS AND ALL CANDIDATES FORUM**

**TAKE NOTICE THAT** Council of Lower Kootenay has called a Council Election in accordance with the *Lower Kootenay Custom Election Law, 2018*;

**AND TAKE NOTICE THAT** a Nomination Meeting for the nomination of candidates for Council Election was held as follows:

**Date:** \_\_\_\_\_  
**Location:** \_\_\_\_\_  
**Time Meeting Opened:** \_\_\_\_\_  
**Time Meeting Closed:** \_\_\_\_\_

**AND TAKE NOTICE THAT** the electoral officer declares the following persons to be candidates in Council Election:

[List Names]

**AND TAKE NOTICE THAT** the electoral officer declares the following persons to be elected by acclamation to the Lower Kootenay Council:

Name	Position

**AND TAKE NOTICE THAT** insufficient nominations have been received for the following positions in office, therefore **A SECOND NOMINATION MUST BE HELD FOR THE RECEIPT OF NOMINATIONS ON [DATE] FROM [TIME] TO [TIME] AT [LOCATION];** and

**AND TAKE NOTICE THAT** an All Candidates Forum must be held as follows, and all members are invited to submit any questions they want to ask candidates at the All Candidates Forum to the electoral officer **NO LATER THAN [DATE]:**

**ALL CANDIDATES FORUM**

**Date:** \_\_\_\_\_

**Location:** \_\_\_\_\_

For more information regarding this Notice of Nomination Results and All Candidates Forum, the nomination procedures, or Council Election process, please contact:

XXXX

**Electoral Officer**

[Address], British Columbia

Ph/Txt: XXXX

Fax: XXXX

Email: XXXX

Website: XXXX

**Form 8 Notice of Election**

**NOTICE OF ELECTION**

**TAKE NOTICE THAT** Council of Lower Kootenay has called a Council Election in accordance with the *Lower Kootenay Custom Election Law, 2018*;

**AND TAKE NOTICE THAT** the Council Election will take place as follows:

**ELECTION DATE, POLLING SITES AND VOTING TIMES**

<p><b>[ELECTION DATE]</b> <b>8:00AM TO 8:00PM</b> [LOCATION OF POLLING SITE]</p>	<p><b>ELECTION DATE</b> <b>8:00AM TO 8:00PM</b> [LOCATION OF POLLING SITE]</p>
--	--

**AND TAKE NOTICE THAT** the candidates for Council Election are as follows:

**[List Names]**

**[AND TAKE NOTICE THAT XXX has withdrawn his/her candidacy;]**

**AND TAKE NOTICE THAT** voting must be conducted in person by secret ballot, by mail-in ballot [and by online voting];

**AND TAKE NOTICE THAT** all Members of Lower Kootenay who will be at least 18 years of age as of the date of Council Election are electors and that any person may contact the electoral officer to confirm their name is on the elector's list;

**AND TAKE NOTICE THAT** electors who are **not ordinarily resident** on reserve will be mailed a mail-in ballot package at least twenty-eight (28) days before election day so they have the option to **vote by mail-in ballot**;

**AND TAKE NOTICE THAT** electors who are **ordinarily resident on reserve and wish to vote by mail-in ballot** **must** contact the electoral officer no later than [date] to be sent a mail-in ballot package;

**AND TAKE NOTICE THAT** electors who wish **to vote by mail-in ballot** must return their mail-in ballots to the electoral officer no later than [date];

**AND TAKE NOTICE THAT** electors who wish **to vote in person** must attend at one of the Polling Sites on election day to cast a secret ballot;



**[AND TAKE NOTICE THAT** electors who wish **to vote electronically** must do so by [insert the instructions for online voting];

**AND TAKE NOTICE THAT** electors may contact [Name of electoral officer] as follows to obtain a copy of the *Lower Kootenay Custom Election Law, 2018* or the electors' list, request a mail-in ballot package, or to obtain further information regarding the Council Election:

XXXX

**Electoral Officer**

[Address], British Columbia

Ph/Txt: XXXX

Fax: XXXX

Email: XXXX

Website: XXXX

**Form 9 Declaration of Ballot Box Sealing**

**DECLARATION OF BALLOT BOX SEALING**

CANADA )  
 )  
Province of \_\_\_\_\_ )

I, \_\_\_\_\_, [electoral officer/deputy electoral officer /Polling Clerk] , of \_\_\_\_\_, in the Province of British Columbia, DO SOLEMNLY DECLARE THAT:

1. I was personally present at [location of polling site] at [time] on [election day];
2. I opened each ballot box at the polling site;
3. I called on such electors as may be present to witness that each ballot box is empty and witness the sealing of each ballot box;
4. I locked and properly sealed each ballot box in a manner preventing it from being opened without breaking the seal;
5. I signed the seal on each ballot box in front of the witnesses; and
6. I placed the ballot box in public view for the reception of ballots;

AND I MAKE THIS SOLEMN DECLARATION conscientiously believing it to be true and knowing that it is of the same force as if made under oath and by virtue of the *Canada Evidence Act*.

DECLARED BEFORE me at the \_\_\_\_\_ )  
of \_\_\_\_\_ in the Province of \_\_\_\_\_ )  
\_\_\_\_\_, this \_\_\_\_\_ day of \_\_\_\_\_, )  
201\_. ) \_\_\_\_\_  
\_\_\_\_\_ ) Name: \_\_\_\_\_

A Commissioner for Oaths in and for the  
Province of British Columbia

**Form 10 Statement of Witness Regarding Mail-in Ballots**

**STATEMENT OF WITNESS REGARDING MAIL-IN BALLOTS**

I, \_\_\_\_\_, DO SOLEMNLY DECLARE THAT:

1. I am an elector.
2. I was personally present at [location of polling site] at [time] on [election day];
3. I witnessed the electoral officer open each secrecy envelope containing a mail-in ballot.
4. I witnessed the electoral officer deposited each mail-in ballot received into ballot box # \_\_\_\_\_ without opening or unfolding it.

Date: \_\_\_\_\_

Name: \_\_\_\_\_

Status Number: \_\_\_\_\_

Signature: \_\_\_\_\_

**Form 11 Declaration of Electoral Officer Regarding Mail-in Ballots**

**DECLARATION OF ELECTORAL OFFICER REGARDING MAIL-IN BALLOTS**

CANADA )  
 )  
Province of \_\_\_\_\_ )

I, \_\_\_\_\_, electoral officer, of \_\_\_\_\_, in the Province of British Columbia, DO SOLEMNLY DECLARE THAT:

1. I was personally responsible for receiving all mail-in ballots at Lower Kootenay when electors of Lower Kootenay voted in Lower Kootenay Council Election; and
2. On [date] at [time], I personally opened each secrecy envelope containing a mail-in ballot.
3. I deposited each mail-in ballot into ballot box #\_\_\_\_\_ without opening or unfolding it.

AND I MAKE THIS SOLEMN DECLARATION conscientiously believing it to be true and knowing that it is of the same force as if made under oath and by virtue of the *Canada Evidence Act*.

DECLARED BEFORE me at the \_\_\_\_\_ )  
of \_\_\_\_\_ in the Province of \_\_\_\_\_ )  
\_\_\_\_\_, this \_\_\_\_\_ day of \_\_\_\_\_, )  
201\_. ) \_\_\_\_\_  
 ) Electoral Officer  
 )  
\_\_\_\_\_ )

A Commissioner for Oaths in and for the Province of British Columbia

**Form 12 Declaration of Electoral Officer Regarding Online Votes**

**DECLARATION OF ELECTORAL OFFICER REGARDING ONLINE VOTES**

CANADA )  
 )  
Province of \_\_\_\_\_ )

I, \_\_\_\_\_, electoral officer, of \_\_\_\_\_, in the Province of British Columbia, DO SOLEMNLY DECLARE THAT:

1. I was personally responsible for receiving all online votes when the electors of Lower Kootenay voted electronically in a Council Election held on [date of election];
2. I personally received real time email notifications from [Name of electronic voting platform provider] beginning on the date that the Notice of Election was sent to electors and ending at the opening of polls on [election day], setting out the names of each person who cast an online vote;
3. I personally reviewed all information received from [Name of electronic voting platform provider] and confirmed that each person who cast an online vote is an elector;
4. I personally made a mark next to the name of each elector on the electors' list for each person who cast an online vote;
5. Immediately after the close of polls on [election day], I personally received from [Name of electronic voting platform provider] a summary setting out the total number of online votes that were cast for each candidate in Council Election;
6. Immediately after the close of polls on the [election day], I personally ensured that the total numbers of online votes that were cast in favor of each candidate in Council Election were added to the results of the physical polls and mail-in ballots;

AND I MAKE THIS SOLEMN DECLARATION conscientiously believing it to be true and knowing that it is of the same force as if made under oath and by virtue of the *Canada Evidence Act*.

DECLARED BEFORE me at the \_\_\_\_\_ )  
of \_\_\_\_\_ in the Province of \_\_\_\_\_ )  
\_\_\_\_\_, this \_\_\_\_\_ day of \_\_\_\_\_, )  
201\_. ) \_\_\_\_\_ )  
 ) Electoral Officer )  
\_\_\_\_\_ )

A Commissioner for Oaths in and for the  
Province of British Columbia

**Form 13 Declaration of Electoral Officer / Polling Clerk Regarding Regular Polls**

**DECLARATION OF ELECTORAL OFFICER / POLLING CLERK  
REGARDING REGULAR POLLS**

CANADA )  
 )  
Province of \_\_\_\_\_ )

I, \_\_\_\_\_, electoral officer, of \_\_\_\_\_, in the Province of  
BRITISH COLUMBIA, DO SOLEMNLY DECLARE THAT:

1. I was personally present at [location of polling site] at [time] on [election day] when the polls opened for Council Election;
2. Immediately before the polls opened, I opened ballot box number # \_\_\_\_;
3. I saw that the ballot box was empty and I asked electors who were present to witness that the ballot box was empty;
4. I then properly sealed the ballot box, in front of those persons who were present, and kept it in view for the reception of ballot papers;
5. I distributed ballots to electors and observed the deposit of ballots by electors into the ballot box commencing at 8:00am until 8:00pm on [election day] in accordance with the *Lower Kootenay Custom Election Law, 2018*; and
6. **Where Applicable:** Immediately after 8:00pm on [election day], I sealed the ballot box in a manner that no further ballots may be deposited in that ballot box, initialed the seal, and transported the sealed ballot box to the electoral officer at [location of poll electoral officer presides over] in accordance with the *Lower Kootenay Custom Election Law, 2018*

AND I MAKE THIS SOLEMN DECLARATION conscientiously believing it to be true and knowing that it is of the same force as if made under oath and by virtue of the *Canada Evidence Act*.

DECLARED BEFORE me at the \_\_\_\_\_ )  
of \_\_\_\_\_ in the Province of \_\_\_\_\_ )  
\_\_\_\_\_, this \_\_\_\_\_ day of \_\_\_\_\_ )  
20\_\_\_. )  
 ) \_\_\_\_\_ )  
\_\_\_\_\_ ) Electoral Officer / Polling Clerk

A Commissioner for Oaths in and for the  
Province of British Columbia



**Form 14 Declaration of Destruction of Voting Materials**

**DECLARATION OF DESTRUCTION OF VOTING MATERIALS**

CANADA )  
 )  
Province of \_\_\_\_\_ )

I, \_\_\_\_\_, Interpreter, of \_\_\_\_\_, in the Province of BRITISH COLUMBIA, DO SOLEMNLY DECLARE THAT:

1. I was present at [location] at [time] where I personally observed the electoral officer, [Name of electoral officer] destroy voting materials in relation to Council Election held on [date of election];
2. I personally observed the electoral officer, [Name of electoral officer] destroy all ballots relating to Council Election by shredding them so that the information contained on them cannot practicably be read or reconstructed; and
3. I personally observed the electoral officer, [Name of electoral officer] destroy all online ballot information in a manner that the information cannot practicably be read or reconstructed and in a manner that all such information on [his/her] hard drive, computer disks and any other memory systems cannot be retrieved;

AND I MAKE THIS SOLEMN DECLARATION conscientiously believing it to be true and knowing that it is of the same force as if made under oath and by virtue of the *Canada Evidence Act*.

DECLARED BEFORE me at the \_\_\_\_\_) of  
\_\_\_\_\_ in the Province of \_\_\_\_\_)  
\_\_\_\_\_, this \_\_\_\_\_ day of \_\_\_\_\_)  
20\_\_\_. )  
\_\_\_\_\_ )  
\_\_\_\_\_ ) Electoral Officer / Polling Clerk

A Commissioner for Oaths in and for the Province of British Columbia

**Form 15 Declaration of Election Results**

CANADA )  
Province of British Columbia )

I, \_\_\_\_\_, of the City of \_\_\_\_\_, in the Province of British Columbia, DO SOLEMNLY DECLARE THAT:

1. I was personally responsible for the conduct of Lower Kootenay Council Election held on [date of election] (the “**election day**”) in accordance with the *Lower Kootenay Custom Election Law, 2018*;
2. A copy of the Notice of Nomination Meeting is attached as Exhibit "A" to this Declaration;
3. A copy of the Nomination Form is attached as Exhibit “B” to this Declaration;
4. In accordance with the *Lower Kootenay Custom Election Law, 2018*, I publicly posted the documents listed in sections 2 and 3 of this Declaration and delivered copies of each of those documents to each elector;
5. In accordance with the *Lower Kootenay Custom Election Law, 2018*, I organized and facilitated a Nomination Meeting;
6. A copy of the Notice of Nomination Results and All Candidates Forum is attached as Exhibit “C” to this Declaration;
7. A copy of the Notice of Election is attached as Exhibit “D” to this Declaration;
8. In accordance with the *Lower Kootenay Custom Election Law, 2018*, I publicly posted the Notice of Election and Notice of Nomination Results and All Candidates Forum, and I delivered copies of the Notice of Nomination Results and All Candidates Forum and Notice of Election to each elector;
9. A copy of the Mail-in Ballot Package is attached as Exhibit “E” to this Declaration;
10. In accordance with the *Lower Kootenay Custom Election Law, 2018*, I delivered a Mail-in Ballot Package to each elector who is not ordinarily resident on Reserve and to each elector from whom I received a request for a Mail-in Ballot Package;
11. I was responsible for overseeing all voting and for counting all ballots cast in Lower Kootenay Council Election;

12. The number of electors was \_\_\_\_\_ and their names are entered on the elector’s list, which is attached as Exhibit “F” to this Declaration;

13. The results of the Vote are as follows:

- (a) \_\_\_\_\_ mail-in ballots were cast in the Council Election;
- (b) \_\_\_\_\_ regular ballots were cast in the Council Election;
- (c) \_\_\_\_\_ online ballots were cast in the Council Election;
- (d) \_\_\_\_\_ ballots were spoiled;
- (e) \_\_\_\_\_ ballots were rejected;
- (f) \_\_\_\_\_ ballots were cancelled;;
- (g) \_\_\_\_\_ ballots were marked in favour of \_\_\_\_\_, who I declared elected for the position of Chief;
- (h) \_\_\_\_\_ ballots were marked in favour of \_\_\_\_\_, who I declared elected for the position of Councillor;
- (i) \_\_\_\_\_ ballots were marked in favour of \_\_\_\_\_, who I declared elected for the position of Councillor;
- (j) \_\_\_\_\_ ballots were marked in favour of \_\_\_\_\_, who I declared elected for the position of Councillor;
- (k) \_\_\_\_\_ ballots were marked in favour of \_\_\_\_\_, who I declared elected for the position of Councillor;

AND I MAKE THIS SOLEMN DECLARATION conscientiously believing it to be true and knowing that it is of the same force and effect as if made under oath and by virtue of the *Canada Evidence Act*.

DECLARED BEFORE me at the \_\_\_\_\_ )  
of \_\_\_\_\_ in the \_\_\_\_\_ )  
Province of British Columbia, this \_\_\_\_\_ )  
day of \_\_\_\_\_ 201\_\_\_\_. )  
\_\_\_\_\_)  
\_\_\_\_\_)  
A Commissioner for Oaths in and for the \_\_\_\_\_ )  
Province of British Columbia

\_\_\_\_\_  
[Name], electoral officer

**Form 16 Arbitrator's Oath of Office**

**ARBITRATOR'S OATH OF OFFICE**

I, \_\_\_\_\_, AGREE TO:

1. act as the Arbitrator for Lower Kootenay to assess and determine the outcome of appeals to the results of a Council Election, which appeals must be held in accordance with the *Lower Kootenay Custom Election Law, 2018*;
2. uphold and comply with my duties and responsibilities in a professional manner under the *Lower Kootenay Custom Election Law, 2018*;
3. fulfill my duties and responsibilities as set out in the *Lower Kootenay Custom Election Law, 2018*;
4. carry out my duties and responsibilities faithfully, honestly, impartially and to the best of my ability;
5. keep confidential all personal information I collect in carrying out my duties as Arbitrator;
6. always act in the best interests of Lower Kootenay in carrying out my duties and responsibilities;
7. not accept anything of value from a member, including money, offers of employment, gifts or travel;
8. not discriminate against anyone in relation to appeals that I oversee;
9. avoid conflicts of interest and the appearance of conflicts of interest in the carrying out of my duties as Arbitrator; and
10. withdraw from my position as Arbitrator if I have a vested interest in a matter at issue in an appeal.

Date: \_\_\_\_\_

Name: \_\_\_\_\_ Signature: \_\_\_\_\_

Witness Name: \_\_\_\_\_ Signature: \_\_\_\_\_

**Form 17 Notice of Appeal**

**NOTICE OF APPEAL**

**TAKE NOTICE THAT** pursuant to the *Lower Kootenay Custom Election Law, 2018*, [Name of elector], a elector, with Status Number [Status Number], of [Address], in the City of [City], in the Province of [Province] hereby appeals to Lower Kootenay Arbitrator from the Declaration of Election Results, dated [Date of electoral officer’s Declaration of Election Results];

**AND TAKE NOTICE THAT** the grounds under which this appeal is made are as follows:

- a candidate was ineligible for nomination under section 39 of the *Lower Kootenay Custom Election Law, 2018* and such ineligibility materially affected the outcome of Council Election;
- a candidate or representative of a candidate participated in illegal campaigning and such illegal campaigning materially affected the outcome of Council Election;
- a person who is not an elector under the *Lower Kootenay Custom Election Law, 2018* cast a vote in Council Election and their vote materially affected the outcome of Council Election; or
- the electoral officer or a polling clerk failed to fulfill their responsibilities under the *Lower Kootenay Custom Election Law, 2018* in a manner that materially affected the outcome of Council Election;

**AND TAKE NOTICE THAT** [Name of elector] requests that Lower Kootenay Arbitrator make the following orders:

- that Council Election results be set aside;
- that the electoral officer’s declaration that [name] be elected into the office of [chief/councillor] be set aside;
- that the Arbitrator set the date for a by-election;

**AND TAKE NOTICE THAT** the factual basis for this appeal is as follows:

1. [list relevant fact]. This fact is supported by the following evidence: [list evidence and attach to Notice of Appeal]
2. [list relevant fact]. This fact is supported by the following evidence: [list evidence and attach to Notice of Appeal]

3. [list relevant fact]. This fact is supported by the following evidence: [list evidence and attach to Notice of Appeal]
4. The above facts materially affected the outcome of Council Election. This fact is supported by the following evidence: [list evidence and attach to Notice of Appeal]

**Contact Information of Person Bringing Appeal**

Name : \_\_\_\_\_

Telephone Number: \_\_\_\_\_

Address: \_\_\_\_\_

Email Address: \_\_\_\_\_

**Form 18 Council Member's Oath of Office**

I, [ Chief / Councillor's Name ], do solemnly and sincerely [swear / declare] that I must be a true and faithful servant to Lower Kootenay, as a member Council and that I will:

[ENTER INFORMATION FROM CURRENT OATH OF OFFICE]

Signed this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_.

\_\_\_\_\_  
(Signature) (Date)

\_\_\_\_\_  
(Witness)

**Form 19 Council Member's Confidentiality Agreement**

This **AGREEMENT** dated the [\_\_\_\_\_] day of [\_\_\_\_\_] , 20[\_\_\_] by and

**BETWEEN:**

**Lower Kootenay,**  
[Address]  
an Indian Band under section 2 of the *Indian Act*

(hereinafter referred to as "Lower Kootenay")

**AND:**

**[Name of Council member]**  
[Address]  
[City, Province Postal Code]

(hereinafter referred to as the "Council member")

**WHEREAS:**

- (a) at an election held on [enter date], the Council member was elected by Lower Kootenay Members to represent Lower Kootenay Members in the governance of Lower Kootenay;
- (b) it is intended that the Council member must have access to Confidential Information; and
- (c) the *Lower Kootenay Custom Election Law, 2018* requires that within two (2) weeks of a Council member commencing his or her term on Council, he or she must sign a confidentiality agreement relating to his or her position on Council;

**NOW, THEREFORE,** in consideration of the votes of Lower Kootenay Members and my acceptance of their electing me into a position on Council, I do hereby acknowledge, covenant and agree as follows:

**Definitions**

**1.** For the purpose of this Agreement, the following terms must have the following meanings:

- (a) "**Confidential Information**" means:
  - (i) any personal information about employees or members of Lower Kootenay, non-public information relating to the business, financial or other affairs of Lower Kootenay, including information about:



- (A) Lower Kootenay records respecting its governance, management, and operations,
  - (B) Lower Kootenay records respecting its financial administration, including the minutes of meetings of Council and Lower Kootenay Committees,
  - (C) Lower Kootenay employee records,
  - (D) Lower Kootenay Membership,
  - (E) Lower Kootenay policies and procedures,
  - (F) Lower Kootenay economic development plans and strategies,
  - (G) Lower Kootenay business acquisition plans,
  - (H) Lower Kootenay archaeological sites, traditional uses of land and resources, and environmental reports;
- (ii) any information identified by Lower Kootenay as confidential; and
- (iii) any copies, extracts or reproductions, in whole or in part, of any of the foregoing, whether in writing, electronic or other form.

The following information must be excluded from the definition of Confidential Information:

- (i) information which is or becomes publicly available through no act or failure to act by the Council member;
- (ii) information which the Council member can demonstrate was developed independently by the Council member from sources which do not include Lower Kootenay;
- (iii) information which was in the possession of the Council member at the time of disclosure and not subject to an obligation of confidentiality;
- (iv) information disclosed by Lower Kootenay to another without obligation of confidentiality;
- (v) information which the Council member can demonstrate was received by it from a third party without any obligation of confidentiality;

(b) “**effective date**” means the date that Council member executes this agreement, his or her Oath of Office and the Code of Conduct; and

(c) “**Law**” means any law, regulation, by-law or rule of Canada, the Province or Lower Kootenay.

### **Term**

2. The term of this Agreement must commence on the effective date and must survive the expiry or termination of the Council member’s term in office.

### **Use of Confidential Information**

3. The Council member agrees to use Confidential Information solely for the purpose of fulfilling the Council member’s responsibilities in his or her role on Council.

4. The Council member agrees not to use the Confidential Information for his or her own benefit or the benefit of any entity in which he or she is associated.

### **Disclosure of Confidential Information**

5. Unless required by Law, the Council member must not directly or indirectly disclose, divulge, reveal, report, publish or transfer Confidential Information in any manner whatsoever, in whole or in part, regardless of the nature or source of the information or of the fact that others may share the knowledge, and must not divulge any such information unless disclosure except:

(a) in accordance with a clear duty to do so under a Lower Kootenay policy, procedure, or direction of Council;

(b) where required by Law, to any other party; or

(c) with Council’s prior written consent, to any other party.

### **Storage of Confidential Information**

6. The Council member must store Confidential Information in a secure manner that protects it from unauthorized use, access or disclosure.

7. The Council member must ensure access to electronic documents and folders containing confidential information is password protected and that such passwords are not directly or indirectly disclose, divulge, reveal, report, publish or transfer Confidential Information in any manner whatsoever, in whole or in part, to any person.

### **Legal Ownership of Confidential Information**

8. The disclosure of Confidential Information to a Council member by Lower Kootenay must not be construed as granting to the Council member any right of ownership to that Confidential Information.
9. The Confidential Information must remain the property of Lower Kootenay.

### **Breach of Confidentiality**

10. In the event of an actual, potential or threatened breach of the Council member's obligations related to the use or disclosure of Confidential Information, the Council member must notify Council of such breach and take all necessary actions to restrain the current and future use or disclosure of such Confidential Information.
11. The Council member must be fully liable for any breach, on the Council member's behalf, of this Agreement.

### **Return of Confidential Information**

12. The Council member must deliver to Lower Kootenay any and all Confidential Information that is in the Council member's possession or control:
  - (a) at the request of Council; and
  - (b) at the termination or expiry of the Council members tenure of office.

### **Waiver**

13. Neither Party must be deemed to have waived the exercise of any right that it holds under this Agreement unless such waiver is made in writing.
14. No waiver made with respect to the exercise of a right under this Agreement must be deemed to be a waiver with respect to any other instance involving the exercise of that right or with respect to any other such right.

### **Governing Law**

15. This Agreement must be governed by, interpreted and enforced in accordance with the laws of the Province of British Columbia and the laws of Canada, as applicable.

**Entire Agreement**

16. This Agreement is the entire agreement between the Parties and supersedes and cancels all previous negotiations, agreements, commitments and writings in respect of the subject-matter hereof and there are no understandings, representations, conditions made or assumed by the Parties, other than those expressly contained in this Agreement.

**IN WITNESS WHEREOF** this Agreement has been duly executed by the Council member on the \_\_\_\_ day of [\_\_\_\_], [20\_\_].

\_\_\_\_\_  
[Council member's Name]

\_\_\_\_\_  
[Name of Witness]

**Form 20 Withdrawal of Candidate**

**NOTICE OF WITHDRAWAL OF CANDIDACY**

I, \_\_\_\_\_, hereby withdraw my nomination as a candidate for the  
*(Please print your name)*

election of Lower Kootenay Council scheduled to be held on the \_\_\_\_\_ day of \_\_\_\_\_,  
20\_\_\_\_.

Date: \_\_\_\_\_

Name: \_\_\_\_\_ Signature: \_\_\_\_\_

**Form 21 Voter Declaration Form**

**VOTER DECLARATION**

In the matter of the election of Lower Kootenay, held according to the *Lower Kootenay Custom Election Law, 2018, I,*

\_\_\_\_\_ solemnly declare that:  
*(Please print your name)*

- 1) I am a member.
- 2) My status number is \_\_\_\_\_ and/or my date of birth is \_\_\_\_\_.
- 3) My current mailing address is:

\_\_\_\_\_, \_\_\_\_\_, \_\_\_\_\_  
(Street number and name or P.O. Box) (First Nation/Municipality) (Province/Territory)

- 4) I am at least 18 years of age.

I make this solemn declaration conscientiously believing it to be true and knowing that it has the same force and effect as if made under oath.

Date: \_\_\_\_\_

Name: \_\_\_\_\_ Signature: \_\_\_\_\_

**WITNESS DECLARATION** (to be filled out by any person who is at least 18 years old)

Declared before me at \_\_\_\_\_ this day of \_\_\_\_ day of \_\_\_\_\_, 20\_\_.

Signature of Witness: \_\_\_\_\_

\_\_\_\_\_, \_\_\_\_\_, \_\_\_\_\_  
(Street number and name or P.O. Box) (First Nation/Municipality) (Province/Territory)

## **Form 22: Conflict of Interest Agreement**

On this [\_\_\_\_\_] day of [\_\_\_\_\_] , 20[\_\_\_], in the City of [Creston?], in the Province of British Columbia, I [Council Member's Full Name], agree as follows:

### ***Conflict of Interest***

1. I understand that I have a “conflict of interest” when I:
  - (a) perform a Council duty and at the same time know or ought reasonably to know that in the performance of the Council duty there is an opportunity to benefit my private interests; or
  - (b) participate in any personal or business activity outside my position on Council that may interfere with the fulfillment or performance of my Council duties, or conflict with the interests of Lower Kootenay.
2. I understand that I have an “apparent conflict of interest” if a reasonable well-informed person would perceive that:
  - (a) my ability to exercise a Council duty must be affected by my private interests; or
  - (b) a personal or business activity I am involved in outside my Council duties must interfere with the fulfillment or performance of my Council duties, or conflict with the interests of Lower Kootenay.
3. I understand that my “private interests” include all of my personal and business interests and include the personal and business interests of:
  - (a) my immediate family;
  - (b) a person under the age of eighteen (18) years in respect of whom myself or my spouse is acting as parent or guardian;
  - (c) a dependent adult in respect of whom myself or my spouse is acting as parent or guardian;
  - (d) a person, other than myself, who is financially dependent upon myself or my spouse or on whom I am financially dependent; and
  - (e) any entity in which I have a controlling interest.

4. I understand that my “immediate family” means my:
- (a) spouse or common-law partner;
  - (b) father and mother and the spouse or common-law partner of my father or mother;
  - (c) child(ren) and the child(ren) of my spouse or common-law partner;
  - (d) grandchild(ren);
  - (e) brothers and sisters;
  - (f) grandfather and grandmother; and
  - (g) spouse or common-law partner’s father or mother.
5. I understand that "common-law partner" means a person who has been cohabiting with me in a conjugal relationship for at least one (1) year.

***Agreement to Avoid and Mitigate Real, Perceived or Potential Conflicts of Interest***

6. I agree to avoid circumstances that could result in me having a conflict of interest or an apparent conflict of interest.
7. I agree to avoid placing myself in circumstances where my ability to exercise my Council duties may be influenced by my private interests.

***Agreement to Disclose Conflict of Interest***

8. If I believe I have a conflict of interest, I agree to disclose the circumstances in writing as soon as practical to the rest of Council.
9. If I am in a meeting and I believe I have a conflict of interest, I agree to disclose that I am in a conflict of interest and to leave the room.
10. I agree to refrain from participating in any discussions or decision-making, or actions, respecting the circumstances of the conflict of interest.

***Breach of Agreement***

11. I understand that my failure to comply with this Agreement may lead to Council accountability measures being taken in accordance with the *Lower Kootenay Custom Election Law, 2018*, which



may result in accountability orders against me, up to and including an order removing me from my position on Council.

<b>Council Member's Information</b>	)	
	)	
_____	)	_____
Name	)	
_____	)	<b>Witness Name:</b> _____
Address	)	
_____	)	
	)	
_____	)	_____
Occupation	)	