

ACADIA FIRST NATION

Kespuwick Resources Inc.

Leasing Policy

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INTRODUCTION

The Kespuwick Advisory Committee on behalf of Acadia First Nation has developed the Kespuwick Resources Incorporated Leasing Policy as a guide to set forth the conditions, and specifications of a lease, terms of the lease agreement and conditions by which a lease may be cancelled. The committee also reviews new applications for leases and provides recommendations to Acadia First Nation concerning leasing within the fisheries sector.

1.0 ADMINISTRATIVE REQUIREMENTS

The following terms and conditions shall apply to this policy and to any other subsequent policies or agreement(s) entered into with Acadia First Nation. Submission of a bid to the Kespuwick Advisory Committee in accordance with this policy indicates acceptance of the following terms:

2.0 DEFINITIONS

“Lease”	Refers to an area that has been designated for use by the leaseholder for the culture and harvesting of fish. The lease is generally restricted to specified species, through conditions of lease or license.
“Lessor”	Acadia First Nation
“Lessee”	The successful applicant chosen to enter into a lease agreement for the purchase of quota and/or use of license.
“Applicant”	Any person(s) that submits, or advises of an intention to submit, a bid to the Kespuwick Advisory Committee for consideration of acceptance.
“Lease Period”	The duration of the agreement with the successful applicant(s).
“RFA”	Request for Applicants by the Kespuwick Advisory Committee.
“DFO”	Department of Fisheries and Oceans

3.0 TERMS OF REFERENCE

3.1 BACKGROUND

Kespuwick Resources Incorporated is an established rights based harvest fisheries company operating within the Atlantic Maritimes region. Operations cover a large geographic area from Yarmouth County to Lunenburg County, with main onshore facilities and assets located in Yarmouth.

Kespuwick Resources Inc. is continuing to develop its position in the commercial marine fishery, building upon existing and new partnerships within the industry(s), maintaining efforts to expand operations to include increased access, increasing efficiency and profitability, looking towards the future in further product development beyond harvesting to include processing and/or exporting.

Kespuwick Resources Inc. current scope of operations includes the commercial marine and food fishery.

3.2 COMMERCIAL MARINE FISHERY

The Marshall Decision September 17, 1999 acclaimed a treaty right to hunt fish and gather in pursuit of a moderate livelihood that arose from the Peace and Friendship Treaties of 1760 and 1761.

In direct response to the Marshall Decision, Department of Fisheries and Oceans launched the Marshall Initiative, granting access to the commercial marine fishery to thirty-four (34) first nation communities in the Atlantic including Nova Scotia, New Brunswick, Prince Edward Island and the Gaspé region of Quebec.

An initial interim agreement was reached with Department of Fisheries and Oceans on November 29, 1999 with the understanding for renegotiations in March 31, 2001. The initial agreement was developed to “facilitate access to fisheries’ resources by the band as an interim measure, pending further discussions on other, longer term harvesting arrangements”.

The long term agreement was reached October 19, 2001 based on the long term response initiative set forth by Department of Fisheries and Oceans in February 2001. The agreement was to “continue the process established by DFO for providing increased access to fisheries resources by the Band.”

This decision coupled with the initial interim agreement set the framework for developing Kespuwick Resources Incorporated in 2000.

3.3 GOVERNANCE

Mandate

Kespuwick Resources Inc. as a vertically integrated, multi-species, rights based fishing enterprise that provides a variety of employment opportunities for band members while building a positive working relationship with non-native fisherman and companies.

3.4 KESPUWICK ADVISORY COMMITTEE

Purpose

The purpose of the Kespuwick Advisory Committee is to provide strategic input, advice and make recommendations with regard to Kespuwick Resources Inc. day to day operations as well as planning and further development to the Acadia First Nation governing body. The Kespuwick Advisory Committee only gives advice. All “*Applicants*” and “*lessees*” expressly waive any claims against the members of the Kespuwick Advisory Committee.

Objectives

- a. To provide advice to Acadia First Nation governing body with regard to current operations, future planning and development of Kespuwick Resources Inc.
- b. To provide recommendations on policies and administration including research, planning, advocacy, policy development opportunities that will influence the operations and development of Kespuwick Resources Inc.
- c. Facilitate communication and linkages amongst potential funding organizations and key stakeholders.
- d. Kespuwick Advisory Committee shall review this Terms of Reference on an annual basis.

3.5 VISION

Kespuwick Resources Inc. strives to be a profitable entity, viewed as a reputable leader within the fishing industry that promotes partnership, community development, employment, innovation and growth.

4.0 LEASING CONDITIONS AND INFORMATION

This policy forms an integral part of a *“lease”* entered into with Acadia First Nation. No condition or standard requirements either expressed or implied by the *“applicant’s”* bid shall override this policy in whole or in part.

5.0 ACCEPTANCE OF TERMS

All of the terms and conditions of this policy are assumed to be accepted by the *“applicant”* and incorporated into the bid as a result of an *“applicant”* responding to a *“RFA”*.

6.0 ADDENDA

Kespuwick Advisory Committee reserves the right to amend or supplement a *“RFA”*, giving equal information and opportunity by way of issued addendum to all *“applicants”* who have filed bids in response to a *“RFA”*.

7.0 REJECTION OF BIDS

Kespuwick Advisory Committee has the right to reject or accept any or all bids submitted in response to a *“RFA”*. *“Applicants”* may be eliminated from consideration if there is a failure to comply with any of the specifications of this policy.

8.0 COSTING

All costs incurred by an *“applicant”* in relation to a bid or a *“lease agreement”* are to solely be incurred by the *“applicant”*, including preparation of the submission, site visit(s) to Acadia First Nation and/or travel expenses.

9.0 SUBMISSION OF BIDS

All bids and specifications therein submitted by an *“applicant”* to Kespuwick Advisory Committee for an *“RFA”* become the property of Acadia First Nation, Kespuwick Resources Incorporated and the Kespuwick Advisory Committee.

Each *“applicant”* shall submit one (1) copy of a bid with details as appropriate. It is the *“applicant’s”* responsibility to ensure that all submissions are accurate for review by the Kespuwick Advisory Committee.

All submissions shall be sent to:

Kespuwick Advisory Committee
c/o Curtis Falls
Director of Operations
Kespuwick Resources Incorporated, Acadia First Nation
10526 Highway #3
RR#4 Yarmouth NS B5A 4A8
Email: curtisfalls@acadiaband.com
Phone: (902) 742-7354
Fax: (902) 742- 9355

10.0 ACCEPTANCE OF BIDS

The *“RFA”* neither expresses nor implies any obligation on the part of Acadia First Nation, to enter into a *“lease”* with any *“applicant”* submitting a bid(s) in response to a *“RFA”*. An *“RFA”* can be withdrawn or terminated by Acadia First Nation at any time. Acadia First Nation, Kespuwick Resources Incorporated or the Kespuwick Advisory Committee incur no obligations to the *“applicants”* in any manner until a written *“lease”* agreement is signed between Acadia First Nation and the successful *“applicant”*.

Kespuwick Advisory Committee shall review all bids submitted in response to the *“RFA”*. Only the successful *“applicant(s)”* will be notified of the award. The highest bid(s) received in response to the *“RFA”* will not necessarily be the one(s) chosen to enter a *“lease”* agreement.

In accordance with the Acadia First Nation Tendering Policy and with all other things being equal in meeting all requirements of this policy, and the *“RFA”* preference will be given to Acadia First Nation band members for the *“lease”* of quota and/or licenses.

11.0 BID CLARIFICATION

After the submission of a bid in response to a “RFA”, Kespuwick Advisory Committee may wish to clarify some aspects of the submission during the evaluation process. Acadia First Nation, Kespuwick Resources Incorporated and Kespuwick Advisory Committee shall maintain and respect bid confidentiality and avoid unfairness based on information provided.

12.0 LEASE AGREEMENT

12.1 PRE-LEASE NEGOTIATING

Kespuwick Advisory Committee has the right to pre-lease negotiate with one or more of the “*applicants*” prior to entering into a lease agreement, including but not limited to “*lease*” payments and policies, quota and/or license fees and procedures, leasing term, sub-leasing, as well as rights and obligations of the “*lessee*” and “*lessor*”.

12.2 LEASING TERM

The “*lease*” agreement shall be for a one (1) year term, with the option for the “*lessee*”, if in good standing, to renew for a second year by notice in writing by June 30th of the following year, such renewal to be on terms as agreed to by both parties.

12.3 SUB-LEASE

The “*lessee*” under all rights and obligations as set forth in this policy is not permitted to sub-lease the quota and/or license without prior written consent from Acadia First Nation. There shall be no release of the “*lessee’s*” obligations within this policy if a sub-lease agreement is entered into. All acts and regulations shall still apply to the “*lessee*” as outlined. The “*lessee*” shall make a formal request to Acadia First Nation by way of the Kespuwick Advisory Committee for consideration within thirty (30) days of the intent to sub-lease for review.

12.4 DESIGNATION OF OPERATOR

The “lessee” shall provide the names and levels of responsibility of personnel that are engaged in the operation of the quota and/or license and a detailed outline of the extent to which each person shall participate. Kespuwick Resources Incorporated shall be advised in writing of any change in captain or crew, together with proof that such new persons meet all lease qualifications and criteria. Kespuwick Resources Incorporated may, in its discretion, direct in writing that any person not meeting those criteria be removed from operation of the quota and/or license.

12.5 LOG BOOKS AND TAGS

Kespuwick Resources Incorporated shall incur the initial cost of a log book and set of tags. Replacement costs are the sole responsibility of the “lessee”.

12.6 MONITORING

Reporting Logs are the responsibility of the “lessee” and shall be submitted to a dockside monitoring company designated by “DFO” for the Maritime region. Failure to comply with reporting requirements shall result in a violation of the conditions of the “lease” agreement and result in non-compliance and grounds for default under this policy and “lease” agreement. Reporting logs are to be completed accurately, and kept up to date with submission on a monthly basis even during times of fishing inactivity for the duration of the quota and/or license.

12.7 REPORTING

The “lessee” shall keep accurate and complete lobster catch and settlement information being completed and submitted to a monitoring agency on a monthly basis for the duration of the quota and/or license. Reports shall be submitted even during fishing inactivity or result in non-compliance and considered default under this policy.

All fees associated with catch and settlement reporting is the sole responsibility of the “lessee”. Acadia First Nation, Kespuwick Resources Incorporated and the Kespuwick Advisory Committee assume no liability or responsibility.

12.8 LIENS

The “*lessee*”, the designated operator, nor any other person shall have any right, power or authority to create or to permit any lien whatsoever to be placed on the lease.

12.9 DOCUMENTATION

It is the sole responsibility of the “*lessee*” to carry a properly certified copy of the “*lease*” agreement on board the vessel at all times.

12.10 NOTICES

All notices and communications from the “*lessor*” to the “*lessee*” shall be made or addressed to the “*lessee*” **by registered mail** or at such place as either the “*lessee*” or “*lessor*” may, from time to time designate in writing.

All notices and communications from the “*lessee*” to the “*lessor*” shall be made or addressed to the “*lessor*” **by registered mail** at 10526 Highway #3, Yarmouth, Nova Scotia, B5A 4A8, or at such place as either the “*lessor*” or “*lessee*” may, from time to time designate in writing.

13.0 OBLIGATIONS OF A LESSEE

The “*lease*” agreement sets out the conditions and obligations of the “*lease*” in reference to temporary use of quota and/or license of Acadia First Nation for a specified species within the “*lease period*” and in accordance with Fisheries Act Regulations.

13.1 OBLIGATIONS

- a. The “*lease*” shall comply with applicable legislation including The Fisheries Act, Waters Protection Act and Canadian Environmental Assessment Act. Any acts or violations against the “*lessee*” during the agreement are the sole responsibility of the “*lessee*” and Acadia First Nation, Kespuwick Resources Incorporated and Kespuwick Advisory Committee assume no responsibility for those actions or charges thereof.
- b. The “*lessee*” shall operate in accordance with the terms and conditions set forth in the “*lease*” agreement.
- c. The lessee shall pay all fees associated with the lease.

14.0 LEASE DOCUMENTS

The documents to form an integral part of the lease with the *“applicant”* include this policy, *“lease”* agreement, bids and specifications within the submission from the successful *“applicant”*, Acadia First Nation Tendering Policy and Conflict of Interest Policy.

15.0 PROCEDURE FOR LEASE FEES

Kespuwick Advisory Committee on behalf of Acadia First Nation shall provide the successful *“applicant”* in writing of the outcome of such evaluation setting out a letter of offer with the terms of conditions therein and a copy of the proposed lease, including a requirement for execution of the lease and payment of the Lease Fees within thirty (30) days of notification of successful bid.

A failure to sign the lease or to pay the money within that thirty (30) days will result in cancelling of the letter of offer and a registered letter shall be sent to the *“applicant”* advising of such.

15.1 PAYMENT

All fees are to be made payable to Acadia First Nation in the form of direct deposit, bank draft or money order.

15.2 FEE COST STRUCTURE

The amount of the bid by a lessee should be based on fair market value at the time of *“RFA”*.

16.0 DEFAULTS AND TERMINATION

A *“lease”* agreement entered into with the successful *“applicant”* may be cancelled for, but not limited to, the following reasons:

16.1 LEASE CANCELLATION

- a. Failure of the *“lessee”* to sign the *“lease”* agreement.
- b. Defaults in the observance and compliance of any of the conditions set forth in the *“lease”* or specifications of this policy.
- c. Non-payment of *“lease”* fees in accordance with section 14.0 of this policy.
- d. Failure to comply with government acts, and/or regulations.
- e. The *“lessee”* has become insolvent.
- f. Non-disclosure of any past violations in accordance with but not limited to The Fisheries Act, Navigable Waters Protection Act and Canadian Environmental Assessment Act.
- g. In the event that title to the quota and/or license is requisitioned or seized by any governmental authority or creditor during the *“leasing period”*, the *“lease”* shall immediately terminate with the *“lessee”*. The *“lessee”* shall be liable to the *“lessor”* any loss of use of quota and/or license as a result of these actions.
- h. If the *“lessee”* shall be dissolved or be adjudged a bankrupt, or petition in bankruptcy filed against, or a general assignment for the benefits of the creditors.
- i. The *“lessor”* upon termination of the *“lease”* agreement shall retake the quota and/or license, wherever found, whether upon the high seas or in any port, harbor or other place, without prior demand and without legal process and for that purpose may enter upon any dock, pier or other premises where the vessel may be and take possession thereof.
- j. The rights of the *“lessor”* shall be cumulative and in addition to any such rights by law, in equity or admiralty, by virtue of the terms of the lease.

16.2 REPAYMENT OF FEES

Upon termination of this agreement for whatever reasons there will be no repayment of fees.

17.0 IRREVOCABILITY OF BIDS

Submission of bids must be open for acceptance for at least sixty (60) days after the closing date or upon date of submission depending on the specifics of the “RFA”. Upon acceptance, prices submitted by the “applicant” must be firm for the entire “lease” period unless otherwise specified and agreed upon with Acadia First Nation.

18.0 LEASING PROCEDURES

The principal contact between the “lessee” and Acadia First Nation relating to the “lease” will be:

Kespuwick Advisory Committee
c/o Curtis Falls
Director of Operations
Kespuwick Resources Inc.
Acadia First Nation
10526 Highway #3 RR#4 Yarmouth, NS B5A 4A8
CANADA
Tel: (902) 742-7354
Fax: (902) 742-9355
Email: curtisfalls@acadiaband.com

19.0 QUALIFICATIONS AND DEMONSTRATED EXPERIENCE

19.1 APPLICANT'S QUALIFICATIONS

The "*applicant*" shall provide to Kespuwick Advisory Committee the following information:

- a. Name of the "*applicant*", and recent contact information.
- b. Total amount of the bid submitted by the "*applicant*" in response to the "*RFA*"
- c. One relevant reference to which Kespuwick Advisory Committee may refer to as part of the selection process. Include company name, contact person and telephone number.
- d. Disclosure of any past and/or ongoing fishing violations or convictions in accordance with but not limited to The Fisheries Act, Navigable Waters Protection Act and Canadian Environmental Assessment Act.
- e. Provide within the bid any and/or all intentions by the "*applicant*" to provide First Nation employment opportunities on the vessel

19.2 APPLICANT REQUIREMENTS

All potential "*applicants*" are requested to contact the Director of Operations of Kespuwick Resources Inc. upon interest in submitting a bid. It is the responsibility of the "*applicant*" to obtain the best possible information to formulate a bid reflective of conditions. Not doing so is at the risk of the "*applicant*" and Acadia First Nation, Kespuwick Resources Inc. and Kespuwick Advisory Committee assumes no liability or responsibility for bids that are not reflective of prevailing information if accepted.

An "*applicant*" bidding on multiple licenses shall present a business case to the Kespuwick Advisory Committee in consideration of the "*RFA*"

20.0 CONFLICT OF INTEREST

No member of Acadia First Nation Chief and Council, employee of Kespuwick Resources Incorporated and/or the Kespuwick Advisory Committee shall participate in the bidding process in response to a "RFA" for quota and/or license. The Conflict of Interest Policy of Acadia First Nation shall apply.

20.1 CONFLICT HANDLING PROCEDURES

- a. Any member shall reveal any personal, family or business interests that are present during a "RFA" process that may influence, or could be reasonably perceived to influence, judgment and hence the possible wisdom of decisions.
- b. A conflict of interest shall apply whereby an individual could benefit, disproportionately from others, directly or indirectly from access to information or from a decision over which they may have influence, or where may be perceived thereto.
- c. Any business relationship between an individual (or individual is an owner or in position of authority of the company) and Acadia First Nation, Kespuwick Resources Incorporated and/or Kespuwick Advisory Committee, outside of the relationship as a member must be formalized in writing and approved by Kespuwick Advisory Committee.
- d. Members of the Kespuwick Advisory Committee will not participate in any discussion or vote on matters where the individual has, or may be reasonably perceived as having, a conflict of interest.

20.2 ARBITRATION

Should any dispute arise under this "lease", the matter in dispute shall be governed by the laws of the Province of Nova Scotia, and shall be referred to three persons at Yarmouth, one to be appointed by "lessee", one by the "lessor", and the third by the two so appointed; and their decision or that of any two of them shall be final and binding, and their award may be made a rule of court and a judgment entered thereon.

21.0 INDEMNITY

The "*lessee*" will indemnify and hold harmless the "*lessor*" against any lien of whatsoever nature upon the license and against any claims against the "*lessor*" arising during the "*lease*" period out of any act, neglect, omission or default of "*lease*", its agents or servants, including the Master and Crew of the designed license. If any action should be commenced against the license, or if the license is otherwise levied against, or taken in custody by virtue of legal proceedings in any court because of such liens claims, the "*lessee*" shall at its own expense, within 15 days thereafter, cause the license to be released and the lien to be discharged.