

ASHCROFT INDIAN BAND

ELECTORAL ADMINISTRATIVE PROCEDURES BY-LAW No. 2020-001

Enacted on the _____ day of _____, 2020

RECITALS

- A. The Band has experienced in past elections, disorderly conduct among its electors, which threatens the observance of law and order on its reserve lands.
- B. Paragraphs 81(1) (c), (d), (q) and (r) of the *Indian Act* authorize Chief and Council to make by-laws:
 - (i) for the observance of law and order;
 - (ii) for the prevention of disorderly conduct;
 - (iii) with respect to any matter arising out of or ancillary to the exercise of the previous powers; andfor the imposition on summary conviction of a fine not exceeding one thousand dollars or imprisonment for a term not exceeding thirty days, or both, for violation of a by-law.
- C. It is expedient and necessary for the benefit, comfort and safety of all the electors of the Band, to make this By-law:
 - (i) setting out the administrative procedures governing elections; and
 - (ii) for the prevention of disorderly conduct during a nomination meeting, an election or other electoral process;in order that law and order may be observed during all electoral processes.

NOW THEREFORE the Chief and Council of the Ashcroft Indian Band hereby makes the following By-law:

1. SHORT TITLE

- 1.1 **Citation:** This By-law may be cited as the “Electoral Administrative Procedures By-Law No. 2020-001”.

2. APPLICATION

- 2.1 **By-law Shall Apply:** This By-law shall apply only to the Election of Chief and Council to office under the *Act*.

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3. **OBJECTS**

- 3.1 **Objects:** The objects of this By-law are to set out comprehensive, transparent and fair provisions for Elections by secret ballot among all Electors of the Band, residing both on and off reserve, of Chief and Council, as a means of:
- (a) having all such votes fully and finally determined; and
 - (b) protecting the sovereignty and self- governance processes of our Band

4. **PRINCIPLES**

- 4.1 **Conduct of Electoral Processes:** The principles under which all electoral processes outlined in this By-law are to be conducted are:
- (a) maintaining the right of each Elector to:
 - (i) nominate another Elector for office;
 - (ii) be nominated for office; and
 - (iii) cast his or her vote in an Election;
 free from any disorderly conduct by any other Elector;
 - (b) maintaining fairness, justice and transparency in all electoral processes;
 - (c) ensuring that all Electors entitled to vote, have that opportunity; and
 - (d) maintaining the best interest of the Electors in general, in the electoral process, over the interest of any particular Elector engaged in disorderly conduct.

5. **DEFINITIONS AND INTERPRETATION**

- 5.1 **Definitions:** For the purposes of this By-law:

- (a) **“Act”** means the *First Nations Elections Act*.
- (b) **“Administration Office”** means the Band administration office currently located at 414 Cornwall Road, Ashcroft Indian Reserve No. 4, PO Box 440, Ashcroft, BC V0K 1A0.
- (c) **“Affidavit re Lost Mail-in Ballot”** means the affidavit in the form of Appendix C to this By-law, to be sworn by an Elector who has lost his or her mail-in ballot, and wishes to vote in person at the polling station on Election day.
- (d) **“authorizing regulation”** means a regulation made by the federal government under the *First Nations Elections Act* authorizing the Band to conduct both the nomination of candidates and the voting in an Election, by a mail-in process only.

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- (e) **“ballot”** means the form provided by the Electoral Officer to an Elector to vote in the Election, and includes a mail-in ballot.
- (f) **“Band”** means the Ashcroft Indian Band.
- (g) **“Band by-law, policy or procedure”** means any duly enacted or adopted by-law, policy, procedure, regulation, manual, or law of the Band.
- (h) **“Band Manager”** means the person appointed by Chief and Council to manage Band operations.
- (i) **“broad consensus”** means a consensus or agreement among the General Band Membership either for or against a matter, determined in accordance with the custom of the Band.
- (j) **“By-election”** means an Election to fill a vacancy on Chief and Council, for the remainder of the term of that office, held pursuant to sections 25 and 29 of the *Act*.
- (k) **“By-law”** means this Electoral Administrative Procedures By-law.
- (l) **“Chief”** means the member of Chief and Council who oversees council meetings and is the primary community and political representative of the Band.
- (m) **“Chief and Council”** means the council elected by the Band Electors from time to time, pursuant to the *Act* and *Regulations*, consisting of a Chief and Councillors, exercising legal authority as the governing body of the Band.
- (n) **“confidential information”** means information that could possibly harm the interests of individuals or the Band if disclosed to persons not authorized by Band by-laws, policies or procedures to access that information.
- (o) **“conflict of interest”** means any situation where the private interest of the Electoral Officer or Deputy Electoral Officer may conflict with the duty of that person to the Band.
- (p) **“contest”** means a contest of the Election of a Chief or Councillor, pursuant to sections 30 to 35 of the *Act*.
- (q) **“Councillor”** means a member of Chief and Council other than the Chief.
- (r) **“Council Member”** means any of the Chief or Councillors of the Band.
- (s) **“Council Resolution”** means a resolution consented to by the Chief and Council at a meeting duly convened and held, which resolution is then recorded in writing and signed by a quorum of Council Members.

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- (t) **“Deputy Electoral Officer”** means the person appointed by the Electoral Officer, pursuant to subsection 2(4) of the *Regulations*, to assist the Electoral Officer to conduct an Election of Chief and Council.
- (u) **“disorderly conduct”** means any act or behaviour by any person:
 - (i) impeding, interfering with, bullying, harassing, intimidating or obstructing:
 - (A) either the Electoral Officer or Deputy Electoral Officer in carrying out any of his or her duties or responsibilities in connection with any electoral process;
 - (B) the conduct of any electoral process;
 - (C) any Elector either:
 - (I) within the building in which an electoral process is being conducted; or
 - (II) within 100 meters of the building referred to in clause (I);
 at any time during that electoral process, or in the one hour period immediately before or immediately after that electoral process;
 - (ii) interfering in any manner with the orderly conduct of any electoral process;
 - (iii) causing inconvenience, annoyance or alarm for one or more Electors present at any electoral process;
 - (iv) challenging in any manner other than by a presentation at a Chief and Council meeting, the legal authority of the Band to carry out an electoral process;
 - (v) in connection with any electoral process:
 - (A) inviting the media to attend, except with the prior written consent of Chief and Council;
 - (B) electioneering, or attempting to influence the outcome of that process;
 - (C) posting or displaying within, or on the exterior surface of any building used for any electoral process, any campaign literature or other material that promotes or opposes the election of a particular candidate;
 - (D) political statements or political attacks, or any oral or written promotion or opposition to any outcome of that process;
 - (E) fighting, yelling, screaming, shouting, swearing, or using insulting, abusive or obscene language;

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- (F) making or causing unreasonable noise;
- (G) using offensive or indecent gestures or displays;
- (H) being impaired by reason of drugs or alcohol;
- (I) exposing, firing or discharging any gun, pistol or other firearm, or using or threatening to use any other article as a weapon;
- (J) inciting another person to act in a disorderly manner; or
- (K) otherwise disrupting the conduct of the proceedings;

and which occurs either within, or outside and within 100 meters of, the building used for any electoral process.

- (v) **"Election"** means an election of Chief and Council by the Electors, conducted pursuant to the *Act*, the *Regulations* and this By-law, and includes a By-election.
- (w) **"Electoral Officer"** means the person appointed under section 8.7 of this By-law by Chief and Council to conduct an Election of Chief and Council.
- (x) **"electoral process"** includes a Nomination Meeting, the conduct of the poll on Election day, an information session for the General Band Membership, or any other process authorized by the *Act*, the *Regulations*, or this By-law in connection an Election of Chief and Council.
- (y) **"Electors"** means all Members of the Band, 18 years of age or older on the date of the Election, who are not disqualified from voting in Band elections.
- (z) **"First Nations Elections Act"** means the *First Nations Elections Act* of Canada and any regulations made pursuant to it, all as amended or replaced from time to time.
- (aa) **"First Nations Elections Regulations"** means the *First Nations Elections Regulations* of Canada, as amended or replaced from time to time.
- (bb) **"General Band Membership"** means all persons whose names appear in the Membership List, or who are entitled under the Membership Rules, or the Membership Code when brought into legal effect, as the case may be, to have their names appear in that list, and who are 18 years of age or older on the relevant date.
- (cc) **"Indian Act"** means the *Indian Act* of Canada and any regulations made pursuant to it, all as amended or replaced from time to time.
- (dd) **"ISC"** means the Department of Indigenous Services of the federal government.
- (ee) **"mail-in ballot"** means the mail-in ballot described in section 15 of the *Regulations*.

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- (ff) **"mail-in ballot package"** means the mail-in ballot package assembled by the Electoral Officer, having the contents set out in subsection 16(1) of the *Regulations*.
- (gg) **"mail-in nomination package"** means the mail-in nomination package assembled by the Electoral Officer, having the contents set out in paragraph 5(1)(b) of the *Regulations*.
- (hh) **"Member"** means a person whose name appears in the Membership List, or who is entitled under the Membership Rules, or the Membership Code when brought into legal effect, as the case may be, to have his or her name appear in that list.
- (ii) **"Membership"** means the Members, collectively.
- (jj) **"Membership Code"** means the Ashcroft Indian Band Membership Code, which has not yet been brought into legal effect, which will repeal and replace the Membership Rules.
- (kk) **"Membership Coordinator"** means the Band employee, acting under the direction of the Band Manager, responsible for administering on a day to day basis, the Membership List, the Membership Rules, the Membership Code when brought into legal effect, and the membership programs and services of the Band.
- (ll) **"Membership List"** means the list of the names of the Band Members, as revised and updated from time to time by the Membership Coordinator, pursuant to authority in subsection 10(10) of the *Indian Act*.
- (mm) **"Membership Rules"** means the Ashcroft Indian Band Membership Rules which came into effect on June 26, 1987, by which the Band assumed control of its own membership from the Department of Indian Affairs and Northern Development of the federal government.
- (nn) **"Nomination Meeting"** means the meeting of Electors held for the purpose of nominating candidates for an Election, as described in sections 5 to 7 of the *Regulations*.
- (oo) **"Notice of Election"** means the notice of Election prepared by the Electoral Officer having the contents set out in section 14 of the *Regulations*.
- (pp) **"Notice of Nomination Meeting"** means the notice of Nomination Meeting prepared by the Electoral Officer having the contents set out in subsections 5(1) and (2) of the *Regulations*.
- (qq) **"Officer"** means any police officer or police constable, active or retired, or other person, appointed by the Electoral Officer under subsection 20(3) of the *Regulations* for the purpose of maintaining law and order for a Nomination Meeting, the conduct of the poll on Election day, or any other electoral process.
- (rr) **"Off Reserve Elector"** means any Elector who resides off reserve.
- (ss) **"On Reserve Elector"** means any Elector who resides on reserve.

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- (tt) **“proof of identity”** shall mean either:
 - (i) the status card issued by the federal government to a Band Member confirming his or her Band membership number; or
 - (ii) other identification evidence satisfactory to the Electoral Officer of the identity and Band membership number of a person.
 - (uu) **“Regulations”** means the *First Nations Elections Regulations* of Canada, as amended or replaced from time to time.
 - (vv) **“Request for a Mail-in Ballot Package”** means the request in the form of Appendix B to this By-law, setting out all the requirements for an Elector to obtain a mail-in ballot package from the Electoral Officer.
 - (ww) **“reserve”** means the reserve lands of the Band, including:
 - (i) Cheetsum’s Farm 1;
 - (ii) 105 Mile Post 2;
 - (iii) McLean’s Lake 3; and
 - (iv) Ashcroft 4.
 - (xx) **“Statutory Declaration of Person Nominated”** means the statutory declaration in the form of Appendix A to this By-law, setting out all the qualifications for elected office.
 - (yy) **“transition period”** means the period of 30 days immediately following, but not including, the day of an Election.
 - (zz) **“Voters List”** means the list, prepared by the Membership Coordinator from the Membership List, of all Electors entitled under section 8.6 of this By-law, to vote in the Election, in alphabetical order, together with the mailing address, e-mail address, birthdate, and Band membership number of each.
- 5.2 **Headings:** Headings inserted in this By-law are for convenience of reference only, and in no way define, limit or enlarge the scope or meaning of this By-law or any provision.
- 5.3 **Gender and Number:** Any reference in this By-law to the masculine shall be taken to include the feminine, and the singular, the plural, or body corporate as the context requires.
- 5.4 **Issuing Authority:** This By-law is issued under the authority of the Chief and Council of the Band, as authorized by paragraphs 81(1) (c), (d), (q) and (r) of the *Indian Act*, and following consultation with the General Band Membership.

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5.5 **Amendments to By-law:** This By-law may be amended, revoked or replaced, either in whole or in part, only by by-law enacted under subsection 81(1) of the *Indian Act*, by Chief and Council, following consultation with the General Band Membership.

5.6 **Amendment and Replacement of Laws:** Reference to any Band by-law, policy or procedure includes that item as amended or replaced from time to time.

6. **QUALIFICATIONS FOR OFFICE**

6.1 **Qualifications:** In order to become a candidate for Election to Chief and Council, an individual who is nominated as a candidate at the Nomination Meeting, must remit the signed Statutory Declaration of Person Nominated, in the form of Appendix A to this By-law, to the Electoral Officer or Deputy Electoral Officer. The statutory declaration contains all the qualifications for office.

6.2 **No Residency Requirements:** There are no residency requirements for Election to Chief and Council. Both Off Reserve Electors and On Reserve Electors are eligible for Election as either Chief or Councillor.

6.3 **Time Limitation:** By subsection 9(1) of the *Regulations*, the signed Statutory Declaration of Person Nominated must be remitted to the Electoral Officer or Deputy Electoral Officer by 6 p.m. on the third day following the day on which the Nomination Meeting closes, in order for that person to be a candidate in the Election.

7. **DISQUALIFICATION FROM OFFICE**

7.1 **Ceasing to Hold Office:** Subsection 28(2) of the *Act* confirms that the Chief or any Councillors will cease to hold office if:

- (a) he or she is convicted of an indictable offence and sentenced to a term of imprisonment of more than 30 consecutive days;
- (b) he or she is convicted of an offence under the *Act*;
- (c) he or she dies or resigns from office; or
- (d) a court sets aside his or her Election under subsection 35(1) of the *Act*.

7.2 **No Appeal:** There is no appeal under the *Act* of any disqualification from office under section 28(2) of the *Act*.

7.3 **Council Discipline:** This By-law does not deal with any matters of Council Member misconduct or potential discipline, not set out in section 7.1 of this By-law for disqualification.

7.4 **Vacancies:** Any vacancies on Chief and Council shall be filled by a By-election held pursuant to sections 25 and 29 of the *Act*.

7.5 **Where No Quorum of Chief and Council:** A vacancy in Chief and Council may occur:

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- (a) under section 7.1 of this By-law; or
- (b) for any other reason;

which results in Chief and Council not being able to get a quorum pending a By-election, because there are less than two Council Members. In that case:

- (c) the General Band Membership shall by a meeting in person held on reserve, on 10 days written notice from the Band Manager to all On and Off Reserve Electors, nominate, and elect by an in person secret ballot, only the minimum number of interim Council Members necessary for a quorum;
- (d) there shall be no a mail-in ballot;
- (e) the interim Council Members shall hold office following the close of that meeting until the conclusion of the By-election;
- (f) before assuming office, each interim Council Member shall swear the Statutory Declaration of Person Nominated in the form of Appendix A to this By-law, with any necessary changes in points of detail; and
- (g) any such Elections are not subject to being contested under sections 30-35 of the Act.

7.6 **General Band Membership Meeting Date:** The meeting of the General Band Membership referred to in section 7.5 shall be held on the first date available as determined by the Band Manager, keeping in mind the requirements for notice to the Electors set out in Article 15, Notice.

8. PREPARATION FOR AN ELECTION

8.1 **Electoral Officers:** Neither the Electoral Officer nor the Deputy Electoral Officer can be Electors. The Electoral Officer cannot be a Band employee, but the Deputy Electoral Officer can. The Electoral Officer must, by section 2 of the *Regulations*, be certified by ISC as having completed the necessary training program.

8.2 **Authority of Electoral Officer:** The Electoral Officer shall have under this By-law all the power and authority necessary:

- (a) to carry out the duties and responsibilities of that position set out in this By-law; and
- (b) to conduct the electoral processes in accordance with the principles stated in section 4.1.

Any discretion of the Electoral Officer under this By-law shall be exercised so as to apply the principles stated in section 4.1.

8.3 **Authority of Deputy Electoral Officer:** The Deputy Electoral Officer:

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- (a) shall have all the power and authority of the Electoral Officer in his or her absence; and otherwise
 - (b) shall act under the direction of the Electoral Officer.
- 8.4 **Conflict of Interest:** Any complaint or allegation that the Electoral Officer or Deputy Electoral Officer is in a conflict of interest in relation to any decision or process under this By-law will be resolved by the application of the principles stated in section 4.1. Any decision by either the Electoral Officer or the Deputy Electoral Officer, made according to these principles, and documented in writing, is not subject to question on the basis of conflict of interest.
- 8.5 **Notice to Electors re Current Addresses Required:** At least 100 days prior to the day of the Election, the Band shall give all the Electors notice by e-mail and on the Band website that all Electors must provide the Administration Office with their current mailing address, within three weeks of the date of the notice, to ensure that they are able to participate in the nomination of candidates and voting in the Election.
- 8.6 **Electors Entitled to Vote:** The Membership Coordinator shall remove from the Voters List being prepared for the Election, the name of any Elector who has not reported a current mailing address to the Administration Office before the end of the three week period referred to in section 8.5. Any Elector whose name is not on the Voters List at the end of that period shall not be entitled to participate in any electoral processes until he or she provides proof of his or her identity and current mailing address to the Membership Coordinator. In that case, the Membership Coordinator will add the name of that Elector back onto the Voters List to be used by the Electoral Officer for the electoral processes.
- 8.7 **Contents of Council Resolution:** The Council Resolution setting the Election date shall be made at least 90 days prior to the day of the Election. That resolution:
 - (a) shall determine whether the nomination of candidates, and the voting in the Election, will be mail-in process only, without either:
 - (i) an in person Nomination Meeting; or
 - (ii) in person voting on Election day;
 - (b) shall set the date, time and place for the Nomination Meeting;
 - (c) shall confirm that an advance poll will not be held;
 - (d) shall set the date, time and place for the Election;
 - (e) shall waive the fee of up to \$250.00 for every candidate for election as Chief or Councillor, which could be imposed under section 8 of the *Regulations*;
 - (f) shall set out the timeline of important dates and events in the process for the Election;

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- (g) may set the date, time and place for one or more information sessions to explain the electoral processes to the General Band Membership;
 - (h) may direct that an information package about the Election, including the qualifications for Election to Chief and Council, be posted on the Band website; and
 - (i) shall appoint an Electoral Officer to conduct the Election.
- 8.8 **Mail-in Nomination and Election Processes Only:** The Band can have a mail-in process for both the nomination of candidates and for the voting in the Election, without:
- (a) an in person Nomination Meeting; or
 - (b) in person voting on Election day;
- only if an authorizing regulation is made by the federal government under the *Act*. If this regulation is received by the Band, Chief and Council may by Council Resolution issue the necessary rules describing how the electoral processes will take place.
- 8.9 **Appointment of Deputy Electoral Officer:** The Deputy Electoral Officer is appointed by the Electoral Officer, pursuant to subsection 2(4) of the *Regulations*.
- 8.10 **Appointment of Officer to Maintain Law and Order:** The Officer who will be responsible to both maintain law and order and prevent any disorderly conduct, at each of the Nomination Meeting, the conduct of the poll on Election day, and any other electoral process, is appointed by the Electoral Officer under subsection 20(3) of the *Regulations*.
- 8.11 **Voters List:** At least 65 days prior to the day of the Election, the Membership Coordinator shall conclude preparation of the Voters List, which will include the revisions under section 8.6 of this By-law. The Membership Coordinator shall then provide the Voters List to the Electoral Officer, as required by section 3 of the *Regulations*.
- 8.12 **Disputes About the Voters List:** Subsection 3(3) of the *Regulations* gives the Electoral Officer authority to correct three types of clerical errors in the Voters List. These three errors are:
- (a) the omission of an Elector's name;
 - (b) the incorrect spelling on an Elector's name; or
 - (c) the inclusion of a person's name on the list, in error.
- 8.13 **Resolving Disputes About the Voters List:** Subsection 3(4) of the *Regulations* directs that:
- (a) the Band by its Membership Coordinator is the only party who provides the Electoral Officer with the written evidence to make either of the corrections to the Voters List, noted in subsections 8.12 (a) or (b); and

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- (b) the correction to the Voters List noted in subsection 8.12(c) is resolved by the Electoral Officer by confirming whether that person is on the Membership List and is 18 years of age on Election day.

8.14 Disputes About the Membership List: Any dispute arising about whether the name of any person should be added to, removed from, or is incorrectly spelled on the Membership List, shall be referred by the Electoral Officer to the Membership Coordinator. Any such dispute about the Membership List:

- (a) shall be addressed by the Membership Coordinator according to the procedures set out either under the Membership Rules of the Band, if still in legal effect, or under the Membership Code, if brought into legal effect by the Band;
- (b) is not a dispute which can be resolved either under this By-law, or by a contest under sections 31 to 35 of the *Act* of the results of an Election; and
- (c) is not a proper matter for dispute at a Nomination Meeting, on Election day, or in any other electoral process.

8.15 Amending the Membership List: Section 10(10) of the *Indian Act* confirms that it is only the Band who can add or delete names from the Membership List. The Electoral Officer has no such authority.

9. NOMINATION MEETING

9.1 Notice of Nomination Meeting and Mail-in Nomination Package: At least 25 days prior to the day of the Nomination Meeting, the Electoral Officer shall:

- (a) post the Notice of Nomination Meeting and the Voters List at the Administration Office;
- (b) send by mail and e-mail to all Off Reserve Electors:
 - (i) the Notice of Nomination Meeting and mail-in nomination package, both as described in subsections 5(1) and (2) of the *Regulations*;
 - (ii) the form of Statutory Declaration of Person Nominated in the form of Appendix A to this By-law, setting out all the qualifications for elected office; and
 - (iii) the Request for a Mail-in Ballot Package, in the form of Appendix B to this By-law, setting out all the requirements for an Elector to obtain a mail-in ballot package from the Electoral Officer.

9.2 Posting on the Band Website-Nomination Meeting: The Band shall post the following documents for the Nomination Meeting, on the Band website:

- (a) the Notice of Nomination Meeting;
- (b) the form of Statutory Declaration of Person Nominated; and

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- (c) the Request for a Mail-in Ballot Package.
- 9.3 **Proof of Identity Not Required:** Proof of identity is not required by the *Act* or *Regulations* to be submitted by any Off Reserve Elector to the Electoral Officer prior to receiving from the Electoral Officer the Notice of Nomination Meeting and mail-in nomination package. The reason is that this is the only notice of the electoral processes that all Off Reserve Electors are required to receive under the *Act* and *Regulations*.
- 9.4 **Electoral Officer Discretion:** The Electoral Officer must prevent any fraud in the Nomination Meeting process. Where the Electoral Officer has a suspicion based on reasonable grounds as to the authenticity of a mail-in nomination package which is received, the Electoral Officer will set aside that package from that Elector until the Electoral Officer:
- (a) receives from that Elector proof of identity satisfactory to the Electoral Officer; or
 - (b) otherwise verifies directly with the Elector the authenticity of the mail-in nomination package.
- 9.5 **Marking the Voters List:** The Electoral Officer will mark the Voters List to confirm both the reason for the suspicion about the authenticity of the mail-in nomination package received, the date the package was set aside, how the Electoral Officer resolved his or her suspicion and the date. Any mail-in nomination package from an Elector that is never accepted by the Electoral Officer is void and shall not be admitted to the Nomination Meeting. All such packages shall be identified by the Electoral Officer as “void”, along with the reason, and preserved by the Electoral Officer, along with all the ballots counted later in the Election.
- 9.6 **Nominations for Two Positions Forbidden:** Subsection 9(2) of the *Act* prohibits an Elector from being nominated as a candidate for the positions of both Chief and Councillor in the same Election. That Elector must advise the Electoral Officer before the end of the Nomination Meeting which of the nominations is declined.
- 9.7 **Elector Unable to Make a Nomination:** Where an Elector is unable to:
- (a) make or second the nomination of a candidate;
 - (b) complete and sign the voter declaration form; or
 - (c) make a written request to the Electoral Officer for a mail-in ballot;
- the Elector may enlist the assistance of another person who is at least 18 years of age, to make or second the nomination of a candidate, complete and sign the voter declaration form, or make the written request to the Electoral Officer for the mail-in ballot, on behalf of the Elector.
- 9.8 **Witnessing the Voter Declaration Form:** The witness signing the voter declaration form shall attest by his or her signature on the form that:
- (a) the person completing and signing the voter declaration form is the Elector whose name is set out on that form; or

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- (b) where the Elector enlisted the assistance of another person under section 9.7, the fact that the Elector is the person:
 - (i) who made or seconded the nomination of a candidate;
 - (ii) whose name is set out on the voter declaration form; and
 - (iii) who has made the written request to the Electoral Officer for a mail-in ballot.
- 9.9 **Method of Receipt:** The Electoral Officer may receive a nomination and the voter declaration form, from an Elector, by delivery, mail, e-mail or fax, pursuant to paragraph 6(1)(a) of the *Regulations*. Nominations by telephone or proxy are not allowed. Any Elector attempting to make a nomination by telephone or proxy, shall still have the opportunity to participate in the Nomination Meeting in an authorized fashion.
- 9.10 **Time of Receipt:** Nominations forwarded by delivery, mail, e-mail or fax to the Electoral Officer, and not received by the Electoral Officer prior to the beginning of the Nomination Meeting, are void, pursuant to subsection 6(3) of the *Regulations*.
- 9.11 **Other Processes Prior to Election:** The *Regulations* set out at sections 5-12, other processes for the Nomination Meeting, withdrawal of candidates, and Elections by acclamation.
- 10. **ELECTION**
- 10.1 **Notice of Election:** At least 30 days prior to the Election day, the Electoral Officer shall post the Notice of Election at the Administration Office, which sets out the information listed in section 14 of the *Regulations*.
- 10.2 **Posting on the Band Website-Election:** The Band shall post the following documents for the Election, on the Band website:
 - (a) the Notice of Election; and
 - (b) the Affidavit re Lost Mail-in Ballot, to be sworn by an Elector who has lost his or her mail-in ballot, and wishes to vote in person at the polling station on Election day.
- 10.3 **Obtaining a Mail-in Ballot:** Pursuant to sections 15 and 16 of the *Regulations*, the Electoral Officer shall forward by mail no later than 30 days before the Election day, the mail-in ballot package to all Electors who have provided to the Electoral Officer:
 - (a) the Request for a Mail-in Ballot Package; and
 - (b) proof of identity.

The mail-in ballot package shall also be mailed or delivered by the Electoral Officer, as soon as possible, to all Electors who provide the documents noted in subsections (a) and (b) to the Electoral Officer, six or more days prior to Election day.

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10.4 Prohibitions re Ballots: Pursuant to section 14 of the *Act*, a person must not, in connection with an Election:

- (a) provide a false name in order to obtain a ballot;
- (b) possess any ballot that was not provided to him or her by the Electoral Officer in accordance with the *Regulations*;
- (c) purchase a mail-in ballot that was issued to another person;
- (d) sell or give away a mail-in ballot; or
- (e) print or reproduce a ballot, except if that person is acting under the direction of the Electoral Officer.

10.5 Elector Unable to Complete Mail-in Ballot: Where an Elector is unable to complete the mail-in ballot, the Elector may enlist the assistance of another person who is at least 18 years of age, to mark the mail-in ballot and complete and sign the voter declaration form, on behalf of the Elector.

10.6 Witnessing the Voter Declaration Form: The witness signing the voter declaration form shall attest by his or her signature on the form that:

- (a) the person completing and signing the voter declaration form is the Elector whose name is set out on that form; or
- (b) where the Elector enlisted the assistance of another person under section 10.5, the fact that the Elector is the person whose name is set out on the voter declaration form, and that the mail-in ballot was marked according to the directions of the Elector.

10.7 Mail or Delivery Only: Mail-in ballot packages may be received by the Electoral Officer from an Elector only by mail or delivery, as required by the *Regulations*, paragraph 17(1)(f). A mail-in ballot package that is received by the Electoral Officer from an Elector by fax, e-mail, or other method of electronic transmission, shall be marked “void” by the Electoral Officer, and shall not be counted. That Elector shall still have the opportunity to vote in an authorized fashion. Voting by telephone or proxy is not allowed, but any Elector attempting to so vote shall still have the opportunity to vote in an authorized fashion.

10.8 Prohibitions re Voting: A person must not, in connection with an Election:

- (a) vote or attempt to vote knowing that he or she is not entitled to vote;
- (b) attempt to influence another person to vote knowing that the other person is not entitled to vote;
- (c) put a ballot into a ballot box except if that person is one of the person authorized by subsection 21(5) of the *Regulations* to do so, being either the Elector voting, the Electoral Officer or the Deputy Electoral Officer;

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- (d) attempt to influence another person to vote or refrain from voting;
- (e) offer money, goods, employment or other valuable consideration in an attempt to influence an Elector to vote or refrain from voting;
- (f) vote more than once;
- (g) accept or agree to accept money, goods, employment or other valuable consideration to vote or refrain from voting;
- (h) attempt to interfere with any Elector at any time in the voting process;
- (i) show his or her ballot, when marked to reveal how he or she has voted;
- (j) in the polling station, openly declare how he or she intends to vote or has voted;
- (k) in the polling station, attempt to determine how any Elector has voted;
- (l) post or display within, or on the exterior surface of any building used for a polling station, any campaign literature or other material that promotes or opposes any candidate in the Election;
- (m) within hearing distance of the polling station, orally promote or oppose any candidate in the Election;
- (n) destroy, take, open or otherwise interfere with any ballots or the ballot box, unless authorized to do so by the *Regulations*; or
- (o) engage, or incite another person to engage, in any disorderly conduct.

10.9 **Candidate's Representatives:** A candidate who wishes up to two representatives to be present in the polling station on Election day, shall provide the Electoral Officer with a letter naming the representatives, before or at the opening of the polling station on Election day.

10.10 **Identification:** Each Elector intending to vote in the polling station on Election day must:

- (a) produce proof of identity; or
- (b) have his or her identity confirmed by another Elector in the polling station;

in order that the Electoral Officer can confirm from the Voters List the entitlement of that person to vote, issue that person a ballot, and mark the Voters List to confirm that person has received a ballot.

10.11 **Mail-in Ballot - Voting in Person:** An Elector who received a mail-in ballot package from the Electoral Officer may, pursuant to subsection 21(3) of the *Regulations*, vote in person at the polling station if the Elector:

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- (a) returns the unused mail-in ballot to the Electoral Officer or Deputy Electoral Officer; or
- (b) provides the Electoral Officer or Deputy Electoral Officer with a sworn Affidavit re Lost Mail-in Ballot, stating that he or she has lost the mail-in ballot.

10.12 **Explaining the Voting Procedure:** The Electoral Officer shall explain the voting procedure to each Elector.

10.13 **Forfeiting the Right to Vote:** Any Elector who:

- (a) has received a ballot and leaves the polling station without delivering the ballot to the Electoral Officer;
- (b) if, after receiving the ballot, refuses to vote; or
- (c) appears to the Electoral Officer to be in any way impaired by alcohol or drugs;

shall forfeit the right to vote in the Election, and the Electoral Officer shall make an entry in the Voters List opposite the name of such Elector to show that such Elector:

- (d) received the ballot and declined to vote, and if the ballot is returned, the Electoral Officer shall write the word “declined” upon the ballot and preserve it; or
- (e) had observable symptoms of impairment by alcohol or drugs in the polling station, and shall list the symptoms;

as the case may be.

10.14 **Ballot Box:** The Electoral Officer and Deputy Electoral Officer shall not leave the ballot box unlocked or unattended at the polling station at any time the poll is open for voting.

10.15 **Interpreter:** Where the Electoral Officer does not understand the language spoken by the Elector, the Electoral Officer shall use an interpreter for all matters required to enable that Elector to vote.

10.16 **Mail-in Ballots from Deceased Electors:** The Membership Coordinator will provide the Electoral Officer with a list of the Electors whose names are on the Voters List, but who have passed away prior to Election day. If the Electoral Officer receives a mail-in ballot package from an Elector who has passed away prior to the Election day, the Electoral Officer shall after the close of the polls on Election day, proceed as follows:

- (a) when the outer sealed envelope for that mail-in ballot is opened by the Electoral Officer, the Electoral Officer will check that the voter declaration form is properly completed, signed and witnessed.
- (b) the Electoral Officer will check that the name on the voter declaration form is that of an Elector on the Voters List who has not already voted.

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- (c) the Electoral Officer will hold and secure separately, without opening, the inner sealed envelope containing the mail-in ballot for the deceased Elector. The Electoral Officer will also hold and secure separately, the accompanying voter declaration form, and the outer envelope, carefully preserving any postmark.
- (d) when all the other ballots are counted after the close of the polls, the Electoral Officer may conclude that the mail-in ballots from deceased Electors could not possibly affect the Election results, regardless of how such ballots were voted. In that case, the Electoral Officer shall open the inner sealed envelopes containing the mail-in ballots from deceased Electors, mark them “accepted”, count them, and include them in the final tally of votes.
- (e) if the Electoral Officer concludes that the mail-in ballots from deceased Electors may affect the Election results, the Electoral Officer shall contact in person or by telephone, the witness on the voter declaration form for each deceased Elector who apparently voted by mail-in ballot.
- (f) the Electoral Officer shall satisfy himself by questioning this witness, whether the mail-in ballot and the voter declaration form for the deceased Elector were completed, signed, and witnessed, as the case may be, and then mailed either by the deceased Elector or the witness, back to the Electoral Officer prior to the Elector passing on. If so, the Electoral Officer shall open the inner sealed envelope containing the mail-in ballot from that deceased Elector, mark the ballot “accepted”, count the ballot, and include the ballot in the final tally of votes. If not, that mail-in ballot will not be counted and will be marked as “rejected”.
- (g) the Electoral Officer shall mark the Voters List to confirm which Electors had passed away prior to Election day, whether a mail-in ballot was received, and whether that mail-in ballot was accepted or rejected, and the reason.

10.17 Ballots to be Set Aside: The Electoral Officer shall set aside:

- (a) any ballot inadvertently spoiled by an Elector, and marked “cancelled” by the Electoral Officer under subsection 21(9) of the *Regulations*;
- (b) any mail-in ballot package received by the Electoral Officer by fax, e-mail or other method of electronic transmission, and marked “void” pursuant to section 10.7 of this By-law;
- (c) any ballot marked “declined” by the Electoral Officer, where the Elector has forfeited the right to vote under section 10.13 of this By-law;
- (d) any ballot rejected by the Electoral Officer under either section 22 or 23 of the *Regulations* during the vote count, after the close of the polls on Election day;
- (e) any ballot upon which votes have been given in a portion of the ballot, for more candidates than are to be elected to an office, and which portion is declared and

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marked “void” by the Electoral Officer, under subsection 23(b) of the *Regulations*, during the vote count, after the close of the polls on Election day;

- (f) any ballot marked “disallowed” by the Electoral Officer under subsection 23(d) of the *Regulations*, during the vote count, after the close of the polls on Election day;
- (g) any mail-in ballot package not received by the Electoral Officer before the time at which the polls close on Election day, and marked “void” by the Electoral Officer, under subsection 17(3) of the *Regulations*;
- (h) any mail-in ballot from a deceased Elector, whether marked “accepted” or “rejected” by the Electoral Officer under subsection 10.16(f) of this By-law, together with the voter declaration form and the inner and outer envelopes from the mail-in ballot package; and
- (i) any other documents received by the Electoral Officer and which are subject to inquiry or dispute during any electoral process.

10.18 Ballots which are Void: Any ballots set aside by the Electoral Officer under subsections 10.17(b), (c), (d), (f) or (g) of this By-law, together with any mail-in ballots marked “rejected” under subsection 10.17(h), are void and shall not be counted. All such ballots shall be identified by the Electoral Officer as “void”, along with the reason and preserved by the Electoral Officer along with all the ballots counted in the Election.

10.19 Ballots which are Partially Void: All ballots for which a portion is declared and marked “void” by the Electoral Officer under subsection 10.17(e) of this By-law, shall along with the reason for that decision, be preserved by the Electoral Officer along with all the ballots counted in the Election.

10.20 Other Processes for Election: The *Regulations* set out at sections 13-24, other processes for the Election.

11. TRANSITION PERIOD FOR NEWLY ELECTED CHIEF AND COUNCIL

11.1 Beginning of First Term of Office: By subsection 3(3) of the *Act*, the first Chief and Council elected under the *Act*, took office on the day of their election, being November 7, 2016.

11.2 First Term of Office: By subsection 28(1) of the *Act*, the term of office of the first Chief and Council elected under the *Act*, is four years, commencing on the day they took office, being November 7, 2016, and expiring on November 6, 2020.

11.3 Second Election Date Under the Act: By section 6 of the *Act*, the second Election of Chief and Council under the *Act*, must be held in the 30 day period prior to November 6, 2020, that is from and including October 7, 2020 to and including November 5, 2020.

11.4 Beginning of Second and Subsequent Terms of Office: The four year term of office of the second and subsequent Chiefs and Council elected under the *Act* will begin on the day of their Election.

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11.5 Outgoing Chief and Council: For the second and each subsequent Election under the *Act*, the outgoing Chief and Council will remain as non-voting and ex officio members of Chief and Council, for the transition period of 30 days immediately following, but not including, the day of the Election. The outgoing Chief and Council will in that transition period:

- (a) attend to the transfer of all bank signing authorities to the new Chief and Council;
- (b) resign from all director, officer, management committee or other positions to which the outgoing Council Members had been appointed by the Band;
- (c) turn over all keys, tools, alarm and computer access codes, computers, written work product including intellectual property, cell phones and other Band property;
- (d) attend all meetings of Chief and Council to brief the incoming Chief and Council on current Band business, including:
 - (i) any reporting deadlines under contribution or other agreements with funding agencies;
 - (ii) any other reporting deadlines or limitation periods;
 - (iii) all matters upon which legal advice is being sought;
 - (iv) any specific claims of the Band filed against the federal government;
 - (v) all consulting contracts outstanding for the Band;
 - (vi) the operation of any business which the Band owns or controls, or in which it has invested or from which it receives a return;
 - (vii) all impact benefit agreements;
 - (viii) all business contracts;
 - (ix) all government funding sources;
 - (x) the own source revenues of the Band;
 - (xi) the current financial obligations of the Band;
 - (xii) any Band bylaws, policies or procedures currently in development; and
 - (xiii) any other current Band business; and
- (e) advise the incoming Chief and Council on any other matter related to the orderly transition of the governance authority of the Band from the outgoing Chief and Council to the incoming Chief and Council, as requested by the incoming Chief and Council.

11.6 Payment of the Outgoing Chief and Council: The outgoing Council Members are paid:

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- (a) for the transition period, at the same biweekly rate of pay as they received on average in the 90 day period immediately prior to the Election; and
 - (b) regardless of how much work is required from them by the incoming Chief and Council, up to seven hours per day and up to 35 hours per work week from Monday to Friday.
- 11.7 **No Withholding of Pay:** The pay of any outgoing Council Member for the transition period, cannot be withheld for any reason, including a dispute between any outgoing Council Member and any incoming Council Member.
- 11.8 **No Discipline:** An outgoing Council Member is not subject to any Council discipline process or termination for just cause, by the incoming Chief and Council, in the transition period.
- 11.9 **Termination Without Cause on Notice:** The incoming Chief and Council may terminate any outgoing Council Member from his or her ex officio position at any time in the transition period, without cause, on written notice, provided that the outgoing Council Member whose office is terminated, is paid for the remaining balance of the transition period, at the rate set out in section 11.6.
- 11.10 **Resignation:** An outgoing Council Member may by notice in writing delivered to the Administration Office, resign from his or her ex officio position at any time during the transition period, and is not entitled to any pay under section 11.6 in the transition period for any day after the day on which the resignation is effective.
- 11.11 **Benefit Package:** The Band health and welfare benefit package for each of the outgoing Council Members will be continued by the Band for the transition period.
- 11.12 **Other Terms and Conditions of Office:** The terms and conditions of the office of the outgoing Council Members, apart from their ex officio and non-voting status, will be the same during the transition period as prior to the Election.
- 12. **DISORDERLY CONDUCT**
 - 12.1 **Offence:** Every one who commits an act of disorderly conduct in connection with any electoral process, is guilty of an offence.
 - 12.2 **Order:** The Officer may order any person who:
 - (a) is engaging in any disorderly conduct; or
 - (b) the Officer believes on reasonable grounds to have engaged in disorderly conduct;
 to stop such conduct immediately.
 - 12.3 **Enforcement:** Where a person who has been ordered by the Officer to stop engaging in disorderly conduct, fails or refuses to comply with the order, the Officer may immediately take such reasonable measures including the use of force, as necessary to:

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- (a) immediately stop the disorderly conduct; and
 - (b) immediately physically remove that person from the building used for the Nomination Meeting, the Election or other electoral process, as the case may be, and all physical space within 100 meters of that building, and order that person to stay outside that physical space for the rest of that day.
- 12.4 **RCMP Assistance:** The Officer may request the assistance of the RCMP in dealing with any disorderly conduct in connection with any electoral process. The RCMP may not be able to attend immediately. The Officer is responsible for enforcement measures under section 12.3, even in the absence of the RCMP.
- 12.5 **Committing an Offence:** A person who fails or refuses to comply with an order made under section 12.2, or who resists or interferes with an Officer acting under subsection 12.3, commits an offence.
- 12.6 **Penalty:** A person who commits an offence under this By-law is liable on summary conviction to a fine not exceeding \$1,000.00 or to imprisonment for a term not exceeding thirty days, or to both.
- 12.7 **Loss of Electoral Rights:** Where a person who has been ordered by an Officer to stop engaging in disorderly conduct, fails or refuses to comply with the order, the Officer may advise that person that any further participation by that person in any other electoral process, is forfeited.
- 12.8 **Offences under the Act:** The Act in sections 37 and 38 sets out additional offences relating to electoral processes.
- 13. **CONTESTING AN ELECTION**
- 13.1 **Procedure:** The procedure to contest an Election is set out in sections 30 to 35 of the Act.
- 14. **APPROVAL BY GENERAL BAND MEMBERSHIP**
- 14.1 **Difficulties:** The Band acknowledges that many of the Electors live off reserve, and a considerable distance from the reserve lands of the Band, making:
 - (a) assembly of the General Band Membership in person on the reserve for an in person vote; or
 - (b) a mail in referendum vote for the whole of the General Band Membership;

time consuming and difficult, and beyond the financial and administrative resources of the Band, for seeking approvals or consents of the General Band Membership.
- 14.2 **Custom of the Band:** Any approvals or consents required from the General Band Membership shall be obtained according to the custom of the Band, as set out in this Article 14.

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- 14.3 **Band Newsletter and Website:** The custom of the Band is to keep the General Band Membership informed by way of the Band newsletter and website.
- 14.4 **Broad Consensus:** The custom of the Band is to determine the broad consensus for or against a matter amongst the General Band Membership, by:
- (a) posting reasonably detailed information about the matter on the Band website;
 - (b) inviting on the Band website:
 - (i) questions and comments from all Electors; and
 - (ii) written responses from all Electors within the 14 day period; and
 - (c) tallying the responses received from the Electors within the 14 day period to determine the broad consensus in the General Band Membership for or against the matter.
- 14.5 **Confidential Matters:** On matters concerning confidential information of the Band, the custom of the Band is to determine the broad consensus for or against a matter amongst the General Band Membership, by:
- (a) providing reasonably detailed information about the matter either by mail or delivery to all Electors, together with a notice from the Band:
 - (i) inviting questions and comments from all Electors; and
 - (ii) requesting a written response from each Elector within 28 days of the date of the notice; and
 - (b) tallying the responses received from the Electors within the 28 day period to determine the broad consensus in the General Band Membership for or against the matter.
15. **NOTICE**
- 15.1 **Method:** Any notice to be given to a person pursuant to this By-law shall be in writing, have the signature of the sender at the end, be dated, and shall be:
- (a) sent in a fully prepaid envelope by mail, addressed to the person receiving. Any such notice shall be deemed to have been given and received by the persons concerned on the fourth business day following the mailing thereof;

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- (b) delivered, and if delivered shall be deemed to have been given and received by the persons concerned upon delivery thereof. If delivering to a residence, business or other building at which no one answers, it shall be sufficient to complete the delivery by putting the notice in a mail box, putting it through a mail slot, or fixing it right to the entrance door; or
 - (c) e-mailed or faxed, and shall be deemed to have been given and received by the persons concerned on the next business day after e-mailing or faxing.
- 15.2 **Band Newsletter and Website:** The Band may, in addition to the methods specified in section 15.1, give written notice to the Electors by placing the notice:
- (a) in the Band newsletter, in which case the notice shall be deemed to have been given and received, according to the method of forwarding as specified in section 15.1, of the newsletter by the Band to that Elector; or
 - (b) on the Band website, in which case the notice shall be deemed to have been given and received by all Electors on the fourth business day after placing by the Band on the website.
- 15.3 **Invalid Notice:** Any notice received by the Band from an Elector or other person under this By-law, has to be in writing, have the signature of the Elector or other person at the end, and be dated, to be a valid legal notice.
- 15.4 **Current Addresses:** All Electors shall be responsible to advise the Administration Office of their current mailing, delivery and e-mail addresses, and fax and phone numbers.

16. APPENDICES

- 16.1 **Appendices:** The Appendices attached to and forming part of this By-law are:

Appendix A – Statutory Declaration of Person Nominated

Appendix B – Request for a Mail-in Ballot Package

Appendix C – Affidavit re Lost Mail-in Ballot

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17. COMING INTO EFFECT

- 17.1 Approval Process:** Following consultation with the General Band Membership, in accordance with the custom of the Band as described in Article 14, this By-law shall be brought into legal effect by Council Resolution.

Coming Into Effect

The ASHCROFT INDIAN BAND CHIEF AND COUNCIL HEREBY RESOLVES BY CONSENT of a quorum of the members of the Council of the Band present at a meeting of Council duly convened and held on the day of _____, 2020 that:

The General Band Membership having been consulted, in accordance with the custom of the Band, this Electoral Administrative Procedures By-law No. 2020-001 is issued under the authority of the Chief and Council of the Ashcroft Indian Band, to come into immediate effect.

ASHCROFT INDIAN BAND

Per:

Chief

Councillor

Councillor

The quorum of Council is two members.

Number of members of the Council present at the meeting: ____

ASHCROFT INDIAN BAND

ELECTORAL ADMINISTRATIVE PROCEDURES BY-LAW NO. 2020-001

CRAIG NIXON LAW CORPORATION

Barristers and Solicitors
880 - 175 Second Avenue
Kamloops, BC V2C 5W1
Telephone: (250) 374-1555
Fax: (250) 374-9992

E-mail: cnlc@CNixonLaw.ca
www.CNixonLaw.ca

File No. 112-046
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