



ECONOMIC AND COMMUNITY DEVELOPMENT AGREEMENT

This Agreement is dated the 29th day of January, 2013.

BETWEEN

**HER MAJESTY THE QUEEN
IN RIGHT OF THE PROVINCE OF BRITISH COLUMBIA**

as represented by the Minister of Aboriginal Relations and Reconciliation
(hereinafter the "Province")

and

**THE KTUNAXA NATION COUNCIL SOCIETY (the "KNC"), on its own
behalf and on behalf of the Ktunaxa Nation, St. Mary's Indian Band,
Tobacco Plains Indian Band, Lower Kootenay Indian Band and
?Akisq'nuk First Nation**

(hereinafter the "Ktunaxa Parties")

(each a "Party" and collectively the "Parties")

Whereas the Ktunaxa Nation has Aboriginal Rights within the Ktunaxa Territory;

Whereas the KNC is an entity empowered by the Ktunaxa Communities to perform the functions of government;

Whereas the Parties are engaged in treaty negotiations and in those negotiations the Ktunaxa Nation has stated its interest in achieving a greater role in the regional economy and in receiving a share of the revenues derived from the use of resources within the Ktunaxa Territory to support self-government;

Whereas the Parties, in the spirit of the New Relationship vision and the Transformative Change Accord, share commitments to strengthen their government-to-government relationship and to close the socio-economic gaps between aboriginal and non-aboriginal peoples;

Whereas the Parties, acting on their shared commitments, have

- (a) entered into a Strategic Engagement Agreement that sets out engagement processes respecting the land and resources within the Ktunaxa Territory, including processes for consultation and accommodation and identifying issues related to land and resource use, principles for sharing information, and the establishment of government-to-government forums to address land and resource management activities, shared decision-making and revenue-sharing, and
- (b) implemented a regional governance initiative to improve the delivery of social services to aboriginal people living within the Ktunaxa Territory; and

Whereas the Parties recognize that the successful implementation of this Agreement is an incremental step towards the fuller implementation of a government-to-government relationship through a potential treaty with the Ktunaxa Nation or other processes and provides opportunities to build the necessary cooperative working relations that will enhance the Ktunaxa Nation's efforts towards self-government.

Now, therefore, the Parties agree as follows:

DEFINITIONS

1 (1) In this Agreement

“Aboriginal Rights” means asserted or determined aboriginal rights, including aboriginal title, which are or may be recognized and affirmed by section 35 of the *Constitution Act, 1982*;

“Agreement” means this Agreement including its attached annexes, Project Appendices and schedules to Project Appendices and any amendments made to it from time to time in accordance with its provisions;

“Band Council Resolution” means a resolution made by a “council of the band” within the meaning of the *Indian Act*, RSC 1985, c.1-5;

“BC Fiscal Year” means a period beginning on April 1 of a calendar year and ending on March 31 of the next calendar year;

“Contributing Project” means a Project identified in a Project Appendix in respect of which the Parties agree to share certain revenues in accordance with the provisions of that Project Appendix;

“Dispute” means any disagreement arising out of the interpretation or implementation of this Agreement including any dispute with respect to whether any Party has failed to perform or satisfy any of its obligations under this Agreement, including any obligations set out in a Project Appendix;

“Effective Date” means the last date upon which this Agreement is signed by the Parties;

“Government Actions” means all processes, decisions, authorizations, permits, licences, approvals, Crown land dispositions, agreements, and other actions whatsoever entered into or otherwise taken by a Provincial Agency in relation to a Project;

“KNC” means the Ktunaxa Nation Council Society, a society incorporated under the laws of the Province of British Columbia;

“Ktunaxa Citizens” means all those persons who are collectively entitled to exercise the Aboriginal Rights of the Ktunaxa Nation and includes Ktunaxa Community Members;

“Ktunaxa Communities” means ʔAkisq’nuk First Nation, St. Mary’s Indian Band, Tobacco Plains Indian Band, and Lower Kootenay Indian Band, all of which are “bands” within the meaning of the *Indian Act*;

“Ktunaxa Community Member” means a member of one of the Ktunaxa Communities as shown in that Ktunaxa Community’s “Band List” within the meaning of the *Indian Act*;

“Ktunaxa Nation” means the collectivity of Ktunaxa Citizens and includes the Ktunaxa Communities and Ktunaxa Community Members and, for the purposes of this Agreement, is represented by the KNC;

“Ktunaxa Territory” means, for the purposes of this Agreement, that portion of the traditional territory in British Columbia claimed by the Ktunaxa Nation that is set out in Annex A;

“Notice of Withdrawal” means a notice provided by the KNC on behalf of the Ktunaxa Parties to the Province of the Ktunaxa Parties’ intent to terminate a schedule to a Project Appendix or a Project Appendix, as the case may be;

“Notice to Terminate” means a notice provided under subsection 20(4) or 20(6) to terminate a schedule to a Project Appendix, a Project Appendix or this Agreement in its entirety, as the case may be;

“Project” means an economic activity within the Ktunaxa Territory that generates or has the potential to generate revenue for the Province;

“Project Appendix” means an agreement that sets out the provisions specifically relating to the revenue-sharing arrangements for a particular Project that the Province and the KNC on behalf of the Ktunaxa Parties have agreed to incorporate into this Agreement in accordance with section 5;

“Project Payment” means a payment made or to be made by the Province in respect of a Project in accordance with this Agreement;

“Provincial Agency” means a provincial ministry, agency or office that is represented in and governed by the Strategic Engagement Agreement, including its provincial decision-makers and any person who has authority or provincial direction to carry out consultation;

“Resource-Revenue and Benefit Sharing Standing Committee” means the Resource-Revenue and Benefit Sharing Standing Committee established under the Strategic Engagement Agreement;

“SEA Senior Forum” means the Senior Forum established under the Strategic Engagement Agreement;

“Strategic Engagement Agreement” means the Strategic Engagement Agreement between the Province of British Columbia and the Ktunaxa Nation, dated October 22, 2010 and includes any amendments made to it from time to time in accordance with its provisions; and

“Term” has the meaning given to that word in section 14.

PURPOSES

- 2** (1) The purposes of this Agreement are to
- (a) further strengthen the government-to-government relationship between the Parties,
 - (b) address the Ktunaxa Nation's interest in achieving a greater role in the regional economy and receiving a share of the revenues derived from the use of resources within the Ktunaxa Territory to support self-government and the Parties' interest in enhancing the well-being of Ktunaxa Citizens by setting out the Parties' agreement with respect to how revenue derived from Projects may be shared between them,
 - (c) to assist in achieving stability and greater certainty for resource development on Crown lands within the Ktunaxa Territory,
 - (d) confirm the engagement processes that the Parties will rely on to meet their respective legal consultation obligations in relation to Projects, and
 - (e) provide an agreed upon framework of general terms and conditions relating to revenue-sharing to assist the Parties in developing and administering revenue-sharing arrangements for particular Projects in a cooperative, efficient and timely manner.

REPRESENTATIONS AND WARRANTIES

- 3** (1) The Province represents and warrants to each of the Ktunaxa Parties that it has the authority to enter into this Agreement and to carry out its obligations in accordance with the provisions of this Agreement and this Agreement is a valid and binding obligation of the Province.
- (2) The KNC represents and warrants to the Province that, as of the Effective Date, and throughout the Term, each of the following representations and warranties are, and will be, true and correct in all material respects:
- (a) the KNC is a duly incorporated and subsisting society under the *Society Act, RSBC 1996, c. 433*;

- (b) each of the Ktunaxa Communities is a “band” within the meaning of the *Indian Act*, and each has the legal power and capacity to enter into and perform its obligations under this Agreement;
 - (c) this Agreement has been duly and validly authorized, executed and delivered by the KNC for and on behalf of itself and each of the Ktunaxa Communities;
 - (d) the KNC has received all authorizations and approvals to enter into and to perform its obligations under this Agreement for and on behalf of itself and, as applicable, each and all of the Ktunaxa Nation, the Ktunaxa Communities and the Ktunaxa Citizens;
 - (e) without limitation to paragraph (d), the KNC holds all legal authorizations, mandates and approvals that may be necessary or desirable for it to receive payments on behalf of Ktunaxa Communities and Ktunaxa Citizens and, through its governance structure and decision-making processes, it is accountable to Ktunaxa Communities and Ktunaxa Citizens;
 - (f) Annex B includes a true copy of a Band Council Resolution of each Ktunaxa Community
 - (i) approving the provisions of this Agreement as set out in a copy of this Agreement, dated for reference, December 19th, 2012, and
 - (ii) authorizing the KNC to enter into this Agreement and to make the covenants, acknowledgements and representations included therein, on its own behalf and on behalf of the Ktunaxa Communities and Ktunaxa Community Members;
 - (g) the Band Council Resolutions under paragraph (f) have not been varied, amended, repealed or replaced; and
 - (h) the Ktunaxa Parties have each obtained or had the opportunity to obtain the advice of its own financial, legal, tax and other professional advisors with respect to this Agreement.
- (3) Each of the Ktunaxa Parties agree that they will immediately notify the Province if the KNC’s legal power, capacity or authority

to act on behalf of the Ktunaxa Communities and Ktunaxa Citizens in respect of the subject matters of this Agreement is diminished in any way or, in the case of each of the Ktunaxa Communities, if its respective Band Council Resolution attached as Annex B is at any time varied, amended, repealed or replaced.

- (4) The KNC agrees that it will, from time to time during the Term following a written request by the Province, provide to the Province a certificate from a senior officer of the KNC confirming that each of the representations and warranties remains true and correct in all material respects.

PROJECT NEGOTIATIONS

- 4 (1) The Parties will seek to identify and pursue potential revenue-sharing opportunities in accordance with this Agreement as a means to generate revenue for the Ktunaxa Parties to
 - (a) pursue the socio-economic objectives identified by them to enhance the well-being of Ktunaxa Citizens, and
 - (b) participate more fully in the regional economy.
- (2) The SEA Senior Forum, being the primary forum for the Parties to discuss the sharing of resource-revenues and other benefits, will
 - (a) identify and prioritize any new revenue-sharing opportunities within the Ktunaxa Territory,
 - (b) identify the objectives and interests of the Parties related to any revenue-sharing opportunities identified under paragraph (a) that may inform the development of their respective negotiation mandates, and
 - (c) subject to each securing such mandates as required by the Parties, be responsible for facilitating the negotiation of potential revenue-sharing agreements in respect of the same.
- (3) If a framework for the negotiation of potential resource-revenue and benefits-sharing agreements is established under the Strategic Engagement Agreement, then, unless the Parties otherwise agree, the negotiation of potential revenue-sharing agreements will be carried out in accordance with that framework.

PROJECT APPENDICES

- 5 (1) The Elk Valley Coal Mining Revenue Sharing Project Appendix and the Forest Revenue Sharing Project Appendix are attached to and form a part of this Agreement.
- (2) If, following the Effective Date, the Parties agree on provisions regarding revenue-sharing for a Project, then, unless the Parties otherwise agree, those provisions will be set out in a Project Appendix.
- (3) A Project Appendix will include provisions with respect to the following matters:
- (a) the manner in which Project Payments for that Project will be determined and any related Project-specific matters with respect to the verification and review of those determinations by the Parties;
 - (b) the period of time over which revenue will be shared in accordance with the Project Appendix;
 - (c) the dates on which, or the timeframes within which, Project Payments are to be made by the Province;
 - (d) the extent to which the Project Payments will constitute an accommodation for the potential impact of a Project on Aboriginal Rights and any associated releases, acknowledgements, and assurances;
 - (e) any confidentiality provisions required to address the particular circumstances of that Project;
 - (f) any additional obligations and obligations that will continue to apply if
 - (i) a Project Appendix or a schedule to a Project Appendix expires,
 - (ii) the KNC or the Province provides a Notice to Terminate a Project Appendix or a schedule to a Project Appendix, or
 - (iii) the KNC provides the Province a Notice of Withdrawal;and
 - (g) other matters as agreed to by the Parties.

- (4) Once the Parties have agreed to the provisions of a Project Appendix and they have obtained all required approvals in relation to that Project Appendix, the Province and the KNC on behalf of the Ktunaxa Parties will confirm those provisions by signing the Project Appendix.
- (5) A Project Appendix or a schedule to a Project Appendix signed after the Effective Date will be deemed to be incorporated by amendment into this Agreement as an attachment to it on the date specified in the Project Appendix or schedule, as the case may be.
- (6) The KNC and the Province will amend Annex C (List of Project Appendices and Schedules) to indicate the date
 - (a) a Project Appendix or a schedule to a Project Appendix was incorporated into this Agreement, or
 - (b) a Project Appendix or a schedule to a Project Appendix was deleted from this Agreement in accordance with subsection 20(8).

PAYMENT OBJECTIVE

- 6** (1) The Ktunaxa Parties agree to use Project Payments to pursue initiatives consistent with the Ktunaxa Nation's socio-economic objective of enhancing the well-being of Ktunaxa Communities and Ktunaxa Citizens, including initiatives related to education, cultural revitalization, housing, infrastructure, health, economic development, land stewardship, intergovernmental engagement processes and governance capacity.
- (2) For greater certainty, the Ktunaxa Parties may use all, or any portion of, Project Payments received in any given year to pursue initiatives in that year, or may hold such payments for initiatives in future years.

DELIVERY OF PAYMENTS

- 7** (1) The Parties agree that Project Payments will be paid to the KNC unless another entity is designated under subsection (8).

- (2) The KNC, or another entity designated under subsection (8), will establish and maintain in its name a separate account at a Canadian financial institution for the purpose of receiving Project Payments (“Payment Account”) into which direct deposits can be made by the Province and it will provide the Province the address and account information to enable the Province to make Project Payments.
- (3) The Province will deposit Project Payments under a Project Appendix directly into the Payment Account established under subsection (2).
- (4) Prior to the Province making any Project Payment, the KNC must
 - (a) be in compliance with subsection (2), or
 - (b) provide the confirmation required under subsection (9) if another entity is designated under subsection (8).
- (5) The Payment Account will be used for the sole purpose of receiving Project Payments under this Agreement to pursue the payment objective set out in subsection 6(1).
- (6) The KNC, or another entity designated under subsection (8), will maintain the Payment Account for as long as there is money in it to be disbursed.
- (7) The KNC warrants and agrees that it
 - (a) adheres to and will continue to adhere to Generally Accepted Accounting Principles, and
 - (b) is and will continue to be audited annually in accordance with Public Sector Accounting Standards.
- (8) The KNC on behalf of the Ktunaxa Parties may designate another entity to receive Project Payments under subsection (1) and, if such a designation is made, the KNC will notify the Province.
- (9) The KNC will ensure and provide confirmation to the Province that the entity designated under subsection (8)
 - (a) possesses the legal capacity to accept Project Payments,
 - (b) will fulfill the payment objectives set out in section 6,
 - (c) will adhere to Generally Accepted Accounting Principles, and

- (d) will be audited annually in accordance with Public Sector Accounting Standards.
- (10) The Province will notify the KNC of any change in the Provincial Agency responsible for making Project Payments.

APPROPRIATION

- 8** (1) Despite any other provision of this Agreement, the payment of Project Payments or any other money by the Province under this Agreement is subject to
- (a) there being sufficient monies available in an appropriation, as defined in the *Financial Administration Act, RSBC 1996, c. 138*, to enable the Province in any fiscal year or part thereof when such payment is required, to make such payment, and
 - (b) Treasury Board, as defined in the *Financial Administration Act*, not having controlled or limited expenditure under any appropriation necessary in order to make such payment.

REPORTS

- 9** (1) For the purposes of this Agreement, the KNC will, within one hundred and twenty (120) days after the end of each BC Fiscal Year, publish and make publicly available on the Ktunaxa Nation's website an annual report containing the following information:
- (a) the Ktunaxa Nation's socio-economic initiatives for the present fiscal year that are intended to be funded from the Payment Account,
 - (b) expenditures made in the previous BC Fiscal Year that were funded from the Payment Account, and
 - (c) how those expenditures contribute to the achievement of the payment objective set out in subsection 6(1).
- (2) The KNC will, if requested by the Province, provide audited financial statements with respect to the expenditure of funds from the Payment Account.

ASSIGNMENT

- 10** (1) The Ktunaxa Parties will not assign, either directly or indirectly, this Agreement or any right under this Agreement without the prior written consent of the Province.
- (2) The Province will not assign, either directly or indirectly, this Agreement or any right under this Agreement without the prior written consent of the KNC.

CONSULTATION PROCESS

- 11** (1) The Parties agree that any consultation required in respect of any Government Actions relating to a Project will be in accordance with the provisions of the Strategic Engagement Agreement but that a Project Appendix may address the extent to which any consultation and accommodation duties have been satisfied in relation to that Project.
- (2) If the Strategic Engagement Agreement expires or is terminated prior to the end of the Term of this Agreement, the Parties will
- (a) continue to rely upon the engagement processes set out in the Strategic Engagement Agreement, or
 - (b) develop alternate engagement processes,
- for the purposes of consultation in relation to a Project.

CONFIDENTIAL INFORMATION

- 12** (1) The Ktunaxa Parties will make all reasonable efforts to keep confidential and to prevent the disclosure of information that the Province marks “confidential”, except as required by law.
- (2) Despite subsection (1), the Ktunaxa Parties may disclose confidential information to their advisors, including legal, financial, tax and other professional advisors, provided that those advisors agree to keep the information confidential.
- (3) Despite any other provision of this Agreement, the Ktunaxa Parties will have the right to disclose the amount of Project Payments to the Ktunaxa Communities and Ktunaxa Citizens.
- (4) Information that may be provided by the Ktunaxa Parties may be confidential in nature, and if so identified in writing, the Province

will make all reasonable efforts to prevent the disclosure of that information, except in accordance with the *Freedom of Information and Protection of Privacy Act, RSBC 1996, c. 164*, or as otherwise required by law.

- (5) If the Province receives a request under the *Freedom of Information and Protection of Privacy Act*, for disclosure of confidential information received from the KNC, the Province will provide the Ktunaxa Parties with an opportunity to express their views regarding any impacts that may arise from a disclosure.
- (6) Except as provided in subsection (3), if a Project Appendix includes provisions regarding the confidentiality of information that conflict with this section 12, the provisions of the Project Appendix will govern to the extent of the conflict.

REVIEW AND AMENDMENT

- 13** (1) Within two (2) years of the date a Project Payment first becomes payable under this Agreement and thereafter every three years, the Province and the KNC on behalf of the Ktunaxa Parties, will meet to
- (a) review the effectiveness of the Agreement in contributing to achievement of the payment objective set out in subsection 6(1),
 - (b) review other matters related to the implementation of this Agreement, and
 - (c) consider potential amendments to improve this Agreement.
- (2) In addition to the review provided under subsection (1), either the KNC on behalf of the Ktunaxa Parties or the Province may notify the other in writing if it wishes to review this Agreement or any part of this Agreement and to negotiate any potential amendments.
- (3) After notice is provided under subsection (2), the KNC and the Province may, if both agree, commence negotiations of potential amendments to this Agreement.
- (4) Any amendment to this Agreement must be in writing and signed by the KNC on behalf of the Ktunaxa Parties and the Province.

TERM

- 14** (1) The Term of this Agreement will commence on the Effective Date and will continue for as long as there are revenue-sharing provisions of a Project Appendix in effect.
- (2) Despite subsection (1), the Province and the KNC on behalf of the Ktunaxa Parties may agree in writing to terminate this Agreement in its entirety on an earlier date.
- (3) For greater certainty,
- (a) the termination of this Agreement under subsection (2) prior to the end of its Term will also result in the concurrent termination of all Project Appendices,
 - (b) if either the Province or the KNC on behalf of the Ktunaxa Parties terminates a specific Project Appendix, this will not result in the termination of this Agreement or any other Project Appendix,
 - (c) if either the Province or the KNC on behalf of the Ktunaxa Parties terminates a schedule to a specific Project Appendix, this will not result in the termination of this Agreement, the Project Appendix, any other schedule to the Project Appendix or any other Project Appendix,
 - (d) if the KNC on behalf of the Ktunaxa Parties provides a Notice of Withdrawal from a specific Project Appendix, this will not affect any other Project Appendix, and
 - (e) if the KNC on behalf of the Ktunaxa Parties provides a Notice of Withdrawal from a specific schedule to a Project Appendix, this will not affect any other schedule to that Project Appendix or any other Project Appendix.

CONTINUING OBLIGATIONS

- 15** (1) The Parties' rights and obligations that are
- (a) set out in subsections 7(5) and 7(6) and sections 6, 9, 12 and this section 15, or

- (b) specified in a Project Appendix as continuing to apply in accordance with paragraph 5(3)(f)

are intended to survive and to remain fully binding on the Parties and enforceable, despite the expiration of the Term or termination of this Agreement.

DISPUTE RESOLUTION

- 16** (1) The Parties agree that they will endeavour to resolve any Disputes in a co-operative, effective and timely manner and that the KNC will act on behalf of the Ktunaxa Parties with respect to the dispute resolution process set out herein.
- (2) The SEA Senior Forum is responsible for the oversight of the implementation of this Agreement and for the management of the dispute resolution processes set out herein.
 - (3) The Province may not commence a court proceeding concerning a Dispute unless the Province has sent a letter to the KNC setting out the subject matter of the Dispute and, subject to an agreement under subsection (7), has proceeded through the processes set out in sections 17 to 19.
 - (4) The Ktunaxa Parties may not commence a court proceeding concerning a Dispute unless the KNC has sent a letter to the Province setting out the subject matter of the Dispute and, subject to an agreement under subsection (7), has proceeded through the processes set out in sections 17 to 19.
 - (5) Despite subsections (3) and (4), the Province or the Ktunaxa Parties may commence a court proceeding concerning a Dispute in order
 - (a) to prevent the loss of a right of action due to the expiration of a limitation period, or
 - (b) to obtain interlocutory or interim relief.
 - (6) Nothing in section 17, 18 or 19 creates a cause of action where none otherwise exists.
 - (7) The KNC and the Province may agree to waive or vary a procedural requirement set out in this section 16 or sections 17

to 19 as it applies to a particular Dispute or agree to another appropriate approach to resolve the Dispute.

- (8) Sections 16 to 19 do not apply to
 - (a) Disputes in respect of any matter related to a Government Action or to the consultation process provided for in section 11, or
 - (b) a Notice to Terminate.

17 (1) A Dispute in relation to

- (a) the determination of the amount of a Project Payment,
- (b) whether the Province has paid a Project Payment or provided information relating to the Project Payment within the time required under the applicable Project Appendix,
- (c) the interpretation of any provision of a Project Appendix relating to paragraph (a) or (b),
- (d) whether a Party is in breach of any of its commitments under a Project Appendix, or
- (e) any other matter that the KNC and the Province may agree to,

will be referred to the Resource-Revenue and Benefit Sharing Standing Committee and the Parties' representatives on that Committee will attempt to resolve the Dispute as soon as practicable.

(2) The following Disputes will be referred to the SEA Senior Forum:

- (a) any Dispute which is referred to the Resource-Revenue and Benefit Sharing Standing Committee which is not resolved within sixty (60) days of the referral or such longer period as the Committee may agree; and
- (b) any other Dispute,

and the Parties' representatives or their designates to that Forum will meet within fifteen (15) days or such time as agreed to by the KNC and the Province to discuss and attempt to resolve the Dispute.

- 18** (1) If a Dispute referred to the SEA Senior Forum is not resolved within sixty (60) days of the referral, either co-chair of the SEA Senior Forum may refer the Dispute to mediation by providing a notice to mediate to the other co-chair.
- (2) Mediation of a Dispute under a notice to mediate will proceed in the following manner:
- (a) upon the delivery of the notice, the respective co-chairs of
 - (i) the Resource-Revenue and Benefit Sharing Standing Committee, and
 - (ii) the SEA Senior Forum,or their designates, will participate in the mediation;
 - (b) the mediation will be conducted by one mediator appointed by agreement of the KNC and the Province or, if there is no agreement within thirty (30) days after delivery of the notice, the mediator will be appointed by the British Columbia Mediator Roster Society using the Society's mediation rules;
 - (c) the mediation will be conducted in the manner that the mediator considers necessary and appropriate to assist the KNC and the Province to resolve the Dispute in a fair, efficient and cost-effective manner;
 - (d) the mediation is terminated on the earliest of
 - (i) the expiration of sixty (60) days after the appointment of the mediator or any longer period agreed to by the KNC and the Province,
 - (ii) the date either the KNC or the Province withdraws its representatives from the mediation by notice in writing to the mediator, provided that no one may withdraw until after the first meeting with the mediator,
 - (iii) the date on which the KNC and the Province agree in writing to terminate the mediation, or
 - (iv) the date on which the KNC and the Province sign a written agreement resolving the Dispute;
 - (e) either the KNC or the Province will

- (i) at the request of the other, provide timely disclosure of sufficient information and documents to enable a full examination of the subject matter of the Dispute, with the exception of privileged documents and subject to applicable information and privacy legislation and other laws imposing confidentiality requirements,
 - (ii) make every reasonable effort to appoint representatives with sufficient knowledge and authority to reach an agreement, or with ready access to such knowledge and authority, and
 - (iii) participate in the mediation in good faith;
- (f) the mediation process and all its related proceedings will be and will remain confidential, unless the KNC and the Province agree otherwise;
 - (g) subject to paragraph (i), the mediation will not restrict in any way the positions that any of the Parties may take in any dispute, arbitration or court proceeding;
 - (h) the mediator will not issue a report or make any recommendations unless requested to do so in writing by the KNC and the Province;
 - (i) any agreement reached through mediation will be recorded in writing, signed by authorized representatives of the KNC and the Province and delivered to both the KNC and the Province;
 - (j) the KNC and the Province will each bear the costs of their own participation, representation and appointments in the mediation; and
 - (k) the KNC and the Province will share equally all common costs of the mediation, including fees of the mediator, costs of meeting rooms, actual and reasonable disbursements incurred by the mediator, and fees of the British Columbia Mediator Roster Society.
- (3) If the KNC and the Province are unable to resolve a Dispute and the mediation is terminated under paragraph (2)(d) the KNC and the Province may, by written agreement, refer the Dispute for resolution by arbitration under section 19.

- 19** (1) Arbitration of a Dispute will proceed in the following manner:
- (a) unless the KNC and the Province agree otherwise, the arbitration will be conducted by
 - (i) an arbitrator appointed by agreement, or
 - (ii) if there is no agreement under subparagraph (i) within thirty (30) days after the written agreement under subsection 18(3), an arbitrator appointed by the British Columbia International Commercial Arbitration Centre or, if the British Columbia International Commercial Arbitration Centre is unavailable, an arbitrator appointed by any other independent and impartial body or individual acceptable to the KNC and the Province;
 - (b) the arbitration process and all its related proceedings will be and will remain confidential, unless the KNC and the Province agree otherwise;
 - (c) subject to the exceptions in applicable arbitration legislation, the decision of the arbitrator is final and binding on all Parties; and
 - (d) except as otherwise ordered by the arbitrator, the KNC and the Province will
 - (i) bear the costs of their own participation, representation and appointments in the arbitration, and
 - (ii) share equally all common costs of the arbitration, including fees of the arbitrator, costs of hearing and meeting rooms, actual and reasonable disbursements incurred by the arbitrator, and administration fees of the British Columbia Commercial Arbitration Centre or other appointing authority.

SUSPENSION AND TERMINATION

- 20** (1) The KNC on behalf of the Ktunaxa Parties may terminate a schedule to a Project Appendix, a Project Appendix or this Agreement in its entirety in accordance with this section 20 if the

Province is in material breach of its obligations set out this Agreement.

- (2) The Province may terminate a schedule to a Project Appendix, a Project Appendix or this Agreement in its entirety in accordance with this section 20 if any one or more of the Ktunaxa Parties are in material breach of their obligations set out this Agreement.
- (3) The KNC or the Province, as the case may be, must set out the specifics of the material breach relied on in a letter of Dispute and provide that letter to the other Party in accordance with subsection 16(3) or 16(4), as applicable.
- (4) If the Dispute referred to in subsection (3) has not been remedied or otherwise resolved after the dispute resolution processes set out in sections 16 to 19 have been exhausted, the Party providing a letter of Dispute may give the other a Notice to Terminate a schedule to a Project Appendix, a Project Appendix or this Agreement in its entirety, on the date specified in the Notice to Terminate.
- (5) For greater certainty, a Party may not give a Notice to Terminate under this section 20 unless the requirements of subsection (4) have been met.
- (6) For the purposes of subsection (4), the dispute resolution processes set out in sections 16 to 19 will have been exhausted if
 - (a) no notice to mediate is given under subsection 18(1), or
 - (b) notice is given, the mediation is terminated under paragraph 18(2)(d).
- (7) Despite subsections (4) and (5),
 - (a) if the Province does not make or reduces a Project Payment in the circumstances set out in section 8, the KNC on behalf of the Ktunaxa Parties may terminate a schedule to a Project Appendix, a Project Appendix or this Agreement in its entirety on the date specified in a Notice to Terminate, or
 - (b) if the KNC has provided a Notice of Withdrawal in respect of a Contributing Project set out in a Project Appendix and such notice is not rescinded, either the KNC or the Province may, in accordance with that Project Appendix and subject to subsection (8), terminate a schedule to a Project Appendix for

a Contributing Project or a Project Appendix on the date specified in a Notice to Terminate.

- (8) A Notice to Terminate provided by the KNC or the Province under paragraph (7)(b) may only terminate a schedule to a Project Appendix or a Project Appendix that the KNC has specified in a Notice of Withdrawal that it intends to terminate;
- (9) Except as provided in section 15, all Parties will be fully released and discharged from the performance of their obligations as of the date specified in a Notice to Terminate
 - (a) under a Project Appendix in respect of a Contributing Project, if the Notice to Terminate specifies that the schedule to that Project Appendix in respect of that Contributing Project is terminated,
 - (b) under a Project Appendix, if the Notice to Terminate specifies that that Project Appendix is terminated, or
 - (c) under this Agreement in its entirety, if the Notice to Terminate specifies that this Agreement in its entirety is terminated.
- (10) Despite subsection 13(4), if a Notice to Terminate a schedule to a Project Appendix or a Project Appendix is given under subsection (4), this Agreement is and will be deemed to be amended to delete the schedule or Project Appendix from it as of the date specified in the Notice to Terminate.
- (11) Subject to subsections (12) and (15), all Parties shall remain bound by their respective obligations under this Agreement despite any breach by any one or more of the Parties of their obligations set out in this Agreement.
- (12) If one or more of the Ktunaxa Parties are in material breach of their obligations under section 6, 7, 9 or 10 of this Agreement, or any representation or warranty made by the Ktunaxa Parties in this Agreement is untrue or incorrect in any material respect, the Province may suspend making further Project Payments and provide the KNC a letter of Dispute setting out the specific material breach or untrue or incorrect representation or warranty relied on.

- (13) If the Province suspends making further Project Payments under subsection (12), the Parties will refer the matter to the SEA Senior Forum for dispute resolution in accordance with subsection 17(2).
- (14) If Project Payments payable by the Province under a Project Appendix are suspended under subsection (12) and the material breach is remedied or the representation or warranty required by this Agreement is made true and correct in all material respects prior to the date specified in a Notice to Terminate, the Province will make any Project Payments under a Project Appendix within sixty (60) days after that material breach is remedied or the representation or warranty is made true and correct in all material respects.
- (15) If Project Payments payable by the Province under a Project Appendix are suspended under subsection (12) and the material breach is not remedied or the representation or warranty required by this Agreement is not made true and correct in all material respects prior to the date specified in a Notice to Terminate, the Province will be fully released and discharged from all of its obligations in respect of those suspended Project Payments.

GENERAL PROVISIONS

- 21** (1) This Agreement is not a treaty or a land claims agreement within the meaning of sections 25 and 35 of the *Constitution Act, 1982*.
- (2) This Agreement does not create, amend, define, affirm, recognize, limit, abrogate, extinguish, replace or derogate from any Aboriginal Rights of the Ktunaxa Nation.
- (3) Except as expressly set out herein, this Agreement does not limit the position a Party may take in any legal or administrative proceedings or in any discussions or negotiations between the Ktunaxa Parties and the Province.
- (4) Nothing in this Agreement is to be construed as an acceptance of or admission by a Party of the position of another Party regarding any matter, including its jurisdiction, responsibilities or decision-making authority or as an admission of liability.
- (5) No partnership, joint venture, agency, fiduciary or employment relationship will be deemed to be created by this Agreement or by any actions of the Parties under this Agreement.

- (6) This Agreement does not constitute an admission by the Province that a Project, including any Government Action associated with a Project, has resulted or may result in any unjustified infringement of any Aboriginal Rights of the Ktunaxa Nation.
- (7) This Agreement does not constitute an admission by the Province of an obligation to provide financial or economic benefits, as provided in this Agreement, as part of the Province's obligation to consult and accommodate in relation to a Project.
- (8) This Agreement does not address and is not intended to be interpreted as addressing compensation for alleged past or future infringements of the Aboriginal Rights of the Ktunaxa Nation that are not related to a Project.
- (9) For greater certainty, this Agreement does not address and is not intended to be interpreted as addressing compensation for alleged past or future infringements of the Aboriginal Rights of the Ktunaxa Nation that are related to a pre-existing operation that is a predecessor to a Project, where the Project is an expansion or a modification of the pre-existing operation.
- (10) This Agreement is not intended to
 - (a) limit or diminish the consideration, determination or implementation of non-monetary forms of accommodation to address potential impacts of Government Actions on the Aboriginal Rights of the Ktunaxa Nation, or
 - (b) be interpreted in a manner that would affect or interfere with any legislative authority of the Province or fetter the discretion of any decision-making authority.
- (11) Nothing in this Agreement precludes any of the Ktunaxa Parties from
 - (a) continuing to negotiate and implement revenue- and benefits-sharing agreements with proponents and other governments,
 - (b) accessing economic opportunities and benefits, which may be available to the Ktunaxa Nation, other than those expressly set out in a Project Appendix, or
 - (c) participating in government programs for which any of the Ktunaxa Parties may be eligible.

- (12) This Agreement is not intended to limit or diminish any present or future fiscal transfer agreements between the Parties for programs unrelated to this Agreement and its Project Appendices.
- (13) The funds received under this Agreement are not, and are not intended to be, considered as own source revenue for any purpose related to federal funding arrangements, either in a treaty or non-treaty agreements.
- (14) If the Strategic Engagement Agreement expires or is terminated prior to the end of the Term of this Agreement, the Province and the KNC on behalf of the Ktunaxa Parties will establish such bodies as are required for the purposes of this Agreement to fulfill the functions of the Resource-Revenue and Benefit Sharing Standing Committee and the SEA Senior Forum.

NOTICE AND DELIVERY

- 22** (1) If any notice or other communication is required to be given by a Party under this Agreement, it will be made in writing and it will be effectively given by
- (a) personal delivery to the address of the other Party set out below, on the date of delivery,
 - (b) pre-paid registered mail to the address of the other Party mentioned in this Agreement, on the date the registered mail is delivered, or
 - (c) facsimile to the facsimile number of the other Party set out in this Agreement, on the date the facsimile is received.
- (2) The address and facsimile numbers are:
- (a) for the Ktunaxa Parties:
Ktunaxa Nation Council
7468 Mission Rd
Cranbrook BC V1C 7E5
Fax Number: (250) 489-2438
Attention: Director, Ktunaxa Land and Resources Agency
 - (b) for the Province:
Ministry of Aboriginal Relations and Reconciliation
PO Box 9100 Stn Prov Govt

Victoria, BC V8W 9B1

Fax: (250) 387-6073

Attention: Assistant Deputy Minister, Strategic Initiatives
Division, MARR

- (3) Any notice or other communications will be deemed to have been given on the date it is actually received if received before 4:00 pm Mountain Standard Time or on the next business day if received after 4:00 pm Mountain Standard Time.
- (4) The KNC or the Province may at any time give notice to the other of any change of information in accordance with subsection (1).

INTERPRETATION

- 23** (1) This Agreement is to be interpreted so that all the provisions are given as full effect as possible.
- (2) If the interpretation of this Agreement results in a conflict between the provisions in this Agreement, the following rules of interpretation apply, unless the context requires otherwise:
 - (a) the main body of this Agreement will prevail over any attachments, including annexes, Project Appendices and schedules to Project Appendices, and
 - (b) the main body of a Project Appendix will prevail over any attachments to the Project Appendix, including schedules.
 - (3) This Agreement will be governed by and construed in accordance with the applicable laws of British Columbia.
 - (4) This Agreement and any amendments to it constitute the entire agreement between the Parties with respect to the subject matter of this Agreement, unless otherwise agreed in writing by the KNC on behalf of the Ktunaxa Parties and the Province.
 - (5) There will be no presumption that any ambiguity in any of the provisions of this Agreement should be interpreted in favour of any Party.
 - (6) If any provision of this Agreement is found by a court of competent jurisdiction to be void or unenforceable at law, it will be severed from this Agreement and the remainder of the Agreement will remain in full force and effect.

- (7) If any provision of this Agreement is found by a court of competent jurisdiction to be void or unenforceable at law, the Parties agree to negotiate and attempt to reach agreement on a replacement for that provision with a view to achieving the intent of the Parties as expressed in this Agreement and, if no agreement is reached, the KNC and the Province may agree to refer the matter to the dispute resolution process set out in section 18.
- (8) All headings in this Agreement are for convenience only and do not form a part of this Agreement and are not intended to interpret, define, limit, enlarge, modify or explain the scope, extent or intent of this Agreement or any of its provisions.
- (9) In this Agreement, words in the singular include the plural and words in the plural include the singular, unless the context otherwise requires.
- (10) The use of the word “including” does not limit the generality of the preceding term or phrase.
- (11) In this Agreement, a reference to a statute includes all regulations made under that statute and any amendments or replacements.
- (12) No term, condition, covenant or other provision of this Agreement will be deemed to have been waived unless such waiver is expressed in writing and signed by the Party giving the waiver.
- (13) Any reference to a corporate entity includes and is also a reference to any corporate entity that was a predecessor to, or that is a successor to, such entity.
- (14) This Agreement may be entered into by the Province and the KNC on behalf of the Ktunaxa Parties respectively signing a separate copy of this Agreement, including a photocopy or faxed or scanned copy, and delivering it to the other by fax or electronic mail. Each facsimile or scanned copy will be deemed to be an original for all purposes and all counterparts taken together will be deemed to constitute one document.
- (15) The Minister of Aboriginal Relations and Reconciliation may delegate to one or more employees or agents of the Province any one or more of her non-statutory powers or duties under this Agreement.

(16) The KNC may delegate to one or more of its employees or agents any one or more of its powers or duties under this Agreement.

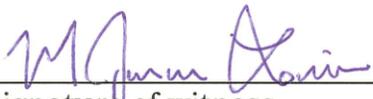
SIGNED in the presence of

Jason Louie this 29th day

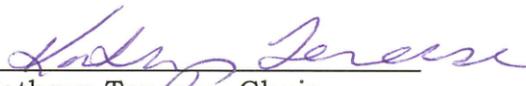
of January, 2013 at

Vancouver, B.C. :

The Ktunaxa Nation Council Society,
on its own behalf and on behalf of the
Ktunaxa Nation, St. Mary's Indian
Band, Tobacco Plains Indian Band,
Lower Kootenay Indian Band and
Akisq'nuk First Nation



Signature of witness



Kathryn Teneese, Chair

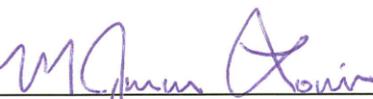
SIGNED in the presence of

Jason Louie this 29th day

of January, 2013 at

Vancouver, B.C. :

HER MAJESTY THE QUEEN IN RIGHT
OF THE PROVINCE OF BRITISH
COLUMBIA, as represented by the
Minister of Aboriginal Relations and
Reconciliation



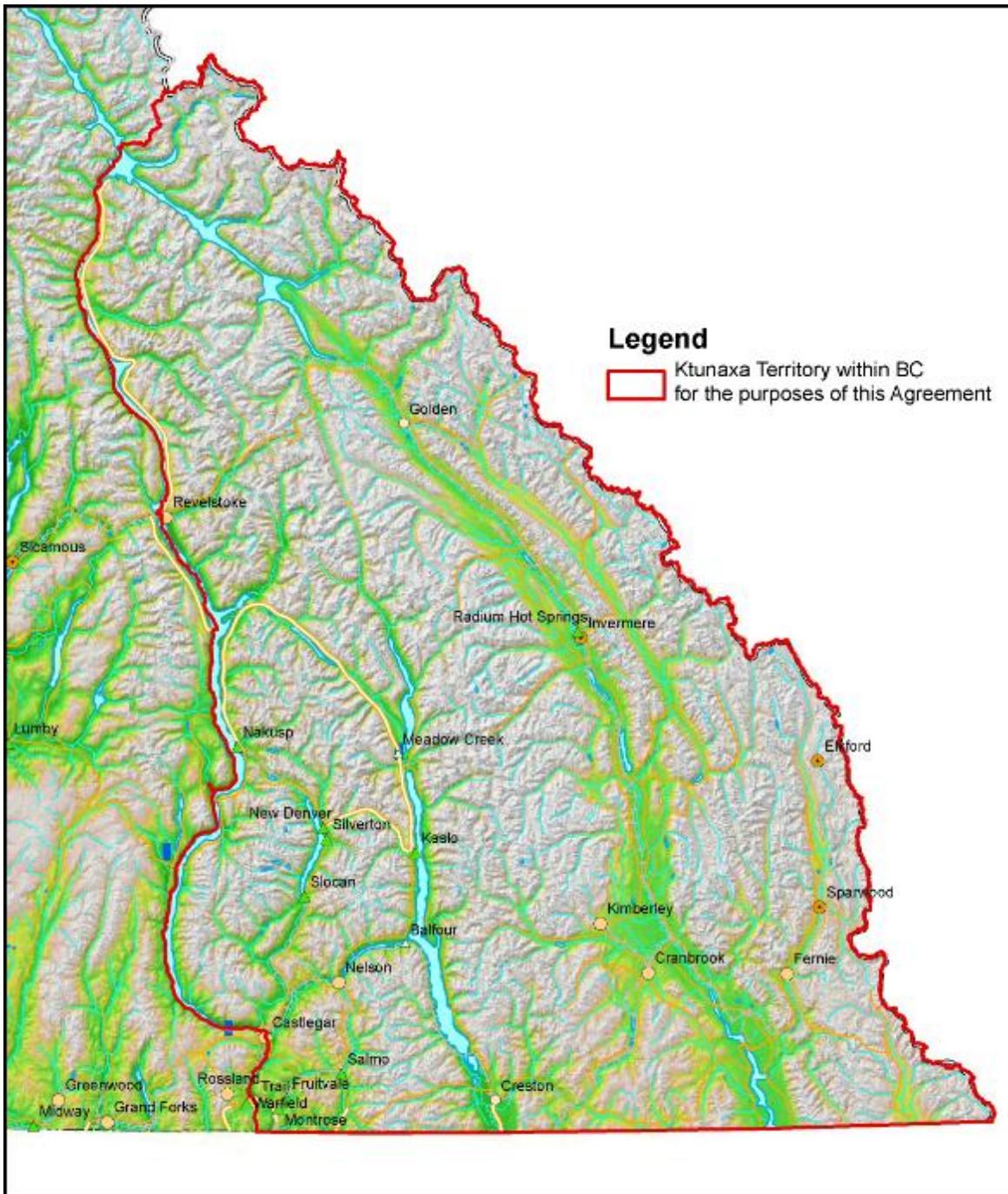
Signature of witness



Ida Chong, Minister

ANNEX A

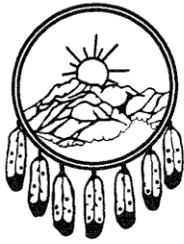
MAP



ANNEX B

BAND COUNCIL RESOLUTION

?Akisq'nuk First Nation	Effective Date
Lower Kootenay Indian Band	Effective Date
St. Mary's Indian Band	Effective Date
Tobacco Plains Indian Band	Effective Date



(604) AKISQ'NUK FIRST NATION
#3050 Highway 93/95, Windermere B.C., V0B 2L2
OFFICE (250) 342-6301 FAX (250) 342-9693

RECEIVED
JAN 23 2013

2012/13 BAND COUNCIL RESOLUTION # 038

THE COUNCIL OF THE AKISQ'NUK FIRST NATION, AT A DULY CONVENED MEETING AT WINDERMERE BRITISH COLUMBIA, ON THIS 15th DAY OF JANUARY, 2013, DO HEREBY RESOLVE:

WHEREAS:

A. The Ktunaxa Nation has Aboriginal rights within Ktunaxa Territory that are recognized and affirmed under section 35 of the *Constitution Act, 1982*;

B. The Akisqnuq First Nation and its members are part of the Ktunaxa Nation;

C. The Ktunaxa Nation Council Society ("KNC"), representing the Akisqnuq First Nation, its band members and the Ktunaxa Nation, has negotiated with British Columbia the "Ktunaxa Nation Economic and Community Development Agreement", including the "Elk Valley Coal Mining Revenue Sharing Project Appendix" and the "Forest Revenue Sharing Project Appendix", (together the "Agreement"), which is attached as Schedule "A";

D. The "Elk Valley Coal Mining Revenue Sharing Project Appendix" relates to coal mining operations in coal reserves in the Elk Valley, British Columbia and the "Forest Revenue Sharing Project Appendix" relates to forest and range activities in the Ktunaxa Territory.

E. The purposes of the Agreement include:

(a) further strengthening the government-to-government relationship between the parties;

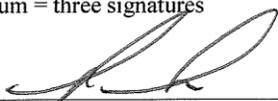
- (b) addressing the interest of the Ktunaxa Nation and each of its member communities in achieving a greater role in the regional economy and receiving a share of the revenues derived from the use of resources within the Ktunaxa Territory to support self-government and enhance the well-being of Ktunaxa Citizens; and
- (c) providing an agreed upon framework of general terms and conditions relating to revenue-sharing to assist the parties in developing and administering resource revenue-sharing arrangements for particular projects in a cooperative, efficient and timely manner.

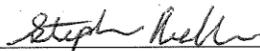
F. The Agreement is an incremental step towards the fuller implementation of a government-to-government relationship and provides opportunities to build the necessary cooperative working relations that will enhance Ktunaxa Nation's efforts towards self-government.

THEREFORE BE IT RESOLVED THAT

The Akisqnuq First Nation approves the provisions of the Agreement (dated for reference December 19, 2012) in substantially the form as attached as Schedule "A" and authorizes the KNC to enter into the Agreement and to make the covenants, acknowledgements and representations included in the Agreement, on behalf of the KNC and on behalf of the Akisqnuq First Nation and its members.

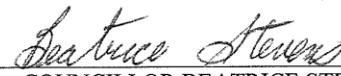
Quorum = three signatures


CHIEF LORNE SHOVAR


COUNCILLOR STEPHEN NICHOLAS


COUNCILLOR LUCILLE SHOVAR


COUNCILLOR MARGUERITE COOPER


COUNCILLOR BEATRICE STEVENS



LOWER KOOTENAY BAND

830 Simon Road, Creston, BC VoB 1G2 Ph: 250.428.4428 Fax: 250.428.7686

LOWER KOOTENAY BAND COUNCIL RESOLUTION

THE COUNCIL OF THE : LOWER KOOTENAY INDIAN BAND

AGENCY: FUNDING SERVICES SOUTH

PROVINCE: BRITISH COLUMBIA

PLACE: CRESTON

DATE: 10 January 2013
 DAY MONTH YEAR

WHEREAS:

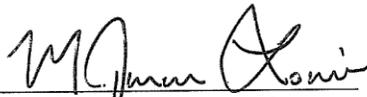
- A. The Ktunaxa Nation has Aboriginal rights within the Ktunaxa territory that are recognized and affirmed under section 35 of the *Constitution Act 1985*
- B. The Lower Kootenay Indian Band and its members are part of the Ktunaxa Nation;
- C. The Ktunaxa Nation Council Society ("KNC"), representing the Lower Kootenay Indian Band, its members and the Ktunaxa Nation, has negotiated with British Columbia the "Ktunaxa Nation Economic and Community Development Agreement, including the "Elk Valley Coal Mining Revenue Sharing Project Appendix" and the " Forest Revenue Sharing Project Appendix", (together the "Agreement), which is attached as Schedule "A";
- D. The Elk Valley Coal Mining Revenue Sharing Project Appendix" related to coal mining operations in coal reserves in the Elk Valley, British Columbia and the "Forest Revenue Sharing Project Appendix" relates to forest and range activities in the Ktunaxa territory.
- E. The purposes of the Agreement include:
 - a. further strengthening the government-to-government relationship between the parties;
 - b. addressing the interest of the Ktunaxa Nation and each of its member communities in achieving a greater role in the regional economy and receiving a share of the revenues derived from the use of resources within the Ktunaxa Territory to support self-government and enhance the well-being of Ktunaxa Citizens, and;

- c. providing an agreed upon framework of general terms and conditions relating to revenue-sharing to assist the parties in developing and administering resource revenue-sharing agreements for particular projects in a cooperative, efficient and timely manner.
- F. The Agreement is an incremental step towards the fuller implementation of a government-to-government and provides opportunities to build the necessary cooperative working relations that will enhance Ktunaxa Nation's efforts towards self-government.

THEREFORE BE IT RESOLVED THAT

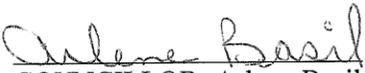
The Lower Kootenay Indian Band approves the provisions of the Agreement (dated for reference December 19, 2012) in substantially the form as attached as Schedule "A" and authorizes the KNC to enter into the Agreement and to make the covenants, acknowledgements and representations included in the Agreement, on behalf of the KNC and on behalf of the Lower Kootenay Indian Band and its members.

A quorum for this band is 3



CHIEF, Jason Louie

COUNCILLOR, Mary Basil



COUNCILLOR, Arlene Basil



COUNCILLOR, Robin Louie



COUNCILLOR, Anne Jimmie



ST. MARY'S BAND ADMINISTRATION

7470 Mission Road
Cranbrook, BC V1C 7E5

Tel: 250.426.5717

Fax: 250.426.8935

BAND COUNCIL RESOLUTION

The council of the St. Mary's Indian Band 7470 Mission Road Cranbrook B.C. V1C 7E5	Chronological no. – No consecutive <i>981-90-369</i>
Date of duly convened meeting, This 10 th day of January, 2013 in the Province of British Columbia	

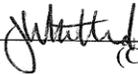
WHEREAS:

- A. The Ktunaxa Nation has Aboriginal rights within the Ktunaxa territory that are recognized and affirmed under section 35 of the *Constitution Act 1985*
- B. The St. Mary's Band and its members are part of the Ktunaxa Nation;
- C. The Ktunaxa Nation Council Society ("KNC"), representing the St. Mary's Band, its members and the Ktunaxa Nation, has negotiated with British Columbia the "Ktunaxa Nation Economic and Community Development Agreement, including the "Elk Valley Coal Mining Revenue Sharing Project Appendix" and the " Forest Revenue Sharing Project Appendix", (together the "Agreement), which is attached as Schedule "A";
- D. The "Elk Valley Coal Mining Revenue Sharing Project Appendix" related to coal mining operations in coal reserves in the Elk Valley, British Columbia and the "Forest Revenue Sharing Project Appendix" relates to forest and range activities in the Ktunaxa territory.
- E. The purposes of the Agreement include:
 - a. further strengthening the government-to-government relationship between the parties;
 - b. addressing the interest of the Ktunaxa Nation and each of its member communities in achieving a greater role in the regional economy and receiving a share of the revenues derived from the use of resources within the Ktunaxa Territory to support self-government and enhance the well-being of Ktunaxa Citizens, and;
 - c. providing an agreed upon framework of general terms and conditions relating to revenue-sharing to assist the parties in developing and administering resource revenue-sharing agreements for particular projects in a cooperative, efficient and timely manner.
- F. The Agreement is an incremental step towards the fuller implementation of a government-to-government and provides opportunities to build the necessary cooperative working relations that will enhance Ktunaxa Nation's efforts towards self-government.

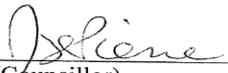
THEREFORE BE IT RESOLVED THAT

The St. Mary's Band approves the provisions of the Agreement (dated for reference December 19, 2012) in substantially the form as attached as Schedule "A" and authorizes the KNC to enter into the Agreement and to make the covenants, acknowledgements and representations included in the Agreement, on behalf of the KNC and on behalf of the St. Mary's Indian Band and its members.

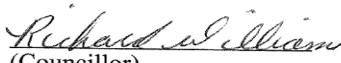
Quorum 3



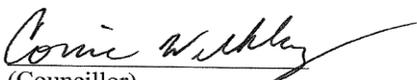
(Chief)



(Councillor)



(Councillor)



(Councillor)

(Councillor)

TOBACCO PLAINS INDIAN BAND

BOX 76 GRASMERE, B.C. V0B 1R0 (250) 887-3461 / FAX (250) 887-3424

www.tobaccoplains.org

Band Council Resolution –KNC-ECDA -01-14-2013-15

WHEREAS:

- A. The Ktunaxa Nation has Aboriginal rights within Ktunaxa Territory that are recognized and affirmed under section 35 of the *Constitution Act, 1982*;
- B. The Tobacco Plains Indian Band and its members are part of the Ktunaxa Nation;
- C. The Ktunaxa Nation Council Society ("KNC"), representing the Tobacco Plains Indian Band, its band members and the Ktunaxa Nation, has negotiated with British Columbia the "Ktunaxa Nation Economic and Community Development Agreement", including the "Elk Valley Coal Mining Revenue Sharing Project Appendix" and the "Forest Revenue Sharing Project Appendix", (together the "Agreement"), which is attached as Schedule "A";
- D. The "Elk Valley Coal Mining Revenue Sharing Project Appendix" relates to coal mining operations in coal reserves in the Elk Valley, British Columbia and the "Forest Revenue Sharing Project Appendix" relates to forest and range activities in the Ktunaxa Territory.
- E. The purposes of the Agreement include:
- (a) further strengthening the government-to-government relationship between the parties;
 - (b) addressing the interest of the Ktunaxa Nation and each of its member communities in achieving a greater role in the regional economy and receiving a share of the revenues derived from the use of resources within the Ktunaxa Territory to support self-government and enhance the well-being of Ktunaxa Citizens; and
 - (c) providing an agreed upon framework of general terms and conditions relating to revenue-sharing to assist the parties in developing and administering resource revenue-sharing arrangements for particular projects in a cooperative, efficient and timely manner.
- F. The Agreement is an incremental step towards the fuller implementation of a government-to-government relationship and provides opportunities to build the necessary cooperative working relations that will enhance Ktunaxa Nation's efforts towards self-government.

THEREFORE BE IT RESOLVED THAT

The Tobacco Plains Indian Band approves the provisions of the Agreement (dated for reference December 19, 2012) in substantially the form as attached as Schedule "A" and authorizes the KNC to enter into the Agreement and to make the covenants, acknowledgements and representations included in the Agreement, on behalf of the KNC and on behalf of the Tobacco Plains Indian Band and its members.


Councillor Dan Gravelle


Councillor Robert Luke

Chief Mary Mahseelah

Councillor Robin Gravelle


Councillor Robert Eneas

Quorum for this Band is 3

ANNEX C

LIST OF PROJECT APPENDICES AND SCHEDULES

Project Appendix / Schedule	Date incorporated into this Agreement	Termination Date
Elk Valley Coal Mining Revenue Sharing Project Appendix	Effective Date	
Forest Revenue Sharing Project Appendix	Effective Date	



KTUNAXA
NATION



BRITISH
COLUMBIA

FOREST REVENUE SHARING PROJECT APPENDIX

FOREST REVENUE SHARING PROJECT APPENDIX

DEFINITIONS

1 (1) In this Project Appendix

“Delegated Decision Maker” means a person with authority, as delegated by the Minister and including the Minister, to make statutory decisions with respect to forest and range resources under provincial legislation as amended from time to time;

“Eligible Forest Tenure” means a direct award forest tenure under a Forest Tenure Opportunity Agreement that is eligible for forest revenue sharing under the Province’s policy in relation to Crown land and timber volumes referenced in the *Forest Revitalization Act*, S.B.C.c.17;

“Forest Tenure Opportunity Agreement” means an agreement signed between the Minister and a First Nation that provides for the Minister to direct award forest tenure under the *Forest Act*, RSBC 1996, c. 157;

“Licensee” means a holder of a forest tenure or a range tenure;

“Main Agreement” means sections 1 through 23 of the Economic and Community Development Agreement;

“Minister” means the Minister of Forests, Lands and Natural Resource Operations having the responsibility, from time to time, for the exercise of powers in respect of forests and range matters;

“Operational Plan” means a Forest Stewardship Plan, Woodlot Licence Plan, a Range Use Plan or Range Stewardship Plan, as those terms are defined in forest and range legislation, that has or will have effect in the Ktunaxa Territory; and

“Timber Harvesting Land Base” means the portion of the total land area of a management unit considered by the Ministry of Forests, Lands and Natural Resource Operations to contribute to, and be available for, long-term timber supply.

(2) Words and expressions that are not defined in this Project Appendix but defined in the Main Agreement have the meanings ascribed to them in the Main Agreement, unless the context otherwise requires.

SCOPE

- 2 (1) This Project Appendix applies to forest and range activities in the Ktunaxa Territory.

PROJECT PAYMENTS

- 3 (1) Subject to section 7, the Province will, during the term of this Project Appendix, make annual Project Payments, calculated in accordance with schedule 1 (Calculation of Project Payments), and the Project Payments will be disbursed in two equal payments: the first payment to be paid on or before September 30th, and the second payment to be paid on or before March 31st.
- (2) For the purposes of determining the amount of a Project Payment for a partial BC Fiscal Year, the amount will be prorated for each month or part thereof that this Project Appendix is in effect.
- (3) Before November 30th of each year during the term of this Project Appendix, the Province will give the KNC notice of the Project Payment for the following BC Fiscal Year, including the summary document and calculations identified in schedule 1 (Calculation of Project Payments), and the Ktunaxa Parties agree that such notice will have the effect for the purposes of this Project Appendix of describing the amount of the Project Payment under this Project Appendix for that following BC Fiscal Year.

ACKNOWLEDGEMENTS AND COVENANTS

- 4 (1) The Ktunaxa Parties acknowledge that forest revenues received by the Province fluctuate and that the Project Payments under this Project Appendix will vary over time.
- (2) The Ktunaxa Parties acknowledge and agree that the Project Payments made under section 3 constitute an accommodation for potential infringements on the Aboriginal Rights of the Ktunaxa Nation in relation to any Government Actions and any forest or range practices carried out pursuant to an Operational Plan.
- (3) The Ktunaxa Parties agree that during the term of this Project Appendix, if the consultation process set out in section 11 of the Main Agreement (Consultation Process) is followed, the Province will have adequately consulted with respect to potential

infringements of the Aboriginal Rights of the Ktunaxa Nation in the context of any Government Actions that the Province will take and any forest or range practices that may be carried out under an Operational Plan in the Ktunaxa Territory.

- (4) The Ktunaxa Parties covenant and agree that during the term of this Project Appendix they will
 - (a) not challenge or support a challenge to a Government Action or an Operational Plan or activities carried out pursuant to those decisions or plans, by way of legal proceedings or otherwise, on the basis that, contrary to subsection (2), the Project Payments provided for in section 3 do not provide an accommodation for impacts on the Aboriginal Rights of the Ktunaxa Nation, and
 - (b) respond immediately to any discussions sought by the Province in relation to any acts of intentional interference by any Ktunaxa Citizen with provincially authorized forest and/or range activities and will work co-operatively with the Province to assist in resolving any such matters.

SECURITY DEPOSITS

- 5 (1) In recognition of the Ktunaxa Parties agreeing to the provisions of this Project Appendix, the Province may choose not to request a silviculture deposit pertaining to a licence issued further to an agreement between one or more of the Ktunaxa Communities or a legal entity controlled by one or more of the Ktunaxa Communities, and the Province.
- (2) The Ktunaxa Parties agree that the Province may apply any payment that the KNC is entitled to receive under this Project Appendix, to a maximum of the amount that the Province would have obtained in a silviculture deposit, to fully or partially satisfy any unfulfilled financial obligations of a Ktunaxa Party to the Province arising from a licence issued further to an agreement between one or more of the Ktunaxa Communities, or a legal entity controlled by one or more of the Ktunaxa Communities, and the Province.
- (3) Prior to the Province applying any payment to satisfy unfulfilled financial obligations of a Ktunaxa Party arising from a licence in

accordance with subsection (2), the Province will notify the KNC and that Ktunaxa Party of the unfulfilled financial obligation and will discuss the proposed action with them.

TERM

- 6** (1) The provisions of this Project Appendix will come into effect on the Effective Date and unless renewed in accordance with section 8, or terminated earlier in accordance with any of the provisions hereof, will continue until September 8, 2014.
- (2) On the Effective Date,
- (a) the provisions of this Project Appendix will replace the Ktunaxa Nation Forest Revenue Sharing Agreement between the Province and the Ktunaxa Parties that came into effect on September 8, 2011, and
- (b) the Ktunaxa Nation Forest Revenue Sharing Agreement will be terminated on the Effective Date in accordance with section 11 of that agreement.

SUSPENSION AND TERMINATION

- 7** (1) The Province may suspend the making of Project Payments under this Project Appendix if one or more of the Ktunaxa Parties have outstanding unfulfilled financial obligations to the Province arising from a licence issued further to a forest tenure between one or more of the Ktunaxa Parties and the Province.
- (2) Subsections 20(12) through 20(14) of the Main Agreement (Suspension and Termination) apply to the suspension of Project Payments under subsection (1), with such changes as may be necessary.
- (3) If this Project Appendix is terminated prior to September 8, 2014, the Project Payment payable for the BC Fiscal Year in which the termination becomes effective will be prorated to the termination date.

RENEWAL OF THE PROJECT APPENDIX

- 8 (1) Six (6) months before this Project Appendix expires, if the provisions of this Project Appendix are being met, the Province and the KNC will, if both Parties have received such authorizations as they may require, begin negotiations for the renewal of this Project Appendix or for a new Project Appendix.

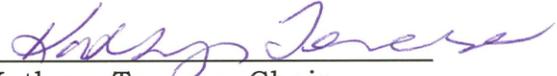
SIGNED in the presence of

Lorne Shovar this 29th day
of January, 2013 at
Vancouver, B.C. :



Signature of witness

The Ktunaxa Nation Council Society,
on its own behalf and on behalf of the
Ktunaxa Nation, St. Mary's Indian
Band, Tobacco Plains Indian Band,
Lower Kootenay Indian Band and
?Akisq'nuk First Nation



Kathryn Teneese, Chair

SIGNED in the presence of

Lorne Shovar this 29th day
of January, 2013 at
Vancouver, B.C. :



Signature of witness

HER MAJESTY THE QUEEN IN RIGHT
OF THE PROVINCE OF BRITISH
COLUMBIA, as represented by the
Minister of Aboriginal Relations and
Reconciliation



Ida Chong, Minister

SCHEDULE 1
CALCULATION OF PROJECT PAYMENTS

KTUNAXA TERRITORY BASED COMPONENT

- 1 (1) In each BC Fiscal Year that this Project Appendix is in effect, and subsequent to the release by the Minister of Finance of the previous BC Fiscal Year's public accounts of the Province, a summary document will be prepared of the forest revenue, defined as the total of stumpage, waste and annual rent payments received by the Crown for the previous 2 BC Fiscal Years, for each of the following forest districts:
- (a) Arrow Boundary;
 - (b) Columbia;
 - (c) Kootenay Lake; and
 - (d) Rocky Mountain.
- (2) An average forest revenue amount over 2 years will be calculated for the forest districts set out in subsection (1).
- (3) For the purposes of the summary document in subsection (1), the stumpage, waste and any annual rent payments from Eligible Forest Tenures held by or on behalf of any of the Ktunaxa Communities will not be included in the calculations of forest revenue.
- (4) The amount of the forest revenue attributed to the Ktunaxa Territory will be calculated by determining the percentage of the Ktunaxa Territory that falls within the Timber Harvesting Land Base in each of the forest districts listed in subsection (1), applied against the average forest revenue calculated under subsection (2).
- (5) The amount of forest revenue attributed to the Ktunaxa Territory under subsection (4) will be prorated for overlapping territories of other First Nations.
- (6) For the purposes of subsection (4), the Province agrees that the latest timber supply review timber harvesting land base data will be used for fiscal year 2012/13 and beyond.
- (7) The Ktunaxa Territory based component of the Project Payment under this Project Appendix will be calculated by multiplying five percent (5%) of the forest revenue attributed to the Ktunaxa Territory as described in subsections (4) and (5).

KTUNAXA DIRECT AWARD TENURE-BASED COMPONENT

- 2** (1) Subsequent to the release by the Minister of Finance of the previous BC Fiscal Year's public accounts of the Province, a summary document will be prepared of the forest revenue, defined as the total of stumpage, and waste payments received by the Crown for the previous BC Fiscal Year, for each Eligible Forest Tenure held by or on behalf of each of the Ktunaxa Parties.
- (2) The Ktunaxa direct award tenure-based component of the Project Payment under this Project Appendix will be calculated by multiplying seventy five percent (75%) of the forest revenue as described in subsection (1).

PROJECT PAYMENT TRANSITION

- 3** (1) The Parties agree that new methods to calculate the Project Payments under this Project Appendix will be phased in over the next two (2) years as set out in this section 3.
- (2) For each BC Fiscal Year that this Project Appendix is in effect, a portion of the Project Payment is calculated by determining the sum of the Ktunaxa Territory based component and the Ktunaxa direct award tenure-based component for that BC Fiscal Year and applying the following percentages to that sum:
 - (a) 2012/13 BC Fiscal Year: eighty percent (80%); and
 - (b) 2013/14 BC Fiscal Year: one hundred percent (100%).
- (3) For each BC Fiscal Year that this Project Appendix is in effect, the remaining portion of the Project Payment is calculated by determining the annual amount of the payments that were made by the Province to the Ktunaxa Parties in any given full year under the Ktunaxa Nation Council Interim Agreement on Forest and Range Opportunities which expired on June 6, 2011, and applying the following percentages to that annual amount:
 - (a) 2012/13 BC Fiscal Year: fifty five percent (55%); and
 - (b) 2013/14 BC Fiscal Year: fifty percent (50%).

- (4) The Parties agree that if this Project Appendix is renewed under its section 8 or expires in the 2014/15 BC Fiscal Year, the Project Payment starting in the 2014/2015 BC Fiscal Year will be the sum of the Ktunaxa Territory based and Ktunaxa direct award tenure-based components calculated in accordance with this schedule.



**ELK VALLEY COAL MINING
REVENUE SHARING
PROJECT APPENDIX**

ELK VALLEY COAL MINING REVENUE SHARING PROJECT APPENDIX

DEFINITIONS

1 (1) In this Project Appendix

“Incremental Production” means

- (a) in respect of a new Mine, all coal mined from coal reserves within the area of a Contributing Project, and
- (b) in respect of an expansion of an existing Mine, the portion of all coal mined from coal reserves within the area of a Contributing Project which would not have been mined in the absence of a Permit Amendment and Government Actions;

“Kootenay Mine Development Review Committee” means the regional advisory committee, established pursuant to section 9 of the *Mines Act, RSBC 1996, c. 293*;

“Main Agreement” means sections 1 through 23 of the Economic and Community Development Agreement;

“Mine” means a “mine” as defined in the *Mineral Tax Act, RSBC 1996, c. 291*;

“Mine Fiscal Year” means the “fiscal year of the mine” as defined in the *Mineral Tax Act*;

“Mineral Tax Act” means the *Mineral Tax Act*, as amended from time to time, and legislation in addition to or in substitution thereof which assesses a tax on minerals or mining in favour of the Province similar to the tax presently assessed under the *Mineral Tax Act*;

“Operator” has the same meaning as in the *Mineral Tax Act*;

“Permit” means a “permit” as defined in the *Mines Act*;

“Permit Amendment” means the amendment of a Permit for a Contributing Project effective as of the date set out in the schedule for that Contributing Project; and

“Specified Date” means

- (a) the date specified in accordance with paragraph 3(2)(c) on which the Parties agree to incorporate a schedule for a

Contributing Project into the Agreement as an attachment to this Project Appendix, or

- (b) the Effective Date in the case of any schedule attached to this Project Appendix on that date.
- (2) Words and expressions that are not defined in this Project Appendix but defined in the Main Agreement have the meanings ascribed to them in the Main Agreement, unless the context otherwise requires.

SCOPE

- 2 (1) This Project Appendix applies to Projects for the expansion of existing and new coal mining operations in coal reserves in the Elk Valley, British Columbia.

CONTRIBUTING PROJECTS

- 3 (1) A Project may become a Contributing Project if the Parties agree and
 - (a) if it is reviewable under the *Environmental Assessment Act, SBC 2002, c. 43*, an environmental assessment certificate has been issued,
 - (b) if it is reviewable by the Kootenay Mine Development Review Committee, and has been authorized by Government Action,
 - (c) the Project has undergone an assessment by the KNC and the KNC on behalf of the Ktunaxa Parties has provided the Province with written confirmation that the Ktunaxa Parties' interests have been adequately addressed, and
 - (d) the Parties agree in writing to the matters set out in subsection (2).
- (2) If the conditions set out in paragraphs (1)(a) to (c) have been met, the Parties will set out in a schedule
 - (a) a written description of the Contributing Project,
 - (b) one or more maps showing
 - (i) the location and the boundaries of the Contributing Project area, and

(ii) the location within the Contributing Project area where pit or waste dump disturbance areas have been authorized by Permit, in the case of a new Mine, or by Permit Amendment, in the case of an expansion of an existing Mine,

and

(c) the date that the schedule will be deemed to be incorporated by amendment into the Agreement in accordance with subsection 5(5) of the Main Agreement (Project Appendices).

(3) A Project will become a Contributing Project on its Specified Date.

(4) If after the Specified Date, an application for new pit or waste dump disturbance areas within the Contributing Project area

(a) is reviewable under the *Environmental Assessment Act* and an environmental assessment certificate has been issued, or

(b) is reviewable by the Kootenay Mine Development Review Committee and has been authorized by Government Action, and

(c) has undergone an assessment by the KNC and the KNC on behalf of the Ktunaxa Parties has provided the Province with written confirmation that the Ktunaxa Parties' interests with respect to the new pit or waste dump disturbance areas have been adequately addressed,

the Parties will amend the maps referred to in subsection (2) to show the location of new pit or waste disturbance areas within the Contributing Project.

(5) Despite subsection 13(4) of the Main Agreement (Review and Amendment) and subsection 12(1) of this Project Appendix, this Project Appendix is and will be deemed to be amended to include the schedule referred to in subsection (2) on the Specified Date.

(6) The depiction of the location of pit or waste dump disturbance areas within a Contributing Project area under subsections (2) and (4) is for reference and illustrative purposes only and neither it nor the provision or absence of written confirmation under subsections (1) or (4) modifies, limits or affects the scope of a Contributing Project or otherwise affects the Parties' rights and obligations.

PROJECT PAYMENTS

- 4 (1) In this section 4 and in schedule 1 (Calculation of Project Payments)

“Incremental Mineral Tax Revenue” means Net Mineral Tax Revenue attributable to Contributing Projects, as determined by the Province based on Incremental Production for each Contributing Project;

“Net Mineral Tax Revenue” means the amount calculated by the following formula

$$(A - B) \times 0.98$$

where

A = the total amount of tax, penalty and interest paid by Operators under the *Mineral Tax Act* in respect of Mines, not including any amount paid in relation to a reclamation tax credit in respect of a Mine for a Mine Fiscal Year commencing after production at the Mine has ceased;

and

B = the total amount of tax, penalty and interest refunded and interest paid to the Operators under the *Mineral Tax Act* in respect of Mines, not including any amount paid or refunded in relation to a reclamation tax credit in respect of a Mine for a Mine Fiscal Year commencing after production at the Mine has ceased;

“Overpayment” means an amount paid under this Project Appendix that exceeds the amount the Ktunaxa Parties were entitled to receive, including

- (a) an amount paid because of an inaccurate Incremental Production figure being used to calculate a Project Payment, or
- (b) a negative Project Payment amount (which may occur if an Operator has paid more tax than required in a previous BC Fiscal Year);

“Underpayment” means an amount that the Ktunaxa Parties were entitled to receive under this Project Appendix in respect of Incremental Mineral Tax Revenue in a BC Fiscal Year, but did not receive as part of the Project Payment for that BC Fiscal Year, including an amount not paid because of an inaccurate

Incremental Production figure being used to calculate a Project Payment.

- (2) The Parties agree that the KNC will act on behalf of the Ktunaxa Parties with respect to the Project Payments in this section 4 and section 5.

How Amount Payable for a Mine Fiscal Year is Determined

- (3) The total amount payable for each Mine Fiscal Year under this Project Appendix will be
 - (a) thirty seven and one-half percent (37.5%) of the first twenty three million dollars (\$23,000,000) of Incremental Mineral Tax Revenue for the Mine Fiscal Year, and
 - (b) five percent (5%) of any Incremental Mineral Tax Revenue for the Mine Fiscal Year exceeding twenty three million dollars (\$23,000,000).
- (4) The Province will determine Incremental Mineral Tax Revenue based on Incremental Production for the Mine Fiscal Year to which the Net Mineral Tax Revenue relates.
- (5) If the Operator has not reported its Incremental Production for the Mine Fiscal Year at the time a Project Payment is calculated, the Province will estimate the Incremental Production for the purpose of determining the Incremental Mineral Tax Revenue under subsection (4).
- (6) The Province may make an adjustment in a subsequent BC Fiscal Year if it determines that a calculation of Incremental Mineral Tax Revenue was based on an inaccurate Incremental Production figure, and the adjustment may result in an Underpayment or Overpayment.

Calculation and Timing of Annual Project Payments

- (7) Project Payments will be calculated for each BC Fiscal Year in accordance with schedule 1 (Calculation of Project Payments).
- (8) If the Project Payment for a BC Fiscal Year is a positive amount, the Province will pay that amount within one hundred and fifty (150) days after the end of the BC Fiscal Year for which the Project Payment is calculated.

Payment Statement

- (9) Within ninety (90) days after the end of each BC Fiscal Year, the Province will provide to the KNC a financial statement containing the following information:
- (a) with respect to each Mine Fiscal Year for which Incremental Mineral Tax Revenue was received by the Province or refunded or paid to an Operator by the Province in the BC Fiscal Year, the following amounts, as defined in schedule 1 (Calculation of Project Payments):
 - i. Current Revenue;
 - ii. Cumulative Revenue; and
 - iii. the Mine Fiscal Year Amount;
 - (b) the amount of any Underpayment or Overpayment resulting from adjustments made under subsection (6); and
 - (c) the amount of the Project Payment.

Other Payment Provisions

- (10) In the event that the Operators are no longer responsible for making payments under the *Mineral Tax Act*, in relation to the Mines, such that there will be no subsequent Project Payments under this Project Appendix, the Province will consult with the KNC respecting any Overpayment that remains outstanding, and the Province may, in its sole discretion, waive the Overpayment in consideration of the two percent (2%) reduction reflected in the definition of Net Mineral Tax Revenue or confirm that the Overpayment will be deducted from any other current metal Mine or future Mine sector Project Payments to be made under this Agreement.
- (11) If this Project Appendix is terminated prior to the last day of a Mine Fiscal Year,
- (a) the obligations of the Province set out in subsections (3) through (10) and section 5 will continue, but only to the extent that Incremental Mineral Tax Revenue is received from, or refunded or paid to, an Operator by the Province in relation to Mine Fiscal Years or portions thereof occurring before the date this Appendix is terminated, and

- (b) no Project Payment will be payable under this Project Appendix in relation to that portion of the Mine Fiscal Year after this Project Appendix is terminated or any subsequent Mine Fiscal Year.
- (12) The Province will notify the KNC of any significant changes made to the *Mineral Tax Act* tax regime.
- (13) If during the Term, the Province makes significant changes to the *Mineral Tax Act* tax regime, the Parties may negotiate alternative mine revenue sharing opportunities.
- (14) The Ktunaxa Parties acknowledge that *Mineral Tax Act* revenues fluctuate and any Project Payments from the Province will vary over time and that the determination of Incremental Production and the revenues under the Act attributable to it are based on approximations and are therefore imprecise and may be inaccurate.
- (15) The Province is entitled to rely upon information provided by the Operator, including the Operator's report of Incremental Production for a Mine Fiscal Year, in determining Incremental Production and in calculating Incremental Mineral Tax Revenue under this section 4.
- (16) The Province will make reasonable efforts to ensure the accuracy of information that is used to determine Incremental Production and to calculate Incremental Mineral Tax Revenue but makes no warranty or representation as to the accuracy of such information and no action or proceeding lies against it in relation to any claim that information or the determination of Incremental Production was inaccurate.
- (17) Despite any other provision of the Main Agreement or this Project Appendix, the Province has no obligation to make a Project Payment in respect of a Mine Fiscal Year prior to the Specified Date for a Contributing Project.

AUDITS AND APPEALS

- 5** (1) The Ktunaxa Parties acknowledge that the Province may audit an Operator from time to time to review the accuracy of *Mineral Tax Act* payments over a specific period of time, and also understand that an Operator may appeal any assessment or reassessment of

tax, penalty or interest to the Minister responsible for administering the *Mineral Tax Act* and then to a court.

- (2) The Ktunaxa Parties acknowledge that any audits or appeals referred to in subsection (1) may affect the amount of the Project Payments the Province will provide in subsequent years, and may also affect the amounts that may be deducted under subsections 4(6) and (10).
- (3) If the Province conducts an audit of an Operator, the Province will report in writing to the KNC the results of the audit and specifically whether the Operator had made overpayments, underpayments or correct payments under the *Mineral Tax Act* for the period of time subject to the audit.
- (4) In the event of any appeal by an Operator of any assessment or reassessment, the Province will report in writing to the KNC the results of the appeal.

RELEASES

Specified Date Release

- 6 (1) If a Contributing Project is a new Mine, each of the Ktunaxa Parties hereby releases and forever discharges the Province, including each Provincial Agency, from all actions, causes of action, claims, proceedings, debts, duties, demands, interest, fines, costs, expenses and compensation of whatsoever amount and kind which it ever may have had, has or may ever have against the Province, including any Provincial Agency, with respect to any legal obligation to consult and accommodate or to provide capacity funding, third party studies or payments or disbursements of any kind in respect of Government Actions related to a Contributing Project taken before the Specified Date.
- (2) If a Contributing Project is an expansion of an existing Mine, each of the Ktunaxa Parties hereby releases and forever discharges the Province, including each Provincial Agency, from all actions, causes of action, claims, proceedings, debts, duties, demands, interest, fines, costs, expenses and compensation of whatsoever amount and kind which it ever may have had, has or may ever have against the Province, including any Provincial Agency, with respect to any legal obligation to consult and accommodate or to

provide capacity funding, third party studies or payments or disbursements of any kind in respect of the Permit Amendment and any Government Actions related to that Contributing Project taken from and including the date of the Permit Amendment to the Specified Date.

Annual Releases After the Specified Date

- (3) For each BC Fiscal Year after the Specified Date, unless the KNC on behalf of the Ktunaxa Parties terminates a schedule to this Project Appendix in respect of a Contributing Project in accordance with subsection 10(4) prior to receiving a Project Payment in respect of that Contributing Project, each Ktunaxa Party will be deemed to have
 - (a) covenanted and agreed that the Province has complied with section 11 of the Main Agreement (Consultation Process) and has fulfilled any and all legal obligations to consult and accommodate the Ktunaxa Parties in relation to the potential impact of Government Actions related to that Contributing Project on the Ktunaxa Nation's Aboriginal Rights taken in the BC Fiscal Year to which the Project Payment pertained, and
 - (b) released and forever discharged the Province from all actions, causes of action, claims, proceedings, debts, duties, demands, interest, fines, costs, expenses and compensation which it ever may have had, has or may ever have against the Province, including any Provincial Agency, with respect to any legal obligation to consult and accommodate or to provide capacity funding, revenue generation, revenue-sharing and economic benefits, third party studies or payments or disbursements of any kind in respect of Government Actions related to that Contributing Project taken in the BC Fiscal Year to which the Project Payment pertained.
- (4) Nothing in this section 6 modifies, limits or otherwise affects the ability of the Ktunaxa Parties to raise, or the ability of the Province to consider and address, any concerns regarding the proposed issuance of an environmental assessment certificate, proposed amendment of a Permit or other proposed Government Action related to a Contributing Project.

- (5) For greater certainty, subsection (4) applies whether or not the same or similar concerns have been raised, considered or addressed previously in respect of a Government Action to which subsections (1), (2) or (3) apply.
- (6) For greater certainty, nothing in subsections (1), (2) and (3) is intended to preclude the Ktunaxa Parties from bringing an action or other proceeding against a person other than the Province with respect to a Contributing Project.

COVENANTS AND ACKNOWLEDGEMENTS

- 7** (1) Each of the Ktunaxa Parties covenants and agrees that
- (a) it will not bring or continue any action or other proceeding against the Province, in its own name or by representative action, which is inconsistent with the releases, covenants and acknowledgements set out in this section 7 and sections 6 and 8, nor will it participate in any such action or proceeding initiated by or in the name of the Ktunaxa Nation or the Ktunaxa Communities,
 - (b) it will not challenge or impede the right of the Province or an Operator, or any of their respective employees, contractors, agents, representatives or invitees, to gain access to a Contributing Project and to carry out any activities associated with the development and operation of a Contributing Project, and
 - (c) it will not engage in, and will take all reasonable actions to discourage any Ktunaxa Community or Ktunaxa Citizen from engaging in, any action that might challenge or impede, directly or indirectly, the right of the Province or an Operator to gain access to a Contributing Project and to carry out any activities associated with the development and operations of that Contributing Project.
- (2) The Ktunaxa Parties will take all reasonable actions to facilitate the resolution of any action that might be taken by any Ktunaxa Community or Ktunaxa Citizen that is inconsistent with the obligations of the Ktunaxa Parties in the Main Agreement and this Project Appendix.

FURTHER ACKNOWLEDGEMENTS

- 8** (1) If a Contributing Project is a new Mine, the Ktunaxa Parties acknowledge and agree that the Province will be deemed to have fulfilled any and all legal obligations to consult and accommodate the Ktunaxa Parties in relation to the potential impact of Government Actions related to a Contributing Project on the Ktunaxa Nation's Aboriginal Rights before the Specified Date.
- (2) If A Contributing Project is an expansion of an existing Mine, the Ktunaxa Parties acknowledge and agree that the Province will be deemed to have fulfilled any and all legal obligations to consult and accommodate the Ktunaxa Parties in relation to the potential impact of Government Actions related to that Contributing Project on the Ktunaxa Nation's Aboriginal Rights taken from and including the date of the Permit Amendment to the Specified Date.
- (3) The Province has no obligation to provide any financial or economic benefit to the Ktunaxa Parties in respect of Incremental Production except as provided in this Agreement.

CONTINUING OBLIGATIONS

- 9** (1) The Parties acknowledge and agree that the promises, releases, acknowledgements and covenants given by the Ktunaxa Parties in sections 6, 7, 8 and this section 9 in relation to a Contributing Project
- (a) for the time before the Specified Date of the Contributing Project, and
- (b) for the BC Fiscal Years or parts thereof that the KNC received Project Payments on behalf of the Ktunaxa Parties in accordance with section 4 for that Contributing Project
- are intended to survive and to remain fully binding on the Parties and enforceable despite
- (c) the giving of a Notice of Withdrawal in respect of that Contributing Project,
- (d) the giving of a Notice to Terminate the schedule for that Contributing Project,

- (e) the termination of that Contributing Project,
- (f) the termination or expiry of any one or more of the Main Agreement, any Project Appendix or any schedule to a Project Appendix, or
- (g) a determination by a court or a tribunal of competent jurisdiction or other finding with respect to the Ktunaxa Nation's Aboriginal Rights.

NOTICE OF WITHDRAWAL

- 10** (1) The KNC on behalf of the Ktunaxa Parties may give the Province a Notice of Withdrawal in respect of a Contributing Project.
- (2) For greater certainty, the KNC may give a Notice of Withdrawal in respect of a Contributing Project regardless of whether the Province has taken any Government Actions in that BC Fiscal Year in respect of that Contributing Project.
- (3) In the event that the KNC gives a Notice of Withdrawal under subsection (1) and at the request of the KNC, the SEA Senior Forum will meet within forty five (45) days after the Notice of Withdrawal is delivered and endeavour to resolve the matter that gave rise to the Notice of Withdrawal.
- (4) If the Notice of Withdrawal under subsection (1) is not rescinded within sixty (60) days after its delivery, either the KNC on behalf of the Ktunaxa Parties or the Province may terminate the schedule to this Project Appendix in respect of that Contributing Project in accordance with paragraph 20(6)(b) of the Main Agreement (Suspension and Termination).
- (5) In the event that the KNC provides a Notice of Withdrawal under subsection (1), the Province may suspend making further Project Payments for that Contributing Project.
- (6) If the Notice of Withdrawal provided under subsection (1) is rescinded and the Province has suspended one or more Project Payments under subsection (5), the Province will make those suspended Project Payments within sixty (60) days after the Notice of Withdrawal is rescinded.
- (7) If the Notice of Withdrawal provided under subsection (1) is not rescinded prior to the date specified in a Notice to Terminate, the

Province will be fully released and discharged from all of its obligations in respect of Project Payments suspended under subsection (5).

CONFIDENTIAL INFORMATION

- 11** (1) Despite any other provision of this Project Appendix, the Province's obligation to provide a payment statement to the KNC under subsection 4(9) or to provide information that is confidential under the *Mineral Tax Act* is subject to the Province obtaining written consent of the Operator to share such information.
- (2) Despite any other provision of this Agreement, the KNC will have the right to disclose the amount of the Project Payment to Ktunaxa Community Members and Ktunaxa Citizens each year.
- (3) The Ktunaxa Parties acknowledge that the Province has informed them of the confidentiality requirements under the *Mineral Tax Act*.

SIGNED in the presence of

Richard Williams this 29th day
of January, 2013 at
Vancouver, B.C. :

The Ktunaxa Nation Council Society,
on its own behalf and on behalf of the
Ktunaxa Nation, St. Mary's Indian
Band, Tobacco Plains Indian Band,
Lower Kootenay Indian Band and
Akisq'nuk First Nation

Richard Williams

Signature of witness

Kathryn Teneese

Kathryn Teneese, Chair

SIGNED in the presence of

Richard Williams this 29th day
of January, 2013 at
Vancouver, B.C. :

HER MAJESTY THE QUEEN IN RIGHT
OF THE PROVINCE OF BRITISH
COLUMBIA, as represented by the
Minister of Aboriginal Relations and
Reconciliation

Richard Williams

Signature of witness

Ida Chong

Ida Chong, Minister

SCHEDULE 1

CALCULATION OF PROJECT PAYMENTS

Definitions

1. In this schedule:

“BC Fiscal Year Total” or “BCFYT” means the sum of the Mine Fiscal Year Amounts calculated under this schedule in respect of all Mine Fiscal Years for which there is Current Revenue;

“Cumulative Revenue” or “CmRv” means, in respect of a Mine Fiscal Year, Current Revenue plus Previous Revenue;

“Current BC Fiscal Year” means the BC Fiscal Year for which the Project Payment is being calculated;

“Current Revenue” or “CrRv” means, in respect of a Mine Fiscal Year, the amount of Incremental Mineral Tax Revenue for the Mine Fiscal Year received by the Province or refunded or paid to an Operator by the Province in the Current BC Fiscal Year;

“Mine Fiscal Year Amount” or “MFYA” means, in respect of a Mine Fiscal Year, the amount calculated under section 3 or 4 of this schedule;

“Outstanding Overpayments” or “OsOp” means the total of:

- (a) any Overpayment remaining as a result of the Project Payment for the BC Fiscal Year immediately before the Current BC Fiscal Year being a negative amount; and
- (b) all other Overpayments that have not been included in the calculation of a previous Project Payment;

“Outstanding Underpayments” or “OsUp” means the total of all Underpayments that have not been included in the calculation of a previous Project Payment;

“Previous BC Fiscal Years” means BC Fiscal Years before the Current BC Fiscal Year;

“Previous Revenue” or “PR” means, in respect of a Mine Fiscal Year, the amount of Incremental Mineral Tax Revenue for the Mine Fiscal Year received by the Province or refunded or paid to an Operator by the Province in all Previous BC Fiscal Years.

Calculation of Project Payment

2. The amount of the Project Payment for a BC Fiscal Year will be calculated according to the following formula:

$$\text{Project Payment} = \text{BCFYT} + \text{OsUp} - \text{OsOp}$$

Calculation of a single Mine Fiscal Year Amount if Current Revenue is Positive

3. If Current Revenue is a positive amount, the Mine Fiscal Year Amount will be calculated according to the following formulas:

- (a) if Cumulative Revenue is less than or equal to twenty-three million dollars (\$23,000,000),

$$\text{MFYA} = 37.5\% \times \text{CrRv};$$

- (b) if Cumulative Revenue is greater than twenty-three million dollars (\$23,000,000) and Previous Revenue is less than twenty-three million dollars (\$23,000,000),

$$\text{MFYA} = 37.5\% \times (\$23,000,000 - \text{PR}) + 5\% \times (\text{CmRv} - \$23,000,000);$$

- (c) if Previous Revenue is greater than or equal to twenty-three million dollars (\$23,000,000),

$$\text{MFYA} = 5\% \times \text{CrRv}.$$

Calculation of a single Mine Fiscal Year Amount if Current Revenue is Negative

4. If Current Revenue is a negative amount, the Mine Fiscal Year Amount will be calculated according to the following formulas:

- (a) if Previous Revenue is less than or equal to twenty-three million dollars (\$23,000,000),

$$\text{MFYA} = 37.5\% \times \text{CrRv};$$

(b) if Previous Revenue is greater than twenty-three million dollars (\$23,000,000) and Cumulative Revenue is less than twenty-three million dollars (\$23,000,000),

$$\text{MFYA} = 37.5\% \times (\text{CmRv} - \$23,000,000) + 5\% \times (\$23,000,000 - \text{PR});$$

(c) if Cumulative Revenue is greater than or equal to twenty-three million dollars (\$23,000,000),

$$\text{MFYA} = 5\% \times \text{CrRv}.$$

SCHEDULE 2

ELKVIEW MINE CONTRIBUTING PROJECT

CONTRIBUTING PROJECT DESCRIPTION

- 1 (1) The “Contributing Project” in this “Schedule 2 – Elkview Mine Contributing Project” is the Elkview Mine located approximately 3 kilometers east of Sparwood, British Columbia and includes the following:
 - (a) the area within the C-2 Permit boundaries shown on Figure 1 (Map of Contributing Project Area) and any changes to those boundaries authorized by Government Action;
 - (b) all associated infrastructure, operations sites, pit and dump areas, access roads, power facilities, and other physical facilities;
 - (c) any changes or modifications to the elements described in paragraph (b) that may be made from time to time; and
 - (d) all matters relating to the exploration, planning, permitting, construction, maintenance, repair, operation and reclamation of the Elkview Mine.
- (2) If the C-2 Permit boundaries referred to in paragraph (1)(a) are changed by Government Action, Figure 1 will be amended to reflect those changes.

PERMIT AMENDMENT

- 2 (1) The “Permit Amendment” in this “Schedule 2 – Elkview Mine Contributing Project” is the amendment to the C-2 Permit effective January 20, 2012.
- (2) The new pit and waste dump disturbance areas authorized by the Permit Amendment referred to in subsection (1) are highlighted on Figure 2 (Location of Disturbance Areas).
- (3) If new pit and waste dump disturbance areas are authorized by Government Action after the Specified Date and written confirmation has been provided under paragraph 3(4)(c) of the

Project Appendix (Contributing Projects), Figure 2 will be amended to highlight those additional areas.

- (4) The Parties agree that the identification of the areas referred to in subsections (2) and (3) is for reference and illustrative purposes only and does not modify, limit or affect the scope of the Contributing Project described in section 1 or otherwise affect the Parties' rights and obligations.

Figure 1: Contributing Project Area

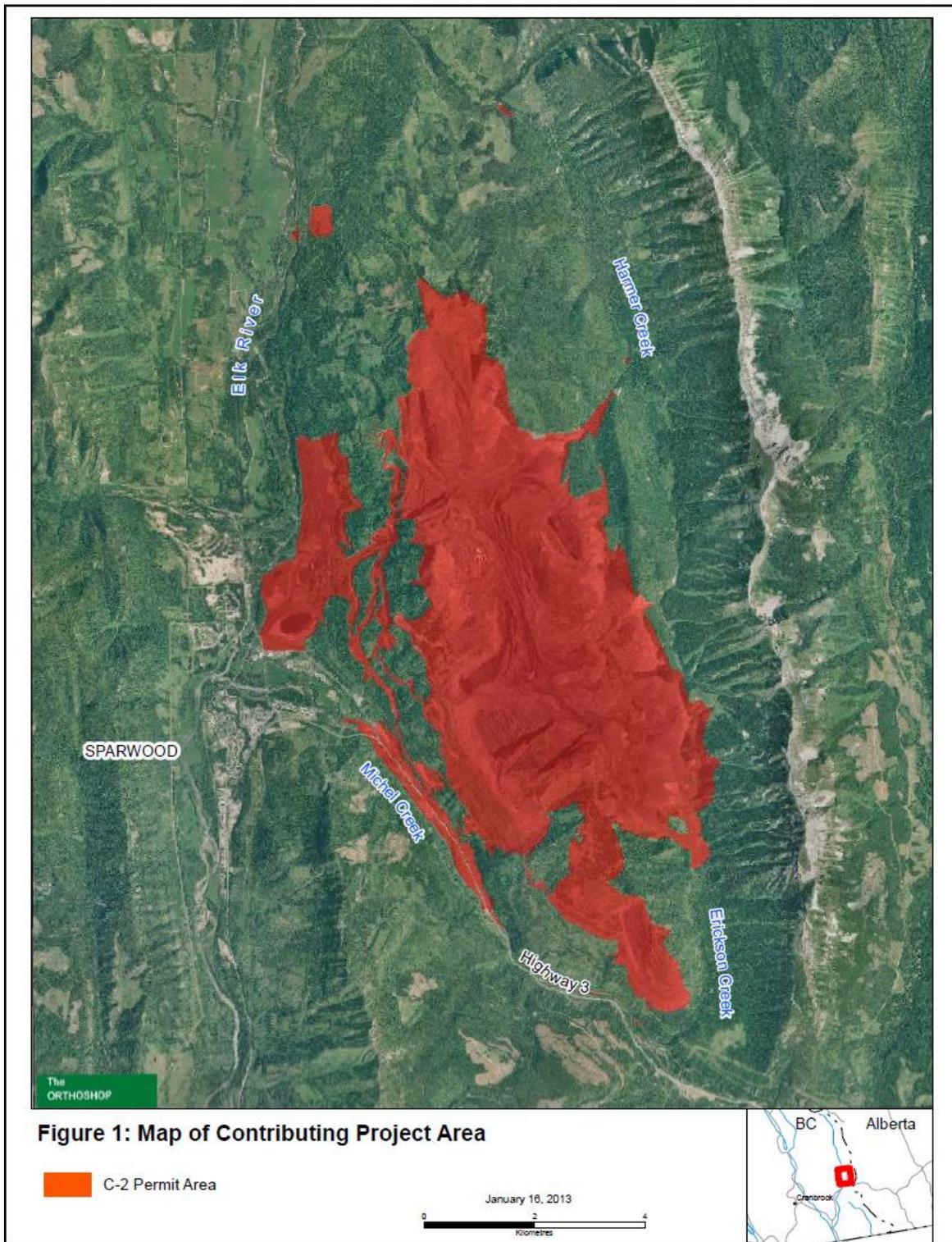
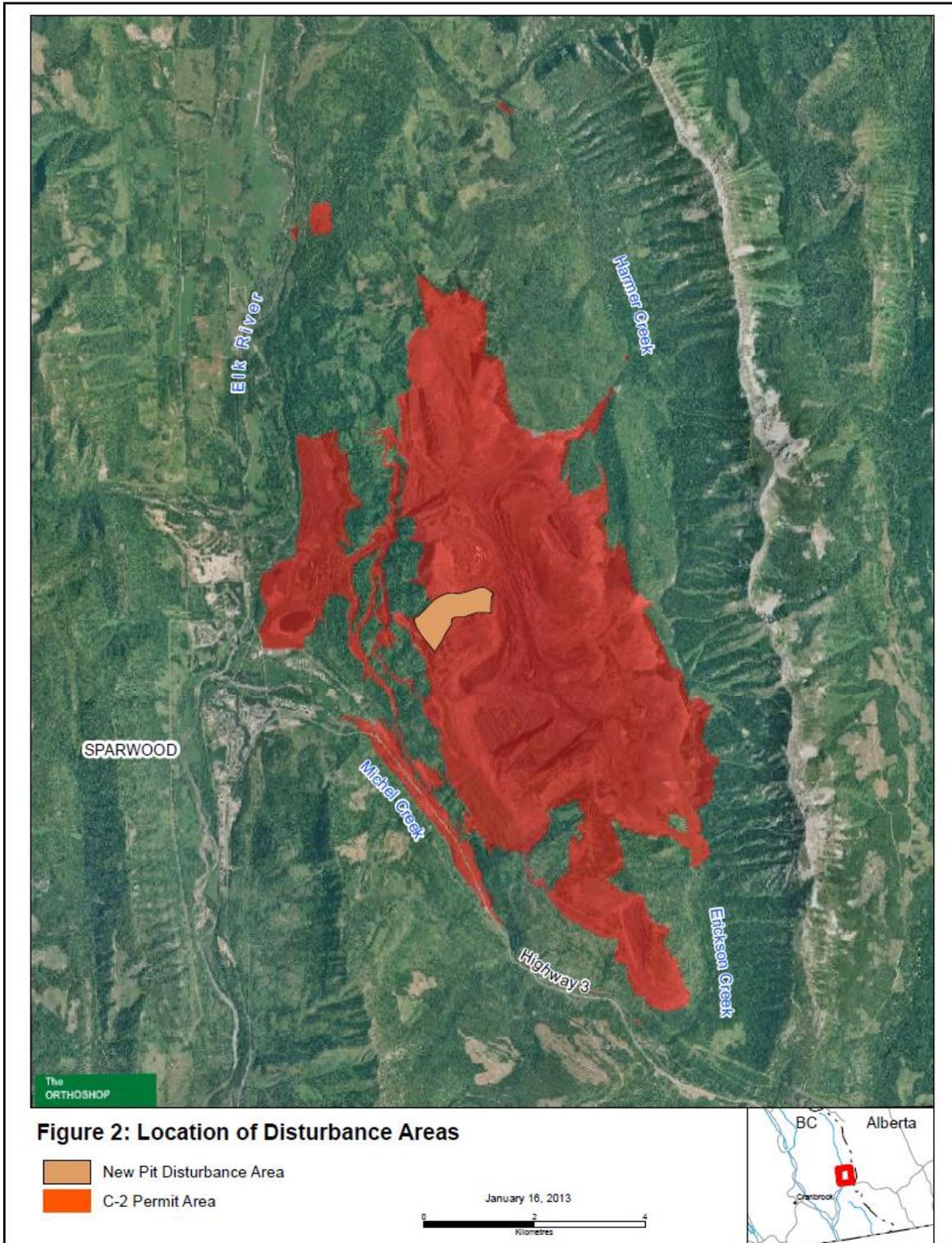


Figure 2: Location of Disturbance Areas

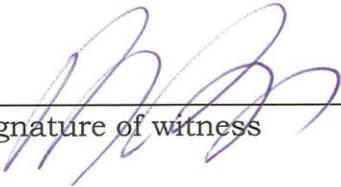


SPECIFIED DATE FOR THE CONTRIBUTING PROJECT

- 3 (1) The Specified Date for the Elkview Mine Contributing Project is the Effective Date of the Main Agreement.

SIGNED in the presence of
Rosemary Phillips this 29th day
of January, 2013 at
Vancouver, B.C.:

The Ktunaxa Nation Council Society,
on its own behalf and on behalf of the
Ktunaxa Nation, St. Mary's Indian
Band, Tobacco Plains Indian Band,
Lower Kootenay Indian Band and
?Akisq'nuk First Nation



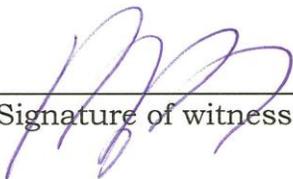
Signature of witness



Kathryn Teneese, Chair

SIGNED in the presence of
Rosemary Phillips this 29th day
of January, 2013 at
Vancouver, B.C.:

HER MAJESTY THE QUEEN IN RIGHT
OF THE PROVINCE OF BRITISH
COLUMBIA, as represented by the
Minister of Aboriginal Relations and
Reconciliation



Signature of witness



Ida Chong, Minister