

THIS AGREEMENT made 2 day of July, 2013

REVENUE SHARING AGREEMENT

BETWEEN:

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

(the "Province")

AND:

TLA-O-QUI-AHT FIRST NATIONS, as represented by Chief and Council,

(the "Recipient")

(Collectively the "Parties", Individually "Party")

RECITALS:

- A. The Recipient has Aboriginal Interests within its Traditional Territory.
- B. The Province supports the development of clean energy and the sharing with First Nations of revenue from clean energy projects, and respects the importance of government to government relationships as contemplated in the New Relationship and the principles of the Transformative Change Accord.
- C. Part 6 of the *Clean Energy Act* enabled the creation of a fund known as the First Nations Clean Energy Business Fund which allows for the sharing of specified land revenues and water rentals with First Nations.
- D. the Recipient is a band as defined by the *Indian Act*.

NOW, THEREFORE, THE PARTIES AGREE AS FOLLOWS:

1.0 DEFINITIONS

1.1 In this Agreement:

"Agreement" means this Revenue Sharing Agreement, including its Schedules;

“Aboriginal Interests” means asserted aboriginal rights (including aboriginal title) or determined aboriginal rights (including aboriginal title) which are recognized and affirmed by section 35(1) of the Constitution Act, 1982

“Available Revenue” means the Project Revenue multiplied by the percentage prescribed for the purposes of section 20(4)(b) of the *Clean Energy Act* (50% as of the effective date of this agreement) and the percentage prescribed for the purposes of section 20(5)(a) of the Act (75% as of the effective date of this agreement), as those percentages are amended from time to time;

“Designated Percentage” means one hundred percent or such other amount specified by the Province in accordance with section 9.2.

“Fiscal Year” means April 1 of a calendar year to March 31 of the following calendar year;

“Lifetime” means the period during which the Local Project continues as a power project for the purposes of section 20 of the *Clean Energy Act*;

“Local Project” means the project described in Schedule 1;

“Overpayment” means both an amount paid mistakenly by the Province under this Agreement that is not due under section 3.1, and if the Province refunds Project Revenue under section 16 of the *Financial Administration Act*, means a percentage of the refunded amount equal to the product of multiplying the Designated Percentage, the percentage prescribed for the purposes of section 20(4)(b) of the *Clean Energy Act* and the percentage prescribed for the purposes of section 20(5)(a) of the Act;

“Prescribed Land and Water Revenues” means revenue prescribed for the purposes of section 20(4)(b) of the *Clean Energy Act*, which the Province derives from Power Projects, but is subject to any changes to the revenue prescribed for those purposes made before or during the Term of this Agreement;

“Power Project” means a power project as defined by section 20(1) of the *Clean Energy Act*;

“Project Revenue” means Prescribed Land and Water Revenues that

- (a) have been received by the Province in a Fiscal Year during the Term,
- (b) have been received by the Province after the Local Project became a Power Project within the meaning of Section 20 of the *Clean Energy Act*, and
- (c) are from an authorization or water licence necessary for the operation or development of the Local Project;

“Recipient First Nation” means the band or First Nation referred to in Recital D;

“Sharing First Nation” means a First Nation, other than the Recipient First Nation, that has asserted Aboriginal Interests on the land where the Local Project is located in whole or in part;

“Term” means the term of this Agreement as defined by section 8.1;

“Traditional Territory” means the traditional territory claimed by the Recipient located within British Columbia as shown on the map attached at Schedule 2; and

“Treasury Board” means Treasury Board as defined by the *Financial Administration Act*.

2.0 PURPOSE

- 2.1 The purpose of this Agreement is to share Project Revenue received by the Province with the Recipient.

3.0 PAYMENT

- 3.1 The Province will, within 120 days of the end of a Fiscal Year, pay to the Recipient a share of Available Revenue for that year equal to the product of multiplying Available Revenue by the Designated Percentage.
- 3.2 If at any time the Province makes an Overpayment, the Province may deduct the Overpayment from amounts payable under section 3.1.
- 3.3 The Recipient will maintain throughout the Term a bank account in the name of the Recipient at a Canadian financial institution into which direct deposits may be made by British Columbia for the purpose of receiving monies payable by British Columbia pursuant to this Agreement. The Recipient will provide such address and account information respecting this account to enable British Columbia to make direct deposits.
- 3.4 Any payment made by the Province to the Recipient under this Agreement:
- (a) does not abrogate any legal consultation obligation of the Province which may apply and may result in accommodation measures being implemented, where appropriate, in addition to any revenue sharing payments made under this Agreement;
 - (b) shall not be interpreted or relied upon as an admission or acknowledgement by the Recipient of Provincial jurisdiction over, or ownership of, lands and resources within the Recipient’s Territory.
- 3.5 In each Fiscal Year that this Agreement is in effect, and subsequent to the release by the Minister of Finance of the previous Fiscal Year's public account of British Columbia, a summary

document will be prepared and made available to the Recipient of the Project Revenue for that Fiscal Year, as follows:

- a) Project Revenue from tenures granted under
 - i) sections 11 or 14 of the *Land Act*, or
 - ii) section 9 of the *Ministry of Lands, Parks and Housing Act*; and
- b) Project Revenue from water rentals under Parts 2 and 3 of Schedule A of the *Water Regulation*; and
- c) if there are any changes to the Prescribed Land and Water Revenue, an accounting for those changes to Project Revenue;
- d) any deductions made under section 3.2 or adjustments for amounts owing that were not paid.

4.0 THE RECIPIENT'S REPRESENTATIONS AND WARRANTIES

4.1 The Recipient represents and warrants to the Province, with the intent and understanding that the Province will rely thereon in entering into this Agreement, that:

- (a) it has the legal power, right, capacity and authority to accept, execute and deliver this Agreement and to carry out its obligations under this Agreement;
- (b) the statements and information provided in the Revenue Sharing Application are true and accurate;
- (c) this Agreement is binding upon, and enforceable against, the Recipient in accordance with its terms;
- (d) the undersigned representative(s) of the Recipient is/are duly authorized to enter into this Agreement;
- (e) it has obtained or had the opportunity to obtain the advice of their own financial, legal, tax, and other professional advisors with respect to this Agreement; and
- (f) it is an Indian Band under the *Indian Act* and entering into this Agreement has been approved by a majority of the councilors of the Recipient present at a duly convened meeting of the Recipient's Band Council.

5.0 PROVINCIAL REPRESENTATIONS AND WARRANTIES

5.1 The Province represents and warrants to the Recipient that it has the legal authority to enter into this Agreement and carry out its obligations in accordance with it.

6.0 RELATIONSHIP

- 6.1 No partnership, joint venture, agency, fiduciary or employment relationship is created by this Agreement or by any actions of the Parties under this Agreement.

7.0 INDEMNITY

- 7.1 The Recipient will indemnify and save harmless the Province and provincial officials, from and against any and all losses, claims, damages, actions, causes of action, cost and expenses that the Province may sustain, incur, suffer or be put to by reason of any act or omission of the Recipient or by any servant, employee, or agent of the Recipient in relation to the performance or non-performance of the Recipient's obligations under this Agreement or breaches of the Warranties and Representations of the Recipient under Article 4. This term will survive the expiry or termination of this Agreement.

8.0 TERM AND TERMINATION

- 8.1 This Agreement takes effect as of April 1, 2012, and continues for the Lifetime of the Local Project unless terminated under section 8.2.
- 8.2 The Province may terminate this Agreement, immediately by written notice to the Recipient, if any representation or warranty made by the Recipient in this Agreement is untrue or incorrect;
- (b) on six months written notice to the Recipient,
 - (i) an amendment or repeal of the *First Nations Clean Energy Business Fund Regulation* or section 20 of the *Clean Energy Act* comes into force,
 - (ii) the Province provides notice of its intention to terminate within 90 days of coming into force of that amendment or repeal, and
 - (iii) the Province provides the Recipient with a reasonable opportunity to consult regarding termination prior to providing notice of termination.

9.0 AMENDMENTS & CHANGES TO DESIGNATED PERCENTAGE

- 9.1 Any amendments to this Agreement must be in writing and executed by the Parties.
- 9.2 Subject to section 9.4, if the Local Project is located wholly or partially on land that is subject to assertions of Aboriginal Interest by one or more Sharing First Nations, the Province may, after consultation with the Recipient and six months written notice to the Recipient, reduce the

Designated Percentage by a percentage equal to the Percentage of Project Revenue allocated to the Sharing First Nation.

- 9.3 For the purposes of section 9.2, consultation with the Recipient shall refer to good faith discussions between the Recipient, the Sharing First Nation and the Province, regarding the factors to be considered in setting the Designated Percentage and sharing information related to those factors.
- 9.4 The Designated Percentage together with the percentage of Available Revenue received by other Indian Bands or aboriginal governing bodies with whom the Province has entered into a revenue sharing agreement applicable to the Local Project must equal one hundred percent.

10.0 APPROPRIATION

10.1 Notwithstanding any other provision of this Agreement, the payment of money by the Province to the Recipient pursuant to this Agreement is subject to:

- (a) there being sufficient monies available in an appropriation, as defined in the *Financial Administration Act* (the *Financial Administration Act* and every amendment made to that Act being collectively called the "Act"), in any fiscal year or part thereof when any payment of money by the Province to the Recipient falls due pursuant to this Agreement, to make that payment;
- (b) the payment being in accordance with an approved Treasury Board spending plan for the First Nations Clean Energy Business Fund special account; and
- (c) Treasury Board not having controlled or limited expenditure, pursuant to the Act, under any appropriation referred to in the preceding paragraph.

11.0 DISPUTE RESOLUTION

- 11.1 If a dispute arises between the Recipient and British Columbia regarding any aspect of this Agreement, the individuals identified under section 13.3 will meet as soon as is practicable to resolve the dispute.
- 11.2 If the Parties are unable to resolve differences under section 11.1, the issue will be raised to, for the Province, the Assistant Deputy Minister responsible for the First Nations Clean Energy Business Fund, and for the Recipient, the Recipient's Council. The Assistant Deputy Minister may authorize a special designate to act in his place. The Assistant Deputy Minister or his designate and the Recipient's Council will meet as soon as is practicable to resolve the dispute.

12.0 GENERAL PROVISIONS

12.1 In this Agreement:

- (a) all headings are for convenience only and do not form 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;
- (b) words in the singular include the plural and words in the plural include the singular unless the context or a specific definition otherwise requires;
- (c) the use of the word "including" is to be read as not limiting the generality of the preceding term or phrase;
- (d) all references to a designated "section", "subsection" or other subdivision or to a Schedule are to the designated section, subsection or subdivision of, or Schedule to, this Agreement;
- (e) any reference to a corporate entity or an Indian Band includes and is also a reference to any entity that was a predecessor to, or that is a successor to, such entity or band;
- (f) any reference made to a statute includes all regulations made under that statute and any amendments or replacements for that statute or regulations made under that statute; and,
- (g) a provision of this agreement or statutes or regulations referred to in it that are expressed in the present tense shall be applied to the circumstances as they arise.

12.2 This Agreement shall be governed by the applicable laws of the Province and Canada.

12.3 This Agreement constitutes the entire agreement between the Parties with respect to the subject matter of the Agreement, unless otherwise agreed in writing by the Parties.

12.4 There will be no presumption that any ambiguity in any of the terms of this Agreement should be interpreted in favour of either Party.

12.5 If any part of this Agreement is void or unenforceable at law, it shall be severed from this Agreement and the rest of the Agreement shall remain in effect and fully enforceable.

12.6 No term, condition, covenant or other provision of this Agreement and no breach by one Party of any term or condition of this Agreement may be waived unless such waiver is in writing and signed by the other Party.

12.7 Time is of the essence.

12.8 This Agreement will ensure to the benefit of and be binding upon the Parties and their respective permitted assigns.

- 12.9 Unless otherwise agreed by the Parties, this Agreement may not be assigned, either in whole or in part, by either Party.
- 12.10 The following schedules are attached and forms part of this Agreement:
- (a) Schedule 1: Clean Energy Project Description,
 - (b) Schedule 2: Map of Traditional Territory of the Recipient First Nation.
- 12.11 This Agreement may be entered into by each Party signing a separate copy of the Agreement (including a photocopy or facsimile copy) and delivering it to the other Party by facsimile transmission.
- 12.12 This Agreement is without prejudice to Recipient's Aboriginal Interests. Nothing in this Agreement is intended to create, define, diminish, abrogate or extinguish Recipient's Aboriginal rights, including Aboriginal title.
- 12.13 This Agreement will not limit the positions that a Party may take in future negotiations or court actions.
- 12.14 This Agreement and any decisions made during the term of this Agreement do not change or affect the positions either Party has, or may have, regarding their respective jurisdictions and authorities.
- 12.15 This Agreement does not preclude the Recipient from accessing clean energy economic opportunities and benefits, which may be available to the Recipient, except to the extent expressly set out in this Agreement.

13.0 NOTICE

- 13.1 Any notice or other communication that is required to be given or that a Party wishes to give to the other Party with respect to this Agreement will be in writing. It will be effectively given:
- (a) by personal delivery to the address of the Party set out in section 13.3;
 - (b) by pre-paid registered mail to the address of the Party set out in section 13.3; or
 - (c) by facsimile, to the facsimile number of the Party set out in section 13.3.
- 13.2 Any notice or communication given in accordance with section 13.1 will be deemed to have been given on the date it is actually received, if received by 4:00 pm. If received after 4:00 pm, it will be deemed to have been received on the next business day.
- 13.3 A notice or communication must be delivered, mailed or sent by facsimile to the intended recipient at the address below:

The Province

Attention: Michael Matsubuchi
Director, Fiscal Arrangements and Climate Change

Schedule 1:

The Haa-ak-suuk Creek Hydroelectric Project (Haa-ak-suuk Creek)

Location:

Near Tofino, (Clayoquot Sound) BC

Project Overview:

The Haa-ak-suuk Creek Hydroelectric Project is a 6.0MW hydroelectric project and is projected to annually produce approximately 21GWh. Much of the road and transmission infrastructure are in place to support the project's development. A completed environmental impact assessment confirms there are no fish present in the proposed diversion reach and impacts to aquatic values can be mitigated. A feasibility assessment has determined the location of the powerhouse, penstock and intake structures will have no fisheries impacts.

This project is eligible for the BC Hydro Standing Offer Program (SOP) which sells all electricity produced through a 40yr agreement.

Schedule 2:

Map of Traditional Territory of Recipient

Haa-ak-suuk Creek

