

**Westcoast Connector Gas Transmission Project
Natural Gas Pipeline Benefits Agreement**

BETWEEN:

Her Majesty the Queen in Right of the Province of British Columbia, as represented by the Minister of Aboriginal Relations and Reconciliation
(the "Province")

AND:

Metlakatla First Nation, on behalf of itself and its Members, as represented by the Chief and Council
("Metlakatla")
(collectively referred to as the "Parties" and individually referred to as a "Party")

WHEREAS:

- A. New natural gas pipelines are proposed in British Columbia.
- B. The Province is consulting Metlakatla on the potential impacts of proposed natural gas pipelines in accordance with provincial legal obligations.
- C. The Parties wish to develop an effective long-term working relationship that includes Metlakatla sharing benefits associated with the Westcoast Connector Gas Transmission Project and supporting the development of the Westcoast Connector Gas Transmission Project in accordance with this Agreement.

NOW THEREFORE the Parties agree as follows:

PART 1 – DEFINITIONS AND INTERPRETATION

1.1 **Definitions.** In this Agreement:

"Additional Payment" means the payment provided in accordance with section 3.5 (Additional Payment);

“Agreement” means this Westcoast Connector Gas Transmission Project Natural Gas Pipeline Benefits Agreement;

“Effective Date” means the date on which the Province receives notice from Metlakatla that it has reached agreement with the proponent for the Westcoast Connector Gas Transmission Project or has waived the requirement to reach agreement;

“Eligible First Nation” means a First Nation that the Province at its sole discretion determines is eligible to receive Ongoing Benefits under section 3.6 (Ongoing Benefits) and for the purposes of this Agreement includes Metlakatla;

“Final Payment” means the payment provided in accordance with section 3.2(b) (Payment Schedule);

“Government Actions” means all processes, decisions, authorizations, permits, licences, approvals, Crown land dispositions, agreements and other actions whatsoever, issued, granted, entered into or otherwise taken by the Province, any minister, public official, employee or agent of the Province, any government corporation, and any person acting as a decision maker under any enactment of the Province;

“In-Service Date” means the first day that Westcoast Connector Gas Transmission Project is placed in-service for transmission of natural gas and is able to make natural gas deliveries to the LNG facility at the terminus of Westcoast Connector Gas Transmission Project;

“Initial Payment” means the payment provided in accordance with section 3.2(a) (Payment Schedule);

“Member” means any person who is a “member of the band”, as that phrase is defined in the *Indian Act*, R.S.C. 1985, c. I-5, of the Metlakatla;

“Metlakatla” means the “band”, as that term is defined in the *Indian Act*, R.S.C. 1985, c. I-5, named “Metlakatla First Nation;”

“Ongoing Benefits” means financial benefits available from the Province to Eligible First Nations provided in accordance with sections 3.6 (Ongoing Benefits) to 3.11 (Inflation Adjustment); and

“Prince Rupert Gas Transmission Project” means the proposed project of that name described in the Environmental Assessment Office Project Approval Certificate issued on November 25, 2014 under the *Environmental Assessment Act*, [SBC 2002] c. 43, as varied from time to time, which includes components such as a natural gas pipeline, and associated compressor stations, equipment and other physical facilities, valves and meters, power supply sources, equipment staging sites, access roads and rights of ways, construction camps and investigative activities;

“Project Payments” means the total payment described under section 3.1 (Project Payments) for the Westcoast Connector Gas Transmission Project, but does not include any additional payments under section 3.5 (Additional Payment), section 3.6 (Ongoing Benefits), or section 3.12 (Additional Opportunities);

“Westcoast Connector Gas Transmission Project” means the proposed project of that name described in the Environmental Assessment Office Project Approval Certificate issued on November 25, 2014 under the *Environmental Assessment Act*, [SBC 2002] c. 43, as varied from time to time, which includes components such as a natural gas pipeline, and associated compressor stations, equipment and other physical facilities, valves and meters, power supply sources, equipment staging sites, access roads and rights of ways, construction camps and investigative activities.

1.2 **Interpretation.** For purposes of this Agreement:

- a) “including” means “including, but not limited to” and “includes” means “includes, but not limited to”;
- b) the recitals and headings are for convenience only, do not form a part of this Agreement and in no way define, limit, alter or enlarge the scope or meaning of any provision of this Agreement;

- c) a reference to a statute includes every amendment to it, every regulation made under it, every amendment made to a regulation made under it and any law enacted in substitution for, or in replacement of, it;
- d) words in the singular include the plural, and words in the plural include the singular unless the context or any specific definition requires otherwise;
- e) any reference to a corporate entity includes any predecessor or successor to such entity; and
- f) there will be no presumption that doubtful expressions, terms or provisions in this Agreement are to be resolved in favour of any Party.

PART 2 – PURPOSE AND SCOPE

- 2.1 **Purpose.** The purpose of this Agreement is to provide financial benefits to Metlakatla and to secure Metlakatla's support in relation to the Westcoast Connector Gas Transmission Project.
- 2.2 **Scope.** This Agreement applies to the Westcoast Connector Gas Transmission Project.

PART 3 – FINANCIAL BENEFITS

- 3.1 **Project Payments.** The Province will provide Metlakatla with a Project Payment of \$1,950,000 for the Westcoast Connector Gas Transmission Project in accordance with section 3.2 (Payment Schedule) and subject to section 3.3 (Changes to Project Payment) and section 6.1 (Conditions Precedent to Funding).

3.2 **Payment Schedule.** The Province will provide the Project Payment for the Westcoast Connector Gas Transmission Project in two installments as follows:

- a) An Initial Payment of one half of the total Project Payment (\$975,000) will be provided within 90 days after all of the following events have occurred:
 - i. the Province receives written confirmation from the proponent that orders have been placed for substantially all of the pipe required for the Westcoast Connector Gas Transmission Project;
 - ii. a contract has been entered into with at least one large diameter pipeline general contractor for completion of the work associated with installation of the pipe for one spread having a linear length of more than 25 kilometres of the Westcoast Connector Gas Transmission Project; and
 - iii. the completion of production welding along a portion of at least 10 kilometres of a spread of the Westcoast Connector Gas Transmission Project.

(collectively the "Material Commencement of Construction");

- b) A Final Payment of one half of the total Project Payment will be provided within 90 days after the In-Service Date of the Westcoast Connector Gas Transmission Project.
- c) The Province will provide Metlakatla with notice of the achievement of Material Commencement of Construction and the In-Service Date as soon as practicable after the occurrence of such events.

- 3.3 **Changes to Project Payment.** Where a portion of the Westcoast Connector Gas Transmission Project is constructed within 70 meters of the centerline of the Prince Rupert Gas Transmission Project, the Province at its sole discretion may reduce the Project Payment by subtracting from the Final Payment the lesser of 50% of the Project Payment for that portion of the Westcoast Connector Gas Transmission Project which is within 70 meters of the existing pipeline or \$330,000.
- 3.4 **Changes to Section 3.3.** Where the Province agrees to delete section 3.3 (Changes to Project Payment) from a Westcoast Connector Gas Transmission Project Benefits Agreement between the Province and another Eligible First Nation, the Parties will delete section 3.3 (Changes to Project Payment) and amend this Agreement accordingly.
- 3.5 **Additional Payment.** The Province will provide Metlakatla with an Additional Payment of \$390,000 within 90 days after the Effective Date.
- 3.6 **Ongoing Benefits.** The Province will provide Ongoing Benefits of \$10,000,000 per year for the Westcoast Connector Gas Transmission Project to Metlakatla and other Eligible First Nations in accordance with sections 3.7 (Entitlement to Ongoing Benefits) to 3.11 (Inflation Adjustment).
- 3.7 **Entitlement to Ongoing Benefits.** Subject to sections 3.8 (Eligible First Nations Discussions) and 3.10 (Ongoing Benefits Agreement), Metlakatla will be entitled to receive a share of Ongoing Benefits commencing on the first anniversary of the In-Service Date for the Westcoast Connector Gas Transmission Project and continuing annually on each subsequent anniversary of the In-Service Date for as long as the project is transporting natural gas deliveries to an LNG facility.

- 3.8 **Eligible First Nations Discussions.** The Province will not make a determination on the allocation of Ongoing Benefits until after June 30, 2015 to allow Eligible First Nations to negotiate and attempt to reach unanimous agreement on the allocation of Ongoing Benefits.
- 3.9 **Province's Role in Eligible First Nations Discussions.** The Province will help to facilitate discussions between Eligible First Nations on the allocation of Ongoing Benefits as follows:
- a) the Province will provide Metlakatla with a list of Eligible First Nations as soon as practicable after the date on which the Agreement is fully executed; and
 - b) on request, the Province will discuss the potential methodologies for the allocation of Ongoing Benefits with Metlakatla (and the other Eligible First Nations should they also submit a request).
- 3.10 **Ongoing Benefits Agreement.** If all of the Eligible First Nations are able to reach agreement on the allocation of the Ongoing Benefits by June 30, 2015, then the Province will allocate the Ongoing Benefits in accordance with such agreement. Where the Eligible First Nations are unable to reach agreement on the allocation of Ongoing Benefits by June 30, 2015, the Province will:
- a) allocate a portion of the Ongoing Benefits to each Eligible First Nation in accordance with a consistent and objective methodology determined by the Province, which may take into account factors such as population and the length of pipeline within the traditional territory;
 - b) provide notice to Metlakatla of the provincial approach to the allocation of Ongoing Benefits among Eligible First Nations and the amount and timing of its allocation of Ongoing Benefits as soon as practicable after June 30, 2015; and

- c) negotiate and attempt to reach agreement with Metlakatla on any amendments applicable to this Agreement:

3.11 **Inflation Adjustment.** The Province will adjust the amount of the Ongoing Payments annually, commencing on the second anniversary of the In-Service Date for the Westcoast Connector Gas Transmission Project, based on changes in annual BC Final Domestic Demand Implicit Price Index published by Statistics Canada.

3.12 **Additional Opportunities.** Where the Province provides new types of financial benefits to First Nations relating to the Westcoast Connector Gas Transmission Project, the Province will provide notice to Metlakatla and the Parties will discuss those financial benefits, including any eligibility criteria, with the intention of increasing the benefits available to Metlakatla.

3.13 **Future Amendments.** Where the benefits under 3.12 (Additional Opportunities) are provided to First Nations under an agreement, the Parties will negotiate and attempt to reach agreement on amendments applicable to this Agreement.

3.14 **Further Assurances.** Nothing in this Agreement precludes Metlakatla 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 Metlakatla, other than those expressly set out in this Agreement; or
- c) participating in government programs for which Metlakatla may be eligible.

PART 4 – CONSULTATION ON WESTCOAST CONNECTOR GAS TRANSMISSION PROJECT

4.1 **Consultation.** The Parties acknowledge that:

- a) consultation between the Parties is occurring and will continue to occur with respect to the Province's assessment, review, any potential permitting processes and other Government Actions related to the Westcoast Connector Gas Transmission Project; and
- b) participation in those processes, including identifying potential impacts and seeking to resolve concerns, is expected to be carried out in a timely manner and in accordance with common law requirements or the process set out in any applicable consultation process agreement between the Parties.

PART 5 - CERTAINTY

5.1 **Support.** Metlakatla will provide any letter, certificate or confirmation of the matters set out in section 4.1 (Consultation), section 5.2 (Legal Challenges), section 5.3 (Release) and section 5.6 (Claims Resolved) on written request from the Province.

5.2 **Legal Challenges.** Provided the Province is not in default of its obligations under this Agreement, Metlakatla agrees not to bring any court actions or proceedings that directly or indirectly challenge any Government Actions in relation to the Westcoast Connector Gas Transmission Project on the basis that the Province has failed to consult or accommodate Metlakatla or on the basis that the Province has infringed any of Metlakatla's rights recognized and affirmed by section 35(1) of the *Constitution Act, 1982*.

- 5.3 **Release.** On receipt of the Initial Payment under section 3.2(a) (Payment Schedule) and provided the Province is not in default of its obligations to make payments under this Agreement (default meaning a failure to make payment within the time required after satisfaction of all conditions for payment), Metlakatla releases and discharges the Province from the following in relation to the Westcoast Connector Gas Transmission Project:
- a) all actions, causes of action, claims or proceedings arising from any legal obligation to consult and accommodate Metlakatla or to avoid infringement of Metlakatla's rights recognized and affirmed by section 35(1) of the *Constitution Act, 1982*; and
 - b) all debts, duties, demands, damages, interest, fines and costs, expenses, and compensation whatsoever amount, nature and kind, including economic benefits, capacity funding and revenue sharing payments of any kind including payments arising from any legal obligation to consult and accommodate or avoid infringement of Metlakatla's rights recognized and affirmed by section 35(1) of the *Constitution Act, 1982*.
- 5.4 **Interference.** Metlakatla agrees not to support or participate in any acts that frustrate, delay, stop or otherwise physically impede the right of the Province or the Westcoast Connector Gas Transmission Project proponent or any of their respective employees, contractors, agents, representatives or invitees to gain access to the Westcoast Connector Gas Transmission Project and to carry out any activities associated with the development and operations of the Westcoast Connector Gas Transmission Project.
- 5.5 **Assistance.** Metlakatla will assist the Province in seeking to resolve any action that may be taken by any Member of Metlakatla that is inconsistent with this Agreement.

5.6 **Claims Resolved.** Provided the Province is not in default of its obligations under this Agreement, Metlakatla agrees that this Agreement resolves all claims arising from any Government Actions in relation to the Westcoast Connector Gas Transmission Project with respect to:

- a) issues of economic benefits, capacity funding and revenue sharing or payments of any kind including payments related to any consultation and accommodation obligations; and
- b) compensation for infringement of Metlakatla' rights recognized and affirmed by section 35(1) of the *Constitution Act, 1982*.

PART 6 – CONDITIONS PRECEDENT

6.1 **Conditions Precedent to Funding.** Notwithstanding any other provision in this Agreement, any payment of funds by the Province to Metlakatla under this Agreement is subject to:

- a) there being sufficient monies available in an appropriation, as defined in the *Financial Administration Act*, R.S.B.C. 1996, c. 138 to enable the Province in any fiscal year or part thereof when such payment is required, to make such payment;
- 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;
- c) the band council resolution under section 6.2(a) (Conditions Precedent to Agreement) not having been varied, amended, repealed or replaced in a manner that alters or terminates its authority to comply with the terms of this Agreement; and
- d) Metlakatla being in compliance with all of its obligations under this Agreement.

6.2 **Conditions Precedent to Agreement.** The Province's execution of this Agreement is subject to:

- a) Metlakatla delivering to the Province a true or certified copy of a band council resolution approving this Agreement and authorizing its representative to sign this Agreement;
- b) The Province having obtained all required approvals, including Cabinet and Treasury Board approval; and
- c) Metlakatla's representations and warranties under this Agreement being true and correct on the Effective Date.

PART 7 - REPRESENTATIONS AND WARRANTIES

7.1 **Metlakatla Representations.** Metlakatla represents and warrants to the Province, with the intent and understanding that they will be relied on by the Province in entering into this Agreement, that:

- a) it has the legal power, capacity and authority to enter into this Agreement on its own behalf and on behalf of its Members;
- b) it has taken all necessary actions and has obtained all necessary approvals to enter into this Agreement for and on behalf of its Members;
- c) it has obtained or had the opportunity to obtain legal advice with respect to this Agreement; and
- d) this Agreement is a valid and binding obligation upon it.

7.2 **Provincial Representations.** The Province represents and warrants to Metlakatla, with the intent and understanding that they will be relied on by Metlakatla in entering into this Agreement, that it has the authority to enter into this Agreement and that this Agreement is a valid and binding obligation of the Province.

PART 8 - COMMENCEMENT

8.1 **Commencement.** This Agreement will commence and the Parties' obligations under this Agreement will take effect on the Effective Date.

PART 9 - DISPUTE RESOLUTION

9.1 **Dispute Resolution.** Where a dispute arises regarding the interpretation of the Agreement, the Parties' duly appointed representatives will meet within 30 days to attempt to resolve the dispute and where the Parties are unable to resolve the dispute within 30 days, the Parties may agree to utilize other dispute resolution mechanisms, including mediation.

PART 10 - NOTICE AND DELIVERY

10.1 **Notices.** Any notice, document, statement or report under this Agreement must be in writing, and will be deemed validly given to and received by the other Party, if served personally, on the date of personal service or, if delivered by mail or facsimile copier, when received as follows:

if to the Province:

Chief Negotiator
Ministry of Aboriginal Relations and Reconciliation
P.O Box Stn. Prov. Govt.
Victoria, BC V8W 9B1

Fax: (250) 387-6073

and if to Metlakatla:

Metlakatla First Nation
PO Box 459
Prince Rupert, BC V8J 3R2
Attention: Chief Harold Leighton
e-mail: hleighton@metlakatla.ca

Fax: (250) 628-9259

10.2 **Change of Address.** Either Party may, from time to time, give written or e-mail notice to the other Party of any change of address or facsimile number of the Party giving such notice and after the giving of such notice, the address or facsimile number therein specified will, for purposes of this Agreement be conclusively deemed to be the address or facsimile number of the Party giving such notice.

10.3 **Electronic Notice.** The Parties agree that they will utilize electronic and other methods of communication for the purposes of engagement whenever practicable and appropriate.

PART 11 – GENERAL PROVISIONS

11.1 **Not a Treaty.** The Agreement does not:

- a) constitute a treaty or land claims agreement within the meaning of section 25 or 35 of the *Constitution Act, 1982*; or
- b) affirm, recognize, abrogate or derogate from any Metlakatla' rights recognized and affirmed by section 35(1) of the *Constitution Act, 1982*.

11.2 **No Admissions Provisions.** Nothing in this Agreement:

- a) is an admission by the Province of the validity of the claims by Metlakatla to an aboriginal or treaty right recognized and affirmed by section 35(1) of the *Constitution Act, 1982*, or that the Westcoast Connector Gas Transmission Project and any related Government Actions have or will result in an unjustifiable infringement of any Aboriginal or treaty right(s) recognized and affirmed by section 35(1) of the *Constitution Act, 1982* of Metlakatla;
- b) is an admission by the Province that it has an obligation to provide financial or economic accommodation or compensation for any infringement to Metlakatla in relation to the Westcoast Connector Gas Transmission Project;

- c) is an admission by Metlakatla that the Province has fulfilled its obligations to consult, and where appropriate accommodate, Metlakatla in respect of any other project;
- d) precludes Metlakatla from identifying concerns about impacts of the Westcoast Connector Gas Transmission Project or precludes the Parties from seeking to resolve those concerns as part of the applicable provincial consultation processes while those processes are underway;
- e) may be construed as Metlakatla providing support or a release of any claims, demands, actions or causes of action that Metlakatla may have in relation to the conversion or modification of the Westcoast Connector Gas Transmission Project for the purpose of transportation of any material other than natural gas;
- f) precludes Metlakatla from bringing claims for breach of the Agreement or from defending a claim or raising any right recognized and affirmed by section 35(1) of the *Constitution Act, 1982* as a defence to a regulatory charge; and
- g) precludes the Province from relying on the payments made under this Agreement if challenged in any legal actions or proceedings with respect to the adequacy of the accommodation or compensation for any alleged infringement of Metlakatla's rights recognized and affirmed by section 35(1) of the *Constitution Act, 1982* in relation to the Westcoast Connector Gas Transmission Project.

11.3 **Entire Agreement.** This Agreement and any amendment 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 Parties.

11.4 **Amendment.** The Parties may agree to amend this Agreement in writing.

11.5 **Validity of Agreement.** If any part of this Agreement is void or unenforceable at law:

- a) the invalidity of that part will not affect the validity of the remainder, which will continue in full force and effect and be construed as if this Agreement had been executed without the invalid part; and
- b) the Parties will negotiate and attempt to reach agreement on a replacement for the part declared or held invalid with a view to achieving the intent of the Parties as expressed in this Agreement.

11.6 **Further Acts and Assurances.** Each of the Parties will, upon the reasonable request of the other, make, do, execute or cause to be made, done or executed all further and other lawful acts, deeds, things, devices, documents, instruments and assurances whatever for the better and absolute performance of the terms and conditions of this Agreement.

11.7 **No Implied Waiver.** Any waiver of:

- a) a provision of this Agreement;
- b) the performance by a Party of an obligation under this Agreement; or
- c) a default by a Party of an obligation under this Agreement,

will be in writing and signed by the Party giving the waiver and will not be a waiver of any other provision, obligation or subsequent default.

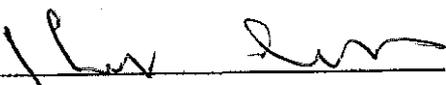
11.8 **Assignment.** Metlakatla will not assign, either directly or indirectly, this Agreement or any right of the Metlakatla under this Agreement without the prior written consent of the Province.

11.9 **Governing Law.** This Agreement will be governed by and construed in accordance with the laws of British Columbia.

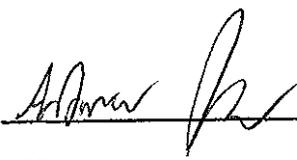
11.10 **Execution in Counterpart.** This Agreement may be entered into by each Party signing a separate copy of this Agreement (including a photocopy or facsimile copy) and delivering it to the other Party by facsimile transmission.

IN WITNESS WHEREOF the Parties have executed this Agreement as set out below:
Agreed to this 13 day of December, 2014

Signed on behalf of Metlakatla by



Chief Harold Leighton



Witness

**Signed on behalf of Her Majesty the
Queen In Right of the Province of
British Columbia by**



Minister John Rustad
Ministry of Aboriginal Relations and
Reconciliation



Witness