

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*, SBC 2003, 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, 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 are an economic accommodation and constitute a component of any accommodation or compensation that may be required for any impacts or infringements to the Aboriginal Rights of the Ktunaxa Nation as a result of Government Actions related to forest and range activities 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 met the procedural aspects of its obligation to consult with respect to potential impacts or infringements to the Aboriginal Rights of the Ktunaxa Nation in the context of any Government Action related to forest and range activities 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 related to forest and range activities and any forest or range practices that may be carried out under an Operational Plan in the Ktunaxa Territory, 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 economic accommodation or constitute a component of any accommodation or compensation for impacts or infringements to the Aboriginal Rights of the Ktunaxa Nation, and
 - (b) work collaboratively with the Province to resolve issues relevant to the Parties that may adversely affect the implementation of this Agreement or adversely affect, challenge or impede authorized activities associated with forest and range activities and any forest or range practices carried out pursuant to an Operational Plan in the Ktunaxa Territory.

SECURITY DEPOSITS

- 5** (1) In recognition of the Ktunaxa Parties agreeing to the provisions of this Project Appendix, the Province, at the request of one or more of the Ktunaxa Communities or a legal entity controlled by one of more of the Ktunaxa Communities, 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 take effect as of October 1, 2017 and unless renewed in accordance with section 8, or terminated earlier in accordance with any of the provisions hereof, will continue until September 30, 2018.

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(13) through 20(16) 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 30, 2018, 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.

- (2) Despite subsection (1) and section 6, the Parties will, if both Parties have received such authorizations as they may require, begin negotiations for a new Forest Revenue Sharing Project Appendix at the Ktunaxa Nation's request, which may come into effect prior to September 30, 2018.

SIGNED in the presence of

Denine Milner this 17 day
of July, 2017 at
Crankbrook, BC:

The Ktunaxa Nation Council Society,
on its own behalf and on behalf of the
Ktunaxa Nation, ʔakisq̓nuk First
Nation, ʔaq̓am, Lower Kootenay Indian
Band and Tobacco Plains Indian Band



Signature of witness

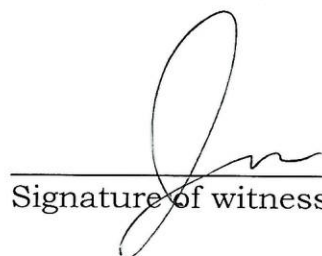
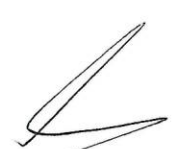


Kathryn Teheese, Chair


SIGNED in the presence of

Jonathan SA this 20th day
of September, 2017 at
Victoria, BC:

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



, 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) Selkirk; and
 - (b) 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) (the "Ktunaxa Territory Based Component").

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) (the "Ktunaxa Direct Award Tenure Based Component").

PROJECT PAYMENT TRANSITION

- 3** (1) The Parties agree that a transition to revenue sharing based entirely on forest revenue will be phased in, in accordance with subsection (2).
- (2) For each BC Fiscal Year that this Project Appendix is in effect, a portion of the Project Payment is calculated by adding the total of the Ktunaxa Territory Based Component to the Ktunaxa Direct Award Tenure Based Component for that BC Fiscal Year (the "Project Payment Transition").
- (3) For the 2017/18 BC Fiscal Year that this Project Appendix is in effect, the remaining portion of the Project Payment is calculated by determining the value of the payments that were made by British Columbia to the Ktunaxa Parties in any given full year under the *Ktunaxa Nation Council Interim Agreement on Forest & Range Opportunities* ("the Annual Amount") and applying 40 percent to that Annual Amount.
- (4) Despite subsection (3), if the Project Payment Transition calculation for BC Fiscal Year 2017/18 under subsection (2) provides:
- (a) an amount calculated under sections 1 and 2 that is equal to or greater than the annual payments received under the *Ktunaxa Nation Council Interim Agreement on Forest & Range Opportunities*, then the Ktunaxa Parties shall only receive the annual payments described by the Project Payment Transition calculation in subsection (2) for BC Fiscal Year 2017/18;

- (b) an amount calculated under the Project Payment Transition calculations in subsections (2) and (3) that is greater than the annual payments received under the *Ktunaxa Nation Council Interim Agreement on Forest & Range Opportunities*, then the Ktunaxa Parties shall only receive an annual payment for BC Fiscal Year 2017/18 that is equal to the annual payment received under the *Ktunaxa Nation Council Interim Agreement on Forest & Range Opportunities*.

Dated the 24 day of August, 2017

**Agreement to Amend the Economic and Community Development
Agreement as it relates to the Forest Revenue Sharing Project Appendix
(the "Agreement")**

Whereas Her Majesty the Queen in Right of the Province of British Columbia (the "Province") and the Ktunaxa Nation Council Society (the "KNC"), on its own behalf and on behalf of the Ktunaxa Nation, ʔaqam (formerly St. Mary's Indian Band), Tobacco Plains Indian Band, Lower Kootenay Indian Band and ʔakisq̓nuk First Nation (the "Ktunaxa Parties") entered into an Economic and Community Development Agreement dated January 29, 2013 that included a Forest Revenue Sharing Project Appendix (the "ECDA") and amended that agreement under a consolidated 2017 Agreement dated March 30, 2017,

And Whereas subsection 13(4) of the ECDA provides that any amendments must be in writing and signed by the KNC on behalf of the Ktunaxa Parties and by the Province,

Therefore the Province and the KNC agree as follows:

1. The ECDA is amended by amending the Forest Revenue Sharing Project Appendix as follows:
 - (a) in subsection 4(2), by deleting the words "constitute an accommodation for potential infringements on the Aboriginal Rights of the Ktunaxa Nation in relation to any Government Actions related to" and replacing these words with "are an economic accommodation and constitute a component of any accommodation or compensation that may be required for any impacts or infringements to the Aboriginal Rights of the Ktunaxa Nation as a result of Government Actions related to", so that the subsection as amended will provide:

"4 (2) The Ktunaxa Parties acknowledge and agree that the Project Payments made under section 3 are an economic accommodation and constitute a component of any accommodation or compensation that may be required for any impacts or infringements to the Aboriginal Rights of the Ktunaxa Nation as a result of Government Actions related to

forest and range activities and any forest or range practices carried out pursuant to an Operational Plan.”

(b) in subsection 4(3), by

- i. deleting the words “that the Province will take”;
- ii. replacing the words “potential infringements of” with the words “potential impacts or infringements to”;

so that the subsection as amended will provide:

“4 (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 met the procedural aspects of its obligation to consult with respect to potential impacts or infringements to the Aboriginal Rights of the Ktunaxa Nation in the context of any Government Action related to forest and range activities and any forest or range practices that may be carried out under an Operational Plan in the Ktunaxa Territory.”

(c) in subsection 4 (4)(a), by

- i. deleting the words “or an Operational Plan or activities carried out pursuant to those decisions or plans” and replacing them with “and any forest or range practices that may be carried out under an Operational Plan in the Ktunaxa Territory”;
- ii. adding the word “economic” before the word “accommodation”;
- iii. adding the words “or constitute a component of any accommodation or compensation” after the word “accommodation”;
- iv. replacing the words “impacts on” with the words “impacts or infringements to”;

so that the subsection as amended will provide:

“4 (4) (a) not challenge or support a challenge to a Government Action related to forest and range activities or an Operational Plan or activities carried out pursuant to those decisions or plans and any forest or range practices that may be carried out under an Operational Plan in the Ktunaxa Territory, 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 economic accommodation or constitute a component of any accommodation or compensation for impacts on the Aboriginal Rights of the Ktunaxa Nation, and”

- (d) in subsection 4 (4) (b) by deleting the words “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” and replacing them with “work collaboratively with the Province to resolve issues relevant to the Parties that may adversely affect the implementation of this Agreement or adversely affect, challenge or impede authorized activities associated with forest and range activities and any forest or range practices carried out pursuant to an Operational Plan in the Ktunaxa Territory”, so that the subsection as amended will provide:

“4 4 (b) work collaboratively with the Province to resolve issues relevant to the Parties that may adversely affect the implementation of this Agreement or adversely affect, challenge or impede authorized activities associated with forest and range activities and any forest or range practices carried out pursuant to an Operational Plan in the Ktunaxa Territory.”

- (e) in subsection 6(1), by deleting the date “**October 1, 2016**” and replacing it with “**October 1, 2017**”, and by deleting the date “**September 30, 2017**” and replacing it with “**September 30, 2018**”, so that the subsection as amended will provide:

“6 (1) The provisions of this Project Appendix will take effect as of October 1, 2017 and unless renewed in accordance with section 8, or terminated earlier in accordance with any of the provisions hereof, will continue until September 30, 2018.”;

- (f) in subsection 7(2), by deleting the reference to subsection “20(15)” and replacing it with “20(16)”, so that the subsection as amended will provide:

“7 (2) Subsections 20(13) through 20(16) of the Main Agreement (Suspension and Termination) apply to the suspension of Project Payments under subsection (1), with such changes as may be necessary.”

(g) in subsection 7(3), by deleting the year “**2017**” and replacing it with “**2018**”, so that the subsection as amended will provide:

“7 (3) If this Project Appendix is terminated prior to September 30, 2018, the Project Payment payable for the BC Fiscal Year in which the termination becomes effective will be prorated to the termination date.”;

(h) in subsection 8(2), by deleting the year “**2017**” and replacing it with “**2018**”, so that the subsection as amended will provide:

“8 (2) Despite subsection (1), and section 6, the Parties will, if both Parties have received such authorizations as they may require, begin negotiations for a new Forest Revenue Sharing Project Appendix at the Ktunaxa Nation’s request, which may come into effect prior to September 30, 2018.”;

(i) in subsection 3(3) of Schedule 1, by deleting the years “**2016/17**” and replacing it with “**2017/18**”, so that the subsection as amended will provide:

“3 (3) For the 2017/18 BC Fiscal Year that this Project Appendix is in effect, the remaining portion of the Project Payment is calculated by determining the value of the payments that were made by British Columbia to the Ktunaxa Parties in any given full year under the *Ktunaxa Nation Council Interim Agreement on Forest & Range Opportunities* (the “Annual Amount”) and applying 40 percent to that Annual Amount.”;

(j) in subsection 3(4) of Schedule 1, by deleting the years “**2016/17**” and replacing it with “**2017/18**”, so that the subsection as amended will provide:

“3 (4) Despite subsection (3), if the Project Payment Transition calculation for BC Fiscal Year 2017/18 under subsection (2) provides:

(a) an amount calculated under sections 1 and 2 that is equal to or greater than the annual payments received under the *Ktunaxa Nation Council Interim Agreement on Forest & Range Opportunities*, then the Ktunaxa Parties shall only receive the annual payments described by the Project Payment Transition calculation in subsection (2) for BC Fiscal Year 2017/18;

(b) an amount calculated under the Project Payment Transition calculations in subsections (2) and (3) that is greater than the annual payments received under the *Ktunaxa Nation Council Interim Agreement on Forest & Range Opportunities*, then the Ktunaxa Parties shall only receive an annual payment for BC Fiscal Year 2017/18 that is equal to the annual payment received under the *Ktunaxa Nation Council Interim Agreement on Forest & Range Opportunities*.”;

2. The Province will provide notice on its website that the ECDA has been amended by this Agreement and will make a copy of this Agreement available on its websites to the same extent that the ECDA is made available.
3. A consolidated version of the Forest Revenue Sharing Project Appendix is attached as Exhibit A.
4. All other provisions of the ECDA remain in full force and effect.
5. This Agreement will take effect as of October 1, 2017.
6. In the event of any discrepancy between this Agreement and the consolidated version attached as Exhibit A, the version attached as Exhibit A will be relied upon as the authoritative version.
7. This Agreement may be executed in counterpart and by each Party delivering it to the other by fax or electronic mail. Each facsimile or scanned copy will be deemed to be an original and the counterparts taken together will be deemed to constitute one document.

Signed on behalf of the Ktunaxa
Nation Council Society, on its own
behalf and on behalf of the Ktunaxa
Nation, ʔaqam (formerly St. Mary's
Indian Band), Lower Kootenay Indian
Band and ʔakisq̓nuk First Nation this
17 day of
July, 2017:


Kathryn Teneese, Chair

Signed on behalf of HER MAJESTY
THE QUEEN IN RIGHT OF THE
PROVINCE OF BRITISH COLUMBIA,
as represented by the Minister of
Aboriginal Relations and
Reconciliation this 24th day of
August, 2017:


Doug Caul, Deputy Minister

Exhibit A

Forest Revenue Sharing Project Appendix