

KWADACHA FIRST NATION

INTERIM AGREEMENT

April 1, 2006

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This Interim Agreement is made as of April 1, 2006,

Among:

KWADACHA FIRST NATION, as represented by its duly constituted Band Council

(“Kwadacha”)

and:

BRITISH COLUMBIA HYDRO AND POWER AUTHORITY, a corporation continued under the *Hydro and Power Authority Act*, having its registered and records office at 333 Dunsmuir Street, Vancouver, British Columbia

(“BC Hydro”)

and:

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

(the “Province”)

Background:

- A. The Parties have been negotiating, for many years, the resolution of all past, present, and future issues, grievances, and claims relating, directly or indirectly, to the Facilities;
- B. The Parties have executed an Agreement in Principle (the “AIP”) dated as of April 1, 2006, a copy of which is attached to this Agreement as Schedule 1, setting out the principles upon which the Parties will proceed to negotiate a Final Agreement;
- C. Concurrent with the execution, ratification, and delivery of the AIP, the Parties wish to execute, ratify, and deliver this Agreement to provide for:
- (i) the payment by BC Hydro to Kwadacha of certain amounts set out in this Agreement and the possible termination of such payments;
 - (ii) certain arrangements among the Parties between the AIP and any Final Agreement; and
 - (iii) the resolution of Disputes; and
- D. The Parties wish to set out their agreement on such terms and conditions in the manner set forth below.

The Parties agree as follows:

ARTICLE 1 DEFINITIONS

1.1 Definitions

In this Agreement, unless there is something in the subject matter or context inconsistent therewith or unless otherwise specifically provided, the following words, phrases, and expressions have the following meanings:

- (a) **“Action”** means Supreme Court of British Columbia Action No. L013565, Vancouver Registry;
- (b) **“Additional Payments”** has the meaning in Section 2.2(b);
- (c) **“AIP”** has the meaning set out in Recital B;
- (d) **“AIP Effective Date”** means April 1, 2006;
- (e) **“Approved WUP”** means the water use plan for the geographical area outlined in Schedule 3 which has been approved by the Province and which has been approved and implemented by the Comptroller of Water Rights or any applicable authority;
- (f) **“Auditor”** has the meaning in Section 4.1;
- (g) **“Authorizations”** means all tenures, approvals, permits, licences, and other authorizations held by BC Hydro for the Facilities as of the AIP Effective Date, or in the future, including any amendments or changes made after the AIP Effective Date to the Authorizations held by BC Hydro as of the AIP Effective Date;
- (h) **“Audit Report”** has the meaning in Section 4.1(c);
- (i) **“Band Council”** means the duly elected council of Kwadacha within the meaning of the *Indian Act*, and any successors thereof;
- (j) **“Band Council Resolution”** means a resolution passed by the Band Council, signed by not less than a majority of the Kwadacha councillors at a duly convened Band Council meeting;
- (k) **“BC Hydro”** means British Columbia Hydro and Power Authority, a corporation continued under the *Hydro and Power Authority Act*, R.S.B.C. 1996, c.212, its subsidiaries, predecessors, successors, and assigns;
- (l) **“Business Day”** means any day other than a Saturday, Sunday, or a statutory holiday in British Columbia;

- (m) **“Capitalization Notice Date”** has the meaning in Section 2.11(g);
- (n) **“Chief”** means the Chief of Kwadacha elected and in office;
- (o) **“Committee Report”** means the Peace Water Use Plan included in the Peace Water Use Plan Committee Report dated December 2003;
- (p) **“Community Facilities”** means a building or structure owned or operated, directly or indirectly, by Kwadacha that is used for community activities or programs, or both, and that is not used as a private residence or a commercial enterprise, provided that buildings or structures that are used only partially or incidentally for a commercial enterprise and which are owned or leased by Kwadacha or economic development organizations established for the benefit of Kwadacha and its Members will be Community Facilities;
- (q) **“Community Related Purposes”** means the purposes set out in Schedule 2;
- (r) **“CPI”** means the most recently published All-Items Consumer Price Index for British Columbia as published by Statistics Canada or such successor index as may replace same, or, in the event no such index or successor index exists, then the most comparable index appropriately adjusted;
- (s) **“Defaulting Party”** has the meaning in Section 6.1;
- (t) **“Defined Operation”** means the operation of the Reservoir at a Reservoir Elevation that is, within a quality-controlled margin of measurement error of +/- 0.1 meters:
 - (i) above 2205 feet (672.08 meters); or
 - (ii) below the lower of 2147 feet (654.41 meters), or such other level or levels as may be established by the Water Comptroller in a future water use planning process and agreed to by Kwadacha;
- (u) **“Dispute”** means:
 - (i) any dispute, difference, or disagreement between Kwadacha and BC Hydro as to the meaning, application, implementation, or breach of this Agreement, including but not limited to any dispute, difference, or disagreement as to:
 - (A) whether or not an Event of Default has occurred;
 - (B) whether or not a proposed action by Kwadacha or BC Hydro will constitute an Event of Default;

- (C) financial sanctions that may be imposed for an Event of Default by Kwadacha under Article 8; or
 - (D) any claim for damages or any other legal or equitable remedy for breach of the Agreement; or
- (ii) a disagreement between Kwadacha and the Auditor concerning policies and procedures directed by the Auditor under Section 4.1;
- (v) **“Dispute Resolution Process”** means the dispute resolution process set out in Article 7;
- (w) **“Disputing Party”** means, for a Dispute under:
 - (i) Section 1.1(u)(i), Kwadacha or BC Hydro; or
 - (ii) Section 1.1(u)(ii), Kwadacha or the Auditor;
- (x) **“Documents”** has the meaning in Schedule 6;
- (y) **“EAO”** has the meaning in Section 8.7(b)(iii)
- (z) **“Eligible Recipients”** means Members and, as determined by the Band Council, in its sole discretion, as evidenced by a written Band Council Resolution, also means:
 - (i) parents, spouses (common-law and legal), children, step-children, and adopted children of a Member; or
 - (ii) persons who ordinarily reside in the Village;
- (aa) **“Event of Default”** has the meaning in Section 6.1;
- (bb) **“Expenditure Request”** has the meaning in Section 3.4;
- (cc) **“Facilities”** means the W.A.C. Bennett Dam, the Peace Canyon Dam, the Reservoir, and any other existing works, including transmission and distribution facilities, substations, generating stations, reservoirs, and related works owned or operated by BC Hydro in the geographic area outlined in the map attached as Schedule 3 as of the AIP Effective Date, which are used or operated in connection with the W.A.C. Bennett Dam or the Peace Canyon Dam; and includes works added at any time after the AIP Effective Date as part of routine maintenance or repairs, and the installation or replacement of Operating Components of the Facilities at any time after the AIP Effective Date whether or not the installation of such Operating Components results in an increase in the generating capacity or efficiency of the Facilities;

- (dd) **“Final Agreement”** means any final agreement among Kwadacha, BC Hydro, and the Province which will be negotiated, executed, ratified, and delivered based on the AIP;
- (ee) **“Final Agreement Effective Date”** means the date upon which the Final Agreement has been executed, ratified, and delivered;
- (ff) **“Financial Obligations”** means the financial obligations under the Final Agreement set out in the AIP of:
 - (i) BC Hydro regarding Annual Payments, the Energy Fund, the Endowment Fund (each as defined in the AIP), and any specific studies or plans; and
 - (ii) the Province regarding annual funding to provide for all season road maintenance on the Road;
- (gg) **“Fixed Payments”** has the meaning in Section 2.2(a);
- (hh) **“Forestry”** has the meaning in Section 5.2;
- (ii) **“GMS Upgrades Proposal”** means the current proposal to replace or upgrade selected equipment for generating units 6, 7, and 8 at BC Hydro’s G.M. Shrum Generating Station and includes the development, construction, and operation of the resulting Facilities;
- (jj) **“Health Impact”** means a chemical, biological, or physical impact resulting in physical illness to a Member caused or contributed to by the Facilities or their construction, repair, maintenance, or operation as a result of dust, mercury, or another mechanism that is unknown or unforeseeable as of the AIP Effective Date and not capable of discernment with due diligence, excluding any personal injury sustained by, or wrongful death of, a Member caused by or attributable to drownings, boating accidents, and other similar causes;
- (kk) **“Information Sharing Area”** means the geographic area outlined and marked as “A” in Schedule 5, and the area of the main stem of the Peace River between Peace Canyon and the Alberta border outlined and marked as “B” in Schedule 5;
- (ll) **“Initial Payment”** has the meaning in Section 2.1;
- (mm) **“Interest Rate”** means the variable nominal interest rate per annum being the prime interest rate of the Canadian Imperial Bank of Commerce (or its successor) for Canadian dollar commercial loans in Canada as publicly declared by the bank from time to time as its **“prime rate”**;
- (nn) **“Kwadacha”** means the Kwadacha First Nation, also known as the Kwadacha Band, a ‘band’ as defined under the *Indian Act*, including any and all Members;

(oo) **“Licensed Use”** means:

- (i) uses of the Facilities, and uses of waters for the Facilities, authorized under the Authorizations listed in Schedule 4 and held by BC Hydro as of the AIP Effective Date, as may be modified by any water licences issued to BC Hydro during the Payment Period; or
- (ii) the sale or export of power generated through the Licensed Use of the Facilities,

and, for greater certainty, except as provided in Section 1.1(oo)(i), the scope of the **“Licensed Use”** within the meaning of this Agreement is not expanded, diminished, or otherwise modified by any amendments to or changes in the Authorizations made or obtained after the AIP Effective Date;

(pp) **“Main Table”** means the collection of representatives and advisors of the Parties participating in meetings for the purpose of negotiating and concluding a Final Agreement;

(qq) **“Maintenance Contract”** has the meaning in Section 5.2;

(rr) **“Member”** means:

- (i) a ‘member of a band’, in respect of the Kwadacha Band List, within the meaning of subsection 2(1) of the *Indian Act*; or
- (ii) a past, present or future member of Kwadacha, or any of their heirs, legal representatives, successors, and assigns;

and **“Members”** means any collective of two or more Members;

(ss) **“New Project”** means, for the purposes of Sections 8.4 and 8.5, any new power-related project proposed or constructed after the AIP Effective Date by, with the approval of, or under or subject to the control of the Province, BC Hydro, or another corporation owned or controlled, directly or indirectly, by the Province or BC Hydro, and, for greater certainty, excludes any and all works added to the Facilities at any time after the AIP Effective Date as part of routine maintenance, and the installation and replacement of Operating Components;

(tt) **“Non-Defaulting Party”** has the meaning in Section 6.2;

(uu) **“Non-Licensed Use”** has the meaning in Section 8.5(a);

(vv) **“Notification Date”** has the meaning in Section 2.11(c);

- (ww) **“Operating Components”** means generation, transmission, and distribution equipment, machinery, and other works, including ancillary structures, that form part of the Facilities from time to time;
- (xx) **“Operating Payments”** has the meaning in Section 2.4(a);
- (yy) **“Parties”** means Kwadacha, BC Hydro, and the Province, and **“Party”** means any one of them;
- (zz) **“Payments”** means the Initial Payment, Fixed Payments, Additional Payments, and Operating Payments, and **“Payment”** means any one of them, as the context may require;
- (aaa) **“Payment Period”** means the period beginning on the date of ratification of this Agreement by all Parties and expiring on the:
- (i) Final Agreement Effective Date; or
 - (ii) date of Kwadacha’s receipt of the Termination Notice;
- (bbb) **“Plaintiffs”** means the plaintiffs in the Action, on their own behalf as well as on behalf of the Members;
- (ccc) **“Proceeding”** means:
- (i) any action, cause of action, injunction, suit, claim, specific claim, demand, trial, hearing, or other process or proceeding before any Court, board, commission, tribunal, or other judicial, quasi-judicial or administrative body, relating directly or indirectly to the planning, development, construction, or operation of the Facilities;
 - (ii) any administrative or consultation process relating to the operation of the Facilities that is open to members of the public or stakeholders, including any water use planning process relating to the Facilities; or
 - (iii) any public relations campaign, or direct lobbying of municipal, provincial, or federal government officials;
- but, for greater certainty, excludes land claims negotiations or any other negotiations the outcome of which is dependent on the agreement or approval of either or both of BC Hydro and the Province;
- (ddd) **“Province”** means Her Majesty the Queen in Right of the Province of British Columbia and includes her ministers, officials, servant, agents, legal representatives, and assigns;
- (eee) **“Reservoir”** means the Williston Reservoir;

- (fff) **“Reservoir Elevation”** means the elevation of the Reservoir above sea level as recorded at the Water Survey of Canada Lost Cabin Gauge (07EF002) located on the north arm of the Peace reach of the Reservoir near the junction with the Finlay and Parsnip reaches;
- (ggg) **“Road”** means the existing road commencing at the Kemess Junction (km 173) and continuing to Fort Ware as may be modified from time to time;
- (hhh) **“Termination Date”** has the meaning in Section 2.3;
- (iii) **“Termination Notice”** has the meaning in Section 2.3;
- (jjj) **“TKD”** means the Tsay Keh Dene First Nation;
- (kkk) **“Trustee”** has the meaning in Section 3.1; and
- (lll) **“Village”** means the village site of Kwadacha.

1.2 Schedules

The following attached schedules form part of this Agreement:

- (a) Schedule 1 - AIP;
- (b) Schedule 2 - Community Related Purposes;
- (c) Schedule 3 - Facilities Map;
- (d) Schedule 4 - Authorizations as of the AIP Effective Date;
- (e) Schedule 5 - Information Sharing Area; and
- (f) Schedule 6 - Communications Protocol.

1.3 Representations and Warranties of BC Hydro and Kwadacha

BC Hydro represents and warrants to each of the other Parties that, to the knowledge of BC Hydro, all tenures, approvals, permits, licences, and authorizations held by BC Hydro for the Facilities as of the AIP Effective Date are specified in Schedule 4, and have been disclosed to, or made available for inspection by, Kwadacha.

Kwadacha represents and warrants to each of the other Parties that it has authority to act on behalf of the Plaintiffs with respect to the conduct of the Action, and with respect to any obligations assumed under this Agreement pertaining to the conduct of the Action.

1.4 Reliance

Each Party acknowledges and agrees that the other Parties have entered into this Agreement relying on the representations and warranties and other terms and conditions of this Agreement, notwithstanding any independent searches or investigations that have been or may be undertaken by or on behalf of such Parties.

1.5 Consequence of Non-Disclosure of Authorization

If, despite Section 1.3, it is determined under the Dispute Resolution Process that there existed, as of the AIP Effective Date, any Authorization that was not listed in Schedule 4:

- (a) if that Authorization imposed a material restriction, limitation, or condition on the Licensed Use of the Facilities,
 - (i) Kwadacha may, under the Dispute Resolution Process, pursue any claim it may have against BC Hydro arising from any use of the Facilities that is contrary to such restriction, limitation, or condition, in the same manner as if that use were a Defined Operation; and
 - (ii) for the purposes of Article 8, any use of the Facilities that is contrary to such restriction, limitation, or condition will be deemed to fall outside the scope of the Licensed Use;
- (b) except as provided in Sections 1.5(a)(i) and (ii), Kwadacha will have no other remedy, including termination or rescission of this Agreement or the Final Agreement, as a result of BC Hydro's non-disclosure of that Authorization; and
- (c) the Parties' respective rights and obligations under this Agreement will not otherwise be affected or modified.

1.6 Interpretation

Under this Agreement, except as otherwise expressly provided, or unless the context otherwise requires:

- (a) words importing the masculine gender include the feminine and neuter genders, corporations, partnerships, and other persons, and words in the singular include the plural, and vice versa, wherever the context requires;
- (b) all references to designated Articles and Sections are to the designated Articles and Sections of this Agreement;
- (c) using separate Articles and Sections and inserting headings are for convenient reference only and will not affect how this Agreement is interpreted;
- (d) any reference to a currency is a reference to Canadian currency;

- (e) there will be no presumption in law or in equity that any ambiguous or doubtful expression is to be resolved in favour of any particular Party; and
- (f) except where amounts are expressly stated to be adjusted for inflation, all amounts referred to in this Agreement are nominal amounts.

1.7 Independent Legal Advice

Each of the Parties acknowledge that each of them have executed this Agreement freely and voluntarily, without duress and after receiving independent legal advice from their respective solicitors.

1.8 Obligations Conditional

The obligations of the Parties under this Agreement are subject to all Parties executing, ratifying, and delivering this Agreement and the AIP. The AIP will be deemed to be executed, ratified, and delivered under the terms and conditions of the AIP. Each of the Parties will provide written notice to the other Parties of their respective ratification of the AIP within 48 hours of such ratification or execution of this Agreement.

1.9 Ratification of This Agreement

The obligations of the Parties under this Agreement are subject to:

- (a) BC Hydro's Board of Directors approving the execution and delivery of this Agreement by BC Hydro;
- (b) the Lieutenant Governor-in-Council approving the execution and delivery of this Agreement by the Province; and
- (c) Kwadacha obtaining a written Band Council Resolution authorizing the Chief to execute and deliver this Agreement.

Each of the Parties covenants and agrees to forthwith upon execution of this Agreement proceed diligently and in good faith to obtain ratification of their respective ratifying bodies. Each of the Parties will provide written notice to the other Parties of their ratification of this Agreement within 48 hours of such ratification or execution of this Agreement. Upon ratification of this Agreement by all Parties, this Agreement will be deemed to be delivered.

1.10 Negotiation of the Final Agreement

Forthwith upon execution, ratification, and delivery of this Agreement, and during the Payment Period, the Parties will proceed diligently and in good faith to negotiate, execute, ratify, and deliver the Final Agreement based on the AIP. The scope of negotiations during this period will not include any proposal or proposals that, if implemented, would have the effect of creating obligations on a Party that are not contemplated by the AIP or of expanding or diminishing an obligation of a Party that is contemplated in the AIP. Without limiting the generality of the

foregoing and for greater certainty, a proposal that would have the effect, if implemented, of making the Financial Obligations of BC Hydro or the Province to Kwadacha in the Final Agreement greater or lesser than contemplated in the AIP is not within the permissible scope of negotiations.

ARTICLE 2 PAYMENTS

2.1 Initial Payment

Within 7 days of the execution, ratification, and delivery of:

- (a) this Agreement; and
- (b) the AIP,

by all the Parties, in consideration of the agreements of Kwadacha contained in Article 8 of this Agreement, BC Hydro will pay \$1,000,000 (the “**Initial Payment**”) to Kwadacha. Kwadacha will use the Initial Payment for Community Related Purposes.

2.2 Fixed and Additional Payments

During the Payment Period, BC Hydro will pay to the Trustee (except for the first Fixed Payment which BC Hydro will pay to its solicitors and BC Hydro will instruct such solicitors to hold the Fixed Payment in an interest bearing trust account and pay such Fixed Payment, and accrued interest, to the Trustee upon written notification from the Trustee to such solicitors that the Trustee has been validly appointed under this Agreement), each subject to adjustment under Section 2.6:

- (a) fixed payments of \$600,000 (the “**Fixed Payments**”); and
- (b) additional payments (the “**Additional Payments**”) of \$103,000.

The first Fixed Payment will be paid when BC Hydro pays the Initial Payment to Kwadacha and subsequent payments of the Fixed Payments will be paid on April 1st of each year thereafter commencing on April 1 after the payment of the first Fixed Payment.

The first Additional Payment will be paid on the first April 1 subsequent to the payment of the Initial Payment and subsequent payments of Additional Payments will be paid on April 1st of each year thereafter. Kwadacha will use the Fixed Payments and the Additional Payments for Community Related Purposes.

2.3 Termination of Payments and Obligations

The Parties estimate that the completion of the Final Agreement and its ratification will take approximately equal time, being one year each. The Final Agreement will be deemed to be executed, ratified, and delivered under the terms and conditions of the Final Agreement. Each of

the Parties will provide written notice to the other Parties of their respective ratification of the Final Agreement within 48 hours of such ratification. Subject to the Parties agreeing to a single extension of this timeframe, such agreement not to be unreasonably withheld, if the Parties have not executed, ratified, and delivered the Final Agreement on or before the second anniversary of the date of the AIP being ratified by all Parties or such later date as the Parties may have agreed upon in writing (the “**Termination Date**”), then neither BC Hydro nor the Province will be required to make any further payments under Section 2.2 or to perform the obligations in Article 5, except for Section 5.5 which may not be terminated prior to the completion of the health studies. If the Parties have not executed, ratified, and delivered the Final Agreement on or before the Termination Date then BC Hydro may, at its sole option and without liability, provide written notice to Kwadacha (the “**Termination Notice**”) that BC Hydro and the Province are terminating payments of Fixed Payments and Additional Payments and the performance of their obligations in Article 5, (except for Section 5.5), provided that BC Hydro will continue to remain liable to pay to Kwadacha any Fixed Payments and Additional Payments due to Kwadacha under Section 2.2 prior to the Termination Date and to perform its obligations to Kwadacha under Article 5 prior to the Termination Date.

2.4 Community Facilities

BC Hydro will pay to Kwadacha:

- (a) the first of annual payments of \$100,000 (the “**Operating Payments**”) when BC Hydro pays the Initial Payment to Kwadacha; and
- (b) on April 1 of each year thereafter an additional Operating Payment, subject to adjustment under Section 2.6.

BC Hydro will continue to pay the Operating Payments to Kwadacha in perpetuity, unless otherwise provided for in the Final Agreement or capitalized in accordance with Sections 2.10 and 2.11. For greater certainty the Operating Payments will continue despite a Termination Notice. Kwadacha will use the Operating Payments to fund the operation, maintenance, and programming/administration of Community Facilities.

2.5 Provincial Guarantee

Until such time as BC Hydro makes the payment under Section 2.11(h), the Province hereby guarantees BC Hydro’s obligation to pay the Operating Payments under Section 2.4.

2.6 Fixed, Additional, and Operating Payment Adjustment

Each April 1 beginning the first April after payment of the first Fixed Payment and on each April 1 thereafter, each Fixed Payment, each Additional Payment, and each Operating Payment will be adjusted for inflation by the percentage change over 12 months in the CPI.

2.7 Late Payment

If BC Hydro fails to make a Payment when due under this Agreement the amount of the Payment will accrue interest at the Interest Rate plus 4% from the date such Payment is due until the date such Payment is made. This Section 2.7 is without prejudice to any rights or remedies of Kwadacha under this Agreement or Article 7.

2.8 Restrictions

Notwithstanding anything contained in this Agreement, Kwadacha may not expend Initial Payments, Fixed Payments, or Additional Payments:

- (a) for direct payments to Eligible Recipients; or
- (b) for per capita distributions to Eligible Recipients;

other than expenditure of Fixed Payments or Additional Payments made for Community Related Purposes through programs available to a group or class of Eligible Recipients, in which case Kwadacha will provide an Expenditure Request for such program to the Trustee, containing the details of such program.

2.9 Advance Payments

In recognition of BC Hydro's payments to Kwadacha prior to the date of this AIP, the first Fixed Payment under Section 2.2 will be reduced by \$50,000.

2.10 Option to Capitalize

If a Termination Notice is provided to Kwadacha by BC Hydro under Section 2.3, at any time after the tenth anniversary of the Termination Date, BC Hydro may capitalize the Operating Payments and pay the capitalized amount of the Operating Payments to Kwadacha. The Dispute Resolution Process is not applicable to Sections 2.10 and 2.11, including a decision by BC Hydro to capitalize the Operating Payments, but is applicable to a determination of Kwadacha's reasonably incurred costs under Section 2.11(c), and the dispute resolution process with respect to the capitalized amount of the Operating Payments will be as described in Section 2.11.

2.11 Capitalization of Operating Payments

If BC Hydro wishes to capitalize Operating Payments under Section 2.10 the following process and principles will apply:

- (a) BC Hydro will notify Kwadacha in writing of its intention to seek a determination of the capitalized amount of the Operating Payments;
- (b) BC Hydro and Kwadacha will each appoint a representative with financial expertise to determine the capitalized amount of the Operating Payments under Section 2.11(d);

- (c) the representatives appointed under Section 2.11(b) will seek agreement on a capitalized amount of the Operating Payments based on the last Operating Payments payable by BC Hydro to Kwadacha prior to the date of BC Hydro's written notice under Section 2.11(a) (the "**Notification Date**");
- (d) the capitalized amount of the Operating Payments will be determined in a manner that provides reasonable assurance to Kwadacha of continuing annual revenue comparable to what Kwadacha would have received if it continued to receive the Operating Payments. The discount rate for the Operating Payments will be based on long-term investment instruments, such as long-term real return Government of Canada bonds, adjusted for the credit risk reflected in the BC Government's long-term bond rate. The final capitalized amount will be based on the last Operating Payments paid by BC Hydro to Kwadacha prior to the Notification Date, adjusted as required by the CPI for the period up to the Capitalization Notice Date;
- (e) the capitalized amount of the Operating Payments will include provision to offset the reasonably estimated investment management and administration fees that would be paid from the invested funds relating to the Operating Payments in order for Kwadacha to establish, maintain, and invest the capitalized amount;
- (f) the representatives appointed under Section 2.11(b) will seek agreement on a capitalized value of the Operating Payments. If the representatives cannot reach an agreement within 30 days, they will jointly appoint an independent arbitrator having financial expertise whose decision for the capitalized value of the Operating Payments will be binding on the Parties. If the two representatives cannot agree on the appointment of an arbitrator the arbitrator will be appointed under the rules of the British Columbia International Arbitration Centre or such successor organization as may be agreed to by the Parties;
- (g) within 120 days of a decision with respect to the capitalized value of the Operating Payments, BC Hydro will notify Kwadacha in writing whether it intends to exercise its option to capitalize the Operating Payments (the "**Capitalization Notice Date**");
- (h) if BC Hydro decides to exercise its option under Section 2.11(g) to capitalize the Operating Payments, BC Hydro will pay the capitalized amount to Kwadacha within 30 days, or such other time as may be agreed by the Parties, of its final notification to Kwadacha that BC Hydro is exercising its option to capitalize; and
- (i) BC Hydro will reimburse Kwadacha for all of Kwadacha's reasonably incurred costs and expenses incurred under Sections 2.10 and 2.11, including amounts paid by Kwadacha to any representative appointed under Section 2.11(b) and any costs and expenses incurred by Kwadacha under the dispute resolution process set out in Section 2.11(f).

2.12 Payments to Kwadacha

All payments will be made to and received by Kwadacha or to the Trustee, as the case may be, for the account of Kwadacha only, to be expended under this Agreement without any direct claim or entitlement by any Member.

ARTICLE 3 TRUSTEE

3.1 Trustee

Kwadacha will appoint a trustee (the “**Trustee**”), which Trustee is:

- (a) currently practicing with a reputable firm of accountants, trustees, or lawyers, or a reputable trust company; and
- (b) whose appointment:
 - (i) is consented to in writing by BC Hydro, acting reasonably;
 - (ii) BC Hydro is deemed to have consented to; or
 - (iii) occurs under Article 7.

Upon identifying a Trustee which Kwadacha wishes to appoint, Kwadacha will provide written notice to BC Hydro of the name and professional qualifications of the Trustee. Within 30 days of receiving the written notice from Kwadacha BC Hydro will provide written notice to Kwadacha as to whether BC Hydro consents to such appointment. If BC Hydro fails to provide written notice within 30 days then BC Hydro will be deemed to have consented to the appointment of the proposed Trustee. If BC Hydro does not consent then Kwadacha may propose another Trustee and this Section 3.1 will again be applicable. If BC Hydro does not consent to the second proposed Trustee then Kwadacha may refer the matter for resolution under Article 7.

3.2 No Liability for Trustee

Neither BC Hydro nor the Province is liable to Kwadacha for any loss or damage to Kwadacha arising from the selection, appointment, or activities of the Trustee.

3.3 Payments to Trustee

BC Hydro will pay the Fixed Payments and the Additional Payments to the Trustee.

3.4 Expenditure Request

Kwadacha will, from time to time, provide written notice to the Trustee (the “**Expenditure Request**”) that Kwadacha wishes to expend Fixed Payments or Additional Payments for Community Related Purposes. The Expenditure Request will contain sufficient detail to permit the Trustee, acting reasonably, to determine whether the expenditures described in the

Expenditure Request meet the criteria set out in Schedule 2. Upon the Trustee, acting reasonably, being satisfied that the expenditures described in the Expenditure Request meet the criteria set out in Schedule 2, the Trustee will forthwith pay the amounts requested by Kwadacha to Kwadacha from the Fixed Payments and Additional Payments then being held by the Trustee. Each Expenditure Request will be accompanied by a signed statement of the Chief or other Band Council representative declaring that the expenditures described in the Expenditure Request meet the criteria set out in Schedule 2.

3.5 Trustee's Fees

The fees, costs, and expenses of the Trustee for performing the services set out in Section 3.4 will be paid from Fixed Payments and Additional Payments. Kwadacha may, from time to time, request in writing that the Trustee pay the Trustee's fees, costs, and expenses for performing the Services set out in Section 3.4, provided Kwadacha has approved such fees, costs, and expenses in writing.

ARTICLE 4 AUDITOR

4.1 Auditor

Kwadacha will retain a chartered accountant in public practice holding an audit practising certificate or equivalent qualification issued by the Institute of Chartered Accountants of British Columbia as an auditor (the "**Auditor**") to:

- (a) annually audit whether or not the Payments were used by Kwadacha for the purposes specified in an Expenditure Request;
- (b) if under Section 4.1(a) the Auditor determines that a Payment was not used for the purposes specified in an Expenditure Request, audit whether or not Payments were used by Kwadacha for the purposes set out this Agreement; and
- (c) report in writing to BC Hydro and Kwadacha its determination under Sections 4.1(a) and (b) (the "**Audit Report**") for each period under this Agreement beginning April 1 and ending on March 31 of the following year, such report to be published in the Village by Kwadacha.

If the Auditor determines in an Audit Report that Payments were not used by Kwadacha for the purposes set out in this Agreement the Auditor may direct Kwadacha in writing to implement such policies and procedures as the Auditor may determine, acting reasonably, to prevent such event from reoccurring. The Auditor and Kwadacha will work cooperatively to implement such policies and procedures. If Kwadacha fails to implement the policies and procedures directed by the Auditor under this Section 4.1 the Auditor may direct the Trustee in writing to cease or delay making Payments to Kwadacha during the period Kwadacha fails to implement such policies and procedures, provided such direction to the Trustee and ceasing or delaying of Payments

- (d) must be proportional to the breach of this Agreement identified by the Auditor in the Audit Report; and
- (e) may involve progressively severe sanctions where the breach of this Agreement identified by the Auditor in the Audit Report is continuing or repeated.

4.2 Restrictions

No payments will be paid by the Trustee to Kwadacha if a report of the Auditor has not been delivered to BC Hydro and Kwadacha on or before July 31 following the completion of the most recent period under Section 4.1(c). If delivery of the Audit Report is delayed beyond July 31 in any year for reasons which are not the responsibility of Kwadacha, then payments will not be suspended.

4.3 Auditor's Fees

The fees, costs, and expenses of the Auditor for performing the services set out in Section 4.1 and for participation by the Auditor in the Dispute Resolution Process under Section 4.4 will be paid from Fixed Payments and Additional Payments. Kwadacha may, from time to time, request in writing that the Trustee pay the Auditor's fees, costs, and expenses for performing the services set out in Section 4.1, provided that Kwadacha has approved such fees, costs, and expenses in writing.

4.4 Dispute Resolution

If Kwadacha disagrees:

- (a) with the policies and procedures directed by the Auditor under Section 4.1; or
- (b) whether the policies and procedures directed by the Auditor under Section 4.1 have been implemented;

Kwadacha may implement the Dispute Resolution Process and Steps 3 and 4 of Section 7.2 will apply between Kwadacha and the Auditor with the necessary changes to make the Dispute Resolution Process apply to Kwadacha and the Auditor.

4.5 Trustee/Auditor Agreements

Kwadacha will enter into written agreements with each of the Auditor and the Trustee which will incorporate the provisions of this Agreement which are applicable to the Auditor and the Trustee, the form of which agreements will be subject to the prior written approval of BC Hydro, acting reasonably.

4.6 Assignment of Trustee/Auditor Functions

The Parties may, by agreement, assign any functions that are contemplated by this Agreement to be performed by the Auditor, except for audit functions required to be performed by a person with an auditor's accreditation, to the Trustee or to another party.

ARTICLE 5 PROVINCE/BC HYDRO COVENANTS

5.1 Road Maintenance

During the Payment Period, the Province will provide annual funding of \$120,000, adjusted annually for inflation by the CPI after April 1, 2006, for winter maintenance of the Road. Winter maintenance may include preparation of the Road for winter maintenance.

5.2 Contracts for Road Maintenance

Commencing in 2006/07 and annually thereafter, until a Final Agreement has been entered into by either or both of TKD and Kwadacha, the Province will cause the Ministry of Forests and Range, Mackenzie Forest District ("**Forestry**") to issue an annual winter maintenance contract for the Road (the "**Maintenance Contract**") on the following terms:

- (a) the contract price in 2006/07 will total \$120,000 and in each year thereafter the contract price will be adjusted for inflation by the CPI from April 1, 2006;
- (b) if both TKD and Kwadacha enter into an Interim Agreement then the Maintenance Contract will be issued to one legal entity;
- (c) if only one of TKD and Kwadacha enter into an Interim Agreement then the Maintenance Contract will be issued to that First Nation;
- (d) if a Termination Notice is issued to either or both of TKD or Kwadacha under Section 2.3 of their respective Interim Agreements, then the Maintenance Contract in place as of the date of issuance of the Termination Notice will subsist until its expiry date. Thereafter the Province's obligation to issue a Maintenance Contract to either of TKD or Kwadacha who have received a Termination Notice will, at the Province's option, terminate;
- (e) the issuance of any Maintenance Contract will be conditional upon:
 - (i) successful performance of the work the previous year, if applicable; and
 - (ii) reasonable market rates for the performance of the work;
- (f) the terms and conditions of the Maintenance Contract (and not this Agreement) will govern the parties' rights and obligations under the Maintenance Contract for any contract year; and

- (g) TKD and Kwadacha will make provision for liability insurance for the performance of work under the Maintenance Contract.

5.3 Annual Joint Planning

At the beginning of each contract year the Province will cause representatives of Forestry to meet with representatives of both TKD and Kwadacha to jointly plan and cooperatively establish priorities for the following year's Maintenance Contract.

5.4 Application of Dispute Resolution Process

The Dispute Resolution Process does not apply to the Parties' obligations under Sections 5.1, 5.2, and 5.3.

5.5 Health Studies

BC Hydro will continue to fund the health studies that are in progress at the Effective Date to evaluate the impact on Kwadacha and its Members of dust and mercury arising from the Reservoir. The parameters and methodology of the health studies will be established by agreement among Kwadacha, TKD, and BC Hydro. BC Hydro estimates that its cost of these health studies, applicable to both Kwadacha and TKD, will be approximately \$650,000. Funding of these health studies will not be subject to any set off rights of BC Hydro under Section 8.12.

5.6 Additional Funding

During the Payment Period, BC Hydro will provide to Kwadacha funding based on rates for services that are approved by the B.C. Utilities Commission, or in its absence a regulatory body performing similar functions, for intervenor funding, for reasonable capacity for Kwadacha to attend and participate in regulatory proceedings directly related to the operation of the Facilities provided that such participation does not breach Kwadacha's obligations under Article 8. Such funding will not include funding for regulatory proceedings that are not directly related to the operation of the Facilities such as rate applications, export permit applications, and environmental assessment and other regulatory proceedings relating to other facilities.

5.7 Information Sharing

During the Payment Period, BC Hydro will, from time to time and in a timely fashion, notify in writing and keep Kwadacha informed about:

- (a) all regulatory proceedings relating to the Facilities;
- (b) the decommissioning and removal of the Facilities; and
- (c) any investment opportunities which may arise in relation to the Facilities or to BC Hydro owned projects within the Information Sharing Area.

5.8 Future Projects Planning

During the Payment Period, in the case of:

- (a) a decommissioning or removal of the Facilities; or
- (b) for any new BC Hydro-owned projects that are:
 - (i) within area A of the Information Sharing Area; or
 - (ii) projects within area B of the Information Sharing Area that are hydro-electric projects and that depend on the storage of water in the Reservoir;

BC Hydro will:

- (c) engage Kwadacha in a process to ensure that:
 - (i) any potential impacts on Kwadacha are identified;
 - (ii) an attempt to address the potential impacts is undertaken; and
 - (iii) any investing, contracting, and other opportunities are identified, including any investing, contracting, and other opportunities identified by Kwadacha to BC Hydro; and
- (d) provide reasonable capacity funding after considering any submissions made by Kwadacha for such funding, provided that:
 - (i) the scope of the services to be funded are those legal, financial, and technical services that are reasonably required to enable Kwadacha to understand the impacts of the new project on it and to assess any investing, contracting, and other opportunities that are presented to Kwadacha by BC Hydro;
 - (ii) the rates for such services should be based on rates for similar services that are:
 - (A) approved by the BC Utilities Commission or its successors for the purposes of intervenor funding;
 - (B) in the absence of such approved rates, rates for similar services approved by other tribunals; or
 - (C) in the absence of rates described in Sections 5.8(d)(ii)(A) or (B), the market rates for such services;

- (iii) the amount of capacity funding will be comparable to amounts paid by BC Hydro for capacity funding to other First Nations in similar circumstances; and
- (iv) a decision made by BC Hydro as to the amount of such funding is within BC Hydro's sole discretion and may not be disputed by Kwadacha in the Dispute Resolution Process or in any other proceeding that may be taken by Kwadacha to enforce its rights under this Agreement.

5.9 Kwadacha Contracting and Employment

Subject to Sections 5.10 and 5.11, BC Hydro will make available to TKD for assignment by TKD to Kwadacha opportunities for direct award contracts:

- (a) for a period of ten years commencing with:
 - (i) the implementation of the Approved WUP; or
 - (ii) the establishment of an alternative arrangement between TKD and BC Hydro; and
- (b) in an amount not less than \$1,000,000 over the ten year period.

For greater certainty any interim agreement among BC Hydro, TKD, and the Province will contain provisions that:

- (c) TKD will assign to Kwadacha opportunities for \$1,000,000 of direct award contracts over the ten year period; and
- (d) BC Hydro and TKD will annually review with Kwadacha the contract work that BC Hydro proposes to make available in that year and in the future under this Section 5.9 and as part of this review process BC Hydro and TKD will consider representations from Kwadacha as to the timing, size, and nature of the opportunities to be made available to Kwadacha.

5.10 Direct Award

Direct award contracts will be awarded only:

- (a) for programs:
 - (i) prescribed in the Approved WUP that contribute to dust, debris, heritage and erosion mitigation measures to be conducted under the Approved WUP in the Finlay Reach of the Reservoir; or
 - (ii) that are described in an alternative arrangement with TKD;

- (b) if:
 - (i) the proponent is at least 51% owned by Kwadacha or by entities that are 51% owned by Kwadacha or Members;
 - (ii) the proponents are, in the sole opinion of BC Hydro, fully qualified; and
 - (iii) at least 50% of the work would be done by Members or TKD members; and
- (c) for contracts that BC Hydro is legally permitted to award by direct award.

5.11 Principles

The terms that are applicable to direct award contract opportunities for Kwadacha will be the same as the terms applicable to the direct award of contracts by BC Hydro to TKD, and will reflect the following principles:

- (a) the criteria used by BC Hydro to establish that any proponent is a qualified contractor will be identified and sufficiently described in order to facilitate successful bids by Kwadacha contractors; and
- (b) the terms of contracts awarded to Kwadacha will, in all respects, be consistent with BC Hydro requirements, including requirements with respect to safety, environmental compliance, security requirements, and performance standards.

ARTICLE 6 DEFAULT

6.1 Event of Default

Each of the following events is an “**Event of Default**” for the Party in question (the “**Defaulting Party**”):

- (a) a default by Kwadacha under Article 8;
- (b) a default by BC Hydro under Article 2; or
- (c) any default (other than defaults of a non-material nature) by a Party in the performance of its obligations to be performed under this Agreement,

unless the Event of Default is of a nature that can be cured and it is cured within 30 days following receipt by the Defaulting Party of a written notice from another Party specifying the nature of the Event of Default and requiring that the Event of Default be cured.

6.2 Remedies

If an Event of Default occurs, a Party not in default (the “**Non-Defaulting Party**”) may do one or more of the following:

- (a) pursue the remedies available to it under Article 7;
- (b) with respect to the Province, pursue the remedies available to it at law or in equity;
- (c) for Events of Default by Kwadacha under Sections 8.1 or 8.3, BC Hydro may pursue any remedy available to it at law or in equity under the Dispute Resolution Process, and may raise this Agreement in defence to any claim commenced by Kwadacha in breach of Sections 8.1 or 8.3;
- (d) for Events of Default by Kwadacha under Section 8.7, BC Hydro may pursue any remedy available to it at law or in equity under the Dispute Resolution Process, provided that any damages or other financial sanctions which are imposed against Kwadacha are reasonable and proportional to the financial harm that is or will be caused to BC Hydro or the Province by Kwadacha’s Event of Default up to and including termination of the payments under Section 2.2; or
- (e) waive, in writing, the Event of Default, but any waiver of the particular Event of Default will not operate as a waiver of any subsequent or continuing Event of Default.

6.3 Binding Effect on the Province

For greater certainty, notwithstanding the fact that the Province is not a party to the Dispute Resolution Process, the Province will not claim or seek to impose financial sanctions against Kwadacha for any Event of Default by Kwadacha under Section 8.7 other than, in excess of, or in addition to any financial sanctions which may be determined under the Dispute Resolution Process under Section 6.2(d).

6.4 Province’s Action During Dispute Resolution Process

If BC Hydro gives notice to Kwadacha of a Dispute under the Dispute Resolution Process under Article 7, the Province will not initiate or continue to pursue any action seeking a remedy referred to in Section 6.2(b) for the same issue which is the subject of the Dispute between BC Hydro and Kwadacha until after that Dispute is resolved (as between BC Hydro and Kwadacha) through the Dispute Resolution Process, except:

- (a) to prevent the loss of a right of action due to the expiration of a limitation period;
- (b) to obtain interlocutory or interim relief; or
- (c) if the matter is considered by the Province to be of an urgent nature.

ARTICLE 7 DISPUTE RESOLUTION

7.1 Confidentiality of Process

The Parties will keep confidential all discussions, negotiations, mediations, arbitrations, and any other communications and proceedings conducted under the Dispute Resolution Process, and will not disclose to any other person such discussions, negotiations, mediations, arbitrations, or other communications or proceedings, or the content thereof, unless previously discussed and agreed to in writing by the Disputing Parties or otherwise required by law. For greater certainty, no part of the Dispute Resolution Process will be open to the public.

7.2 Stages

Subject to Section 7.5, Disputes that arise will progress, until resolved, through the following stages of the Dispute Resolution Process:

Step 1: Within 30 days of one Disputing Party providing written notice to the other Disputing Party that a Dispute exists, the Main Table will make *bona fide* efforts to resolve the Dispute through negotiation following the mandates given by the Disputing Parties to their respective representatives and advisors.

Step 2: If the Main Table is unable to resolve the Dispute within 30 days of the written notice under Step 1, the Chief (or other authorized representative of the Band Council) and the BC Hydro President (or other authorized representative of BC Hydro senior management) will, within 40 days of the written notice under Step 1, meet and commence further good faith efforts to resolve the Dispute.

Step 3: If the Chief (or other authorized representative of the Band Council) and the BC Hydro President (or other authorized representative of BC Hydro senior management) are unable to resolve the Dispute themselves within 60 days of the written notice under Step 1, either Disputing Party may give notice to the other Disputing Party of a desire to commence mediation and the Disputing Parties will jointly appoint a mutually acceptable mediator within 30 days after the date that such notice is given. If the Disputing Parties are unable to agree upon the appointment of a mediator within 30 days after a Disputing Party has given written notice of a desire to mediate the Dispute, either Disputing Party may apply to the British Columbia Mediator Roster Society for appointment of a mediator. The mediation will be conducted under the Mediation Rules of the British Columbia Mediator Roster Society.

Step 4: If a Dispute has not been resolved through mediation under Step 3 within 30 days of the appointment of a mediator, either Disputing Party, by written notice to the other Disputing Party, may refer such unresolved Dispute to binding arbitration under the *Commercial Arbitration Act*. The Disputing Parties will agree upon an arbitrator within 30 days of the notice of arbitration being provided, failing which the arbitrator will be

selected under the *Commercial Arbitration Act*. The decision of the arbitrator will be final and binding on the Disputing Parties.

7.3 Disputes about Use of Payments

For a Dispute concerning a breach of Kwadacha's agreement to use Payments for the purposes specified in this Agreement, the arbitrator under Step 4 of Section 7.2:

- (a) may require Kwadacha to implement such policies and procedures as the arbitrator considers necessary to prevent such breach from occurring again;
- (b) will not require Kwadacha to return such Payments to BC Hydro or the Trustee;
- (c) will not permit or require BC Hydro to cease or delay making Payments to the Trustee or Kwadacha;
- (d) may permit or require the Trustee to cease or delay making Payments, if Kwadacha has failed to implement the policies and procedures directed by the Auditor under Section 4.1 or by the arbitrator under Section 7.3(a), but only for the period of such failure to comply, but such sanction by the arbitrator or the Trustee must be proportional to the breach of this Agreement identified by the Auditor or the Audit Report; and
- (e) may impose progressively severe sanctions where the breach of this Agreement by Kwadacha is continuing or repeated.

7.4 Authority of Arbitrator

Subject to Section 7.3, but without limiting any other authority granted to the arbitrator under this Agreement, the arbitrator may make any order or grant any legal or equitable remedy that could be made or granted by the Supreme Court of British Columbia in respect of a Dispute and may award remedies at law and in equity, but may not make any award that restricts, constrains, or alters BC Hydro's use or operation of the Facilities.

7.5 Exception to Process

Despite anything else in this Article 7:

- (a) a Dispute relating to whether an action or a proposed action by Kwadacha will constitute an Event of Default by Kwadacha under Article 8 will be referred directly to Step 4 of Section 7.2 for arbitration if the Dispute:
 - (i) is not resolved within 30 days by the Main Table under Step 1 of Section 7.2; or
 - (ii) is considered by Kwadacha to be of an urgent nature;

- (b) if BC Hydro gives notice to Kwadacha of a Dispute under the Dispute Resolution Process relating to whether an action or proposed action by Kwadacha constitutes or will constitute an Event of Default under Article 8, Kwadacha may not take any steps in furtherance of the action or proposed action until the Dispute Resolution Process has been completed;
- (c) in urgent circumstances, a Dispute referred directly to arbitration under Section 7.5(a) will be conducted on an expedited basis, to the extent reasonably necessary to avoid prejudice to Kwadacha as a result of the operation of Section 7.5(b); and
- (d) Steps 1 and 2 of Section 7.2 do not apply to a Dispute under Section 1.1(u)(ii).

7.6 Relationship between Mitigative Measures and Claimant Compensation

The Parties acknowledge that mitigative or remedial measures may have a lasting, beneficial effect on the viability of Kwadacha or the Members, whether as a group or individually. Accordingly, any evidence that such measures have been implemented on an individual, group, or community basis in relation to a Dispute, and their mitigative effect when they have been implemented, will be considered by the arbitrator in assessing the amount of damages that may be payable in relation to the Dispute.

7.7 Availability of Argument

In any Dispute, a Disputing Party may raise any defence or argument that it would otherwise have been able to raise at law, equity, or otherwise, had the Dispute been referred to a Court of competent jurisdiction, including a defence that the Dispute is statute-barred by the *Limitation Act*.

7.8 No Further Claims

When Disputes are resolved under this Article 7:

- (a) no Disputing Party may make any further claim against a Disputing Party; and
- (b) no further compensation will be payable by a Disputing Party to a Disputing Party;

for the same Dispute.

7.9 Appeals

In any appeal to a Court of a decision, order, or award made under the Dispute Resolution Process, Article 8 does not preclude Kwadacha from raising or pursuing the subject matter of the appeal.

ARTICLE 8 CERTAINTY PROVISIONS

8.1 Abeyance

Except as provided in this Agreement, the Plaintiffs will take no further steps in the Action during the Payment Period, and Kwadacha will not, during the Payment Period, commence, advance, prosecute, or continue against BC Hydro, its subsidiaries, insurers, administrators, employees, agents, directors, or officers, while acting in such capacities, or the Province, any claim or other remedy with respect to any manner of action, cause of action, suit, debt, sum of money, expense, general or special damages, trust, accounting, costs, interest, or expenses of any nature or kind whatsoever, whether arising from the Action or any other Proceeding, and whether known or unknown, suspected or unsuspected, and arising at law or in equity or under statute which the Plaintiffs can, will, or may have for, or by reason of, or arising from the planning, development, construction, repair, maintenance, or operation of the Facilities, and, in particular, without restricting the generality of the foregoing, for and by reason of any law for:

- (a) injuries or damages, including costs and expenses, arising directly or indirectly from the planning, development, construction, repair, maintenance, or operation of the Facilities; and
- (b) past, present, and future infringement of any and all claimed, existing or future, aboriginal rights or title or treaty rights arising directly or indirectly from the planning, development, construction, repair, maintenance, or operation of the Facilities.

The remedies for breach of this Section 8.1 by Kwadacha will include termination of all payments under this Agreement by BC Hydro and the Province.

8.2 Exceptions

Section 8.1 does not apply to or affect:

- (a) the ability of Kwadacha to pursue a claim for damages for a Defined Operation against BC Hydro under the Dispute Resolution Process;
- (b) claims by Kwadacha against the Province for damages in respect of a Defined Operation;
- (c) claims for Health Impacts;
- (d) claims for past, present, or future infringement of claimed, existing, or future aboriginal rights or title or treaty rights, to the extent that the breach alleged is not the result of, or would have existed in any event of, the planning, development, construction, repair, maintenance, or operation of the Facilities;
- (e) claims by any Member for personal injury or wrongful death;

- (f) claims by any Member employed or engaged as a contractor by the Province, BC Hydro, or their agents or contractors, in respect of the Member's employment or engagement, or the termination thereof;
- (g) an appeal to a Court of any decision, order, or award made under the Dispute Resolution Process, or an application to the Court to set aside such a decision, order, or award, or for judicial review of such a decision, order, or award, or for interim relief to preserve any Party's interests pending the making of such a decision, order, or award;
- (h) a claim against any Party for breach of the Agreement, or a decision, order, or agreed resolution under the Dispute Resolution Process, or any other agreement entered into between Kwadacha or any Member and either or both of BC Hydro and the Province, including any proceeding in respect of such a claim; and
- (i) any other proceeding to enforce the rights of any Party or Member under the Agreement, or a decision, order, award, or agreed resolution under the Dispute Resolution Process, or any other agreement entered into between Kwadacha or any Member, and either or both of BC Hydro and the Province.

8.3 Duty to Consult and Accommodate

The Plaintiffs will not during the Payment Period commence, advance, prosecute, or continue against BC Hydro or the Province any claims in any Proceeding that the Province or BC Hydro failed to satisfy any legal obligation to the Plaintiffs to consult with them in respect of their existing or asserted aboriginal rights or title or any treaty rights that may be agreed to, or to accommodate those existing or asserted rights or title or treaty rights, arising from the planning, development, construction, repair, maintenance, and operation within Licensed Use of the Facilities.

8.4 Exceptions

Section 8.3 does not apply to or affect claims for any alleged failure by the Province, BC Hydro, or another corporation owned or controlled, directly or indirectly, by the Province or BC Hydro, to consult with the Plaintiffs in respect of their existing or asserted aboriginal rights or title or treaty rights, or to accommodate those existing or asserted aboriginal rights or title or treaty rights, in relation to:

- (a) any New Project;
- (b) a change in the Authorizations, including the acquisition of a new tenure, approval, permit, licence, or other authorization for the Facilities authorizing a use of the Facilities or a use of water for the Facilities that is not a Licensed Use; or
- (c) a change in the use of the Facilities from the generation, transmission, or distribution of electricity to another use.

This Section 8.4 does not impose, create, or extend any legal obligation to the Plaintiffs that BC Hydro or the Province would not have in the absence of this Agreement. Section 8.4(b) does not include a change in the Authorizations, other than a water licence, that is required for the installation or operation of an Operating Component.

8.5 Kwadacha Participation in Proceedings

This Agreement does not restrict Kwadacha's right to participate fully in any Proceeding, provided Kwadacha does not breach Sections 8.1, 8.3, or 8.7. For greater clarity, notwithstanding Section 8.1, this Agreement does not restrict Kwadacha's right to take any position in any Proceeding with respect to:

- (a) any use, operation, repair, or maintenance, or proposed use, operation, repair, or maintenance of the Facilities that is determined under the Dispute Resolution Process to fall outside the scope of the Licensed Use (the "**Non-Licensed Use**"), provided that Kwadacha will not make any claim for damages with respect to the Non-Licensed Use, other than as may be permitted by Section 8.8 for a Defined Operation; or
- (b) any New Project.

Kwadacha will, in the exercise of its rights under Section 8.5(a), make a good faith effort to resolve the issue with BC Hydro prior to seeking relief from a regulatory body or bodies having jurisdiction over the matter and may pursue other remedies available to it once its remedies from the regulatory authority or authorities have been exhausted.

8.6 Binding Effect on the Province

For greater certainty, notwithstanding the fact that the Province is not a party to the Dispute Resolution Process, the Province will not, subject to Sections 8.1, 8.3, or 8.7, take the position that Kwadacha is not entitled under Section 8.5(a) to take any position in any Proceeding with respect to any use, operation, repair, or maintenance, or proposed use, operation, repair, or maintenance of the Facilities that is determined under the Dispute Resolution Process to fall outside the scope of the Licensed Use.

8.7 Kwadacha Covenants Not to Interfere

During the Payment Period, Kwadacha will not encourage, commence, join, prosecute, assert, intervene in, or support any Proceeding on its own behalf or on behalf of or in cooperation with any other Member, person, group, or entity, in which Kwadacha or such other Member, person, group, or entity:

- (a) takes the position that:
 - (i) any Authorization required for the Licensed Use of the Facilities is legally invalid;

- (ii) the Licensed Use of the Facilities was not or is not within the scope of the Authorizations;
 - (iii) BC Hydro does not, for any reason, have the legal right to continue its Licensed Use of the Facilities; or
 - (iv) BC Hydro requires any further tenure, approval, permit, licence, or other authorization to allow the Licensed Use of the Facilities;
- (b) without the express consent of BC Hydro, attempts to restrict the Licensed Use of the Facilities, other than to:
- (i) participate in any proceeding in the current water use planning process to support the implementation of recommendations which are consistent with the Committee Report and to advocate for the implementation of those recommendations with respect to dust, debris, heritage, and erosion mitigation measures, including implementation of plans with respect to dust, debris, heritage, and erosion mitigation measures through amended water licence conditions and other orders under the *Water Act*;
 - (ii) participate in the 5 year and 10 year reviews of the Approved WUP, and in future public multi-stakeholder planning processes for water use plans that include all or a portion of the geographic area outlined in the map attached as Schedule 3:
 - (A) to make and support recommendations with respect to dust, debris, heritage, and erosion mitigation measures that are consistent with the Committee Report; and
 - (B) to advocate for, and recommend new plans that Kwadacha may consider to be necessary with respect to dust, debris, heritage, and erosion mitigation, including implementation of such plans through amended water licence conditions and other orders under the *Water Act*, provided that such plans and recommendations do not include any restrictions on reservoir elevations or otherwise restrict BC Hydro's operation of the Reservoir;

provided that with respect to any water use planning process, Kwadacha will not encourage, commence, join, prosecute, assert, intervene in, or support any Proceeding to review or appeal the decision of the statutory decision maker with respect to the acceptance, rejection, or modification of any position advocated, or recommendation made by Kwadacha, or with respect to the scope or manner of implementation of any such position or recommendation, on any basis or grounds, including the ground that there is a failure to satisfy a legal obligation to Kwadacha to consult with them in respect of their existing or asserted aboriginal rights or title or treaty

rights, or to accommodate those existing or asserted rights or title or treaty rights; and

- (iii) continue to participate in the environmental assessment office (“EAO”) process with respect to the GMS Upgrades Proposal to learn about the GMS Upgrades Proposal and to identify any physical or environmental interests that Kwadacha may have related to the incremental impacts of the GMS Upgrades Proposal provided that Kwadacha will not:
 - (A) oppose the GMS Upgrades Proposal or any Authorizations that are required for or related to the GMS Upgrades Proposal;
 - (B) make any further representations with respect to the impacts of the Facilities in existence at AIP in the course of its participation in the EAO process;
 - (C) encourage, commence, join, prosecute, assert, intervene in, or support any Proceeding to review or appeal the decision of the statutory decision maker with respect to the GMS Upgrades Proposal, on any basis or grounds, including the ground that there is a failure to satisfy a legal obligation to Kwadacha to consult with them in respect of their existing or asserted aboriginal rights or title or treaty rights, or to accommodate those existing or asserted rights or title or treaty rights; and
 - (D) seek any compensation or other accommodation from BC Hydro or the Province with respect to the GMS Upgrades Proposal;
- (c) opposes the issuance, renewal, or modification of any Authorization sought by BC Hydro, to the extent such Authorization is required to allow the Licensed Use of the Facilities; and
- (d) opposes or seeks to delay or prevent the approval and implementation by the Comptroller of Water Rights of the Committee Report.

8.8 Defined Operations

During the Payment Period, Kwadacha may seek compensation from BC Hydro through the Dispute Resolution Process, and subject to Section 7.7, for damages to Kwadacha that it can establish are caused by physical impacts arising from Defined Operations of the Reservoir by BC Hydro. Compensable damages for a Defined Operation:

- (a) shall be limited to the proportion of any loss or damage that is caused by the Defined Operation and that would not have occurred as a result of an operation of the Reservoir that is not a Defined Operation; and

- (b) in the case of Reservoir operations at elevations between 2147 feet and 2106 feet, shall be limited to damages arising in the existing village sites or on the Finlay Reach of the Reservoir north of the northern limit of Omineca Arm.

For greater certainty, this Section 8.8 does not provide Kwadacha with any grounds to claim for compensation that Kwadacha would not have in the absence of this Agreement. Kwadacha's remedies under these provisions are limited to compensation for damages. Nothing in this Agreement restricts, constrains, or alters BC Hydro's use or operation of the Facilities, or constitutes an agreement between BC Hydro and Kwadacha to use or operate the Facilities in any agreed manner.

8.9 Indemnification by Kwadacha

Subject to Section 8.10, Kwadacha will indemnify and forever save harmless BC Hydro and the Province from and against any and all obligation, liability, duty, loss, damage, cost, or expense resulting, directly or indirectly, from any Proceeding that during the Payment Period is commenced, joined, prosecuted, asserted, intervened in, or supported by the Plaintiffs or commenced, joined, prosecuted, asserted, or intervened in by Kwadacha or any Member or collective of Members against BC Hydro or the Province relating directly or indirectly to:

- (a) the planning, development, construction, repair, maintenance, or operation of the Facilities;
- (b) claims which are in respect of procedures resulting in the execution of this Agreement;
- (c) claims arising from the selection, appointment, or actions of the Trustee;
- (d) any errors or omissions in respect of the ratification of this Agreement; or
- (e) the deposit, withdrawal, use, management, or any other dealing with respect to funds paid to Kwadacha or the Trustee under this Agreement.

8.10 Exceptions

Nothing in this Agreement will require Kwadacha to indemnify BC Hydro or the Province in respect of a claim described in Sections 8.2 or 8.4.

8.11 Notice

BC Hydro and the Province will provide Kwadacha with notice of any Proceeding which may reasonably give rise to indemnification under Section 8.9.

8.12 Set-Off

If:

- (a) under this Agreement, Kwadacha or any of the Plaintiffs become obligated to pay any sum of money to either BC Hydro or the Province then such sum may, at the election of BC Hydro or the Province, as the case may be, and without limiting or waiving any right or remedy for either such Party under this Agreement or the Final Agreement, be set off against and will apply to any sum of money owed by either BC Hydro or the Province, as the case may be, under this Agreement, until such amount has been completely set-off; and
- (b) this Agreement is terminated under Section 2.3, any amounts received by Kwadacha under this Agreement may, at the election of BC Hydro or the Province, as the case may be, be set-off against any award of damages that may be made in litigation commenced by Kwadacha against the Province or BC Hydro claiming damages arising from the planning, development, construction, or operation of the Facilities;

Kwadacha acknowledges that BC Hydro's contribution of \$1,450,000 to Kwadacha's community store is an amount that is received by Kwadacha for the purposes of Section 8.12.

8.13 No Admission of Liability

It is expressly understood and agreed by the Parties that nothing in this Agreement constitutes an admission of wrongdoing or liability on the part of BC Hydro or the Province and is agreed to by BC Hydro and the Province on a 'without prejudice' basis.

8.14 Kwadacha Letter

Kwadacha will forthwith, upon execution, ratification, and delivery of this Agreement, advise the EAO, in writing, that it does not oppose the GMS Upgrades Proposal or any Authorizations that are required for or related to the GMS Upgrades Proposal.

ARTICLE 9 GENERAL

9.1 Notices

Except as otherwise provided in this Agreement, any notice, direction, demand, request, or document required or permitted to be given by any Party to any other Party under this Agreement will be in writing and deemed to have been sufficiently given if signed by or on behalf of the Party giving the notice and delivered or transmitted by facsimile or e-mail to the other Party's address, facsimile number, or e-mail address as shown below:

To Kwadacha:

Kwadacha First Nation
P.O. Box 86
Fort Ware, BC V0J 3B0

Attention: Chief Donny Van Somer

Facsimile: 250-471-2701

With a copy to:

Davis & Company, LLP
2800 - 666 Burrard Street
Vancouver, BC V6C 2Z7

Attention: John Landry

Facsimile: 604-605-3558

E-mail: john_landry@davis.ca

To BC Hydro:

British Columbia Hydro and Power Authority
6911 Southpoint Drive
Burnaby, BC V3N 4X8

Attention: Lyle Viereck

Facsimile: 604-528-3157

With a copy to:

Fasken Martineau DuMoulin, LLP
3400 - 350 7 Avenue SW
Calgary, AB T2P 3N9

Attention: Peter Feldberg

Facsimile: 403-261-5351

E-mail: pfeldberg@cgy.fasken.com

To the Province:

Ministry of Energy Mines and Petroleum Resources
8th Floor, 1810 Blanchard
P.O. Box 9319, Stn Prov. Gov.
Victoria, BC, V8W 9W3

Attention: Deputy Minister

Facsimile: 250-952-0269

With a copy to:

Ministry of Attorney General
4th Floor, 1405 Douglas Street
Victoria, BC V8W 2G2

Attention: Kathryn Kickbush

Facsimile: 250-387-0343

E-mail: kathryn.kickbush@gov.bc.ca

or to such other address, to such other facsimile number or e-mail address or to the attention of such other official or individual as a Party will have most recently notified the other Party in writing. Any such notice, direction, request, or document will conclusively be deemed to have been received by the intended recipient on the date of delivery or transmission, as the case may be, except that if it is not received at such address or at the facsimile device by 5:00 P.M. on a Business Day (at the place of receipt) it will conclusively be deemed to have been received by the intended recipient on the next Business Day immediately following its receipt at such address or at such facsimile device.

9.2 Assignment and Successorship

This Agreement may not be assigned, in whole or in part, by a Party, except with the written consent of the other Parties, such consent not to be unreasonably withheld.

9.3 Amendment

The only amendments which may be made to this Agreement are written amendments signed by all Parties.

9.4 Governing Law and Language

This Agreement will be governed by and construed under British Columbia law and applicable Canadian law and will be treated in all respects as a British Columbia contract.

9.5 Entire Agreement

This Agreement and any other arrangement in writing between any of the Parties, which is entered into substantially contemporaneously with this Agreement constitutes the entire agreement among the Parties relating to the subject matter of this Agreement and supersedes all prior negotiations and agreements, whether written, oral, implied or collateral, among the Parties with respect to the subject matter of this Agreement.

9.6 Further Assurances

As and so often as a Party may reasonably require, each Party will execute and deliver further documents and assurances as may be necessary to properly carry out this Agreement.

9.7 Successors and Assigns

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

9.8 Waivers

No provision of this Agreement may be waived, except by written notice to the other Parties and any waiver of a provision:

- (a) is valid only in respect of the specific instance to which it relates and is not a continuing waiver; and
- (b) is not a waiver of any other provision.

9.9 Time

Time will be of the essence of this Agreement.

9.10 Communications

Communication by the Parties of this Agreement or its terms will be made in accordance with the Communications Protocol attached to this Agreement as Schedule 6.


9.11 Counterparts

This Agreement may be signed in one or more counterparts, each counterpart may be transmitted by electronic facsimile, and each will constitute an original instrument and such counterparts, taken together, will constitute one and the same agreement.

Each of the Parties have executed this Agreement on the date set forth below.

KWADACHA FIRST NATION

By:



Chief Donny Van Somer

**BRITISH COLUMBIA HYDRO AND
POWER AUTHORITY**

By:

Bob Elton, President and Chief Executive Officer

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

By:

Honourable Michael de Jong,
Minister of Aboriginal Relations and
Reconciliation

Each of the Parties have executed this Agreement on the date set forth below.

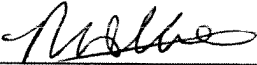
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KWADACHA FIRST NATION

By:

Chief Donny Van Somer

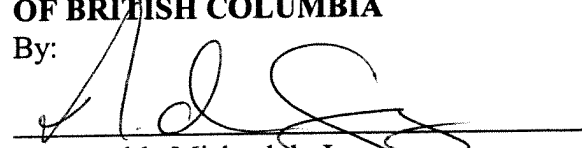
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**HER MAJESTY THE QUEEN IN
THE RIGHT OF THE PROVINCE
OF BRITISH COLUMBIA**

By:



Honourable Michael de Jong,
Minister of Aboriginal Relations and
Reconciliation

SCHEDULE 1

**KWADACHA FIRST NATION
SETTLEMENT NEGOTIATIONS**

**DRAFT
AGREEMENT-IN-PRINCIPLE**

April 1, 2006

KWADACHA FIRST NATION SETTLEMENT NEGOTIATIONS

WITHOUT PREJUDICE

DRAFT

APRIL 1, 2006

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This Agreement-in-Principle is made effective as of the 1st day of April, 2006,

Among:

KWADACHA FIRST NATION, as represented by its duly
constituted Band Council

(“Kwadacha”)

and:

**BRITISH COLUMBIA HYDRO AND POWER
AUTHORITY**, a corporation continued under the *Hydro
and Power Authority Act*, having its registered and records
office at 333 Dunsmuir Street, Vancouver, British Columbia

(“BC Hydro”)

and:

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

(the “Province”)

Background:

- A. The Parties have been negotiating, for many years, the resolution of all past, present, and future issues, grievances, and claims of Kwadacha relating, directly or indirectly, to the impacts on Kwadacha by the Facilities; and
- B. Each Party will use reasonable efforts to:
- (i) cooperate with each other to develop harmonious working relationships;
 - (ii) prevent or, alternatively, minimize Disputes;

- (iii) identify Disputes quickly and resolve them in the most expeditious and cost-effective manner possible; and
- (iv) resolve Disputes in a non-adversarial and collaborative manner.

ARTICLE 1 GENERAL PROVISIONS

1.1 Nature of the AIP. This AIP is not legally binding and is without prejudice to the respective legal positions of the Parties prior to the Final Agreement Effective Date and neither this AIP, nor any related communications over the course of these negotiations, will be used by or against any of the Parties in any court proceeding or any other forum or be construed as creating, abrogating, negating, denying, recognizing, defining, or amending any rights or obligations of any of the Parties, except as expressly provided for in this AIP, the Interim Agreement, or the Final Agreement.

1.2 Ratification of AIP. This AIP will be ratified by:

- (a) BC Hydro's Board of Directors approving the execution and delivery of this AIP on behalf of BC Hydro;
- (b) the Lieutenant Governor-in-Council approving the execution and delivery of this AIP on behalf of the Province; and
- (c) in addition to any ratification processes that Kwadacha may require, a written Band Council Resolution authorizing the Chief to execute and deliver this AIP.

1.3 Nature of the Final Agreement. The Final Agreement, once executed, ratified, and delivered by the Parties, will be legally binding on all Parties and can be relied on by all Parties.

1.4 Ratification of Final Agreement. For ratification of the Final Agreement:

- (a) BC Hydro will require that its Board of Directors review and approve the Final Agreement on behalf of BC Hydro;
- (b) the Province will require the Lieutenant Governor-in-Council to approve the Final Agreement on behalf of the Province; and
- (c) in addition to any ratification processes that Kwadacha may require, the following is required:

- (i) Kwadacha approving the Final Agreement by a majority vote of its general membership in a manner determined by Kwadacha and acceptable to BC Hydro and the Province; and
- (ii) a written Band Council Resolution authorizing the Chief and the Band Council to execute and deliver the Final Agreement.

1.5 Assurances. Kwadacha will provide assurances in the Final Agreement to the other Parties that it represents all Members. The Parties will each provide assurances in the Final Agreement to the other Parties that they have the authority to execute and deliver the Final Agreement.

1.6 Certainty. Concurrently with the execution, ratification, and delivery of the Final Agreement, the Parties will execute, ratify, and deliver the Certainty Provisions Agreement. In this AIP, a reference to the Final Agreement also includes the Certainty Provisions Agreement.

1.7 Negotiation of the Final Agreement. Forthwith upon execution and delivery of this AIP, and during the Payment Period, the Parties will proceed diligently and in good faith to negotiate, execute, ratify, and deliver the Final Agreement based on this AIP. The scope of negotiations during this period will not include any proposal or proposals that, if implemented, would have the effect of creating obligations on a Party that are not contemplated by this AIP or of expanding or diminishing an obligation of a Party that is contemplated in this AIP. Without limiting the generality of the foregoing, and for greater certainty, a proposal that would have the effect, if implemented, of making the Financial Obligations of BC Hydro or the Province to Kwadacha in the Final Agreement greater or lesser than contemplated in this AIP is not within the permissible scope of negotiations.

1.8 Interpretation. Under the Final Agreement there will be no presumption in law or in equity that any ambiguous or doubtful expression is to be resolved in favour of any particular Party. The Final Agreement will set out various provisions concerning the interpretation of the Final Agreement.

1.9 Independent Legal Advice. Each of the Parties acknowledge that each of them have executed this AIP freely and voluntarily, without duress and after receiving independent legal advice from their respective solicitors.

1.10 Interim Agreement. To avoid confusion and duplication the Parties will consider having the Interim Agreement terminate upon execution, ratification, and delivery of the Final Agreement and certain provisions of the Interim Agreement be incorporated into the Final Agreement.

ARTICLE 2 DEFINITIONS

2.1 Definitions. In this AIP, unless there is something in the subject matter or context inconsistent therewith or unless otherwise specifically provided, the following words, phrases and expressions have the following meanings:

- (a) **“Additional Payments”** has the meaning in Section 3.2;
- (b) **“Agreement Steering Committee”** means the committee established by Kwadacha and BC Hydro under Section 9.1;
- (c) **“AIP”** means this Agreement-in-Principle;
- (d) **“AIP Effective Date”** means April 1, 2006;
- (e) **“Annual Payments”** has the meaning in Section 3.4;
- (f) **“Approved WUP”** means the water use plan for the geographic area outlined in Schedule 3 which has been approved by the Province and which has been approved and implemented by the Comptroller of Water Rights or any other applicable authority;
- (g) **“Band Council”** means the duly elected council of Kwadacha within the meaning of the *Indian Act*, and any successors thereof;
- (h) **“Band Council Resolution”** means a resolution passed by the Band Council, signed by not less than a majority of the Kwadacha councillors at a duly convened Band Council meeting;
- (i) **“BC Hydro”** means British Columbia Hydro and Power Authority, a corporation continued under the *Hydro and Power Authority Act*, R.S.B.C. 1996, c. 212, and includes any subsidiaries, predecessors, successors, and assigns;
- (j) **“Capital Base”** means the Initial Capital, together with accumulated retained returns from the investment of the Initial Capital, representing income earned less management fees and other related costs paid for such investment and after any distributions paid to the Trustee from such returns prior to the first payment of Endowment Fund Income under Section 4.1(a);
- (k) **“Capitalization Fund”** has the meaning in Section 3.4;
- (l) **“Capitalization Notice Date”** has the meaning in Section 3.5(h);

- (m) **"CDP"** has the meaning in Section 3.1;
- (n) **"CDP Plans"** has the meaning in Section 3.1(e)(i);
- (o) **"CDP Trustees"** has the meaning in Section 3.1(a);
- (p) **"Certainty Provisions Agreement"** means the agreement which is to be executed, ratified, and delivered by the Parties, concurrently with the Final Agreement, substantially in the form attached to this AIP as Schedule 1;
- (q) **"Chief"** means the Chief of Kwadacha elected and in office;
- (r) **"Committee Report"** means the Peace Water Use Plan included in the Peace Water Use Plan Committee Report dated December 2003;
- (s) **"Community Related Purposes"** means the purposes set out in Schedule 2;
- (t) **"CPI"** means the most recently published All-Items Consumer Price Index for British Columbia as published by Statistics Canada or such successor index as may replace same, or, in the event no such index or successor index exists, then the most comparable index appropriately adjusted;
- (u) **"Defined Operation"** means the operation of the Reservoir at a Reservoir Elevation that is, within a quality-controlled margin of measurement error of ± 0.1 meters,
 - (i) above 2205 feet (672.08 meters); or
 - (ii) below the lower of 2147 feet (654.41 meters), or such other level or levels as may be established by the Water Comptroller in a future water use planning process and agreed to by Kwadacha;
- (v) **"Disbursement Plan"** means a disbursement plan developed and adopted by the Endowment Fund Trustees which is consistent with the advice to the Endowment Fund Trustees from a qualified and reputable investment professional and is designed to protect the Capital Base against inflation over the long term;
- (w) **"Dispute Resolution Fund"** has the meaning in Section 10.10;
- (x) **"Dispute Resolution Process"** has the meaning in Section 10.1;

- (y) **“Eligible Recipients”** means Members and, as determined by the Band Council, in its sole discretion, as evidenced by a written Band Council Resolution, also means:
 - (i) parents, spouses (common-law and legal), children, step-children, and adopted children of a Member; or
 - (ii) persons who ordinarily reside in the Village;
- (z) **“Energy Fund”** has the meaning in Section 7.2;
- (aa) **“Endowment Fund”** has the meaning in Section 4.1;
- (bb) **“Endowment Fund Income”** has the meaning in Section 4.1(a);
- (cc) **“Endowment Fund Trustees”** has the meaning in Section 4.1(j);
- (dd) **“Expenditure Request”** has the meaning in Section 5.3;
- (ee) **“Facilities”** means the W.A.C. Bennett Dam, the Peace Canyon Dam, the Reservoir, and any other existing works, including transmission and distribution facilities, substations, generating stations, reservoirs, and related works owned or operated by BC Hydro in the geographic area outlined in the map attached as Schedule 3 as of the AIP Effective Date, which are used or operated in connection with the W.A.C. Bennett Dam or the Peace Canyon Dam; and includes works added at any time after the AIP Effective Date as part of routine maintenance or repairs, and the installation or replacement of Operating Components of the Facilities at any time after the AIP Effective Date whether or not the installation of such Operating Components results in an increase in generating capacity or efficiency of the Facilities;
- (ff) **“Final Agreement”** means the final agreement among Kwadacha, BC Hydro, and the Province which will be negotiated based on this AIP;
- (gg) **“Final Agreement Effective Date”** means the date upon which the Final Agreement takes effect;
- (hh) **“Financial Obligations”** means the financial obligations under the Final Agreement as set out and defined in this AIP of:
 - (i) BC Hydro regarding Annual Payments, the Energy Fund, the Endowment Fund, and any specific studies or plans; and

- (ii) the Province regarding annual funding to provide for all season road maintenance on the Road;
- (ii) **“Five Year Period”** has the meaning in Section 4.1(c)(i)
- (jj) **“Fixed Payments”** has the meaning in Section 3.2;
- (kk) **“Forestry”** has the meaning in Section 8.2;
- (ll) **“Health Impact”** means a chemical, biological, or physical impact resulting in physical illness to a Member caused or contributed to by the Facilities or their construction, repair, maintenance, or operation as a result of dust, mercury, or another mechanism that is unknown or unforeseeable as of the Final Agreement Effective Date and not capable of discernment with due diligence, excluding any personal injury sustained by, or wrongful death of, a Member caused by or attributable to drownings, boating accidents, and other similar causes;
- (mm) **“IA Additional Payments”** means Additional Payments as defined in the Interim Agreement;
- (nn) **“IA Fixed Payments”** means Fixed Payments as defined in the Interim Agreement;
- (oo) **“Indian Act”** means the *Indian Act*, R.S.C. 1985, c. I-5, and regulations made thereunder, all as amended or replaced from time to time, and any reference to a section of that Act or a regulation made thereunder will include that section or regulation as amended or replaced from time to time;
- (pp) **“Initial Capital”** has the meaning in Section 4.2;
- (qq) **“Information Sharing Area”** means the geographical area outlined and marked as “A” in Schedule 4, and the area of the main stem of the Peace River between Peace Canyon and the Alberta border outlined and marked as “B” in Schedule 4;
- (rr) **“Interest Rate”** means the variable nominal interest rate per annum being the prime interest rate of the Canadian Imperial Bank of Commerce (or its successor) for Canadian dollar commercial loans in Canada as publicly declared by the bank from time to time as its **“prime rate”**;
- (ss) **“Interim Agreement”** means the interim agreement entered into among the Parties concurrently with this AIP;

- (tt) **"Kwadacha"** means the Kwadacha First Nation, also known as the Kwadacha Band, a 'band' as defined under the *Indian Act*, including any and all Members;
- (uu) **"Member"** means:
 - (i) a 'member of a band', in respect of the Kwadacha Band List, within the meaning of subsection 2(1) of the *Indian Act*; or
 - (ii) a past, present or future member of Kwadacha, or and any of their heirs, legal representatives, successors, and assigns;
 and **"Members"** means any collective of two or more Members;
- (vv) **"Notification Date"** has the meaning in Section 3.5(c);
- (ww) **"Operating Components"** means generation, transmission, and distribution equipment, machinery, and other works, including ancillary support structures, that form part of the Facilities from time to time;
- (xx) **"Operating Payments"** has the meaning set out in the Interim Agreement;
- (yy) **"Parties"** means any two or more of Kwadacha, BC Hydro, and the Province, as the context may require and **"Party"** means any one of them;
- (zz) **"Payment Period"** means the period beginning on the date of ratification of the Final Agreement by all Parties and:
 - (i) continuing in perpetuity; or
 - (ii) terminating under Section 3.3;
- (aaa) **"Payments"** means payments by the CDP Trustees to Kwadacha of Fixed Payments, Additional Payments, and Endowment Fund Income;
- (bbb) **"Province"** means Her Majesty the Queen in Right of the Province of British Columbia and includes her ministers, officials, servants, agents, legal representatives, and assigns;
- (ccc) **"Remaining Payments"** has the meaning in Section 3.7;
- (ddd) **"Reservoir"** means the Williston Reservoir;

- (eee) **“Reservoir Elevation”** means the elevation of the Reservoir above sea level as recorded at the Water Survey of Canada Lost Cabin Gauge (07EF002) located on the north arm of the Peace reach of the Reservoir near the junction with the Finlay and Parsnip reaches;
- (fff) **“Road”** means the existing road commencing at the Kemess Junction (km 173) and continuing to Fort Ware as may be modified from time to time;
- (ggg) **“TKD”** means the Tsay Keh Dene First Nation; and
- (hhh) **“Village”** means the village site of Kwadacha.

2.2 Schedules. Each of the following schedules shall be attached to and form part of this AIP:

- (a) **Schedule 1** – Certainty Provisions Agreement;
- (b) **Schedule 2** – Community Related Purposes;
- (c) **Schedule 3** – Facilities Map; and
- (d) **Schedule 4** – Information Sharing Area.

ARTICLE 3 COMMUNITY DEVELOPMENT PAYMENTS

3.1 Payments. BC Hydro will make certain payments (**“CDP”**) set out in Sections 3.2 and 3.7 which will be used by Kwadacha for Community Related Purposes, subject to the following conditions:

- (a) appointment of one or more trustees (the **“CDP Trustees”**) under Section 5.1;
- (b) decisions of the CDP Trustees must, in all cases, be unanimous;
- (c) CDP will be paid by BC Hydro to the CDP Trustees;
- (d) the fees of the CDP Trustees will be paid from the CDP;
- (e) prior to the payment of any CDP by the CDP Trustees to Kwadacha, the CDP Trustees are satisfied that either:

- (i) Kwadacha has developed one or more plans to disburse the CDP (the "**CDP Plans**") which are in accordance with Community Related Purposes; or
- (ii) the intended expenditure by Kwadacha is for Community Related Purposes and payment of the CDP is consistent with any directions of the Auditor under Section 6.1;
- (f) completion of annual independent audit reviews, the results of which will be posted in the Village and shared with BC Hydro; and
- (g) audit fees of the CDP will be paid from CDP.

3.2 Fixed and Additional Payments. During the Payment Period, BC Hydro will pay to the CDP Trustees fixed payments (the "**Fixed Payments**") and additional payments (the "**Additional Payments**") determined as follows:

- (a) the first Fixed Payment will equal two times the last Fixed Payment (as defined in the Interim Agreement) paid to the Trustee (as defined under the Interim Agreement) under the Interim Agreement, adjusted by the percentage change over 12 months in the CPI; and
- (b) the first Additional Payment will equal two times the last Additional Payment (as defined in the Interim Agreement) paid to the Trustee (as defined under the Interim Agreement) under the Interim Agreement, adjusted by the percentage change over 12 months in the CPI;

the first payment of each of which will be paid on the first April 1 after the Final Agreement Effective Date and subsequent payments of each of which will be paid on April 1 of each year thereafter. Each April 1 beginning the first April after the first Fixed Payment following the Final Agreement Effective Date and on each April 1 thereafter each Fixed Payment and Additional Payment will be adjusted by the percentage change over 12 months in the CPI. Kwadacha will expend the Fixed Payments and the Additional Payments under the CDP Plans or for Community Related Purposes.

3.3 Continuation of Payments. The Fixed Payments and the Additional Payments will continue until:

- (a) for the Additional Payments, the Facilities permanently cease to generate electricity;
- (b) for all CDP, if:

- (i) Kwadacha breaches the Final Agreement;
- (ii) Kwadacha winds up the Endowment Fund in any manner other than as permitted by the terms of the Endowment Fund; or
- (iii) Kwadacha disburses the Capital Base in any manner other than under a Disbursement Plan;

and in each such case, subject to the Dispute Resolution Process, BC Hydro exercises its right to terminate the CDP; or

- (c) BC Hydro exercises the option under Section 3.4 to capitalize the Annual Payments.

3.4 Option to Capitalize. At any time after the tenth anniversary of the Final Agreement Effective Date, BC Hydro may capitalize the CDP, the Operating Payments, and the Dispute Resolution Fund payments (collectively, the “**Annual Payments**”) and pay the capitalized amount of the Annual Payments to a fund established under Section 3.5 (the “**Capitalization Fund**”). The Dispute Resolution Process is not applicable to Sections 3.4 or 3.5, including a decision by BC Hydro to capitalize the Annual Payments, and the dispute resolution process with respect to the capitalized amount of the Annual Payments will be as described in Section 3.5.

3.5 Capitalization of Annual Payments. If BC Hydro wishes to capitalize under Section 3.4 the following process and principles will apply:

- (a) BC Hydro will notify Kwadacha in writing of its intention to seek a determination of the capitalized amount of the Annual Payments.
- (b) BC Hydro and Kwadacha will each appoint a representative with financial expertise to determine the capitalized amount of the Annual Payments under Sections 3.5(d) and (e).
- (c) The representatives appointed under Section 3.5(b) will seek agreement on a capitalized amount of the Annual Payments based on the last Annual Payments payable by BC Hydro to Kwadacha prior to the date of BC Hydro’s written notice under Section 3.5(a) (the “**Notification Date**”).
- (d) The capitalized amount of the Annual Payments will be determined in a manner that provides reasonable assurance to Kwadacha of continuing annual revenue comparable to what Kwadacha would have received if it continued to receive the Annual Payments. The discount rate for the Annual Payments will be based on long-term investment instruments, such as long-term real return Government of Canada bonds, adjusted for the credit risk reflected in the BC Government’s long-

term bond rate. The final capitalized amount will be based on the last Annual Payments paid by BC Hydro to Kwadacha prior to the Notification Date, adjusted as required by the CPI for the period up to the Capitalization Notice Date.

- (e) The capitalized amount of the Additional Payments will be determined under Section 3.5(d), but if, at the Notification Date:
 - (i) the date on which generation of electricity at the Facilities will permanently cease is known with certainty, then the determination of the capitalized amount will take into account that the Additional Payments are to continue only as long as electricity is generated at the Facilities; and
 - (ii) the date on which generation of electricity at the Facilities will terminate is not known with certainty, then the capitalized amount of the Additional Payments will be determined as in Section 3.5(d) and the capitalized amount of the Additional Payments, adjusted as required by the latest CPI up to the date on which generation of electricity of the Facilities permanently ceases, will revert to BC Hydro or its successor at such time as generation of electricity at the Facilities permanently ceases.
- (f) The capitalized amount of the Annual Payments will include provision to offset the reasonably estimated investment management and administration fees that would be paid from the invested funds relating to the Annual Payments in order for Kwadacha to establish, maintain, and invest the capitalized amount.
- (g) The representatives appointed under Section 3.5(b) will seek agreement on a capitalized value of the Annual Payments. If the representatives cannot reach an agreement within 30 days, they will jointly appoint an independent arbitrator having financial expertise whose decision for the capitalized value of the Annual Payments will be binding on the Parties. If the two representatives cannot agree on the appointment of an arbitrator the arbitrator will be appointed under the rules of the British Columbia International Commercial Arbitration Centre or such successor organization as may be agreed to by the Parties.
- (h) Within 120 days of a decision with respect to the capitalized value of the Annual Payments, BC Hydro will notify Kwadacha, in writing, whether it intends to exercise its option to capitalize the Annual Payments (the “**Capitalization Notice Date**”).
- (i) Subject to Section 3.5(j), Section 10.11 will apply to Kwadacha’s costs for participation in this process.

- (j) If BC Hydro decides not to exercise its option to capitalize the Annual Payments, BC Hydro will reimburse Kwadacha for all of Kwadacha's costs of its participation in this process.
- (k) If BC Hydro decides to exercise its option under Section 3.5(h) to capitalize the Annual Payments, Kwadacha will establish the Capitalization Fund and BC Hydro will deposit the capitalized amounts in the Capitalization Fund within 30 days, or such other time as may be agreed by the Parties, of the Capitalization Notice Date. The Capitalization Fund will be established according to the principles applicable to the Endowment Fund, (including principles relating to payments from the Capitalization Fund), but excluding Section 4.1(c). Kwadacha may elect to have the Capitalization Fund held and administered by the same trustee as holds and administers the Endowment Fund.
- (l) Provision will be made in the Capitalization Fund to ensure that if there is a breach by Kwadacha of Section 5.2 of the Certainty Provisions Agreement, payments to BC Hydro may be made from the Capitalization Fund to provide BC Hydro with the same level of certainty with respect to Kwadacha's compliance with Section 5.2 of the Certainty Provisions Agreement that BC Hydro would have had if the Annual Payments had not been capitalized.

3.6 Provincial Guarantee. Under the Final Agreement, the Province will, until BC Hydro makes the payment under Section 3.5(k), guarantee the payment of the Annual Payments to Kwadacha.

3.7 Pre-Final Agreement Payments. The Interim Agreement provides for IA Fixed Payments and IA Additional Payments to be paid to the Trustee (as defined in the Interim Agreement) prior to the Final Agreement Effective Date, subject to the Interim Agreement. Under the Final Agreement, BC Hydro will pay within 10 days of the execution, ratification, and delivery of the Final Agreement:

- (a) an amount equal to each IA Fixed Payment and each IA Additional Payment paid or payable to Kwadacha under the Interim Agreement; and
- (b) an amount equal to an effective annual growth rate of 8% on the payments required under Section 3.7(a);

(collectively, the "**Remaining Payments**") either to the CDP Trustees or into the Endowment Fund, as determined by Kwadacha, in Kwadacha's sole discretion, by Kwadacha providing written notice to BC Hydro upon the execution, ratification, and delivery of the Final Agreement. If the CDP Trustees receive the Remaining Payments, Kwadacha will use the Remaining Payments for Community Related Purposes.

3.8 Late Payment. If BC Hydro fails to make a payment when due under the Final Agreement the amount of the payment will accrue interest at the Interest Rate plus 4% from the date such Payment is due until the date such payment is made. This Section 3.8 is without prejudice to any rights or remedies of Kwadacha under the Dispute Resolution Process.

3.9 Restrictions. Notwithstanding anything contained in this AIP, Kwadacha may not expend Fixed Payments or Additional Payments:

- (a) for direct payments to Eligible Recipients; or
- (b) for per capita distributions to Eligible Recipients;

other than expenditures of Payments made for Community Related Purposes through programs available to a group or class of Eligible Recipients, in which case Kwadacha will provide an Expenditure Request for such program to the CDP Trustees, containing the details of such program.

3.10 Payments to Kwadacha. All Payments will be made to and received by Kwadacha or to CDP Trustees or the Endowment Fund Trustees, as the case may be, for the account of Kwadacha, to be expended under the Final Agreement without any claim or entitlement by any Member.

ARTICLE 4 ENDOWMENT FUND

4.1 Endowment Fund. Under the Final Agreement, an endowment fund (the “**Endowment Fund**”) will be established with the following characteristics:

- (a) income earned on the Endowment Fund (the “**Endowment Fund Income**”) will be paid to the CDP Trustees and then paid to Kwadacha on the same terms as the CDP Trustees pays CDP to Kwadacha and will be paid to the CDP Trustees under the most recent Disbursement Plan adopted by the Endowment Fund Trustees;
- (b) prior to the first payment of Endowment Fund Income to the CDP Trustee, and at least once every five years thereafter, the Endowment Fund Trustees will take advice from a qualified and reputable investment professional and develop and adopt a Disbursement Plan;
- (c) the first payment of Endowment Fund Income to the CDP Trustees will be made only after:
 - (i) the expiry of the period of five years (the “**Five Year Period**”) from the Final Agreement Effective Date; and

- (ii) the Endowment Fund contains a sum not less than the Initial Capital adjusted by the CPI from the month of the Final Agreement Effective Date;
- (d) Kwadacha will use Endowment Fund Income for Community Related Purposes;
- (e) the Endowment Fund will be structured in a manner which will exempt the income and capital of the Endowment Fund from income tax, if possible, to maximize the benefits of the Endowment Fund for Kwadacha;
- (f) the Endowment Fund will be structured as a trust so that it will operate in accordance with these characteristics without the need for any supervision by BC Hydro;
- (g) the Endowment Fund will not be collapsed;
- (h) the Capital Base will not be distributed except under a Disbursement Plan;
- (i) the Endowment Fund will be professionally managed. BC Hydro is indifferent to whether the Endowment Fund is administered "privately" by Kwadacha (that is, managed by professional investment managers selected by Kwadacha) or whether it is established as part of a public foundation;
- (j) the trustees of the Endowment Fund (the "**Endowment Fund Trustees**") will meet certain conditions that are acceptable to the Parties and that are specified in the trust terms (e.g. a trust company licensed to do business in British Columbia, having been in business for a specified number of years, having a specified amount of assets under administration, etc.);
- (k) the investment manager or managers of the Endowment Fund, as retained from time to time, will meet criteria that are acceptable to the Parties and that are set out in the Final Agreement;
- (l) if Kwadacha so chooses, the Endowment Fund may be transferred (at inception or subsequently) to a charitable public foundation that is acceptable to the Parties acting reasonably, on condition that such public foundation hold and administer the fund on the same terms that apply to the Endowment Fund;
- (m) management costs of the Endowment Fund will be paid by the Endowment Fund, and be at no cost to BC Hydro; and

- (n) neither BC Hydro nor the Province will have any liability to Kwadacha for the performance of the Endowment Fund or for the selection of the Endowment Fund Trustees or the investment manager or managers of the Endowment Fund.

4.2 Initial Capital. Upon the Final Agreement Effective Date, BC Hydro will pay into the Endowment Fund:

- (a) \$9,375,000;
- (b) plus an amount equal to an effective annual growth of 8% between the AIP Effective Date and the Final Agreement Effective Date on the amount paid under Section 4.2(a); and
- (c) any payments contributed to the Endowment Fund under Sections 3.7 or 7.2;

(collectively, the “**Initial Capital**”).

4.3 Investment Managers. If Kwadacha so requests, BC Hydro will use commercially reasonable efforts to facilitate the engagement by the Endowment Fund of one or more of the investment managers of BC Hydro’s pension fund and BC Hydro will use commercially reasonable efforts to minimize the fees that any such investment manager charges to the Endowment Fund.

ARTICLE 5 CDP TRUSTEES

5.1 CDP Trustees. Kwadacha will appoint the CDP Trustees at least one of which must meet the following:

- (a) be independent of Kwadacha;
- (b) be currently practicing with a reputable firm of accountants, trustees, or lawyers, or a reputable trust company with experience acting as a trustee; and
- (c) whose appointment:
 - (i) must be consented to in writing by BC Hydro, acting reasonably;
 - (ii) BC Hydro is deemed to have consented to; or
 - (iii) occurs under Article 10.

Upon identifying the CDP Trustees which Kwadacha wishes to appoint, Kwadacha will provide written notice to BC Hydro of the name and professional qualification of the CDP Trustee appointed under this Section 5.1. Within 30 days of receiving the written notice from Kwadacha BC Hydro will provide written notice to Kwadacha as to whether BC Hydro consents to the appointment of the CDP Trustee appointed under this Section 5.1. If BC Hydro fails to provide written notice within 30 days then BC Hydro will be deemed to have consented to the appointment of the CDP Trustee appointed under this Section 5.1. If BC Hydro does not consent to the CDP Trustee appointed under this Section 5.1 then Kwadacha may propose another CDP Trustee and this Section 5.1 will again be applicable. If BC Hydro does not consent to such proposed CDP Trustee then Kwadacha may refer the matter for resolution under Article 10.

5.2 Payments to CDP Trustees. BC Hydro will pay Fixed Payments and Additional Payments to the CDP Trustees. The Endowment Fund Trustees will pay Endowment Fund Income to the CDP Trustees.

5.3 Expenditure Request. Kwadacha will, from time to time, provide written notice to the CDP Trustees (the “**Expenditure Request**”) that Kwadacha wishes to expend Payments for Community Related Purposes. The Expenditure Request will contain sufficient detail to permit the CDP Trustees, acting reasonably, to determine whether the expenditures described in the Expenditure Request meet the criteria set out in Schedule 2. Upon the CDP Trustees, acting reasonably, being satisfied that the expenditures described in the Expenditure Request meet the criteria set out in Schedule 2, the CDP Trustees will forthwith pay the amounts requested by Kwadacha to Kwadacha from the Fixed Payments, Additional Payments, and Endowment Fund Income then being held by the CDP Trustees. Each Expenditure Request will be accompanied by a signed statement of the Chief or other Band Council representative declaring that the expenditures described in the Expenditure Request meet the criteria set out in Schedule 2.

5.4 CDP Trustee’s Fees. The fees, costs, and expenses of the CDP Trustees for performing the services set out in Section 5.3 will be paid from Fixed Payments, Additional Payments, and Endowment Fund Income. Kwadacha may, from time to time, request in writing that the CDP Trustees pay the CDP Trustees’ fees, costs, and expenses for performing the services set out in Section 5.3, provided Kwadacha has approved such fees, costs, and expenses in writing.

5.5 No Liability for Trustee. Neither BC Hydro nor the Province is liable to Kwadacha for any loss or damage to Kwadacha arising from the selection, appointment, or activities of any of the CDP Trustees.

ARTICLE 6 AUDITOR

6.1 Auditor. Kwadacha will retain a chartered accountant in public practice holding an audit practising certificate or equivalent qualification issued by the Institute of Chartered Accountants of British Columbia as an auditor (the “**Auditor**”) to:

- (a) audit whether or not the Payments were used by Kwadacha for the purposes specified in the Expenditure Request;
- (b) if under Section 6.1(a) the Auditor determines that a Payment was not used for the purposes specified in an Expenditure Request, audit whether or not the Payments were used by Kwadacha for the purposes set out in a CDP Plan or for Community Related Purposes; and
- (c) report in writing to BC Hydro and Kwadacha (the “**Audit Report**”) under Sections 6.1(a) and (b) for each period under the Final Agreement beginning April 1 and ending on March 31 of the following year, such report to be published in the Village by Kwadacha.

If the Auditor determines in an Audit Report that Payments were not used by Kwadacha for the purposes set out in an Expenditure Request or a CDP Plan or for Community Related Purposes, the Auditor may direct Kwadacha in writing to implement such policies and procedures as the Auditor may determine, acting reasonably, to prevent such event from reoccurring. The Auditor and Kwadacha will work cooperatively to implement such policies and procedures. If Kwadacha fails to implement the policies and procedures directed by the Auditor under this Section 6.1 the Auditor may direct the CDP Trustees in writing to cease or delay making Payments to Kwadacha during the period Kwadacha fails to implement such policies and procedures, provided such direction to the CDP Trustees and ceasing or delaying of Payments:

- (d) must be proportional to the breach identified by the Auditor in the Audit Report; and
- (e) may involve progressively severe sanctions where the breach of the Final Agreement identified by the Auditor in the Audit Report is continuing or repeated.

6.2 Restrictions. No Payments will be made by the CDP Trustees to Kwadacha if a report of the Auditor is not delivered to BC Hydro on or before July 31 following the completion of the most recent period under Section 6.1(c), provided that, if delivery of the Audit Report is delayed beyond July 31 in any year for reasons which are not the responsibility of Kwadacha, the Payments will not be suspended.

6.3 Auditor's Fees. The fees, costs, and expenses of the Auditor for performing the services set out in Section 6.1 and for participation by the Auditor in the process for resolving disagreements between Kwadacha and the Auditor under Section 6.6 will be paid from Fixed Payments, Additional Payments, and Endowment Fund Income. Kwadacha may, from time to time, request in writing that the Trustee pay the Auditor's fees, costs, and expenses for performing the services set out in Section 6.1, provided that Kwadacha has approved such fees, costs, and expenses in writing.

6.4 Trustee/Auditor Agreements. Kwadacha will enter into written agreements with each of the Auditor and the Trustee which will incorporate the provisions of the Final Agreement which are applicable to the Auditor and the Trustee, the form of which agreements will be subject to the prior written approval of BC Hydro, acting reasonably.

6.5 Assignment of Auditor Functions. The Parties may, by agreement, assign any functions that are contemplated by this AIP to be performed by the Auditor, except for audit functions required to be performed by a person with an auditor's accreditation, to the Trustee or to another party.

6.6 Resolution of Disagreements between Kwadacha and the Auditor. The Final Agreement will contain provisions establishing a process for resolving disagreements between Kwadacha and the Auditor, which will involve successive stages of mediation and arbitration, and which Kwadacha will be entitled to invoke if it disagrees with:

- (a) the policies and procedures directed by the Auditor under Section 6.1; or
- (b) whether the policies and procedures directed by the Auditor under Section 6.1 have been implemented.

6.7 Authority of Arbitrator. The process to be established under Section 6.6 will provide that, for a disagreement concerning a breach of Kwadacha's agreement to use Payments under Section 6.1, the Arbitrator:

- (a) may require Kwadacha to implement such policies and procedures as the Arbitrator considers necessary to prevent such breach from occurring again;
- (b) will not require Kwadacha to return the Payments to the CDP Trustees;
- (c) will not permit or require BC Hydro to cease or delay making Fixed Payments or Additional Payments to the Trustees;
- (d) will not permit or require the Endowment Fund Trustees to cease or delay paying Endowment Fund Income to the CDP Trustees;

- (e) may permit or require the CDP Trustees to cease or delay making Payments, if Kwadacha has failed to implement the policies and procedures directed by the Auditor under Section 6.1 or by the Arbitrator under this Section 6.7, but only for the period of such failure to comply, but such sanction by the Arbitrator or the CDP Trustees must be proportional to the breach of the Final Agreement identified by the Auditor or the Audit Report; and
- (f) may impose progressively severe sanctions where the breach of the Final Agreement by Kwadacha is continuing or repeated.

ARTICLE 7 ENERGY FUND

7.1 Provision of Electricity. BC Hydro is currently providing electricity service to Kwadacha under a Framework Agreement and Replacement Agreement, under which BC Hydro agrees to provide electrical service to Kwadacha so that the Kwadacha community will receive electrical service to at least a minimum standard applicable to non-integrated area communities currently served by BC Hydro, or such other reasonably comparable standard as BC Hydro and Kwadacha may agree upon.

7.2 Energy Fund. BC Hydro will establish its own internal \$2,000,000 fund for energy-related matters (the "**Energy Fund**") which amount will be held initially to cover any external costs incurred by BC Hydro in taking over, upgrading, and operating the Kwadacha electricity system in order to comply with the above noted standard. BC Hydro deductions from the Energy Fund will be made only for actual costs incurred by BC Hydro for which Kwadacha, acting reasonably, has provided prior written approval to BC Hydro under the Replacement Agreement, as may be amended or replaced from time to time. Upon execution, ratification, and delivery of the Final Agreement, BC Hydro will pay the balance of the Energy Fund into the Endowment Fund.

ARTICLE 8 BC HYDRO/PROVINCE COVENANTS

8.1 Road Maintenance. Following a Final Agreement with one or both of Kwadacha or TKD, the Province will cause the Road to be maintained year round to standards comparable to forest service roads serving residents in the Mackenzie Forest District, such as the Germansen Landing road. Kwadacha acknowledges that bringing the Road up to this standard will require a reasonable period of time.

8.2 Contracts for Road Maintenance. Following Final Agreement with one or both of Kwadacha or TKD, the Province will cause the Ministry of Forests and Range, Mackenzie Forest District (“Forestry”) to award an annual contract to one legal entity amounting to \$450,000, adjusted annually for inflation by the CPI from the AIP Effective Date, for annual maintenance of the Road to be carried out on a basis that is agreed to by Kwadacha and TKD and agreed to by Forestry, for a period of ten years. Contracts for maintenance of the Road will be held by Forestry. A maintenance contract with Forestry for the Road will be conditional upon:

- (a) successful performance of the work the previous year;
- (b) reasonable market rates for the performance of the work.

The terms and conditions of the maintenance contract will cover the parties’ rights and obligations under that maintenance contract. Kwadacha and TKD will make provision for liability insurance for contracts with Forestry.

8.3 Annual Joint Planning. Annually the Province will cause representatives of Forestry to meet with representatives of both Kwadacha and TKD to jointly plan and cooperatively establish priorities for the following annual maintenance program for the Road.

8.4 Application of Dispute Resolution Process. The Dispute Resolution Process does not apply to Sections 8.1, 8.2, and 8.3.

8.5 Road Improvements Inapplicable. Specific road improvements to the Road are outside the scope of this AIP and will not be addressed in the Final Agreement on the understanding that the Province will maintain safe road access as contemplated here. The Province acknowledges that Kwadacha has not, in this AIP, agreed to forego seeking improvements to the Road through Treaty or other discussions, including seeking development of the Carina/Tomias option.

8.6 Additional Funding. BC Hydro will provide funding, based on rates for services that are approved by the BC Utilities Commission, or in its absence a regulatory body performing similar functions, for intervenor funding, for reasonable capacity for Kwadacha to attend and participate in regulatory proceedings directly relating to the operation of the Facilities provided that such participation does not breach any of the covenants of the Final Agreement. BC Hydro's obligation under the Final Agreement will not extend to regulatory proceedings that are not directly related to the operation of the Facilities such as rate applications, export permit applications, and environmental assessment and other regulatory processes related to other facilities.

8.7 Health Studies. BC Hydro will continue to fund the health studies that are in progress at the AIP Effective Date to evaluate the impact on Kwadacha and Members of dust and mercury arising from the Reservoir. The parameters and methodology of the health studies will be

established by agreement among Kwadacha, TKD, and BC Hydro. BC Hydro estimates that its cost of these health studies, applicable to both Kwadacha and TKD, will be approximately \$650,000.

8.8 Information Sharing. BC Hydro will, from time to time and in a timely fashion, notify in writing and keep Kwadacha informed about:

- (a) all regulatory proceedings relating to the Facilities;
- (b) the decommissioning or removal of the Facilities; and
- (c) any investment opportunities which may arise in relation to the Facilities or to BC Hydro-owned projects within the Information Sharing Area.

8.9 Future Projects Planning. In the case of:

- (a) a decommissioning or removal of the Facilities; or
- (b) any new BC Hydro-owned projects that are:
 - (i) within area A of the Information Sharing Area; or
 - (ii) projects within area B of the Information Sharing Area that are hydro-electric projects and that depend on the storage of water in the Reservoir;

BC Hydro will:

- (c) engage Kwadacha in a process to ensure that:
 - (i) any potential impacts on Kwadacha are identified;
 - (ii) an attempt to address the potential impacts is undertaken,
 - (iii) any investing, contracting, and other opportunities are identified, including investing, contracting, and other opportunities identified by Kwadacha to BC Hydro; and
- (d) provide reasonable capacity funding after considering any submissions made by Kwadacha for such funding, provided that:
 - (i) the scope of the services to be funded are those legal, financial, and technical services that are reasonably required to enable Kwadacha to understand the impacts of the new project on it and to assess any

investing, contracting, and other opportunities that are presented to Kwadacha by BC Hydro;

- (ii) the rates for such services should be based on rates for similar services that are:
 - (A) approved by the BC Utilities Commission or its successors for the purposes of intervenor funding;
 - (B) in the absence of such approved rates, rates for similar services approved by other tribunals; or
 - (C) in the absence of rates described in Sections 8.9(d)(ii)(A) or (B), the market rates for such services;
- (iii) the amount of capacity funding will be comparable to amounts paid by BC Hydro for capacity funding to other First Nations in similar circumstances; and
- (iv) a decision made by BC Hydro as to the amount of such funding is within BC Hydro's sole discretion and may not be disputed by Kwadacha in the Dispute Resolution Process or in any other proceeding that may be taken by Kwadacha to enforce its rights under the Final Agreement.

8.10 Kwadacha Contracting and Employment. Subject to Sections 8.11 and 8.12, BC Hydro will make available to TKD for assignment by TKD to Kwadacha opportunities for direct award contracts:

- (a) for a period of ten years commencing with:
 - (i) the implementation of the Approved WUP; or
 - (ii) the establishment of an alternative arrangement between TKD and BC Hydro; and
- (b) in an amount not less than \$1,000,000 over the ten year period.

For greater certainty, any Final Agreement among BC Hydro, TKD, and the Province will contain provisions that:

- (c) TKD will assign to Kwadacha opportunities for \$1,000,000 of direct award contracts over the ten year period; and

- (d) BC Hydro and TKD will annually review with Kwadacha the contract work that BC Hydro proposes to make available in that year and in the future under this Section 8.10 and as part of this review process BC Hydro and TKD will consider representations from Kwadacha as to the timing, size, and nature of the opportunities to be made available to Kwadacha.

8.11 Direct Award. Direct award contracts will be awarded only:

- (a) for programs:
 - (i) prescribed in the Approved WUP that contribute to dust, debris, heritage and erosion mitigation measures to be conducted under the Approved WUP in the Finlay Reach of the Reservoir; or
 - (ii) that are described in an alternative arrangement with TKD;
- (b) if:
 - (i) the proponent is at least 51% owned by Kwadacha or by entities that are 51% owned by Kwadacha or Members;
 - (ii) the proponents are, in the sole opinion of BC Hydro, fully qualified; and
 - (iii) at least 50% of the work would be done by Members or TKD members; and
- (c) for contracts that BC Hydro is legally permitted to award by direct award.

8.12 Principles. The terms that are applicable to direct award contract opportunities for Kwadacha will be the same as the terms applicable to the direct award of contracts by BC Hydro to TKD, as reflected in a Final Agreement between BC Hydro and TKD, and will reflect the following principles:

- (a) the criteria used by BC Hydro to establish that any proponent is a qualified contractor will be identified and sufficiently described in order to facilitate successful bids by Kwadacha contractors; and
- (b) the terms of contracts awarded to Kwadacha will, in all respects, be consistent with BC Hydro requirements, including requirements with respect to safety, environmental compliance, security requirements, and performance standards.

ARTICLE 9 IMPLEMENTATION OF FINAL AGREEMENT

9.1 Agreement Steering Committee. BC Hydro and Kwadacha will establish an agreement steering committee (the “**Agreement Steering Committee**”) with equal membership from BC Hydro and Kwadacha. BC Hydro will be represented on the Agreement Steering Committee by the senior BC Hydro manager for the geographic area outlined in Schedule 3, and Kwadacha will be represented by either the Chief or a Band Councillor. The Agreement Steering Committee will have defined responsibilities to assist in the ongoing management of the Final Agreement by BC Hydro and Kwadacha. The specific responsibilities of the Agreement Steering Committee may, subject to further discussion by the Parties, include:

- (a) timely sharing of information of interest relating to each of Kwadacha and BC Hydro’s intentions, plans, and activities;
- (b) facilitating awareness of each of Kwadacha and BC Hydro’s operations and interests, especially issues which may be the subject of dispute resolution;
- (c) identifying opportunities for Members relating to BC Hydro operations in northern British Columbia; and
- (d) reviewing and reporting on implementation and effectiveness of the Final Agreement.

9.2 Costs and Staffing. Kwadacha and BC Hydro will each pay the costs of their respective members on the Agreement Steering Committee (time and expenses). BC Hydro will provide administrative support staff for the work of the Agreement Steering Committee for the first three years.

9.3 Meeting of Principals. In addition to or in conjunction with Agreement Steering Committee meetings, principals of Kwadacha and BC Hydro will, at their own respective expense, meet at least once a year. Principals for Kwadacha are the Chief and Council and for BC Hydro are designated representatives of senior management at the Vice-President level or higher.

ARTICLE 10 DISPUTE RESOLUTION

10.1 Dispute Resolution Process. The Final Agreement will contain provisions establishing a process for resolving disputes between Kwadacha and BC Hydro (the “**Dispute Resolution Process**”) which will be substantially in the form set out in this Article 10.

10.2 Definitions. For the purposes of this Article 10, the following terms have the following meanings:

- (a) **“Arbitrator”** means an arbitrator appointed under this Article 10;
- (b) **“Designated Individual”** means, for each Disputing Party, that individual or group of individuals so designated to assist with the resolution of a particular Dispute under Step 2;
- (c) **“Dispute”** means any dispute, difference, or disagreement between Kwadacha and BC Hydro:
 - (i) as to the meaning, application, implementation, or breach of any part of the Final Agreement, including but not limited to any dispute, difference, or disagreement as to:
 - (A) whether or not an Event of Default has occurred under the Final Agreement;
 - (B) whether or not a proposed action by a Party will constitute an Event of Default under the Final Agreement;
 - (C) financial sanctions that may be imposed for an Event of Default by Kwadacha under the Final Agreement; or
 - (D) any claim for damages or any other legal or equitable remedy for breach of the Agreement; or
 - (ii) subject to the provisions to be included in the Final Agreement under Section 11.1 as to whether any liability exists (including whether any damages are payable as a result of such liability, and the amount of any such damages) for a Defined Operation; and
- (d) **“Disputing Party”** means Kwadacha or BC Hydro.

10.3 Confidentiality of Process. The Parties and the Disputing Parties will keep confidential all discussions, negotiations, mediations, arbitrations, and any other communications and proceedings conducted under the Dispute Resolution Process, and will not disclose to any other person such discussions, negotiations, mediations, arbitrations, or other communications or proceedings, or the content thereof, unless previously discussed and agreed to in writing by the Disputing Parties or otherwise required by law. For greater certainty, no part of the Dispute Resolution Process will be open to the public.

10.4 Stages. Subject to Section 10.5, any Disputes arising between Disputing Parties will progress, until resolved, through the following stages of the Dispute Resolution Process:

- STEP 1: Within <*> days of one Disputing Party providing written notice to the other Disputing Party that a Dispute exists, the Agreement Steering Committee will make *bona fide* efforts to resolve the Dispute through negotiation following the mandates given by the Disputing Parties to their respective representatives on the Agreement Steering Committee.
- STEP 2: If the Agreement Steering Committee is unable to resolve the Dispute within <*> days of the written notice under Step 1, each Disputing Party will forthwith identify to the Agreement Steering Committee their respective Designated Individual. The Agreement Steering Committee will then prepare a written report setting out the nature and extent of the Dispute and submit such report to each Designated Individual within <*> days from the date upon which the Designated Individuals were identified.
- STEP 3: The Designated Individual for each Disputing Party will give directions to the Disputing Party's representatives on the Agreement Steering Committee with respect to a possible resolution of the Dispute.
- STEP 4: Within <*> days of the Designated Individuals giving directions to the Disputing Parties' representatives under Step 3, the Agreement Steering Committee will make *bona fide* efforts to resolve the Dispute through further negotiation following those directions.
- STEP 5: If the Agreement Steering Committee is still unable to resolve the Dispute within <*> days of the Designated Individuals giving directions to the Disputing Parties' representatives under Step 3, either Disputing Party may give notice to the other Disputing Party of a desire to commence mediation, and the Disputing Parties will jointly appoint a mutually acceptable mediator within <*> days after such notice is given. If the Agreement Steering Committee is unable to agree upon the appointment of a mediator within <*> days after a Disputing Party has given notice of a desire to mediate the Dispute, either Disputing Party may apply to the

British Columbia Mediator Roster Society for appointment of a mediator. The mediation will be conducted under the Mediation Rules of the British Columbia Mediator Roster Society.

- STEP 6: If Dispute has not been resolved through mediation under Step 5 within <*> days of the appointment of a mediator, each of the representatives of the Disputing Parties on the Agreement Steering Committee, as well as the mediator appointed under Step 5, will prepare a written report. Such reports will be delivered to the Disputing Parties within <*> days of suspension of mediation.
- STEP 7: Within <*> days of receipt of the written reports delivered under Step 6, the Chief (or other authorized representative of the Band Council) and the BC Hydro President (or other authorized representative of BC Hydro senior management) will meet and commence further good faith efforts to resolve the Dispute.
- STEP 8: If the Chief (or other authorized representative of the Band Council) and the BC Hydro President (or other authorized representative of BC Hydro senior management) are unable to resolve the Dispute under Step 7 within <*> days of receipt of the written reports delivered under Step 6, either Disputing Party, by written notice to the other Disputing Party, may refer such unresolved Dispute to binding arbitration under the *Commercial Arbitration Act*. The Disputing Parties will agree upon an Arbitrator within <*> days of the notice of arbitration being provided, failing which the Arbitrator will be selected in accordance with the *Commercial Arbitration Act*. The decision of the Arbitrator will be final and binding on the Disputing Parties.

10.5 Exceptions to Process. Despite anything else in this Article 10:

- (a) a Dispute relating to whether an action or a proposed action by Kwadacha will constitute an Event of Default by Kwadacha under the Final Agreement will be referred directly to Step 8 of Section 10.4 for arbitration if the Dispute:
 - (i) is not resolved by the completion of Step 4 by the time that a Party may give notice of a desire to commence mediation under Step 5; or
 - (ii) is considered by Kwadacha to be of an urgent nature;
- (b) if BC Hydro gives notice to Kwadacha of a Dispute under the Dispute Resolution Process relating to whether an action or proposed action by Kwadacha constitutes or will constitute an Event of Default under the Final Agreement, Kwadacha may

not take any steps in furtherance of the action or proposed action until the Dispute Resolution Process has been completed; and

- (c) in urgent circumstances, a Dispute referred directly to arbitration under Section 10.5(a) will be conducted on an expedited basis, to the extent reasonably necessary to avoid prejudice to Kwadacha as a result of the operation of Section 10.5(b).

10.6 Relationship between Mitigatory Measures and Claimant Compensation. The Parties acknowledge that mitigatory or remedial measures may have a lasting, beneficial effect on the viability of Kwadacha or the Members, whether as a group or individually. Accordingly, any evidence that such measures have been implemented on an individual, group, or community basis in relation to a Dispute, and their mitigatory effect when they have been implemented, will be considered by the Arbitrator in assessing the amount of damages that may be payable in relation to the Dispute.

10.7 Availability of Argument. In any Dispute, a Disputing Party may raise any defence or argument that it would otherwise have been able to raise at law, equity, or otherwise, had the Dispute been referred to a Court of competent jurisdiction, including a defence that the Dispute is statute-barred by the *Limitation Act*.

10.8 Arbitrator's Powers. An Arbitrator appointed under this Article 10 may award remedies at law and in equity, but may not make any award that restricts, constrains, or alters BC Hydro's use or operation of the Facilities.

10.9 No Further Claims. When Disputes are resolved under this Article 10:

- (a) neither Disputing Party may make any further claim against the other Disputing Party; and
- (b) no further compensation will be payable by a Disputing Party to the other Disputing Party

for the same Dispute.

10.10 Dispute Resolution Fund. BC Hydro will provide Kwadacha with annual payments of \$25,000, adjusted annually for CPI after the first annual payment, commencing upon the Final Agreement Effective Date. Kwadacha will establish a dispute resolution fund (the "**Dispute Resolution Fund**") for Kwadacha's dispute resolution expenses in relation to disputes with BC Hydro or the Province under the Final Agreement, and will pay each dispute resolution payment made by BC Hydro into the Dispute Resolution Fund. Amounts in excess of \$250,000, as adjusted for inflation by the CPI from the AIP Effective Date, in the Dispute Resolution Fund

will be available for Community Related Purposes, and may be paid to Kwadacha by the CDP Trustees under Article 5. Such dispute resolution payments will continue in perpetuity, unless otherwise provided for in the Final Agreement.

10.11 Dispute Resolution Costs. In any dispute to which the Dispute Resolution Process applies, Kwadacha will be responsible for all of its own costs and 50% of shared costs (including the cost of mediators, arbitrators, facilities, and reporters necessary to conduct the Dispute Resolution Process). Subject to the following, to the extent that Kwadacha's responsibility for such costs, at any time, exceeds the amount available to Kwadacha from the Dispute Resolution Fund, Kwadacha will be responsible for paying those costs from its own resources, but may reimburse itself, subject to reasonable audit, from future payments into the Dispute Resolution Fund. If BC Hydro exercises its option to capitalize under Section 3.4, to the extent that Kwadacha's responsibility for costs in relation to resolving disputes pertaining to defining how capitalization is to be computed and applied exceeds the amount available to Kwadacha from the Dispute Resolution Fund, BC Hydro will share 50% of such excess up to, but not exceeding, an aggregate amount of \$125,000.

10.12 Province's Action During Dispute Resolution Process. If BC Hydro gives notice to Kwadacha of a Dispute under the Dispute Resolution Process under Section 10.4, the Province will not initiate or continue to pursue any action seeking any remedy available to it at law or in equity for the same issue which is the subject of the Dispute between BC Hydro and Kwadacha until after that Dispute is resolved (as between BC Hydro and Kwadacha) through the Dispute Resolution Process, except:

- (a) to prevent the loss of a right of action due to the expiration of a limitation period;
- (b) to obtain interlocutory or interim relief; or
- (c) if the matter is considered by the Province to be of an urgent nature.

ARTICLE 11 DEFINED OPERATIONS & HEALTH IMPACTS

11.1 Defined Operations. The Final Agreement will contain provisions to enable Kwadacha to seek compensation from BC Hydro through the Dispute Resolution Process, and, subject to Section 10.7, for damages to Kwadacha that it can establish are caused by physical impacts arising from Defined Operations of the Reservoir by BC Hydro. Compensable damages for a Defined Operation:

- (a) will be limited to the proportion of any loss or damage that is caused by the Defined Operation and that would not have occurred as a result of an operation of the Reservoir that is not a Defined Operation; and
- (b) in the case of Reservoir operations at elevations between 2147 feet and 2106 feet, shall be limited to damages arising in the existing Village site or on the Finlay Reach of the Reservoir north of the northern limit of Omineca Arm.

For greater certainty, this Section 11.1 does not provide Kwadacha with any grounds for compensation that Kwadacha would not have in the absence of this AIP. Kwadacha's remedies under these provisions will be limited to compensation for damages. Nothing in this AIP restricts, constrains, or alters BC Hydro's use or operation of the Facilities, or constitutes an agreement between BC Hydro and Kwadacha to use or operate the Facilities in any agreed manner.

11.2 Potential Adverse Health Impacts. The Final Agreement will contain provisions and claim processes to enable individual Members to seek compensation for Health Impacts from BC Hydro through an alternate dispute resolution process which will be established under the Agreement, and which may be invoked by a Member who elects, in writing, to resolve a claim against BC Hydro for compensation for Health Impacts through that process. That process:

- (a) will involve successive stages of mediation and arbitration; and
- (b) will include terms equivalent to the principles in Sections 10.7, 10.8, and 10.9 of the Dispute Resolution Process to be established for disputes between Kwadacha and BC Hydro.

11.3 Adherence by Member Advancing Claims. Any Member advancing a claim against BC Hydro under the alternate dispute resolution process to be established under Section 11.2 will be required to agree to adhere to the provisions of the Final Agreement governing that process.

11.4 Notice by Kwadacha. Kwadacha will give prompt notice to BC Hydro of any occurrence of which it is aware which is alleged to have caused a Health Impact, together with all particulars resulting therefrom.

ARTICLE 12 GENERAL

12.1 Assignment and Successorship. The Final Agreement will be assignable to future operators of the Facilities who are capable of performing the obligations assigned with the consent of Kwadacha, such consent not to be unreasonably withheld.

12.2 Comparability with TKD. The Final Agreement will ensure that reasonable comparability is maintained with respect to the CDP and the Endowment Fund (subject to the variation between the Endowment Funds of TKD and Kwadacha when initially established) in the event of any subsequent agreement being reached with TKD within two years after the Final Agreement Effective Date.

12.3 Own Source Revenues. It is in the interest of Kwadacha and consistent with the Province's government policy at the time of the AIP Effective Date that monies received by Kwadacha under the Final Agreement not be considered as First Nation 'own source revenues' in the context of future land claims negotiations or agreements.

12.4 Currency. All dollar amounts in this AIP are in Canadian currency.

12.5 Counterparts. This AIP may be signed in one or more counterparts, each counterpart may be transmitted by facsimile and each will constitute an original instrument and such counterparts, taken together, will constitute one and the same document.

This Agreement-in-Principle has been executed effective as of April 1, 2006 notwithstanding the actual date of execution by each of the Parties.

KWADACHA FIRST NATION

By:

Chief Donny Van Somer

BRITISH COLUMBIA HYDRO AND POWER AUTHORITY

By:

Bob Elton, President and Chief Executive Officer

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

By:

Honourable Michael de Jong,
Minister of Aboriginal Relations and Reconciliation

SCHEDULE 1

CERTAINTY PROVISIONS AGREEMENT

BACKGROUND

- A. Kwadacha, together with certain other parties, have commenced an action in the Supreme Court of British Columbia under No. L013565, Vancouver Registry, on behalf of Kwadacha and all of its Members against BC Hydro, the Province and Canada in relation to the planning, development, construction and operation of the W.A.C. Bennett Dam and the Williston Reservoir seeking, among other things, an accounting of profits, equitable and common law damages or compensation, exemplary, punitive and aggravated damages, special damages, declaratory relief, special costs and interest;
- B. As of the Effective Date, the Plaintiffs have not yet reached any settlement with Canada in respect of the Action;
- C. The Plaintiffs, BC Hydro and the Province have reached a settlement of all issues between them in the Action on the terms and conditions set out herein; and
- D. Kwadacha, the Province and BC Hydro wish to settle certain other matters relating to the Facilities on the terms and conditions set out herein.


AGREEMENTS

For good and valuable consideration, the receipt and sufficiency of which each Party acknowledges, the Parties agree as follows:

ARTICLE 1 INTERPRETATION

1.1 Defined Terms. In this Agreement, unless there is something in the subject matter or context inconsistent therewith or unless otherwise specially provided, the following words, phrases and expressions shall have the following meanings:

- (a) **"Action"** means Supreme Court of British Columbia Action No. L013565, Vancouver Registry;
- (b) **"Agreement"** means this Certainty Provisions Agreement;
- (c) **"AIP Effective Date"** means April 1, 2006;
- (d) **"Approved WUP"** means the water use plan for the Peace Area which has been approved by the Province and which has been approved and implemented by the Comptroller of Water Rights or any applicable authority;

- (e) **"Authorizations"** means all tenures, approvals, permits, licences, and other authorizations held by BC Hydro for the Facilities as of the Effective Date, or in the future, including any amendments or changes made after the Effective Date to the Authorizations held by BC Hydro as of the Effective Date;
- (f) **"BC Hydro"** means British Columbia Hydro and Power Authority, a corporation continued under the *Hydro and Power Authority Act*, R.S.B.C. 1996, c. 212, its subsidiaries, predecessors, successors and assigns, and includes its directors, officers, employees and agents;
- (g) **"Canada"** means Her Majesty the Queen in Right of Canada, and includes her ministers, officials, servants, agents, legal representatives and assigns;
- (h) **"Committee Report"** means the Peace Water Use Plan included in the Peace Water Use Plan Committee Report dated December 2003;
- (i) **"Defined Operation"** means the operation of the Reservoir at a Reservoir Elevation that is, within a quality-controlled margin of measurement error of ± 0.1 meters,
 - (i) above 2205 feet (672.08 meters); or
 - (ii) below the lower of 2147 feet (654.41 meters), or such other level or levels as may be established by the Water Comptroller in a future water use planning process and agreed to by Kwadacha;
- (j) **"Dispute Resolution Process"** means the dispute resolution process set out in Article  of the Final Agreement;
- (k) **"EAO"** means the British Columbia Environmental Assessment Office;
- (l) **"Effective Date"** means the date of this Agreement;
- (m) **"Facilities"** means the W.A.C. Bennett Dam, the Peace Canyon Dam, the Reservoir and any other existing works, including transmission and distribution facilities, substations, generating stations, reservoirs, and related works owned or operated by BC Hydro in the geographic area outlined in the map attached as Schedule 1 as of the AIP Effective Date, which are used or operated in connection with the W.A.C. Bennett Dam or the Peace Canyon Dam; and includes works added at any time after the AIP Effective Date as part of routine maintenance or repairs, and the installation or replacement of Operating Components of the Facilities at any time after the AIP Effective Date whether or not the installation of such Operating Components results in an increase in the generating capacity or efficiency of the Facilities;

- (n) **"Final Agreement"** means the final agreement among Kwadacha, BC Hydro and the Province dated as of [REDACTED], and a reference to the Final Agreement includes the provisions of this Agreement;
- (o) **"GMS Upgrades Proposal"** means the current proposal to replace or upgrade selected equipment for generating units 6, 7 and 8 at BC Hydro's G.M. Shrum Generating Station and includes the development, construction, and operation of the resulting Facilities;
- (p) **"Health Impact"** means a chemical, biological, or physical impact resulting in physical illness to a Member caused by the Facilities or their construction, repair, maintenance, or operation as a result of dust, mercury, or another mechanism that is unknown or unforeseeable as of the Effective Date and not capable of discernment with due diligence, excluding any personal injury sustained by, or wrongful death of, a Member caused by or attributable to drownings, boating accidents, and other similar causes;
- (q) **"Kwadacha"** means the Kwadacha First Nation, also known as the Kwadacha Band, a 'band' as defined under the *Indian Act*, including any and all Members;
- (r) **"Licensed Use"** means:
 - (i) uses of the Facilities, and uses of waters for the Facilities, authorized under the Authorizations listed in Schedule 2 and held by BC Hydro as of the Effective Date, or
 - (ii) the sale or export of power generated through the Licensed Use of the Facilities,

and, for greater certainty, the scope of the **"Licensed Use"** within the meaning of this Agreement is not expanded, diminished, or otherwise modified by any amendments to or changes in the Authorizations made or obtained after the Effective Date;


- (s) **"Member"** means:
 - (i) a 'member of a band', in respect of the Kwadacha Band List, within the meaning of subsection 2(1) of the *Indian Act*, or
 - (ii) a past, present or future member of Kwadacha, or any of their heirs, legal representatives, successors, and assigns;

and **"Members"** means any collective of two or more Members;

- (t) **"New Project"** means any new power-related project proposed or constructed after the AIP Effective Date by, with the approval of, or under or subject to the control of the Province, BC Hydro, or another corporation owned or controlled,

directly or indirectly, by the Province or BC Hydro, and, for greater certainty, excludes any and all works added to the Facilities at any time after the AIP Effective Date as part of routine maintenance, and the installation and replacement of Operating Components;

- (u) **“Non-Licensed Use”** means any use, operation, repair or maintenance, or proposed use, operation, repair or maintenance of the Facilities that is determined under the Dispute Resolution Process to fall outside the scope of the Licensed Use, or that is deemed to fall outside the scope of the Licensed Use under Section 7.3(a)(ii);
- (v) **“Operating Components”** means generation, transmission, and distribution equipment, machinery, and other works, including ancillary structures, that form part of the Facilities from time to time;
- (w) **“Other Action”** has the meaning defined in Section 4.2(b) of this Agreement;
- (x) **“Parties”** means Kwadacha, BC Hydro, and the Province, and **“Party”** means any one of them;
- (y) **“Plaintiffs”** means the plaintiffs in the Action, on their own behalf as well as on behalf of the Members;
- (z) **“Proceeding”** means:
 - (i) any action, cause of action, injunction, suit, claim, specific claim, demand, trial, hearing, or other process or proceeding before any Court, board, commission, tribunal, or other judicial, quasi-judicial or administrative body, relating directly or indirectly to the planning, development, construction or operation of the Facilities;
 - (ii) any administrative or consultation process relating to the operation of the Facilities that is open to members of the public or stakeholders, including any water use planning process relating to the Facilities; or
 - (iii) a public relations campaign, or direct lobbying of municipal, provincial, or federal government officials;but, for greater certainty, excludes land claims negotiations or any other negotiations the outcome of which is dependent on the agreement or approval of either or both of BC Hydro and the Province;
- (aa) **“Province”** means Her Majesty the Queen in Right of British Columbia and includes her ministers, officials, servants, agents, legal representatives and assigns;
- (bb) **“Reservoir”** means the Williston Reservoir;

- (cc) **"Reservoir Elevation"** means the elevation of the Reservoir above sea level as recorded at the Water Survey of Canada Lost Cabin Gauge (07EF002) located on the north arm of the Peace reach of the Reservoir near the junction with the Finlay and Parsnip reaches; and
- (dd) **"Road Provisions"** means those provisions in Article  of the Final Agreement dealing with the 'Road' as defined under the Final Agreement.

1.2 Definitions in Final Agreement. Terms used in this Agreement, which are defined in the Final Agreement but not otherwise defined in this Agreement, shall have the meanings ascribed to them in the Final Agreement.

1.3 Schedules. The following attached schedules form part of this Agreement:

- (a) **Schedule 1** Facilities Map
- (b) **Schedule 2** Authorizations as of the Effective Date

1.4 Obligations Conditional. The obligations of the Parties under this Agreement are conditional on the Parties executing, ratifying and delivering this Agreement and the Final Agreement, in accordance with the ratification procedures under Article <*> of the Final Agreement.

ARTICLE 2

SATISFACTION AND COVENANT NOT TO SUE

2.1 Satisfaction of Portion of Claim. The Plaintiffs acknowledge full and complete satisfaction of that portion of their total claims in the Action which may have been caused by or is attributable to the negligence, nuisance, breach of duty, or any other act, omission, or default of BC Hydro or the Province, if any, as may be determined in the trial or other disposition of the Action.

2.2 Covenant Not to Sue. Except as otherwise provided in this Agreement, the Plaintiffs covenant not to, at any time hereafter, commence, advance, prosecute or continue against BC Hydro, its subsidiaries, insurers, administrators, employees, agents, directors, or officers, while acting in such capacities, or the Province, any claim or other remedy with respect to any manner of action, cause of action, suit, debt, sum of money, expense, general or special damages, trust, accounting, costs, interest or expenses of any nature or kind whatsoever, whether arising from the Action or any other proceeding, and whether known or unknown, suspected or unsuspected, and arising at law or in equity or under statute which the Plaintiffs can, will, or may have for, by reason of, or arising from the planning, development, construction, repair, maintenance or operation of the Facilities, and, in particular, without restricting the generality of the foregoing, for and by reason of any law for:

- (a) injuries or damages, including costs and expenses, arising directly or indirectly from the planning, development, construction, repair, maintenance or operation of the Facilities; and

- (b) past, present and future infringement of any and all claimed, existing or future, aboriginal rights or title or treaty rights arising directly or indirectly from the planning, development, construction, repair, maintenance or operation of the Facilities.

2.3 Exceptions. Section 2.2 does not apply to or affect:

- (a) the ability of Kwadacha to pursue a claim for damages for a Defined Operation against BC Hydro under the Dispute Resolution Process as provided in Article 2.2 of the Final Agreement;
- (b) claims by Kwadacha against the Province for damages in respect of a Defined Operation;
- (c) claims for Health Impacts, where the Member in question has not elected, in writing, to resolve such claim under the Dispute Resolution Process as provided in Article 2.2 of the Final Agreement;
- (d) the ability of a Member to pursue a claim in respect of a Health Impact against BC Hydro under the Dispute Resolution Process, where the Member in question has elected, in writing, to resolve such claim under the Dispute Resolution Process, as provided in Article 2.2 of the Final Agreement;
- (e) claims for past, present or future infringement of claimed, existing or future, aboriginal rights or title or treaty rights, to the extent that the breach alleged is not the result of, or would have existed in any event of, the planning, development, construction, repair, maintenance or operation of the Facilities;
- (f) claims by any Member for personal injury or wrongful death that do not constitute claims in respect of a Health Impact;
- (g) claims by any Member employed or engaged as a contractor by the Province, BC Hydro, or their agents or contractors, in respect of the Member's employment engagement, or the termination thereof;
- (h) an appeal to a Court of any decision, order, or award made under the Dispute Resolution Process, or an application to the Court to set aside such a decision, order, or award, or for judicial review of such a decision, order, or award, or for interim relief to preserve any Party's interests pending the making of such a decision, order, or award;
- (i) a claim against any Party for breach of this Agreement, the Final Agreement, or a decision, order, or agreed resolution under the Dispute Resolution Process, or any other agreement entered into between Kwadacha or any Member and either or both of BC Hydro and the Province, including any proceeding in respect of such a claim; and

- (j) any other proceeding to enforce the rights of any Party or Member under this Agreement, the Final Agreement, or a decision, order, award, or agreed resolution under the Dispute Resolution Process, or any other agreement entered into between Kwadacha or any Member, and either or both of BC Hydro and the Province.


2.4 Satisfaction of Duty to Consult and Accommodate. The Plaintiffs acknowledge and agree that any and all obligations of BC Hydro and the Province, or either of them, to consult with them in respect of their existing or asserted aboriginal rights or title or any treaty rights that may be agreed to, or to accommodate those existing or asserted rights or title or treaty rights, arising from the planning, development, construction, repair, maintenance, and operation within Licensed Use of the Facilities, are satisfied by this Agreement and the Final Agreement and by the performance by BC Hydro and the Province of their obligations under this Agreement and the Final Agreement.


2.5 Exceptions. Section 2.4 does not apply to claims for any alleged failure by the Province, BC Hydro, or another corporation owned or controlled, directly or indirectly, by the Province or BC Hydro, to consult with the Plaintiffs in respect of their existing or asserted aboriginal rights or title or treaty rights, or to accommodate those existing or asserted aboriginal rights or title or treaty rights, in relation to:

- (a) any New Project;
- (b) a change in the Authorizations, including the amendment of an Authorization or the acquisition of a new Authorization for the Facilities, authorizing a use of the Facilities or a use of waters for the Facilities that is not a Licensed Use; or
- (c) a change in the use of the Facilities from the generation, transmission, or distribution of electricity to another use.

This Section 2.5 does not impose, create, or extend any legal obligation to the Plaintiffs that BC Hydro or the Province would not have in the absence of this Agreement. Section 2.5(b) does not include a change in the Authorizations, other than a water licence (or, if the water licensing scheme established by the Province under the *Water Act* is replaced by another regulatory scheme, an Authorization equivalent to a water licence under that new regulatory scheme), that is required for the installation or operation of an Operating Component.

ARTICLE 3 DISCONTINUANCE OF ACTION AGAINST BC HYDRO AND THE PROVINCE

3.1 Notice of Discontinuance. The Plaintiffs will, within  days of execution of this Agreement by all the Parties, discontinue the Action as against BC Hydro and the Province, on a without costs basis, at which time BC Hydro and the Province both agree to waive any claim for costs therein.

3.2 Amendment of Pleadings. The Plaintiffs will, within  days of execution of this Agreement by all the Parties, amend their pleadings in the Action to do the following:

- (a) remove BC Hydro and the Province as defendants to the Action;
- (b) delete any claims as against BC Hydro or the Province; and
- (c) expressly waive the Plaintiffs' right to recover against Canada or any other party any fraction, portion or percentage of any losses, damages, or other amounts claimed in the Action that is attributable to the negligence, nuisance, breach of duty, or other act or default of BC Hydro or the Province, for which the Court, or any other Court or tribunal in another proceeding, may find that Canada or such other party is or would be entitled to claim contribution or indemnity, under any statute, agreement or otherwise, from BC Hydro or the Province.

3.3 Continuation of Action against Canada. The Plaintiffs may only continue to pursue the Action as against Canada in accordance with the provisions of Article 4 hereof.

3.4 Full Defence. The Parties agree that:

- (a) if any of the Plaintiffs continue to pursue the Action against BC Hydro or the Province, or otherwise commence, advance, prosecute, or continue any claim against BC Hydro or the Province contrary to the intent of this Agreement, this Agreement may be pleaded by BC Hydro or the Province as full estoppel and defence to any such claim by any of the Plaintiffs so that the full force and effect of this Agreement is maintained according to its terms without variation; and
- (b) this Agreement may also be raised by the Province or BC Hydro in any land claims negotiations or other negotiations (excluding settlement negotiations for the purpose of settling claims referred to in Section 2.3(b)) as a full answer to any assertions or claims made by or on behalf of any of the Plaintiffs for further compensation relating to the planning, development, construction, maintenance or operation of the Facilities.

ARTICLE 4 RESERVATION OF RIGHTS AGAINST CANADA

4.1 Reservation of Rights Against Canada. Subject to the terms of Section 4.2, the Plaintiffs hereby except and reserve, and this Agreement is not intended to discharge or in any way affect, any action, cause of action, claim, right or demand that the Plaintiffs may now or in the future have against Canada or any other person, other than BC Hydro or the Province, except as set out in this Agreement, and, for greater certainty:

- (a) the Plaintiffs shall be at liberty to settle, pursue or relinquish their claims against Canada, or, at the Plaintiffs' sole discretion, another person or persons other than BC Hydro or the Province; and

- (b) any recovery of funds made by the Plaintiffs against Canada or such other person or persons shall be solely to the credit of the Plaintiffs, as appropriate, except to the extent that indemnity may be required from Kwadacha under Section 4.2(f).

4.2 Obligations of Plaintiffs. If the Plaintiffs:

- (a) continue to pursue their claims in the Action as against Canada, or as against any other person other than BC Hydro or the Province that the Plaintiffs may add as a defendant in the Action, or
- (b) commence, advance, prosecute or continue any other action, cause of action, claim, right or demand against Canada or any other person other than BC Hydro or the Province, relating to the planning, development, construction, maintenance or operation of the Facilities, for which Canada or such other person might reasonably be entitled to claim contribution or indemnity under any statute, agreement or otherwise from BC Hydro or the Province (other than a claim referred to in Section 2.3) (the "**Other Action**"),

the Plaintiffs agree that:

- (c) the Plaintiffs will inform the Court or tribunal, and Canada or such other person, that they have entered into an agreement with BC Hydro and the Province in settlement of the Plaintiffs' claims as against BC Hydro and the Province in relation to the planning, development, construction, maintenance and operation of the Facilities,
- (d) the Plaintiffs will not to seek to recover against Canada or any other person, and will advise the Court at the first reasonable opportunity that they expressly waive any right to recover from Canada or any other person, that fraction, portion or percentage of the Plaintiffs' total causes of action and claims for damages respecting the planning, development, construction, maintenance or operation of the Facilities that is attributable to the negligence, nuisance, breach of duty, or other act or default of BC Hydro or the Province, for which the Court or tribunal, or any other Court or tribunal in another proceeding, may find that Canada or such other party is or would be entitled to claim contribution or indemnity, under any statute, agreement, or otherwise, from BC Hydro or the Province (other than a claim referred to in Section 2.3),
- (e) if the Court or tribunal, after the trial of the Action or the Other Action, grants judgment to the Plaintiffs or any of them against Canada or any other person in an amount exceeding that fraction, portion or percentage of the Plaintiffs' total causes of action and claims for damages respecting the planning, development, construction, maintenance or operation of the Facilities that is attributable to Canada or such other person, based upon the fraction, portion or percentage of fault or liability of Canada or such other person as found by the Court or tribunal, the Plaintiffs will not seek to recover, directly or indirectly, from Canada or such

other person any amount for which Canada or such other person is or would be entitled to claim contribution or indemnity, under any statute, agreement, or otherwise, from BC Hydro or the Province (other than a claim referred to in Section 2.3), and

- (f) if BC Hydro or the Province, through any judgment or order of any Court or tribunal, is found liable to Canada or any other person for contribution or indemnity for any fraction, portion or percentage of any amount paid by Canada or such other person to Kwadacha in respect of the Plaintiff's claims in the Action or the Other Action, Kwadacha will indemnify BC Hydro or the Province, as the case may be, for any such fraction, portion or percentage which BC Hydro or the Province is required to pay to Canada or such other person under that judgment or order (other than in respect of a claim referred to in Section 2.3), but Kwadacha will not be liable for any costs incurred by BC Hydro or the Province to defend any such claim by Canada or any other person for contribution and indemnity.

4.3 Consideration. The Plaintiffs expressly acknowledge the receipt of adequate consideration in respect of the obligations agreed to under Section 4.2, notwithstanding that such consideration has not been provided by Canada or any other person other than BC Hydro or the Province.

4.4 Rights of BC Hydro and the Province. Nothing in this Agreement shall in any way or manner restrict BC Hydro or the Province from resisting any application by Canada or any other person to keep BC Hydro or the Province in the Action as a defendant or nominal defendant.

4.5 Bar Order. BC Hydro or the Province may, at their option, request a bar order from the Court to bar:

- (a) all claims by all non-settling defendants for contribution, indemnity or other claims as against BC Hydro or the Province in respect of the Action; and
- (b) discovery by all non-settling defendants against BC Hydro or the Province except where the Court deems it appropriate by court order.

ARTICLE 5 FUTURE RELATIONSHIP

5.1 Kwadacha Participation in Proceedings. Subject to the provisions of Article 2, Article 3 and Article 4, this Agreement does not restrict Kwadacha's right to participate fully in any Proceeding, provided that Kwadacha does not breach Section 5.2. For greater clarity, notwithstanding the provisions of Article 2, this Agreement does not restrict Kwadacha's right to take any position in any Proceeding with respect to:

- (a) any Non-Licensed Use of the Facilities, provided that Kwadacha shall not make any claim against BC Hydro or the Province for damages with respect to a Non-Licensed Use, other than as may be permitted by Section <*> of the Final Agreement for a Defined Operation; or

- (b) any New Project.

Kwadacha will, in the exercise of its rights under Section 5.1(a), make a good faith effort to resolve the issue with BC Hydro prior to seeking relief from a regulatory body or bodies having jurisdiction over the matter and may pursue other remedies available to it once its remedies from the regulatory authority or authorities have been exhausted.

5.2 Kwadacha Covenants Not to Interfere. Kwadacha covenants and agrees not to encourage, commence, join, prosecute, assert, intervene in, or support any Proceeding on its own behalf or on behalf of or in cooperation with any other Member, person, group or entity, in which Kwadacha or such other Member, person, group or entity:

- (a) takes the position that:
 - (i) any Authorization required for the Licensed Use of the Facilities is legally invalid;
 - (ii) the Licensed Use of the Facilities was not or is not within the scope of the Authorizations;
 - (iii) BC Hydro does not, for any reason, have the legal right to continue its Licensed Use of the Facilities; or
 - (iv) BC Hydro requires any further tenure, approval, permit, licence, or other authorization to allow the Licensed Use of the Facilities;
- (b) without the express consent of BC Hydro, attempts to restrict the Licensed Use of the Facilities, other than to: **[NTD: This provision may need to be refined before the Final Agreement is finalized depending on the status of WUP process.]**
 - (i) participate in any proceeding in the current water use planning process to support the implementation of recommendations which are consistent with the Committee Report and to advocate for the implementation of those recommendations with respect to dust, debris, heritage, and erosion mitigation measures, including implementation of plans with respect to dust, debris, heritage, and erosion mitigation measures through amended water licence conditions and other orders under the *Water Act*;
 - (ii) participate in the 5 year and 10 year reviews of the Approved WUP, and in future public multi-stakeholder planning processes for water use plans that include all or a portion of the geographic area outlined in the map attached as Schedule 1:
 - (A) to make and support recommendations with respect to dust, debris, heritage, and erosion mitigation measures that are consistent with the Committee Report; and

- (B) to advocate for and recommend new plans that Kwadacha may consider to be necessary with respect to dust, debris, heritage, and erosion mitigation, including implementation of such plans through amended water licence conditions and other orders under the *Water Act*, provided that such plans and recommendations do not include any restrictions on reservoir elevations or otherwise restrict BC Hydro's operation of the Reservoir;

provided that with respect to any water use planning process, Kwadacha will not encourage, commence, join, prosecute, assert, intervene in, or support any Proceeding to review or appeal the decision of the statutory decision maker with respect to the acceptance, rejection, or modification of any position advocated, or recommendation made by Kwadacha, or with respect to the scope or manner of implementation of any such position or recommendation, on any basis or grounds, including the ground that there is a failure to satisfy a legal obligation to Kwadacha to consult with them in respect of their existing or asserted aboriginal rights or title or treaty rights, or to accommodate those existing or asserted rights or title or treaty rights; and

- (iii) continue to participate in the EAO process with respect to the GMS Upgrades Proposal to learn about the GMS Upgrades Proposal and to identify any physical or environmental interests that Kwadacha may have related to the incremental impacts of the GMS Upgrades Proposal provided that Kwadacha will not:
 - (A) oppose the GMS Upgrades Proposal or any Authorizations that are required for or related to the GMS Upgrades Proposal;
 - (B) make any further representations with respect to the impacts of the Facilities in existence at AIP in the course of its participation in the EAO process;
 - (C) encourage, commence, join, prosecute, assert, intervene in, or support any Proceeding to review or appeal the decision of the statutory decision maker with respect to the GMS Upgrades Proposal, on any basis or grounds, including the ground that there is a failure to satisfy a legal obligation to Kwadacha to consult with them in respect of their existing or asserted aboriginal rights or title or treaty rights, or to accommodate those existing or asserted rights or title or treaty rights; and
 - (D) seek any compensation or other accommodation from BC Hydro or the Province with respect to the GMS Upgrades Proposal;

- (c) opposes the issuance, renewal or modification of any Authorization sought by BC Hydro, to the extent such Authorization is required to allow the Licensed Use of the Facilities;
- (d) opposes or seeks to delay or prevent the approval and implementation by the Comptroller of Water Rights of the Committee Report; or
- (e) attempts to seek any compensation from BC Hydro or the Province for damages or impacts arising out of a Defined Operation other than under the Dispute Resolution Process, or from the Province as otherwise permitted under Section 2.3.

5.3 Sanctions for Breach. For any breach by Kwadacha of Section 5.2, BC Hydro may pursue any remedy available to it at law or in equity under the Dispute Resolution Process, provided that

- (a) any damages or other financial sanctions which are imposed against Kwadacha are reasonable and proportional to the financial harm that is or will be caused to BC Hydro or the Province by the breach, up to and including termination of the CDP, and
- (b) such damages or financial sanctions are not applicable to breaches of Section 2.2 or 2.4, as it is contemplated that BC Hydro and the Province will be able to rely on the provisions of Article 2, Article 3 and Article 4 as a complete defence to any action that is commenced.

5.4 Binding Effect on the Province. For greater certainty, notwithstanding the fact that the Province is not a party to the Dispute Resolution Process,

- (a) subject to Article 2, Article 3 and Article 4, the Province will not take the position that Kwadacha is not entitled under Section 5.1(a) to take any position in any Proceeding with respect to any Non-Licensed Use of the Facilities; and
- (b) the Province will not claim or seek to impose damages or financial sanctions against Kwadacha in respect of any breach of Section 5.2 other than, in excess of, or in addition to any damages or financial sanctions which may be determined under the Dispute Resolution Process in accordance with Section 5.3(a).

5.5 Appeals from Dispute Resolution Process. In any appeal to a Court of a decision, order, or award made under the Dispute Resolution Process, Article 2 and this Article 5 do not preclude Kwadacha from raising or pursuing the subject matter of the appeal.

ARTICLE 6 INDEMNITY

6.1 Indemnification by Kwadacha. Subject to Section 6.2, Kwadacha will indemnify and forever save harmless BC Hydro and the Province from and against any and all obligation,

liability, duty, loss, damage, cost or expense resulting, directly or indirectly, from any Proceeding commenced, joined, prosecuted, asserted, intervened in, or supported by the Plaintiffs or commenced, joined, prosecuted, asserted, or intervened in by Kwadacha or any Member or collective of Members against BC Hydro or the Province relating directly or indirectly to:

- (a) the planning, development, construction, repair, maintenance, or operation of the Facilities;
- (b) claims which are in respect of procedures resulting in the execution of this Agreement or the Final Agreement;
- (c) claims arising from the selection, appointment, or actions of the CDP Trustees or the Endowment Fund Trustees;
- (d) any errors or omissions in respect of the ratification of this Agreement or the Final Agreement; or
- (e) the deposit, withdrawal, use, management or any other dealing with respect to funds paid to Kwadacha or the CDP Trustees or Endowment Fund Trustees under the Final Agreement.

6.2 Exceptions. Nothing in this Agreement will require Kwadacha to indemnify BC Hydro or the Province for a claim described in Section 2.3 or 2.5, including a claim for a Health Impact where the Member in question has elected, in writing, to resolve such claim under the Dispute Resolution Process.

6.3 Notice. BC Hydro and the Province will provide Kwadacha with notice of any Proceeding which may reasonably give rise to indemnification under Section 6.1. Such notice must be sufficient to enable Kwadacha to identify the claims being made in such Proceeding and to protect Kwadacha's interest in any Proceeding or settlement.

ARTICLE 7 REPRESENTATIONS AND WARRANTIES

7.1 Representation and Warranty of Kwadacha. Kwadacha represents and warrants to each of the other Parties that it has the authority to act on behalf of the Plaintiffs with respect to the conduct of the Action, and with respect to any obligations assumed under this Agreement pertaining to the conduct of the Action.

7.2 Representation and Warranty of BC Hydro. BC Hydro represents and warrants to each of the other Parties, that, to the knowledge of BC Hydro, there is no material Authorization held by BC Hydro for the Facilities as of the Effective Date that has not been specified in Schedule 2, and that has not been fully disclosed to, or made available for inspection by, Kwadacha.

7.3 Consequence of Non-Disclosure of Authorization. If, despite Section 7.2, it is determined under the Dispute Resolution Process that there existed, as of the Effective Date, any Authorization that was not listed in Schedule 2:

- (a) if that Authorization imposed a material restriction, limitation, or condition on the Licensed Use of the Facilities,
 - (i) Kwadacha will be entitled under the Dispute Resolution Process to pursue any claim it may have against BC Hydro arising from any use of the Facilities that is contrary to such restriction, limitation, or condition, in the same manner as if that use were a Defined Operation, in accordance with Section 2.3(a), and
 - (ii) for the purposes of Article 5, any use of the Facilities that is contrary to such restriction, limitation, or condition will be deemed to fall outside the scope of the Licensed Use;
- (b) except as provided in Section 7.3(a)(i) and (ii), Kwadacha will have no other remedy, including termination or rescission of this Agreement or the Final Agreement, as a result of BC Hydro's non-disclosure of that Authorization; and
- (c) the Parties' respective rights and obligations under this Agreement and the Final Agreement will not otherwise be affected or modified.

7.4 Survival. The representations and warranties of each of the Parties contained in this Article shall survive and continue in full force and effect indefinitely for the benefit of the other Parties.

7.5 Reliance. Subject to Section 7.3, each Party acknowledges and agrees that the other Parties have entered into this Agreement relying on the representations and warranties and other terms and conditions of this Agreement, notwithstanding any independent searches or investigations that have been or may be undertaken by or on behalf of such Parties.

ARTICLE 8 GENERAL

8.1 Dispute Resolution. Any dispute, difference or disagreement between Kwadacha and BC Hydro as to the meaning, application, implementation, or breach of any part of this Agreement, including the quantum of any financial sanction but excluding the Road Provisions, will be resolved in accordance with the Dispute Resolution Process.

8.2 Set-Off. If, under this Agreement or the Final Agreement, Kwadacha or any of the Plaintiffs become obligated to pay any sum of money to either BC Hydro or the Province, then such sum may, at the election of BC Hydro or the Province, as the case may be, and without limiting or waiving any right or remedy for either such Party under this Agreement or the Final Agreement, be set off against and will apply to any sum of money owed by either BC Hydro or

the Province, as the case may be, whether under this Agreement or the Final Agreement, until such amount has been completely set-off.

8.3 No Admission of Liability. It is expressly understood and agreed by the Parties that the terms and conditions contained in this Agreement do not constitute an admission of wrongdoing or liability on the part of BC Hydro or the Province and are agreed to by BC Hydro and the Province on a 'without prejudice' basis.

8.4 Limitation of Agreement. It is expressly understood and agreed by the Parties that this Agreement is not a treaty or land claims agreement within the meaning of section 25 and 35 of the *Constitution Act, 1982* and does not define, recognize or affirm any asserted or existing aboriginal rights including title or treaty rights.

8.5 Further Assurances. The Parties agree to execute and deliver all other appropriate supplemental agreements and other instruments, and take any other action necessary, to give full effect to this Agreement, and to make this Agreement legally effective, binding, and enforceable as among them, and as against third parties.

8.6 Waiver. No provision of this Agreement may be waived except by written notice to the other Parties, and any waiver of a provision:

- (a) is valid only in respect of the specific instance to which it relates and is not a continuing waiver; and
- (b) is not a waiver of any other provision.


8.7 Time of Essence. Time is of the essence of this Agreement.

8.8 Applicable Law. This Agreement and all related matters will be governed by, and construed in accordance with the federal laws of Canada and the provincial laws of British Columbia applicable therein. The Parties each irrevocably submit and attorn to the original and exclusive jurisdiction of British Columbia.

8.9 Independent Legal Advice. Each of the Parties acknowledge that each of them have executed this Agreement freely and voluntarily, without duress and after receiving independent legal advice from their respective solicitors.

8.10 Interpretation. The Parties agree that there will be no presumption in law or in equity that any ambiguous or doubtful expression is to be resolved in favour of any particular Party.

8.11 Counterparts. This Agreement may be signed in one or more counterparts, each counterpart may be transmitted by electronic facsimile and each will constitute an original instrument and such counterparts, taken together, will constitute one and the same agreement.

IN WITNESS WHEREOF this Certainty Provisions Agreement has been executed by each of the Parties as of .

KWADACHA FIRST NATION

By:

Chief Donny Van Somer

**BRITISH COLUMBIA HYDRO AND
POWER AUTHORITY**

By:

Bob Elton, President and Chief Executive Officer

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

By:

Honourable Michael de Jong,
Minister of Aboriginal Relations and Reconciliation

SCHEDULE 2

COMMUNITY RELATED PURPOSES

General Criteria

“Community Related Purposes” means expenditures of Payments by Kwadacha for the benefit of Kwadacha or Eligible Recipients which meet the following general criteria:

1. promoting economic and social welfare;
2. providing health care facilities and programs;
3. providing educational facilities and programs;
4. providing spiritual and cultural facilities and programs;
5. providing community facilities and programs;
6. providing recreational facilities and programs;
7. providing support for any recognized benevolent and charitable enterprises, federations, agencies, and societies engaged in assisting the development, both economic and social, of Kwadacha; and
8. general administration and governance of Kwadacha.

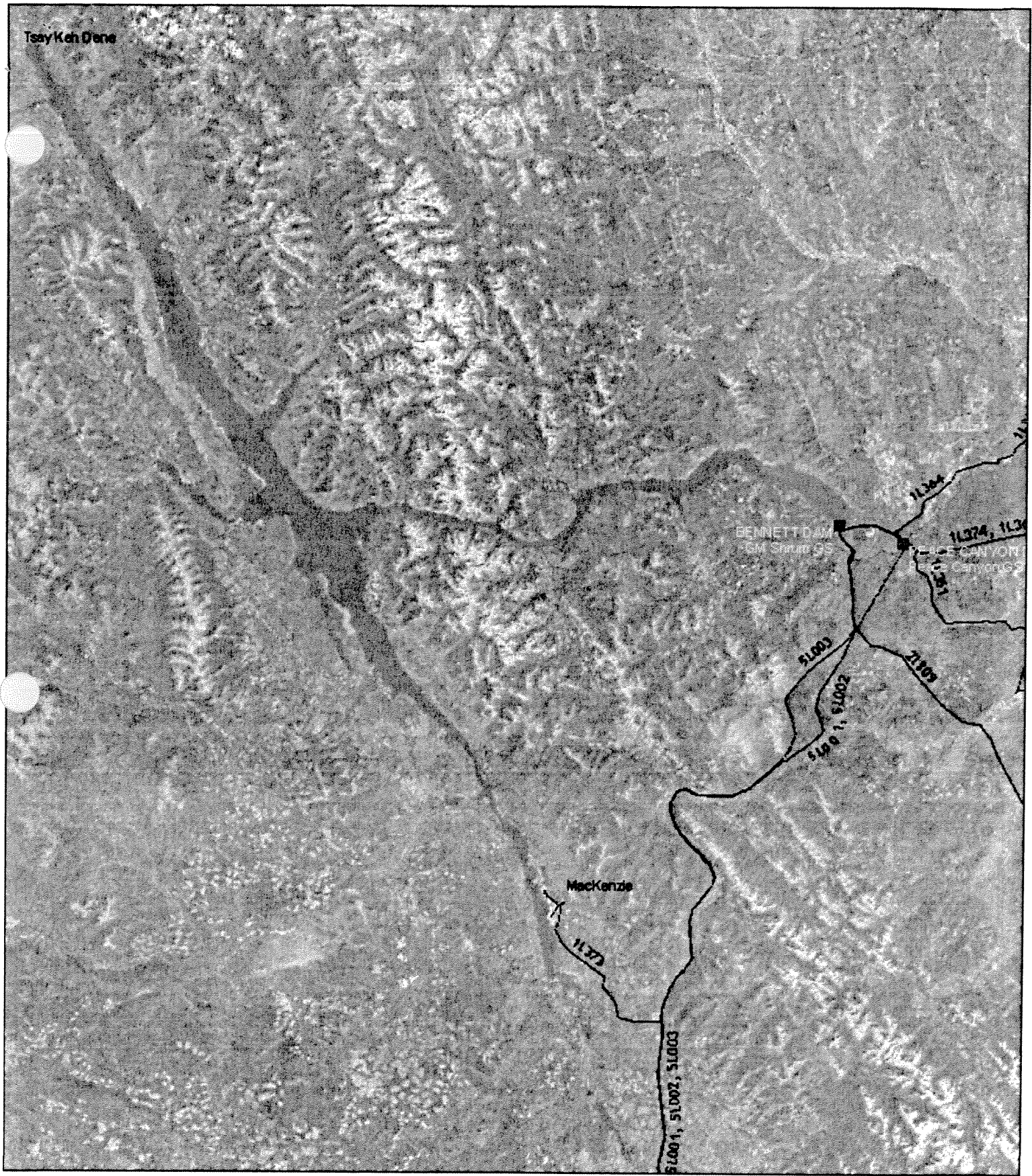
Specific Examples

For greater certainty, the following specific examples fall within the definition of **“Community Related Purposes”**:

1. implementing programs for economic development;
2. providing family support/community services;
3. providing water treatment and delivery system;
4. fire protection;
5. medical services;
6. providing programs and services in relation to spiritual and cultural beliefs and practices and aboriginal language;
7. providing health care and services and social and welfare services;

8. providing training programs;
9. providing educational programs and services;
10. use, management, administration, and protection of natural resources under the ownership, control, or jurisdiction of Kwadacha;
11. licensing and regulation of persons and entities carrying on any business, trade, profession, or other occupation within the jurisdiction of Kwadacha;
12. control of sanitary conditions of buildings and properties;
13. planning, zoning, and land development;
14. establishment, maintenance, provision, and operation and regulation of local services and facilities;
15. administration of justice and local policing; and
16. control or prevention of pollution and protection of the environment.

SCHEDULE 3
FACILITIES MAP

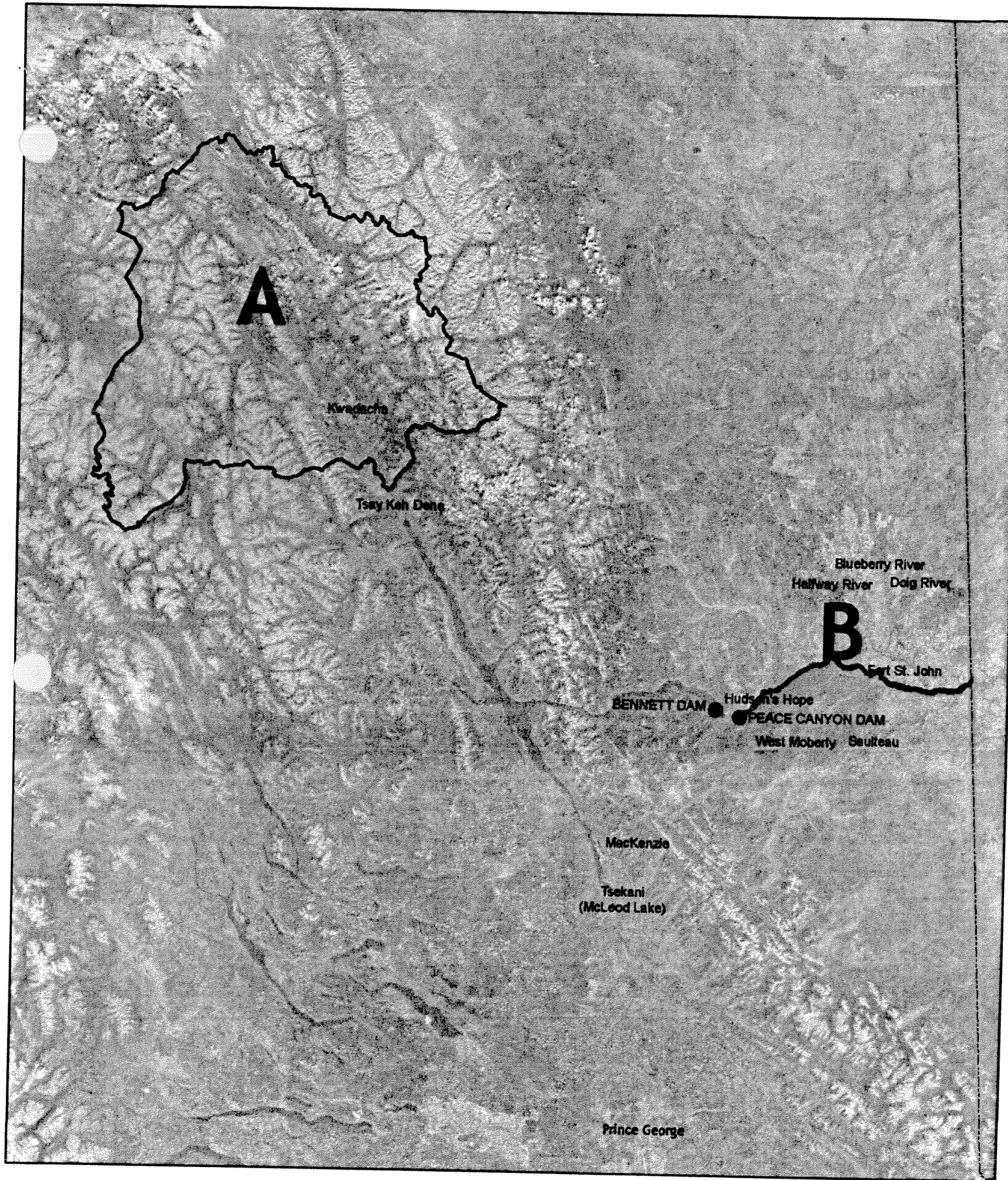


BC Hydro's Peace Facilities



Scale = 1:1,000,000

SCHEDULE 4
INFORMATION SHARING AREA



Information Sharing Area

1:2,500,000

SCHEDULE 2

COMMUNITY RELATED PURPOSES

General Criteria

“**Community Related Purposes**” means expenditures of Initial Payments, Fixed Payments, or Additional Payments by Kwadacha for the benefit of Kwadacha or Eligible Recipients which meet the following general criteria:

1. promoting economic and social welfare;
2. providing health care facilities and programs;
3. providing educational facilities and programs;
4. providing spiritual and cultural facilities and programs;
5. providing community facilities and programs;
6. providing recreational facilities and programs;
7. providing support for any recognized benevolent and charitable enterprises, federations, agencies, and societies engaged in assisting the development, both economic and social, of Kwadacha; and
8. general administration and governance of Kwadacha.

Specific Examples

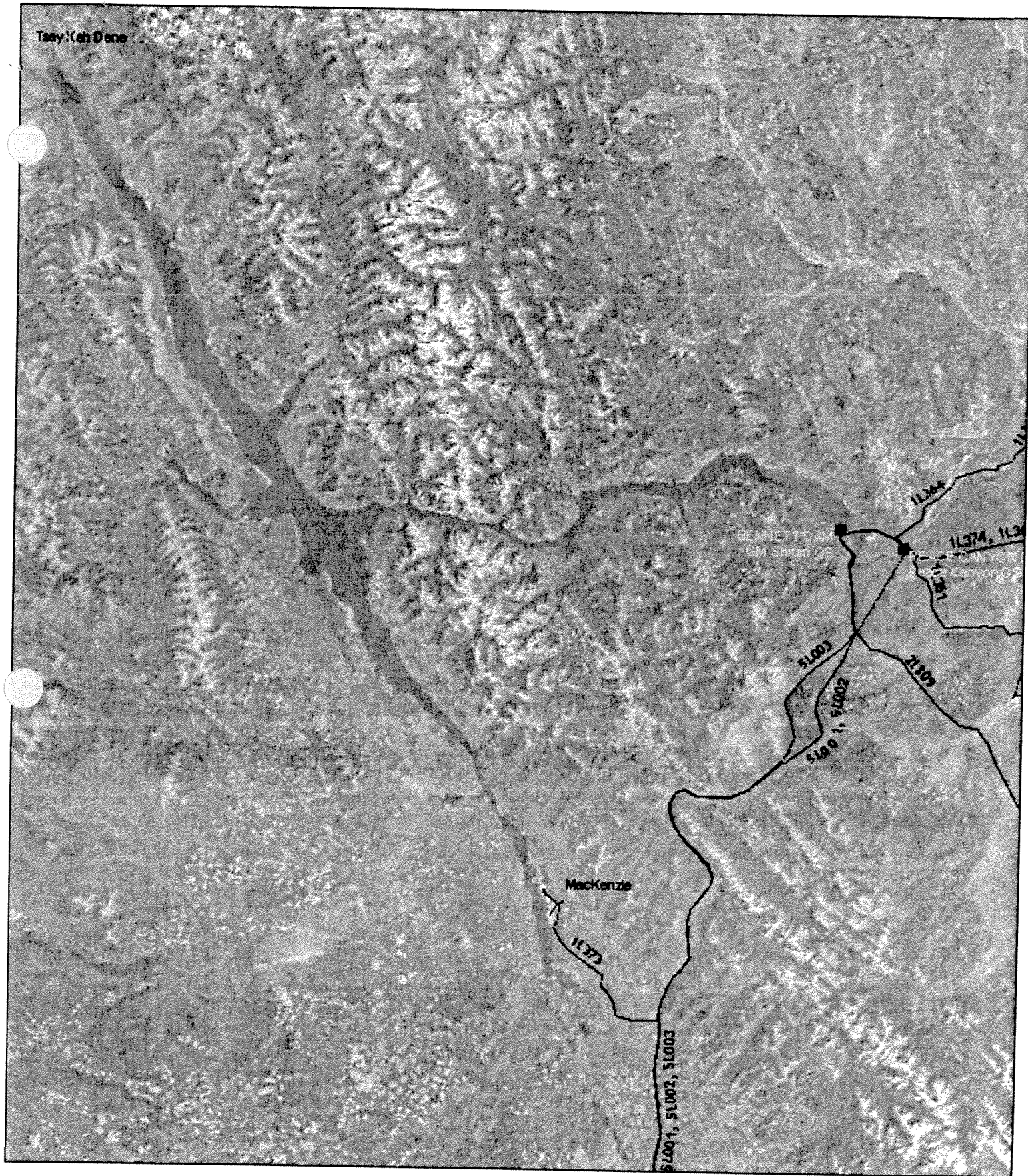
For greater certainty, the following specific examples fall within the definition of “**Community Related Purposes**”:

1. implementing programs for economic development;
2. providing family support/community services;
3. providing water treatment and delivery system;
4. fire protection;
5. medical services;
6. providing programs and services in relation to spiritual and cultural beliefs and practices and aboriginal language;

7. providing health care and services and social and welfare services;
8. providing training programs;
9. providing educational programs and services;
10. use, management, administration, and protection of natural resources under the ownership, control, or jurisdiction of Kwadacha;
11. licensing and regulation of persons and entities carrying on any business, trade, profession, or other occupation within the jurisdiction of Kwadacha;
12. control of sanitary conditions of buildings and properties;
13. planning, zoning, and land development;
14. establishment, maintenance, provision, and operation and regulation of local services and facilities;
15. administration of justice and local policing; and
16. control or prevention of pollution and protection of the environment.

SCHEDULE 3
FACILITIES MAP

Tsay Keh Dene



BC Hydro's Peace Facilities



Scale = 1:1,000,000

SCHEDULE 4

AUTHORIZATIONS

A. Water Licences, Orders, Approvals and Permits

1. Conditional Water Licence No. 27722, dated December 21, 1962
2. Conditional Water Licence No. 27721, dated December 21, 1962
3. Conditional Water Licence No. 29206, dated September 1, 1964
4. Conditional Water Licence No. 29207, dated September 1, 1964
5. Conditional Water Licence No. 43431, dated November 22, 1974
6. Conditional Water Licence No. 42203, dated April 26, 1974
7. Conditional Water Licence No. 49679, dated February 10, 1978
8. Order amending Conditional Water Licence No. 27722, dated March 30, 1972
9. Order under the Water Act amending Conditional Water Licence No. 27722, dated February 27, 1963
10. Permit No. 6781 under the Water Act Authorizing the Occupation of Crown Land, dated June 3, 1968, issued to the Holder of Conditional Water Licence No. 27722
11. Permit No. 18365 under the Water Act Authorizing the Occupation of Crown Land, dated July 19, 1991, issued to the Holder of Conditional Water Licence No. 42203
12. Order pursuant to clause (n) of Conditional Water Licence No. 42203, dated May 8, 1980
13. Order pursuant to clause (o) of Conditional Water Licence No. 42203, dated May 8, 1980

B. Waste Management Act Permits

14. Waste Management Act Permit No. PE-07673 issued June 8, 1987, as amended July 26, 2004 (GMS effluent discharge permit)
15. Waste Management Act Permit No. PE-05240 issued October 18, 1978, as amended March 29, 1996 (PCN effluent discharge permit)
16. Waste Management Act Permit No. PR-14556 issued March 27, 1997 (GMS landfill refuse Permit)

C. Navigable Waters Protection Act Approval

17. Navigable Waters Protection Act Approval, dated March 8, 1974

D. Pest Management

18. Pest Management Plan No. 105-956-2000-2006, as amended and extended on March 31, 2006

E. Subsurface Coal, Petroleum and Natural Gas Rights

19. Registered Charge C2935, Subsurface coal, petroleum and natural gas rights over DL 1024, 1025, the S ½ of 1026, 1027, 1028, 1029, 1034, 1035, 1042, 1043, 1047 and 1049 under registered charge C2935

F. Land/Map Reserves and Flooding Permits

20. Land/Map Reserve No. 84825 – File: 1006-1201.0(10)
21. Land/Map Reserve No. 84826 – File: 1006-1201.0(10)
22. Land/Map Reserve No. 84827 – File: 1006-1201.0(10)
23. Land/Map Reserve No. 2300/62 – File: 1006-1240.0(11)
24. Land/Map Reserve No. 2301/62 – File: 1006-1240.0(11)
25. Land/Map Reserve No. 2297/62 – File: 1006-1240.0(11)
26. Land/Map Reserve No. 2299/62 – File: 1006-1240.0(11)
27. Crown Grant No. 2063/1091; reservation giving right to flood
28. Crown Grant No. 2064/1091; reservation giving right to flood
29. Crown Grant No. 2062/1091; reservation giving right to flood
30. Crown Grant No. 2060/1091; reservation giving right to flood

G. Licences of Occupation

31. Licence of Occupation No. 814260, dated March 25, 2002
32. Licence of Occupation No. 813823, dated March 23, 2000
33. Licence of Occupation No. 813883, dated February 21, 2000
34. Licence of Occupation No. 813882, dated February 21, 2000

35. Licence of Occupation No. 814259, dated March 25, 2002

H. Registered Flowage Easements:

36. Easement No. A2708 granted by Kariel Adams in favour of British Columbia Hydro and Power Authority in Deed of Trust dated April 1, 1966
37. Easement No. G1488 granted by Vervine Hazel Stark and Diana Mary Brooks Adams in favour of British Columbia Hydro and Power Authority dated January 14, 1972
38. Easement No. A1878 granted by Kariel Adams in favour of British Columbia Hydro and Power Authority in Deed of Trust dated April 1, 1982
39. Easement No. A2709 granted by Kariel Adams in favour of British Columbia Hydro and Power Authority in Deed of Trust dated April 1, 1966
40. Easement No. D7633 granted by Elizabeth Beattie in favour of British Columbia Hydro and Power Authority dated June 9, 1969
41. Easement No. E5261 granted by William Kruger in favour of British Columbia Hydro and Power Authority dated July 3, 1968
42. Easement No. G1491 granted by Vervine Hazel Stark and Clement Charles Brooks Adams in favour of British Columbia Hydro and Power Authority dated January 14, 1972
43. Easement No. E10222 granted by Bradford Angier in favour of British Columbia Hydro and Power Authority dated August 5, 1970
44. Easement No. C7134 granted by Herbert Charles Lindley in favour of British Columbia Hydro and Power Authority dated May 21, 1968
45. Easement No. M37850 granted by Tompkins Ranching Ltd. in favour of British Columbia Hydro and Power Authority dated March 11, 1977
46. Easement No. S7696 granted by Tompkins Ranching Ltd. in favour of British Columbia Hydro and Power Authority dated March 2, 1982
47. Easement No. E714 granted by John Leonard Roche Ardill, Richard William Ardill, Thomas Alfred Ardill and Elizabeth Anne Holoboff in favour of British Columbia Hydro and Power Authority dated January 6, 1970
48. Easement No. A1880 granted by Kariel Adams in favour of British Columbia Hydro and Power Authority in Deed of Land dated April 1, 1966
49. Easement No. D2364 granted by Kariel Adams in favour of British Columbia Hydro and Power Authority dated February 19, 1969

50. Easement No. C11272 granted by Martin Surrey Caine and executors of the last will and testament of Alexander Bohannon Moffat in favour of British Columbia Hydro and Power Authority dated August 14, 1968
51. Easement No. J33108 granted by Olive Powell in favour of British Columbia Hydro and Power Authority dated August 21, 1979

I. Generating Station and Williston Lake Tenures

52. Title No. PE37685 registered in favour of British Columbia Hydro and Power Authority, PID: 017-558-204
53. Title No. PE37686 registered in favour of British Columbia Hydro and Power Authority, PID: 017-558-221
54. Title No. PF2594 registered in favour of British Columbia Hydro and Power Authority, PID: 017-558-239
55. Title No. PB43657 registered in favour of British Columbia Hydro and Power Authority, PID: 012-173-801
56. Title No. PB49685 registered in favour of British Columbia Hydro and Power Authority, PID: 012-565-393
57. Title No. PB45437 registered in favour of British Columbia Hydro and Power Authority, PID: 012-259-993
58. Williston Lake Tenures:

Title No.	Legal Description
EI97	DL 4707 Cassiar District
82866M	Blk A DL 3581 Cassiar District
83852M	DL 7458 Cariboo District
72893M	DL 7459 Cariboo District exc. Pcl A. (112727M)
112727M	Pcl A DL 7459 Cariboo District
PB32989	DL 7460 Cariboo District
81790M	DL 7461 Cariboo District
72818M	DL 7462 Cariboo District
C11273	The most southerly 30 chains of DL 7463 Cariboo District exc. Pcl A (52477M)
80140M	Pcl A (52477M) of the most southerly 30 chains of DL 7463 Cariboo District
PB32997	DL 7508 Cariboo District
PB32994	DL 7465 Cariboo District

Title No.	Legal Description
PB32990	DL 7464 Cariboo District
110891M	DL 7493 Cariboo District
110890M	DL 7494 Cariboo District
PB33053	DL 7495 Cariboo District
PB33054	DL 7496 Cariboo District
110885M	DL 7497 Cariboo District
110892M	DL 7498 Cariboo District
88905M	DL 7499 Cariboo District
110893M	DL 7500 Cariboo District
PB33006	DL 3720 Cariboo District
PB33005	DL 3719 Cariboo District
74819M	DL 7489 Cariboo District
90771 M	DL 7486 Cariboo District
82006M	DL 3722 Cariboo District
113601M	DL 9604 Cariboo District
87145M	DL 3721 Cariboo District
84286M	DL 1792 Peace River District
83340M	DL 336 Peace River District
PCI473	DL 1509 Peace River District exc. Plan 2405
86616M	Lot A DL 1509 Peace River District Plan 2405
PC 1472	DL 1488 Peace River District
D1183	DL 2040 Peace River District
PC18709	DL 1517 Peace River District
PB 18708	DL 1516 Peace River District
PC 18707	DL 1515 Peace River District
80138M	DL 1510 Peace River District
PC21452	DL 15 11 Peace River District
PC21453	DL 1512 Peace River District
PCI8705	DL 1513 Peace River District
PC 18706	DL 1514 Peace River District
102101M	Lot 2 DL 330 Peace River District Plan 16495
PC4027	Lots DL 329 Peace River District Plan 16495
PB32972	DL 2041 Peace River District
PB32973	DL 1518 Peace River District
PB32971	DL 346 Peace River District

Title No.	Legal Description
PB32974	W 1/2 DL 345 Peace River District
C8420	Lot 3 DL 2042 Peace River District
104543M	DL 2043 Peace River District
PC21474	DL 1522 Peace River District
PC21473	DL 1521 Peace River District
PC21475	DL 1798 Peace River District
80592M	DL 1519 Peace River District
X25983	Blk C DL 1791 Peace River District
113305M	DL 338 Peace River District
X25984	Blk A DL 1791 Peace River District
80593M	DL 399 Peace River District
PCI6824	DL 1520 Peace River District
PC16825	DL 339 Peace River District
83466M	DL 347 Peace River District
PC27959	Frac. W 1/2 DL 348 Peace River District
PC27958	Frac. E 1/2 DL 348 Peace River District
H3230	DL 2991 Peace River District
85294M	DL 2046 exc. Plan 15273
C11036	DL 1001 Peace River District
PL3001	SW 1/4 DL 1000 Peace River District
PL3003	Frac. N 1/2 of DL 1012 Peace River District
PC2075I	The east. 20 chains of the fract. S 1/2 DL 1012 Peace River District
PC27343	NW ¼ DL 1008 Peace River District
PC27342	SW 1/4 DL 1008 Peace River District exc. S 1/2
82138M	S ½ of SW 1/4 DL 1008 Peace River District
PC20750	Blk A D1 1082 Peace River District
84427M	Fract. W 1/2 DL 1009 Peace River District
PL3002	W 1/2 of E 1/2 DL 1009 Peace River District
111900M	Blk A DL 1081 Peace River District
81369M	Fract. W 1/2 DL 1011 Peace River District
D3061	DL 841 Peace River District
D3063	DL 842 Peace River District
84282M	DL 435 Peace River District
85891M	DL 1795 Peace River District
99568M	Lot 1 DL 2044 Peace River District

Title No.	Legal Description
M2037	Portions of the N 1/2 of the NW 1/4 DL 1000 Peace River District
E5260	Lot 1 DL 1000 Peace River District Plan 18622
D3064	DL 840 Peace River District
PB32997	DL 7508 Cariboo District
PB32994	DL 7465 Cariboo District
PB32990	DL 7464 Cariboo District
PB32995	DL 7466 Cariboo District
PB32991	DL 7467 Cariboo District
PB32996	DL 7469 Cariboo District
PK5539	DL 7468 Cariboo District
PB33003	DL 7470 Cariboo District
PB33004	DL 7471 Cariboo District
80139M	Pt of DL 7472 Cariboo District Plan B4003
112579M	DL 7472 Cariboo District Plan B4003
PB32999	DL 7474 Cariboo District
PB32998	DL 7473 Cariboo District
PB330011	DL 7519 Cariboo District
PB33002	DL 7520 Cariboo District
PB33000	DL 7475 Cariboo District
82763M	DL 7492 Cariboo District
PB32992	DL 7476 Cariboo District
PB32993	DL 7477 Cariboo District
D5706	DL 7479 Cariboo District exc. Plan 17863
90771 M	DL 7486 Cariboo District
74819M	DL 7489 Cariboo District
82867M	Pt of DL 7482 Cariboo District Plan B3148
113600M	DL 7482 Cariboo District except Plan B3148
113599M	DL 7483 Cariboo District exc. Plan 17924
110894M	Pcl A (B 12097 & Plan 17080) DL 7481 Cariboo District
T27310	DL 12397 Cariboo District

59. Land Act Grant to Pacific Great Eastern Railway Company under Document No. 1265 for Lots 12572 and 12571; reservation re: Conditional Water Licence 27722
60. Land Act Grant to Pacific Great Eastern Railway Company under Document No. 472 for Lots 12478 and 12479; reservation re: Conditional Water Licence 27722

61. Reserve Maps and grant of Reserve 56020
62. Bennett Dam site Mineral Tenures
63. Order in Council dated July 31, 1973 regarding Finley Forest Reserve
64. Order in Council No. 248 approved and ordered February 26, 1991 regarding Finley Forest Reserve
65. Indian Land Grant, Document No. E197 dated December 18, 1969, containing charge No. E252
66. Offer of Licence over District lots 1024 and 1025 dated March 22, 1993

J. Peace Region Transmission Line Tenures

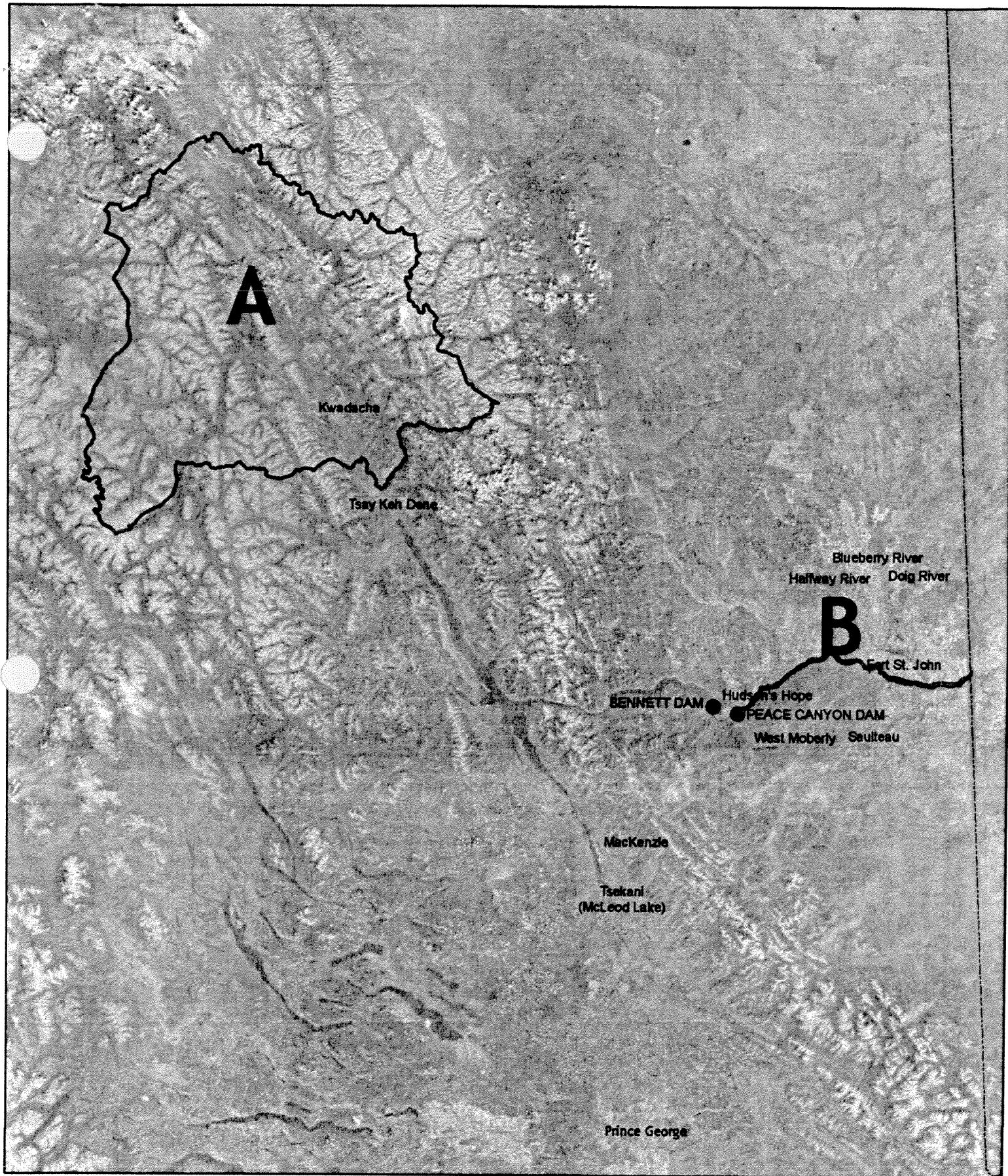
67. Registered charges related to tenures for transmission lines IL360, IL361, IL364, IL366, IL368, IL373, IL374, 2L309, 5L1, 5L2, 5L3 and 5L4:
 - a. 25765 granted by Helen Isabel Moore dated October 16, 1962
 - b. 25767 granted by Ivan Golding dated October 15, 1962
 - c. 25786 granted by Olaf Paulson dated October 18, 1962
 - d. 26114 granted by Peace River Forest Industries Ltd. dated October 16, 1962
 - e. 26440 granted by Mona Madeline Bowie dated December 3, 1962
 - f. 26817 granted by David E. Armstrong dated October 18, 1962
 - g. 27988 granted by Official Administrator, County of Cariboo, dated March 15, 1963
 - h. 29076 granted by Mary Ann Cameron and Harry Clayton Garbitt dated September 23, 1963
 - i. 29736 granted by Lakeshore Resorts Ltd. dated August 23, 1963
 - j. 32957 granted by Peace River Forest Industries dated July 30, 1964
 - k. 33367 granted by Arthur McClellan dated October 15, 1964
 - l. 37877 granted by Esme Tuck dated September 29, 1965
 - m. 37975 granted by Marion Cameron dated September 30, 1965
 - n. 39881K granted by Phyllis Geraldine Graham dated February 22, 1966
 - o. 4114K granted by Ralph Gilles Parker dated June 6, 1966
 - p. C16083 granted by the Executive Council for the Province of British Columbia dated January 23, 1968
 - q. C9244 granted by Her Majesty the Queen in Right of the Province of British Columbia dated June 11, 1968
 - r. D11780 granted by the Executive Council for the Province of British Columbia dated August 19, 1969

- s. E10494 granted by Mathis Boe dated July 21, 1970
- t. E10521 granted by Melvin Kylo dated July 15, 1970
- u. E11712 granted by Dorothy Roberta Holt and Jacqueline Muriel Storey dated July 15, 1970
- v. E12475 granted by Ardillis Ranch Ltd. dated July 14, 1970
- w. E135 granted by the Executive Council for the Province of British Columbia dated December 9, 1969
- x. E17868 granted by Gary James Powell dated December 19, 1970
- y. E896 granted by Finlay Forest Industries Ltd. dated December 2, 1969
- z. F11078 granted by James Ewing McIntosh dated June 1, 1971
- aa. F11656 granted by the Executive Council for the Province of British Columbia dated June 29, 1971
- bb. F13308 granted by Executive Council for the Province of British Columbia dated June 24, 1971
- cc. F14716 granted by Kinross McIntosh, Margaret Hobbs and Margaret Marth dated August 9, 1971
- dd. F1831 granted by Gary James Powell and Peace Valley Farms Ltd. dated July 15, 1970
- ee. F19690 granted by the Executive Council for the Province of British Columbia dated October 19, 1971
- ff. F20248 granted by Leo George Rutledge dated May 27, 1971
- gg. F3526 granted by the Pacific Great Eastern Railway Company dated February 16, 1971
- hh. F60 granted by Marshall Ness dated July 15, 1970
- ii. F609 granted by Robert Allan Everleigh January 6, 1971
- jj. F62 granted by Gary James Powell dated December 19, 1970
- kk. L28192 granted by British Columbia Railway Company dated September 21, 1976
- ll. P29947 granted by Del Rio Ranch Ltd. dated August 26, 1980
- mm. PB13790 granted by Her Majesty the Queen in Right of the Province of British Columbia stamped March 21, 1988
- nn. PB25413 granted by Her Majesty the Queen in Right of the Province of British Columbia stamped June 14, 1988
- oo. PF5240 granted by Her Majesty the Queen in Right of the Province of British Columbia dated August 20, 1991
- pp. PG28380 granted by Ardillis Ranch Ltd. stamped August 13, 1993
- qq. PM29181 granted by Fletcher Challenge Canada Limited

- rr. PP17900 granted by British Columbia Hydro and Power Authority stamped May 30, 2000
- ss. R47566 granted by Larry James Disher and Larry David Disher dated November 13, 1981
- tt. S11969 granted by James Robert Groves and Clement Lofgren dated April 27, 1982
- uu. S5958 granted by Frank Oberle and Joan Oberle dated January 15, 1982
- vv. T13500 granted by Christopher von Unruh dated October 27, 1982
- ww. Y44856 granted by Her Majesty the Queen in Right of the Province of British Columbia stamped December 1, 1987
- xx. Y47625 granted by Her Majesty the Queen in Right of the Province of British Columbia stamped December 24, 1987

SCHEDULE 5

INFORMATION SHARING AREA



Information Sharing Area

1:2,500,000

SCHEDULE 6

COMMUNICATIONS PROTOCOL

In acknowledgement of the need for the Parties to have a common understanding of the public release of information concerning this Agreement, the AIP, and the Final Agreement (the “**Documents**”) among the Parties, the Parties agree as follows:

A. The Parties acknowledge the need to promote widespread understanding of the benefits and contents of the Documents within Kwadacha and its Members.

B. The Parties acknowledge that it will be important for the Documents to be broadly circulated to the Members in order for Kwadacha to fulfill the ratification obligations under the Documents. Kwadacha will decide how distribution of the Document to Members will best fulfill this obligation.

C. The Parties will enter into discussions with a view to preparing a joint announcement of the terms of the agreement among the Parties. If agreement is not reached among the Parties with respect to the content of a joint announcement within ten days of execution of this Agreement, each Party will be at liberty to make its own announcement, with the form and content of that announcement in its own discretion, after providing 48 hours notice to each other Party of the form and content of the announcement.

D. While the Province and BC Hydro do not intend a broad public release of the Documents, it is in the public interest that the Documents are available to members of the public should the Documents be requested by a member of the public. The Province and BC Hydro will release the Documents to a member of the public if requested by a member of the public.

E. In some circumstances the Province and BC Hydro may be legally bound to release the Documents. The Province and BC Hydro will comply with such legal requirements. BC Hydro may also release the Documents in the course of regulatory proceedings when BC Hydro considers it necessary to do so.