

This Agreement is dated 24 day of August, 2010.

ECONOMIC AND COMMUNITY DEVELOPMENT AGREEMENT

BETWEEN

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

as represented by the Minister of
Energy, Mines and Petroleum Resources and
the Minister of Forests and Range and Minister Responsible for
Integrated Land Management Bureau
("British Columbia")

and

STK'EMLÚPSEMC OF THE SECWEPENC NATION

as represented by the Tk'emlúps Indian Band
and the Skeetchestn Indian Band
("SSN")

(collectively referred to as the "Parties")

WHEREAS:

- A. New Gold, Inc. has proposed to develop the New Afton Mine Project (the "Project") at the site of the historic Afton Mine, approximately 10 kilometres west of Kamloops;
- B. The Project site is within the traditional territory of Tk'emlúps and Skeetchestn, which together comprise the Stk'emlúpsenc of the Secwepenc Nation;
- C. The Parties will utilize this Economic and Community Development Agreement to demonstrate leadership and respect for each others' interests, while developing a successful long-term working relationship intended to address fundamental SSN concerns, including those presented in the 1910 Memorial to Sir Wilfred Laurier;
- D. The Parties acknowledge that British Columbia and SSN have undertaken a shared commitment to strengthening relationships on a government-to-government basis, and on focusing efforts to close the socio-economic and cultural gaps between Aboriginal and non-Aboriginal peoples, which will require a relationship between SSN and British Columbia based on enhanced collaboration,

effective working partnerships and mutual respect, recognition and accountability;

- E. The Ministry of Energy, Mines and Petroleum Resources (MEMPR) is interested in facilitating and developing a thriving, competitive, safe and environmentally responsible mineral resource sector, and for increasing the contribution to the local and provincial economy for the benefit of all British Columbians;
- F. The Parties entered into a Mining and Minerals Agreement which: provides for a government-to-government process on mining activities, includes the establishment of a Mines and Minerals Joint Resources Committee, establishes information-sharing principles, and sets forth a consultation and accommodation approach for mining activity within SSN traditional territory;
- G. The Parties acknowledge the importance of SSN and New Gold, Inc. having developed a benefits agreement between them in relation to the Project and that this Agreement should not limit, or diminish the value of, that agreement; and
- H. The Parties have agreed upon a revenue-sharing arrangement respecting the Project, which is set out in this Agreement.

NOW, THE PARTIES AGREE AS FOLLOWS.

SECTION 1 DEFINITIONS

“Aboriginal Rights” means asserted or determined aboriginal rights, including aboriginal title, as recognized and affirmed by section 35(1) of the *Constitution Act, 1982*;

“Agreement” means this Economic and Community Development Agreement;

“Annual Payments” means the payments to be made by British Columbia to SSN each year pursuant to section 3, and “Annual Payment” means any one such payment;

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

“Councils” means, in respect of Tk'emlúps and Skeetchestn, the councils of both bands;

“Consultation and Accommodation Process” means the consultation and accommodation process set out in section 6.1(b) which is the means by which Provincial Releasees will fulfill any consultation and accommodation obligations relating to any Governmental Actions that may impact SSN’s Aboriginal Rights after the date of this Agreement;

“Effective Date of this Agreement” means the date upon which this Agreement has been ratified and is signed by all of the Parties;

“Fiscal year of the Mine” has the same meaning as in the *Mineral Tax Act*;

“Government Actions” means all processes, decisions, authorizations, permits, licences, approvals, Crown land dispositions, agreements, and other actions whatsoever entered into or otherwise taken by a Provincial Releasee in relation to the Project at any time either before or after the date of this Agreement;

“Member” means any person who from time to time is a member of Tk’emlúps or Skeetchestn;

“MEMPR” means the Ministry of Energy, Mines and Petroleum Resources;

“Mine Fiscal Year” means a Fiscal Year of the Mine during which the Proponent is an Operator of the Project;

“Mining and Minerals Agreement” means the Mining and Mineral Agreement entered into by British Columbia and SSN dated April 7, 2009;

“Mines and Minerals Joint Resources Committee” means the committee established under section 5.0 of the Mining and Minerals Agreement between the British Columbia and SSN, dated April 7, 2009;

“Mining Activity” means a mining activity as that term is defined in the *Mines Act*, R.S.B.C 1996, c.293 for which a permit would be required under section 10 of the *Mines Act*;

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

“Overpayment Amount” means any payment amount that is subject to the off-set provisions in section 3.1(d);

“Payment Account” has the meaning given to that term in section 3.2 of this Agreement;

“Payment Statement” means the financial statement containing the tax information referred to in section 3.1(b) that British Columbia will provide to SSN under section 3.1(a);

“Project” means:

1. the New Afton Mine Project which is the subject of the *Mines Act* permit M-229 issued to New Gold Inc. on October 30, 2007 and which is at the site of the historic Afton Mine, approximately 10 kilometres west of Kamloops, and includes its associated infrastructure, access roads, power facilities and other physical facilities;
2. any changes or modifications to the project and physical facilities described in clause (1) above that may be made from time to time;
3. all matters relating to the exploration, planning, permitting, construction, maintenance, repair and operation of the project and its infrastructure and facilities described in clauses (1) and (2) above; and
4. but does not include, unless the Parties agree otherwise,
 - a. any expansion of the New Afton Mine project or any of the infrastructure and facilities of the kind described in clauses (1) and (2) that would be associated with a material expansion or change in the mine project and that would require a significant amendment to the *Mines Act* permit M-229 issued to New Gold Inc.; or
 - b. any extraordinary, unforeseen environmental emergency resulting from the mine project that may have a potentially significant adverse affect on SSN’s Aboriginal Rights.

“Proponent” means the Operator who from time to time is responsible for the Project and for paying *Mineral Tax Act* tax payments in relation to the Project to British Columbia;

“Provincial Releasee” means British Columbia, including:

1. any minister, public official, employee or agent of British Columbia;
2. any government corporation; and
3. any director, officer, employee, or contractor acting on behalf of or as an agent of British Columbia.

“Skeetchestn” means the band named Skeetchestn Indian Band;

“SSN Corporation” means a corporation to be incorporated under the laws of the Province of British Columbia for the purposes of this Agreement;

“Stk’emlúpsmc of the Secwepemc Nation” (or **“SSN”**) means the Tk’emlúps and Skeetchestn, including their Members; and

“Tk’emlúps” means the band named Tk’emlúps Indian Band, formerly known as Kamloops Indian Band.

SECTION 2 PURPOSES AND OBJECTIVES

2.1 The purposes of this Agreement are to:

- a. confirm understandings reached between the Parties with respect to how British Columbia will meet its legal obligations to consult with and to accommodate SSN in relation to the Project, and
- b. share resource revenue received by British Columbia from the Project with SSN so that it may pursue activities that will enhance the social, economic and cultural well being of its Members.

SECTION 3 PROVINCIAL PAYMENTS

3.1 ANNUAL PAYMENTS

- a. Subject to compliance by SSN with the provisions of section 6.3, British Columbia will, within 60 days after the end of a BC Fiscal Year, provide a Payments Statement to SSN for that BC Fiscal Year. The first Payments Statement will be following the first BC Fiscal Year in which British Columbia receives a tax payment from the Proponent under the *Mineral Tax Act*.
- b. The Payments Statement for a BC Fiscal Year will contain the following information in relation to the Proponent’s tax liability, payments and refunds under the *Mineral Tax Act* relating to the Project:
 - i. the total amount of tax, penalty and interest assessed or reassessed during the BC Fiscal Year;
 - ii. the total amount of tax, penalty and interest paid by the Proponent during the BC Fiscal Year in relation to any Mine Fiscal Year other than a Mine Fiscal Year that ended before the Effective Date of this Agreement; and

- iii. the total amount of tax and penalty refunded to the Proponent and interest paid to the Proponent during the BC Fiscal Year in relation to any Mine Fiscal Year other than a Mine Fiscal Year that ended before the Effective Date of this Agreement.
- c. If the amount in section 3.1(b)(ii) exceeds the amount in clause (b)(iii), British Columbia will pay to SSN 37.5 % of the difference between those two amounts. British Columbia will make this payment within 90 days after British Columbia has sent to SSN the Payments Statement under clause (a).
- d. If the amount in section 3.1(b)(ii) is less than the amount in section 3.1(b)(iii), British Columbia will off-set 37.5 % of the difference between those two amounts (the “**Overpayment Amount**”) from any subsequent payments British Columbia is required to make to SSN under this Agreement in relation to any subsequent BC Fiscal Years. In the event that the Proponent is no longer responsible for making *Mineral Tax Act* payments in relation to the Project, such that there will be no subsequent payments owing to SSN under this Agreement, British Columbia will send to SSN a notice of any Overpayment Amount that remains outstanding, and British Columbia may off-set that amount from any future amounts that may be payable to SSN, Skeetchestn or Tk’emlúps under any subsequent agreement governing the sharing of revenue in relation to the Project.
- e. For the purposes of determining any Overpayment Amounts under section 3.1(d), British Columbia will not include any credit or refund amounts that may be refunded to the Proponent in relation to any Project reclamation credits that may occur at the end of the Project after the Proponent is no longer liable to pay any tax under the *Mineral Tax Act*.
- f. SSN understands that British Columbia may audit the Proponent from time to time to review the accuracy of *Mineral Tax Act* payments over a specific period of time, and also understands that the Proponent may appeal any assessment or reassessment of tax, penalty or interest to the Minister responsible for administering the *Mineral Tax Act* and then to the Court. SSN understands that any such audits or appeals may influence the amount of the payments British Columbia will provide to SSN in subsequent years, and may also influence the amounts that may be off-set under section 3.1(d).
- g. If British Columbia conducts an audit of the Proponent, British Columbia will report in writing to SSN the results of the audit and

specifically whether the Proponent had made overpayments, underpayments or correct payments under the *Mineral Tax Act* to British Columbia for the period of time subject to the audit. In the event of any appeal by the Proponent of any assessment or reassessment, British Columbia will report in writing to SSN of the results of the appeal.

- h. If this Agreement is terminated prior to the last day of a Mine Fiscal Year:
 - i. no Annual Payment will be payable to SSN under this Agreement in relation to that portion of the Mine Fiscal Year after this Agreement is terminated or any subsequent Mine Fiscal Year, and
 - ii. the obligations of British Columbia set out in sections 3.1(a) through (g) will continue, but only to the extent that tax, penalty or interest is assessed or reassessed, or amounts are received from, or refunded or paid to, the Proponent by British Columbia in relation to Mine Fiscal Years ending between the Effective Date of this Agreement and the date this Agreement is terminated.
- i. British Columbia will notify SSN of any significant changes made to the *Mineral Tax Act* tax regime and will be open to discussions with SSN respecting whether the nature of this Agreement should be reviewed.
- j. SSN acknowledges that *Mineral Tax Act* revenues fluctuate and any revenue-sharing payments from British Columbia will vary over time.

3.2 DELIVERY OF PAYMENTS AND DIRECTION

- a. SSN acknowledges and covenants that it will establish SSN Corporation and will throughout the term of this Agreement maintain a bank account in the name of SSN Corporation at a Canadian financial institution for the purpose of receiving monies payable by British Columbia pursuant to this Agreement (the “**Payment Account**”), which bank account will be used solely for the purpose of receiving monies payable under this Agreement and implementing the objectives described in section 6.2 (d).
- b. SSN will provide to British Columbia sufficient address and account information respecting the Payment Account to enable British Columbia to make payments to the Payment Account.

- c. SSN hereby directs that all payments which British Columbia is obliged to make to SSN pursuant to this Agreement are to be remitted to the Payment Account.
- d. British Columbia will not be obligated to make any payments under this Agreement until the provisions of this section 3.2 have been complied with to the reasonable satisfaction of British Columbia.

3.3 CONFIDENTIAL INFORMATION

- a. SSN will keep confidential information that British Columbia explicitly denotes as "Confidential", such as the Payment Statements, that relates to tax payment information under the *Mineral Tax Act* and will not disclose such confidential information to any other person.
- b. Notwithstanding any other provision of this Agreement, British Columbia's obligations under this Agreement are subject to British Columbia obtaining a release and consent from the Proponent for sharing potentially confidential information obtained under the *Mineral Tax Act* with SSN for the purposes of providing Payment Statements to SSN and making Annual Payments to SSN.

3.4 APPROPRIATION

Notwithstanding any other provision of this Agreement, the Annual Payments to be provided by British Columbia to SSN are subject to:

- a. there being sufficient monies available in an appropriation, as defined in the *Financial Administration Act*, to enable British Columbia in any Fiscal Year or part thereof when such payment is required, to make such payment; and
- b. Treasury Board, as defined in the *Financial Administration Act*, not having controlled or limited expenditure under any appropriation necessary in order to make such payment.

SECTION 4 RELATIONSHIP

- 4.1** No partnership, joint venture, agency, fiduciary or employment relationship will be deemed to be created by this Agreement or by any actions of the Parties under this Agreement.

SECTION 5 REPRESENTATIONS AND WARRANTIES

5.1 SSN REPRESENTATIONS AND WARRANTIES

Skeetchestn and Tk'emlúps each represent and warrant to British Columbia, on which British Columbia will rely in entering into this Agreement, the following:

- a. each of them has the authority, and SSN, as represented by the Chief of Tk'emlúps and the Chief of Skeetchestn, has the authority to enter into this Agreement and to make the covenants and representations in the Agreement, all of which have been duly authorized and executed;
- b. each of them has obtained or had the opportunity to obtain the advice of their own financial, legal, tax and other professional advisors with respect to this Agreement;
- c. SSN has entered into this Agreement for, and on behalf of, Tk'emlúps and Skeetchestn, as represented by their duly elected Councils, with full authority to represent their Members;
- d. Appendix 1 to this Agreement consists of a true copy of a resolution made by Skeetchestn Council approving this Agreement and giving authority to the Chief to enter into this Agreement on behalf of Skeetchestn and Members and such resolution has not been varied, amended, repealed or replaced;
- e. Appendix 2 to this Agreement consists of a true copy of a resolution made by Tk'emlúps Council approving this Agreement and giving authority to the Chief to enter into this Agreement on behalf of Tk'emlúps and Members and such resolution has not been varied, amended, repealed or replaced; and
- f. all of the shares of SSN Corporation will be legally and beneficially held by Skeetchestn and Tk'emlúps at the time of incorporation.

5.2 PROVINCIAL REPRESENTATIONS AND WARRANTIES

British Columbia represents and warrants to SSN that it has the legal authority to enter into this Agreement and carry out its obligations in accordance with it.

SECTION 6 ACKNOWLEDGEMENTS AND COVENANTS

6.1 ENGAGEMENT ON THE PROJECT

- a. With respect to any proposed Government Actions relating to the Project after this Agreement, which may relate to new or existing provincial dispositions, licences, permits or authorizations, that may impact SSN's Aboriginal Rights,
 - i. MEMPR British Columbia will engage SSN through Mines and Minerals Joint Resources Committee and will consult with SSN, and SSN will participate as appropriate, in accordance with the Consultation and Accommodation Process; and
 - ii. other Provincial Releasees will consult with SSN, and SSN will participate as appropriate, in accordance with the Consultation and Accommodation Process,

for the purposes of identifying potential mitigation or accommodation measures that may be appropriate for the Government Action but such measures will not include any additional financial or economic component.
- b. The Consultation and Accommodation Process is as follows:
 - i. Provincial Releasees will provide to SSN advance written notification of a proposed Government Action that may adversely affect any of SSN's Aboriginal Rights together with relevant information about the proposed activity;
 - ii. Provincial Releasees will provide a reasonable period of time for SSN to prepare its views on the proposed Government Action;
 - iii. Provincial Releasees will provide a reasonable opportunity for SSN to present its views as to potential adverse impacts on the exercise of any Aboriginal Rights, together with any suggestions as to how any such impact may be avoided, mitigated, minimized or otherwise accommodated (other than by compensation), and Provincial Releasees will provide a reasonable opportunity to discuss the views and attempt to resolve any concerns;
 - iv. Provincial Releasees will undertake a full and fair consideration of any views presented by SSN;
 - v. in the absence of a presentation of views by SSN within a reasonable period of time, Provincial Releasees will undertake

a full and fair consideration of all relevant information available respecting how to avoid, mitigate, minimize or otherwise accommodate (other than by compensation) any potential adverse impacts on the exercise of any of its Aboriginal Rights, given that Provincial Releasees will have taken reasonable steps to inform themselves of any such adverse impacts on such Aboriginal Rights; and,

- vi. Provincial Releasees will provide, in writing where appropriate, to SSN notification of the decision taken and how the views presented by SSN were taken into account.
- c. If there is a conflict or inconsistency with section 6.1 of this Agreement and section 7 of the Mines and Minerals Agreement, section 6.1 prevails to the extent of the conflict or inconsistency.

6.2 ACKNOWLEDGEMENTS AND COVENANTS

SSN acknowledges and covenants that:

- a. subject to section 6.1 above, Provincial Releasees will be deemed to have fulfilled any legal obligations of consultation and accommodation to SSN and their Members in relation to the Project and associated Government Actions;
- b. this Agreement resolves any past or future claims associated with the Project in relation to Provincial Releasees with respect to the issues of capacity funding, third-party studies or payments, or other compensation or disbursements of any kind, including any claims related to the consultation activities described in section 6.1 above;
- c. this Agreement resolves any past or future claims associated with the Project in relation to Provincial Releasees with respect to the issues of revenue generation, including revenue-sharing and economic benefits;
- d. the Annual Payments provided under this Agreement will be used to pursue activities that will help it to enhance and improve the social, cultural and economic well-being of its communities, including governance capacity, and in particular, all expenditures from the Payment Account will be consistent with the Statement of Community Priorities referred to in section 6.3(a);
- e. SSN will use all, or a portion of, Annual Payments received in any given year for the objectives set out in section 6.2(d) in that year,

or will hold such payments for implementing the objectives set out in section 6.2(d) in future years, as they see fit;

- f. monies received under this Agreement will be used for the objectives set out in section 6.2(d) even if this Agreement is terminated; and
- g. this Agreement resolves the need to further identify funding resources, as contemplated in section 2.1(h) of the Mining and Minerals Agreement, to bridge the involvement of the SSN in the five phases of consultation and engagement in the mineral resource sector.

6.3 COMMUNITY PRIORITIES, ANNUAL REPORTS AND RECORDS

SSN covenants and agrees as follows:

- a. Within one year of the Effective Date of this Agreement, SSN will prepare a Statement of Community Priorities that identifies community priorities and outlines goals and specific outcomes that SSN intends to fund to help achieve the objectives set out in section 6.2(d) over the next 3 years.
- b. Within 90 days of receipt of each Annual Payment under this Agreement, SSN will update the Statement of Community Priorities identified in section 6.3(a) taking into account the amount of that Annual Payment; the updates will include a section on how the funds have helped the SSN achieve their community priorities.
- c. Within 90 days of receipt of each Annual Payment under this Agreement, SSN will provide to British Columbia a report prepared by the treasurer of SSN Corporation identifying all expenditures made from the Payment Account since the date of the last such report (or, in the case of the first such report, since the Effective Date of this Agreement) and confirming that, aside from reasonable administrative expenses, all such expenditures were made for the purpose of accomplishing the objectives referred to in section 6.2(d).
- d. British Columbia will have the right from time to time, at its sole discretion, to require an audit of expenditures made from the Payment Account to ensure that all such expenditures were made for appropriate purposes under this Agreement, such audit to be at the expense of SSN.

- e. The documents referred to in sections 6.3(a), 6.3(b) and 6.3(c) will be published by SSN on the Internet or in another manner that can reasonably be expected to bring the information to the attention of its communities and the public.
- f. Notwithstanding the termination or expiry of this Agreement, SSN will continue to comply with section 6.3 until twelve months after SSN receives the last Annual Payment from British Columbia.

6.4 RELEASE

SSN hereby releases and forever discharges the Provincial Releasees from all actions, causes of actions, claims, proceedings, debts, duties, demands, interest, fines, costs, expenses and compensation of whatsoever amount, nature and kind relating to consultation, accommodation and infringement of any Aboriginal Rights of SSN, arising from any Government Actions in relation to the Project.

6.5 NO PROCEEDINGS

SSN covenants and agrees that:

- a. without restricting the generality of section 6.4, they will not bring or continue any action or other proceeding, in their own name or by representative action, against Provincial Releasees in regard to the subject matter of the release in section 6.4; and
- b. neither it nor Skeetchestn or Tk'emlúps will challenge or impede, directly or indirectly, the right of Provincial Releasees or the Proponent, or any of their respective employees, contractors, agents, representatives or invitees to gain access to the Project and to carry out any activities associated with the development and operations of the Project.

6.6 SSN CORPORATION

SSN covenants and agrees that Skeetchestn and Tk'emlúps will not, during the term of this Agreement as defined in section 8, dispose of any legal or beneficial interest in the shares of SSN Corporation. This section is not intended to limit the ability of SSN to assign this Agreement or any right of SSN under this Agreement as set forth in section 7 of this Agreement.

6.7 ASSISTANCE

SSN will promptly, upon request by British Columbia:

- a. cooperate with British Columbia and provide their support to British Columbia in contesting or otherwise seeking to resolve any action that might be taken by any Member that is inconsistent with the release in section 6.4, or inconsistent with any of the other obligations of SSN in this Agreement; and
- b. cooperate with British Columbia and provide their support to British Columbia in contesting or otherwise seeking to resolve any action or proceeding against British Columbia by any other aboriginal group or proceeding in abeyance, seeking a legal claim for economic benefits or compensation in relation to the Project.

6.8 CONTINUING OBLIGATIONS

The Parties acknowledge and agree that they intend this Agreement to benefit and bind British Columbia and SSN, including present and future Members and Chiefs and Councils of Skeetchestn and Tk'emlúps, on an ongoing basis and accordingly the acknowledgements, releases and covenants given by SSN in this section 6 are intended to remain fully binding and enforceable despite any matter whatsoever including any determination by a court or a tribunal of competent jurisdiction, or any other recognition, of any Aboriginal Rights held by SSN.

6.9 CONDITION SUBSEQUENT

If British Columbia fails to make a payment to SSN as contemplated by section 3, other than a failure to pay as a result of a dispute concerning the proper amount of payment, and such failure is not remedied within one hundred and eighty (180) days after the date on which SSN give British Columbia written notice of the failure to pay, SSN may elect to terminate this Agreement. If there is a dispute as to the proper amount of payment then either Party may give the other notice of the same and upon the giving of such notice the Parties will diligently seek to resolve that dispute. Until any such dispute is finally resolved by agreement or the final decision of a court or arbitrator, and the expiration of any applicable appeal periods, British Columbia will be deemed to be in compliance with its obligation to make payments for the purpose of this section 6.9.

SECTION 7 ASSIGNMENT

7.1 SSN will not assign, either directly or indirectly, this Agreement or any right of SSN under this Agreement without the prior written consent

of British Columbia. British Columbia will not unreasonably withhold such consent, and a condition of such consent may be that SSN must obtain written consent from the Proponent, to be provided to British Columbia, that the Proponent consents to the potential for any confidential information obtained under the *Mineral Tax Act* to be provided to SSN's assigns.

SECTION 8 TERM

8.1 The term of this Agreement will commence on the Effective Date of this Agreement and will continue for as long as tax, interest and penalties payable by the Proponent are subject to reassessment under applicable legislation, unless this Agreement:

- a. terminates or is extended by mutual agreement of the Parties; or
- b. terminates under section 6.9 or section 9 (Termination) of this Agreement.

SECTION 9 TERMINATION

9.1 Either Party may terminate this Agreement on the grounds set out in sections 9.2 or 9.3 by giving the other Party thirty (30) days advance written notice of the intent to terminate the Agreement and the reasons for terminating the Agreement, except that upon the occurrence of one or more of the events referred to in section 9.3(e) termination will be effective immediately upon the giving of written notice.

9.2 SSN will have the right to terminate this Agreement:

- a. in accordance with section 6.9; or
- b. British Columbia is not in compliance with its obligations under this Agreement.

9.3 British Columbia will have the right to terminate this Agreement if:

- a. SSN, Skeetchestn, or Tk'emlúps are not in compliance with their obligations under this Agreement, including but not limited to those set out in section 6.3;
- b. SSN, Skeetchestn, or Tk'emlúps are not in compliance with their obligations under the Mining and Minerals Agreement;

- c. any representation or warranty made by SSN, Skeetchestn, or Tk'emlúps in this Agreement is untrue or incorrect; and
- d. SSN, Skeetchestn, or Tk'emlúps commence (in their own name or in the name of their Chiefs acting on behalf of SSN, Skeetchestn, or Tk'emlúps or their Members) any proceeding against British Columbia or activate a proceeding in abeyance, in relation to the Project; and
- e. SSN Corporation
 - (i) commences proceedings to be adjudged a voluntary bankrupt or has consented to the filing of a bankruptcy proceeding against it;
 - (ii) is declared bankrupt or insolvent;
 - (iii) has appointed for it a receiver, receiver-manager, trustee, liquidator or assignee in bankruptcy (or SSN consents to the appointment of same); or
 - (iv) institutes, or there is instituted against it, any formal or informal proceeding for its dissolution or liquidation, settlement of claims against it, or winding-up of its affairs.

9.4 The termination of this Agreement will not cease the obligations of the Parties in the Mining and Minerals Agreement. For greater certainty, the termination of this Agreement would result in the consultation and accommodation approach of the Mining and Minerals Agreement potentially being applicable again to potential provincial decisions relating to the Project that would be otherwise included as Government Actions and subject to the Consultation and Accommodation Process under this Agreement.

9.5 SSN covenants and agrees that, upon termination of SSN Corporation, it will cause all monies in the Payment Account to be distributed to Skeetchestn and Tk'emlúps on such equitable basis as they may agree.

9.6 The Parties' rights and obligations, which by their nature extend beyond the expiration or termination of the Agreement, will survive any expiration or termination of this Agreement.

SECTION 10 AMENDMENT OF AGREEMENT

10.1 Any amendment of this Agreement agreed to by the Parties must be in writing and signed by the Parties.

SECTION 11 DISPUTE RESOLUTION

11.1 A “dispute” is defined, for the purposes of this section, as any disagreement:

- a. about which written notice of a dispute is given in accordance with sections 11.3 and 12; and
- b. which relates to the interpretation of this Agreement.

11.2 No part of this section applies in respect of a Government Action which potentially adversely affects or infringes an Aboriginal Right.

11.3 Any Party may give written notice of a dispute to the other Party, which notice must include a summary of the particulars of the dispute.

11.4 Within ten (10) working days, all Parties will meet and will attempt to resolve the dispute through unassisted collaborative negotiation. If the meeting fails to resolve the dispute, any Party may refer the dispute to mediation by delivering a notice to commence mediation to the other Party, and the Parties may participate in a mediation process as set out below:

- a. if all Parties fail to agree on a mediator within ten (10) working days after notice to commence mediation is delivered under the above paragraph, on written request of a Party that is copied to the other Parties, the appointment will be made by the British Columbia Mediator Roster Society using the Society's mediation rules;
- b. at any time prior to the conclusion of the mediation, a Party may give the mediator and the other Parties a written notice, with or without reasons, requiring the mediator to withdraw from the mediation on the grounds that the Party has justifiable doubts as to the mediator's independence or impartiality;
- c. a mediator's appointment terminates if the mediator is required to withdraw under section 11.4(b), the mediator

withdraws from office for any reason, or all Parties agree to a termination of the mediation or this Agreement;

- d. if a mediator's appointment terminates under section 11.4(c) and all Parties want to continue a mediated process, a replacement mediator will be jointly appointed by the Parties within ten (10) working days of termination of the mediator's appointment. If the Parties cannot agree, on the written request of a Party that is copied to the other Parties, the appointment will be made by the British Columbia Mediator Roster Society using the Society's mediation rules;
- e. each Party will submit to the mediator within five (5) working days a summary of the facts and its views on the issue in dispute;
- f. the first mediation session must take place no later than ten (10) working days following the appointment of the mediator;
- g. mediation sessions must not extend beyond fifteen (15) working days after the first mediation session and the following will apply:
 - i. the mediation process and all its related proceedings will be and will remain confidential;
 - ii. the mediator will not issue a report or make any recommendations unless requested to do so in writing by all Parties;
 - iii. a Party may withdraw from mediation at any time by providing written notice of its intent to the mediator; and
 - iv. each Party will assume its own expenses related to the mediation, and one-half of the expenses and fees of the mediator will be paid by SSN and one-half by British Columbia;
- h. if a meeting or mediation has not resolved the dispute, the Parties may jointly agree to refer the dispute to an arbitrator pursuant to the *Commercial Arbitration Act*;
- i. if the Parties agree to arbitration, then the following will apply:

- i. the arbitrator will be chosen jointly by the Parties, and failing agreement, the appointment will be made by a neutral appointing authority on the written request of a Party that is copied to the other Parties;
- ii. the arbitration process and all its related proceedings will be and will remain confidential;
- iii. the decision of the arbitrator will be binding on the Parties for the term of this Agreement; and
- iv. each Party participating in the arbitration will bear its own costs of participation; British Columbia will bear one-half of the expenses and fees of the arbitrator, and SSN will bear the other one-half of the expenses and fees.

11.5 The Parties may also choose other appropriate approaches to assist in reaching resolution of the dispute.

SECTION 12 NOTICE & DELIVERY

12.1 Where in this Agreement any notice or other communication is required to be given by any of the Parties, it will be made in writing. It will be effectively given:

- a. by personal delivery to the address of the Party set out below, on the date of delivery;
- b. by pre-paid registered mail to the address of the Party mentioned in this Agreement, on the date the registered mail is delivered; or
- c. by facsimile, to the facsimile number of the Party set out in this Agreement, on the date the facsimile is received.

12.2 The address and facsimile numbers of the Parties are:

- a. SSN:
Chief, Tk'emlúps Indian Band
Chief, Skeetchestn Indian Band
c/o Stk'emlúpsemc of the Secwepemc Nation
P.O. Box 188
1000 Trans-Canada Highway
Savona, BC VOK 2J0
Fax: (250) 373-0025

b. British Columbia:

Executive Director, Division of Marketing, Aboriginal and
Community Relations
Ministry of Energy, Mines and Petroleum Resources
PO Box 9315 Stn Prov Govt
Victoria, British Columbia V8W 9N1
Fax: (250) 952-0111

- 12.3** Any Party may at any time give notice to the other Party of any change of address or facsimile number in accordance with section 12.1.

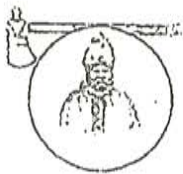
SECTION 13 GENERAL PROVISIONS

- 13.1** Nothing in this Agreement prohibits SSN from participating in government programs for which it may be eligible.
- 13.2** This Agreement does not constitute a treaty or land claim agreement within the meaning of sections 25 and 35 of the *Constitution Act, 1982*.
- 13.3** Except as expressly provided herein, this Agreement does not create, expand, amend, define, affirm, recognize, limit, deny, abrogate, extinguish, replace or derogate from any SSN aboriginal rights or title which are recognized and affirmed by section 35(1) of the *Constitution Act, 1982*.
- 13.4** This Agreement shall not be interpreted as addressing compensation for alleged past or future infringements of Aboriginal Rights that are not related to the Project.
- 13.5** This Agreement does not change or affect the position either Party has, or may have, regarding its jurisdiction, responsibilities and decision-making authority, and it should not be interpreted in a manner that would affect or unlawfully interfere with any legislative authority of British Columbia or any lawful authority of SSN.
- 13.6** This Agreement does not limit the position either Party may take in any legal or administrative proceedings or in any discussions or negotiations between the Parties.

- 13.7** Nothing in this Agreement is to be construed as an acceptance of or admission by a Party of the position of the other Party or as an admission of fact or liability.
- 13.8** This Agreement does not constitute any admission of any claim that the Project, including any Government Action associated with the Project, has resulted or will result in any unjustified infringement of any Aboriginal Rights.
- 13.9** This Agreement does not constitute any admission of an obligation to provide financial or economic benefits, as provided in this Agreement, as part of the British Columbia's obligation to consult and accommodate.
- 13.10** This Agreement shall be governed by the applicable laws of Canada and British Columbia.
- 13.11** There will be no presumption that any ambiguity in any of the terms of this Agreement should be interpreted in favour of either Party.
- 13.12** This Agreement and any amendment to it constitute the entire Agreement between the Parties with respect to the subject matter of this Agreement, unless otherwise agreed in writing by the Parties.
- 13.13** If any part of this Agreement is void or unenforceable at law, it shall be severed from this Agreement and the rest of the Agreement shall remain in effect and fully enforceable.
- 13.14** If any part of this Agreement is void or unenforceable at law, the Parties agree to negotiate and attempt to reach agreement, to the extent reasonably possible and as their respective interests may require, on a replacement for the severed part with a view to achieving the intent of the Parties as expressed in this Agreement. The Parties may agree to refer the matter to the dispute resolution process set out in section 11.
- 13.15** All headings in this Agreement are for convenience only and do not form a part of this Agreement and are not intended to interpret, define, limit, enlarge, modify or explain the scope, extent or intent of this Agreement or any of its provisions.
- 13.16** In this Agreement, words in the singular include the plural, and words in the plural include the singular unless the context or any specific definition otherwise requires.

- 13.17** The use of the word “including” is to be read as not limiting the generality of the preceding term or phrase.
- 13.18** In this Agreement, any reference made to a statute includes all regulations made under that statute and any amendments or replacements.
- 13.19** No term, condition, covenant or other provision of this Agreement will be considered to have been waived by the Parties unless such waiver is expressed in writing by the Parties.
- 13.20** All references in this Agreement to a designated “section”, “clause” or other subdivision or to an Appendix are to the designated section, clause or other subdivision of, or Appendix to, this Agreement.
- 13.21** Any reference to a corporate entity includes and is also a reference to any corporate entity that was a predecessor to, or that is a successor to, such entity.
- 13.22** The following appendices are attached to and form part of this Agreement:
- | | |
|------------|--|
| Appendix 1 | Skeetchestn Band Council Resolution; and |
| Appendix 2 | Tk'emlúps Band Council Resolution. |
- 13.23** This Agreement may be executed in counterparts and by facsimile by the Parties.

APPENDIX 1



SKEETCHESTN INDIAN BAND

330 Main Drive, PO Box 178
Savona, BC V0K 2J0



BAND COUNCIL RESOLUTION

A quorum for this Band consists of 3			RESOLUTION NUMBER
Central District British Columbia	7 Day	December Month	2009 Year
			SKE 1864

WHEREAS; the Stk'emlupsemc Secwepemc Nation was jointly created by the Tkumlups and Skeetchestn Bands respectively;

WHEREAS; the Stk'emlupsemc Secwepemc Nation has completed discussion and review of the "Economic and Community Development Agreement" dated November 24, 2009 Final Draft, as represented by the Minister of Energy Mines and Petroleum Resources and the Minister of Forest and Range and Minister Responsible for Integrated Land Management Bureau;

WHEREAS; at a duly convened meeting of the Stk'emlupsemc Secwepemc Nation on December 3, 2009, the "Economic and Community Development Agreement" was formally adopted; and execution of Skeetchestn Band Council Resolution is required;

THEREFORE BE IT RESOLVED THAT; the Skeetchestn Band convened a Chief and Council meeting on December 7, 2009 to execute a Band Council Resolution endorsing and adopting the Economic and Community Development Agreement between Stk'emlupsemc Secwepemc Nation the Minister of Energy Mines and Petroleum Resources and the Minister of Forest and Range and Minister Responsible for Integrated Land Management Bureau.

CERTIFIED COPY OF A BAND COUNCIL RESOLUTION OF

"SKEETCHESTN INDIAN BAND"

"Passed at the Meeting of Chief and Council held the 7 day of December, 2009.


WHEREAS;

I. Skeetchestn Indian Band"

I hereby certify that the foregoing is a true copy of a Band Council Resolution of the Skeetchestn Indian Band duly passed on December 7, 2009 which Band Council Resolution is now in full force and effect unamended.


Director


CHIEF


COUNCILLOR


COUNCILLOR


COUNCILLOR


COUNCILLOR



FILE: 09-230

KAMLOOPS INDIAN BAND COUNCIL RESOLUTION

DATE APPROVED AT COUNCIL MEETING: DECEMBER 4, 2009

DISTRICT: NORTH

PROVINCE: BRITISH COLUMBIA

PLACE OF APPROVAL: KAMLOOPS

QUORUM: FOUR (4)

The Kamloops Indian Band Council does hereby resolve that:

Page 1 of 1

WHEREAS the Stk'emlupsenc Secwepemc Nation was jointly created by the Tk'emlúps te Secwépemc and Skeetchestn Bands respectively;

WHEREAS the Stk'emlupsenc Secwepemc Nation has completed discussion and review of the "Economic and Community Development Agreement" dated November 24, 2009 Final Draft, as represented by the Minister of Energy Mines and Petroleum Resources and the Minister of Forest and Range and Minister Responsible for Integrated Land Management Bureau;

WHEREAS at a duly convened meeting of the Stk'emlupsenc Secwepemc Nation on December 3, 2009, the "Economic and Community Development Agreement" was formally adopted; and execution of Tk'emlúps te Secwépemc Band Council Resolution is required;

THEREFORE be it resolved that the Tk'emlúps te Secwépemc Band Council convened a Chief and Council meeting on December 4, 2009 to execute a Band Council Resolution endorsing and adopting the Economic and Community Development Agreement between Stk'emlupsenc Secwepemc Nation the Minister of Energy Mines and Petroleum Resources and the Minister of Forest and Range and Minister Responsible for Integrated Land Management Bureau.

CHIEF: 4-11-6-

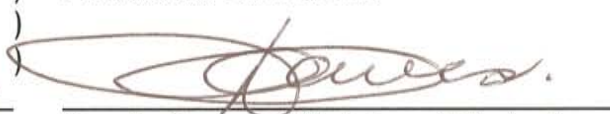
COUNCILLOR: <u>Jeannette Jiles</u>	COUNCILLOR: <u>Connie Leonard</u>
COUNCILLOR: <u>[Signature]</u>	COUNCILLOR: <u>[Signature]</u>
COUNCILLOR: <u>[Signature]</u>	COUNCILLOR: <u>[Signature]</u>
COUNCILLOR: <u>[Signature]</u>	COUNCILLOR: <u>[Signature]</u>

Comments:

SIGNED in the presence of:

) HER MAJESTY THE QUEEN IN RIGHT
) OF BRITISH COLUMBIA OF BRITISH
) COLUMBIA, as represented by the
) Minister of Energy Mines and
) Petroleum Resources


Witness


Randy Hawes, Minister of State for
Mining

SIGNED in the presence of:

) HER MAJESTY THE QUEEN IN RIGHT
) OF BRITISH COLUMBIA OF BRITISH
) COLUMBIA, as represented by the
) Minister of Forests and Range and
) Minister Responsible for Integrated
) Land Management Bureau



Witness


Minister Pat Bell

SIGNED in the presence of:

) STK'EMLÚPSEMC OF THE
) SECWEP EMC NATION
) as represented by Tk'emlúps Indian
) Band and the Skeetchestn Indian
) Band


Witness


Chief Rick Deneault, Skeetchestn
Indian Band


Witness


Chief Shane Gottfriedson, Tk'emlúps
Indian Band