

SITE C PROJECT TRIPARTITE LAND

AGREEMENT This Agreement is dated March 27, 2020

BETWEEN:

PROPHET RIVER FIRST NATION, a “band” within the meaning of the *Indian Act*, R.S.C. 1985, c. 1-5 for and on behalf of itself and all of its Members, as represented by its Chief and Council

(“**PRFN**”)

AND:

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

(“**British Columbia**”)

AND:

BRITISH COLUMBIA HYDRO AND POWER AUTHORITY, a corporation continued under the authority of the *Hydro and Power Authority Act*, R.S.B.C. 1996, c. 212

(“**BC Hydro**”)

WHEREAS:

- A. BC Hydro is undertaking the Site C Project as part of an overall regeneration program to invest in and renew British Columbia’s electricity system and as a source of clean and renewable energy;
- B. The Site C Project is located in territory covered by Treaty 8 over which PRFN has Section 35 Rights;
- C. BC Hydro has been issued the Environmental Assessment Certificate and Federal Decision Statement authorizing the Site C Project, with conditions, and BC Hydro is legally obligated to and will comply with their conditions;
- D. PRFN has commenced an action against BC Hydro, British Columbia and Canada seeking, among other relief, a declaration that the cumulative impacts of the W.A.C. Bennett, Peace Canyon and Site C dams unjustifiably infringes its Treaty 8 rights;

- E. Concurrent with this Agreement, BC Hydro and PRFN have entered into an Impact and Benefits Agreement relating to the Site C Project and its Operation; and
- F. This Agreement provides for the transfer of certain Lands identified or to be identified in the Schedules to this Agreement.

NOW THEREFORE, in consideration of the mutual covenants and agreements contained in this Agreement, and other good and valuable consideration the receipt and sufficiency of which the Parties acknowledge, the Parties agree as follows:

ARTICLE 1 - INTERPRETATION

1.1 Definitions. In this Agreement:

“Adequate Survey” means a survey that meets the requirements for Land Title Office registration as defined under the *Land Title Act*, R.S.B.C. 1996, c. 250;

“Agency” means any permitting, regulatory or government decision-making body from whom an Authorization is required or to whom an application for an Authorization is made, or that is making a decision or developing a plan in respect of the Site C Project;

“Agreement” means this Tripartite Land Agreement, including the Schedules and any agreement, document or instrument executed or delivered pursuant to this Agreement;

“Authorization” means any approval, permit, licence, tenure or other authorization applied for, issued or required to enable the Site C Project and its Operation, including:

- (a) the FDS;
- (b) the EAC;
- (c) any approval by Fisheries and Oceans Canada, Transport Canada, Natural Resources Canada or any other federal department;
- (d) any approval by Ministry of Forests, Lands and Natural Resource Operations, Comptroller of Water Rights, Ministry of Energy and Mines, or any other provincial department;
- (e) any decision by a Public Official or any federal minister, official, employee, contractor, agent or representative, including any statutory decision-maker, to approve, enable or support the Site C Project and its Operation; and
- (f) any amendments to the foregoing which may be required from time to time, except any Material Change;

“Band Council Resolution” means a resolution of the PRFN band council, duly passed in accordance with the Indian Act, R.S.C. 1985, c. I-5, substantially in the form set out in Schedule A “1”;

“Charter” means the *Canadian Charter of Rights and Freedoms* in Part 1 of the *Constitution Act, 1982*;

“Closing Date” means the date or dates on which the documents for the transfer of the Lands to a Designated Entity are uploaded to the electronic meet and are filed in the Land Title Office;

“Confirmation Letter” means the letter to be provided by PRFN to British Columbia in the form set out in the Impact and Benefits Agreement;

“Contaminant” means any substance which is a prescribed substance for the purposes of the definition of “contaminated site” in the *Environmental Management Act*, S.B.C. 2003, c. 53;

“Contaminated Lands” means lands, including surface water and groundwater, that contain any Contaminant to a level requiring remediation at law having regard for PRFN’s intended use of those lands should they be selected by PRFN pursuant to 6.1 or 6.2;

“Costs” has the meaning set forth under 18.3;

“Crown Corridor” means a highway, as defined in the *Transportation Act*, S.B.C. 2004, c. 44 and the area of any other licence, easement, right-of-way or road over Crown land that is used for transportation or public utility purposes and that, where the Lands are not surveyed or have to be re-surveyed, is identified in Schedule B “1”;

“Crown Grant” means a Crown grant as defined in the *Land Act*, R.S.B.C. 1996, c. 245;

“Designated Entity” means a legal entity which PRFN has designated to take fee simple title to any of the Lands;

“Effective Date” means the date on which the last of this Agreement and the Impact and Benefits Agreement is fully executed by all of the Parties;

“Environmental Assessment Certificate or “EAC” means the provincial Environmental Assessment Certificate #E14-02 authorizing the Site C Project, issued to BC Hydro on October 14, 2014 pursuant to the *Environmental Assessment Act*, S.B.C. 2002, c. 43;

“Excluded Claims” has the meaning set forth under 17.7;

“Existing BC Hydro Peace River Hydroelectric Facilities” means the W.A.C. Bennett Dam, the Peace Canyon Dam, the Williston Reservoir, the Dinosaur

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 D “1” as of the Effective Date (for greater certainty, excluding the Site C Project), which are used or operated in connection with the W.A.C. Bennett Dam, the Peace Canyon Dam, the Williston Reservoir or the Dinosaur Reservoir;

“**Federal Decision Statement** or “**FDS**” means the Federal Decision Statement authorizing the Site C Project, issued to BC Hydro on October 14, 2014 (and re-issued on November 25, 2014) pursuant to the *Canadian Environmental Assessment Act*, S.C. 2012, c. 19;

“**Force Majeure Event**” means, with respect to a Party, any event or circumstances that was not caused by and is not reasonably within the control of that Party and which, by the exercise of due diligence, such Party would be unable to overcome, provided that lack of funds and economic hardship will not constitute a Force Majeure Event;

“**GST**” means the goods and services tax imposed under the *Excise Tax Act*, R.S.C. 1985, c. E-15 (Canada) or equivalent tax imposed under federal or provincial law;

“**Impact and Benefits Agreement**” or “**IBA**” means the Impact and Benefits Agreement entered into concurrently with this Agreement between BC Hydro and PRFN, as such agreement may be amended from time to time;

“**Impacts**” means the impacts or effects of the Site C Project and its Operation, including any contribution that such impacts or effects may have to cumulative impacts or effects;

“**In Service Date**” means the date, of which notice is provided by BC Hydro to British Columbia and PRFN pursuant to the IBA, on which the first of the six generating units that form part of the Site C Project is, in the determination of BC Hydro, capable of continuously generating electricity in a manner that meets BC Hydro’s system interconnection requirements, as those requirements are described in the BC Hydro document entitled “60kV to 500 kV Technical Interconnection Requirements for Power Generators” and as that document may be updated, amended or replaced from time to time;

“**Lands**” means the provincial Crown lands identified for illustrative purposes in Schedule B “1” and described in Schedule B “2”;

“**Material Change**” means any material change to the Site C Project that:

- (a) cannot reasonably be considered to constitute part of the Site C Project and its Operation within the intended operating parameters as set out in the EAC or the FDS; and

- (b) causes new and substantial adverse effects on PRFN Section 35 Rights which have not been determined by the applicable Agency to have been avoided, mitigated or otherwise accommodated;

“Member” means an individual who, in respect of PRFN, is a “member of a band” as defined in the *Indian Act*, R.S.C. 1985, c. I-5, and includes all those Aboriginal persons who are eligible or entitled to exercise PRFN Section 35 Rights;

“Operation” means the ongoing use, operation and maintenance, repair, replacement, upgrade, removal or required remediation of all or any part of the constructed Site C Project, or of any other Works that are required or undertaken to make the Site C Project functional for its intended use and purpose (examples of which are included by way of illustration only and without limitation in Schedule C “2”), from the In Service Date to the completion of decommissioning of the Site C Project, as such completion of decommissioning is determined by BC Hydro in its discretion and of which notice is provided by BC Hydro to PRFN pursuant to the IBA;

“Parties” means British Columbia, BC Hydro and PRFN, or their permitted successors or assigns, and **“Party”** means any one of them;

“Permitted Encumbrances” means the reservations, exceptions, liens, charges, and interests described in Part 1 and 2 of Schedule B “3” for each of the Lands or any other Permitted Encumbrances agreed to by the Parties and registered as a charge on title;

“Person” means an individual, legal personal representative, corporation, body corporate, firm, partnership, trust, trustee, syndicate, joint venture, unincorporated organization, association, Agency or governmental authority;

“PRFN Amended Civil Claim” has the meaning set forth under 18.2;

“PRFN Civil Claim” means the action currently bearing the style of cause *Prophet River First Nation and Lynette Tsakoza on her own behalf and on behalf of all other Prophet River First Nation Beneficiaries of Treaty No. 8 v. Her Majesty the Queen in Right of the Province of British Columbia, the Attorney General of Canada, and British Columbia Hydro and Power Authority*, filed in the BC Supreme Court, Vancouver Registry No. S194993;

“Proceeding” means any claim, demand, cause of action or action made before a court or any proceeding before a court, including a judicial review or appeal of an Agency or a court decision, or any hearing before an Agency or other board, commission, tribunal, arbitrator or other judicial, quasi-judicial or administrative decision-maker;

“Proximate Land” means lands that are adjacent or in close proximity to PRFN’s existing reserve and are identified for illustrative purposes in Schedule B “1” and described in Schedule B “2” as Proximate Land;

“PST” means the sales tax imposed under the *Provincial Sales Tax Act* or equivalent tax imposed under federal or provincial law;

“Public Official” means:

- (a) the British Columbia Cabinet or Treasury Board, or the board of directors of BC Hydro;
- (b) any minister, official, employee, contractor, agent or representative of British Columbia, including any statutory decision-maker; or
- (c) any director, officer, employee, contractor, agent or representative of a government corporation, including BC Hydro;

“Released Claims” means any and all past, present and future claims of or by PRFN or its Members regarding or in relation to PRFN Section 35 Rights resulting or arising from the Site C Project and its Operation or any Authorization, including: (i) claims regarding the adequacy of consultation and accommodation with respect to PRFN Section 35 Rights resulting or arising from the Site C Project and its Operation or any Authorization; (ii) claims regarding any Impacts or infringement of PRFN Section 35 Rights resulting or arising from the Site C Project and its Operation or any Authorization; (iii) breach of treaty resulting or arising from the Site C Project and its Operation or any Authorization; (iv) breach of PRFN Charter rights resulting or arising from the Site C Project and its Operation or any Authorization; and (v) private or public nuisance, breach of riparian rights, trespass, breach of fiduciary duty, unjust enrichment, civil conspiracy, lack of PRFN’s free, prior and informed consent, and any other civil claims regarding or in relation to PRFN Section 35 Rights resulting or arising from the Site C Project and its Operation or any Authorization; but, for greater certainty, excluding any Excluded Claims;

“Releasees” has the meaning set forth under 18.1;

“Section 35 Rights” or **“PRFN Section 35 Rights”** means the Aboriginal and treaty rights, including as an adherent to Treaty 8, which are now or may be asserted or established by or on behalf of PRFN or its Members pursuant to, or interpreted by a court of competent jurisdiction as recognized and affirmed by, section 35 of the *Constitution Act, 1982*;

“Site C Project” means the proposed third dam and hydroelectric generating station on the Peace River and associated structures on or adjacent to the Peace River in northeastern British Columbia, as more fully described in Schedules C “1” and “2”, as they or any parts or components thereof may be modified, replaced or upgraded from time to time, but does not include a Material Change;

“Site C Project and its Operation” means the Site C Project and its Operation, the Site C Project or its Operation, or both;

“Treaty 8” means Treaty No. 8, a treaty concluded on several dates in 1899 and in subsequent years between Her Majesty the Queen by her Commissioners for Canada and the Cree, Beaver, Chipewyan and other First Nations, inhabitants of the territory described in the Treaty 8 document, and each other signatory or adherent to Treaty 8, including PRFN;

“Treaty 8 Territory” means, subject to 17.2, the territory in British Columbia that is subject to Treaty 8;

“WMFN Civil Claim” means the action currently bearing the style of cause *West Moberly First Nations and Roland Willson on his own behalf and on behalf of all other West Moberly First Nations beneficiaries of Treaty No. 8 v Her Majesty the Queen in Right of the Province of British Columbia, the Attorney General of Canada, and British Columbia Hydro and Power Authority*, filed in the BC Supreme Court, Vancouver Registry, S195070; and

“Works” includes licences, easements, rights-of-way, roads, telecommunication services, components, equipment, infrastructure and facilities, including transmission lines, related to the generation, transmission or distribution of electricity.

1.2 Schedules. The following are the Schedules to this Agreement:

PRFN Schedules

- Schedule A “1” – Form of Band Council Resolution
- Schedule A “2” – Map of Treaty 8 Territory

Land Transfer Schedules

- Schedule B “1” – Map(s) of Lands
- Schedule B “2” – Description of Lands
- Schedule B “3” – Permitted Encumbrances
- Schedule B “4” – Form of Permitted Encumbrances
- Schedule B “5” – [Intentionally Deleted]
- Schedule B “6” – Designated Entity Agreement
- Schedule B “7” – GST Certificate
- Schedule B “8” – Consent of PRFN in relation to Property Transfer Tax Matters

Site C Project Schedules

- Schedule C “1” – Map of Site C Project Area
- Schedule C “2” – Site C Project Description

Existing Facilities Schedule

- Schedule D “1” – Existing BC Hydro Peace River Hydroelectric Facilities

- 1.3 Schedules B “1” and B “2”.** For greater certainty, Schedules B “1” and B “2” will identify those Lands which are Proximate Land and which may be added to the applicable PRFN Indian Reserve under 13.2 and those Lands which are not Proximate Land whose reservation as a PRFN Indian Reserve will be reviewed by British Columbia on a case-by-case basis under 13.3.
- 1.4 Amendment of Schedules.** The Parties acknowledge and agree that the Schedules will need to be updated by agreement of the Parties after the Effective Date.

ARTICLE 2 - PURPOSE

- 2.1 Purpose.** The purpose of this Agreement is to:
- (a) identify and transfer those parcels of provincial Crown land identified as Lands from British Columbia to PRFN;
 - (b) confirm that PRFN and its Members have been adequately consulted and accommodated with respect to the Site C Project and its Operation in relation to PRFN Section 35 Rights, including with respect to any Impacts or infringement of PRFN Section 35 Rights resulting or arising from the Site C Project and its Operation or any Authorization;
 - (c) settle the PRFN Civil Claim as against British Columbia and BC Hydro; and
 - (d) provide British Columbia and BC Hydro with legal certainty with respect to the Site C Project and its Operation.
- 2.2 Impact and Benefits Agreement.** The Parties agree that BC Hydro and PRFN will enter into and execute the Impact and Benefits Agreement concurrent with the execution of this Agreement, in order to:
- (a) ensure that BC Hydro provides benefits to PRFN in relation to the Site C Project;
 - (b) settle the PRFN Civil Claim as against British Columbia and BC Hydro;
 - (c) provide BC Hydro with legal certainty with respect to the Site C Project and its Operation; and
 - (d) establish and foster a long term, collaborative and positive working relationship between BC Hydro and PRFN with respect to the Site C Project and its Operation.
- 2.3 Separate Agreements.** This Agreement is a separate agreement from the Impact and Benefits Agreement and is governed by its terms.

ARTICLE 3 - TERM AND TERMINATION

- 3.1 Coming into Effect.** This Agreement commences on the Effective Date and continues until completion of decommissioning of the Site C Project and its Operation, unless terminated under 3.3 or 22.2.
- 3.2 Delay, Suspension or Abandonment.** If BC Hydro determines, at any time and in its sole discretion, to delay, suspend or abandon the Site C Project and its Operation, British Columbia may, in its sole discretion, on 60 days' prior notice to PRFN and BC Hydro, delay or suspend the transfer of the Lands.
- 3.3 Termination.** Any Party may, on 60 days' prior notice to the other Parties, and in addition to any other remedies it may have, terminate this Agreement:
- (a) in the event any of the representations or warranties of another Party under Article 4 are or become incorrect; or
 - (b) if BC Hydro has abandoned the Site C Project and terminated the Impact and Benefits Agreement.
- 3.4 Resumption of Obligations.** If BC Hydro determines, at any time and in its sole discretion, to recommence the Site C Project and its Operation following a delay or suspension, BC Hydro will promptly deliver notice of recommencement to PRFN and British Columbia and British Columbia's obligations regarding the transfer of any Lands which have not been completed will resume upon receipt of BC Hydro's notice that it has recommenced the Site C Project and its Operation.
- 3.5 Retention of Transferred Lands.** PRFN may retain any Lands transferred to it by British Columbia before the termination of this Agreement or the abandonment of the Site C Project and its Operation. Any Lands transferred by British Columbia to PRFN before the termination of this Agreement or the abandonment of the Site C Project and its Operation, together with the benefits received by PRFN under the Impact and Benefits Agreement, will be deemed to constitute accommodation (without prejudice to any Party's position regarding the adequacy of any such accommodation) with respect to the Site C Project and its Operation in relation to PRFN Section 35 Rights, including with respect to any Impacts or infringement of PRFN Section 35 Rights resulting or arising from the Site C Project and its Operation or any Authorization.
- 3.6 Survival of Lands Conditions.** Notwithstanding 3.2 or 3.3, where any of the Lands are transferred under this Agreement, 3.5, Article 9, Article 12, and Article 13 will survive the completion of the transfers or the termination of this Agreement and, for greater certainty, will continue to apply to the Lands.

ARTICLE 4 - REPRESENTATIONS AND WARRANTIES

4.1 PRFN Representations. PRFN represents and warrants to British Columbia and BC Hydro, with the intent and understanding that they will be relied on by British Columbia and BC Hydro in entering into this Agreement, that:

- (a) it is the proper representative and exclusive holder of PRFN's Section 35 Rights for the purposes of this Agreement, including consultation and accommodation with respect to the Site C Project and its Operation;
- (b) it has the legal power, capacity and authority to enter into this Agreement for and on behalf of PRFN and its Members, including in relation to PRFN Section 35 Rights, and to carry out its obligations under this Agreement;
- (c) it has taken all necessary actions and obtained all necessary approvals to enter into and authorize the execution of this Agreement, including the passing of the Band Council Resolution and the authorization of the individual signing this Agreement on behalf of PRFN;
- (d) any company or society designated by PRFN for the purposes of this Agreement as a Designated Entity will have the legal power, capacity and authority to enter into and to carry out its obligations under each agreement and transaction to which it is a party in accordance with this Agreement; and
- (e) this Agreement is a valid and legally binding obligation of PRFN and its Members.

4.2 British Columbia Representations. British Columbia represents and warrants to PRFN and BC Hydro, with the intent and understanding that they will be relied on by PRFN and BC Hydro in entering into this Agreement, that:

- (a) it has the legal power, capacity and authority to enter into this Agreement and to carry out its obligations under this Agreement;
- (b) all necessary actions have been taken to authorize the execution of this Agreement, including the authorization of the individual signing this Agreement;
- (c) this Agreement is a valid and legally binding obligation of British Columbia; and
- (d) on satisfaction or waiver of the conditions precedent under 5.2 and, as applicable 5.3, it will have the legal power, capacity and authority to transfer the fee simple title to the Lands to a Designated Entity.

4.3 BC Hydro Representations. BC Hydro represents and warrants to PRFN and British Columbia, with the intent and understanding that they will be relied on by PRFN and British Columbia in entering into this Agreement, that:

- (a) it has the legal power, capacity and authority to enter into this Agreement and to carry out its obligations under this Agreement;
- (b) this Agreement is a valid and legally binding obligation of BC Hydro; and
- (c) all necessary actions have been taken to authorize the execution of this Agreement, including the authorization of the individual signing this Agreement.

4.4 Survival of Representations. The representations and warranties of each of the Parties under 4.1 to 4.3 will survive the execution and completion of any transactions under this Agreement and will continue in full force and effect for the benefit of the other Parties.

ARTICLE 5 - CONDITIONS PRECEDENT

5.1 Required Deliveries and Actions. PRFN will:

- (a) prior to the execution of this Agreement, deliver to British Columbia and BC Hydro a fully executed and duly passed Band Council Resolution expressly confirming the approval of this Agreement in accordance and in compliance with PRFN processes in the form set out in Schedule A “1”; and
- (b) after execution of this Agreement, discontinue the PRFN Civil Claim or amend and discontinue the PRFN Civil Claim as against British Columbia and BC Hydro in accordance with 18.2 and issue a press release in accordance with section 15.29 of the IBA.

5.2 Conditions Precedent (General). British Columbia’s obligation to transfer the Lands is subject to:

- (a) PRFN having delivered the documents and taken the actions under 5.1;
- (b) PRFN having executed the Impact and Benefits Agreement relating to the Site C Project and its Operation;
- (c) PRFN’s representations and warranties under this Agreement being and continuing to be true and correct;
- (d) PRFN having complied with all applicable terms and conditions under this Agreement, including taking reasonable, culturally appropriate measures to resolve any conflicts with First Nations which have or assert rights under s. 35 of the *Constitution Act, 1982* in the territory in which the Lands are located;
- (e) British Columbia having, with respect to each parcel of Lands to be transferred:

- (i) completed, where applicable, consultations with First Nations, third parties who are entitled to the benefit of the Permitted Encumbrances, and local governments or governmental authorities and other stakeholders in order to determine the nature of their interest in the Lands and the impact, if any, of the transfer of Lands on such interests;
 - (ii) determined, where applicable, that any overlapping claims by or conflicts with other First Nations which have or assert rights under s. 35 of the *Constitution Act, 1982* in the territory in which the Lands are located have been resolved or otherwise addressed to the satisfaction of British Columbia;
 - (iii) resolved any financial liability British Columbia may have, including third party claims for compensation; and
 - (iv) obtained all required approvals, including Cabinet and Treasury Board approval;
- (f) there being sufficient monies available in an appropriation, as defined in the *Financial Administration Act*, R.S.B.C. 1996, c. 138, to enable British Columbia in any fiscal year, when any expenditure in respect of an obligation may be required, to make that expenditure; and
- (g) the Site C Project not being subject to delay, suspension or abandonment.

5.3 Conditions Precedent to Land Transfers. In addition to and without limiting the conditions precedent under 5.2, British Columbia's obligation to transfer the Lands to PRFN is subject to:

- (a) where any portions of the Lands are not surveyed or have to be re-surveyed, Adequate Surveys for the Lands having been completed on or before the applicable Closing Date;
- (b) if the Lands are transferred in phases, all obligations of PRFN and the Designated Entity having been fully performed in accordance with this Agreement with respect to all previously transferred Lands; and
- (c) British Columbia having given notice that the minister responsible has authorized the disposition of the Lands in accordance with provincial law.

5.4 Waiver of Conditions Precedent. The conditions precedent under 5.2 and 5.3 are for the sole benefit of British Columbia and may be waived by British Columbia on notice to BC Hydro and PRFN.

ARTICLE 6 - LAND SELECTION

6.1 Land Selection. Within one year after the Effective Date, or such other time as the Parties may agree, PRFN will make best efforts to identify at least 2,750

acres of provincial Crown lands located within Treaty 8 Territory for the purpose of ultimately identifying 2,500 acres, or as close as possible thereto given the Lands selected, of provincial Crown lands located within Treaty 8 Territory for inclusion as the Lands to be transferred to PRFN pursuant to this Agreement.

6.2 Alternative Lands. In the event that lands identified by PRFN under 6.1 are not eligible for inclusion as the Lands based on the factors under 6.3 and the remaining identified area of land is less than 2,500 acres, PRFN will identify such other lands within Treaty 8 Territory as may be required for inclusion as the Lands having regard for the factors under 6.3.

6.3 Statusing of Land Selection. Within one year after PRFN's identification of land under 6.1 or 6.2, or such other time as the Parties may agree, British Columbia will complete the statusing of those lands having regard for, among other things:

- (a) confirmation of the Crown's ownership of the lands;
- (b) the location, condition and contiguity of the lands;
- (c) environmental condition of the lands and the ability to resolve any environmental concerns;
- (d) any encumbrances, interests or tenures in or on the lands, including fee simple interests, road and utility rights-of-way, surface or subsurface tenures and access to those tenures, or access to adjacent or proximate lands;
- (e) the estimated, or where available the appraised or assessed, value of the lands;
- (f) any potential third party claims for compensation;
- (g) any overlapping claims by other First Nations; and
- (h) consultation or engagement with any potentially affected First Nations, local governments and stakeholders.

6.4 Finalization of Land Selection. After the land statusing is complete, British Columbia will provide PRFN with the results of the land statusing and British Columbia and PRFN will make best efforts to resolve any issues or concerns with a view to finalizing the land selection. If British Columbia and PRFN are unable to resolve the issues or concerns such that some of the lands are not eligible for inclusion as the Lands based on the factors under 6.3, or if PRFN has advised British Columbia that PRFN no longer wishes to include those lands based on the results provided by British Columbia or the results of 9.2, those lands will not be transferred and will if necessary, subject to 6.3, be replaced with alternative lands so that the aggregate amount of eligible lands selected is at least 2,500 acres. If

the aggregate amount of eligible lands selected is greater than 2,500 acres, PRFN will identify and withdraw a portion of the lands so that the aggregate amount of Lands is not more than 2,500 acres. Without limiting the generality of the foregoing:

- (a) British Columbia acknowledges PRFN's interest in ensuring that the lands are as free as possible of any interests, encumbrances or tenures;
- (b) British Columbia and PRFN acknowledge the potential cost to British Columbia in removing any interests, tenures or encumbrances on the lands; and
- (c) British Columbia and PRFN may, as part of the process of finalizing the Lands under 6.4, identify and confirm which interests, tenures or encumbrances will be removed or altered prior to the Closing Date, and which will remain as Permitted Encumbrances (whether in their existing form or as so altered) that will be included as part of the transfer under 8.4.

6.5 Interim Protection of Lands. Following the identification of lands by PRFN pursuant to 6.1 or 6.2 and completion of any consultation or engagement required under 6.3, British Columbia will seek to place a Notation of Interest over such lands until the selection process for the Lands is complete. Following finalization of the selection process pursuant to 6.4, British Columbia will seek approval to withdraw the Lands identified under 6.4 from disposition under s. 16 or s. 17 of the *Land Act*, R.S.B.C. 1996, c. 245, and will seek to implement other interim measures as the Parties may agree are necessary or appropriate, if any, to ensure the Lands do not become subject to additional third party interests or encumbrances. The interim withdrawal will remain in place until the earlier of:

- (a) termination of this Agreement; or
- (b) transfer of the Lands to PRFN under 8.4.

6.6 Completion of Land Schedules. On finalization of the selection of the Lands under 6.4, the Parties will finalize and initial the entries for Schedules B "1", B "2", B "3" and B "4", which will form part of this Agreement.

6.7 Best Efforts to Transfer Lands. The Parties acknowledge and agree that British Columbia will use its best efforts to identify and transfer to PRFN lands identified under 6.1 or 6.2, in the quantum specified for transfer in 6.1, having regard for the factors under 6.3 and the acknowledgements under 6.4.

ARTICLE 7 - SURVEY OF LANDS

7.1 Surveys. BC Hydro will ensure that there is an Adequate Survey of the exterior boundaries of the Lands, including any surveys required by statute for the registration of any third party Permitted Encumbrance. For greater certainty, any

internal boundary surveys will be the sole responsibility of PRFN, including those required for any subdivision of the Lands.

7.2 Survey Protocol. For the purposes of 7.1, the Parties will develop and agree on a protocol for the priority and timing of Adequate Surveys for the Lands, including proposed Closing Dates, having regard for:

- (a) PRFN's priorities, including, as appropriate, the processes, procedures and policies of the Federal Crown relating to additions to reserve;
- (b) efficiency and economy, including the availability of British Columbia land surveyors and minimizing the number of different Closing Dates;
- (c) the necessity to clarify the boundaries due to imminent public or private development on adjacent lands; and
- (d) the requirements under provincial law, including legislated timelines.

7.3 Lands Programs Branch. The development of a survey protocol under 7.2 will include the ministries responsible for the transfer of provincial Crown land.

ARTICLE 8 - TRANSFER OF LANDS

8.1 Registration of Lands. Unless the Parties otherwise agree, British Columbia will transfer the Lands in fee simple to PRFN's Designated Entity within three (3) years after the Lands have been finalized under 6.4. All Lands transferred to PRFN's Designated Entity will be registered in the Land Title Office.

8.2 Alternative Transfer Mechanics. Nothing in this Agreement will preclude the Parties from discussing and agreeing to alternative processes to transfer certain Lands which British Columbia agrees to support for addition to reserve in accordance with Article 13 where such processes may be more efficient than a fee simple transfer, subject to any required agreement of the Federal Crown to such process and provided that none of the Parties are required to agree to any such alternative process or to incur any additional or incremental cost or expense as a result of such process.

8.3 Pre-Closing Deliveries by PRFN. Not less than 60 days before the Closing Date determined by the Parties under 8.5, PRFN will deliver to British Columbia a direction identifying the Designated Entity that will take fee simple title to the Lands under 8.4.

8.4 Closing Deliveries by British Columbia. Subject to the Permitted Encumbrances and the terms of this Agreement, including the satisfaction or waiver of the conditions precedent under 5.2 and 5.3, British Columbia will, with respect to each transfer, provide the Designated Entity identified under 8.3 with a Crown Grant transferring the indefeasible title to the Lands on the Closing Date.

8.5 Determination of Closing Date. The Parties will determine the Closing Date for the transfer of indefeasible title to the Lands. The Closing Date will be in accordance with the survey protocol developed and agreed to by the Parties under 7.2.

8.6 Closing Deliveries by PRFN. Not less than 14 days before the Closing Date, PRFN will execute and deliver, or cause to be executed and delivered, or deliver, as the case may be, to British Columbia:

- (a) an agreement executed by the Designated Entity in the form attached as Schedule B “6” in relation to the applicable Lands;
- (b) a certificate signed by an officer of the Designated Entity in the form attached as Schedule B “7” confirming the Designated Entity’s GST registration number and registered status;
- (c) a letter of undertaking signed by PRFN’s legal counsel undertaking, among other things, that British Columbia will be provided with a signed copy of the Designated Entity agreement (Schedule B “6”) and the GST certificate (Schedule B “7”);
- (d) a consent signed by PRFN in relation to the property transfer tax in the form attached as Schedule B “8”; and
- (e) all such other documents that may be necessary or advisable for PRFN or a Designated Entity to provide to complete the transactions contemplated under this Agreement.

8.7 Closing Procedure. The legal counsel for PRFN and British Columbia will confirm in writing the manner in which the documents necessary or advisable to transfer and register the Lands will be produced, managed, exchanged and delivered. Without limiting the generality of the foregoing, legal counsel responsible for registering the Lands will:

- (a) provide a letter of undertaking to legal counsel for the other Parties;
- (b) use the Land Title and Survey Authority electronic filing system; and
- (c) provide all documents filed under 8.6 to legal counsel to the other Parties.

ARTICLE 9 - CONDITION OF LANDS

9.1 Mutual Intention. The Parties acknowledge their mutual intention to not transfer Contaminated Lands to PRFN unless PRFN has made an informed decision. The Parties further acknowledge and agree that informed decision making is a key principle that will guide them throughout the land selection process.

9.2 Site Investigations. To support the Parties' ability to make an informed decision, after identification of the lands pursuant to 6.1 or 6.2 and prior to finalization of the Lands pursuant to 6.4, BC Hydro will engage a professional consultant acceptable to PRFN, acting reasonably, to perform:

- (a) a Stage 1 Preliminary Site Investigation; and
- (b) if PRFN has been unable to identify at least 2,500 acres of Lands that would be acceptable to it and British Columbia pursuant to the process under 6.1 to 6.6 within one year after PRFN has initially identified lands under 6.1, such other investigations as PRFN reasonably requests,

on certain of the lands selected by PRFN, provided that the maximum aggregate amount of such investigations does not exceed \$100,000, of which BC Hydro will contribute and be responsible for paying up to \$75,000 and British Columbia will contribute and be responsible for paying up to \$25,000. BC Hydro will provide the results of such investigations to PRFN and British Columbia as soon as reasonably possible after receipt. BC Hydro will work together with PRFN to select the consultant and the lands for such investigations and to determine the scope of such other investigations undertaken by or on behalf of BC Hydro at PRFN's request so as not to exceed the amount available for such investigations.

9.3 No Transfer of Lands. Subject to 9.4, British Columbia will not transfer any lands pursuant to this Agreement, and PRFN will not accept any lands pursuant to this Agreement, that British Columbia or PRFN, as the case may be, knows are Contaminated Lands through the research process under 6.3 or 9.2.

9.4 PRFN Election. PRFN may elect, in its sole discretion, to accept Contaminated Lands identified under 9.3 and, if PRFN so elects and advises British Columbia in writing, British Columbia will transfer such lands to PRFN's Designated Entity in accordance with and subject to all the terms and conditions of this Agreement.

9.5 Lands "As Is". PRFN acknowledges and agrees that any of the Lands acquired by a Designated Entity under this Agreement are acquired "as is".

9.6 Viability of Lands. PRFN acknowledges and agrees that British Columbia and BC Hydro have not given any representation or warranty concerning:

- (a) physical access to the Lands including, without limitation, overland access;
- (b) the economic feasibility of the development of the Lands;
- (c) the fitness of the Lands for any particular use, including the intended use of the Lands by PRFN or by a Designated Entity; or
- (d) the provisions of any enactments or bylaws of any governmental body which relate to the development, use and occupation of the Lands.

9.7 Environmental Condition. PRFN:

- (a) waives the requirement, if any, of British Columbia or BC Hydro to provide a site profile as defined in the *Environmental Management Act*, S.B.C. 2003, c. 53 for any of the Lands; and
- (b) acknowledges and agrees that British Columbia and BC Hydro have not given any representation or warranty concerning the environmental condition of the Lands (including surface water and groundwater), including the presence or absence of any toxic, hazardous, dangerous or potentially dangerous substances on or under the Lands or on or under any surrounding or neighbouring land, or the current or past uses of the Land or any surrounding or neighbouring land.

9.8 Environmental Remediation. PRFN will from and after the Closing Date:

- (a) assume all environmental liabilities relating to the Lands including all liability for the clean-up of any toxic, hazardous, dangerous or potentially dangerous substances or conditions on or under the Lands or migrating from the Lands (including surface water and groundwater);
- (b) release British Columbia, BC Hydro and all Public Officials from and against any and all claims, demands, causes of action, actions, expenses, costs, including legal fees, losses, damages, or any other liability with respect to all environmental liabilities relating to the Lands, including any contamination or any other toxic, hazardous, dangerous or potentially dangerous substances migrating from the Lands; and
- (c) indemnify and save harmless British Columbia, BC Hydro and all Public Officials from and against any and all claims, demands, causes of action, actions, expenses, costs, including legal fees, losses, damages, or any other liability that they may suffer or incur, directly or indirectly, after the Closing Date arising out of or in connection with all environmental liabilities relating to the Lands, including any contamination or any other toxic, hazardous, dangerous or potentially dangerous substances migrating from the Lands.

9.9 Responsible Persons. Nothing in this Agreement precludes PRFN from recovering the costs incurred in the inspection or remediation of any Contaminated Lands transferred to PRFN, from any party, other than British Columbia or BC Hydro, who may be determined to be a responsible person under the *Environmental Management Act* or other relevant statutes or regulations in respect of the contamination of that site.

9.10 Disclosure. As part of the statusing process under 6.3, British Columbia will provide PRFN with the following information relating to each parcel of land identified by PRFN under 6.1:

- (a) any information contained in the Contaminated Sites Registry; and
- (b) any information relating to historical tenures contained in the Historic Mines Atlas.

9.11 Accuracy. PRFN acknowledges and agrees that British Columbia and BC Hydro have not given any representation or warranty concerning the accuracy, relevance, reliability or completeness of information under 9.10 and that British Columbia and BC Hydro will have no liability for any errors, omissions or inaccuracies with respect to such information.

9.12 Effect of 9.8. For greater certainty:

- (a) 9.8 applies where:
 - (i) any contamination relating to the Lands, whether disclosed or undisclosed, known or unknown, created or existing, arose before the Closing Date or arose before and continues after the Closing Date; and
 - (ii) any environmental liability relating to the costs of remediation of the Lands are incurred after the Closing Date and relate to contamination that arose before the Closing Date or arose before and continues after the Closing Date.
- (b) 9.8 does not apply in respect of any environmental liability relating to the Lands that results from the acts or omissions of British Columbia or BC Hydro after the Closing Date.

ARTICLE 10 - ENCUMBRANCES

10.1 Permitted Encumbrances. PRFN acknowledges and agrees, upon finalization of the updated Schedules under 6.6 and as of the Closing Date, that it is familiar with the existence and terms of the Permitted Encumbrances and accepts the Lands subject to the Permitted Encumbrances and that it will not do, or allow to be done, anything that would interfere with any rights under any of the Permitted Encumbrances or that would otherwise result in any claim against British Columbia or BC Hydro by anyone claiming by, through or under a Permitted Encumbrance.

10.2 Form of Permitted Encumbrances. The Permitted Encumbrances will be in the form to be attached as Schedule B “4” upon completion of the land statusing and finalization of land selection pursuant to 6.4, and will include any modifications that British Columbia or PRFN and the holder of the Permitted Encumbrance may have agreed to in writing.

10.3 Amendments to Permitted Encumbrances. The Parties acknowledge and agree that between the Effective Date and the Closing Date, British Columbia may require that the Permitted Encumbrances be amended to:

- (a) comply with current provincial policies, practices or legal requirements; and
- (b) correct any errors or omissions to the form of Permitted Encumbrances attached as Schedule B “4”.

10.4 Amendments Form Part of Agreement. Where any amendments are made under 10.3, Schedule B “3” (Permitted Encumbrances) will be revised and will, as revised, form part of this Agreement.

10.5 Registration of Unregistered Interests. PRFN will consent, or will cause the Designated Entity to consent, to the registration of any interests identified in Schedule B “3” Part 2 which are not registered against the applicable Lands in the Land Title Office on or after the Closing Date.

10.6 Indemnity for Charges. PRFN will indemnify and save harmless British Columbia, BC Hydro and all Public Officials from and against all claims, demands, causes of action, actions, expenses, costs, including legal fees, losses, damages or any other liability that they may suffer or incur, directly or indirectly, in connection with or as a result of any Proceeding arising out of PRFN’s or a Designated Entity’s acts or omissions in connection with any Permitted Encumbrance where the Proceeding is settled or is successful.

ARTICLE 11 - TRANSACTION COSTS

11.1 Crown Grant. British Columbia is responsible for preparing the Crown Grants relating to the Lands.

11.2 Registration, Tax and Other Costs. BC Hydro is responsible for the following costs in connection with the transfer of the Lands:

- (a) any costs associated with any appraisals necessary for the valuation of the Lands;
- (b) the cost associated with ensuring the Lands have an Adequate Survey;
- (c) any costs or fees associated with the investigations under 9.2, up to the maximum amount set out therein;
- (d) any costs or fees associated with the preparation and issuance of Crown Grants and any other documents required to register the Lands and Permitted Encumbrances;

- (e) any fees charged by the Land Title Office or the Land Title and Survey Authority relating to the registration of the Lands and Permitted Encumbrances; and
- (f) the determination and payment of property transfer tax payable under the *Property Transfer Tax Act*, R.S.B.C. 1996, c. 378.

11.3 GST, PST and Other Charges. BC Hydro is responsible for any federal or provincial sales tax, including GST and PST.

11.4 Annual Taxes and Other Costs. The Designated Entity is responsible for any and all annual taxes payable in respect of the Lands in accordance with provincial law. For greater certainty, on and after the applicable Closing Date, British Columbia and BC Hydro are not required to assume any financial or other obligations with respect to the Lands.

11.5 Effect of Delay, Suspension or Abandonment. British Columbia will not be liable for or otherwise obligated to reimburse BC Hydro for any costs incurred by BC Hydro under 11.2 or 11.3, including any survey costs, in the event the Site C Project and its Operation is delayed, suspended or abandoned under 3.2.

ARTICLE 12 - STATUS OF LANDS

12.1 Status and Use of Lands. Subject to Lands that are added to reserves in accordance with Article 13, the Lands transferred to PRFN or a Designated Entity under this Agreement:

- (a) will not be “lands reserved for the Indians” within the meaning of section 91(24) of the *Constitution Act, 1867* or a reserve within the meaning of the *Indian Act*, R.S.C. 1985, c. I-5; and
- (b) will be subject to provincial and local government laws, including applicable zoning, land use, land development and property tax laws, and at no time will PRFN or a Designated Entity challenge the applicability of provincial laws to the Lands.

ARTICLE 13 - ADDITIONS TO RESERVE

13.1 Additions to Reserve. British Columbia understands that PRFN may, in accordance with Canada’s Addition to Reserve (ATR) policy, seek Indian reserve status for some or all of the Lands.

13.2 Additions of Proximate Lands to Reserve. British Columbia will not object to and may support a request by PRFN to the Federal Crown for the transfer and designation of the land identified as Proximate Land in Schedules B “1” and B “2” as reserve land, provided there has been or will be a satisfactory resolution to any access, servicing or third party interests in land that will be directly impacted by the parcel becoming reserve land.

13.3 Additions of Other Lands to Reserve. PRFN may request that British Columbia not object to or support a request by PRFN to the Federal Crown for the transfer and designation of other land not identified as Proximate Land in Schedules B “1” and B “2” as reserve land. British Columbia will consider any such request on a case-by-case basis.

13.4 Resolution of Issues. The Parties acknowledge and agree that British Columbia’s consideration under 13.3 may include access, servicing and third party interests in a parcel of land that may be directly impacted by the parcel becoming reserve land, and that issues may arise in its ability to address these kinds of concerns. If such issues or concerns arise, the following steps will be undertaken:

- (a) British Columbia will inform PRFN of any issues or concerns;
- (b) British Columbia will make reasonable efforts to resolve the issues or concerns and keep PRFN informed of its progress in resolving them;
- (c) British Columbia will work collaboratively with PRFN to resolve any issues or concerns, if PRFN so chooses to participate;
- (d) if the issues or concerns are:
 - (i) resolved, British Columbia will not object to and may support a request by PRFN to the Federal Crown for the transfer and designation of such Lands as reserve land; or
 - (ii) not resolved after making such efforts, and British Columbia does not consent to a request for additions to reserve, provided that British Columbia does not unreasonably withhold its consent, then PRFN will not request that the Federal Crown transfer and designate the Lands under 13.3 as reserve land unless or until PRFN can demonstrate to British Columbia’s satisfaction that the issue or concerns no longer apply and have been resolved.

13.5 Notice of Support or Non-objection. British Columbia will notify PRFN and the Federal Crown in writing if it supports or does not object to PRFN’s proposals under 13.2 and 13.3.

13.6 PRFN Acknowledgements. PRFN acknowledges and agrees that:

- (a) neither British Columbia nor BC Hydro is responsible for any applications or any costs or expenses that may be required in connection with the addition of the Lands under 13.2 or 13.3 to reserve status, including any costs or expenses associated with environmental or other studies;
- (b) any application by PRFN to transfer the Lands under 13.2 or 13.3 to the Federal Crown for designation as a reserve will proceed on the express

condition that they remain subject to the Permitted Encumbrances and that there has been satisfactory resolution of access, including access to subsurface resources, servicing or third party interests in or on the land that will be directly impacted by the parcel becoming reserve land; and

- (c) this Agreement does not impose any obligations on British Columbia, BC Hydro, or any other person to construct or provide at its cost or expense any work or service to or for the benefit of the Lands under 13.2 or 13.3, including any roads, sewers, drains, water supply, lighting, garbage disposal, or other works or services of improvement or convenience.

ARTICLE 14 - OVERLAPPING CLAIMS

- 14.1 Shared Territories.** PRFN will discuss the transfer of the Lands with First Nations, including Treaty 8 adherents, which have or assert rights under s. 35 of the *Constitution Act, 1982* in the territory in which the foregoing are located and PRFN will make reasonable, culturally appropriate efforts to resolve any conflicts with those First Nations prior to the applicable Closing Date. Where requested by PRFN, British Columbia will provide reasonable assistance to PRFN to facilitate these discussions or conflict resolution processes.
- 14.2 Unresolved Territory Claims.** In the event any conflict under 14.1 is not resolved to the satisfaction of British Columbia and PRFN, British Columbia and PRFN may consider alternative lands under 6.2.
- 14.3 Other First Nations' Proceedings.** PRFN will, at the request of British Columbia or BC Hydro, provide British Columbia and BC Hydro with reasonable assistance, taking into account cultural or community processes, and non-financial support in the event any Proceeding is brought by any First Nation against British Columbia, BC Hydro or any Public Official with respect to the transfer of the Lands.
- 14.4 Agreements with Other First Nations.** PRFN acknowledges that British Columbia and BC Hydro may enter into agreements relating to the Site C Project and its Operation with other First Nations, including Treaty 8 adherents, and agrees that, where any land transfer or protection measure under those agreements may have a potential adverse impact on its Section 35 Rights, it will make reasonable efforts, taking into account cultural or community processes, to resolve any conflicts and will, where requested by British Columbia or BC Hydro, participate in consultations with those First Nations.

ARTICLE 15 - FORCE MAJEURE

- 15.1 Force Majeure.** If any Party fails to perform or comply with any of the terms, conditions, obligations or provisions of this Agreement and such failure is caused by a Force Majeure Event, then such Party will be deemed not to be in default or breach of this Agreement or its obligations hereunder for the duration of the Force Majeure Event and as long as the Party is prevented from performing or

complying with this Agreement or its obligations hereunder as a result thereof, provided that such Party has delivered notice to the other Parties explaining the nature of such Force Majeure Event, the date that it commenced and its anticipated duration (if known).

- 15.2 Alternative Lands.** In the event the Lands cannot be transferred due to a Force Majeure Event, the Parties will identify alternative lands in accordance with the processes and conditions under this Agreement.

ARTICLE 16 - LEGAL CERTAINTY

- 16.1 PRFN Covenants Regarding the Site C Project and its Operation.** The Parties acknowledge that PRFN asserts the construction and development of the Site C Project and its Operation was approved by British Columbia and commenced by BC Hydro prior to obtaining PRFN's free, prior, and informed consent. Notwithstanding the foregoing assertion in respect of the period prior to the Effective Date, and in consideration for the obligations to be performed by British Columbia and BC Hydro under this Agreement, and the benefits received by PRFN under this Agreement, PRFN acknowledges and agrees on its own behalf and on behalf of its Members that:

- (a) PRFN will not oppose or object to the development and construction of the Site C Project and its Operation, or to the granting of any Authorization necessary for or applied for by or on behalf of BC Hydro in connection with the Site C Project and its Operation;
- (b) from and after the Effective Date, PRFN will not assert in any Proceeding or otherwise that the Site C Project and its Operation lacks PRFN's consent;
- (c) PRFN has been adequately consulted and accommodated with respect to the Site C Project and its Operation in relation to PRFN Section 35 Rights, including with respect to any Impacts or infringement of PRFN Section 35 Rights resulting or arising from the Site C Project and its Operation or any Authorization;
- (d) PRFN will not support or engage in any action that might interfere with, frustrate, delay or stop the construction of the Site C Project and its Operation, including challenging or opposing the granting or validity of an Authorization in any Proceeding on any grounds;
- (e) if PRFN becomes aware that one or more Members is engaging in or intends to engage in any action prohibited under 16.1(d) or (h), PRFN will, of its own accord or at the request of BC Hydro, make reasonable efforts to prevent, resolve or remedy such actions taking into account community and cultural processes, traditions and practices, including:

- (i) providing notice to BC Hydro of such actions, and any actions that PRFN has taken to prevent, resolve or remedy those actions;
 - (ii) working cooperatively with BC Hydro to prevent, resolve or remedy the action, including participating in discussions with BC Hydro; and
 - (iii) participating in discussions and providing supporting materials;
- (f) PRFN will ensure that the Authorizations that have been or may be granted will be recognized and preserved unaltered in form and substance in any self-government agreement or other agreement, including in the exercise of any rights or powers granted pursuant to those agreements, that PRFN (or any other group of which it forms a part) may enter into with Canada, British Columbia or both, or that PRFN may obtain through litigation or court declaration;
- (g) this Agreement, together with the Impact and Benefits Agreement, are entered into in full and final satisfaction of the Released Claims; and
- (h) PRFN will not seek any additional financial consideration or economic accommodation from BC Hydro, British Columbia or any Public Official with respect to the Site C Project and its Operation, including any renewal or issuance of an Authorization.

16.2 Confirmation Letters. PRFN will, concurrent with the execution of this Agreement, deliver a Confirmation Letter to the British Columbia Environmental Assessment Office, the Canadian Impact Assessment Agency, Ministry of Forests, Lands and Natural Resource Operations, Comptroller of Water Rights, Ministry of Environment, Ministry of Energy, Mines and Petroleum Resources, Fisheries and Oceans Canada, Transport Canada, and Natural Resources Canada, substantially in the form and substance of the Confirmation Letter attached as Schedule C to the Impact and Benefits Agreement.

PRFN will deliver in a timely manner any additional Confirmation Letter to any other Agency upon request by BC Hydro

16.3 Participation in Regulatory Processes. BC Hydro and British Columbia will continue to engage PRFN regarding any concerns or interests that PRFN may have in relation to new Authorizations or renewals, replacements, or amendments to existing Authorizations for the Site C Project and its Operation and will continue to consider in good faith proposals made by PRFN which seek to avoid or otherwise mitigate any Impacts such Authorizations may have on PRFN Section 35 Rights. Nothing in this Agreement shall be construed so as to deprive PRFN of any right it may have to participate in any permitting, regulatory or other government decision-making processes related to the issuance or renewal of any Authorization, the Site C Project and its Operation, including raising environmental or cultural concerns or proposing reasonable

avoidance and mitigation measures as part of such processes, provided that such participation:

- (a) is not based upon an allegation that is included in the definition of Released Claims;
- (b) is consistent with PRFN's non-opposition to the Site C Project, and does not in any way derogate from or in any way breach any of its acknowledgements, agreements or obligations under this Agreement; and
- (c) is efficient and completed in a timely manner in keeping with the timelines established by the relevant Agency,

and provided that BC Hydro will have no further obligation to provide additional funding to support ongoing engagement for the Site C Project and its Operation unless the Parties mutually agree to such funding arrangements (including any payments that BC Hydro may make to British Columbia for First Nations consultation related to provincial regulatory processes).

ARTICLE 17 - NON-DEROGATION AND NO PREJUDICE OR ADMISSION

17.1 Non-derogation. The Parties acknowledge and agree that nothing in this Agreement in any way defines, amends or denies the existence of any PRFN Section 35 Rights.

17.2 Treaty 8 Territory. The Parties acknowledge and agree that:

- (a) British Columbia and certain Treaty 8 First Nations have different positions regarding the location of the western boundary of the geographic area of Treaty 8 and nothing in this Agreement is an admission of fact or liability in relation to any claims arising with respect to this matter, including the litigation by Treaty 8 First Nations seeking a declaration of the western boundary of Treaty 8 in British Columbia;
- (b) PRFN may select lands under 6.1, 6.2 and 6.4 which are located in the disputed area shown highlighted in yellow for illustrative purposes on the map in Schedule A "2" provided that those lands selected by PRFN in the disputed area have been finally determined in a binding decision of a court of competent jurisdiction after all appeal rights have expired or been exhausted to be located within the western boundary of the geographic area of Treaty 8; and
- (c) for greater certainty, the map attached in Schedule A "2" is for land selection purposes under this Agreement only and Schedule A "2" may not to be used or otherwise relied on for any other purpose, including in any Proceeding except in relation to this Agreement.

- 17.3 Past Impacts.** The Parties acknowledge and agree, subject to 17.4 and 17.5, that this Agreement and the Impact and Benefits Agreement do not affect or limit PRFN's legal remedies regarding, and is not intended to compensate PRFN or its Members for, any past or ongoing impacts on or infringements of PRFN Section 35 Rights resulting from any Existing BC Hydro Peace River Hydroelectric Facilities, or to prevent or limit PRFN's ability to negotiate or pursue compensation related to any such past or ongoing impacts or infringements, except, for greater certainty, to the extent resulting or arising from the Impacts.
- 17.4 Non-interference.** PRFN acknowledges and agrees, for greater certainty, that any legal rights or remedies asserted or pursued by PRFN in connection with the matters described in 17.3 must not directly or indirectly affect, frustrate or interfere with the construction and development of the Site C Project and its Operation.
- 17.5 No Admission.** The Parties acknowledge and agree that nothing in this Agreement, and in particular under 17.3 and 17.6, is to be interpreted or construed as an admission or recognition by British Columbia or BC Hydro of any infringement of PRFN Section 35 Rights by the Site C Project and its Operation alone or cumulatively with the Existing BC Hydro Peace River Hydroelectric Facilities, or by the Existing BC Hydro Peace River Hydroelectric Facilities, or any liability of British Columbia or BC Hydro to PRFN or its Members in relation to PRFN Section 35 Rights, or as an acknowledgement, admission or confirmation of any claim or cause of action, whether in relation to the Site C Project and its Operation or such Existing BC Hydro Peace River Hydroelectric Facilities, including for the purposes of any applicable statutory or common law limitations or otherwise.
- 17.6 PRFN Civil Claim.** Notwithstanding 16.1(b), 16.1(c), 16.1(g), 16.2 and 16.3, the Parties acknowledge and agree that nothing in this Agreement or the Impact and Benefits Agreement will preclude PRFN from pursuing the PRFN Civil Claim against Canada or any other Person, other than British Columbia, BC Hydro and Public Officials, provided that:
- (a) PRFN complies with 18.2 and 18.4;
 - (b) upon the resolution or discontinuance of any such claim PRFN will deliver any Confirmation Letter otherwise required pursuant to 16.2 or 16.3 to the applicable federal Agency;
 - (c) the relief sought in such claim must not directly or indirectly affect, frustrate or interfere with the construction and development of the Site C Project and its Operation; and
 - (d) PRFN shall discontinue such claim in full in the event that PRFN is not successful obtaining the bar order in accordance with 18.4, as soon as practicable after the determination of the court pursuant to 18.4.

17.7 Other Claims. The Parties acknowledge and agree that nothing in this Agreement or the Impact and Benefits Agreement will preclude PRFN from pursuing the following (“**Excluded Claims**”):

- (a) claims against British Columbia or BC Hydro for damages, including damages to property, arising from negligent acts or omissions or willful misconduct on the part of British Columbia or BC Hydro and its employees, servants, agents, contractors and subcontractors in connection with the Site C Project and its Operation;
- (b) claims against British Columbia or BC Hydro in respect of any breach of its obligations under this Agreement or the Impact and Benefits Agreement, except as such claims may be limited in accordance with terms thereof; or
- (c) claims in relation to matters referenced in 17.3 or other civil claims that are not otherwise defined as Released Claims, provided that such claims are not inconsistent with PRFN's non-opposition to the Site C Project, and do not in any way directly or indirectly frustrate or interfere with the construction and development of the Site C Project and its Operation.

ARTICLE 18 – RELEASE, INDEMNITY AND LIMITATION OF LIABILITY

18.1 Release. PRFN releases and forever discharges British Columbia, BC Hydro, and all Public Officials (the “**Releasees**”) from and against the Released Claims and any and all claims, demands, causes of action, actions, expenses, costs, including legal fees, losses, damages, or any other liability, that PRFN may have or may suffer or incur, directly or indirectly, resulting or arising from the Released Claims.

18.2 PRFN Civil Claim Discontinuance and Amendment. PRFN will, as soon as practicable after the execution of this Agreement, either discontinue the PRFN Civil Claim in full, or amend the PRFN Civil Claim in accordance with this 18.2. If PRFN determines, in its discretion, to amend the PRFN Civil Claim instead of discontinuing it in full, then PRFN shall amend the PRFN Civil Claim (the “**PRFN Amended Civil Claim**”) so as to:

- (a) delete the names of Her Majesty the Queen in Right of the Province of British Columbia and British Columbia Hydro and Power Authority from the style of cause;
- (b) withdraw all causes of action and remedies against British Columbia, BC Hydro, and Public Officials;
- (c) withdraw any claims for injunctive relief against Canada or any other Person that would affect or interfere with the Site C Project and its Operation; and

- (d) include the following paragraph in the amended Notice of Civil Claim:

“Notwithstanding any other provision in this Notice of Civil Claim, the Plaintiffs are not making any claims against British Columbia or BC Hydro, or pursuing relief against British Columbia or BC Hydro, with respect to claims in relation to the Plaintiffs’ Aboriginal or treaty rights resulting or arising from the development and construction of the Site C Project and its operation or any authorizations required with respect thereto, including any such claims arising as a result of any impacts or effects of the Site C Project and its operation, including any contribution such impacts or effects may have to cumulative impacts or effects. The Plaintiffs further waive any right to recover any losses, damages or other amounts awarded for any such claims from Canada or any other party.”

The Parties agree that the discontinuance or amendment of the PRFN Civil Claim in accordance with the foregoing terms is a condition precedent for the benefit of BC Hydro and British Columbia to its performance of any obligations under this Agreement.

18.3 Costs. The Parties further agree that such discontinuance or amendment of the PRFN Civil Claim will be without costs to any party. The Parties acknowledge that a court may award British Columbia and BC Hydro costs against WMFN in relation to applications filed in the WMFN Civil Claim that were filed with the court prior to the execution of this Agreement (the “**Costs**”). PRFN represents and warrants to British Columbia and BC Hydro that PRFN has an obligation to WMFN to contribute fifty percent (50%) of any Costs payable by WMFN. In reliance on such representation and warranty, British Columbia and BC Hydro hereby waive any right to fifty percent (50%) of the Costs and agree that they will not seek to collect more than fifty percent (50%) of the Costs from WMFN.

18.4 PRFN Civil Claim Conditions. In the event that PRFN maintains or makes any further claim in the PRFN Civil Claim against Canada or any other Person who might claim contribution or indemnity from the Releasees, then PRFN agrees:

- (a) PRFN shall within 60 days after discontinuing or amending the PRFN Civil Claim in accordance with 18.2 apply for and use best efforts to obtain a bar order providing that all claims by Canada, or any other Person, for contribution, indemnity or other claims over, inclusive of interest, taxes and costs, as against the Releasees in the PRFN Civil Claim, are barred, prohibited and enjoined;
- (b) PRFN shall not seek to recover, or recover, from Canada or any other Person including the Releasees, that portion of any damages (including punitive damages, if any), restitutionary award, disgorgement of profits, interest and costs that corresponds to the proportion of any judgment the court apportions to the Releasees, or would have apportioned to the

Releasees with respect to the Released Claims, had British Columbia and BC Hydro not entered into an agreement with PRFN in settlement of the Released Claims;

- (c) PRFN will inform the Court at the first reasonable opportunity that it has entered into agreements with British Columbia and BC Hydro in settlement of the Released Claims, and that PRFN expressly waives any right to recover from Canada or any other Person the portion of any judgment the court would have apportioned to the Releasees in respect of the Released Claims;
- (d) PRFN shall expressly limit their claims against Canada or any other Person that is not a Releasee in the PRFN Civil Claim, to include only those claims for damages (including punitive damages, if any), restitution, disgorgement of profits, costs and interest attributable to the several liability of Canada or any other Person that is not a Releasee, or the aggregate of the several liability if there is more than one defendant, and, for greater certainty, PRFN shall be entitled to claim and seek to recover such amounts on a joint and several basis as between Canada and any other Person that is not a Releasee, if permitted by law;
- (e) PRFN will indemnify and save harmless the Releasees from and against the portion of any judgment or liability for any judgments or damages with respect to the Released Claims, excluding for greater certainty any award or liability for legal costs, that the Releasees or any of them may suffer or incur as a result of any claim for contribution or indemnity or other claims over brought against the Releasees by Canada or any other Person in the PRFN Civil Claim; and
- (f) British Columbia and BC Hydro retain all rights to oppose any application for discovery or participation brought by any Person in the PRFN Civil Claim.

18.5 Indemnity. Subject to sections 18.6 and 18.10, PRFN will indemnify and save harmless the Releasees from and against any and all actions, causes of action, proceedings, demands, claims, liabilities, losses, damages, judgments, costs or expenses of every nature and kind whatsoever, that the Releasees or any of them may suffer or incur, directly or indirectly, as a result of:

- (a) the procedures resulting in, or any errors or omissions in respect of, the approval of this Agreement by PRFN;
- (b) any breach of this Agreement by PRFN or its Members;
- (c) any Proceedings commenced by PRFN or its Members against or involving the Releasees relating to the validity of this Agreement, the validity of any of the Authorizations, PRFN's non-opposition to the Site C Project and its Operation, or any of the Released Claims, but excluding

for greater certainty any Proceedings contemplated in sections 17.3, 17.6, or 17.7; or

- (d) any Proceedings for contribution or indemnity brought against the Releasees by a third party in connection with any Proceeding commenced against such third party by PRFN or any of its Members in respect of any matter relating to the validity of this Agreement, the validity of any of the Authorizations, PRFN's non-opposition to the Site C Project and its Operation, or any of the Released Claims, but excluding for greater certainty any Proceedings contemplated in sections 17.3, 17.6, or 17.7.

18.6 Limit on PRFN Indemnity. The indemnification by PRFN set out in 18.5 will not apply to any Proceedings commenced, or any adverse action taken, by Members acting without PRFN's authority or approval where PRFN has made reasonable efforts to prevent, resolve or remedy such actions, taking into account community and cultural processes, traditions and practices in accordance with 16.1(e).

18.7 British Columbia Indemnity. Subject to 18.10, British Columbia will indemnify and save harmless PRFN from any cause of action, loss, cost or damages that PRFN may incur, directly or indirectly, as a result of a breach of this Agreement by British Columbia.

18.8 BC Hydro Indemnity. Subject to 18.10, BC Hydro will indemnify and save harmless PRFN from any cause of action, loss, cost or damages that PRFN may incur, directly or indirectly, as a result of a breach of this Agreement by BC Hydro.

18.9 Set Off. Any financial harm incurred or suffered by British Columbia or BC Hydro as a result of PRFN's breach of this Agreement, including any requirement to indemnify British Columbia or BC Hydro, may be set off by BC Hydro against any payments payable by BC Hydro to PRFN under this Agreement or the Impact and Benefits Agreement.

18.10 Other Remedies. No Party will have any claim against or liability to another Party in relation to this Agreement under any cause of action or theory of liability for any indirect, incidental, punitive, exemplary or consequential losses or damages, including pure economic loss, or loss of opportunity, profit, revenues, production, earnings or contract.

ARTICLE 19 - DISPUTE RESOLUTION

19.1 Dispute Notice. If a dispute arises between the Parties regarding the interpretation or implementation of a provision of this Agreement, then a Party may give notice of the dispute to the other Parties, which must include a reasonably detailed description of the relevant issues related to the dispute and key evidence relied on by the Party.

- 19.2 Initial Representatives.** If a Party delivers notice of a dispute to the other Parties pursuant to 19.1, then the Parties or their duly appointed representatives will meet as soon as is practicable to attempt to resolve the dispute in accordance with this Article 19.
- 19.3 Senior Representatives.** If the Parties are unable to resolve the dispute pursuant to 19.1 within thirty (30) days of the delivery of the dispute notice in accordance with 19.1, the dispute will be raised to more senior levels of the Parties to attempt to resolve the dispute in accordance with this Article 19.
- 19.4 Other Remedies.** If the Parties are unable to resolve the dispute pursuant to 19.2 within sixty (60) days of the delivery of the dispute notice in accordance with 19.1, the Parties may pursue any other remedies available to them under this Agreement or at law or in equity which are not expressly limited by this Agreement.
- 19.5 Other Means.** Nothing in this Agreement precludes the Parties from agreeing to other appropriate approaches to assist them in reaching resolution of a dispute at any time.

ARTICLE 20 - NOTICES

- 20.1 Notices.** Any notice, document, statement, report, demand or grant that any Party may be required or may desire to give to any other Party under this Agreement must be in writing, unless otherwise specified herein, and will be deemed validly given to and received by the addressee, if served personally, on the date of personal service or, if delivered by mail, e-mail or facsimile copier, when received as follows:

if to British Columbia:

Deputy Minister

Ministry of Aboriginal Relations and Reconciliation
P.O. Box Stn. Prov. Gvt.
Victoria, B.C. V8W 9B1
Fax: (250) 387-6073

if to BC Hydro:

British Columbia Hydro and Power Authority
6911 Southpoint Drive, 10th Floor
Burnaby, B.C. V3N 4X8
Attention: Lindsay Thompson, Director, Indigenous Relations
Email: Lindsay.Thompson@bchydro.com

if to PRFN:

Prophet River First Nation
Chief and Council
PO Box 3250, Fort Nelson
British Columbia, V0C 1R0
Attention: Chief Kirk Tsakoza
Email: Kirk.Tsakoza@prophetriverfn.ca

Cc: Councillor Beverly Stager
Emails: Beverly.Stager@prophetriverfn.ca

Cc: Councillor Jacqueline Reno
Email: Jackie.Reno@prophetriverfn.ca

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

ARTICLE 21 - INTERPRETATION

- 21.1 Interpretation.** For purposes of this Agreement:

- (a) the recitals and headings are for convenience only, do not form a part of this Agreement and in no way define, limit, alter or enlarge the scope or meaning of any provision of this Agreement;
- (b) “including” means “including, but not limited to” and “includes” means “includes, but not limited to”;
- (c) the use of the singular includes the plural and the use of the plural includes the singular;
- (d) words importing gender include the masculine, feminine or neuter gender and words in the singular include the plural and vice versa;
- (e) in the calculation of time under this Agreement, “business days” means any day from Monday to Friday, except any such day that is a statutory holiday in British Columbia;
- (f) any reference to a corporate entity includes any predecessor or successor to such entity;

- (g) any reference to the delivery on the Closing Date of an agreement, document or instrument “in the form” of an attached schedule means an agreement, document or instrument substantially in that form with such changes, additions or deletions as may be agreed by the representatives of the Parties;
- (h) a reference to an agreement between two or more of the Parties includes that agreement, as it may be amended from time to time in accordance with its terms;
- (i) a reference to a statute includes every amendment to it, every regulation made under it, every amendment made to a regulation made under it and any law enacted in substitution for, or in replacement of, it; and
- (j) the rule of construction that ambiguities are to be resolved against the drafting party does not apply to the interpretation of this Agreement, and there will be no presumption that doubtful or ambiguous expressions, terms or provisions in this Agreement are to be resolved in favour of any Party.

21.2 No Implied Waiver. Any waiver of:

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

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

21.3 No Fettering. Nothing in this Agreement will be interpreted in a way that fetters the discretion given to any Public Official in an enactment.

21.4 Not a Treaty. This Agreement does not:

- (a) constitute a treaty or land claims agreement within the meaning of section 25 or 35 of the *Constitution Act, 1982* (Canada); or
- (b) define, amend or deny the existence of PRFN's Section 35 Rights or any responsibilities of the Parties except as set out in this Agreement.

ARTICLE 22 - ENTIRE AGREEMENT

22.1 Entire Agreement. This Agreement constitutes the entire agreement between the Parties relating to the subject matter of this Agreement and supersedes all prior documents, agreements or understandings between the Parties, except for certainty the letter agreement with British Columbia delivered concurrently herewith with respect to additional provincial commitments. Except as set out in

this Agreement, British Columbia and BC Hydro have not made any representation, warranty, collateral agreement or agreed to any condition, right or obligation affecting this Agreement. Without limiting the generality of the foregoing, nothing in the negotiation of this Agreement, or in any correspondence or document leading to this Agreement, including any term sheet, forms part of this Agreement.

22.2 Validity of Agreement. The Parties will not challenge the validity of any provision of this Agreement. If any part of this Agreement is declared or held invalid for any reason by a court of competent jurisdiction:

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

If any part of Article 16, Article 17 or Article 18 is declared or held invalid by a court of competent jurisdiction, and the Parties are unable to reach agreement on a replacement for that part pursuant to this section that is acceptable to British Columbia, acting reasonably, then in addition to any other remedy it may have, British Columbia may terminate this Agreement on notice to BC Hydro and PRFN.

ARTICLE 23 - GENERAL

23.1 Further Acts and Assurances. Each of the Parties will, upon the reasonable request of another Party, do further lawful acts and deliver such further documents in a timely fashion as are reasonably required from time to time in order to fully perform and carry out the terms of this Agreement.

23.2 Successors. This Agreement will enure to the benefit of and be binding on British Columbia, BC Hydro and PRFN and their successors and, without limiting the generality of the foregoing, this Agreement and PRFN's obligations under it will be assumed and adopted unaltered in form and substance by any successor organization or government, or any new organization or government that effectively replaces PRFN, under any self-government agreement or other agreement that PRFN, or any other group of which it forms a part, may enter into with Canada, British Columbia or both, or that PRFN may obtain through litigation or court declaration.

23.3 Assignment. BC Hydro may assign all or part of its rights and obligations under this Agreement to any successor or assignee of BC Hydro's rights and obligations relating to the Site C Project provided that any such successor or assignee agrees in writing to be bound by the terms of this Agreement. PRFN

may not assign its rights or obligations under this Agreement, in whole or in part, except as may be required to give effect to 23.2.

23.4 Amendment. This Agreement may be amended by the Parties in writing.

23.5 Governing Law. This Agreement will be governed by and construed in accordance with the laws of British Columbia and Canada, as applicable.

23.6 Legal Advice. Each Party acknowledges that it has obtained or has had the opportunity to obtain independent legal advice relating to the terms and conditions of this Agreement and the Impact and Benefits Agreement and that the signatories have read and understand the terms and conditions of the foregoing agreements.

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

IN WITNESS WHEREOF the Parties have executed this Agreement as set out below:

**Signed on behalf of the PROPHET
RIVER FIRST NATION by**



Chief Kirk Tsakoza

**Signed on behalf of HER MAJESTY THE
QUEEN IN RIGHT OF BRITISH
COLUMBIA by**



Hon. Scott Fraser, Minister of Indigenous
Relations and Reconciliation



Hon. Bruce Ralston, Minister of Energy, Mines and
Petroleum Resources



Hon. Doug Donaldson, Minister of Forests, Lands, Natural
Resource Operations and Rural Development

**Signed on behalf of BRITISH
COLUMBIA HYDRO AND POWER
AUTHORITY by**



Chris O'Riley, President and CEO

SCHEDULE A "1"- FORM OF BAND COUNCIL RESOLUTION

Whereas BC Hydro and Power Authority ("**BC Hydro**") is undertaking the development, construction and operation of the Site C Project, a third dam and hydroelectric generating station on the Peace River, together with all associated components, in northeastern British Columbia, near Fort St. John;

And whereas the Site C Project is located in an area covered by Treaty 8 and over which the Prophet River First Nation ("**PRFN**"), as an adherent to Treaty 8, has section 35 rights;

And whereas PRFN has commenced an action currently bearing the style of cause *Prophet River First Nation and Lynette Tsakoza on her own behalf and on behalf of all other Prophet River First Nation Beneficiaries of Treaty No. 8 v. Her Majesty the Queen in Right of the Province of British Columbia, the Attorney General of Canada, and British Columbia Hydro and Power Authority*, filed in the BC Supreme Court, Vancouver Registry No. S194993 (the "**Civil Claim**");

And whereas PRFN and British Columbia have negotiated the Ministerial Letter Agreement, PRFN and BC Hydro have negotiated the Impact and Benefits Agreement (the "**IBA**") and PRFN, BC Hydro and British Columbia have negotiated the Tripartite Land Agreement (the "**TLA**") (collectively the "**Agreements**"), drafts of which have been provided to and reviewed by each of the undersigned members of Council;

And whereas the Agreements provide PRFN with certain commitments and benefits to foster reconciliation between the Parties, settle the Civil Claim and to mitigate and offset impacts of the Site C Project and its operations on PRFN's section 35 rights, including: (a) commitments to work with PRFN to rename and protect areas of cultural significance; (b) commitments to provide a woodland licence to PRFN; (c) provision of a lump sum payment to PRFN; (d) provision of annual payments to PRFN for 70 years; and (e) transfer of 2,500 acres of land from BC to PRFN (some of which may be added to reserve);

And whereas PRFN acknowledges in the IBA and TLA that British Columbia and BC Hydro have adequately consulted and accommodated PRFN with respect to the Site C Project and its operation;

And whereas the Agreements allow PRFN, if it so chooses, to continue its Civil Claim against Canada due to the absence of any negotiated settlement or other satisfactory resolution of the Civil Claim as against Canada.

Now therefore the Council of PRFN hereby approves the terms of the Agreements and authorizes Chief Kirk Tsakoza to discontinue the Civil Claim against British Columbia and BC Hydro and to enter into, execute and deliver the Agreements in substantially the form and substance provided to and reviewed by each of the undersigned, and each of the documents contemplated by the Agreements, on behalf of PRFN and each of the members of PRFN; and to do all such further and other acts and things and execute

and deliver all such further and other documents as may be necessary in order to carry out the intent of the Agreements and to perform the obligations of PRFN under the Agreements.

may not assign its rights or obligations under this Agreement, in whole or in part, except as may be required to give effect to 23.2.

23.4 Amendment. This Agreement may be amended by the Parties in writing.

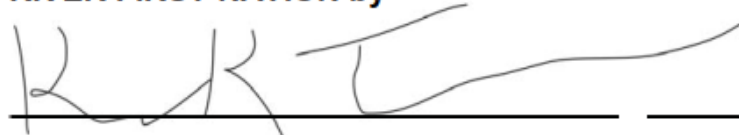
23.5 Governing Law. This Agreement will be governed by and construed in accordance with the laws of British Columbia and Canada, as applicable.

23.6 Legal Advice. Each Party acknowledges that it has obtained or has had the opportunity to obtain independent legal advice relating to the terms and conditions of this Agreement and the Impact and Benefits Agreement and that the signatories have read and understand the terms and conditions of the foregoing agreements.

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

IN WITNESS WHEREOF the Parties have executed this Agreement as set out below:

**Signed on behalf of the PROPHET
RIVER FIRST NATION by**



Chief Kirk Tsakoza

**Signed on behalf of HER MAJESTY THE
QUEEN IN RIGHT OF BRITISH
COLUMBIA by**



Hon. Scott Fraser, Minister of Indigenous
Relations and Reconciliation



Hon. Bruce Ralston, Minister of Energy, Mines and
Petroleum Resources



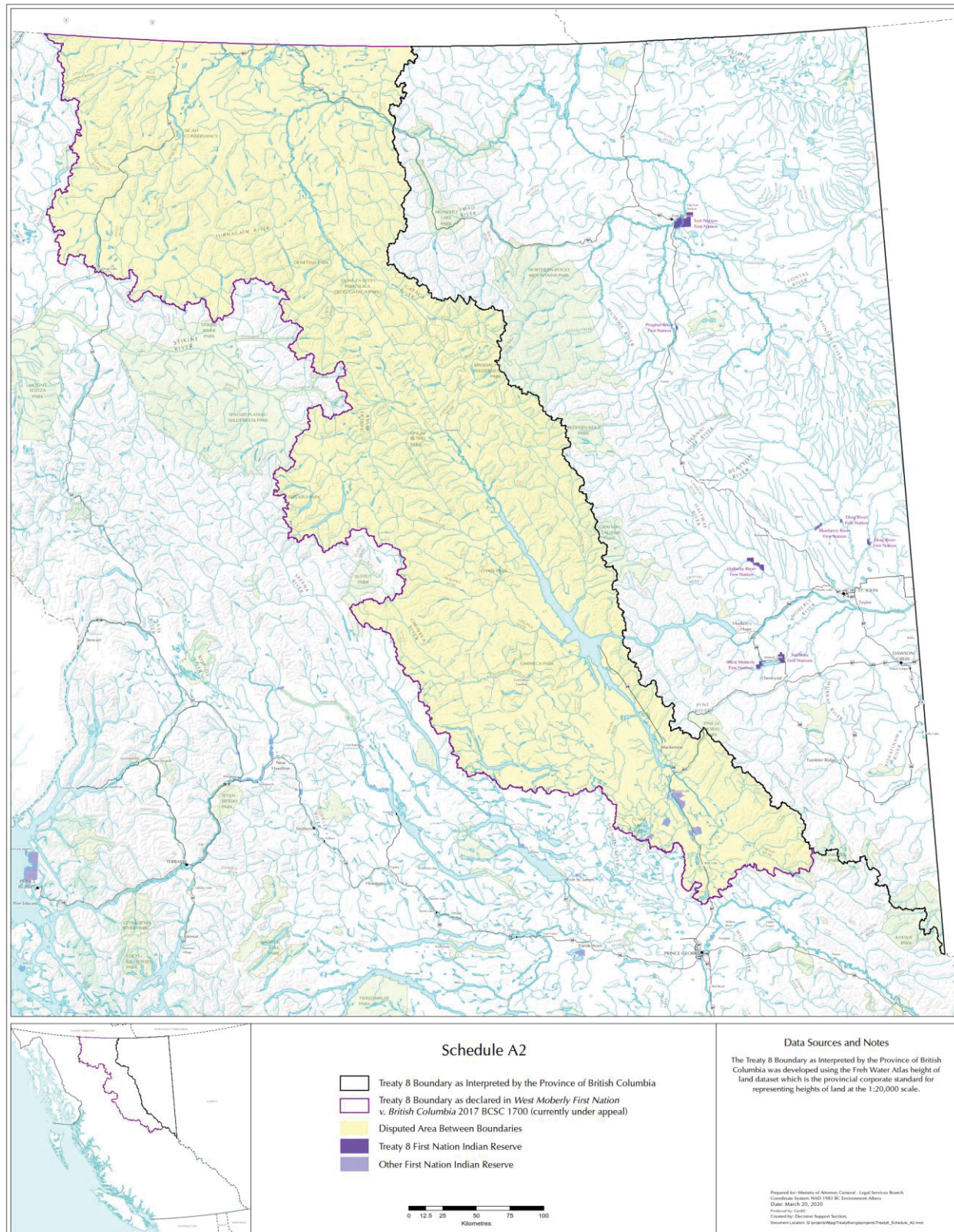
Hon. Doug Donaldson, Minister of Forests, Lands, Natural
Resource Operations and Rural Development

**Signed on behalf of BRITISH
COLUMBIA HYDRO AND POWER
AUTHORITY by**



Chris O'Riley, President and CEO

SCHEDULE A "2" - MAP OF TREATY 8 TERRITORY



SCHEDULE B "1"- MAP OF LANDS FOR ILLUSTRATIVE PURPOSES

To be completed at a later date pursuant to Article 6.

SCHEDULE B “2”- DESCRIPTION OF LANDS

To be completed at a later date pursuant to Article 6.

Where the Lands are registered in the Land Title Office or have been adequately surveyed, insert the legal description.

Where the Lands are not surveyed or have to be re-surveyed in order for title to be raised in the Land Title Office, insert the following (or similar) description:

the area of approximately **[number]** hectares as shown for illustrative purposes in Schedule 1 and, following completion and approval of the survey or re-survey of those lands, the area legally described in the survey, which, for greater certainty, will not include any land below the natural boundary (as defined in the *Land Act*, R.S.B.C. 1996, c. 245) and the area of any Crown Corridor, or any submerged lands

SCHEDULE B “3” PART 1 - PERMITTED ENCUMBRANCES**Permitted Encumbrances**

all interests registered on title under the *Land Title Act*, R.S.B.C. 1996, c. 250 as of the Closing Date

all subsisting exceptions and reservations of interests, rights, privileges and titles contained in any previous Crown grant of the land

all exceptions and reservations contained in section 50(1) of the *Land Act*, R.S.B.C. 1996, c. 245

any conditional or final water license or substituted water license issued or given under the *Water Act*, R.S.B.C. 1996, c. 483, or any prior enactment of British Columbia of like effect, and to the rights of the holder of it to enter on the land and to maintain, repair and operate any works permitted on the land under the license at the date of the crown grant

all subsisting grants to, or subsisting rights of any person made or acquired under the *Mineral Tenure Act*, R.S.B.C. 1996, c. 292, *Coal Act*, R.S.B.C. 1996, c. 51 or *Petroleum and Natural Gas Act*, R.S.B.C. 1996, c. 361 or under any prior or subsequent enactment of British Columbia of like effect

all other liens, charges and encumbrances granted by British Columbia, with the prior written consent of the Prophet River First Nation prior to the Closing Date

all existing interests on the Lands in favour of existing interest holders, including any such interests or interest holders that may not have been identified in this Schedule prior to the execution of this Agreement

**SCHEDULE B “3” PART 2 - PERMITTED ENCUMBRANCES-INTERESTS NOT
REGISTERED ON TITLE**

Interests Not Registered on Title
Utility and local government Interests for hydro, telephone, cablevision, heating/natural gas, water infrastructure, storm drains, dykes and waste disposal/sewer continue on the Lands shown in Schedule B “1” .

SCHEDULE B “4” - FORM OF PERMITTED ENCUMBRANCES

To be completed at a later date pursuant to Article 6.

SCHEDULE B “5” - [INTENTIONALLY DELETED]

SCHEDULE B “6” - DESIGNATED ENTITY AGREEMENT

This Agreement is dated for reference _____, 20____.

BETWEEN:

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

(**“British Columbia”**)

AND:

BRITISH COLUMBIA HYDRO AND POWER AUTHORITY, a corporation continued under the authority of the *Hydro and Power Authority Act*, R.S.B.C. 1996, c. 1-5

(**“BC Hydro”**)

AND:

PROPHET RIVER FIRST NATION, a “band” within the meaning of the *Indian Act*, R.S.C. 1985, c. 1-5 for and on behalf of itself and all of its Members as represented by its Chief and Council

(**“PRFN”**)

AND:

_____, a company incorporated under the laws of British Columbia and having its principle place of business at [address]

(the **“Designated Entity”**)

(collectively referred to as the “Parties” and individually referred to as a “Party”)

WHEREAS:

- A. British Columbia, BC Hydro and PRFN have entered into the Tripartite Land Agreement dated _____ (the **“TLA”**) pursuant to which British Columbia will transfer to the Designated Entity fee simple title to those lands legally described as:

[Insert Legal Description of lands]

(the “**Lands**”); and

- B. PRFN and the Designated Entity have agreed that, as a condition of the transfer of the Lands, the Designated Entity will execute and deliver this Agreement on the terms set out below.

NOW THEREFORE the Parties agree as follows:

1. **Defined Terms and Interpretation Provisions.** The terms “British Columbia”, “BC Hydro” and “PRFN” and any other capitalized terms used in this Agreement and defined in TLA will have the meaning given to those terms in the TLA and the interpretation provisions under section 21.1 of the TLA will apply to this Agreement.
2. **TLA Binding.** The terms of the TLA relating to the Lands which are for the benefit of British Columbia or BC Hydro are legally binding on the Designated Entity as if the Designated Entity was a party to the TLA.
3. **Environmental Condition.** Without limiting the generality of the foregoing, the Designated Entity waives the requirement, if any, of British Columbia or BC Hydro to provide a site profile as defined in the *Environmental Management Act*, S.B.C. 2003, c. 53 in connection with its acquisition of the Lands.
4. **Enforcement of TLA.** British Columbia and BC Hydro may, in their sole discretion, enforce any term or condition of the TLA, including any acknowledgement, agreements, representations and warranties, releases, indemnities or any other obligation of PRFN, against the Designated Entity or PRFN or both of them.
5. **Legal Advice.** The Designated Entity acknowledges that it has had the opportunity to obtain independent legal advice relating to the terms and conditions of this Agreement and the TLA, a copy of which is attached as Schedule A, and that the signatories have read and understand the terms and conditions of the foregoing agreements.
6. **Validity of Agreement.** The Parties will not challenge the validity of any provision of this Agreement. If any part of this Agreement is declared or held invalid for any reason by a court of competent jurisdiction:
 - (a) subject to law, the invalidity of that part will not affect the validity of the remainder, which will continue in full force and effect and be construed as if this Agreement had been executed without the invalid part; and
 - (b) the Parties will negotiate and attempt to reach agreement on a replacement for the part declared or held invalid with a view to achieving the intent of the Parties as expressed in this Agreement.

7. **Entire Agreement.** This Agreement constitutes the entire agreement between the Parties relating to the subject matter of this Agreement and, except as set out in this Agreement, British Columbia has and BC Hydro have not made any representation, warranty, collateral agreement or agreed to any condition, right or obligation affecting this Agreement. Without limiting the generality of the foregoing, nothing in the negotiation of this Agreement, or in any correspondence or document leading to this Agreement, including any term sheet, forms part of this Agreement.
8. **Further Acts and Assurances.** The Parties will, upon the reasonable request of the other, make, do, execute or cause to be made, done or executed all further and other lawful acts, deeds, things, devices, documents, instruments and assurances whatever for the better and absolute performance of the terms and conditions of this Agreement.
9. **No Implied Waiver.** Any waiver of:
 - (a) a provision of this Agreement;
 - (b) the performance by a Party of an obligation under this Agreement; or
 - (c) a default or breach by a Party of an obligation under this Agreement,will be in writing and signed by the Party giving the waiver and will not be a waiver of any other provision, obligation or subsequent default or breach.
10. **Successors.** This Agreement will enure to the benefit of and be binding on the Designated Entity and its successors and British Columbia.
11. **No Admissions.** Nothing in this Agreement, in the negotiation of this Agreement or in any prior document leading to this Agreement will be construed as an acknowledgment by British Columbia or BC Hydro that it has an obligation to provide any financial, economic or other accommodation to PRFN.
12. **Not a Treaty.** This Agreement does not:
 - (a) constitute a treaty or land claims agreement within the meaning of section 25 or 35 of the *Constitution Act, 1982* (Canada); or
 - (b) recognize, affirm, define, deny, limit or amend any aboriginal rights or titles or any responsibilities of the Parties except as set out in this Agreement.
13. **No Fettering.** Nothing in this Agreement will be interpreted in a way that fetters the discretion given to any Provincial Official in an enactment.
14. **Amendment.** This Agreement may be amended from time to time by the Parties in writing.

15. **Governing Law.** This Agreement will be governed by and construed in accordance with the laws of British Columbia and Canada, as applicable.
16. **Execution in Counterpart.** This Agreement may be entered into by each Party signing a separate copy of this Agreement (including a photocopy or facsimile copy) and delivering it to the other Party by facsimile or other electronic means of transmission.

**Signed on behalf of HER MAJESTY THE
QUEEN IN RIGHT OF BRITISH
COLUMBIA** by the Minister of Aboriginal
Relations and Reconciliation or the
Minister's authorized representative as of
_____, 20_____:

**Signed on behalf of BRITISH
COLUMBIA HYDRO AND POWER
AUTHORITY** as of _____,
20_____ by:

**Signed on behalf of PROPHET RIVER
FIRST NATION** as of _____,
20_____ by:

**Signed on behalf of the Designated
Entity** as of _____, 20_____
by:
[Name of Company]

Per: Authorized Signatory _____

SCHEDULE B “7” - GST CERTIFICATE

**CERTIFICATE AS TO REGISTRATION STATUS OF PURCHASER
(FORM 221(2)(b))**

Certificate as to Registration Status of Purchaser

(Paragraphs 221(2)(b) and (c))

FROM: *[the “Vendor”]*

TO: *[the “Purchaser”]*

RE: *[the “Property”]*

THE PURCHASER HEREBY CERTIFIES TO THE VENDOR PURSUANT TO PARAGRAPHS 221(2)(b) AND (c) OF THE *EXCISE TAX ACT*, R.S.C. 1985, c. E-15 (THE “ACT”) THAT THE PURCHASER:

is a prescribed recipient under the Act.

[OR]

is registered under Part IX of the Act, its registration number is [number] and the Purchaser will account for the tax payable in respect of the purchase of the Property in accordance with the Act.

The Purchaser acknowledges that the Vendor is relying on this Certificate in connection with the sale of the Property.

Each term that is used in the Certificate and that is defined in, and for the purposes of, Part IX of the Act has the meaning assigned to it in Part IX of the Act.

DATED *[month, day, year]*.

[Name of Corporate Vendor]

Per: _____

[Name of Individual Vendor]

**SCHEDULE B “8” - CONSENT OF PRFN IN RELATION TO PROPERTY TRANSFER
TAX MATTERS**

TO WHOM IT MAY CONCERN:

1. Article 11 of the Site C Tripartite Land Agreement (the “**Agreement**”) between the Province of British Columbia, BC Hydro and the Prophet River First Nation (“**PRFN**”), executed [date of execution], provides that BC Hydro is responsible for property transfer tax payable under the *Property Transfer Tax Act*, R.S.B.C. 1996, c. 378 in relation to the transfer of land under the Agreement (the “**Property Transfer Tax**”).
2. In the event that:
 - a. an exemption from Property Transfer Tax is not enacted prior to the date on which payment of that tax is due, or
 - b. the Province pays the Property Transfer Tax,

then PRFN hereby

- c. authorizes the Ministry of Finance and the Ministry of Aboriginal Relations and Reconciliation, and BC Hydro to deal directly with one another in regard to all matters relating to the Property Transfer Tax, and
- d. agrees that if there is any refund payable in respect of the Property Transfer Tax paid by the Province or BC Hydro, then the amount of that refund may be retained by payee.

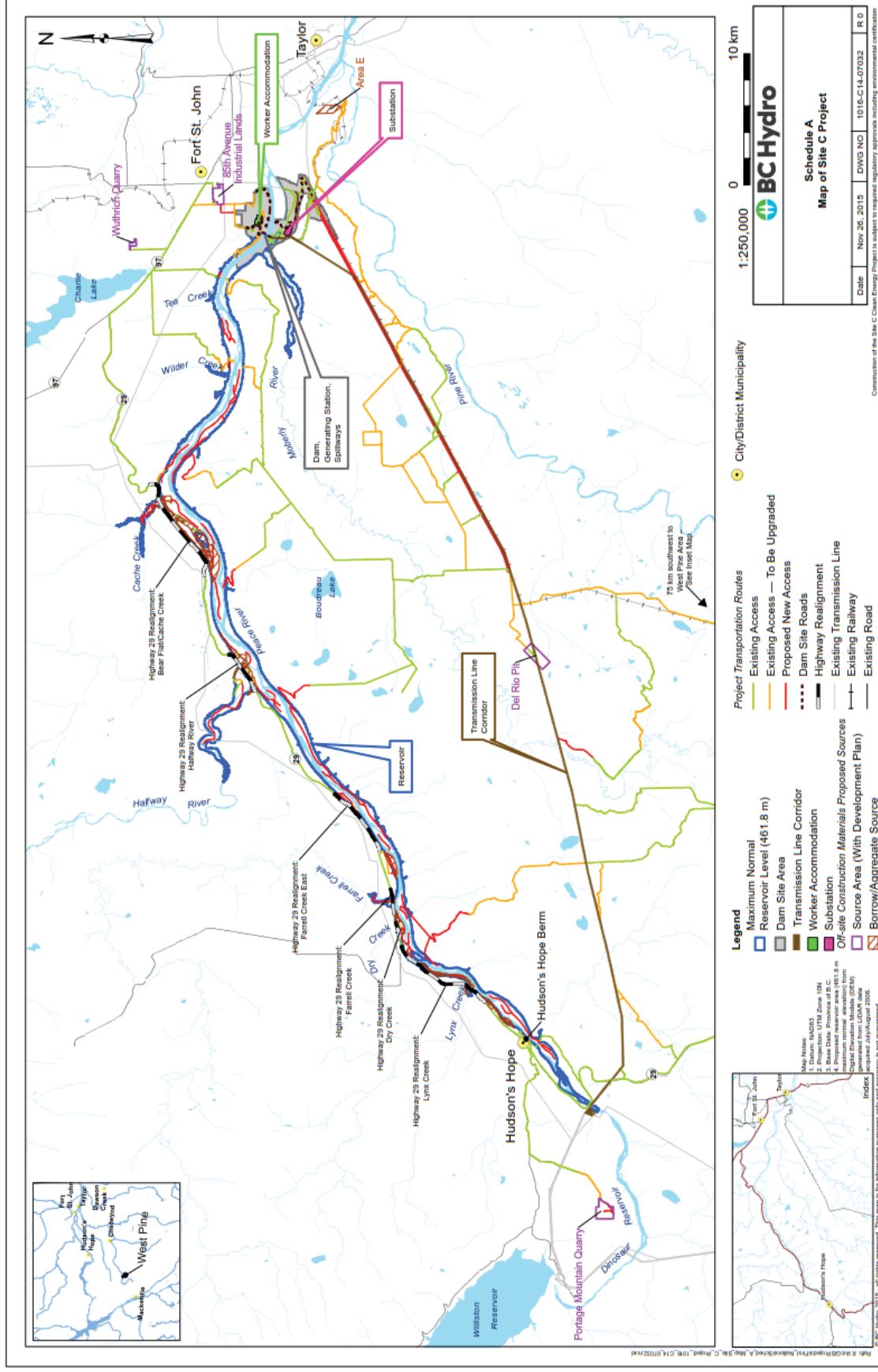
Executed on the ____ day of _____, 20__

Signature of the duly authorized signatory for the Prophet River First Nation

Name and Title (please print)

SCHEDULE C “1” - MAP OF SITE C PROJECT AREA

See attached.



SCHEDULE C “2” - SITE C PROJECT DESCRIPTION

The Site C Project is the project described in Schedule A of the Environmental Assessment Certificate, as amended from time to time.

The Site C Project consists of a third dam and hydroelectric generation station on the Peace River together with all associated structures, to be constructed and operated in northeastern British Columbia, near Fort St. John.

In general terms, the components of the Site C Project, which are shown for illustrative purposes in the map of the Site C Project contained in Schedule C “1”, are:

- Dam, generating station, and spillways;
- Reservoir;
- Substation and transmission lines to Peace Canyon Dam;
- Highway 29 realignment;
- Quarried and excavated construction materials;
- Worker accommodation; and
- Road and rail access.

The Operation of the Site C Project includes the ongoing use, operation and maintenance, repair, replacement, upgrade, removal, or required remediation of all or any part of any other Works that are required or undertaken to make the Site C Project functional for its intended use and purpose.

By way of illustration only, and without limitation, examples of such Works:

(a) include:

- the distribution line from the BC Hydro Fort St. John substation built to supply construction power to the Site C Project and which will continue to supply ongoing operational power and support communication needs;
- the network of telecommunication sites including any repeater stations that support remote operation of the dam;
- the public safety exclusion boom, which may potentially be installed downstream of the dam, where the temporary construction bridge across the Peace River is located;

(b) do not include:

- any existing or new transmission or distribution lines, including the currently proposed “PRES Project” (being the “Peace Region Electricity Supply Project” transmission line), except those transmission or distribution lines noted above for the Site C Project (including under paragraph (a)); or
- any existing or new substations, except the substation noted above for the Site C Project.

SCHEDULE D “1” - EXISTING BC HYDRO PEACE RIVER
HYDROELECTRIC FACILITIES

