

**AGREEMENT ESTABLISHING A G2G TABLE REGARDING
THE KEMESS UNDERGROUND PROJECT**

This Agreement is dated March 30th, 2017

Between:

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

(referred to as the "**Province**")

And:

Tsay Keh Dene First Nation, Takla Lake First Nation and Kwadacha First Nation

(referred to collectively as "**Tse Keh Nay**" or the "**First Nations**")

Whereas:

- A. Tsay Keh Nay is an alliance of three First Nations in BC: Tsay Keh Dene First Nation, Takla Lake First Nation and Kwadacha First Nation.
- B. This alliance by the Tse Keh Nay is based on a shared history, language, culture and common economic interests and concerns.
- C. AuRico Metals Inc. is proposing to develop a new gold and copper mine called the "Kemess Underground Project" or "KUG" at or near the site of the past producing mine known as "Kemess South" in BC, and AuRico has incorporated into the design for KUG infrastructure and facilities from Kemess South.
- D. Takla Lake First Nation and Tsay Keh Dene First Nation assert Aboriginal rights, including Aboriginal title, in and to the lands affected by KUG.
- E. Kwadacha First Nation's main reserve at Fort Ware is downstream of and the closest community to KUG, and by virtue of that proximity, Kwadacha First Nation has the potential to be adversely affected by KUG.
- F. TKN has raised serious concerns that remain outstanding regarding the development and operation of Kemess South and its impacts on Aboriginal rights including Aboriginal title asserted by them.
- G. KUG is currently in the BC Environmental Assessment Process and, pursuant to the *Canadian Environmental Assessment Act*, substitution was granted by Canada to the Province to conduct a single environmental assessment for KUG that meets both federal and provincial requirements.
- H. KUG has entered the pre-application phase of permitting including an integrated Mines Act and the Environmental Management Act permitting process led by the Ministry of Energy and Mines Major Mine Permitting Office ("**MMPO**").



- I. TKN and MMPO are developing a collaboration plan (the "**Collaboration Plan**") for review of permitting for KUG and this Collaboration Plan is designed to encourage and facilitate a collaborative approach to review of permitting for KUG by TKN and the Province.
- J. In 2015, Tse Keh Nay and the Province entered into negotiations regarding an Economic and Community Development Agreement ("**ECDA**") for KUG, and these negotiations are ongoing.
- K. In 2016, Tse Keh Nay raised several issues and concerns with the Province regarding KUG and, in the interests of fostering a respectful and constructive government to government relationship between the First Nations and the Province and achieving certainty for KUG, the parties wish to establish a government to government table ("**G2G Table**") to consider and, where appropriate, address the issues and concerns raised by Tse Keh Nay.

NOW THEREFORE the parties agree as follows.

1.0 Purpose and Scope

1.1 The purposes of this agreement are to:

- (a) establish a G2G Table to discuss and, where appropriate, address issues and concerns raised by Tse Keh Nay regarding KUG, the particulars of which are set out in part 4.0 of this agreement;
- (b) set out a framework for the G2G table that will guide and govern its activities;
- (c) liaise with MMPO and other provincial agencies on permitting for KUG where doing so will achieve efficiencies and advance the purposes of this agreement; and
- (d) otherwise foster a respectful and constructive government-to-government relationship between the First Nations and the Province.

1.2 Tse Keh Nay and the Province acknowledge they are developing a process to be included in the ECDA and this process will provide a forum for ongoing engagement by Tse Keh Nay and the Province on the longer term operation of KUG. To facilitate timely and efficient engagement and in recognition of TKN's longstanding desire to engage collectively with the Province regarding KUG, Tse Keh Nay will participate in that process on a collective basis.

2.0 Principles

2.1 In implementing this agreement, Tse Keh Nay and the Province adopt and will be guided by the following principles.

Recognition

In the spirit of the New Relationship, the G2G Table will be informed by respect, recognition and accommodation Aboriginal rights and title recognized and affirmed by s. 35 of the *Constitution Act*, 1982.

Reconciliation

The G2G table will be a forum that contributes to the goal of reconciliation between the parties of Aboriginal and Crown titles, jurisdictions and interests.



<i>Non-adversarial</i>	The approach to issues or concerns will be constructive and non-adversarial. Collaborative problem solving will be pursued whenever possible.
<i>Open and clear</i>	Communication by the parties will be open, honest and clear so that both sides understand the information, concerns and interests communicated by the other side.
<i>Mutual benefit</i>	A good faith effort will be made to identify opportunities for mutual benefit.
<i>Certainty</i>	The ultimate goal of the parties is to increase certainty for both sides and the proponent regarding KUG.
<i>Shared responsibility</i>	Tse Keh Nay and the Province will both be responsible for achieving results and an ongoing effort will be made to assess progress and measure success.

3.0 G2G Table

- 3.1 Tse Keh Nay and the Province will promptly establish a G2G Table.
- 3.2 The G2G Table will consist of two bodies: a G2G Executive and a G2G Working Group.
- 3.3 The G2G Executive will be composed of the Chiefs of the First Nations and the Deputy Minister or an Assistant Deputy Minister-level representative of the Ministry of Aboriginal Relations and Reconciliation.
- 3.4 The role and responsibilities of the G2G Executive are to:
- (a) facilitate resolution of disagreements, if any, that are jointly identified by the Working Group; and
 - (b) provide strategic direction and guidance to the Working Group on an "as needed" basis.
- 3.5 The G2G Working Group will be composed of one representative from each of the Tse Keh Nay and at least two provincial representatives including an appropriately mandated senior representative from the Ministry of Aboriginal Relations and Reconciliation.
- 3.6 The role and responsibilities of the G2G Table are to:
- (a) oversee implementation of this agreement;
 - (b) develop a detailed work plan and revise as appropriate to implement this agreement;
 - (c) collaboratively discuss and exchange views on the issues and concerns set out in part 4.0;
 - (d) collaboratively develop, where appropriate, strategies or solutions to address the issues and concerns set out in part 4.0 in a manner that meets the interests of both Tse Keh Nay and the Province; and



- (e) where agreement exists within the Working Group on strategies or solutions to address the issues and concerns set out in part 4.0, present those strategies and solutions to their respective decision makers for a decision.

3.7 The Working Group will meet as often as reasonably necessary to effectively implement this agreement.

4.0 Tse Keh Nay Issues and Concerns

4.1 Tse Keh Nay have identified the following specific issues and concerns to be discussed, and where appropriate, addressed by the G2G Table:

- (a) the achievement of an ECDA that meets the interests of TKN and the Province;
- (b) TKN's concerns regarding Kemess South;
- (c) access to training programs or services for Tse Keh Nay members to prepare them for jobs at KUG, including funding and/or other support from the Province for those programs and services;
- (d) the Omineca Resource Access Road through Tsay Keh Dene's Blackpine reserve including monitoring specific to this portion of the road;
- (e) measures for monitoring and management of the Omineca Resource Access Road that include a role for TKN;
- (f) potential measures for protection of Thutade Lake and Amazay Lake which may include:
 - (i) a no registration reserve and s. 16 or s. 17 *Land Act* withdrawal from disposition for mineral claims to be surrendered by AuRico Metals Inc.; and
 - (ii) measures for management of lands at Thutade Lake and Amazay Lake by Tse Keh Nay and the Province.

4.2 For greater certainty, nothing in this agreement limits or detracts from the ability of Tse Keh Nay to raise other issues or concerns as part of their participation in the environmental assessment and other permitting processes for KUG.

5.0 Representations and Warranties

5.1 Tse Keh Nay collectively and individually represent and warrant to the Province that:

- (a) they have the legal power, right, capacity and authority to accept, execute and deliver this agreement and to carry out their obligations under this agreement; and
- (b) they have obtained or had the opportunity to obtain the advice of their own legal and other professional advisors regarding this agreement.

5.2 The Province represents and warrants to Tse Keh Nay that the Province has the authority to enter into and carry out its obligations in accordance with this agreement.



6.0 Notice

6.1 Where in this agreement any notice or other communication is required or permitted to be given by a party to any other party, it will be in writing and will be effectively given:

- (a) by delivery to the address of the party in paragraph 6.2 on the date of delivery; or
- (b) by pre-paid registered mail to the address of the party that is the intended recipient in paragraph 6.2 on the date the registered mail is delivered; or
- (c) by email to the email address of the party in paragraph 6.2 on the date the email is successfully transmitted.

6.2 The address and email address of the parties for purposes of paragraph 6.1 are:

Tsay Keh Dene First Nation
1877 Queensway
Prince George, BC
V2L 1L9
Attention: Chief Dennis Izony
Email: dizony@hughes.net

Takla Lake First Nation
Unit 11, 1839 1 Ave
Prince George, BC
V2L 2Y9
Attention: Chief John French
Email: chief@taklafn.ca

Kwadacha First Nation
497 3rd Ave
Prince George, BC
V2L 3C1
Attention: Chief Donny Van Somer
Email: donny.vs55@gmail.com

Province of British Columbia
Ministry of Aboriginal Relations and Reconciliation
PO Box 9051 Stn Prov Govt
Victoria, BC
V8W 9E2
Attention: Douglas Scott
Email: Douglas.S.Scott@gov.bc.ca

7.0 Confidentiality

7.1 Tse Keh Nay and the Province are committed to conducting their activities openly and transparently, but acknowledge that they may exchange confidential information pursuant to this agreement. Where confidential information is exchanged, the parties will treat that confidential information as confidential and will not, without the prior consent of the disclosing party, provide, publish, release or disclose, or permit to be published, released or disclosed,



either before or after the expiration or termination of this agreement, that confidential information unless and to the extent that publication, release or disclosure is:

- (a) necessary to enable the party to fulfill its obligations under this agreement;
- (b) necessary to enable the Province to fulfill its obligations regarding a decision made, or to be made, by a provincial decision-maker; or
- (c) required by a court or tribunal with competent jurisdiction or otherwise required by law, including disclosure pursuant to the *Freedom of Information and Protection of Privacy Act* where and to the extent disclosure is required by the Act.

8.0 Term and Termination

- 8.1 This agreement is effective when it is signed by all of the parties and will remain in effect until March 31, 2018 unless terminated in accordance with this part 8.0.
- 8.2 Tse Keh Nay may terminate this agreement on 30 days prior written notice to the Province.
- 8.3 The Province may terminate this Agreement on 30 days prior written notice to Tse Kay Nay.
- 8.4 A notice of termination under paragraphs 8.2 and 8.3 will include the reasons for termination.
- 8.5 Where a notice of termination is given under this part 8.0, the parties will use reasonable efforts to meet and resolve the dispute or issue that precipitated the notice of termination within the 30 day notice period.

9.0 Not a Treaty and No Admissions

- 9.1 This agreement does not:
 - (a) constitute a treaty or land claim agreement within the meaning of section 25 and section 35 of the *Constitution Act*, 1982; or
 - (b) affirm, recognize, abrogate or derogate from any Aboriginal rights, including Aboriginal title, of Tse Keh Nay or any of the First Nations.
- 9.2 Nothing in this agreement:
 - (a) prevents Tse Keh Nay or any of the First Nations from initiating or proceeding with a claim for a court declaration or finding about any Aboriginal right or title recognized and affirmed by section 35(1) of the *Constitution Act*, 1982;
 - (b) is an admission by the Province of the validity of the claims by Tse Keh Nay or any of the First Nations, including any claims to an Aboriginal or treaty right, recognized and affirmed by section 35(1) of the *Constitution Act*, 1982, or that the Province has breached any duty to consult Tse Keh Nay or any of the First Nations or infringed any Aboriginal or treaty right(s) recognized and affirmed by section 35(1) of the *Constitution Act*, 1982 of Tse Keh Nay or any of them;
 - (c) is an acknowledgement of any obligation of the Province to provide any financial, economic or other compensation as part of the Province's obligation to consult and,



where appropriate, accommodate TKN or the First Nations with respect to the KUG or the Kemess South project; or

- (d) in any way limits the position the parties may take in any negotiations or in any discussions between the parties except as otherwise contemplated by this agreement.

10.0 Mandates

10.1 Approvals Required. The Parties acknowledge that new or additional mandates may be required for proposed measures identified by the G2G Table and any agreements reached between the Parties are subject to:

- (a) all required Provincial approvals, including any Cabinet and Treasury Board approvals, and
- (b) all required TKN approvals.

11.0 General

11.1 Relationship. No partnership, joint venture, agency, fiduciary or employment relationship is created by this agreement or by the actions of the parties pursuant to this agreement.

11.2 Legal Authority. Nothing in this agreement interferes with any legislative authority or constitutional jurisdiction, or fetters the discretion given to any decision-making authority.

11.3 Execution in Counterpart. This agreement may be entered into by each party signing a separate copy of it (including a photocopy or facsimile copy) and delivering it to the other party by facsimile transmission or electronically by email delivery of a PDF data file.

11.4 Amendment. This agreement may be amended in writing, and any amendment will be effective when it has been signed by the authorized representatives of the parties.

11.5 Time. Time is of the essence.

11.6 Governing Law. This agreement will be governed by the applicable laws of British Columbia and Canada.

11.7 Entire Agreement. This agreement and any amendments to it made in accordance with paragraph 10.4 constitute the entire agreement between the parties regarding the subject matter of this agreement.

11.8 Ambiguity. No presumption exists that any ambiguity in any of the terms of this agreement should be interpreted in favour of any party.

11.9 Assignment. This agreement may not be assigned in whole or in part by any party without the consent of the other parties.

11.10 Waiver. No term, condition, covenant or other provision of this agreement, and no breach by a party of any term or condition of this agreement, will be waived unless such waiver is in writing and signed by the party against whom the waiver is claimed.



11.11 Severability. If any part of this agreement is void or unenforceable at law, it will be severed from this agreement and the remainder this agreement will remain in effect and be enforceable.

11.12 Enurement. This agreement will enure to the benefit of and be binding upon the parties and their permitted assigns.

IN WITNESS WHEREOF the parties have executed this agreement as follows:

**For the Province of British Columbia,
Ministry of Aboriginal Relations and
Reconciliation:**




Minister John Rustad

March 31, 2017

Date

For Tsay Keh Dene First Nation:


Chief Dennis Izony

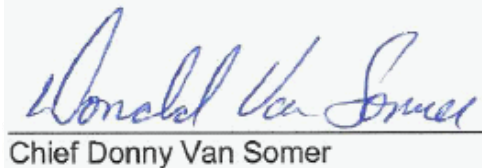
March 30, 2017
Date

For Takla Lake First Nation:


Chief John A. French

March 30th / 2017
Date

For Kwadacha First Nation:


Chief Donny Van Somer

March 31st 2017
Date

APPENDIX A - PROJECT AREA

