



KTUNAXA
NATION



FOREST REVENUE SHARING PROJECT APPENDIX

DEFINITIONS

- 1 (1) In this Project Appendix;

“Eligible Forest Tenure” means a direct award forest tenure under a Forest Tenure Opportunity Agreement that is eligible for forest revenue sharing under the Province’s policy in relation to Crown land and timber volumes referenced in the *Forestry Revitalization Act*, SBC 2003, c.17;

“Forest Tenure Opportunity Agreement” means an agreement signed between the Minister and a First Nation that provides for the Minister to direct award forest tenure under the *Forest Act*, RSBC 1996, c. 157;

“Licensee” means a holder of a forest tenure or a range tenure;

“Main Agreement” means sections 1 through 23 of the Economic and Community Development Agreement;

“Minister” means the Minister of Forests, Lands and Natural Resource Operations having the responsibility, from time to time, for the exercise of powers in respect of forests and range matters;

“Operational Plan” means a Forest Stewardship Plan, Woodlot Licence Plan, Range Use Plan or Range Stewardship Plan, as those terms are defined in forest and range legislation, that has or will have effect in the Ktunaxa Territory; and

“Timber Harvesting Land Base” means the portion of the total land area of a management unit considered by the Ministry of Forests, Lands and Natural Resource Operations to contribute to, and be available for, long-term timber supply.

- (2) Words and expressions that are not defined in this Project Appendix but defined in the Main Agreement have the meanings ascribed to them in the Main Agreement, unless the context otherwise requires.

SCOPE

- 2 (1) This Project Appendix applies to forest and range activities in the Ktunaxa Territory.

PROJECT PAYMENTS

- 3** (1) Subject to section 7, the Province will, during the term of this Project Appendix, make annual Project Payments, calculated in accordance with schedule 1 (Calculation of Project Payments), and the Project Payments will be disbursed in two equal payments: the first payment to be paid on or before September 30th, and the second payment to be paid on or before March 31st.
- (2) For the purposes of determining the amount of a Project Payment for a partial BC Fiscal Year, the amount will be prorated for each month or part thereof that this Project Appendix is in effect.
- (3) Before November 30th of each year during the term of this Project Appendix, the Province will give the KNC notice of the Project Payment for the following BC Fiscal Year, including the summary document and calculations identified in schedule 1 (Calculation of Project Payments), and the Ktunaxa Parties agree that such notice will have the effect, for the purposes of this Project Appendix, of describing the amount of the Project Payment under this Project Appendix for that following BC Fiscal Year.

ACKNOWLEDGEMENTS AND COVENANTS

- 4** (1) The Parties acknowledge that forest revenues received by the Province fluctuate and that the Project Payments under this Project Appendix will vary over time.
- (2) The Parties agree that Project Payments received by the KNC under section 3 are an economic accommodation and constitute a component of any accommodation or compensation that may be required for any impacts or infringements to the Aboriginal Rights of the Ktunaxa Nation as a result of Government Actions related to forest and range activities and any forest or range practices carried out pursuant to an Operational Plan during the term of this Project Appendix.
- (3) The Parties, working in partnership, have jointly designed the engagement process set out in their Strategic Engagement Agreement (SEA) and the Ktunaxa Parties agree that, during the term of this Project Appendix, if the engagement process in the SEA, or a jointly designed alternative process pursuant to section 11(2) of the Main Agreement] is followed, the Parties will have fulfilled their respective procedural obligations arising from the Province's duty to consult with

the Ktunaxa Nation in the context of any Government Action related to forest and range activities and any forest or range practices that may be carried out under an Operational Plan in the Ktunaxa Territory.

- (4) The Ktunaxa Parties covenant and agree that during the term of this Project Appendix they will not challenge or support a challenge to a Government Action related to forest and range activities or an Operational Plan or activities carried out pursuant to those decisions or plans, by way of legal proceedings or otherwise, on the basis that, contrary to subsection (2), the Project Payments provided for in section 3 do not provide an economic accommodation for impacts on the Aboriginal Rights of the Ktunaxa Nation.
- (5) Nothing in this section 4 modifies, limits or otherwise affects the Province's duty to consult with the Ktunaxa Parties, or the ability of the Ktunaxa Parties to raise, or the ability of the Province to consider and address, any concerns regarding any proposed Government Action related to forest and range activities through the consultation processes set out in section 11 of the Main Agreement (Consultation Process).
- (6) The Ktunaxa Parties will work collaboratively with the Province to resolve issues relevant to the Parties that may adversely affect the implementation of this Agreement or adversely affect, challenge or impede authorized activities associated with forest and range activities authorized by Government Actions.
- (7) For greater certainty, nothing in subsections (1), (2) or (3) is intended to preclude the Ktunaxa Parties from bringing an action or other proceeding against a person other than the Province with respect to forest and range activities.
- (8) The Parties agree that during the term of this Project Appendix, the Province will provide quarterly updates to the Resource-Revenue and Benefit Sharing Standing Committee on the status of potential changes to the provincial forestry revenue sharing model that may affect the calculation described in Schedule 1. When there are changes to the forestry revenue sharing model that may affect the calculation formula described in Schedule 1 of this Project Appendix, the Parties will meet as soon as reasonable practicable to determine how such changes will be incorporated into this Project Appendix.

SECURITY DEPOSITS

- 5** (1) In recognition of the Ktunaxa Parties agreeing to the provisions of this Project Appendix, the Province, at the request of one or more of the Ktunaxa Communities or a legal entity controlled by one or more of the Ktunaxa Communities, may choose not to request a silviculture deposit pertaining to a licence issued further to an agreement between one or more of the Ktunaxa Communities or a legal entity controlled by one or more of the Ktunaxa Communities, and the Province.
- (2) The Ktunaxa Parties agree that the Province may apply any payment that the KNC is entitled to receive under this Project Appendix, to a maximum of the amount that the Province would have obtained in a silviculture deposit, to fully or partially satisfy any unfulfilled financial obligations of a Ktunaxa Party to the Province arising from a licence issued further to an agreement between one or more of the Ktunaxa Communities, or a legal entity controlled by one or more of the Ktunaxa Communities, and the Province.
- (3) Prior to the Province applying any payment to satisfy unfulfilled financial obligations of a Ktunaxa Party arising from a licence in accordance with subsection (2), the Province will notify the KNC and that Ktunaxa Party of the unfulfilled financial obligation and will meet within 15 business days of such notification under this section to identify potential options to address the unfulfilled financial obligation prior to the province applying any payment, or portion thereof, to satisfy the unfulfilled obligation.

TERM

- 6** (1) The provisions of this Project Appendix will take effect as of October 1, 2018 and unless renewed in accordance with section 8, or terminated earlier in accordance with any of the provisions hereof, will continue until September 30, 2021

SUSPENSION AND TERMINATION

- 7** (1) Subsections 20(13) through 20(15) of the Main Agreement (Suspension and Termination) apply to the suspension of Project Payments under subsection (1), with such changes as may be necessary.

- (2) If this Project Appendix is terminated prior to September 30, 2021, the Project Payment payable for the BC Fiscal Year in which the termination becomes effective will be prorated to the termination date.

RENEWAL OF THE PROJECT APPENDIX

- 8** (1) Six (6) months before this Project Appendix expires, if the provisions of this Project Appendix are being met, the Province and the KNC will, if both Parties have received such authorizations as they may require, begin negotiations for the renewal of this Project Appendix or for a new Project Appendix.
- (2) Despite subsection (1) and section 6, the Parties will, if both Parties have received such authorizations as they may require, begin negotiations for a new Forest Revenue Sharing Project Appendix at the KNC's request, which may come into effect prior to September 30, 2021.


SIGNED in the presence of

Denine Milner this 24 day


of September, 2018 at

Cranbrook, BC.:

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



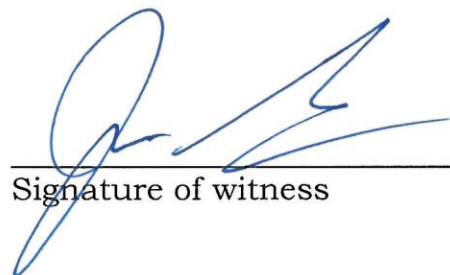
Signature of witness



Kathryn Teneese, Chair


SIGNED in the presence of

Jonathan Sas this 24th day
of October, 2018 at
Victoria BC:



Signature of witness

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



Scott Fraser, Minister

SCHEDULE 1

CALCULATION OF PROJECT PAYMENTS

KTUNAXA TERRITORY BASED COMPONENT

- 1 (1) In each BC Fiscal Year that this Project Appendix is in effect, and subsequent to the release by the Minister of Finance of the previous BC Fiscal Year's public accounts of the Province, a summary document will be prepared of the forest revenue, defined as the total of stumpage, waste and annual rent payments received by the Crown for the previous 2 BC Fiscal Years, for each of the following forest districts:
 - (a) Selkirk; and
 - (b) Rocky Mountain.
- (2) An average forest revenue amount over 2 years will be calculated for the forest districts set out in subsection (1).
- (3) For the purposes of the summary document in subsection (1), the stumpage, waste and any annual rent payments from Eligible Forest Tenures held by or on behalf of any of the Ktunaxa Communities will not be included in the calculations of forest revenue.
- (4) The amount of the forest revenue attributed to the Ktunaxa Territory will be calculated by determining the percentage of the Ktunaxa Territory that falls within the Timber Harvesting Land Base in each of the forest districts listed in subsection (1), applied against the average forest revenue calculated under subsection (2).
- (5) If the Province receives notice from another First Nation claiming territory that may result in changes to the amount of forest revenue attributed to the Ktunaxa Territory under subsection (4), the Parties will meet to discuss any impacts on this Agreement.
- (6) For the purposes of subsection (4), the Province agrees that the latest timber supply review timber harvesting land base data will be used for BC Fiscal Year 2018/19 and beyond.
- (7) The Ktunaxa Territory based component of the Project Payment under this Project Appendix will be calculated by multiplying five percent (5%) of the forest revenue attributed to the Ktunaxa Territory as

described in subsections (4) and (5) (the “Ktunaxa Territory Based Component”).

KTUNAXA DIRECT AWARD TENURE-BASED COMPONENT

- 2** (1) Subsequent to the release by the Minister of Finance of the previous BC Fiscal Year’s public accounts of the Province, a summary document will be prepared of the forest revenue, defined as the total of stumpage, and waste payments received by the Crown for the previous BC Fiscal Year, for each Eligible Forest Tenure held by or on behalf of each of the Ktunaxa Parties.
- (2) The Ktunaxa direct award tenure-based component of the Project Payment under this Project Appendix will be calculated by multiplying seventy five percent (75%) of the forest revenue as described in subsection (1) (the “Ktunaxa Direct Award Tenure Based Component”).

PROJECT PAYMENT TRANSITION

- 3** (1) For each BC Fiscal Year that this Project Appendix is in effect, a portion of the Project Payment is calculated by adding the total of the Ktunaxa Territory Based Component to the Ktunaxa Direct Award Tenure Based Component for that BC Fiscal Year (the “Project Payment Transition”).
- (2) For the BC Fiscal Years that this Project Appendix is in effect, the remaining portion of the Project Payment is calculated by determining the value of the payments that were made by British Columbia to the Ktunaxa Parties in any given full year under the *Ktunaxa Nation Council Interim Agreement on Forest & Range Opportunities* (“the Annual Amount”) and applying the following percentages to that Annual Amount:
- 3.2.1 2018/19 BC Fiscal Year 40 percent;
 - 3.2.2 2019/20 BC Fiscal Year 40 percent;
 - 3.2.3 2020/21 BC Fiscal Year To Be Determined.
- (3) Despite subsection (2), if the Project Payment Transition calculation for a BC Fiscal Year under subsection (1) provides:
- (a) an amount calculated under Sections 1 and 2 that is equal to or greater than the annual payments received under the

Ktunaxa Nation Council Interim Agreement on Forest & Range Opportunities, then the Ktunaxa Parties shall only receive the annual payments described by the Project Payment Transition calculation in subsection (1) for that BC Fiscal Year;

- (b) an amount calculated under the Project Payment Transition calculations in subsections (1) and (2) that is greater than the annual payments received under the *Ktunaxa Nation Council Interim Agreement on Forest & Range Opportunities*, then the Ktunaxa Parties shall only receive an annual payment for that BC Fiscal Year that is equal to the annual payment received under the *Ktunaxa Nation Council Interim Agreement on Forest & Range Opportunities*.