

## Revenue Sharing Agreement

BETWEEN:

**His Majesty the King in Right of the Province of British Columbia** as represented by  
Minister of Indigenous Relations and Reconciliation (the “Province”)

AND:

**McLeod Lake Indian Band** as represented by Harley Chingee (the “First Nation”)  
(Individually a “Party” and collectively the “Parties”)

Whereas in response to the June 29, 2021 BC Supreme Court decision in *Yahey v. British Columbia* BCSC 1287 decision (the “Yahey Decision”), the Parties are engaging in collaborative government-to-government discussions to seek to achieve the following objectives through one or more agreements or arrangements: (a) respect, uphold, and implement the rights, obligations, and promises made in Treaty 8, and ensure the First Nation is able to meaningfully exercise its constitutionally protected rights and way of life; and, (b) establish timely enforceable mechanisms to assess and manage the cumulative impact of industrial development on the First Nations’ rights and way of life;

Whereas the Parties have agreed to enter into this Agreement concurrently with a letter of agreement between them in relation to issues identified in the Yahey Decision;

Whereas the Parties are engaging in discussions to seek to reach agreement on a “New Fiscal Relationship” and other matters that could become effective April 1, 2024, and which may replace this Agreement; and

Whereas the Parties acknowledge the commitments, obligations and affirmations contained in the *Declaration on the Rights of Indigenous People Act*, S.B.C. 2019, c. 44, including the rights or principles contained at articles 26, 29 and 32 of the schedule thereto.

Therefore, the Province and the First Nation agree to the following terms:

### PART 1 - DEFINITIONS AND INTERPRETATION

1.1 For the purposes of this Agreement, the following definitions apply:

“**Agreement**” means this Revenue Sharing Agreement, including its Schedules and Appendices;

“**Effective Date**” means April 1, 2022;

**“Fiscal Year”** means each of the 12-month periods from April 1 to March 31 2022/2023 and 2023/2024;

**“Funds”** means the sum of the Annual Payment and Additional Payment as set out in Part 2 and Schedule 1 of this Agreement;

**“Letter of Agreement”** means an agreement between the Parties setting out shared commitments in relation to issues identified in the Yahey Decision;

**“Members”** means McLeod Lake Indian Band members including, for greater certainty, severalty members;

**“Treaty 8 Nation”** means any of the following eight (8) First Nations: Blueberry River First Nations, Doig River First Nation, Fort Nelson First Nation, Halfway River First Nation, McLeod Lake Indian Band, Prophet River First Nation, Saulteau First Nations, and West Moberly First Nations;

**“Treaty 8”** means the treaty agreement between the Crown and certain First Nations, which the Parties agree is a treaty for the purposes of Section 35 of the *Constitution Act, 1982*, and which was made applicable to the First Nation by virtue of the McLeod Lake Indian Band Treaty No.8 Adhesion and Settlement Agreement, dated March 27, 2000;

**“Treaty 8 Focus Area”** means all of Treaty 8 territory, excepting the portion of the First Nation’s territory situated west of the Rocky Mountains, as set out on the map attached as Schedule 2 hereto; and

**“Treaty Rights”** means the asserted and established treaty rights of the First Nation.

1.2 In this Agreement:

- a. "including" means "including, but not limited to" and "includes" means "includes, but not limited to";
- b. 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;
- c. 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;
- d. words in the singular include the plural, and words in the plural include the singular unless the context or any specific definition requires;
- e. any reference to a corporate entity includes any predecessor or successor to such entity; and

- f. there will be no presumption that doubtful expressions, terms or provisions in this Agreement are to be resolved in favour of any Party.

## **PART 2 - FUNDS**

- 2.1 The Province will, each Fiscal Year, pay to the First Nation the Funds in accordance with Schedule 1 of this Agreement.
- 2.2 Notwithstanding any other provision in this Agreement, at no time will the First Nation be required to return or repay to the Province any of the payments made pursuant to this Agreement.
- 2.3 The Parties appreciate that reporting is needed to demonstrate the positive outcomes anticipated by this Agreement and to be eligible for the funding for the Fiscal Year. The First Nation will provide such reporting to the Province within 180 days after Q4, in the form of one of the following:
  - a. a short summary paragraph, explaining what was achieved by the First Nation with the revenue provided under the Agreement, or
  - b. a copy of any year-end report the First Nation provides to its Members on how funds are spent over the fiscal year.
- 2.4 In the alternative to the reporting described in section 2.3, the First Nation may choose to co-develop with the Province a qualitative report on the shared progress/outcomes of any Letter of Agreement that may be executed by the Parties.

## **PART 3 - AMENDMENT**

- 3.1 Any amendment to this Agreement must be in writing and duly signed by the Parties.

## **PART 4 - TERM**

- 4.1 This Agreement will take effect on the Effective Date and will terminate on March 31, 2024.
- 4.2 This Agreement may be terminated at any time by mutual agreement of the Parties, or by either Party after completion of the government-to-government dispute resolution process set out in Part 7 of this Agreement where the other Party is in material breach of its obligations under this Agreement.
- 4.3 The Parties may shorten or extend the term of this Agreement at any time by mutual agreement in writing.

## **PART 5 - SHARED ASSURANCES**

- 5.1 The First Nation agrees not to initiate any new legal claims against the Province during the term of the Agreement by which the First Nation asserts that cumulative effects of development in aggregate within the Treaty 8 Focus Area are resulting in infringements of Treaty Rights. This clause does not prevent the First Nation from commencing a legal proceeding seeking a bare declaration regarding the application of the Yahey Decision's declarations to the First Nation.
- 5.2 Nothing herein prevents the First Nation or prejudices the First Nation's ability to seek judicial reviews of any specific government decision.
- 5.3 The Parties acknowledge that the economic benefits provided for under this Agreement will contribute to financial accommodation of impacts to the First Nation's interests associated with new disturbance in the Treaty 8 Focus Area during the term of this Agreement that may occur as a result of authorizations made during the term of this Agreement. The economic benefits are not intended to be accommodations for impacts or infringements that occurred before, or continue after, the term of this Agreement.
- 5.4 The Funds provided under this Agreement are incremental and have no effect on eligibility for or access to existing funding programs or programs of general application, or on ongoing government-to-government matters, including gaming revenue sharing, unless specifically described in Schedule 1 of this Agreement.
- 5.5 The allocation of Funds set out in this Agreement and Schedule 1 of this Agreement are without prejudice to the positions the First Nation may take in the future on such matters.
- 5.6 No changes to the allocation of Funds may be made with respect to any Treaty 8 Nation without the written consent of the First Nation.
- 5.7 In the event that the Province agrees to any funding arrangements with respect to sharing of oil and gas royalties and revenues with any Treaty 8 Nation that would result in a total share of oil and gas royalties and revenues to such Treaty 8 Nation that exceeds the allocation of Funds that would be provided for in accordance with this Agreement, then the First Nation will be immediately entitled to an increase in its share on terms equivalent to such Treaty 8 Nation.

## **PART 6 - REPRESENTATIONS AND WARRANTIES**

- 6.1 Each Party represents and warrants to the other Party, with the intent and understanding that these will be relied on by the other Party in entering this Agreement, that:
  - a. the person executing this Agreement on behalf of the Party is duly authorized and has the requisite legal authority to enter into this Agreement and bind the Party to its terms and conditions;

- b. the Party has obtained or had the opportunity to obtain legal advice with respect to this Agreement; and
- c. this Agreement is valid and binding obligation upon the Party.

## **PART 7 - DISPUTE RESOLUTION**

- 7.1 Where a dispute arises regarding this Agreement, the Parties' duly appointed representatives will meet within 30 days to attempt to resolve the dispute and where the Parties are unable to resolve the dispute within 30 days, either Party may terminate the Agreement, or the Parties may agree to utilize other dispute resolution mechanisms, including mediation. Any such dispute resolution processes will be confidential to the Parties.

## **PART 8 - NOTICE AND DELIVERY**

- 8.1 Any notice, document, statement or report under this Agreement must be in writing, and will be deemed validly given to and received by the other Party, if served personally, on the date of personal service or, if delivered by mail, email or facsimile copier, when received as follows:

If to the Province:

Cory Waters (Cory.Waters@gov.bc.ca)

Chief Negotiator, North Area

and if to the First Nation:

Chief Harley Chingee (hchingee@yahoo.ca)

Chief of the McLeod Lake Indian Band

- 8.2 Either Party may, from time to time, give written or e-mail notice to the other Party of any change of mailing address, e-mail address or facsimile number of the Party giving such notice and after the giving of such notice, the mailing address, email address or facsimile number therein specified will, for purposes of this Agreement be conclusively deemed to be the mailing address, e-mail address or facsimile number of the Party giving such notice.
- 8.3 The Parties agree that they will utilize electronic and other methods of communication for the purposes of engagement whenever practicable and appropriate.

## **PART 9 - COMMUNICATIONS**

- 9.1 The Parties recognize that joint communication is important to strengthening community relations and ensuring business stability. The Parties agree to develop and implement joint communications on matters related to this Agreement.
- 9.2 No public announcements or communications may be made with respect to this Agreement or the subject matter of this Agreement without the consent of both Parties hereto.
- 9.3 Unless otherwise agreed to by the Parties in writing, this Agreement and any discussions that take place about or under this Agreement (including all records, information and communications that disclose the content of the discussions), are confidential and cannot be shared with any third parties.
- 9.4 Notwithstanding subsections 9.1 to 9.3, the Province agrees that the First Nation may communicate information related to the nature, scope and contents of this Agreement to Members, including information related to the Funds payable under this Agreement.

#### **PART 10 - GENERAL PROVISIONS**

- 10.1 This Agreement, any amendment to it and any funding previously provided related to this Agreement as described in Schedule 1, constitute the entire agreement between the Parties with respect to the subject matter of this Agreement, unless otherwise agreed in writing by the Parties.
- 10.2 Each of 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 whatsoever for the better and absolute performance of the terms and conditions of this Agreement.
- 10.3 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 by a Party of an obligation under this Agreement,

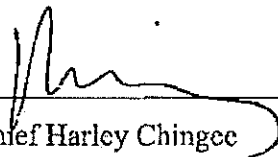
must be in writing and signed by the Party giving the waiver and will not be a waiver of any other provision, obligation or subsequent default under this Agreement.

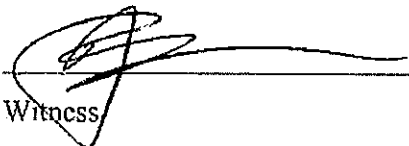
- 10.4 The rights and remedies of a Party are cumulative with any other rights in this Agreement and the exercise by a Party of its rights hereunder does not preclude it from exercising any other rights or remedies in this Agreement, or otherwise at law or in equity. No remedy is exclusive of any other remedy.

- 10.5 The First Nation will not assign, either directly or indirectly, this Agreement or any right of the First Nation under this Agreement without the prior written consent of the Province.
- 10.6 This Agreement is for the benefit of and is binding upon the Province and any of its Ministers, officials, servants, employees, agents, successors and assigns and upon the First Nation and its present and future Members and any of their respective heirs, descendants, legal representatives, successors and assigns.
- 10.7 This Agreement will be governed by and construed in accordance with the laws of British Columbia. The Parties acknowledge this Agreement does not constitute a treaty or land claim agreement within the meaning of section 25 and 35 of the *Constitution Act, 1982*, and is not intended to define, limit, amend, modify, or derogate from any rights recognized and affirmed under section 35 of the *Constitution Act, 1982*.
- 10.8 This Agreement may be entered into by each Party signing a separate copy of this Agreement (including a photocopy or electronic copy) and delivering it to the other Party by electronic transmission.

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

SIGNED on March 27, 2023 on behalf of McLeod Lake Indian Band by:

  
\_\_\_\_\_  
Chief Harley Chingee

  
\_\_\_\_\_  
Witness

SIGNED on March \_\_\_\_, 2023 on behalf of HIS MAJESTY THE KING IN RIGHT OF THE PROVINCE OF BRITISH COLUMBIA by:

\_\_\_\_\_  
Minister of Indigenous Relations and Reconciliation

\_\_\_\_\_  
Witness



## Schedule 1: Royalty Revenue Sharing Formula

This Schedule consists of:

- Part 1 - Defined Terms
- Part 2 - Annual Payments and Annual Payment Reconciliation
- Part 3 - Additional Payments
- Part 4 - Adjustments
- Appendix 1A: Annual Payment
- Appendix 1B: Calculation of Annual Payment Reconciliation
- Appendix 1C: Calculation of Additional Payments
- Appendix 1D: Population

### Part 1 - Defined Terms

1.1 In this Schedule:

- a. **“Additional Payment”** means the amount, payable by the Province, calculated in accordance with this Schedule and Appendix 1C of this Schedule for each Fiscal Year during which the Agreement is in effect;
- b. **“Annual Payment”** means the amount set out in Appendix 1A of this Schedule, payable by the Province within 60 days after April 1<sup>st</sup> for each Fiscal Year during which the Agreement is in effect;
- c. **“Annual Payment Reconciliation”** means the amount, payable by the Province, calculated in accordance with this Schedule and Appendix 1B of this Schedule for each Fiscal Year during which the Agreement is in effect;
- d. **“First Nation”** means the McLeod Lake Indian Band; and
- e. **“Fiscal Year”** means each of the 12-month periods from April 1 to March 31 2022/2023 and 2023/2024.

### Part 2 - Annual Payments and Annual Payment Reconciliation

- 2.1 Commencing with Fiscal Year 2023/24, the Province will pay the First Nation the Annual Payment within 60 calendar days following the first day of the Fiscal Year.
- 2.2 Following the Effective Date of the Agreement, the Province may provide notice to the First Nation that it intends to pay a portion of an Annual Payment Reconciliation required under the Agreement earlier than provided for under this Schedule.
- 2.3 The Province will advance a prepayment from the Annual Payment Reconciliation of [REDACTED] for Fiscal Year 2022/23 to be provided to the First Nation in May 2023, and a prepayment from the Annual Payment Reconciliation of [REDACTED] for Fiscal Year 2023/24 to be provided to the First Nation in May 2024.

- 2.4 Any payment received by the First Nation, including:
- a. [REDACTED] bridging funds provided to the First Nation in the grant letter dated March 31, 2022;
  - b. the prepayment of \$ [REDACTED] for Fiscal Year 2022/23 provided to the First Nation in May 2023;
  - c. the prepayment of \$ [REDACTED] for Fiscal Year 2023/24 provided to the First Nation in May 2024;
  - d. payments received by the First Nation under the Government-to-Government Agreement between the Parties, dated March 21, 2017; and
  - e. any other payments made by the Province in accordance with Section 2.2
- will be deducted from the Annual Payment Reconciliation for the Fiscal Year for which the payment is made.

- 2.5 Subject to the terms and conditions set out in the Agreement and this Schedule, the Province will provide to the First Nation the following:
- a. commencing with Fiscal Year 2023/24, the Annual Payment as set out in Appendix 1A of this Schedule, within sixty (60) calendar days following the start of the Fiscal Year. In the event of termination of the Agreement, the Annual Payment will be prorated for the time that the First Nation was part of the Agreement during that Fiscal Year and any over payments will be deducted from the Annual Payment Reconciliation due in accordance with Appendix 1B and Section 2.5(b) of this Schedule; and
  - b. commencing with Fiscal Year 2022/23 and for each Fiscal Year during the term of the Agreement, the Annual Payment Reconciliation amount calculated in accordance with Appendix 1B of this Schedule, within one hundred and eighty (180) calendar days following the end of the applicable Fiscal Year. In the event of termination of the Agreement, the Annual Payment Reconciliation will be prorated for the time that the First Nation was part of the Agreement during that Fiscal Year.

- 2.6 For each Fiscal Year during the term of the Agreement, when the Annual Payment Reconciliation is provided in accordance with this Schedule, the Province will provide to the First Nation a statement satisfactory to the First Nation setting out the documents, reports, figures and calculations relied upon by the Province to calculate the Annual Payment Reconciliation in accordance with Appendix 1B of this Schedule for that Fiscal Year.

### **Part 3 – Additional Payments**

- 3.1 Subject to the terms and conditions set out in this Agreement and this Schedule, the Province will provide to the First Nation the following funding:

- a. commencing with Fiscal Year 2022/23 and for each Fiscal Year during the term of the Agreement, the Additional Payment calculated in accordance with Appendix 1C of this Schedule, within one hundred and eighty (180) days following the end of the applicable Fiscal Year. In the event of termination of the Agreement, the Additional Payment will be prorated for the time that the First Nation was part of the Agreement during that Fiscal Year.
- 3.2 The Additional Payment will be subject to a maximum amount, as set out in Appendix 1C of this Schedule.
- 3.3 For each Fiscal Year during the term of the Agreement, when the Additional Payment is provided in accordance with this Schedule, the Province will provide to the First Nation a statement satisfactory to the First Nation setting out the documents, reports, figures and calculations relied upon by the Province to calculate the Additional Payment for that Fiscal Year.

#### **Part 4 – Adjustments**

- 4.1 Annual Payments Reconciliation and Additional Payments will be subject to adjustments by the Province from time to time on the following basis:
  - a. with respect to the calculation of each Annual Payment Reconciliation and Additional Payment made by the Province during the term of the Agreement, the value inputted to the variable identified in Appendix 1B of this Schedule as OGR1 will, on the basis of available updated information, be reviewed and re-calculated by the Province on one occasion which is six (6) years following the end of that Fiscal Year; and
  - b. if the review and re-calculation reveals an underpayment by the Province, the Province will adjust the next occurring Annual Payment Reconciliation and/or Additional Payment to compensate for the underpayment (and if there is no subsequent Annual Payment Reconciliation and/or Additional Payment, the Province will pay to the First Nation the amount of the underpayment).
- 4.2 The Annual Payment identified in Appendix 1A of this Schedule is not subject to re-calculation.

## Appendix 1A: Annual Payment

Annual Payment = [REDACTED]

## Appendix 1B: Calculation of Annual Payment Reconciliation

### Annual Payment Reconciliation

$$= \frac{[(XFNP/T8P \times EB1t \times 0.5) + (1/8 \times EB1t \times 0.5)] - (\text{Annual Payment}) - (\text{Advance Payments})}{}$$

Where:

**Advance Payments** : Any payment made in accordance with Sections 2.2, 2.3 or 2.4 of this Schedule.

**XFNP** is the Total Registered Population of the First Nation according to the table in Appendix 1D of this Schedule.

**T8P** is the sum of the Total Registered Population of Blueberry River First Nations, Doig River First Nation, Fort Nelson First Nation, Halfway River First Nation, McLeod Lake Indian Band, Prophet River First Nation, Saulteau First Nations, and West Moberly First Nations as described in the table in Appendix 1D of this Schedule.

**t** = Fiscal Year for which payment is being made under the Agreement.

Specifically:

t = 1 = April 1, 2022 to March 31, 2023

t = 2 = April 1, 2023 to March 31, 2024

**EB1t**: [REDACTED] (OGRt)

Where:

**OGRt** = Oil and Gas Royalty for the Fiscal Year including collected provincial royalties on oil, natural gas, and natural gas by-products as obtained from the Oil Ledger Report and the Gas Ledger Report as extracted from the Ministry of Finance's Taxpayer Administration, Compliance and Services (TACS) system. The provincial royalties are calculated in accordance with, as applicable, the Petroleum and Natural Gas Royalty and Freehold Production Tax Regulation and the Net Profit Royalty Regulation made pursuant to the Petroleum and Natural Gas Act, as either may be amended or replaced from time to time, and collected from oil and gas activities within the Treaty 8 area, British Columbia.

The Province agrees that the methods used to collect and record provincial royalty information,

as set out in this Schedule, will not change during the term of the Agreement without the consent of the First Nation.

### Appendix 1C: Calculation of Additional Payments

**Additional Payment** = 50% x (COGRt) x [(1/8 x 0.5) + (XFNP/T8P x 0.5)]

**Additional Payment Maximum Amount** = [REDACTED] x [(1/8 x 0.5) + (XFNP/ T8P x 0.5)]

**Where:**

**XFNP** – same as defined in Appendix 1B

**T8P** – same as defined in Appendix 1B

**COGRt** = Collected provincial royalties, rents and tenure sales above [REDACTED] calculated in accordance with, as applicable, the Petroleum and Natural Gas Royalty and Freehold Production Tax Regulation, the Petroleum and Natural Gas Act Fee, Rental and Work Requirement Regulation, Long Term Royalty Agreement Regulation and the Net Profit Royalty Regulation made pursuant to the Petroleum and Natural Gas Act, as may be amended or replaced from time to time, collected from oil and gas activities within the Treaty 8 area, British Columbia. This variable will be measured by estimates from the Oil Ledger Report and the Gas Ledger Report as extracted from the Ministry of Finance's Taxpayer Administration, Compliance and Services (TACS) system and the Ministry of Energy Mines and Petroleum Resources Integrated Petroleum System and E-Payments System.

The Province agrees that the methods used to collect and record provincial royalty information, as set out in this Schedule, will not change during the term of the Agreement without the consent of the First Nation.

### Appendix 1D: Population

The following table represents the population numbers agreed to by the First Nation and will be used in the calculations described in this Schedule. These population numbers are according to Indian and Northern Affairs Canada (now Crown-Indigenous Relations and Northern Affairs Canada), Population Statistics Report, Indian Registration System, for 2022/2023, region British Columbia, Total by Gender, or according to the First Nation's membership list if membership is controlled by the First Nation under section 10 of the Indian Act. At the request of the First Nation, the Parties will update the below McLeod Lake Indian Band population numbers for any fiscal year that the Agreement remains in effect beyond 2023-2024.

| <b>Treaty 8 First Nation</b> | <b>Population</b> |
|------------------------------|-------------------|
| West Moberly First Nation    | 367               |
| Saulteau First Nation        | 1299              |
| McLeod Lake Indian Band      | 566               |
| Halfway River First Nation   | 303               |
| Doig River First Nation      | 339               |
| Blueberry River First Nation | 533               |
| Fort Nelson First Nation     | 993               |
| Prophet River First Nation   | 294               |
| <b>Total</b>                 | <b>4694</b>       |

Schedule 2: MLIB Territory West of the Rocky Mountains

