

TSAY **KEH** ENTERPRISES AGREEMENT

This AGREEMENT is made the 31st day of August, **2009** (the "Effective Date").

BETWEEN:

TSAY **KEH** ENTERPRISES LTD. (Incorporation No. 0382687), a corporation organized under the laws of British Columbia having its registered **office** at 7th Floor, 1175 Douglas Street, Victoria British Columbia V6W 2E1 (hereinafter called "Enterprises")

AND:

HER MAJESTY THE QUEEN IN RIGHT OF THE PROVINCE OF BRITISH COLUMBIA (hereinafter called the "Province")

AND:

BRITISH COLUMBIA HYDRO AND POWER AUTHORITY, a crown corporation continued under the Hydro and Power Authority Act, having its registered and records **office** at 333 **Dunsmuir** Street, Vancouver, British Columbia (hereinafter called "BC Hydro")

WHEREAS:

A. Tsay Keh Dene First Nation, a "band" under Section **2(1)** of the *Indian* Act, R.S.C. 1985, c. I-5 ("Tsay Keh"), Her Majesty the Queen in right of Canada ("Canada"), the Province and BC Hydro entered into an Agreement dated September 22, 1989 to effect the relocation and re-settlement of Tsay Keh (formerly the **Ingenika** Band) who were dislocated as a result of the construction of the W.A.C. **Bennett** Dam (the "**Bennett** Dam") and the creation of the Williston Reservoir (the "Reservoir"), which Agreement was amended by an Amending Agreement dated March 17, 1994 by and among Tsay Keh, Canada, the Province and BC Hydro (the Agreement dated September **22**, 1989, as amended by the Amending Agreement dated March 17, 1994, is referred to herein as the "Settlement Agreement").

B. Under the Settlement Agreement, certain lands were selected by Tsay Keh in accordance with Section 3.1 to be set apart as reserve land for the use and benefit of the Tsay Keh (the "Proposed Reserves") and certain lands were selected by Tsay Keh in accordance with Section 3.1.3 and transferred to a corporation owned by Tsay Keh.

C. The lands selected by Tsay Keh in accordance with Section 3.1.1 of the Settlement Agreement include District Lot 7120, Cassiar District ("Ingenika Cemetery")

and the administration and control of the **Ingenika** Cemetery has been transferred by the Province to Canada to be set apart as reserve land for the use and benefit of Tsay Keh.

D. Tsay Keh selected District Lot 7119, **Cassiar** District ("DL 7119) in accordance with Section 3.1.3 of the Settlement Agreement. The Province granted DL 7119 to Enterprises, a corporation wholly owned by Tsay Keh, on January 26, 1998 in accordance with Section 3.3.2.1 of the Settlement Agreement.

E. Tsay Keh, BC Hydro, the Province and Canada have entered into an Implementation and Amending Agreement dated as of the 31st day of August, 2009 (the "Implementation and Amending Agreement").

F. Pursuant to Section **12(b)** of the Implementation and Amending Agreement Tsay Keh has agreed to cause Enterprises to execute and deliver this Agreement to the Province and BC Hydro.

NOW THEREFORE THIS AGREEMENT WITNESSETH that in consideration of the premises set forth herein, the sum of **\$10.00** now paid by each of the parties to the others and other good and valuable consideration (the receipt and sufficiency of which is hereby acknowledged),

SECTION I INTERPRETATION

1.1 **Interpretation.** For the purposes of this Agreement, except as otherwise expressly provide herein:

- (a) "Agreement" means this agreement as supplemented or amended from time to time;
- (b) the words "herein", "hereof" and "hereunder" and similar expressions refer to this Agreement as a whole and not to any particular provision of this Agreement;
- (c) the words "include", "including" and similar expressions mean "including but not limited to*";
- (d) the singular of any term includes the plural and vice versa and the use of any term is equally applicable to any gender or a body corporate;
- (e) a reference to a statute in this Agreement will be deemed to refer to such statute as amended, supplemented or replaced from time to time and all regulations made thereunder; and
- (f) any reference to a Party will be deemed to refer to any successor of that Party.

12 **Governing Law.** This Agreement shall **be** governed by and construed in accordance with the laws of the Province of British Columbia and the laws of Canada applicable therein.

13 **Headings.** The headings in this Agreement are inserted for convenience of reference only and shall not affect the interpretation of this Agreement.

14 **Severability.** Should any provision of this Agreement be void or unenforceable it shall be severed from this Agreement and the remainder of this Agreement shall remain in full force and effect and shall be interpreted and construed as if the stricken provision had never formed part of this Agreement.

SECTION 2 TATI

21 **Representations and Warranties of Enterprises.** represents and warrants to BC Hydro and the Province that:

- (a) Enterprises is a corporation organized, validly existing and in good standing under the laws of British Columbia, is lawfully authorized to carry on business in British Columbia, and has full corporate power, capacity and authority to enter into and to perform its obligations under this Agreement;
- (b) This Agreement constitutes a valid and binding obligation of Enterprises enforceable against Enterprises in accordance with its terms;
- (c) This Agreement has been duly authorized, executed and delivered by Enterprises; and
- (d) All of the issued and outstanding shares of Enterprises are beneficially owned by Tsay Keh.

SECTION 3 ADDITIONAL CEMETERY LANDS

3.1 **Application to Enterprises.** Enterprises hereby acknowledges that under Section **3.1.6** of the Settlement Agreement (as amended by the Implementation and Amending Agreement,) a copy of which is attached as Schedule "**A**" hereto, Tsay Keh has covenanted to cause Enterprises to take certain actions including, without limitation, to make available **DL 71.19** for the purposes specified in Section **3.1.6** and to consent on the terms **specified** in Section **3.1.6** to a **flowage** easement in favour of BC Hydro (the "**Flowage Easement**") for that portion of **DL 71.19** on the foreshore side of any impact line determined by BC Hydro, at its sole discretion, in relation to erosion that may arise from or be in any way connected with the **Bennett Dam** and Reservoir (all such actions and all obligations in Section **3.1.6** in relation to **DL 71.19** are referred to herein as the "**Enterprises Obligations**"). Enterprises hereby covenants and agrees with the Province

and BC Hydro to perform all of the Enterprises Obligations in accordance with and at the times required by the Settlement Agreement.

SECTION 4 RELEASE

4.1 Release. Enterprises does hereby release, remise and forever discharge the Province and BC Hydro (including, as applicable, their respective ministers, officials, predecessors, successors, subsidiaries, shareholders, directors, officers, servants, agents, employees, contractors, subcontractors, legal representatives and assigns) of and from all manner of action, causes of action, suits, claims and demands whatsoever which Enterprises had, now has or which it hereafter shall, can or may have for or by reason of any act, deed or thing done or omitted to be done by the Province and BC Hydro (including, as applicable, their respective ministers, officials, predecessors, successors, subsidiaries, shareholders, directors, officers, servants, agents, employees, contractors, subcontractors, legal representatives and assigns) arising from or in any way connected with the construction, creation and operation, of the **Bennett** Dam and of the Reservoir and any activities related thereto, other than, in the case of BC Hydro, any claim by Tsay Keh for the costs of re-interment pursuant to Section 3.1.6 of the Settlement Agreement.

SECTION 5 INDEMNITY

5.1 Indemnity. Enterprises shall indemnify and forever save harmless BC Hydro and the Province (including, as applicable, their respective ministers, officials, predecessors, successors, subsidiaries, shareholders, directors, officers, servants, agents, employees, contractors, subcontractors, legal representatives and assigns) from and against any and all obligation, liability, duty, loss, damage, **cost** or expense resulting, directly or indirectly, from any action, cause of action, injunction, suit, claim, specific claim, demand, trial, hearing, or other process or proceeding made or commenced against BC Hydro or the Province (including, as applicable, their respective ministers, officials, predecessors, successors, subsidiaries, shareholders, directors, officers, servants, agents, employees, contractors, subcontractors, legal representatives and assigns) by a future owner, holder of a property interest in, or occupier of DL 7119 by reason of any act, deed or thing done or omitted to be done by the Province or BC Hydro (including, as applicable, their respective ministers, officials, predecessors, successors, subsidiaries, shareholders, directors, officers, servants, agents, employees, contractors, subcontractors, legal representatives and assigns) arising from or in any way connected with the construction, creation and operation, of the **Bennett** Dam and of the Reservoir and any activities related thereto as of the date of the **Flowage** Easement.

SECTION 6 GENERAL

6.1 Notices. Except as otherwise provided in this Agreement, any notice, direction, demand, request, or document required or permitted to be given by any Party to any other Party under this Agreement will be in writing and deemed to have been

sufficiently given if signed by or on behalf of the Party giving the notice and delivered in person or transmitted by facsimile or e-mail to the other Party's address, facsimile number, or e-mail address as shown below:

To Tsay Keh:

Tsay Keh Dene First Nation
#11 - 1839 First Avenue
Prince George, BC V2L 2Y8
Attention: Chief Ella Pierre
Facsimile: 250-562-8882

With a copy to:

Cook Roberts LLP
7th Floor - 1175 Douglas Street
Victoria, BC **V8W 2E1**
Attention: **Eric** Woodhouse
Facsimile: 250-413-3300
E-mail: **ewoodhouse@cookroberts.bc.ca**

To BC Hydro:

British Columbia Hydro and Power Authority
6911 Southpoint Drive
Burnaby, BC V3N 4X8
Attention: **Lyle** Viereck, Director Aboriginal Relations and Negotiations
Facsimile: 604-528-1530

With a copy to:

Fasken Martineau **DuMoulin** LLP
3400 - 3507 Avenue SW
Calgary, AB T2P 3N9
Attention: Peter Feldberg
Facsimile: 403-261-5351

To the Province:

Ministry of Energy Mines and Petroleum Resources
8th Floor, 1810 **Blanshard** Street
P.O. Box 9319, Stn Prov. Gov.
Victoria, BC, **V8W 9N3**
Attention: Deputy Minister
Facsimile: 250-952-0269

With a copy to:

Ministry of Attorney General
4th Floor, 1405 Douglas Street
Victoria, BC V8W 2G2
Attention: **Kathryn Kickbush**
Facsimile: 250-356-8939

or to such other address, to such other facsimile number or e-mail address or to the attention of such other **official** or individual as a Party will have most recently notified the other Parties in writing. The Parties will from time to time provide written notice to the other Parties of any changes to the contact persons or contact details listed for such Party under this Section 6.1. Any such notice, direction, request, or document will conclusively be deemed to have been received by the intended recipient on the date of delivery or transmission, as the case may be, except that if it is not received at such address, **email** address, or at the facsimile device by **5:00 P.M.** on a business day (at the place of receipt) it will conclusively be deemed to have been received by the intended recipient on the next Business Day immediately following its receipt at such address, **email** address, or at such facsimile device.

6.2 **Enurement.** This Agreement shall enure to the benefit of and be **binding** upon the Parties and their respective successors, and permitted assigns.

6.3 **Waiver.** Any waiver by a Party must be made in writing and shall be limited to the particular instance and shall not extend to any other instance or matter in this Agreement or in any way otherwise affect the rights or remedies of such Party.

6.4 **Further Assurances.** The Parties agree to use all reasonable efforts to execute and deliver all such other and additional **instruments** or **documents** and to do all such other acts and things as may be necessary to give full effect to this Agreement.

6.5 **Amendment.** This Agreement may not be amended except by an agreement in writing signed by the Parties.

6.6 **Independent Legal Advice.** Enterprises acknowledges that it has retained and received independent legal advice regarding this Agreement and matters associated with it.

6.7 **Counterparts.** This Agreement may be executed in one or more counterparts and such counterparts may be transmitted by electronic facsimile, and each

such counterparts shall be deemed to be an original and together such counterparts shall constitute one document.

IN WITNESS **WHEREOF** the Parties have executed this Agreement on the date first above written.

TSAY KEH ENTERPRISES LTD.

By:


Daniel Pierre,
Director

**BRITISH COLUMBIA HYDRO AND
POWER AUTHORITY**

By:

Chris O'Riley,
Senior Vice-President, Engineering,
Aboriginal Relations and Generation

**HER MAJESTY THE QUEEN IN
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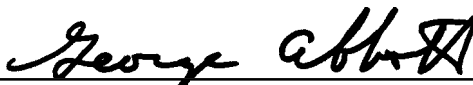
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Schedule "A"

3.1.6 Ingenika Point Cemetery Reserve and DL 7119

3.1.6.1 Subject to the provisions of this Section 3.1.6:

- (a) Canada and The Band acknowledge and agree that pursuant to Section 6.1 they are providing a full release of **B.C.**Hydro and The Province from all liability for prior or future erosion to the **Ingenika** Point Cemetery Reserve arising from or in any way connected with the **Bennett Dam** and Williston Reservoir; and
- (b) The Band acknowledges and agrees that pursuant to Section 6.2 of the Settlement Agreement the Band is providing a full release of **Canada** from all liability for prior and future erosion to the Ingenika Point Cemetery arising from or in any way connected with the **Bennett Dam** and Williston Reservoir.

3.1.6.2 If any graves located at the Ingenika Point Cemetery Reserve become endangered at any time in the future as a direct result of the erosion of **the** Ingenika Point Cemetery Reserve that is directly attributable to the existence or operation of the Williston Reservoir, the following provisions will apply:

- (a) The Band will cause to be made available without cost to B.C. Hydro or The Province additional adjacent lands (the "**Additional Cemetery Lands**") from District Lot **7119 Cassiar** District ("**DL 7119**"), currently owned by Tsay Keh Enterprises Ltd., to be used for the purpose of such re-interment. The Additional Cemetery Lands will be:
 - (i) selected by mutual agreement of The Band, Canada, the Province, and B.C. Hydro; and
 - (ii) equal in area to the area of lands at Ingenika Point Cemetery Reserve that have become unavailable for cemetery use as a result of erosion.

If the costs of remediation of Additional Cemetery Lands are material, BC Hydro and The Band will discuss and in good faith attempt to agree upon an alternate arrangement, such as Tsay Keh setting apart non-contiguous lands in DL **7119** for Indian reserve and use as a cemetery.

- (b) Prior to undertaking any re-interment, The Band, in cooperation with Canada, will be solely responsible for ensuring that the Additional Cemetery Lands are set apart as Indian reserves, which setting apart will be subject to the laws, regulations and policies of Canada then in force regarding setting apart lands as Indian reserve. If Canada

approves the setting apart of the Additional Cemetery Lands as Indian reserve the Province will consent thereto.

- (c) B.C. Hydro will reimburse The Band for:
 - (i) reasonable out-of-pocket costs of the re-interment of the endangered graves to the Additional Cemetery Lands; and
 - (ii) legal **survey**, environmental audit and environmental remediation costs, if necessary, of the Band as required to comply with Canada's additions to reserve process in respect of the Additional Cemetery Lands;payable if and when Additional Cemetery Lands are set apart as Indian reserves.
- (d) BC Hydro may access the **Ingenika** Point Cemetery Reserve to assess whether graves are likely to be endangered by erosion at no cost to BC Hydro, Canada or Tsay Keh, and without objection from Canada or Tsay Keh.

3.1.6.3 The parties agree as follows with respect to DL 7119:

- (a) As soon as reasonably practicable after this Section takes effect, B.C. Hydro will commence the work necessary to determine, at its sole discretion, an impact line on DL 7119 in relation to erosion that may arise from or be **in** any way connected with the **Bennett Dam** and Williston Reservoir. The Band will cause Tsay Keh Enterprises Ltd. to grant B.C. Hydro access to DL 7119 to determine such impact line (the area of land in DL 7119 which lies on the foreshore side of the impact line determined by B.C. Hydro is referred to herein as the "**Impact Area**").
- (b) If the Impact Area is equal to or exceeds one hectare in area then The Band will cause Tsay Keh Enterprises Ltd. to consent to a **flowage** easement in favour of B.C. Hydro for the Impact Area, having priority over all other property interests in DL 7119, except the s. 219 covenant (**PM28769**) and statutory right of way (**PM28770**) registered in favour of the Province, in the form substantially similar to the **flowage** easement attached as Schedule 10 hereto ("**Flowage Easement**") and in consideration for the entering into of the **Flowage** Easement B.C. Hydro will transfer to Tsay Keh Enterprises Ltd. lands having an area approximately equal to the Impact Area as may be mutually agreed to by B.C. Hydro and The Band or, if B.C. Hydro and The Band are not able to reach agreement on the selection of such replacement lands, B.C. Hydro will provide compensation to Tsay Keh Enterprises Ltd. based on the fair market value of **flowage** rights on fee simple lands, as determined by a property appraiser mutually acceptable to The Band

and B.C. Hydro. The replacement lands offered by B.C. Hydro will be adjacent to DL 7119 to the extent such lands are available to B.C. Hydro on commercially reasonable **terms**. At the request of B.C. Hydro, the Province will make reasonable efforts to make available lands contiguous to DL 7119 for purchase by B.C. Hydro at fair market value for the purpose of the land exchange contemplated hereby.

- (c) If the Impact Area is less than one hectare in area then The Band will cause Tsay Keh Enterprises Ltd. to consent to a **flowage** easement in favour of B.C. Hydro for the Impact **Area**, having priority over all other property interests in DL 7119, except the s. 219 covenant (**PM28769**) and statutory right of way (**PM28770**) registered in favour of the Province, in the form substantially similar to the **Flowage** Easement and in consideration for the entering into of the **Flowage** Easement B.C. Hydro will provide compensation to Tsay Keh Enterprises Ltd. based on fair market value of **flowage** rights on fee simple lands, as determined by a property appraiser mutually acceptable to The Band and B.C. Hydro. At the request of The Band, the Province will make reasonable efforts to make available lands contiguous to DL 7119 for purchase at fair market value by Tsay Keh Enterprises Ltd. with the compensation provided by B.C. Hydro under this Section **3.1.6.3(c)**.

- (d) The Band represents and warrants that it beneficially owns all of the issued and outstanding shares of Tsay Keh Enterprises Ltd., which is the owner in fee simple of DL 7119. The Band covenants to and in favour of B.C. Hydro and the Province to:
 - (i) cause Tsay Key Enterprises Ltd. at all times to retain ownership of DL 7119 and to make DL 7119 available for future use as a cemetery in accordance with the provisions of this Section 3.1.6;

 - (ii) cause any holder of any property interest in DL 7119 (including, without limitation, a successor in title or lessee) to provide a release to B.C. Hydro and the Province in substance substantially similar to the release granted by The Band under Section 6.1 in such **form** as may be reasonably required by B.C. Hydro and the Province, at no cost to B.C. Hydro or the Province except, with respect to that remaining portion of DL 7119 not affected by the registration of the **Flowage** Easement, B.C. Hydro is not released from any erosion which may occur after the **Flowage** Easement has been granted arising from or in any way connected with the **Bennett** Dam and Williston Reservoir ; and

- (iii) indemnify and forever save harmless B.C. Hydro and the Province (including, as applicable, their respective ministers, officials, predecessors, successors, subsidiaries, shareholders, directors, officers, servants, agents, employees, contractors, subcontractors, legal representatives and assigns) **from** and against any and all obligation, liability, duty, loss, damage, cost or expense resulting, directly or indirectly, from any action, cause of action, injunction, suit, claim, specific claim, demand, trial, hearing, or other process or proceeding made or commenced against B.C. Hydro or the Province (including, as applicable, their respective ministers, officials, predecessors, successors, subsidiaries, shareholders, directors, **officers**, servants, agents, employees, contractors, subcontractors, legal representatives and assigns) by Tsay Keh Enterprises Ltd. or a future owner, holder of a property interest in, or occupier of DL 7119 by reason of any act, deed or thing done or omitted to be done by the Province or B.C. Hydro (including, as applicable, their respective ministers, officials, **predecessors**, successors, subsidiaries, shareholders, directors, officers, servants, agents, employees, contractors, subcontractors, legal representatives and assigns) arising from or in any way connected with the construction, creation, existence and operation, of the **Bennett** Dam and of the Williston Reservoir and any activities related thereto as of the date of the **Flowage** Easement. In addition to any other remedies available to B.C. Hydro or the Province to enforce The Band's indemnity under this Section **3.1.6.3(d)(iii)**, B.C. Hydro or the Province may, pursuant to the Tsay Keh Dene First Nation Final Agreement amongst The Band, B.C. Hydro and the Province, set off against any money owing to The Band any money owed to the Province or **B.C.** Hydro under such indemnity.