

IMPLEMENTATION AND AMENDING AGREEMENT

This Agreement dated as of the 31st day of August, 2009.

BETWEEN:

TSAY **KEH** DENE FIRST NATION (formerly the INGENIKA BAND) as represented by the Chief and Councillors of the Band on behalf of themselves and the other members of the Band (hereinafter called "Tsay Keh")

AND:

HER MAJESTY THE QUEEN IN RIGHT OF CANADA as represented by the Minister of Indian Affairs and Northern Development (hereinafter called "Canada")

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, 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. The following four parcels of land have been selected by Tsay Keh in accordance with Section 3.1 of the Settlement Agreement (the "Original Proposed Reserves"):

(a) District Lot 7126, Cassiar District (the "Original **Finlay** River Site")

- (b) District Lot 7154, Cassiar District (the "Police Station Site")
- (c) District Lot 7131, Cassiar District ("Mesilinka Site"); and
- (d) District Lot 7120, Cassiar District ("Ingenika Cemetery").

C. In order to address concerns with respect to the erosion of the Original Finlay River Site without undertaking costly and disruptive erosion-prevention works, the parties have agreed to amend the boundaries of the Original Finlay River Site by removing approximately 42 hectares, more or less, subject to survey, from the Original Finlay River Site where it parallels the shoreline of the Reservoir and replacing such removed lands with the land selected by Tsay Keh in accordance with and subject to the terms of this Agreement.

D. The parties wish to complete the transfer of administration and control of the Finlay River Site (as defined below), Mesilinka Site and Ingenika Cemetery from the Province to Canada to be set apart as Indian reserves for the use and benefit of Tsay Keh.

E. Pursuant to Section 3.1.3 of the Settlement Agreement the Province transferred District Lot 7119 Cassiar District ("DL 7119") to Tsay Keh Enterprises Ltd.

F. The parties wish to clarify their obligations with respect to the Police Station Site and the potential erosion of the Ingenika Cemetery and DL 7119.

G. The parties wish to enter into this Agreement to implement the terms of the Settlement Agreement and make certain consequential amendments thereto.

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 acknowledged by the parties), the parties agree as follows:

1. Schedules. The following Schedules attached hereto are hereby incorporated into and form part of this Agreement:

- Schedule 1: Removed Lands
- Schedule 2: Replacement Lands
- Schedule 3: Form of Federal Transfer Documents
- Schedule 4: Form of Provincial Order in Council
- Schedule 5: Form of Access Agreement
- Schedule 6: Form of BC Hydro Licence
- Schedule 7: Form of BCR
- Schedule 8: Confirmation of Compatibility
- Schedule 9: Forms of Letters to Comptroller of Water Rights
- Schedule 10: Finlay River Site Plan

- Schedule 11: Tsay Keh Enterprises Agreement
- Schedule 12: Form of Federal Draft Recommendation and Order in Council
- Schedule 13: Form of Flowage Easement

2. **Original Finlay River Site Boundary Adjustment.** The parties agree that the boundaries of the Original Finlay River Site shall be adjusted as follows:

- (a) The lands corresponding to the area shown hatched in red set out in Schedule 1 hereto (the "Removed Lands") shall be removed from the Original Finlay River Site. The removal of the Removed Lands will result in a reduction of the Original Finlay River Site by approximately 42 hectares, more or less, subject to survey. The administration and control of the Removed Lands shall be transferred by Canada to the Province in accordance with and subject to the terms of this Agreement.
- (b) The lands corresponding to the area shown hatched in red set out in Schedule 2 hereto (the "Replacement Lands"), approximately 47.8 hectares, more or less, subject to survey, shall be added to the Original Finlay River Site, which Replacement Lands shall be deemed to be included in the lands selected by Tsay Keh pursuant to Section 3.1.1 of the Settlement Agreement (the Original Finlay River Site as adjusted by the removal of the Removed Lands and the addition of the Replacement Lands is referred to herein as the "**Finlay River Site**").
- (c) As soon as reasonably practicable after the date hereof, Tsay Keh shall complete (i) a survey of the Replacement Lands; and (ii) any other surveys required to complete the transfers contemplated by the Settlement Agreement and this Agreement, other than the survey of the Removed Lands which shall be performed by BC Hydro at its cost. The costs of the surveys to be performed by Tsay Keh shall be paid for **from** the Funds being made available by Canada under Section 7 hereof to the extent provided for in that Section.
- (d) As soon as practicable after the confirmation by the Surveyor General for British Columbia of the legal survey of the Replacement Lands and completion of any other regulatory requirements, the Minister responsible for Aboriginal Relations and Reconciliation shall recommend to the Lieutenant Governor in Council the transfer of the administration and control of the Replacement Lands to Canada to be set apart as Indian reserve lands for the use and benefit of Tsay Keh on substantially the terms set out in the draft Order-in-Council set out in Schedule 4 hereto.
- (e) Within 30 days of the date of passage of the Order-in-Council referred to in Section 2(d), the Minister of Indian Affairs and Northern Development shall transfer the administration and control of the Removed Lands to the

Province on substantially the terms set out in the **draft** transfer documents set out in Schedule 3 hereto.

3. **Reserve Creation.**

- (a) Canada shall coordinate and assist Tsay Keh with fulfilling the requirements of the applicable "Addition to Reserve" policies to be completed prior to the recommendation to the Governor General in Council that Mesilinka Site, Ingenika Cemetery, Police Station Site and Finlay River Site (collectively, the "**Proposed Reserves**") be set apart as Indian reserve lands for the use and benefit of Tsay Keh. These requirements may include, but are not limited to, the following:
- (i) the development of a communications strategy to inform the community at large of the proposal;
 - (ii) completion of an environmental assessment to identify any concerns and clean-up required;
 - (iii) an assessment of land value;
 - (iv) informing municipal authorities, provincial authorities and surrounding First Nations of the proposed Indian reserve creation for the purpose of providing an opportunity to express any concerns or interests related to the proposed Indian reserve creation; and
 - (v) conduct a legal survey(s) suitable for deposit in the Canada Lands Survey Records.

If Canada and Tsay Keh are reasonably unable to fulfill the requirements of Canada's applicable "Addition to Reserve" policies as a result of an unforeseen issue (for example a material environmental issue or the existence a material competing land interest), the parties shall forthwith meet and work cooperatively on a timely basis to mutually agree upon a solution to the issue, which solution may, amongst other things, include the identification and selection of alternate lands.

- (b) For greater certainty, the parties acknowledge that Canada's recommendation to the Governor General in Council that the Police Station Site be set apart as Indian reserve land for the use and benefit of the Tsay Keh will proceed **after** Canada's recommendation to the Governor General in Council that the Mesilinka Site, Ingenika Cemetery and the Finlay River Site be set apart as Indian reserve lands for the use and benefit of Tsay Keh.
- (c) The parties agree that:

- (i) Canada will recommend to the Governor in Council that the absolute surrender of Tutu Creek I.R. No. 4 and Parsnip I.R. No. 5 be accepted by order in council substantially in the form of order in council included in Schedule 5i of the Settlement Agreement; and
- (ii) upon the acceptance of the absolute surrender of Tutu Creek I.R. No. 4 and Parsnip I.R. No. 5, Canada will, subject to agreement being reached pursuant to Section 3(d), transfer the fee simple title to the lands comprising Tutu Creek I.R. No. 4 and Parsnip I.R. No. 5 to the Province;

after Canada recommends to the Governor General in Council that the Mesilinka Site, Ingenika Cemetery and the Finlay River Site be set apart as Indian reserve lands for the use and benefit of Tsay Keh and before Canada recommends to the Governor General in Council that the Police Station Site be set apart as Indian reserve land for the use and benefit of Tsay Keh.

- (d) Prior to the transfer of fee simple title of the lands comprising Tutu Creek I.R. No. 4 and Parsnip I.R. No. 5 from Canada to the Province pursuant to Section 3(c)(ii) of this Agreement, the Province and Canada will negotiate the terms and cost of the transfer including:
 - (i) an audit of the environmental condition of the land;
 - (ii) the standard of environmental remediation to be applied to the lands, to be determined in accordance with Provincial environmental legislation and regulations; and
 - (iii) the completion of any environmental remediation of the lands that may be required prior to the transfer.
- (e) The parties agree that the Province shall upon:
 - (i) removal by Tsay Keh of all encumbrances on the Police Station Site;
 - (ii) cancellation of fee simple title; and
 - (iii) a joint request by Tsay Keh and Canada;

recommend to the Lieutenant Governor in Council the transfer of administration and control of the Police Station Site to Canada to be set apart as Indian reserve lands for the use and benefit of Tsay Keh.

4. **Tsay Keh and BC Hydro Access Rights to Removed Lands.** Concurrently with the execution and delivery of this Agreement, the Province, BC Hydro and Tsay Keh shall enter into an Access Agreement in a form substantially similar to Schedule 5.

5. **BC Hydro Access Rights to Finlay River Site.**

- (a) Concurrently with the execution and delivery of this Agreement by all Parties, Canada shall grant to BC Hydro a licence for road access through the Original Finlay River Site in a form substantially similar to Schedule 6 (the "**Licence**") and the Licence, as amended by the Parties pursuant to Section 5(b), will continue in effect throughout any transfer of administration and control of the Original Finlay River Site, or portions thereof, and the Replacement Lands between Canada and the Province and the creation of the Finlay River Site by Canada.
- (b) The Parties covenant and agree to amend the Licence so that it will not include the Removed Lands and will extend to and include the Replacement Lands, after the boundaries of the Original Finlay River Site have been modified to create the Finlay River Site.
- (c) For greater clarity, and subject to the provisions of Section 3 of this Agreement, Canada will recommend to the Governor General in Council that the Finlay River Site, as encumbered by the Licence, be set apart as reserve land for the use and benefit of Tsay Keh.
- (d) After Canada has granted Indian reserve status to the Finlay River Site, at the option of BC Hydro:
 - (i) the Licence will continue in effect, registered in the Indian Lands Registry against the Finlay River Site; or
 - (ii) Canada will replace the Licence with a new registered charge acceptable to BC Hydro, on substantially the same terms as Schedule 6, but under then applicable legislation or authority, upon the written request of BC Hydro.

6. **Payment by BC Hydro.** Within fourteen (14) days after the execution of this Agreement by all parties, BC Hydro shall pay to Tsay Keh \$5,600,000 to be used by Tsay Keh as it considers appropriate in its sole discretion.

7. **Payment by Canada.** Canada will pay to Tsay Keh a maximum of \$2,000,000 (the "**Funds**"), to be used and paid in accordance with the following:

- (a) The Funds shall be used by Tsay Keh for the following purposes only:
 - (i) Housing:

Construction of residential housing on-reserve, at the Original Finlay River Site, or at the Finlay River Site, for Tsay Keh's community members. Residential units, funded in whole or in part by payments under this Article, must meet current applicable building codes and standards and will not be eligible for future INAC renovation subsidies.

(ii) Costs related to Reserve creation:

In accordance with Sections 3(a)(ii), 3(a)(iii) and 3(a)(v) hereof, to obtain the survey, assessment of land value and environmental assessment (including any remediation measures required) related to the satisfaction of the Addition to Reserve policies provided that Tsay Keh's total obligation in respect of such expenses shall be \$50,000.

(b) Subject to Section 7(c), the Funds will be paid by Canada to Tsay Keh by instalments, subject to:

(i) the execution of this Agreement by all parties; and

(ii) Canada having administration and control of the Finlay River Site;

and provided that the last instalment is paid within three (3) full fiscal years of the execution of this Agreement by all parties, the last being the 2012-2013 fiscal year, and provided that each instalment is fully expended by Tsay Keh within the fiscal year of payment.

(c) After the execution of this Agreement by all parties, an instalment of \$50,000 of the Funds shall be paid by Canada to Tsay Keh upon receipt of a work plan from Tsay Keh describing the proposed expenditures in accordance with Section 7(a)(ii) above.

Tsay Keh acknowledges that Tsay Keh has existing and adequate access to the Finlay River Site, separate from the existing road (the "Existing Road") along the top of the bank of the Williston Reservoir. Tsay Keh will not be eligible for future INAC funding or subsidies for the repair or relocation of the Existing Road.

8. Social Service Tax Rebate. Provided that on or before the date that the Finlay River Site is set apart by Canada as an Indian reserve Tsay Keh provides all of the information required by the Province, the Provincial Minister of Finance shall, on one occasion only, recommend to the Lieutenant Governor in Council that Tsay Keh receive a remission under the Financial Administration Act RSC 1996, c. 138 of the social service tax paid on all eligible purchases which were made at any of the Proposed Reserves (even though none were considered Indian reserves at the relevant time) or on eligible purchases ordered by Tsay Keh and delivered by the seller, or common carrier, to any of the Proposed Reserves, where title to the goods passed to Tsay Keh on the Proposed Reserves.

9. **Compatibility with Operation of the Reservoir.** Upon completion of the Finlay River Site boundary adjustment matters contemplated in Section 2, BC Hydro and Tsay Keh will each provide to Canada a confirmation that the use of the Proposed Reserves by Tsay Keh is compatible with the operation of the Reservoir. Such confirmation shall be made in form substantially similar to that set out in Schedule 8. Tsay Keh, Canada, BC Hydro and the Province acknowledge that a confirmation of compatibility shall not be interpreted as a representation by Tsay Keh or BC Hydro or both, upon which any action, cause of action, suit, claim or demand of any nature, including breach of this Agreement may be founded.

10. **Water License Requirements.** Tsay Keh agrees to support any application or submission by BC Hydro to the Comptroller of Water Rights seeking confirmation that the execution of this Agreement and the performance of certain obligations by BC Hydro and the Province under Sections 2(d) and 6 of this Agreement will satisfy BC Hydro's obligations as set out in sections 3(b) and 6(e) of Schedule A of the Peace Order approved by the Comptroller of Water Rights under s. 88 of the Water Act. Upon execution of this Agreement, Tsay Keh will provide letters to the Comptroller of Water Rights substantially similar to those set out in Schedule 9.

11. **Liability for Future Erosion on Finlay River Site.** Section 6.1 of the Settlement Agreement is deleted and the following substituted therefor:

“6.1 In consideration of this Agreement, Canada and The Band do hereby release, remise and forever discharge the Province and 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) of and from all manner of action, causes of action, suits, claims and demands whatsoever which Canada or The Band ever had, now has or which either 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 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, other than, in the case of B.C. Hydro:

- (a) actions, causes of action, suits, claims or demands arising in connection with and to the extent caused by any erosion of the Finlay River Site that is directly attributable to the existence or operation of the Williston Reservoir and which occurs from and after the date on which the lands selected pursuant to Section 3.1.1 are set apart by Canada as Indian reserve lands for the use and benefit of The Band; and

- (b) any claim by The Band against B.C. Hydro for the payment of costs of re-interment pursuant to Section 3.1.6 hereof.”

12. **Liability for Future Erosion on Ingenika Point Cemetery Reserve and Grant of Flowage Easement on DL 7119.**

- (a) The following provisions are added to the Settlement Agreement:

"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."

- (b) Concurrently with the execution of this Agreement, Tsay Keh will cause Tsay Keh Enterprises Ltd. to execute and deliver to B.C. Hydro and the Province the agreement in the form set out in Schedule 11 hereto.

13. **Other Consequential Amendments.** The Settlement Agreement is hereby amended as follows:

- (a) The definition of "Mesilinka Site" in Section 1.8 and Schedule 2 site sketch are deleted and the following description is substituted:

""Mesilinka Site" means District Lot 7131, Cassiar District, except any part of that land lying below the natural boundary (as the term is defined in the Land Act) of any lake or creek and except any part of that land comprising a forest service road, the official plan of which was completed and certified by W.D. McIntosh, BCLS, the 14th day of October 1999,

confirmed by the Surveyor General of British Columbia on April 11,2000 and which is on file in the British Columbia Crown Land registry as Survey Plan 8 tube 1840.”

- (b) Section 3.1.2.1 is deleted and the following is substituted:

“3.1.2.1(a) The Band and B.C. Hydro will ensure the lands selected pursuant to paragraphs 3.1.1 and 3.1.3 will be compatible with the operation of the Williston Reservoir.

(b) For greater certainty, the Band and B.C. Hydro acknowledge that the compatibility of the lands selected pursuant to paragraphs 3.1.1 and 3.1.3 with future alterations to the operating range of the Williston Reservoir has been addressed as between the Band and B.C. Hydro to the mutual satisfaction of the Band and B.C. Hydro.”

- (c) Section 4.1 of the Settlement Agreement is deleted and the following is substituted therefor:

“In consideration of this Agreement The Band shall, by way of referendum consider and vote on the Instrument of Absolute Surrender attached hereto as Schedule 5, for the purpose of absolutely surrendering the lands described herein. The fee simple title to the surrendered lands shall be transferred by Canada to the Province. Should the Band vote "no" to the Absolute Surrender then this Agreement shall be null and void as if it had never been made.”

- (d) Schedule 1 of the Settlement Agreement is deleted, and Schedule 10 of this Agreement substituted therefor.

- (e) Schedule 5(i) is deleted, and Schedule 12 of this Agreement substituted therefor.

- (f) Schedule 13 of this Agreement is added as Schedule 10 to the Settlement Agreement.

- (g) Sections 9(1) through (4) are deleted and the following substituted therefor:

(1) TO CANADA:

Indian and Northern Affairs Canada (BC Region)
Suite 600, 1138 Melville Street
Vancouver, BC V6E 4S3
Attention: Regional Director General

Facsimile: 604-775-7149

(2) TO THE BAND:

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

(3) 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

(4) 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 - 350 7 Avenue SW
Calgary, AB T2P 3N9
Attention: Peter Feldberg

Facsimile: 403-261-5351

The parties acknowledge and agree that except as specifically amended by this Agreement, the Settlement Agreement continues in full force and effect.

14. **Acknowledgment and Release.**

- (a) Tsay Keh, BC Hydro, Canada and the Province mutually acknowledge and agree that the obligations of the parties under Sections 3.1.1, 3.1.2.1, 3.1.3, 3.1.4, 3.1.5, 3.2.1, 3.2.2, 3.2.3, 3.2.4, 3.3.1, 3.3.2.1, 3.3.3, 3.4.1, 3.4.2, 3.4.3, 3.5.1, 3.5.2, 3.5.3, 4.1, 5.1.1, 5.2.2, 5.2.3, 5.2.4, 5.3, 5.4 and 8.1 of the Settlement Agreement (the "Satisfied Obligations") have been fulfilled (either through the performance of such obligations or by substitution **therefor** of the obligations agreed to in this Agreement (and, in the case of BC Hydro and the Province, by substitution **therefor** of the obligations agreed to in the Tsay Keh Dene First Nation Final Agreement amongst Tsay Keh, BC Hydro and the Province)), waived or released.
- (b) Effective as of the date of this Agreement, BC Hydro and the Province hereby release each other and each of the other parties, together with all of their respective present, former or future directors, officers, employees, servants, agents and shareholders, and each of the other parties hereby release each of 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) (collectively, the parties being released pursuant to this Section 14(b) are referred to as the "Releasees") of and **from** any and all actions, liabilities, obligations, causes of action, claims, demands and damages whatsoever, whether known or unknown, arising out of, related to or based upon, in whole or in part, directly or indirectly, any delay, performance or failure to perform any of the Satisfied Obligations or delay in performance or failure in the performance by a party of any of its other obligations under the Settlement Agreement to the extent such failure or delay relates to any period up to and including the date hereof.
- (c) Effective as of the date of this Agreement:
 - (i) Tsay Keh and Tsay Keh's past, present and future heirs, executors, administrators, successors, legal representatives, and assigns; and
 - (ii) Canada and Canada's past, present and future heirs, successors, ministers, officials, employees, servants, agents, and assigns;

hereby release each other, together with their present, former or future heirs, successors, ministers, officials, employees, servants, agents, and assigns, of and from any and all actions, liabilities, obligations, causes of action, claims, demands and damages whatsoever, whether known or unknown, arising out of, related to or based upon, in whole or in part, directly or indirectly, any delay, performance or failure to perform any of the Satisfied Obligations, save and except for the obligations contained in sections 3.1.1, 3.1.2.1, 3.2.1 and 3.2.3 of the Settlement Agreement, or any delay, performance or failure to perform any of its other obligations under the Settlement Agreement to the extent such failure or delay relates to any period up to and including the date hereof.

(d) Effective as of and from the date on which Mesilinka Site, Ingenika Cemetery and Finlay River Site are set apart by Canada as Indian reserve lands for the use and benefit of Tsay Keh as contemplated hereby:

- (i) Tsay Keh and Tsay Keh's past, present and future heirs, executors, administrators, successors, legal representatives, and assigns; and
- (ii) Canada and Canada's past, present and future heirs, successors, ministers, officials, employees, servants, agents, and assigns;

hereby release each other, together with all of their present, former or future heirs, successors, ministers, officials, employees, servants, agents, and assigns, of and from any and all actions, liabilities, obligations, causes of action, claims, demands and damages whatsoever, whether known or unknown, arising out of, related to or based upon, in whole or in part, directly or indirectly, any delay, performance or failure to perform the obligations set out in sections 3.1.1, 3.1.2.1, 3.2.1 and 3.2.3 of the Settlement Agreement as those sections pertain to Mesilinka Site, Ingenika Cemetery and Finlay River Site.

(e) Effective as of and from the date on which the Police Station Site is set apart by Canada as Indian reserve land for the use and benefit of Tsay Keh as contemplated hereby:

- (i) Tsay Keh and Tsay Keh's past, present and future heirs, executors, administrators, successors, legal representatives, and assigns; and
- (ii) Canada and Canada's past, present and future heirs, successors, ministers, officials, employees, servants, agents, and assigns;

hereby release each other, together with all of their present, former or future heirs, successors, ministers, officials, employees, servants, agents, and assigns, of and from any and all actions, liabilities, obligations, causes of action, claims, demands and damages whatsoever, whether known or unknown, arising out of, related to or based upon, in whole or in part, directly or indirectly, any delay, performance or failure to perform the

obligations set out in sections 3.1.1, 3.1.2.1, 3.2.1 and 3.2.3 of the Settlement Agreement as those sections pertain to the Police Station Site.

- (f) Subject to Sections 14(a), 14(c), 14(d) and 14(e) of this Agreement, nothing in this Agreement prejudices any claim, with respect to the flooding of Tsay Keh settlements and the dislocation of Tsay Keh members arising from the construction, creation and operation of the Bennett Dam and Williston Reservoir, that Tsay Keh may have had against Canada prior to the effective date of this Agreement. For greater certainty, Canada does not admit any liability to Tsay Keh with respect to the flooding of Tsay Keh settlements and the dislocation of Tsay Keh members arising from the construction, creation and operation of the Bennett Dam and Williston Reservoir.

15. **Band Council Resolutions.** Concurrently with the execution of this Agreement Tsay Keh shall provide Canada, the Province and BC Hydro with a certified copy of a duly passed Band Council Resolution evidencing the approval of Tsay Keh's Band Council of this Agreement and its obligations hereunder, such certified resolutions to be in form substantially similar to Schedule 7 hereto. After the date that the Finlay River Site (or lands substituted therefor) is set apart by Canada as Indian reserve land for the use and benefit of Tsay Keh, Tsay Keh shall provide Canada, the Province and BC Hydro with a certified copy of a duly passed Band Council Resolution evidencing the approval of Tsay Keh's Band Council to the granting of an access permit pursuant to the provisions of the Indian Act to BC Hydro on the Finlay River Site as contemplated by Section 5 hereof, if requested by BC Hydro.

16. **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.

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

IN WITNESS WHEREOF the parties hereto have executed this Agreement as of the dates set forth below.

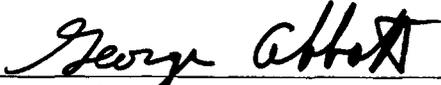
**HER MAJESTY THE QUEEN IN RIGHT
OF CANADA**

By: 

Jeff Loucks,
Regional Director General, Indian Affairs and
Northern Development (B.C. Region)
Dated: March 30, 2009

**HER MAJESTY THE QUEEN IN RIGHT
OF THE PROVINCE OF BRITISH COLUMBIA**

By:



Honourable George Abbott,
Minister of Aboriginal Relations and Reconciliation

Dated: August 31, 2009

TSAY KEH DENE FIRST NATION

By:

Chief Ella Pierre

Dated: _____, 2009

**BRITISH COLUMBIA HYDRO AND
POWER AUTHORITY**

By:

Bob Elton, President and Chief Executive Officer

Dated: _____, 2009

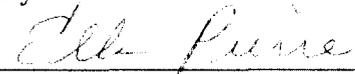
**HER MAJESTY THE QUEEN IN RIGHT
OF THE PROVINCE OF BRITISH COLUMBIA**

By:

Honourable George Abbott,
Minister of Aboriginal Relations and Reconciliation
Dated: _____, 2009

T'SAY KEH DENE FIRST NATION

By:



Chief Ella Pjerre
Dated: August 31, 2009

**BRITISH COLUMBIA HYDRO AND
POWER AUTHORITY**

By:

Bob Elton, President and Chief Executive Officer
Dated: _____, 2009

**HER MAJESTY THE QUEEN IN RIGHT
OF THE PROVINCE OF BRITISH COLUMBIA**

By:

Honourable **George Abbott**,
Minister of Aboriginal Relations and Reconciliation
Dated: _____, 2009

TSAY KEH DENE FIRST NATION

By:

Chief Ella Pierre
Dated: _____, 2009

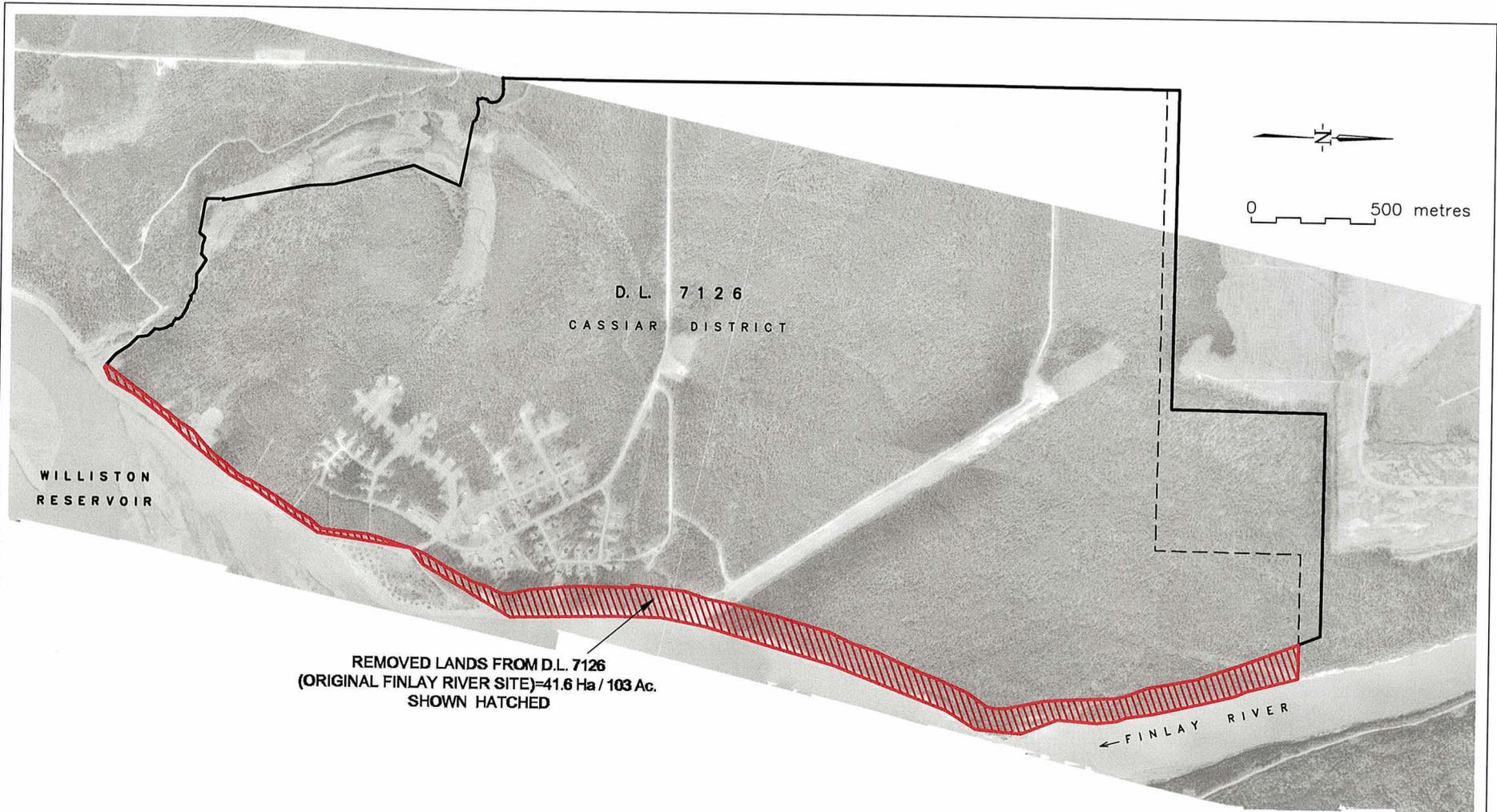
**BRITISH COLUMBIA HYDRO AND
POWER AUTHORITY**

By: *Bob Elton*

Bob Elton, President and Chief Executive Officer
Dated: *Aug 24*, 2009

SCHEDULE 1
REMOVED LANDS

See attached

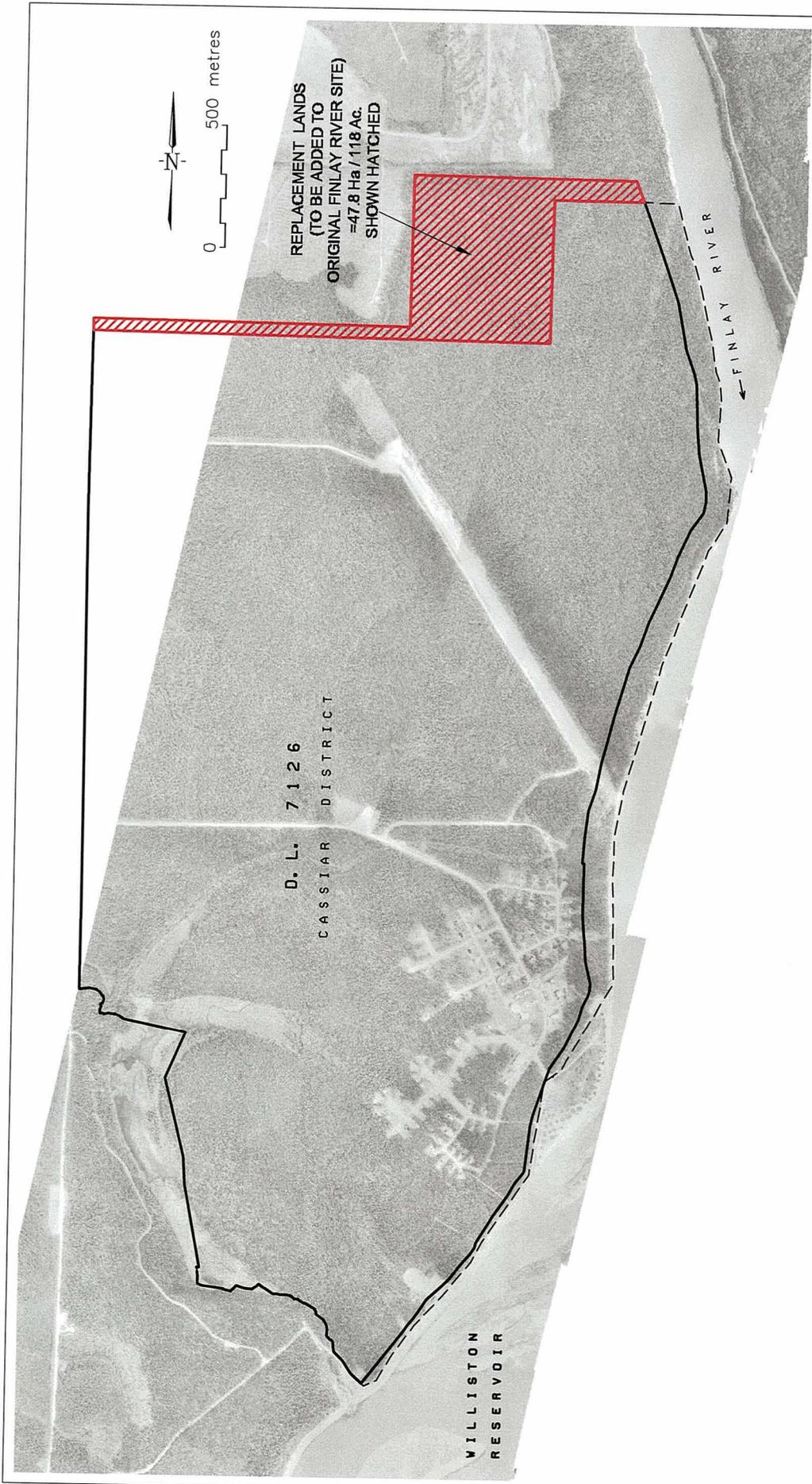


										Bhydro ENGINEERING <small>TRANSMISSION DIVISION SURVEY SERVICES</small>	
										SCHEDULE 1 REMOVED LANDS Implementation and Amending Agreement	
										<small>DATE</small> MARCH 12, 2009	<small>DIST</small> 1006-S11-D2 / S1_Imp
										<small>DWG/LAYOUT</small>	<small>R</small> 0
										<small>NOT TO BE REPRODUCED WITHOUT PERMISSION</small>	

<small>DSGN</small> <small>INDEP CHK</small> <small>DFTG</small> <small>DFTG CHK</small> <small>INSP</small> <small>REV</small> <small>ACPT</small>	 	<small>ICW</small>							
<small>NO</small> <small>REVISIONS</small>	<small>REMARKS</small>	<small>DATE</small>	<small>DESIGNED</small>	<small>INDEP CHK</small>	<small>DFTG</small>	<small>DFTG CHK</small>	<small>INSP</small>	<small>REV</small>	<small>ACPT</small>

SCHEDULE 2
REPLACEMENT LANDS

See attached



Richydro ENGINEERING TRANSMISSION DESIGN SURVEY SERVICES		SCHEDULE 2 REPLACEMENT LANDS Implementation and Amending Agreement		1006-S11-D2 / S2 Imp R 1
DESK INSP CHK DATE DTG INSP REV ACPT	ICW	DATE MARCH 12, 2009	DIST DISTRICT	DWG/ LAYOUT
J:\BSS\SPD\SURVEY\JOB\PROPERTIES\05-878 (LOWAGE EASEMENT, TSKY KEH DENY)\DWG\1006-S11-D2.DWG				
REMARKS 1 HATCHED AREA LABEL CHANGED		DATE 2009-03-17	SE AC	DATE DTG
		INSP DATE DTG	INSP DATE DTG	INSP DATE DTG

NOT TO BE REPRODUCED WITHOUT PERMISSION

SCHEDULE 3
FORM OF FEDERAL TRANSFER DOCUMENT

See attached

C A N A D A

**TRANSFER OF ADMINISTRATION AND CONTROL TO
HER MAJESTY IN RIGHT OF A PROVINCE**

WHEREAS:

- A. Her Majesty in right of the Province of British Columbia (the "Province") has requested the entire interest of Her Majesty in right of Canada ("Canada") in the lands hereinafter described (the "Lands").
- B. The Lands are federal real property under the administration of the Minister of Indian Affairs and Northern Development.
- C. This transfer of administration and control is satisfactory to the Minister of Justice.

THEREFORE, THE MINISTER OF INDIAN AFFAIRS AND NORTHERN DEVELOPMENT, under subsection 5(1) of the *Federal Real Property Regulations*, by this instrument, transfers from Canada to the Province the administration and control of the entire interest of Canada in the federal real property described as:

Finlay River Site, District Lot 7126 Cassiar District, comprising 847 ha, as outlined in Survey Plan IT 1553 as lodged in the **office** of the Surveyor General. This parcel is located at the Northern tip of Williston Lake Reservoir, West of the outlet of the Finlay River

in perpetuity.

IN WITNESS WHEREOF this transfer of administration and control has been signed and countersigned under the *Federal Real Property and Federal Immovables Act* as at _____, 2009.

SIGNED on behalf of the Minister of
Indian Affairs and Northern Development
by:

Ken McDonald
Director, Lands
Lands and Trust Services
B.C. Region

COUNTERSIGNED on behalf of the
Minister of Justice by:

Cathy Figol
Counsel
Aboriginal Law (Advisory Services)
British Columbia Regional Office

C A N A D A

**TRANSFER OF ADMINISTRATION AND CONTROL TO
HER MAJESTY IN RIGHT OF A PROVINCE**

WHEREAS:

- A. Her Majesty in right of the Province of British Columbia (the "Province") has requested the entire interest of Her Majesty in right of Canada ("Canada") in the lands hereinafter described (the "Lands").
- B. The Lands are federal real property under the administration of the Minister of Indian Affairs and Northern Development.
- C. This transfer of administration and control is satisfactory to the Minister of Justice.

THEREFORE, THE MINISTER OF INDIAN AFFAIRS AND NORTHERN DEVELOPMENT, under subsection 5(1) of the Federal Real *Property* Regulations, by this instrument, transfers from Canada to the Province the administration and control of the entire interest of Canada in the federal real property described as:

Mesilinka Site, District Lot 7131, Cassiar District, except those portions of land coloured blue and brown as outlined in Survey Plan 14 Tube 1602, completed and certified by W.D. Mcintosh, BCLS, the 2nd day of October 1992, lodged at the Office of the Surveyor General of British Columbia, and comprising 386 ha, a copy of which is recorded as Plan 74938 in the Canada Lands Survey Records at Ottawa. This parcel is located on the northern bank of the **Mesilinka** River, between Blackpine and Aiden Lakes

in perpetuity.

IN WITNESS WHEREOF this transfer of administration and control has been signed and countersigned under the Federal Real Property and Federal Immovables Act as at _____, 2009.

SIGNED on behalf of the Minister of
Indian Affairs and Northern Development
by:

Ken McDonald
Director, Lands
Lands and Trust Services
B.C. Region

**COUNTERSIGNED on behalf of the
Minister of Justice by:**

**Cathy Figol
Counsel
Aboriginal Law (Advisory Services)
British Columbia Regional Office**

C A N A D A

**ACCEPTANCE OF A TRANSFER OF ADMINISTRATION AND CONTROL FROM
HER MAJESTY IN RIGHT OF A PROVINCE**

WHEREAS:

- A. The lands hereinafter described (the "Lands") are the property of Her Majesty in right of the Province of British Columbia ("British Columbia").
- B. By transfer of administration and control in the form annexed, the entire interest of British Columbia in the Lands has been transferred to Her Majesty in right of Canada ("Canada") in perpetuity.
- C. As evidenced by endorsement on the form annexed, the transfer of administration and control is satisfactory to the Minister of Justice.

THE MINISTER OF INDIAN AFFAIRS AND NORTHERN DEVELOPMENT, under subsection 5(2) of the Federal Real Property Regulations, hereby accepts, on behalf of Canada, the transfer of _____, 2009, of the entire interest in the real property described as:

**[Note to draft: insert legal descriptions for newly configured DL
7126 and Replacement Lands.]**

in perpetuity, subject to the terms, reservations and restrictions set out in the transfer of administration and control.

IN WITNESS WHEREOF the Minister has signed this acceptance of a transfer of administration and control as at _____, 20__.

SIGNED on behalf of the Minister of Indian Affairs and Northern Development by:

Ken McDonald
Director, Lands
Lands and Trust Services
B.C. Region

COUNTERSIGNED on behalf of the Minister of Justice by:

Cathy Figol
Counsel
Aboriginal Law (Advisory Services)
British Columbia Regional Office

CANADA

**ACCEPTANCE OF A TRANSFER OF ADMINISTRATION AND CONTROL FROM
HER MAJESTY IN RIGHT OF A PROVINCE**

WHEREAS:

- A. The **lands** hereinafter described (the "Lands") are the property of Her Majesty in right of the Province of British Columbia ("British Columbia").
- B. By transfer of administration and control in the form annexed, the entire interest of British Columbia in the Lands has been transferred to Her Majesty in right of Canada ("Canada") in perpetuity.
- C. As evidenced by endorsement on the form annexed, the transfer of administration and **control** is satisfactory to the Minister of Justice.

THE MINISTER OF INDIAN AFFAIRS AND NORTHERN DEVELOPMENT, under subsection 5(2) of the *Federal Real Property Regulations*, hereby accepts, on **behalf** of Canada, the transfer of October 23, 2003 of the entire interest in the real property described as:

District Lot 7131, Cassiar District, except any part of that land **lying** below the **natural** boundary (as that term is defined in the *Land Act*) of any **lake** or creek and except any part of that land comprising a forest service road, the **official** plan of which was **completed** and certified by W.D. McIntosh, BCLS, the 14th day of October 1999, confirmed by the Surveyor **General** of British Columbia on April 11, 2000 and which is on file in the British **Columbia** Crown Land Registry as Survey **Plan** 8 Tube 1840, a copy of which is recorded as Plan 84062 in the Canada Lands Survey Records at Ottawa

in perpetuity, subject to the terms, reservations and restrictions set out in the transfer of administration and **control**.

IN WITNESS WHEREOF the Minister has signed this acceptance of a transfer of administration and control as at _____, 20__.

SIGNED on behalf of the Minister of
Indian Affairs and Northern
Development by:

Ken McDonald
Director, Lands
Lands and Trust Services
B.C. Region

COUNTERSIGNED on behalf of the
Minister of Justice by:

Cathy Figol
Counsel
Aboriginal Law (Advisory Services)
British Columbia Regional Office

SCHEDULE 4
FORM OF PROVINCIAL ORDER IN COUNCIL

See attached

PROVINCE OF BRITISH COLUMBIA
ORDER OF THE LIEUTENANT GOVERNOR IN COUNCIL

Order in Council No.

, Approved and Ordered

_____ FORM OF ORDER FOR ATTACHMENT TO AGREEMENT _____
Lieutenant Governor

Executive Council Chambers, Victoria

On the recommendation of the undersigned, the Lieutenant Governor, by and with the advice and consent of the Executive Council, orders that

- (a) the Transfer to Canada (Tsay Keh Dene Indian Band) Order, attached, is made, and
- (b) Order in Council 1533195 is rescinded insofar as it purports to transfer the administration, control and benefit in the following lands to Her Majesty the Queen in right of Canada:
District Lot 7154 Cassiar District comprising .441 ha as outlined in Survey Plan IT 1553 as lodged in the office of the Surveyor General of British Columbia.

*Minister of Aboriginal Relations
and Reconciliation*

Presiding Member of the Executive Council

(This part is for administrative purposes only and is not part of the Order.)

TRANSFER TO CANADA (TSAY KEH DENE INDIAN BAND) ORDER

- 1** To give effect to the Agreement dated September 22, 1989, as amended by the Amending Agreement dated March 17, 1994 and as further amended by the Implementation and Amending Agreement dated XXX, which agreements provide for the creation of Indian reserves over land on which Tsay Keh Dene have lived and built streets, trails, roads and other infrastructure for their use,

 - (a) the administration, control and benefit, within the meaning of section 31 of the *Land Act*, of the lands described in Schedule " A of this order (the "Exchange Land") are transferred, subject to sections 2 and 3 of this order, in perpetuity to Her Majesty the Queen in Right of Canada ("Canada"), for the use and benefit of the Tsay Keh Dene Indian Band (the "Band"), and
 - (b) the transfer under paragraph (a) is made in exchange for the transfer to the Province of the administrative control of the land described in Schedule "B" of this order that was transferred to Canada for the use and benefit of the Band by Order in Council 1533195 and accepted by Canada under OIC PC 1997-1837.
- 2** The transfer to Canada under section 1 (a) is subject to the following terms, reservations and restrictions:

 - (a) the Province, or any person acting for it, has, subject to paragraph (c), the right to resume any part of the Exchange Land it considers necessary to resume for making roads, canals, bridges, towing paths or other works of public utility or convenience, which may not exceed 1/20' part of the whole of the Exchange Land and no resumption may be made of any part of the Exchange Land on which a building has been erected, or which may be in use as a garden or otherwise for the more convenient occupation of a building;
 - (b) any person authorized by the Province has, subject to paragraph (c), the right to take and occupy water privileges and to have and enjoy rights of carrying water, as may be reasonably required for mining or agricultural purposes in the vicinity of the Land, over, through or under any part of the Exchange Land, paying a reasonable compensation to Canada for the use and benefit of the Band;
 - (c) the federal minister of the time being responsible for Indian Affairs must be advised of any work contemplated under the preceding paragraphs and furnished with plans showing the location of the work, and a reasonable time must be allowed for consideration of the plans and for any necessary adjustments or arrangements in connection with the proposed work;
 - (d) any person authorized by the Province has the right to take from any part of the Exchange Land any gravel, sandstone, lime, timber or other material which may be required in the construction, maintenance or repair of any road, ferry, bridge or other public work, paying to Canada for the use and benefit of the Band reasonable compensation for any material taken for use outside the boundaries of the Exchange Land;
 - (e) if Canada fails to accept the transfer referred to in section 1 (a) from the Province and make the transfer referred to in section 1 (b), to the Province within 5 years of the date this Order is made, this Order is of no force or effect.
- 3** This order comes into effect on the date that both the following have occurred:

 - (a) Canada makes the transfer referred to in section 1 (b) to the Province
 - (b) Canada accepts the transfer referred to in section 1 (a) from the Province,

under the terms of the *Federal Real Property and Federal Immovables Act*, S.C. 1991, c. 50 and sections 5(1) and 5(2) of the Federal Real Property Regulations SOR/92/502, subject to the terms, reservations and restrictions set out in this order.

SCHEDULE “A”

“EXCHANGE LAND”

- 1 District Lot 7126A Cassiar District, comprising ◇ hectares, as outlined in Survey Plan ◇ as confirmed by the Surveyor General of British Columbia on <date> and which is on file in the British Columbia Crown Land Registry as Survey Plan ◇ Tube ◇. **[Note to draft: This is intended to describe District Lot 7126 reconfigured omitting the reservoir strip]**
- 2 District Lot ◇ Cassiar District, comprising ◇ hectares, as outlined in Survey Plan ◇ as confirmed by the Surveyor General of British Columbia ◇ and which is on file in the British Columbia Crown Land Registry as Survey Plan ◇ Tube ◇. **[Note to draft: This is intended to describe the additional lands being given to replace the reservoir strip being omitted under section].**

SCHEDULE “B”

Finlay River Site, District Lots 7126 Cassiar District, comprising 847 ha as outlined in Survey Plan IT 1553 as lodged in the office of the Surveyor General. This Parcel is located at the Northern tip of Williston Lake Reservoir, West of the outlet of the Finlay River.

SCHEDULE 5
FORM OF ACCESS AGREEMENT

See attached

ACCESS AGREEMENT

BETWEEN:

TSAY **KEH** DENE FIRST NATION, a 'band' under Section 2(1) of the Indian Act, R.S.C. 1985, c. I-5, as represented by its Chief and Council on behalf of themselves and the other members of the Band (hereinafter called "Tsay Keh")

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, RSBC 1996, c. 212, having its registered and records office at 333 Dunsmuir Street, Vancouver, British Columbia (hereinafter called "BC Hydro")

WHEREAS:

- A. Tsay Keh occupy, inter alia, an area of land (hereinafter defined as the "Village Site") in close proximity to the Reservoir (as hereinafter defined);
- B. Canada holds the Village Site for and on behalf of Tsay Keh and is in the process of setting aside the Village Site as an Indian Reserve;
- C. Tsay Keh wish to have access to the Provincial Crown land which lies between the Village Site and the Reservoir (hereinafter defined as the "Access Lands");
- D. BC Hydro is authorized to occupy certain Provincial Crown land around the Reservoir, including the Access Lands, under a permit issued under the Water Act, RSBC 1996, c. 483, and BC Hydro carries out maintenance, operations, orders or other activities in relation to the Reservoir, which results in the use and occupation of the Access Lands, including the flooding and erosion of the Access Lands; and
- E. The Parties have entered into this Agreement to provide Tsay Keh with an easement over the Access Lands and to ensure that Tsay **Keh** is in agreement with the way in which BC Hydro may use and occupy the Access Lands for maintenance, operations, orders or other activities related to the Reservoir,

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 each of the others,

and other good and valuable consideration (the receipt and sufficiency of which is acknowledged by the Parties), each of the Parties covenants and agrees in favour of the other Parties as follows:

1. Definitions. In this Agreement:

"Access Lands" means those Provincial Crown lands between the eastern boundary of the Village Site and the edge of the Reservoir when the Reservoir is at its low pool elevation of 2106.43 ft (642.04m) as shown hatched in the sketch attached as Schedule 1.

"BC Hydro Rights" means those rights to use the Access Lands granted to BC Hydro under PCL 25875 as amended or replaced from time to time and any other interests, rights, permits or authorizations that may from time to time be granted in favour of or held by BC Hydro, and which may permit some or all of the BC Hydro Activities;

"BC Hydro Activities" means those activities that BC Hydro may wish to exercise on the Access Lands, as set out in Schedule 2;

"Canada" means her Majesty the Queen in right of Canada

"Dam" means the W.A.C. Bennett Dam, and includes any related dam or power generating plant and, or, associated works;

"disposition" has the meaning given to it in the Land Act RSBC 1996, c. 245, and for certainty includes a licence of occupation;

"Final Agreement" means the agreement between the Tsay Keh, the Province and BC Hydro dated _____,

"Implementation and Amending Agreement" means the Agreement between Canada, the Province, BC Hydro and Tsay Keh dated _____,

"PCL 25875" means the permit issued under s. 26 of the Water Act, RSBC 1996, c. 483, in favour of BC Hydro, , as amended or replaced from time to time;

"Parties" means Tsay Keh, the Province and BC Hydro, and "Party" means any one of them;

"Removed Lands" means the lands corresponding to the area outlined in red set out in Schedule 3 hereto, approximately 42 hectares, more or less, subject to survey;

"Reservoir" means the body of water upstream from the Dam known as the Williston Reservoir, and includes the mouths of rivers and streams entering into the reservoir;

"Road Portion" means those areas of the Access Lands that as of the date of this Agreement contain roads in the locations generally described in Schedule 4; and

"Village Site" means District Lot 7126, Cassiar District as adjusted by the removal of the Removed Lands

2. **Schedules.** The following Schedules attached hereto are hereby incorporated into and form part of this Agreement:

Schedule 1	Map Depicting Access Lands
Schedule 2	BC Hydro Activities
Schedule 3	Map Depicting Removed Lands
Schedule 4	Map Depicting Road Portion

3. This Agreement comes into effect on the effective date of Canada's transfer of administration and control of the Removed Lands to the Province pursuant to Section 2(e) of the Implementation and Amending Agreement. The transfer of administration and control of the Removed Lands from Canada to the Province is a condition precedent to the coming into effect of this Agreement including any obligation to enter into this Agreement and the implementation of any of the rights and obligations pursuant to this Agreement.

4. **Tsay Keh Access.** The Province hereby grants to Tsay Keh, and its members, contractors, employees, agents and invitees, the licence, in perpetuity, and without charge, but subject always to the other terms of this Agreement, to enter upon, go across and pass over the Access Lands for temporary, non-intensive, non-commercial activities such as campfires, traditional ceremonies, and surface relic gathering or other ancillary activities. Such access shall be exercised on:

- (a) the Road Portion, or any roads which may exist on the Access Lands from time to time, with or without motorized vehicles, equipment or machinery; and
- (b) the remainder of the Access Lands on foot without any motorized vehicles, equipment or machinery.

5. **Limitations and Reservations.** Tsay Keh acknowledges and agrees that:

- (a) its use of the Access Lands pursuant to Section 3 is subject to and may be affected by:
 - (i) all subsisting dispositions and any grants to, or rights of, any person made or acquired under the Coal Act, SBC 2004, c.51, Forest Act, RSBC 1996, c. 157, Mineral Tenure Act, RSBC 1996, c. 292, Petroleum and Natural Gas Act, RSBC 1996, c. 361, Wildlife Act, SBC 2004, c. 31, or Water Act, or any extension or renewal of the same, and whether or not Tsay Keh has actual notice of any such interest, extension or renewal;
 - (ii) the exceptions and reservations of interests, rights, privileges and titles referred to in section 50 of the Land Act;

- (iii) the **BC Hydro Rights and BC Hydro Activities**;
- (b) the Province, including its ministers, officials, servants, agents, employees, contractors, subcontractors, legal representatives, and assigns, and **BC Hydro** including its, directors, officers, employees, legal representatives, contractors, subcontractors, servants and agents, successors and permitted assigns, is hereby released from any and all liabilities, claims, actions, causes of action, suits, debts and demands that Tsay Keh may now have, or may at any time in the future have against the Province, arising out of any conflict between the use of the Access Lands under this Agreement by Tsay Keh and the right of any other person to use the Access Lands by virtue of any of the enactments, rights, exceptions or reservations referred to in subsection (a);
- (c) without limitation to subsection (b), the Province including its ministers, officials, servants, agents, employees, contractors, subcontractors, legal representatives, and assigns, and **BC Hydro**, including its, directors, officers, employees, legal representatives, contractors, subcontractors, servants and agents, successors and permitted assigns, are hereby released from any and all liabilities, claims, actions, causes of action, suits, debts and demands that Tsay Keh may now have, or at any time in the future may have arising out of any conflict between the use of the Access Lands under this Agreement by Tsay Keh and the **BC Hydro Rights and the BC Hydro Activities**, **including** any effects of the Reservoir or Dam on the Road Portion or any other area of the Access Lands, whether as a result of erosion, sloughing, flooding, dust, debris or otherwise, and whether resulting in damage to, or total destruction of, the Road Portion or any other area;
- (d) the Province may from time to time, without any further consent from or consultation with Tsay Keh, make any disposition or otherwise grant, confirm or establish any prior interest, permit or other authorization, or take any other action (including, without limitation, raising title to the Access Lands and granting **BC Hydro** a prior registerable interest in the Access Lands, whether by statutory right of way, fee simple alienation or otherwise) that it considers necessary or advisable to enable or better allow **BC Hydro** to do all acts on the Access Lands, including the **BC Hydro Activities**, in furtherance of the maintenance, operation, orders or other activities in relation to the Dam and Reservoir;
- (e) the Province may, with the prior consent of the Tsay Keh, such consent in Tsay **Keh's** sole discretion, make dispositions of or over the Access Lands, or any part of it, to any person for a use not described in subsection (d);
- (f) nothing in this Agreement precludes the Province from permitting the Access Lands to be used from time to time by members of the public for non-commercial recreational uses such as camping, hiking and other similar forms of temporary non-intensive recreational uses;
- (g) the Province and **BC Hydro** have no responsibility or liability for inspecting, supervising, repairing, maintaining, replacing, relocating or otherwise addressing

the condition of any portion of the Access Lands, including the Road Portion and any other roads or trails in existence on the Access Lands at the time of signing this Agreement, or any roads or trails that may exist on the Access Lands in the future; and

- (h) it will not commence or maintain proceedings under section 65 of the *Land Act* in respect of any lawful interference with its use of the Access Lands that arises as a result of the exercise or operation of the BC Hydro Rights and the BC Hydro Activities, and the interests, rights, privileges and titles described in the foregoing subsections (a) (d) and (e).

6. Covenants of Tsav Keh. Tsav Keh covenants in favour of both BC Hydro and the Province that it:

- (a) will not use the Access Lands for any purpose other than as permitted by section 4;
- (b) will not leave any materials, structure or things on the Access Lands;
- (c) will not construct, build, make or install any improvement, installation or building, including without limitation any cemetery, campsite, facility, wall, fence, home, trail or shelter, whether intended to be permanent or temporary, on the Access Lands, at any time or for any purpose;
- (d) will not construct or build any new road or trail on the Access Lands, and will not extend, widen or relocate any existing road on the Access Lands;
- (e) will promptly at its cost and expense remove and clean up any improvements, materials, structures or things (including any debris or rubbish) left or deposited on the Access Lands by it or by any of its members, employees, contractors or invitees in contravention of this Agreement;
- (f) will not, and will not permit members of Tsav Keh, and Tsav Keh's employees, contractors, invitees or guests, to do anything which will interfere with or obstruct BC Hydro and its employees, officers, agents, contractors or subcontractors from the use of and access to the Access Lands in accordance with BC Hydro Rights and BC Hydro Activities;
- (g) will not harvest, cut down or remove any growth, tree or vegetation;
- (h) will not use the Access Lands for any business or industry; and
- (i) will exercise its rights under this Agreement subject to the BC Hydro Activities, as if the BC Hydro Activities had already been formally granted, confirmed or established by the Province.

7. **Release and Indemnity** Tsay Keh acknowledges and agrees that the use of the Access Lands by it, and by the members, contractors, employees, agents and invitees of Tsay Keh, shall be at the risk and expense of Tsay Keh, and Tsay Keh, on its behalf and on behalf of its members, contractors, employees, agents and invitees, hereby:

- (a) releases the Province including its ministers, officials, servants, agents, employees, contractors, subcontractors, legal representatives, and assigns, and BC Hydro, including its, directors, officers, employees, legal representatives, contractors, subcontractors, servants and agents, successors and permitted assigns,, from any and all liability, claims, losses, or damages arising from or related to Tsay Keh's use of the Access Lands, including use by its members, contractors, employees, agents and invitees; and
- (b) releases the Province including its ministers, officials, servants, agents, employees, contractors, subcontractors, legal representatives, and assigns, and BC Hydro, including its, directors, officers, employees, legal representatives, contractors, subcontractors, servants and agents, successors and permitted assigns, from any and all liability, claims, losses, or damages occurring to the Access Lands arising from or related to BC Hydro Rights and BC Hydro Activities; and
- (c) covenants and agrees to indemnify and hold harmless the Province, including its ministers, officials, servants, agents, employees, **contractors**, subcontractors, legal representatives, and assigns, and BC Hydro, including its, directors, officers, employees, legal representatives, contractors, subcontractors, servants and agents, successors and permitted assigns,, from and against any liability, claims, losses, costs and damages of any kind whatsoever, including fees of solicitors and other professional advisors, arising from or related to:
 - (i) any breach, violation or non-performance of this Agreement by Tsay Keh; and
 - (ii) any personal injury (including death), or any loss of or damage to any property, of Tsay Keh or its members, contractors, employees, agents and invitees, arising or occurring on or off the Access Lands by virtue of their use of the Access Lands;

And the amount of all such liability, claims, losses, costs and damages will be payable to the Province or to BC Hydro, as the case may be, immediately upon demand.

In addition to any other remedies available to BC Hydro to enforce this indemnity, BC Hydro may, pursuant to the Final Agreement, set off against any money owing to Tsay Keh any money owed to the Province or BC Hydro under this indemnity.

8. **BC Hydro.** BC Hydro is a Party to this Agreement and shall be entitled to enforce and benefit from its terms and provisions.

9. **Satisfaction of Duty to Consult and Accomodate.** Tsay Keh acknowledges and agrees that any and all obligations of BC Hydro and the Province, or either of them, to consult with Tsay Keh in respect of its existing or asserted Aboriginal rights or title or any future treaty rights, or to accomodate those existing rights or title or any future treaty rights in relation to:

- (a) Tsay **Keh's** access and use of the Access Lands; and
- (b) BC Hydro Rights and BC Hydro Activities as they pertain to the Access Lands;

are satisfied by this Agreement and by the performance of BC Hydro and the Province of their obligations under this Agreement.

10. **Independent Legal Advice.** The Parties have each executed this Agreement freely and voluntarily, without duress and after receiving independent legal advice from their respective solicitors.

11. **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 Dene:

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
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:

British Columbia Hydro and Power Authority
12th Floor – 333 Dunsmuir Street
Vancouver, B.C. V6B 5R3

Attention: **Aki Lintunen**, Director, Properties Division

Facsimile: 604623-3988

To the Province:

Ministry of Agriculture and Lands
Integrated Land Management Bureau
Suite 200-1488 4th Ave.
Prince George, BC V2L 4Y2

Attention: Regional Executive Director

Facsimile: 250 565-6941

With a copy to:

Ministry of Attorney General
4th Floor, 1405 Douglas Street
Victoria, BC V8W 2G2

Attention: **Kathryn Kickbush**

Facsimile: 250 356-8939

E-mail: kathryn.kickbush@gov.bc.ca

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 16.1. 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.

12. **Assignment.** This Agreement may be assigned by BC Hydro, or by any assignee of BC Hydro, to any other operator of the Dam or **Reservoir** who is capable of performing BC Hydro's obligations under this Agreement, subject to the consent of Tsay Keh such consent not to be unreasonably withheld. Except as set out in this Section 12 a Party may not assign this Agreement.

13. **Amendment.** If any of the provisions of this Agreement become impossible or impractical to carry out as a result of changes in law, then the Parties will, subject to the consent of the other Parties, such consent not to be unreasonably withheld or delayed, upon the written request of any Party amend this Agreement to address such changes in law. The only amendments to this Agreement that are binding on the Parties are written amendments signed by all Parties.

14. **Replacement of this Agreement.** Tsay Keh covenant and agree, if requested by the Province, to enter into an easement agreement to be registered in the Land Title Office if title to the Access Lands is raised, on substantially the same terms and conditions as contained in this Agreement, for no additional consideration, which easement agreement will be registered behind and be subject and subordinate to any instrument granted to BC Hydro in respect of the BC Hydro Rights and BC Hydro Activities. A breach of this Section 14 will be considered a material and fundamental breach of this Agreement.

15. **Governing Law and Forum.** This Agreement is deemed to be made in British Columbia, and will be governed by and construed and interpreted in accordance with the laws of British Columbia and the laws of Canada applicable therein. If any Party commences a dispute in the courts of British Columbia to interpret or enforce any term of this Agreement or to resolve any dispute under it, the other Parties will irrevocably **attorn** to the jurisdiction of the courts of British Columbia in connection therewith, and the courts of British Columbia will have exclusive jurisdiction in connection therewith.

16. **Entire Agreement.** This Agreement constitutes the entire agreement among the Parties relating to the subject matter of this Agreement and supersedes all prior negotiations and agreements, whether written, oral, implied, or collateral, among the Parties with respect to the subject matter of this Agreement.

17. **Further Assurances.** As and so often as a Party may reasonably require, each Party will execute and deliver further documents and assurances as may be necessary to properly carry out this Agreement.

18. **Successors and Assigns.** This Agreement enures to the benefit of and will be binding upon the Parties and their respective successors and permitted assigns under Section 12.

19. **Waivers.** No provision of this Agreement may be waived by a Party, except by written notice to the other Parties and any waiver of a provision:

- (a) is valid only in respect of the specific instance to which it relates and is not a continuing waiver; and

(b) is not a waiver of any other provision.

20. **Time.** Time will be of the essence of this Agreement.

21. **Interpretation.** In this Agreement:

- (a) a reference to "this Agreement" means this Agreement as from time to time amended under the terms and conditions of this Agreement and includes the Schedules to this Agreement;
- (b) a reference to a Party includes an entity that is a successor or permitted assign of such Party;
- (c) references to a statute include all regulations under that statute, all as amended or replaced from time to time, and any reference to a provision of a statute or regulation includes a reference to an equivalent provision if that statute or regulation is amended or replaced;
- (d) words importing the masculine gender include the feminine and neuter genders, corporations, partnerships, and other persons, and words in the singular include the plural, and vice versa, wherever the context requires;
- (e) all references to designated Articles, Sections and Schedules are to the designated Articles, Sections or Schedules of or to this Agreement;
- (f) using separate Articles and Sections and inserting headings are for convenient reference only and will not affect how this Agreement is interpreted;
- (g) there will be no presumption in law or in equity that any ambiguous or doubtful expression is to be resolved in favour of any particular Party;
- (h) in the calculation of time under this Agreement, all references to "days" are to calendar days, except that if the time for doing an act falls or expires on a day that is not a Business Day, the time is extended to the next Business Day; and,
- (i) where the word "including" or "includes" is used it means "including (or includes) without limitation".

22. **Counterparts.** This Agreement may be signed in one or more counterparts, each counterpart may be transmitted by facsimile and each will constitute an original instrument and such counterparts, taken together, will constitute one and the same document.

This Agreement has been executed on the dates set out below and takes effect from the date of last execution.

TSAY KEH DENE FIRST NATION

By:

Chief Ella Pierre

Dated: _____ 2009

**BRITISH COLUMBIA HYDRO AND
POWER AUTHORITY**

By:

Name and Title:

Authorized Signatory for BC Hydro

Dated: _____, 2009

**HER MAJESTY THE QUEEN IN RIGHT
OF THE PROVINCE OF BRITISH COLUMBIA,**
as represented by the Minister of Agriculture and Lands
or by a duly authorized designate:

Honourable

Minister of Agriculture and Lands

Dated: _____, 2009

SCHEDULE 6
FORM OF BC HYDRO LICENCE

See attached

LICENCE FOR ROAD ACCESS

This Licence is made between the following parties effective _____, 2009

BETWEEN:

HER MAJESTY IN RIGHT OF CANADA, as represented by
the Minister of Indian Affairs and Northern Development

("Canada")

AND:

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

("Hydro")

AND:

TSAY KEH DENE INDIAN BAND, a band within the meaning
of the Indian Act, as represented by its Chief and Councillors

(the "First Nation")

BACKGROUND:

- A. Canada has administration and control of the **Finlay River Site**:
- B. The First Nation's village is located at the **Finlay River Site**, where members of the First Nation reside;
- C. The First Nation has applied to Canada to have the **Finlay River Site** set apart as an Indian Reserve for the use and benefit of the Band;
- D. Hydro has asked Canada to grant a licence to authorize Hydro's use of roads through the **Finlay River Site** for the purpose of accessing the Access Lands and **Williston Reservoir**;
- E. Canada is authorized to issue this licence under subsection 4(2)(a) of the Federal Real Property Regulations, **SOR/92-502**; and
- F. The First Nation has given its consent to the execution of this Licence for Access, in the form attached as Schedule 'B'.

NOW THEREFORE, with mutual consideration, the Parties covenant and agree as follows:

1. INTERPRETATION

1.1 Definitions

1.1.1 Unless otherwise stated, the terms defined in **Schedule "A"** have the meanings given to them in that schedule.

1.1.2 Any defined term will be read as having an appropriate corresponding meaning if referred to in the singular, plural, verb, or noun form.

1.2 Parts of the Licence

1.2.1 The structure of this Licence is as follows: article (e.g., 1.), section (e.g., 1.1), subsection (e.g., 1.1.1), paragraph (e.g., 1.1.1(a)), and sub-paragraph (e.g., 1.1.1(a)(i)). Unless otherwise stated, any reference to an article, section, subsection, paragraph, or sub-paragraph means the appropriate part of this Licence.

1.3 Headings

1.3.1 All headings are for convenience and reference only. They are not to be used to define, limit, enlarge, modify, or explain the scope or meaning of any provision.

1.4 Extended Meanings

1.4.1 All words in the singular will include the plural, and vice-versa, where the context allows.

1.4.2 In this Licence:

- (a) "includes" means "includes, without limitation,";
- (b) "including" means "including, without limitation,";
- (c) "Hydro will not use" includes "Hydro will not use, or suffer or permit the use of,";
- (d) "Hydro will not cause" includes "Hydro will not cause, permit, or suffer"; and
- (e) "on the Access Roads" means "in, on, under, or above the Access Road," where the context allows.

2. LICENCE

2.1 Authorization to Use

2.1.1 Canada hereby gives Hydro the authority to use the Access Roads for the Term, subject to the provisions, exceptions, and reservations in this Licence.

Wherever in this Licence Canada is required to do anything, including, but not limited to the giving or withholding of consents or approvals, Canada may act through its authorized representative.

- 2.1.3 Hydro's rights under section 3 of this Licence may be exercised by any Responsible Person, who will be required to abide by such obligations of Hydro as are applicable to the rights being exercised.
- 2.1.4 For greater certainty, Hydro will continue to be liable for the performance of its covenants under this Licence, despite authorizing any Responsible Person to exercise its rights under section 3 of this Licence.
- 2.1.5 Further and for greater certainty, the Parties agree that Hydro is authorized to use the Access Roads for the Term, subject to the provisions, exceptions and reservations in this Licence, throughout any transfer of administration and control of the **Finlay River Site**, including portions thereof or additions thereto, between Canada and the Province of British Columbia and after any setting apart of the **Finlay River Site** as reserve for the use and benefit of the First Nation.

2.2 This is a License

- 2.2.1 Hydro's rights are personal, contractual rights only and do not, explicitly or implicitly:
- (a) create any interest in land;
 - (b) create any rights of tenancy; or
 - (c) give exclusive use and occupation of the Access Roads.

2.3 Other Rights

- 2.3.1 This Licence is subject to all existing encumbrances and rights existing at the date hereof given for or attaching to the Access Roads, whether or not Hydro has notice of them.
- 2.3.2 Subject to the Permitted Uses, Canada may grant or give other rights or interests on the Access Roads to other Persons without the consent of Hydro.
- 2.3.3 Hydro acknowledges that Canada and the First Nation intend for the **Finlay River Site**, including the Access Roads, to be set apart as a reserve, as defined in the **Indian Act**, for the use and benefit of the First Nation and Hydro will not oppose the setting apart as a reserve, subject to the preservation of the rights granted under this Licence.

2.4 Minerals

- 2.4.1 Hydro will not remove or use any Minerals on the Access Roads.

3. USE OF THE ACCESS ROADS

3.1 Types of Use

- 3.1.1 Hydro will not use the Access Roads for any purposes except to enter, pass, exit and re-pass on and across the Access Roads, either with or without vehicles, equipment and machinery of all kinds, for the purposes of:
- (a) gaining access to the Access Lands and Williston Reservoir for purposes authorized, granted, ordered or permitted by the Province from time to time; and
 - (b) to repair any damage Hydro or a Responsible Person may cause to the Access Roads, subject to the terms and conditions set out in section 8.2.1.
- 3.1.2 Hydro will use and occupy the Access Roads in common with every Person having a legal right to use the Access Roads and Hydro agrees not to obstruct unreasonably other Persons' use of the Access Roads.

3.2 No Waste of the Access Roads

- 3.2.1 Hydro will not commit any waste on the Access Roads.

3.3 "As is - Where is" Licence

- 3.3.1 This Licence is issued on an "as is - where is" basis.
- 3.3.2 Hydro confirms that it is satisfied that the Access Roads are suitable for its intended uses and that those uses are within the scope of the Permitted Uses.
- 3.3.3 For greater certainty, neither Canada nor the First Nation has any obligation to maintain the Access Roads.

3.4 Artifacts and Survey Monuments

- 3.4.1 Hydro will immediately notify Canada and the First Nation Council of any Artifact it discovers in the course of effecting any repairs to the Access Roads, and ensure its preservation to the greatest extent practicable.
- 3.4.2 If any legal control survey monuments are disturbed, damaged, or destroyed by Hydro, Hydro will ensure that they are replaced by a duly qualified surveyor to the satisfaction of the Surveyor General of Canada.

3.5 Fences

- 3.5.1 Hydro will not fence or lock the Access Roads.

4. FEES

4.1 Fees To Be Paid

4.1.1 On or before the Commencement Date, Hydro will pay to Canada the prepaid fee of TEN DOLLARS (\$10.00) for the Term.

4.2 GST

4.2.1 No GST is payable by Hydro under this Licence.

4.3 Additional Fees

4.3.1 Upon notice from Canada, Hydro will promptly pay Canada for any damage, loss, or expense of Canada (together with an administration fee of 15% of the damage, loss, or expense) because of a breach of any of Hydro's covenants in this Licence.

4.3.2 This section survives the expiration or early termination of this Licence.

4.4 Arrears to Bear Interest

4.4.1 If any Additional Fees are not paid when due, then Hydro will pay interest on the unpaid amount at the rate established from time to time by the Treasury Board of Canada for Indian moneys held in the Government of Canada's Consolidated Revenue Fund, plus **5%**, calculated quarterly and compounded semi-annually, from the date the payment is due until the date the payment is made by Hydro.

4.4.2 This section will not prejudice any of Canada's other remedies or relieve Hydro from any default in paying Additional Fees when due.

4.4.3 This section survives the expiration or earlier termination of this Licence.

5. ASSIGNMENTS

5.1 Hydro will not assign the whole or any part of its interest in this Licence without the prior written consent of Canada and the First Nation, which consent may not be unreasonably withheld.

5.2 No assignment is valid until the proposed assignee has executed a written agreement covenanting and agreeing with Canada that, upon Canada and the First Nation's respective consents to the assignment, the assignee will observe and perform all of Hydro's covenants under this Licence and any further covenants that Canada considers advisable.

6. LAWS & TAXES

6.1 Laws

6.1.1 Hydro will comply with all applicable Laws concerning this Licence, the Access Roads, or any activity on the Access Roads.

6.2 Taxes

6.2.1 Hydro will have no liability to pay any Taxes relating to its use of the Access Roads.

6.3 Interruption Not a Disturbance

6.3.1 The interruption of any service or facility provided to the Access Roads will not:

- (a) render Canada liable for any loss, injury, or damages to Hydro; or
- (b) relieve the Parties from their obligations under this Licence.

IRONMENT

7.1 Contaminants

7.1.1 Hydro will not use, transport or store Contaminants on the Access Roads, except as may be reasonably required in connection with the Permitted Uses and in strict compliance with Environmental Laws.

7.2 Removal of Contaminants

7.2.1 Hydro will promptly remove any Contaminants that it, or a Responsible Person, has left or Spilled on the Access Roads, and, upon the removal, will promptly deliver to Canada evidence satisfactory to Canada confirming the removal satisfactory to Canada and any Authority.

7.2.2 On or before the end of the Term, Hydro will remove any Contaminants that are on the Access Roads by the actions or omissions of Hydro or a Responsible Person.

7.3 Report of Spill

7.3.1 If Hydro or a Responsible Person Spills any Contaminants on the Access Roads, or if the Spill migrates off the Access Roads to adjoining lands, then Hydro will:

- (a) promptly deliver written notice to Canada and any appropriate Authority of the Spill and details relating to the Spill, including:
 - (i) the time and extent of the Spill;

- (ii) the estimated amount of contaminants involved;
 - (iii) any action taken prior to giving the notice; and
 - (iv) any action that Hydro intends to take in order to contain and rectify the effects of the Spill.
- (b) promptly take all action necessary to contain and rectify the effects of the Spill;
- (c) deliver to Canada an independently-prepared report, satisfactory to Canada, of Hydro's activities under paragraph 7.3.1(b) and the state of the Access Roads after such activities compared with the state of the Access Roads prior to the Spill; and
- (d) do such further activities as Canada may reasonably require, based on the report referred to in paragraph 7.3.1(c), to contain and rectify the effects of the Spill.

7.4 Increased Risks

- 7.4.1 Hydro will not exercise its rights hereunder in any way that materially increases the risk of liability to Canada (whether direct or indirect) as a result of the application of Environmental Laws (as determined by Canada acting reasonably).

7.5 Title to Contaminants

- 7.5.1 Notwithstanding any rule of law to the contrary, any Contaminants that are on the Access Roads, or outside the Access Roads, by actions or omissions of Hydro or a Responsible Person, remain the sole and exclusive property of Hydro and will not become the property of Canada, regardless of any degree of affixation of the Contaminants outside or on the Access Roads.

7.6 Environment

- 7.6.1 Hydro will promptly remediate any environmental damage caused to the Access Roads by its actions or omissions, or by actions or omissions of a Responsible Person, but will only be responsible for remediating environmental conditions caused by Hydro or a Responsible Person.

7.7 Survival of Article

- 7.7.1 This article survives the expiration or earlier termination of this Licence.

NUISANCE & RUBBISH

8.1 Nuisance

8.1.1 Except as reasonably required by the uses permitted under this Licence, Hydro will not cause any nuisance in its use of the Access Roads.

8.2 Rubbish

8.2.1 Hydro will not cause any rubbish or debris to be placed or left on the Access Roads, except as reasonably required for the Permitted Uses or as otherwise permitted in writing by Canada.

9. WORKS

9.1 Construction

9.1.1 Hydro will not construct anything on the Access Roads.

9.2 Maintenance

9.2.1 Hydro will take reasonable care to avoid causing damage to the Access Roads, and will repair, promptly on demand from Canada or the First Nation, any damage that Hydro or a Responsible Person causes to the Access Roads, but shall not be responsible for restoring or repairing:

- (a) ordinary wear and tear related to its use, or
- (b) damage or destruction caused by others,

and will repair and restore any such damaged area to the condition existing immediately prior to the damage occurring, at its sole cost and expense.

10. DEFAULT & CANCELLATION

10.1 Defaults Requiring Notice to Cancel

10.1.1 If Hydro fails to pay any Fees or fails to perform or observe any covenant contained within this Licence or is otherwise in default under this Licence, then Canada may deliver a default notice to Hydro.

10.1.2 If Canada delivers a default notice to Hydro under this section and the default is reasonably capable of being cured within 90 days after the notice is delivered but the default is not cured within that time, then Canada may, by notice to Hydro, immediately declare this Licence at an end.

10.1.3 If Canada delivers a default notice to Hydro under this section and the default is not reasonably capable of being cured within 90 days after the notice is delivered and Hydro fails to:

- (a) begin to cure the default promptly after the notice is delivered; or
- (b) proceed to cure the default with all due diligence to completion,

then Canada may, by notice to Hydro, immediately declare this Licence at an end.

10.1.4 If Canada delivers a default notice to Hydro under this section and the default is not cured within the time permitted, then, without relieving Hydro of its covenants under this Licence and without limiting any other right of Canada, Canada may undertake the performance of any necessary work in order to complete such covenants of Hydro. However, having commenced any work under this section, Canada has no obligation to complete such work.

10.1.5 Canada's expenses under this section are Additional Fees. This subsection survives the expiration or earlier termination of this Licence.

10.2 End of Licence

10.2.1 If Canada declares this Licence at an end, then, except as otherwise expressly provided in this Licence, this Licence and everything contained in it will terminate without any other act or legal proceedings and Canada may enjoy the Access Roads as if the Licence had not been made. Notwithstanding a declaration by Canada that this Licence has ended Canada will be entitled to recover from Hydro:

- (a) the Additional Fees then accrued or accruing;
- (b) all prospective losses and damages arising from any consequential loss or damage caused by Hydro; and
- (c) any other amounts allowed by law,

and enforce any right of action (including a right of action under any provisions that survive the expiration or earlier termination, of this Licence) against Hydro in respect of any prior breach of Hydro's covenants.

10.3 Access to Inspect and Perform

10.3.1 Hydro will not unreasonably interfere with Canada and Canada's officials, employees, servants, agents, contractors, and subcontractors convenient access by any means to the Access Roads at all reasonable times for the purposes of:

- (a) viewing the Access Roads;
- (b) conducting any test or investigation that Canada considers necessary to determine that Hydro's covenants are being met;
- (c) determining the presence of contaminants on the Access Roads; or

- (d) performing any of Hydro's covenants as provided for in this Licence.

Canada will give reasonable notice to Hydro, except in the case of an emergency, when no notice is required.

10.4 Without limiting section 4.3, Canada's expenses under this section are Additional Fees.

10.5 Remedies Cumulative

10.5.1 All rights and remedies of Canada are cumulative and are in addition to and do not exclude any other right or remedy provided in this Licence or otherwise allowed by law. All rights and remedies of Canada may be exercised concurrently.

11. END OF TERM

11.1 Upon expiry or earlier termination of the Licence, Hydro will cease using the Access Roads unless otherwise duly authorized in writing to do so.

12. INDEMNITY

12.1 Hydro's Indemnity of Canada

12.1.1 Hydro **indemnifies** and saves harmless Canada and Canada's officials, employees, servants, agents, contractors, and subcontractors against and from all claims, demands, damages, losses (including economic losses or any diminution in the fair market value of the Access Roads, based on the highest and best use of the Access Roads as opposed to the Permitted Uses), expenses (including legal fees of Canada on a solicitor-client basis), or payments arising from:

- (a) breach of any of Hydro's covenants;
- (b) injury, death, damage, or loss of any Person because of the actions or omissions of Hydro or a Responsible Person; or
- (c) Contaminants on the Access Roads as a result of the actions or omissions of Hydro or a Responsible Person.

12.2 Hydro's Indemnity of the First Nation

12.2.1 Hydro indemnifies and saves harmless the First Nation against and from all claims, demands, damages, losses (including economic losses or any diminution in the fair market value of the Access Roads, based on the highest and best use of the Access Roads as opposed to the Permitted Uses), expenses (including legal fees of the First Nation on a solicitor-client basis), or payments arising from:

- (a) breach of any of Hydro's covenants;

- (b) injury, death, damage, or loss of any Person because of the actions or omissions of Hydro or a Responsible Person; or
- (c) Contaminants on the Access Roads as a result of the actions or omissions of Hydro or a Responsible Person.

12.3 Survival of Article

12.3.1 This article survives the expiration or earlier termination of this Licence.

13. NO REPRESENTATIONS AND WARRANTIES

13.1 Canada, Canada's officials, employees, servants, agents, contractors, or subcontractors, the First Nation, the First Nation Council, or any member of the First Nation has not made any representations or warranties with respect to:

- (a) the condition of the Access Roads;
- (b) compliance of the Access Roads with any Laws; or
- (c) the presence of contaminants on the Access Roads.

Hydro has not relied on any such Person in this regard.

14. DELIVERY

14.1 General Requirement

14.1.1 All deliveries of Fees, notices, or otherwise must be made in accordance with this article to the following addresses:

To Canada:

Director, Lands & Trust Services
Indian and Northern Affairs Canada
600 – 1138 Melville Street
Vancouver, BC V6E 4S3

Fax: (604) 775-7149

To Hydro at:

British Columbia Hydro and Power Authority
12th Floor, 333 Dunsmuir Street
Vancouver, BC V6B 5R3

Attention : **Aki** Lintunen, Director, Properties Division

Fax: (604) 623-3988

To the First Nation:

Tsay Keh Dene First Nation
#11, 1839 First Avenue
Prince George BC V2L 1Y8

Attention: Chief and Council

Fax: (250) 562-8882

14.2 Delivery

14.2.1 If any question arises as to the date on which delivery was made, it will be deemed to have been made:

- (a) (except in the case of Fees) if sent by fax before **3:00 p.m.** Pacific time, on the day of transmission;
- (b) (except in the case of Fees) if sent by fax after **3:00 p.m.** Pacific time, on the next business day;
- (c) if sent by mail, on the sixth **day after** it is mailed; or
- (d) if sent by any means other than fax or mail, the day it is received.

14.2.2 If the postal service is interrupted, or threatened to be interrupted, then any delivery will only be sent by means other than mail.

14.3 Change of Contact Information

14.3.1 Any change in contact information will take effect 30 days after the notice is delivered to the other Party.

15. DISPUTE RESOLUTION

15.1 Use of Federal Court

15.1.1 Any dispute between the Parties may be settled by referral, in the first instance, to the Federal Court and, in such circumstance, the decision of the Federal Court is considered final and binding upon the Parties.

15.1.2 If the Federal Court refuses jurisdiction or otherwise fails to determine the dispute, then the dispute may be referred by either Party to any other court of competent jurisdiction and the Parties may exercise any other right or remedy they may have under this Licence or otherwise.

16. GENERAL PROVISIONS

16.1 Hydro's Covenants at Own Expense

16.1.1 All of Hydro's covenants are at its own expense.

16.2 All Terms are Covenants and Conditions

16.2.1 All agreements, terms, conditions, covenants, provisions, duties, and obligations to be performed or observed by Hydro under this Licence are deemed to be covenants as well as conditions.

16.3 Survival of Obligations

16.3.1 If a provision states that it survives the expiration or earlier termination of this Licence, then the survival of the provision is only to the extent required for the performance of any covenants pertaining to it, and Hydro's entry on the Access Roads after the expiration or earlier termination of this Licence will only be at such times and upon such terms and conditions as Canada may from time to time specify in writing.

16.4 Governing Law

16.4.1 This Licence will be governed by, and is to be interpreted in accordance with, the applicable laws of Canada and British Columbia.

16.5 No Modifications

16.5.1 No modifications of this Licence are effective unless in writing and executed in the same manner as this Licence.

16.6 Time is of the Essence

16.6.1 Time is of the essence in this Licence.

16.7 No Presumption

16.7.1 No ambiguity in any of the terms of this Licence will be interpreted in favour of any Party.

16.8 Severability

16.8.1 If any part of this Licence is declared or held invalid for any reason, then 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 Licence had been executed without the invalid portion.

16.9 Binding on Successors

16.9.1 This Licence will be for the benefit of, and be binding upon, the heirs, executors, administrators, successors, assigns, and other legal representatives, as the case may be, of each Party.

16.10 No Waiver

16.10.1 No condoning, excusing, or overlooking by Canada of any default of the Licence operates as a waiver of, or otherwise affects the rights of, Canada in respect of any continuing or subsequent default.

16.10.2 No waiver will be inferred from anything done or omitted to be done by Canada, but only from an express waiver in writing.

16.11 No Assumption of Responsibility by Canada

16.11.1 No consent or absence of consent by Canada will in any way be an assumption of responsibility or liability by Canada for any matter subject to or requiring Canada's consent.

16.12 Corporate Authority

16.12.1 Hydro warrants and represents to Canada that Hydro has the authority to enter into this Licence and to perform all of Hydro's covenants contained in this Licence.

16.13 Consent of the First Nation

16.13.1 The First Nation hereby consents to Canada granting this Licence to Hydro.

IN WITNESS WHEREOF the Parties have executed this Licence as of the date first written on page 1.

EXECUTED in the presence of:

) **Her Majesty in Right of Canada**, as
) represented by the Minister of Indian Affairs and
) Northern Development
)
)

Witness (as to all signature)

) _____
) **Jeff Loucks**,
) Regional Director General,
) Indian Affairs and Northern Development (B.C.
) Region)

SCHEDULE "A" -

DEFINITIONS

"**Access Lands**" means those lands between the eastern boundary of the **Finlay River Site** and the edge of the Williston Reservoir when the Williston Reservoir is at its low pool elevation of 2106.43 ft (642.04m), and which following all anticipated addition to and removal of land from the **Finlay River Site**, the Parties anticipate will be as shown hatched in the sketch attached as Schedule C (subject to formal survey).

"Access Roads" means those roads existing from time to time through the **Finlay River Site**, whether or not it has been set apart as an Indian reserve, and whether or not its boundaries have been altered, which provide direct access through the **Finlay River Site** to the Access Lands;

"Additional Fees" means the amounts set out in section 4.3.

"Artifact" means any burial site, human remains, or any Indian artifact of archaeological or cultural interest.

"Authority" means any one, or any combination of, federal, provincial, territorial, municipal, local, and other governmental and quasi-governmental authorities, departments, commissions, and boards having jurisdiction, including any law or bylaw of the First Nation Council not inconsistent with this Licence.

"CEAA" means the *Canadian Environmental Assessment Act*, S.C. 1992, c. 37, and any regulations made under it, all as amended or replaced from time to time.

"Commencement Date" means the date first written on page one of this Licence.

"Contaminant" includes any contaminant, toxic substance, hazardous substance, hazardous waste, hazardous recyclable, ozone-depleting substance, halocarbon, pesticide, waste, or any similar substance, and any substance defined or referred to as such under any Laws.

"Environment" means the components of the earth and includes:

- (a) air, land, and water;
- (b) all layers of the atmosphere;
- (c) all organic and inorganic matter and living organisms; and
- (d) the interacting natural systems that include components referred to in paragraphs (a) to (c).

"Environmental Laws" means:

- (a) any Laws relating, in whole or in part, to the protection and enhancement of the Environment, public health, public safety, and the transportation of dangerous goods; and
- (b) any specifications, mitigative measures, and environmental protection measures described, contained, or referred to in any audit, report, or environmental screening decision pertaining to any Project on the Access Roads.

"Federal Court" means the court established by the *Federal Courts* Act, R.S.C. 1985, c. F-7, and any regulations made under it, all as amended or replaced from time to time.

"Fees" means Additional Fees, Prepaid Fees, applicable GST, and any interest on any of them

"**Finlay** River Site" means the lands which Canada has administration and control of and described as:

Finlay River Site, District Lot 7126 Cassiar District, comprising 847 ha, as outlined in Survey Plan IT 1553 as lodged in the office of the Surveyor General. This parcel is located at the northern tip of Williston Lake Reservoir, west of the outlet of **Finlay** River,

which description the Parties anticipate will be amended to include the addition and removal of lands.

"**First** Nation Council" means the First Nation's "council of the band" as that term is used in the *Indian* Act.

"**FRPA**" means the *Federal Real Property and Federal Immovables* Act, 1991, c. 50, and any regulations made under it, all as amended or replaced from time to time.

"GST" means any sales, use, consumption, business, goods, services, value-added, or other similar tax applicable to the payment of Fees.

"**Indian** Act" means the *Indian* Act, R.S.C. 1985, c. 1-5, and any regulations made under it, all as amended or replaced from time to time.

"Laws" means all laws, statutes, regulations, bylaws, rules, codes, guidelines, approvals, permits, licenses, or other authorizations, standards, declarations, notices, ordinances, requirements, and directions of any Authority in force from time to time.

"Licence" means this Licence Agreement, and includes any Schedules.

"Minerals"

- (a) means ore of metal and every natural substance that can be mined and that:

- (i) occurs in fragments or particles lying on, above, or adjacent to the bedrock source from which it is derived and commonly described as talus; or
 - (ii) is in the place or position in which it was originally formed or deposited, as distinguished from loose, fragmentary, or broken rock or float, which, by decomposition or erosion of rock, is found in wash, loose earth, gravel, or sand; and
- (b) includes coal, petroleum, and all other hydrocarbons (regardless of gravity and how or where recovered), natural gas, methane, coal bed methane, and other gases, building and construction stone, limestone, dolomite, marble, shale, clay, sand, and gravel.

"Party" means a party to this Licence.

"Person" includes any individual, partnership, firm, company, corporation, incorporated or unincorporated association or society, co-tenancy, joint venture, syndicate, fiduciary, estate, trust, bank, government, governmental or quasi-governmental agency, board, commission or authority, organization or any other form of entity howsoever designated or constituted, or any group, combination, or aggregation of any of them.

"Permitted **Uses**" are those uses authorized in section 3.1.

"**Prepaid Fees**" means the amount set out in section 4.1.

"Responsible Person" includes Hydro's directors, officers, servants, employees, agents, contractors and subcontractors, licensees, invitees, or any Person over whom Hydro may reasonably be expected to exercise control or is in law responsible.

"Schedule" means an attachment to this Licence labelled as a "Schedule," which forms part of and is integral to the agreement between the Parties.

"Spill" includes discharge, dispose, spray, inject, inoculate, abandon, deposit, spill, leak, leach, seep, pour, emit, empty, throw, dump, place, and exhaust.

"Taxes" includes taxes, trade licences, rates, levies, duties, and assessments of any kind.

"Term" means the period commencing on the Commencement Date and continuing for so long as Hydro, or any successor or assign, requires access to the Access Lands and Williston Reservoir and for so long as Hydro's use of the Access Lands is authorized by the Province of British Columbia.

**SCHEDULE "B" -
BAND COUNCIL RESOLUTION**

WHEREAS:

"A. Tsay Keh Dene First Nation, Her Majesty The Queen In Right of Canada, The Queen in Right of the Province of British Columbia and British Columbia Hydro have negotiated the terms of an agreement (the "Implementation and Amending Agreement") to amend and implement the terms of the agreement entered into by Tsay Keh Dene First Nation, Her Majesty The Queen in Right of Canada, Her Majesty The Queen in Right of the Province of British Columbia and British Columbia Hydro dated September **22, 1989** and which agreement was subsequently amended by agreement dated March **17, 1994**;

B. On March **30, 2009**, Tsay Keh Dene First Nation, British Columbia Hydro & Power Authority and Her Majesty The Queen in Right of the Province of British Columbia entered into a Ratification Agreement wherein Tsay Keh Dene First Nation agreed to implement certain approval procedures with regard to a member ratification process to approve the terms of the Implementation and Amending Agreement;

C. The ratification process stipulated in the Ratification Agreement has been fully implemented and complied with and the members of Tsay Keh Dene First Nation have approved the terms of the Implementation and Amending Agreement on behalf of the Tsay Keh Dene First Nation.

RESOLVED that the Chief and Council of Tsay Keh Dene First Nation hereby authorize Chief Ella Pierre of the Tsay Keh Dene First Nation to execute and deliver the Implementation and Amending Agreement on behalf of the Tsay Keh Dene First Nation and any and all documents, instruments and consents to be executed and delivered by Tsay Keh Dene First Nation pursuant to the terms of such Agreement."

Certified a true copy of the original Band Council Resolution passed by the Chief and Council of Tsay Keh Dene First Nation on _____, 2009.

**SCHEDULE "C" -
ACCESS LANDS**

Schedule 1
Map Depicting Access Lands



The area designated as the Access Lands (shown hatched) is for illustrative purposes only and does not make any representation with respect to the actual area at any given elevation.

The area may take on a different shape and size but will not extend beyond the area exposed at the lower limit (642.04 metres) of the current water license.

DSGN		BCHydro ENGINEERING TRANSMISSION DIVISION SURVEY SERVICES			
INSEP					
CHK					
DFIG	ICW				
GRND					
HMP					
REV		SCHEDULE 1 ACCESS LANDS Access Agreement			
ADPT					
DATE	MARCH 13, 2005	DISTR	DWG/LAYOUT	1006-S11-D2 / S1_Access	R 1

NO	REVISIONS	DATE	DESIGNED	INSEP	DFIG	BSP	REV	ADPT
1	CHANGED HATCH LABEL FROM 7ND ACCESS AREA TO ACCESS LANDS	2009-03-17						

Schedule 2

BC Hydro Activities on the Access Lands:

- (a) flood, saturate, permeate, overflow, and cover the Access Lands or any part or parts thereof with flood, slack or backwater caused or created by the Reservoir;
- (b) cause or permit debris to be deposited on the Access Lands and remain on the Access Lands, in connection with overflowing, flooding or covering of the Access Lands;
- (c) cause or permit the erosion of the Access Lands, and sloughing and slides on and from the Land, including loss of acreage, elevation and foreshore of the Land, in connection with the overflowing, flooding or covering of the Access Lands;
- (d) cause or permit dust to arise and circulate on or from the Access Lands;
- (e) enter upon the Access Lands at its sole discretion for or in connection with the uses authorized in the foregoing subsections (a) to (d) of this Schedule 3, in order to:
 - (i) clear, remove, destroy, burn, bury or dispose of any building, structure, timber or other natural growth, obstruction, accumulation, trash, filth or other thing, including any building, structure, trailer, tent or shelter for human habitation, which in the sole opinion of BC Hydro might in any way interfere with:
 - A. navigation or flood control;
 - B. the operation of the Dam and the Reservoir;
 - C. the Reservoir or the margin of the Reservoir, so as to render it inaccessible, unsafe or unsanitary, or
 - D. the exercise of any of the activities in subsections (a) to (d) of this Schedule 3;
 - (ii) remove, clear, destroy or dispose of anything placed or constructed on the Access Lands in contravention of this Agreement;
 - (iii) erect structures and signs;
 - (iv) excavate and do such other work as may be desirable in connection with the needs of navigation or flood control or the operation of the Dam or Reservoir;
 - (v) grade, contour, shape and place **riprap** on the Access Lands;

- (vi) launch, land, load and unload boats and barges (including installation, construction and storage of docks and boat ramps);
 - (vii) carry out environmental and geotechnical work;
 - (viii) carry out archaeological and heritage investigations;
 - (ix) implement fisheries projects and habitat enhancement;
 - (x) implement erosion, dust and vegetation management measures;
 - (xi) carry out monitoring work;
 - (xii) carry out any works or activities related to requirements under applicable water licences, water use plans, or as required by the Water Comptroller or his successor or by any other applicable authority; and
 - (xiii) undertake such other activities as BC Hydro may deem desirable or necessary; and
- (f) generally to do all acts on the Access Lands necessary or incidental to the foregoing, for BC Hydro's operation and maintenance of the Dam and Reservoir, including construction and maintenance of related works. For greater certainty, BC Hydro may but will not have the obligation to construct, maintain, or replace any road or trail on the Access Lands, at its sole option, to any standard it sees fit, at any time it sees fit.

(herein collectively called the "BC Hydro Activities")

Schedule 3

Map Depicting Removed Lands

Schedule 4
Map Depicting Road Portion



D. L. 7126
CASSIAR DISTRICT

NEW D.L. BOUNDARY
ROAD PORTION

WILLISTON
RESERVOIR

		SCHEDULE 4 ROAD PORTION Access Agreement	
TRANSMISSION DIVISION SURVEY SERVICES		1006-S11-D2 / S4_Access	
ICW		DATE: MARCH 12, 2009	
DTSR		DWG/LAYOUT: 1006-S11-D2.DWG	
REVISIONS		NOT TO BE REPRODUCED WITHOUT PERMISSION	
NO	1	Title changed from Schedule 2 to Schedule 4, Drawing Number changed from 1006-S11-D2 / S4_Access to 1006-S11-D2 / S4_Access	R 1

SCHEDULE 7
FORM OF BCR

See attached

WHEREAS:

"A. Tsay Keh Dene First Nation, Her Majesty The Queen In Right of Canada, The Queen in Right of the Province of British Columbia and British Columbia Hydro have negotiated the terms of an agreement (the "Implementation and Amending Agreement") to amend and implement the terms of the agreement entered into by Tsay Keh Dene First Nation, Her Majesty The Queen in Right of Canada, Her Majesty The Queen in Right of the Province of British Columbia and British Columbia Hydro dated September 22, 1989 and which agreement was subsequently amended by agreement dated March 17, 1994;

B. On March 30, 2009, Tsay Keh Dene First Nation, British Columbia Hydro & Power Authority and Her Majesty The Queen in Right of the Province of British Columbia entered into a Ratification Agreement wherein Tsay Keh Dene First Nation agreed to implement certain approval procedures with regard to a member ratification process to approve the terms of the Implementation and Amending Agreement;

C. The ratification process stipulated in the Ratification Agreement has been fully implemented and complied with and the members of Tsay Keh Dene First Nation have approved the terms of the Implementation and Amending Agreement on behalf of the Tsay Keh Dene First Nation.

D. Pursuant to Section 5 of the Implementation and Amending Agreement Tsay Keh Dene First Nation has agreed and consented to the grant by Canada of a License for Road Access to BC Hydro over the current Tsay Keh Dene Village site.

RESOLVED that the Chief and Council of Tsay Keh Dene First Nation hereby consent and agree to the issuance of the Licence for Road Access to BC Hydro, and to its amendment and replacement as contemplated by Sections **5(b)** and **5(d)** (ii) of the Implementation and Amending Agreement and hereby authorize Chief **Ella** Pierre of the Tsay Keh Dene First Nation to execute and deliver the License for Road Access to BC Hydro on behalf of the Tsay Keh Dene First Nation."

Certified a true copy of the original Band Council Resolution passed by the Chief and Council of Tsay Keh Dene First Nation on _____, 2009.

SCHEDULE 8

CONFIRMATION OF COMPATIBILITY

Department of Indian and Northern Affairs
Les Terrasses de la Chaudiere
10 Wellington Street
Hull, Quebec K1A 0H4

Attention: Associate Deputy Minister

Dear Sirs/Mesdames:

Re: Agreement (the "Settlement Agreement") dated September 22, 1989 among Tsay Keh Dene ("Tsay Keh"), BC Hydro and Power Authority ("BC Hydro"), Her Majesty the Queen in Right of Canada ("Canada") and Her Majesty the Queen in the Right of British Columbia ("British Columbia"), as amended on March 17, 1994 (the "Amending Agreement") and _____, 2009 (the "Implementation and Amending Agreement")

As contemplated by section 3.1.2.1 of the Settlement Agreement and section 8 of the Implementation and Amending Agreement, BC Hydro and Tsay Keh confirm to Canada that the lands selected for the purpose of the Proposed Reserves, as defined in the Implementation and Amending Agreement and District Lot 7119 are compatible with the operation of the Williston Reservoir.

BC Hydro and Tsay Key agree that nothing in this confirmation of compatibility shall add to, detract from, or be used to interpret the rights, obligations or allocation of risk among Tsay Keh, BC Hydro or British Columbia contained in the Final Agreement and the Certainty Provisions Agreement (together the "Final Agreement") among Tsay Key, BC Hydro and British Columbia each dated the ____ day of _____, 2009 nor may anything in this confirmation of compatibility form the basis of any action, suit or claim by any party to the Final Agreement against another party to the Final Agreement.

TSAY **KEH** DENE FIRST NATION

By:

Authorized Signatory

Dated: _____, 2009

BRITISH COLUMBIA HYDRO AND
POWER AUTHORITY

By:

Authorized Signatory

Dated: _____, 2009

SCHEDULE 9

FORMS OF LETTERS TO COMPTROLLER OF WATER RIGHTS

See attached

Jay Joyner
Peace WLR Implementation Manager
Generation Environment & Social Issues
Phone: (604) 528-1715
Fax: (604) 528-2905
Email: jay.joyner@bchydro.com

March ●, 2009

Mr. **Pieter** Bekker
Deputy Comptroller of Water Rights
Ministry of Environment
PO Box 9340 Stn Prov Govt
Victoria, BC V8W 9M1

Dear **Pieter**:

Re: Peace Order Water Act s.88 (File No. 76975-35/Peace)

Request for Delay of Submission of Terms of Reference for:

GMSWORKS#23 WLL Erosion Control Trial and GSMON#19 WLL Erosion Control

The **GMSWORKS#23** physical works project relates to clause **3(b)** of Schedule A to the Peace Order of 09 August **2007** (the Order), which reads in part:

The licensee shall submit within 9 months of the date of this Order, for approval by the Comptroller, terms of reference to:...

b. control shoreline erosion in front of the Tsay Keh Village...

The **GSMON#19** monitoring study relates to clause **6(e)** of Schedule A to the Order, which reads in part:

The licensee shall submit within 12 months of the date of this Order, for approval by the Comptroller, terms of reference for the following effectiveness monitoring programmes on Williston Lake reservoir to determine:...

e. the effectiveness of erosion control measures in 3 b above...

The terms of reference (**ToR**) for the physical works project was originally due to be submitted by 09 May 2008, extended to **28 November 2008** pursuant to Glen Davidson's

letter of 01 May 2008, and to 29 May 2009 pursuant to your letter dated 27 November 2008. The **ToR** for the monitoring study was originally due to be submitted by 09 August 2008, extended to 28 November 2008 pursuant to Glen Davidson's letter of 01 May 2008 (in which it was incorrectly labelled "GMSWORKS 19" and related to clause **3(b)**), and to 29 May 2009 pursuant to your letter dated 27 November 2008.

The issue of erosion control at Tsay Keh Village has been an integral part of litigation settlement negotiations between the Tsay Keh Dene First Nation (TKD), BC Hydro, and the Province of British Columbia (BC). TKD, BC Hydro and BC have now reached a settlement which obviates the need for the two erosion projects and the Parties have agreed that the erosion control measures will no longer be required once the settlement agreement has been implemented.

The settlement agreement contemplates a land exchange between Canada and BC; the lands abutting the reservoir which are subject to erosion will be exchanged for lands which have been selected by TKD on the northern boundary of the village (the "new lands"). TKD reserve boundaries will be realigned to include the new lands and a reservoir-side boundary set back to a location agreed to be sufficient to remove concerns of erosion of reserve lands. TKD will be able to claim against BC Hydro for any future erosion of the new reserve which is directly attributable to reservoir operations.

The land exchange and reserve creation process will commence in the spring when surveys can be conducted. TKD wishes BC Hydro's current obligations under the WUP to remain until BC has transferred the new lands to Canada. Accordingly, we request that the date for submission of **ToR** relating to these two projects be delayed for a period of ●, that being the estimated timeframe for the transfer of the new lands.

Upon completion of the transfer, BC Hydro will make a second application requesting relief from the obligation to submit **ToR** required by clauses **3(b)** and **6(e)** of Schedule A to the Order and from any other obligations to carry out the erosion physical works projects and monitoring studies recommended by the Peace Water Use Plan Committee under any water licence or Water Act order.

In the interim, BC Hydro will continue to update you via the Peace project annual report on WUP implementation.

TKD support this application and a letter to that effect is attached.

Thank you for your consideration of this request.

Yours truly,

Jay Joyner
Peace **WLR** Implementation Manager

c: **Ella** Pierre, Chief, Tsay Keh Dene First Nation

[Tsay Keh Dene letterhead]

[date]

Mr. **Pieter** Bekker
Deputy Comptroller of Water Rights
Ministry of Environment
PO Box 9340 Stn Prov Govt
Victoria, BC V8W 9M1

Dear **Pieter**:

Re: Peace Order Water Act s.88 (File No. 76975-35/Peace)

Request for Delay of Submission of Terms of Reference for:

GMSWORKS#23 WLL Erosion Control Trial and GSMON#19 WLL Erosion Control

The Tsay Keh Dene First Nation hereby confirm its support of the above captioned application by BC Hydro dated _____

Yours truly,

Ella Pierre

Chief, Tsay Keh Dene First Nation

c: Jay Joyner
Peace WLR Implementation Manager

Jay Joyner

Peace WLR Implementation Manager
Generation Environment & Social Issues
Phone: (604) 528-1715
Fax: (604) 528-2905
Email: jay.joyner@bchydro.com

[date]

Mr. Pieter Bekker
Deputy Comptroller of Water Rights
Ministry of Environment
PO Box 9340 Stn Prov Govt
Victoria, BC V8W 9M1

Dear Pieter:

Re: Peace Order Water Act s.88 (File No. 76975-35/Peace)

Relief from the Ordered Requirement to Submit Terms of Reference for:

GMSWORKS#23 WLL Erosion Control Trial and GSMON#19 WLL Erosion Control

The **GMSWORKS#23** physical works project relates to clause **3(b)** of Schedule A to the Peace Order of 09 August 2007 (the Order), which reads in part:

The licensee shall submit within 9 months of the date of this Order, for approval by the Comptroller, terms of reference to:...

b. control shoreline erosion in front of the Tsay Keh Village...

The **GMSMON#19** monitoring study relates to clause **6(e)** of Schedule A to the Order, which reads in part:

The licensee shall submit within 12 months of the date of this Order, for approval by the Comptroller, terms of reference for the following effectiveness monitoring programmes on Williston Lake reservoir to determine:...

e. the effectiveness of erosion control measures in 3 b above...

The terms of reference (**ToR**) for the physical works project were originally due to be submitted by 09 May **2008**, extended to 28 November **2008** pursuant to Glen Davidson's letter of 01 May 2008, to 29 May 2009 pursuant to your letter dated 27 November 2008, and to 29 May 2012 pursuant to your letter dated •. The **ToR** for the monitoring study were originally due to be submitted by 09 August 2008, extended to 28 November 2008 pursuant to Glen Davidson's letter of 01 May 2008 (in which it was incorrectly labelled "GMSWORKS 19" and related to clause **3(b)**), to 29 May 2009 pursuant to your letter dated 27 November **2008**, and to • pursuant to your letter dated •.

Further to our letter of ●, we can now confirm that the anticipated transfer of the lands to Canada, as selected by the Tsay Keh Dene First Nation (TKD) pursuant to the settlement agreement between TKD, BC Hydro, and the Province of British Columbia dated ●, has been completed. As a result, there is no First Nation, agency, or stakeholder with an interest in our proceeding with the two erosion projects. We therefore request relief from the obligation to submit **ToR** required by clauses **3(b)** and **6(e)** of Schedule A to the Order and from any other obligations to carry out the erosion physical works projects and monitoring studies recommended by the Peace Water Use Plan Committee under any water licence or Water Act order.

A letter of support from TKD is attached.

Thank you for your consideration of this request.

Yours truly,

Jay Joyner
Peace WLR Implementation Manager

c: **Ella** Pierre, Tsay Keh Dene First Nation

[Tsay Keh Dene letterhead]

[date]

Mr. **Pieter** Bekker
Deputy Comptroller of Water Rights
Ministry of Environment
PO Box 9340 Stn Prov Govt
Victoria, BC V8W 9M1

Dear **Pieter**:

Re: Peace Order Water Act s.88 (File No. 76975-35/Peace)

Relief from the Ordered Requirement to Submit Terms of Reference for:

GMSWORKS#23 WLL Erosion Control Trial and GSMON#19 WLL Erosion Control

The Tsay Keh Dene First Nation hereby confirm its support of the above captioned application by BC Hydro dated _____

Yours truly,

Ella Pierre
Chief, Tsay Keh Dene First Nation

c: Jay Joyner
Peace WLR Implementation Manager

SCHEDULE 10
FINLAY RIVER SITE PLAN

See attached



1 Changed title from Schedule 8 to Schedule 10. Drawing Number changed from 1006-S11-D2 / S9_Jmp to 1006-S11-D2 / S10_Jmp

NO	REVISIONS	DATE	DESIGNED	INDEP CHK	DTG CHK	INSP	REV	ACPT
		2009-03-16			SC	AC		

DIGN	
INDEP CHK	
DTG	ICW
DTG CHK	
INSP	
REV	
ACPT	

BChydro ENGINEERING
TRANSMISSION DIVISION SURVEY SERVICES

SCHEDULE 10
FINLAY RIVER SITE PLAN
Implementation and Amending Agreement

DATE: MARCH 12, 2009 DISTR: DWG/LAYOUT: 1006-S11-D2 / S10_Jmp R 1

SCHEDULE 11

TSAY **KEH** ENTERPRISES AGREEMENT

This AGREEMENT is made the ____ of _____, 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 <*> day of <*>, 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 1 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.

1.2 **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.

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

1.4 **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 REPRESENTATIONS

2.1 **Representations and Warranties of Enterprises.** 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 7119 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 7119 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 7119 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 the 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 - 350 7 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:

<*>

<*>

**BRITISH COLUMBIA HYDRO AND
POWER AUTHORITY**

By:

[Bob Elton, President and Chief Executive
Officer]

**HER MAJESTY THE QUEEN IN
RIGHT OF THE PROVINCE OF
BRITISH COLUMBIA**

By:

Honourable <*>,
[Minister of Aboriginal Relations and
Reconciliation]

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 Reserve 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.

SCHEDULE 12
FORM OF FEDERAL DRAFT RECOMMENDATION AND ORDER IN
COUNCIL

See attached

DRAFT Order in Council

Her Excellency the Governor General in Council, on the recommendation of the Minister of Indian Affairs and Northern Development, **pursuant** to paragraph 39(1)(c) and section 40 of **the** Indian Act, hereby **accepts the** absolute surrender made to Her Majesty in right of Canada by the Tsay Keh Dene **First** Nation (formerly the **Ingenika** Indian Band) of **the** whole of **Tutu Creek Indian Reserve No. 4**, in the **Province** of **British** Columbia, and of a portion of Parsnip Indian Reserve No. 5, in the **Province** of British Columbia, which absolute surrender was assented to by the Tsay Keh Dene First Nation on September 13, 1989, and is set out in the attached schedule.

DRAFT

SCHEDULE 13
FORM OF FLOWAGE EASEMENT

See attached

LAND TITLE ACT
FORM C
(Section 233)
Transferor of
British Columbia

GENERAL INSTRUMENT – PART I (This area for Land Title Office use)

PAGE 1 of 1 page(s)

1. APPLICATION: (Name, address, phone number and signature of applicant, applicant's solicitor or agent)

MAI REMPEL, Solicitor for BC Hydro and Power Authority, 12th Floor, 333 Dunsmuir Street, Vancouver, B.C., V6B 5R3

Signature of Solicitor – Mai Rempel

2. PARCEL IDENTIFIER(S) AND LEGAL DESCRIPTION(S) OF LAND: *
(PID) (LEGAL DESCRIPTION)

024-192-562

District Lot 7119 Cassiar District

3. NATURE OF INTEREST: *
DESCRIPTION

DOCUMENT REFERENCE
(page and paragraph)

PERSON ENTITLED TO INTEREST

Statutory Right of Way over part
shown on Plan BCP

Pages 5 and 6, section 1

Transferee

Section 219 Covenant

Page 6, section 2

Transferee

Section 219 Covenant

Pages 6 and 7, section 3

Transferee

Statutory Right of Way

Page 7, section 4

Transferee

4. TERMS: Part 2 of this instrument consists of (select one only)

(a) Filed Standard Charge Terms

D.F. Number:

(b) Express Charge Terms

Annexed as Part 2

(c) Release

There is no Part 2 of this instrument

A selection of (a) includes any additional or modified terms referred to in Item 7 or in a schedule annexed to this instrument. If (c) is selected, the charge described in Item 3 is released or discharged as a charge on the land described in Item 2.

5. TRANSFEROR(S): *

TSAY **KEH** ENTERPRISES LTD. (Inc. No. 382687)

6. TRANSFEREE(S): (including postal address(es) and postal code(s))*

BRITISH COLUMBIA HYDRO AND POWER AUTHORITY, 333 Dunsmuir Street, Vancouver, BC, V6B 5R3

7. ADDITIONAL OR MODIFIED TERMS: *

NIA

SCHEDULE "A" TO PART I OF GENERAL INSTRUMENT

REDUCED COPY OF PLAN

FLOWAGE LOT

TERMS OF INSTRUMENT – PART 2

FLOWAGE EASEMENT

In these Express Charge Terms, the following capitalized terms will have the following meanings, respectively:

"**BC Hydro**" means the Transferee as set out in Item 6 on Page 1 (Form C) of the General Instrument – Part 1;

"**Dam**" means the W.A.C. Bennett Dam, and includes any related power generating plant and/or associated works;

"**Flowage Lot**" means that area of the Land shown outlined in heavy black line on the photo-reduced copy of plan attached as Schedule "A" to Part I of the General Instrument;

"**Land**" means the land as set out in Item 2 on Page 1 (Form C) of the attached General Instrument – Part 1;

"**Land Title Act**" means the *Land Title Act* of British Columbia, R.B.S.C. 1996, c.250, and any amendments thereto and re-enactments thereof;

"**Reservoir**" means the body of water upriver from the Dam known as Williston Reservoir, and includes the mouths of rivers and streams entering into the reservoir; and

"**Transferor**" means the Transferor as set out in Item 5 on Page 1 (Form C) of the attached General Instrument – Part 1.

WHEREAS:

- A. In order to impound the waters of the Peace River and Williston Lake for electric power generation purposes, and for the purposes of controlling the flow of water along the Peace River, BC Hydro constructed the Dam;
- B. The Dam has created the Reservoir upriver from the Dam;
- C. The Transferor is the owner of the Land, which includes the Flowage Lot;
- D. The Flowage Lot is adjacent to the Reservoir and it may be or may have been flooded or injuriously affected from time to time by the operation of the Dam and the Reservoir;
- E. BC Hydro requires certain rights, liberties and a statutory right of way over the Flowage Lot; and
- F. This Agreement is necessary for the operation and maintenance of BC Hydro's undertaking.

NOW THEREFORE in consideration of the payment by BC Hydro to the Transferor of ONE DOLLAR (\$1.00), and other good and valuable consideration, the receipt and sufficiency of which is acknowledged by the Transferor, the parties hereby covenant and agree as follows:

1. **Section 218 Statutory Right of Way.** Pursuant to section 218 of the *Land Title Act*, the Transferor hereby grants to BC Hydro the right, liberty and right of way to:

- (a) flood, saturate, permeate, overflow and cover the **Flowage Lot** or any part or parts thereof with flood, slack or backwater caused or created by the Reservoir;
- (b) cause or permit debris to be deposited on the **Flowage Lot** and remain on the **Flowage Lot**, in connection with overflowing, flooding or covering of the **Flowage Lot**;
- (c) cause or permit the erosion of the **Flowage Lot**, and sloughing and slides on and from the **Flowage Lot**, including loss of surface acreage, elevation and foreshore of the **Flowage Lot**, in connection with the overflowing, flooding or covering of the **Flowage Lot** ;
- (d) cause or permit dust to arise and circulate on or from the **Flowage Lot**;
- (e) enter upon the **Flowage Lot** at its sole discretion for or in connection with the uses authorized in the foregoing subsections 1(a) to 1(d) of this Agreement, in order to:
 - (i) clear, remove, destroy, burn, bury or dispose of any building, structure, timber or other natural growth, obstruction, accumulation, trash, filth or other thing, including any building, structure, trailer, tent or shelter for human habitation, which in the sole opinion of BC Hydro might in any way interfere with:
 - A. navigation or flood control;
 - B. the operation of the Dam and the Reservoir;
 - C. the Reservoir or the margin of the Reservoir, so as to render it inaccessible, unsafe or unsanitary, or
 - D. the exercise of any of the rights granted in subsections 1(a) to 1(d) of this Agreement;
 - (ii) remove, clear, destroy or dispose of anything placed or constructed on the **Flowage Lot** in contravention of this Agreement;
 - (iii) erect structures and signs;
 - (iv) excavate and do such other work as may be desirable in connection with the needs of navigation or flood control or the operation of the Dam or Reservoir;

- (v) grade, contour, shape and place riprap on the Flowage Lot;
 - (vi) launch, land, load and unload boats and barges (including installation, construction and storage of docks and boat ramps);
 - (vii) carry out environmental and geotechnical work;
 - (viii) carry out archaeological and heritage investigations;
 - (ix) implement fisheries projects and habitat enhancement;
 - (x) implement erosion, dust and vegetation management measures;
 - (xi) carry out monitoring work;
 - (xii) carry out any works or activities related to requirements under applicable water licences, water use plans, or as required by the Water Comptroller or his successor or by any other applicable authority; and
 - (xiii) undertake such other activities as BC Hydro may deem desirable or necessary; and
- (f) generally to do all acts on the Flowage Lot necessary or incidental to the foregoing or to BC Hydro's operation and maintenance of the Dam and Reservoir, including construction and maintenance of related works. For greater certainty, BC Hydro shall have the right but not the obligation to construct, maintain, replace or remove any road or trail on the Flowage Lot, at its sole option, to any standard it sees fit, at any time it sees fit.

2. Section 219 Covenant. Pursuant to section 219 of the *Land* Title Act, the Transferor hereby covenants with BC Hydro that the Transferor will use the Flowage Lot exclusively in a manner that is consistent with, and not detrimental to the statutory right of way granted to BC Hydro in section 1 above, and that the uses by BC Hydro set out in paragraphs 1(a)-1(e) are all permitted uses of the Flowage Lot.

3. Section 219 Covenant. Pursuant to section 219 of the *Land* Title Act, the Transferor hereby covenants with BC Hydro that the Transferor will not, directly or indirectly, without the prior written consent of BC Hydro:

- (a) make, place, erect or maintain on the Flowage Lot any improvement, building, structure, material or thing;
- (b) plant any growth, tree or vegetation, or harvest, cut down or remove any growth, tree or vegetation;
- (c) use the Flowage Lot for any business or industry;

- (d) will not permit or allow anything which will interfere with or obstruct BC Hydro and its employees, officers, agents, contractors or subcontractors from the use of and access to the **Flowage Lot** in accordance with BC Hydro's rights hereunder; or
- (e) make, place or erect any camp, dwelling, cemetery, lookout, ceremonial site, home, trailer, tent or shelter upon the **Flowage Lot**, whether intended to be permanent or temporary;

or grant to any third party the right to carry out any of the foregoing, or the right to carry out any activity contrary to the rights of BC Hydro hereunder.

4. Statutory Right of Way for Access. Pursuant to section 218 of the Land *Title Act*, the Transferor hereby grants to BC Hydro the right to use the Land for access to and from the **Flowage Lot** and the Reservoir, on the following terms and conditions:

- (a) BC Hydro shall be entitled to use any road or trail existing on the Land from time to time for access to and from the **Flowage Lot**, but only for the purposes described in this Agreement;
- (b) BC Hydro shall be entitled to park a vehicle or vehicles on or adjacent to any existing road or trail on the Land, provided it does not unreasonably interfere with the Transferor's use and enjoyment of the Land;
- (c) BC Hydro may use the Land for access by foot, between the **Flowage Lot** and any road or trail where BC Hydro has parked a vehicle or vehicles, and may transport equipment and supplies on foot to and from the **Flowage Lot**;
- (d) BC Hydro shall not cause any loss or damage to the Land while exercising its access rights hereunder,
- (e) BC Hydro shall be under no obligation to maintain, repair or replace any road or trail on the Land, but shall promptly repair any specific damage it may cause to any road or trail on the Land, at its sole cost and expense;
- (f) BC Hydro shall have the right, but not the obligation, to effect repairs or improvements to any road or trail, in order to make use of it; and
- (g) BC Hydro shall indemnify and hold harmless the Transferor from any loss, liability or damage suffered or incurred by the Transferor as a result of BC Hydro's use of the Land pursuant to this section 4, including any environmental damage to the Land caused or contributed to by BC Hydro.

BC Hydro shall confine its use of the Land to only those areas that are reasonably necessary for access to and from the **Flowage Lot** and Reservoir in accordance with the foregoing terms and conditions.

5. **Acknowledgements by BC Hvdro.** BC Hydro acknowledges and agrees that, subject to the terms of this Agreement, the Transferor and its invitees and agents may:

- (a) use the **Flowage Lot** to gain access to the Reservoir; or
- (b) carry out temporary, non-intensive, non-commercial activities such as campfires, traditional ceremonies, surface relic hunting, and other ancillary activities on the **Flowage Lot**;

provided that the foregoing acknowledgment shall not be construed as restricting the scope of activities that the Transferor, as fee simple owner, may undertake on the **Flowage Lot** which are not inconsistent with the rights of BC Hydro hereunder.

6. **Release.** The Transferor hereby releases and forever discharges BC Hydro of and **from** any and all liabilities, claims, losses, costs, damages, charges or expenses, of any nature or kind, arising out of or related to any of the uses of the **Flowage Lot** authorized under this Agreement, including any losses or damages it has suffered prior to the date of this Agreement.

7. **Third Parties.** The Transferor acknowledges and agrees that BC Hydro shall have full right, power and authority to enforce its rights hereunder against any and all third parties on the **Flowage Lot**, including any third parties on the **Flowage Lot** with the permission of the Transferor.

8. **Miscellaneous.** It is mutually agreed between the Transferor and BC Hydro that:

- (a) no **term**, condition, covenant or other provision herein will be considered to have been waived by either party unless such waiver is in writing. Any such waiver of any term, condition, covenant or other provision herein will not be construed as or constitute a waiver of any further or other breach of the same or any other term, condition, covenant, or other provision;
- (b) the grants or covenants made by the Transferor in this Agreement are in perpetuity, and may not be surrendered, modified or restricted without the express written consent of BC Hydro;
- (c) no remedy conferred upon or reserved to the Transferor or BC Hydro is exclusive of any other remedy herein or provided by law, but such remedy will be cumulative and will be in addition to any other remedy herein or **hereafter** existing at law, in equity, or by statute;
- (d) if any section of this Agreement or any part of a section is found to be illegal or unenforceable, that part or section, as the case may be, will be considered separate and severable and the remaining part or sections as the case may be, will not be affected thereby and will be enforceable to the **fullest** extent permitted by the law;
- (e) the title to all timber cut on the **Flowage Lot** and to all things destroyed or disposed of by BC Hydro in the exercise of its rights hereunder shall vest in BC Hydro;

- (f) this Agreement will run with the Land and will run with each part into which the Land may at any time be subdivided, and with each parcel to which it may at any time be consolidated, and will bind all present and subsequent grantees of the Land, including their respective heirs, executors, administrators, successors, and assigns;
- (g) no part of the fee of the soil shall pass to or be vested in BC Hydro under or by these presents and the Transferor may fully use and enjoy the Land subject only to the rights and restrictions herein provided;
- (h) the expressions "Transferor" and "BC Hydro" herein contained shall be deemed to include:
 - (i) the successors or assigns of such parties wherever the context so admits;
 - (ii) the heirs and administrators of any successors or assigns; and
 - (iii) the servants, agents and invitees of the Parties, and their successors and assigns, as appropriate;
- (i) wherever the singular and masculine are used in this Agreement they shall be construed as meaning the plural or the feminine or body corporate where the context or the parties hereto so require;
- (j) a word in the singular form includes the plural form if the context allows it and a word in the plural form includes the singular form if the context allows it;
- (k) the words 'include', 'includes', and 'including' are to be read as if they are followed by the phrase "without limitation"; and
- (l) any reference to a statute means that statute, and any regulations made under it, all as changed or replaced from time to time.

IN WITNESS WHEREOF this General Instrument, consisting of both Part 1 and Part 2, has been duly executed on the Form C to which this Agreement is attached.