

This agreement has financial amounts redacted, to respect continued negotiations occurring with other Treaty 8 Nations. The Parties will release full agreement content upon the completion of those other negotiations.



Revenue Sharing Agreement

BETWEEN:

His Majesty the King in Right of the Province of British Columbia as represented by Minister (INSERT MINISTERS SIGNING) (the “Province”)

AND:

**Fort Nelson First Nation as represented by (“FNFN” or “First Nation”)
(Individually a “Party” and collectively the “Parties”)**

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

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

Therefore, the Province and FNFN agree to the following terms:

PART 1 - DEFINITIONS AND INTERPRETATION

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

“Agreement” means this Revenue Sharing Agreement;

“Effective Date” means April 1, 2022;

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

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

“PNG” means petroleum and natural gas;

“Revenue Sharing” means the Funds set out in Part 2 and Schedule 1 of this Agreement;

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

“Treaty 8” means the treaty agreement between the Crown and the First Nation, which the Parties agree is a treaty for the purposes of Section 35 of the *Constitution Act, 1982*; and

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

1.2 In this Agreement:

- a) "including" means "including, but not limited to" and "includes" means "includes, but not limited to";
- b) the recitals and headings are for convenience only, do not form a part of this Agreement and in no way define, limit, alter or enlarge the scope or meaning of any provision of this Agreement;
- c) a reference to a statute includes every amendment to it, every regulation made under it, every amendment made to a regulation made under it and any law enacted in substitution for, or in replacement of, it;

- d) words in the singular include the plural, and words in the plural include the singular unless the context or any specific definition requires;
- e) any reference to a corporate entity includes any predecessor or successor to such entity; and
- f) there will be no presumption that doubtful expressions, terms or provisions in this Agreement are to be resolved in favour of any Party.

PART 2 - FUNDS

2.1 The Funds provided to participating Treaty 8 First Nations in each Fiscal Year will be as set out in Schedule 1 of this Agreement.

- a) For illustration purposes, the Funds will be calculated based on the following summary, relying on and as specified in Schedule 1 to this Agreement:
 - i. BC will share ██████████ of PNG Royalties with Treaty 8 Nations that choose to participate. That share of PNG Royalties will become due to the Province during each Fiscal Year (except as provided for in the Additional Amount described in 2.1.a(ii)).
 - ii. An Additional Amount of up to ██████████ calculated as ██████████ of PNG royalties plus PNG tenure sales plus PNG rents calculated when the sum of those amounts due to the Province during each Fiscal Year exceed ██████████
 - iii. To be clear, if the total PNG tenure sales, PNG rents and royalties exceed ██████████, BC will continue to share ██████████ of PNG royalties during each fiscal year.

- iv. The share to a participating Treaty 8 Nation will be calculated as the sum of:
 - i. Half the total shared amount will be an equal share (1/8) of the total amount;
 - ii. Half of the share will be calculated based on their relative population of each Treaty 8 Nation compared to the total population of all eight Treaty 8 Nations.
- 2.2 The Province will make minimum floor payments to FNFN of [REDACTED] per fiscal year as further described in Schedule 1 to this Agreement on the account of amounts payable by the Province under s. 2.1(a)i of this Agreement.
- 2.3 Notwithstanding any other term in this Agreement, at no time will the First Nation be required to return or repay to the Province any of the payments referenced in section 2.1 and 2.2.
- 2.4 The Parties appreciate that reporting is needed to demonstrate the positive outcomes anticipated by this Agreement and to be eligible for the Annual Payment Reconciliation and Additional Payment for the Fiscal Year. The First Nation will provide to BC within 180 days after Q4 in the form of one of the following:
- a) A short summary paragraph, provided at the end of the fiscal year, explaining what was achieved by the First Nation with the revenue provided under the agreement, or
 - b) A copy of any year-end report the First Nation provides to its members on how funds are spent over the fiscal year, or
 - c) Co-develop a qualitative report on the shared progress/outcomes of the Letter of Agreement/consensus document.

PART 3 - AMENDMENT

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

PART 4 - TERM

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

PART 5 - SHARED ASSURANCES

- 5.1 The First Nation agrees not to initiate any new legal claims against the Province during the term of this Agreement by which the First Nation asserts that cumulative effects of development in aggregate are resulting in infringements of treaty rights. This clause does not impact on the First Nation's ability to bring a notice of civil claim seeking a bare declaration regarding the application of the Yahey declarations to the First Nation.
- 5.2 Nothing herein prevents the First Nation or prejudices the First Nation's ability to seek judicial reviews of any specific government decision.
- 5.3 The Parties acknowledge that upon payment in full of the economic benefits provided for under this Agreement, such economic benefits will contribute to financial accommodation of impacts to the First Nation's interests associated with disturbance during the term of this Agreement that may occur as a result of Authorizations made during the term of this Agreement. The economic benefits are not intended to be accommodations for impacts or infringements that occurred before, or continue after, the term of this Agreement.

- 5.4 The funding provided under this Agreement is incremental and has no effect on eligibility for or access to existing funding programs, programs of general application, or ongoing government-to-government matters, including Gaming revenue sharing.
- 5.5 The allocation of Funds set out in this Agreement and Schedule 1 of this Agreement are without prejudice to the positions the First Nation may take in the future on such matters.
- 5.6 No changes to the allocation of Funds may be made with respect to any Treaty 8 Nation without the written consent of the First Nation.
- 5.7 In the event that the Province agrees to any funding arrangements with respect to sharing of oil and gas royalties and revenues with any Treaty 8 Nation that would result in a total share of oil and gas royalties and revenues to such Nation that exceeds the allocation of Funds that would be provided for in accordance with this Agreement, then the First Nation shall be immediately entitled to an increase in its share on terms equivalent to such other Treaty 8 Nation.

PART 6 - REPRESENTATIONS AND WARRANTIES

- 6.1 Each Party represents and warrants to the other Party, with the intent and understanding that these will be relied on by the other Party in entering this Agreement that:
 - a) the person executing this Agreement on behalf of the Party is duly authorized and has the requisite legal authority to enter into this Agreement and bind the Party to its terms and conditions;
 - b) the Party has obtained or had the opportunity to obtain legal advice with respect to this Agreement; and
 - c) this Agreement is valid and binding obligation upon the Party.

PART 7 - DISPUTE RESOLUTION

- 7.1 Where a dispute arises regarding the interpretation of this Agreement, the Parties' duly appointed representatives will meet within 30 days to attempt to resolve the dispute and where the Parties are unable to resolve the dispute within 30 days, the Parties may agree to utilize other dispute resolution mechanisms, including mediation.

PART 8 - NOTICE AND DELIVERY

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

If to the Province:

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

Chief Negotiator, North Area

and if to the First Nations

Liz Logan (Liz.logan@fnnation.ca)

Executive Director

James Tate (jtate@ratecliff.com)

Legal Counsel

- 8.2 Change of Address. Either Party may, from time to time, give written or e-mail notice to the other Party of any change of address or e-mail address of the Party giving such notice and after the giving of such notice, the address or email address therein specified will, for purposes of this Agreement be conclusively deemed to be the address or facsimile number of the Party giving such notice.

- 8.3 Electronic Notice. The Parties agree that they will utilize electronic and other methods of communication for the purposes of engagement whenever practicable and appropriate.

PART 9 - COMMUNICATIONS

- 9.1 Communicating with communities and stakeholders and communication of this Agreement
- a) The Parties recognize that joint communication is important to strengthening community relations and ensuring business stability.
 - b) The Parties agree to develop and implement joint communications on matters of shared interest.

PART 10 - GENERAL PROVISIONS

- 10.1 This Agreement, any amendment to it and any Funding previously provided related to this agreement as described in Schedule 1 of this Agreement, constitute the entire agreement between the Parties with respect to the subject matter of this Agreement, unless otherwise agreed in writing by the Parties.
- 10.2 Each of the Parties will, upon the reasonable request of the other, make, do, execute or cause to be made, done or executed all further and other lawful acts, deeds, things, devices, documents, instruments and assurances whatever for the better and absolute performance of the terms and conditions of this Agreement.
- 10.3 Any waiver of:
- a) a provision of this Agreement;
 - b) the performance by a Party of an obligation under this Agreement; or
 - c) a default by a Party of an obligation under this Agreement,

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

- 10.4 The rights and remedies of a Party are cumulative with any other rights in this Agreement and the exercise by a Party of its rights hereunder does not preclude it from exercising any other rights or remedies in this Agreement, or otherwise at law or in equity. No remedy is exclusive of any other remedy.
- 10.5 The First Nation will not assign, either directly or indirectly, this Agreement or any right of the Nation under this Agreement without the prior written consent of the Province.
- 10.6 This Agreement is for the benefit of and is binding upon the Province and any of its Ministers, officials, servants, employees, agents, successors and assigns and upon the First Nation and its present and future Members and any of their respective heirs, descendants, legal representatives, successors and assigns.
- 10.7 This Agreement will be governed by and construed in accordance with the laws of British Columbia. The Parties acknowledge this Agreement does not constitute a treaty or land claim agreement within the meaning of section 25 and 35 of the Constitution Act, 1982, and is not intended to define, limit, amend, modify, or derogate from any rights recognized and affirmed under section 35 of the Constitution Act, 1982.
- 10.8 This Agreement may be entered into by each Party signing a separate copy of this Agreement (including a photocopy or electronic copy) and delivering it to the other Party by electronic transmission.
- 10.9 The Province will take all reasonable steps to collect the revenues that due and owing to the Province and that form part of the funds provided under Part 2 of this agreement.

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

SIGNED on January 18, 2023 on behalf of Fort Nelson First Nation by:



Chief of Fort Nelson First Nation



Witness

SIGNED on January 18, 2023 on behalf of HIS MAJESTY THE KING IN RIGHT OF THE PROVINCE OF BRITISH COLUMBIA by:



Minister of Indigenous Relations and Reconciliation



Witness

Revenue Sharing Agreement

Schedule 1: Royalty Revenue Sharing Formula

This Schedule consists of:

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

Part 1 - Defined Terms

1.1 In this Schedule:

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

Part 2 - Annual Payments

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

- 2.4 Any advanced payment received by the First Nation, including:
- a) [REDACTED] Bridging Funds provided to the First Nation in the Grant Letter dated March 31, 2022;
 - b) The prepayment of [REDACTED] for Fiscal Year 2022/23 provided to the First Nation in May 2023;
 - c) The prepayment of [REDACTED] for Fiscal Year 2023/24 provided to the First Nation in May 2024;
 - d) Payments received by the First Nation under their Economic Benefits Agreements, if applicable; and
 - e) Any other payments made by the Province in accordance with Section 2.2

will be deducted from the Annual Payment Reconciliation for the Fiscal Year for which the payment is made.

- 2.5 Subject to Parts 5 and 6 and the terms and conditions set out in this Revenue Sharing Agreement and this Schedule, the Province will provide to the First Nation the following funding:
- a. commencing with Fiscal Year 2023/24, the Annual Payment as set out in Appendix 1A of this Schedule, within sixty (60) calendar days following the start of the Fiscal Year. In the event of termination of the Agreement, the Annual Payment will be prorated for the time that the First Nation was part of the Agreement during that Fiscal Year and any over payments will be deducted from the Annual Payment Reconciliation due in accordance with Appendix 1B and Section 2.5(b) of this Schedule; and
 - b. commencing with Fiscal Year 2022/23 and for each Fiscal Year during the term of the Agreement, the Annual Payment Reconciliation amount calculated in accordance with Appendix 1B of this Schedule, within one hundred and eighty (180) calendar days following the end of the applicable Fiscal Year. In the event of termination of the Agreement, the Annual Payment Reconciliation will be prorated for the time that the First Nation was part of the Agreement during that Fiscal Year.
- 2.6 For each Fiscal Year during the term of the Agreement, when the Annual Payment Reconciliation is provided in accordance with this Schedule, the Province will provide to the First Nation a statement satisfactory to the First Nation setting out the documents, reports, figures and calculations relied upon by the Province to calculate the Annual Payment Reconciliation in accordance with Appendix 1B of this Schedule for that Fiscal Year.

Part 3 – Additional Payments

- 3.1 Subject to Parts 5 and 6 and the terms and conditions set out in this Revenue Sharing Agreement and this Schedule, the Province will provide to the First Nation the following funding as long as this Agreement is in effect:
- a. commencing with Fiscal Year 2022/23 and for each Fiscal Year during the term of the Agreement, the Additional Payment calculated in accordance with Appendix 1C of this Schedule, within one hundred and eighty (180) days following the end of the applicable Fiscal Year. In the event of termination of the Agreement, the Additional Payment will be prorated for the time that the First Nation was part of the Agreement during that Fiscal Year.
- 3.2 The Additional Payment will be subject to a maximum amount, as set out in Appendix 1C of this Schedule.
- 3.3 For each Fiscal Year during the term of the Agreement, when the Additional Payment is provided in accordance with this Schedule, the Province will provide to the First Nation a statement satisfactory to the First Nation setting out the documents, reports, figures and calculations relied upon by the Province to calculate the Additional Payment for that Fiscal Year.

Part 4 – Adjustments

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

Appendix 1A: Annual Payment

Annual Payment = [REDACTED]

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

Appendix 1B: Calculation of Annual Payment Reconciliation

Annual Payment Reconciliation = EBPR

$$= \frac{[(XFNP/T8P \times EB1_t \times 0.5) + (1/8 \times EB1_t \times 0.5)] - (\text{Annual Payment}) - \text{Advance Payments}}{}$$

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

T8P is the sum of the Total Registered Population of all Treaty 8 First Nations according to the table in Appendix 1D of this schedule.

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

Specifically:

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

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

$$EB1_t = [REDACTED] \times (OGR_t)$$

Where:

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

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

Appendix 1C: Calculation of Additional Payments

$$\text{Additional Payment} = [REDACTED] \times (COGR_t) \times [(1/8 \times 0.5) + (XFNP/T8P \times 0.5)]$$

$$\text{Additional Payment Maximum Amount} = [REDACTED] \times [(1/8 \times 0.5) + (XFNP/T8P \times 0.5)]$$

Where:

XFNP – same as defined in Appendix 1B

T8P – same as defined in Appendix 1B

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

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

Appendix 1D: Population

The following table represents the population numbers agreed to by the First Nation and will be used in the calculations described in Schedule 1. These population numbers are according to according to Indian and Northern Affairs Canada (now Crown-Indigenous Relations and Northern Affairs Canada), Population Statistics Report, Indian Registration System, for 2022/2023, region British Columbia, Total by Gender, or according to the First Nation's membership list if membership is controlled by the First Nation under section 10 of the Indian Act.

Treaty 8 First Nation	Population (First Nation Profiles (aadnc-aandc.gc.ca))
West Moberly First Nation	367
Saulteau First Nation	1299
McLeod Lake Indian Band	566
Halfway River First Nation	303
Doig River First Nation	339
Blueberry River First Nation	533
Fort Nelson First Nation	993
Prophet River First Nation	294
Total	4694