

**Forest Tenure Opportunity Agreement
(the "Agreement")**

Between the:

**St. Mary's
hereinafter referred to as St. Mary's Indian Band,
Tobacco Plains
hereinafter referred to as Tobacco Plains Indian Band,
?Akisq'nuk First Nation, and the
Lower Kootenay,
hereinafter referred to as Lower Kootenay Indian Band,
(jointly referred to as "Ktunaxa Communities")**

and

**Ktunaxa Nation, as represented by the the Ktunaxa Nation Council Society
(for the purpose of representing Aboriginal Interests Only)**

and

**Her Majesty the Queen in Right of the Province of British Columbia
as represented by the Minister of Forests, Lands, and Natural Resource
Operations
("British Columbia")**

(collectively the "Parties")

WHEREAS:

- A. In 2005, British Columbia and First Nations in British Columbia, as represented by the BC Assembly of First Nations, the First Nations Summit, and the Union of BC Indian Chiefs (the First Nations Leadership Council) entered into a New Relationship and signed the Transformative Change Accord, the purposes of which are to implement a government-to-government relationship based on an effective working partnership, enhanced collaboration, mutual respect and recognition and accommodation of Aboriginal title and rights, and achieve the mutual goals of closing the social and economic gap between First Nations and other British Columbians.
- B. In the spirit of the New Relationship and the Transformative Change Accord, British Columbia and Ktunaxa Communities have undertaken a shared commitment to strengthening relationships on a government-to-

government basis, and on focusing efforts to close the socio-economic gaps between Aboriginal and non-Aboriginal people.

- C. This Agreement, and the benefits flowing from it, will assist Ktunaxa Communities in achieving progress towards the goals referred to in the previous recitals, and in particular help to address the conditions that contribute to poverty among Aboriginal people and to ensure that they can more fully benefit from and contribute to British Columbia's prosperity.
- D. British Columbia recognizes that the Ktunaxa Nation has a unique history and its own culture and traditions that help to define it, and that these characteristics, along with its relationship with British Columbia, form an important context for the cooperative efforts needed to improve the Ktunaxa Communities' community well-being.
- E. The Ktunaxa Nation, which includes the Ktunaxa Communities, has Aboriginal Interests within the Ktunaxa Territory.
- F. This Agreement is intended to assist in achieving stability and greater certainty for forest resource development on Crown lands within the Ktunaxa Territory and to enhance the ability of the forest industry to exercise timber harvesting in a timely, economic, and environmentally sustainable manner while longer term interests of the Ktunaxa Nation are addressed through other agreements or processes.

THEREFORE THE PARTIES AGREE AS FOLLOWS:

1. Definitions

- 1.1. **“Aboriginal Interests”** means asserted aboriginal rights (including aboriginal title) or determined aboriginal rights (including aboriginal title) which are recognized and affirmed by section 35(1) of the *Constitution Act, 1982*.
- 1.2. **“Effective Date”** means the date on which this Agreement has been ratified and signed by each of the Parties.
- 1.3. **“Forest Tenure”** means an agreement granting rights to harvest Crown timber as defined in section 12(1) of the *Forest Act*.
- 1.4. **“Licence”** means a forest licence or a forestry licence to cut as defined in the *Forest Act*.
- 1.5. **“Licensee”** means a holder of a forest tenure.
- 1.6. **“Licence Area”** means an area defined by agreement between the licensee and British Columbia, over which the licensee will have the right to apply for cutting authorities to a specified level of harvest of Crown timber as defined in the *Forest Act*.
- 1.7. **“Ktunaxa Nation”** means the collectivity of Ktunaxa People and includes the Ktunaxa Communities and their members.
- 1.8. **“Ktunaxa People”** means all those persons who are collectively entitled to exercise the Aboriginal Interests of Ktunaxa Nation.
- 1.9. **“Ktunaxa Territory”** means, for the purposes of this Agreement, that portion of the Ktunaxa Territory that is set out in Appendix A.
- 1.10. **“Representative”** carries the same meaning as it is given in the *Forest Act*.

2. Purpose and Objectives

The purposes and objectives of this Agreement are to:

- 2.1. Provide an opportunity for Ktunaxa Communities to identify and pursue socio-economic objectives in their respective communities and, in connection with those objectives, to assist the Ktunaxa Communities in achieving progress towards closing socio-economic gaps between the members of Ktunaxa Nation and non-Aboriginal people in British Columbia.
- 2.2. Promote and increase Ktunaxa Communities participation in the forest sector by offering a forest tenure opportunity(s).
- 2.3. Provide an accommodation in respect of potential impacts of forestry decisions and operations within the Ktunaxa Territory on the Ktunaxa Nation’s Aboriginal Interests.

3. Forest Tenure Opportunity

- 3.1. British Columbia has reallocated specific volumes in Timber Supply Areas within Ktunaxa Territory to provide Replaceable Forest Licences to Ktunaxa Communities under this Agreement, therefore Ktunaxa Communities will be invited to apply for a Replaceable Forest License as follows.
 - a. After execution of this Agreement, the Regional Executive Director will invite the St. Mary's Indian Band to apply for Replaceable Forest Licence (the "Licence") on a non-competitive basis for up to 17 500 cubic meters annually of volume for a term of 15 years in the Cranbrook Timber Supply Area.
 - b. After execution of this Agreement, the Regional Executive Director will invite the Tobacco Plains Indian Band to apply for Replaceable Forest Licence (the "Licence") on a non-competitive basis for up to 9 000 cubic meters annually of volume for a term of 15 years in the Cranbrook Timber Supply Area.
 - c. After execution of this Agreement, the Regional Executive Director will invite the ?Akisq'nuk First Nation to apply for Replaceable Forest Licence (the "Licence") on a non-competitive basis for up to 13 500 cubic meters annually of volume for a term of 15 years in the Invermere Timber Supply Area.
 - d. After execution of this Agreement, the Regional Executive Director will invite the Lower Kootenay Indian Band to apply for Replaceable Forest Licence (the "Licence") on a non-competitive basis for up to 11 043 cubic meters annually of volume for a term of 15 years in the Kootenay Lake Timber Supply Area.
- 3.2. The appointment of a Representative for the purpose of holding the Licence(s) must be made in accordance with the Forest Act.
- 3.3. British Columbia will invite Ktunaxa Communities to apply for a replaceable volume-based forest licence with the intent to transition to a replaceable First Nation Woodland Licence.
- 3.4. The Licence(s) under section 3.1 of this Agreement will:
 - a. be a replaceable forest licence as defined under the Forest Act;
 - b. include other terms and conditions required by law including the condition that each member of the Ktunaxa Communities must comply with this Agreement; and,
 - c. include other terms and conditions as may be required by the Regional Executive Director.

- 3.5. Notwithstanding any other provision of this Agreement, British Columbia neither makes nor offers any guarantee of the financial viability of any operations under the Licence(s) referred to in section 3.1.
- 3.6. During the term of this Agreement and notwithstanding section 3.5, Ktunaxa Communities agree that British Columbia has provided to Ktunaxa Nation, through the Ktunaxa Communities, an accommodation in respect of potential impacts of forestry decisions and operations within the Ktunaxa Territory on Ktunaxa Aboriginal Interests, in the form of the Licence(s) provided for under this Agreement.
- 3.7. If the Licence(s) entered into under this Agreement remain(s) in effect beyond the term of this Agreement, the Licence(s) will continue to be considered by the Parties to be an accommodation as contemplated in sections 2.3 and 3.6 until the Licence(s) expires or is terminated.
- 3.8. Any Licence(s) entered into under this Agreement can only be transferred in accordance with the *Forest Act*.
- 3.9. If during the term of this Agreement a further volume increase become available in Ktunaxa Territory, the Parties agree to explore, in accordance with the provisions within the *Forest Act*, further tenure opportunities that include:
 - a. disposition plan volumes within the Traditional Territory,
 - b. additional volume related to innovative harvest of second growth; and
 - c. additional volume related to innovative utilisation of the non-traditional timber profile.

4. Reporting of Tenure Information

- 4.1. British Columbia, in its commitment to the goals of the Transformative Change Accord, may require certain information from Ktunaxa Communities on what measurable benefits the Ktunaxa Communities has been able to achieve as a result of this Agreement.
- 4.2. Ktunaxa Communities agree to cooperate with British Columbia in providing the information in a format acceptable to both Parties and in a manner that maintains the confidentiality of that information in accordance with applicable statutory requirements.

5. Ktunaxa Territory

5.1. British Columbia will use the map of the Ktunaxa Territory used in the *Ktunaxa Nation Forest and Revenue Sharing Agreement* which map is set out in this Agreement as Appendix A.

6. Economic and Operational Stability

6.1. Ktunaxa Communities will work cooperatively to assist British Columbia in resolving any issues that may arise from intentional interference by members of the Ktunaxa Community with provincially authorized forest activities within the Ktunaxa Territory.

7. Term and Termination

- 7.1. The term of this Agreement is 15 years.
- 7.2. This Agreement will take effect on the date on which the last Party has executed it.
- 7.3. This Agreement will terminate on the occurrence of the earliest of any of the following events:
 - a. expiry of its term;
 - b. 90 days notice by either Party to the other Party; or
 - c. mutual agreement of the Parties.
- 7.4. This Agreement may be terminated by British Columbia if the Licence(s) or any of them issued pursuant to section 3.1 is or are cancelled, surrendered or otherwise terminated under the *Forest Act*.
- 7.5. Prior to the expiry of the 90 days when 90 day notice of termination has been given under section 7.3.b, the Parties agree to meet and endeavour to resolve the issue that has given rise to the 90 day notice of termination.
- 7.6. If any of the Licence(s) entered into under this Agreement, are replaced, the term of this Agreement will be deemed to be amended so as to extend the term to be the same as the longest of the terms of the replaced Licence(s).

8. Dispute Resolution

- 8.1. If a dispute arises between British Columbia and Ktunaxa Communities regarding the interpretation of a provision of this Agreement, the Parties or Representatives will meet as soon as is practicable to attempt to resolve the interpretation dispute.
- 8.2. If the Parties are unable to resolve differences at the appropriate level, the interpretation issue will be raised to more senior levels of British Columbia and Ktunaxa Communities.

- 8.3. If the interpretation dispute cannot be resolved by the Parties directly, the Parties may choose other appropriate approaches to assist in reaching resolution of the interpretation dispute.

9. Renewal of the Agreement

- 9.1. Prior to the expiry of the term of this Agreement, if the terms and conditions of this Agreement are being met and if each party has received such authorizations as it may require to either renew this Agreement or negotiate a new Agreement, British Columbia and Ktunaxa Communities will, negotiate a renewal of this Agreement or, where applicable, negotiate a new agreement.

10. Amendment of Agreement

- 10.1. Any alteration or amendment to the terms and conditions of the Agreement must be in writing and duly executed by the Parties.
- 10.2. Either Party may request the participation of the other Party to review the effectiveness of this Agreement annually and consider amendments to this Agreement.

11. Suspension or Cancellation by the Minister

- 11.1. Without limiting the actions that may be taken by the Minister or by British Columbia, the Minister or a person authorized by the Minister may suspend or cancel the Licence(s) entered into as a result of this Agreement, if the Minister or a person authorized by the Minister determines that the Ktunaxa Communities are not in compliance with this Agreement.
- 11.2. If this Agreement is terminated in accordance with section 11.1, the Minister may cancel the Licence(s) issued pursuant to this Agreement.
- 11.3. Prior to contemplating any action referred to in sections 11.1 or 11.2, British Columbia will provide notice to Ktunaxa Communities of any alleged contravention of this Agreement that may lead to Ktunaxa Communities not being in compliance with this Agreement.

12. Entire Agreement

- 12.1. This Agreement, and any amendment to it, constitutes the entire Agreement between the Parties with respect to the subject matter of this Agreement.

13. Notice

- 13.1. Any notice or other communication that is required to be given or that a Party wishes to give to the other Party with respect to this

Agreement, will be in writing and will be effective if delivered, sent by registered mail, or transmitted by facsimile to the address of the other Party as set out in this section of the Agreement.

- 13.2. Any notice or other communications will be deemed to have been given on the date it is actually received, if received before 4:00 p.m. on that day.
- 13.3. The address of either Party may be changed by notice in the manner set out in this section of the Agreement.

British Columbia	St. Mary's Indian Band
Deputy Minister	Contact Name Contact E-Mail
Ministry of Forests, Lands and Natural Resource Operations	St. Mary's Indian Band
P.O. Box 9525 STN PROV GOVT	7470 Mission Road
Victoria B.C. V8W 9C3	Cranbrook, BC, V1C 7E5
Telephone: (250) 356-5012	Telephone: (250) 426-5717
Facsimile: (250) 953-3687	Facsimile: (250) 426-8935

British Columbia	Tobacco Plains Indian Band
Deputy Minister	Contact Name Contact E-Mail
Ministry of Forests, Lands and Natural Resource Operations	Tobacco Plains Indian Band
P.O. Box 9525 STN PROV GOVT	Box 76
Victoria B.C. V8W 9C3	Grasmere, British Columbia V0B 1R0
Telephone: (250) 356-5012	Telephone: (250) 887-3461
Facsimile: (250) 953-3687	Facsimile: (250) 887-3424

British Columbia	?Akisq'nuk First Nation
Deputy Minister	Contact Name Contact E-Mail
Ministry of Forests, Lands and Natural Resource Operations	?Akisq'nuk First Nation
P.O. Box 9525 STN PROV GOVT	Box 3050 Hwy 93/95
Victoria B.C. V8W 9C3	Windermere, BC V0B 2L2
Telephone: (250) 356-5012	Telephone: (250) 342-6301
Facsimile: (250) 953-3687	Facsimile: (250) 342-9693

British Columbia	Lower Kootenay Indian Band
Deputy Minister	Contact Name Contact E-Mail
Ministry of Forests, Lands and Natural Resource Operations	Lower Kootenay Indian Band
P.O. Box 9525 STN PROV GOVT	830 Simon Road
Victoria B.C. V8W 9C3	Creston, BC V0B 1G2
Telephone: (250) 356-5012	Telephone: (250) 428-4428
Facsimile: (250) 953-3687	Facsimile: (250) 428-7686

- 13.4. This Agreement may be entered into by each Party signing a separate copy of this Agreement, including a photocopy or faxed copy, and delivering it to the other Party by facsimile. Each facsimile will be deemed to be an original for all purposes and all counterparts taken together will be deemed to constitute one document.

- 13.5. British Columbia is not in breach of any duty merely as a result of any contraventions by Ktunaxa Communities' representative in respect of any licences issued under this Agreement.

14. Miscellaneous

- 14.1. This Agreement is to be interpreted in a manner consistent with provincial, federal and constitutional law.
- 14.2. Except as set out in this Agreement, this Agreement will not limit the positions that a Party may take in future negotiations or court actions.
- 14.3. British Columbia acknowledges and enters into this Agreement on the basis that the Ktunaxa Nation has Aboriginal Interests within the Ktunaxa Territory but that the specific nature, scope and geographic extent of the Ktunaxa Nation's Aboriginal Interests have not yet been determined, and further that broader processes engaged in to bring about reconciliation are intended to result in a common understanding of the nature, scope and geographic extent of Aboriginal Interests or treaty interests of the Ktunaxa Nation.
- 14.4. This Agreement does not exclude Ktunaxa Communities from accessing forestry economic opportunities and benefits, which may be available to them, other than those expressly set out in this Agreement.
- 14.5. This Agreement is not a treaty or a lands claims agreement within the meaning of sections 25 and 35 of the *Constitution Act, 1982* and does not define or amend aboriginal rights, or limit any priorities afforded to aboriginal rights, including aboriginal title.
- 14.6. This Agreement and any decisions made during the term of this Agreement do not change or affect the positions either Party has, or may have, regarding jurisdiction and authorities.
- 14.7. Any reference to a statute in this Agreement includes all regulations made under that statute and any amendments or replacement of that statute and its regulations.
- 14.8. This Agreement does not and is not intended to address or prejudice conflicting interests or competing claims between First Nations.
- 14.9. There will be no presumption that any ambiguity in any of the terms of this Agreement should be interpreted in favour of either Party.
- 14.10. The laws of British Columbia will govern this Agreement.
- 14.11. This Agreement is not intended to limit any obligation of forest Licensees or other third parties to the Ktunaxa Nation.
- 14.12. The appendices to this Agreement form part of the Agreement

Signed on behalf of:

St. Mary's Indian Band

Chief: [Signature] Date: Jan 11/13

Councillor [Signature] Councillor _____

Councillor Richard Williams Councillor _____

Councillor [Signature] Councillor _____

Councillor _____

[Signature]
Witness of St. Mary's Indian Band signatures.

Tobacco Plains Indian Band

Chief: Mary Mahseelah Date: Jan. 14/13

Councillor [Signature] Councillor _____

Councillor [Signature] Councillor _____

Councillor [Signature] Councillor _____

Councillor _____

[Signature]
Witness of Tobacco Plains Indian Band signatures.

?Akisq'nuk First Nation

Chief:

Date: _____

Councillor _____

Councillor _____

Councillor _____

Councillor _____

Councillor _____

Councillor _____

Councillor _____

Witness of ?Akisq'nuk First Nation signatures.

Lower Kootenay Indian Band

Chief:

M. James Lewis

Date: _____

January 22/13

Councillor _____

Arlene Basil

Councillor _____

Councillor _____

Anne Gemme

Councillor _____

Councillor _____

Mary Basil

Councillor _____

Councillor _____

R

Gemma Seragotto

Witness of Lower Kootenay Indian Band signatures.

?Akisq'nuk First Nation

Chief:

[Handwritten Signature]

Date: January 23, 2013

Councillor

[Handwritten Signature]

Councillor

[Handwritten Signature]

Councillor

[Handwritten Signature]

Councillor

Councillor

Councillor

Councillor

[Handwritten Signature]

Witness of ?Akisq'nuk First Nation signatures.

Lower Kootenay Indian Band

Chief:

Date:

Councillor

Councillor

Councillor

Councillor

Councillor

Councillor

Councillor

Witness of Lower Kootenay Indian Band signatures.



Ktunaxa Nation

Chair: Antony Jeneese Date: 2013 0128

Ryan [Signature]
Witness of Ktunaxa Nation signature.

Signed on behalf of:

British Columbia Date: March 27 / 2013

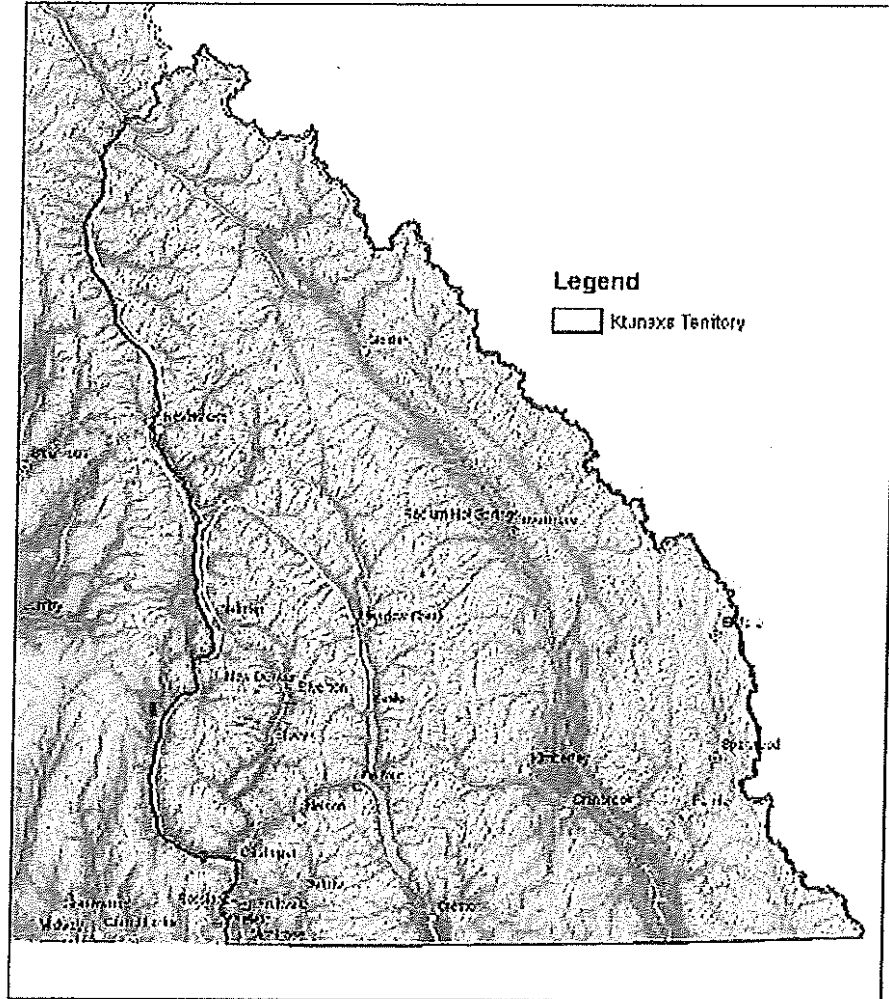
Steve Thomson
Steve Thomson
Minister of Forests, Lands and Natural
Resource Operations

[Signature]
Witness of Minister signature

APPENDIX A

Map of Ktunaxa Territory

Traditional Territory Map



APPENDIX B

Licence Area Map(s) for the Kootenay Lake, Cranbrook and Invermere
Timber Supply Area

