

**Ktunaxa Nation  
Forest Revenue Sharing Agreement (FRSA)  
(the "Agreement")**

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**Between:**

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

as represented by the  
Minister of Aboriginal Relations and Reconciliation  
(hereinafter the "Province")

and

**THE KTUNAXA NATION COUNCIL SOCIETY (the "KNC")**, on its own behalf and on  
behalf of St. Mary's Indian Band, Tobacco Plains Indian Band,  
Lower Kootenay Indian Band and ?Akisq'nuk First Nation  
(hereinafter the "Ktunaxa Parties")

(collectively the "Parties")

**WHEREAS:**

- A. The Ktunaxa Nation has Aboriginal Rights within the Ktunaxa Territory.
- B. The Parties are engaged in treaty negotiations and in those negotiations the Ktunaxa Nation has stated its interest in achieving a greater role in the regional economy and in receiving a share of the revenues derived from the use of resources within the Ktunaxa Territory to support self-government.
- C. The Parties, in the spirit of the New Relationship vision and the Transformative Change Accord, share commitments to strengthen their government-to-government relationship and to close the socio-economic gaps between aboriginal and non-aboriginal people.
- D. The Parties, acting on their shared commitments, have
  - (a) entered into a Strategic Engagement Agreement that sets out engagement processes respecting the land and resources within the Ktunaxa Territory, including processes for consultation and accommodation, principles for sharing information, and the establishment of government-to-government forums to address land and resource management activities and resource revenue-sharing,

- (b) implemented a regional governance initiative to improve the delivery of social services to aboriginal people living within the Ktunaxa Territory, and
  - (c) initiated negotiations of a comprehensive economic and community development agreement that is intended to include revenue-sharing from different resource sectors including forest revenue.
- E. The Province intends to consult with the Ktunaxa Parties and to accommodate Aboriginal Rights as appropriate, including accommodation by way of the payments provided through this Agreement, with respect to potential impacts on those Aboriginal Rights arising from forest and/or range resource development activities proposed within the Ktunaxa Territory.
- F. The Ktunaxa Parties intend to fully participate in any consultation or information sharing with the Province in accordance with the Strategic Engagement Agreement in relation to forest and/or range resource development activities proposed within the Ktunaxa Territory that may impact on the Aboriginal Rights of the Ktunaxa Nation.
- G. This Agreement is intended to assist in achieving stability and greater certainty for forest and/or range resource development on Crown lands within the Ktunaxa Territory 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 For the purposes of this Agreement, the following definitions apply:

**“Aboriginal Rights”** means asserted or determined aboriginal rights, including aboriginal title, which are or may be recognized and affirmed by section 35 of the *Constitution Act, 1982*;

**“Administrative and/or Operational Decision”** means a decision made by the Minister or a Delegated Decision Maker related to forest and range resources under provincial legislation;

**“Band Council Resolution”** means a resolution made by a “council of the Band” within the meaning of the *Indian Act*, RSC 1985, c.1-5;

**“BC Fiscal Year”** means a period beginning on April 1 of a calendar year and ending on March 31 of the next calendar year;

**“Delegated Decision Maker”** means a person with authority, as delegated by the Minister and including the Minister, to make statutory decisions with respect

to forest and range resources under provincial legislation as amended from time to time;

“**Effective Date**” means the date on which this Agreement has been ratified and signed by each of the Parties;

“**First Fiscal Year of the Term**” has the meaning given to that term in section 3.10;

“**Forest Tenure Opportunity Agreement**” means an agreement signed between the Minister and a First Nation that provides for the Minister to direct award forest tenure under the *Forest Act*;

“**Ktunaxa Citizen**” means all those persons who are collectively entitled to exercise the Aboriginal Rights of the Ktunaxa Nation and includes Ktunaxa Community Members;

“**Ktunaxa Communities**” means ?Akisq’nuk First Nation, St. Mary’s Indian Band, Tobacco Plains Indian Band, and Lower Kootenay Indian Band, all of which are bands within the meaning of the *Indian Act*;

“**Ktunaxa Community Member**” means a member of one of the Ktunaxa Communities as shown on that Ktunaxa Community’s band list within the meaning of the *Indian Act*;

“**Ktunaxa Nation**” means the collectivity of Ktunaxa Citizens and includes the Ktunaxa Communities and Ktunaxa Community Members and, for the purposes of this Agreement, is represented by the KNC;

“**KNC**” means the Ktunaxa Nation Council Society, a society registered under the laws of the Province of British Columbia;

“**Ktunaxa Territory**” means, for the purposes of this Agreement, that portion of traditional territory claimed by the Ktunaxa Nation that is set out in Appendix A;

“**Licensee**” means a holder of a forest tenure or a range tenure;

“**Minister**” means the Minister of Forests, Lands and Natural Resource Operations having the responsibility, from time to time, for the exercise of powers in respect of forests and range matters;

“**Operational Plan**” means a Forest Stewardship Plan, Woodlot Licence Plan, a Range Use Plan, or Range Stewardship Plan, as those terms are defined in forest and range legislation, that has or will have effect in the Ktunaxa Territory;

“**Payment Account**” has the meaning given to that term in section 3.4;

“**Revenue Sharing Contribution**” means each payment to be made by the Province to the Ktunaxa Parties in accordance with section 3;

“**SEA**” means the Strategic Engagement Agreement between the Province of British Columbia and the Ktunaxa Nation, dated October 22, 2010 and includes any amendments made to the Strategic Engagement Agreement from time to time in accordance with its provisions;

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“**Term**” has the meaning given to that term in section 12;

“**Timber Harvesting Land Base**” means the portion of the total land area of a management unit considered by Ministry of Forests, Lands and Natural Resource Operations to contribute to, and be available for, long-term timber supply; and

“**Treasury Board**” means the cabinet committee of British Columbia defined in the *Financial Administration Act*.

## **2. Purposes**

2.1 The purposes of this Agreement are to

- 2.1.1 provide the Ktunaxa Parties with a share of the forest revenues received by the Province so that the Ktunaxa Nation may pursue activities that will enhance the social, cultural and economic well-being of Ktunaxa Citizens and assist the Ktunaxa Nation in achieving progress towards closing socio-economic gaps between Ktunaxa Citizens and non-Aboriginal people in British Columbia,
- 2.1.2 confirm the consultation process that will be relied upon by the Parties to meet their respective legal consultation obligations in relation to the potential impacts on the Aboriginal Rights of the Ktunaxa Nation resulting from forest and range activities in Ktunaxa Territory,
- 2.1.3 support the capacity of the Ktunaxa Nation to participate in the consultation processes as set out in section 5 which is intended to identify opportunities and implement appropriate accommodation measures in addition to the Revenue Sharing Contribution,
- 2.1.4 provide a mechanism for the Parties to further strengthen their government-to-government relationship, and
- 2.1.5 address the interests expressed by the Ktunaxa Nation to have a greater role in the regional economy and to receive a share of the revenues derived from the use of resources within Ktunaxa Territory to sustain self-government.

## **3. Forest Revenue Sharing Contribution**

3.1 The KNC makes the following representations and warranties to the Province, on which the Province will rely, that

- 3.1.1 it is a duly incorporated society under the Society under the *Society Act, RSBC 1996, c. 433*, and that it is in good standing and will remain

in good standing for as long as the Ktunaxa Parties are entitled to receive monies under this Agreement,

- 3.1.2 it has the legal power, capacity and authority to enter into this Agreement on its own behalf and on behalf of the Ktunaxa Communities and Ktunaxa Citizens and to make the covenants, acknowledgements and representations in this Agreement,
  - 3.1.3 it enters into this Agreement for and on behalf of itself, the Ktunaxa Communities and Ktunaxa Citizens and that the Agreement is binding upon it and the Ktunaxa Communities; and
  - 3.1.4 Appendix C includes a true copy of a Band Council Resolution of each Ktunaxa Community approving this Agreement and giving authority to the KNC to enter into this Agreement on its behalf and on behalf of its Ktunaxa Community Members and that such resolutions have not been varied, amended, repealed or replaced.
- 3.2 The Ktunaxa Communities designate the KNC to receive Revenue Sharing Contributions on their behalf for the purposes described in section 2.
  - 3.3 The designation under subsection 3.2 does not relieve the Ktunaxa Parties of their obligations under this Agreement.
  - 3.4 The KNC will establish and maintain throughout the Term a separate account ("Payment Account") at a Canadian financial institution into which direct deposits can be made by the Province for the purpose of receiving Revenue-Sharing Contributions and monies payable by the Province pursuant to other revenue-sharing agreements between the Parties, and will provide to the Province sufficient address and account information to enable the Province to make direct deposit payments to the Payment Account.
  - 3.5 The Payment Account will be used solely for the purpose of receiving Revenue Sharing Contributions under this Agreement and monies received from the Province pursuant to other revenue-sharing agreements between the Parties and implementing the purposes and objectives described in section 2.
  - 3.6 The KNC adheres, and will continue to adhere, to the Generally Accepted Accounting Principles and is audited in accordance with Public Sector Accounting Body Standards and will provide a copy of its bylaws upon request to the Province.
  - 3.7 The Province will notify the KNC of any change in the Provincial Agency responsible for making Revenue Sharing Contributions.

- 3.8 For greater certainty, the Province will not be obligated to make any payments under this Agreement until the KNC has complied with subsection 3.4.
- 3.9 Subject to section 11, the Province will, during the Term, make annual Revenue Sharing Contributions, calculated in accordance with Appendix B, to the Ktunaxa Communities through the KNC and, subject to subsections 3.10 and 3.13, the Revenue Sharing Contribution will be disbursed in two equal payments: the first payment to be paid on or before September 30<sup>th</sup>, and the second payment to be paid on or before March 31<sup>st</sup>.
- 3.10 Notwithstanding subsections 3.9 and 3.11, for the BC Fiscal Year in which the Effective Date falls (the "First Fiscal Year of the Term") the amount calculated in accordance with Appendix B is deemed to be \$401,923.
- 3.11 For the purposes of determining the amount of the Revenue Sharing Contribution for partial BC Fiscal Years, the amount will be prorated for each month or part thereof that this Agreement is in effect.
- 3.12 Before November 30<sup>th</sup> of each year during the Term, the Ktunaxa Parties will receive written notification from the Province of the Revenue Sharing Contribution for the following BC Fiscal Year, including the summary document and calculations identified in Appendix B, and the Ktunaxa Parties agree that such written notification will have the effect for the purposes of this Agreement of describing the amount of the Revenue Sharing Contribution under this Agreement for that following BC Fiscal Year.
- 3.13 For each BC Fiscal Year subsequent to the First Fiscal Year of the Term, the Revenue Sharing Contribution will be provided by the Province to the Ktunaxa Communities through the KNC in the manner specified in subsection 3.9 only if the KNC has published all of the necessary statements and reports before the appropriate dates as set out in section 7, the Ktunaxa Parties are in all other respects in compliance with the terms of this Agreement and this Agreement has not been suspended or terminated pursuant to section 11.

#### **4. Appropriation**

- 4.1 Notwithstanding any other provision of this Agreement, the payment of money by the Province to the Ktunaxa Communities pursuant to this Agreement is subject to
- 4.1.1 there being sufficient monies available in an appropriation, as defined in the *Financial Administration Act*, to enable the Province in any BC Fiscal Year or part thereof when any such payment may be required, to make that payment, and

- 4.1.2 Treasury Board, as defined in the *Financial Administration Act*, not having controlled or limited expenditure under any appropriation necessary in order to make such payment.

## **5. Consultation Process**

- 5.1 The Parties agree that consultation with respect to potential impacts on the Aboriginal Rights of the Ktunaxa Nation arising from any Administrative and/or Operational Decisions that may be made or Operational Plans that may be carried out after the Effective Date of the Agreement will be carried out in accordance with the processes described in section 6 of the SEA.
- 5.2 The Ktunaxa Parties agree that Provincial Agencies are entitled to rely on the consultation processes referred to in subsection 5.1 to fulfill any duty to consult with respect to a proposed Administrative or Operational Decision that may adversely affect the Aboriginal Rights of the Ktunaxa Nation.
- 5.3 If the SEA expires or is terminated prior to the end of the Term, this Agreement will be amended within 60 days of the date of expiry or termination of the SEA to include a consultation process for this Agreement.
- 5.4 If this Agreement is not amended as provided for under subsection 5.3, the Parties may suspend Revenue Sharing Contributions or terminate this Agreement in accordance with section 11.5.

## **6. Acknowledgments and Covenants**

- 6.1 The Ktunaxa Parties acknowledge that forest revenues received by the Province fluctuate and that the Revenue Sharing Contributions under this Agreement will vary over time.
- 6.2 The Ktunaxa Parties agree that the Revenue Sharing Contributions made under section 3 constitute an accommodation for potential infringements on the Aboriginal Rights of the Ktunaxa Nation of Administrative and/or Operational Decisions and Operational Plans in the Ktunaxa Territory.
- 6.3 The Ktunaxa Parties agree that during the Term of this Agreement, if the consultation process set out in section 5 is followed, the Province will have adequately consulted with respect to potential infringements of the Aboriginal Rights of the Ktunaxa Nation in the context of any Administrative and/or Operational Decisions that the Province will make and any forest or range practices that may be carried out under an Operational Plan in the Ktunaxa Territory.

## **7. Community Priorities, Annual Reports and Records**

- 7.1 The Ktunaxa Parties agree to use Revenue Sharing Contributions to achieve the socio-economic objectives on behalf of Ktunaxa Communities and Ktunaxa Citizens, including objectives related to education, cultural revitalization, housing, infrastructure, health, economic development, land stewardship and governance capacity.
- 7.2 For greater certainty, the Ktunaxa Parties may use all, or a portion, of Revenue Sharing Contributions received in any given year for priority objectives in that year, or may hold such payments for implementing initiatives to achieve socio-economic objectives in future years.
- 7.3 Whether or not the Term has ended the Ktunaxa Parties covenant to use the monies received under this Agreement for the objectives set out in subsection 7.1.
- 7.4 The KNC, as the entity responsible and accountable to Ktunaxa Communities and Ktunaxa Citizens, prepares multi-year plans reflecting the Ktunaxa Nation's socio-economic goals and priorities, and provides annual reports to Ktunaxa Communities and Ktunaxa Citizens and for the purposes of this Agreement will, within 120 days of the end of each BC Fiscal Year, publish and make publically available on the Ktunaxa Nation's website an annual report containing the following information:
- 7.4.1 the Ktunaxa Nation's socio-economic priorities for the upcoming fiscal year that are intended to be funded from the Payment Account,
  - 7.4.2 expenditures made in the previous fiscal year that were funded from the Payment Account, and
  - 7.4.3 the criteria and specific outcomes considered to indicate how those expenditures contributed to the achievement of objectives set out in subsection 7.1.
- 7.5 The KNC will provide, if requested by the Province, audited financial statements with respect to the expenditure of funds from the Payment Account.

## **8. Security Deposits**

- 8.1 In recognition of the Ktunaxa Parties entering into this Agreement, the Province may choose not to request a silviculture deposit pertaining to a licence entered into as a result of the invitation to apply under a Forest Tenure Opportunity Agreement entered into between one or more of the Ktunaxa Communities, or a legal entity controlled by one or more of the Ktunaxa Communities, and the Province.



8.2 The Ktunaxa Parties agree that the Province may apply any payment that the Ktunaxa Parties are entitled to receive under this Agreement, to a maximum of the amount that the Province would have obtained in a silviculture deposit, to fully or partially satisfy any unfulfilled financial obligations of a Ktunaxa Party to the Province arising from a licence entered into as a result of the invitation to apply under a Forest Tenure Opportunity Agreement entered into between one or more of the Ktunaxa Communities, or a legal entity controlled by one or more of the Ktunaxa Communities, and the Province.

8.3 Prior to the Province applying any payment to satisfy unfulfilled financial obligations of a Ktunaxa Party arising from a licence in accordance with subsection 8.2, the Province will notify the Ktunaxa Parties of the unfulfilled financial obligation and will discuss the proposed action with the Ktunaxa Parties.

## **9. Stability for Land and Resource Use**

9.1 The Ktunaxa Parties will respond immediately to any discussions sought by the Province in relation to any acts of intentional interference by any Ktunaxa Citizen with provincially authorized forest and/or range activities and will work co-operatively with the Province to assist in resolving any such matters.

## **10. Dispute Resolution**

10.1 If a dispute arises between the Province and the Ktunaxa Parties regarding the interpretation or implementation of this Agreement, the duly appointed representatives of the Parties will meet as soon as is practicable to attempt to resolve the dispute.

10.2 If the Parties are unable to resolve differences through the process described in subsection 10.1, the Senior Forum established under Appendix C of the SEA will attempt to resolve the issue.

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

## **11. Suspension and Termination**

11.1 Subject to sections 11.2 and 11.3, the Province may suspend the making of further Revenue Sharing Contributions under this Agreement if it determines, acting reasonably, that one or more of the Ktunaxa Parties are not fulfilling their obligations under sections 5, 7 or 9 or subsection 11.4, or where one or more of the Ktunaxa Parties have outstanding unfulfilled financial obligations to the Province arising from a licence issued further to an agreement between one or more of the Ktunaxa Parties and the Province.

- 11.2 Upon making a determination under subsection 11.1, the Province will provide notice to the Ktunaxa Parties of the alleged non-compliance, and the Parties will then attempt to resolve their differences.
- 11.3 If the alleged non-compliance by one or more of the Ktunaxa Parties is not resolved within 60 days of the notice provided in subsection 11.2, the Province will notify the Ktunaxa Parties that the alleged non-compliance remains unresolved and, without limiting the actions that may be taken by the Province, may terminate this Agreement.
- 11.4 If, during the Term of this Agreement, one or more of the Ktunaxa Parties challenges or supports a challenge to an Administrative Decision and/or Operational Decision or an Operational Plan or activities carried out pursuant to those decisions or plans, by way of legal proceedings or otherwise, on the basis that, contrary to section 6.2, the Revenue Sharing Contribution provided for in section 3 does not provide an accommodation for impacts on the Aboriginal Rights of the Ktunaxa Nation then, without limiting any actions that may be taken by the Province, the Revenue Sharing Contribution provided for in section 3 may be suspended or this Agreement may be terminated by the Province.
- 11.5 This Agreement will terminate prior to the end of the Term in any one of the following circumstances:
- 11.5.1 90 days written notice of termination is given by either the Ktunaxa Parties or the Province to the other Parties;
  - 11.5.2 termination occurs in accordance with any of the provisions of section 11; or
  - 11.5.3 upon written mutual agreement of the Parties.
- 11.6 In the event of such early termination, the Revenue Sharing Contribution for the BC Fiscal Year in which the termination becomes effective will be prorated to the termination date.
- 11.7 During the 90 day period under subsection 11.5, representatives of the Parties will meet to discuss the circumstances that gave rise to the written notice, determine whether to pursue a resolution of the issue through the dispute resolution process set out in section 10, and determine if there is a basis for rescinding the notice.
- 11.8 In the event the Parties enter into a comprehensive economic and community development agreement that includes a forestry revenue-sharing component, that economic and community development agreement will replace this Agreement and this Agreement will terminate on a date mutually agreed to in writing by the Parties pursuant to subsection 11.5.3.

**12. Term**

12.1 The term of this Agreement ("Term") will commence on the Effective Date and, unless terminated earlier in accordance with any of the provisions hereof, will end on the day immediately before the third anniversary of the Effective Date.

**13. Renewal of the Agreement**

13.1 Within six (6) months before the expiry of the Term, if the terms and conditions of this Agreement are being met, the Province and the Ktunaxa Parties will, if each Party has received such authorizations as it may require, begin negotiations for the renewal of this Agreement or for a new agreement.

**14. Amendment of Agreement**

14.1 Any amendment of this Agreement must be in writing and duly executed by the Parties.

14.2 The Ktunaxa Parties or the Province may request the participation of the other Party(ies) for a review of the effectiveness of this Agreement and consider amendments to this Agreement.

**15. Entire Agreement**

15.1 This Agreement and any amendment to it constitute the entire Agreement between the Parties with respect to the subject matter of this Agreement.

**16. Notice**

16.1 Where in this Agreement any notice or other communication is required to be given by any of the Parties, it will be made in writing and it will be effectively given by

16.1.2 personal delivery to the address of the Party set out below, on the date of delivery,

16.1.2 pre-paid registered mail to the address of the Party mentioned in this Agreement, on the date the registered mail is delivered, or

16.1.3 facsimile, to the facsimile number of the Party set out in this Agreement, on the date the facsimile is received.

16.2 The addresses and facsimile numbers of the Parties are

16.2.1 for the Ktunaxa Parties:

Ktunaxa Nation Council  
7468 Mission Rd  
Cranbrook BC V1C 7E5  
Fax: (250) 489-2438  
Attention: Director, Ktunaxa Land and Resources Agency;

and

16.2.2 for the Province:

Deputy Minister  
Ministry of Aboriginal Relations and Reconciliation  
PO Box 9100 Stn Prov Govt  
Victoria, BC V8W 9B1  
Fax: (250) 489-8506  
Attention: Kootenay Boundary Manager, MARR

- 16.3 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. If received after 4:00 p.m., it will be deemed to have been received on the next business day.
- 16.4 Any Party may at any time give notice to the other Party of any change of information in the manner set out in this section 16.

## **17. Miscellaneous**

- 17.1 The main body of this Agreement and all appendices attached are to be interpreted so that all the provisions are given as full effect as possible.
- 17.2 This Agreement will be governed by and construed in accordance with the applicable laws of British Columbia and Canada.
- 17.3 This Agreement is not a treaty or a lands claims agreement within the meaning of sections 25 and 35 of the *Constitution Act, 1982*.
- 17.4 This Agreement does not create, amend, define, affirm, recognize, limit, abrogate, extinguish, replace or derogate from any Aboriginal Rights of the Ktunaxa Nation.
- 17.5 This Agreement does not address or prejudice conflicting interests or competing claims between First Nations.
- 17.6 Except as expressly contemplated herein, this Agreement does not limit the position either Party may take in any legal or administrative proceedings or in any discussions or negotiations between the Parties.

- 17.7 The Province acknowledges and enters into this Agreement on the basis that the Ktunaxa Nation has Aboriginal Rights within Ktunaxa Territory but that the specific nature, scope or geographic extent of those rights, have yet to be determined. Broader processes engaged in to bring about reconciliation will result in a common understanding of the nature, scope and geographic extent of Aboriginal Rights or treaty rights and interests of the Ktunaxa Nation.
- 17.8 References in this Agreement to Crown lands are without prejudice to the Ktunaxa Nation's Aboriginal Rights and its claims over those lands.
- 17.9 This Agreement does not address or affect any claims by the Ktunaxa Nation regarding impacts on the Aboriginal Rights of the Ktunaxa Nation resulting from past Operational or Administrative Decisions made by the Province prior to the Effective Date of this Agreement.
- 17.10 Nothing in this Agreement is to be construed as an acceptance, or admission by a Party, of the position of another Party regarding any matter including its jurisdiction, its responsibilities, or decision-making authority or otherwise or as an admission of fact or liability.
- 17.11 Agreement to the Revenue Sharing Contribution Methodology set out in Appendix B is without prejudice to any position that the Ktunaxa Parties may take in any other negotiations or proceedings regarding the following:
- 17.11.1 the approach to prorating the overlapping territories of other First Nations as set out in section 1.5 of that Appendix;
- 17.11.2 the percentage used to calculate the Ktunaxa Territory forest revenue sharing component under section 1.7 of that Appendix; and
- 17.11.3 the percentage used to calculate the direct award forest tenure revenue sharing component under section 2.2 of that Appendix.
- 17.12 In this Agreement, a reference to a statute includes all regulations made under that statute and any amendments or replacements of that statute and its regulations.
- 17.13 There will be no presumption that any ambiguity in any of the terms of this Agreement should be interpreted in favour of either Party.
- 17.14 This Agreement is not intended to limit any obligation of forest or range Licensees or other third parties to the Ktunaxa Parties.
- 17.15 This Agreement does not exclude the Ktunaxa Parties from accessing forestry economic opportunities and benefits, which may be available to the Ktunaxa Nation, other than those expressly set out in this Agreement.

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- 17.16 This Agreement is not intended to limit or diminish the consideration or application of non-monetary forms of accommodation to address potential impacts on the Aboriginal Rights of the Ktunaxa Nation relating to Administrative Decisions, Operational Decisions and/or Operational Plans in the Ktunaxa Territory during the Term of this Agreement.
- 17.17 This Agreement does not constitute an admission by the Province of an obligation to provide financial or economic benefits, as provided in this Agreement, as part of the Province's obligation to consult and accommodate.
- 17.18 If any part of this Agreement is void or unenforceable at law, it will be severed from this Agreement and the remainder of the Agreement will remain in full force and effect.
- 17.19 If any part of this Agreement is void or unenforceable at law, the Parties agree to negotiate and attempt to reach agreement on a replacement for that part with a view to achieving the intent of the Parties as expressed in this Agreement and, if no agreement is reached, the Parties may agree to refer the matter to the dispute resolution process set out in section 10.
- 17.20 All headings in this Agreement are for convenience only and do not form a part of this Agreement and are not intended to interpret, define, limit, enlarge, modify or explain the scope, extent or intent of this Agreement or any of its provisions.
- 17.21 In this Agreement, words in the singular include the plural, and words in the plural include the singular unless the context or any specific definition otherwise requires.
- 17.22 This Agreement is not intended to be interpreted in a manner that would affect or interfere with any legislative authority of the Province or fetter the discretion of any decision-making authority.
- 17.23 This Agreement and any amendment to it constitute the entire Agreement between the Parties with respect to the subject matter of this Agreement, unless otherwise agreed in writing by the Parties.
- 17.24 No partnership, joint venture, agency, fiduciary or employment relationship will be deemed to be created by this Agreement or by any actions of the Parties under this Agreement.
- 17.25 The use of the word "including" does not limit the generality of the preceding term or phrase.
- 17.26 No term, condition, covenant or other provision of this Agreement will be deemed to have been waived unless such waiver is expressed in writing and signed by the Party or Parties giving the waiver.

- 17.27 Any reference to a corporate entity includes and is also a reference to any corporate entity that was a predecessor to, or that is a successor to, such entity.
- 17.28 This Agreement is not intended to limit or diminish any present or future fiscal transfer agreements between the Parties unrelated to this Agreement.
- 17.29 The funds received under this Agreement are not, and are not intended to be, considered as own source revenue for the purposes of a treaty.
- 17.30 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 fax. Each facsimile will be deemed to be an original for all purposes and all counterparts taken together will be deemed to constitute one document.

SIGNED this 21 day of July,  
2011, in the presence of: )

The Ktunaxa Nation Council Society, on its  
own behalf and on behalf of St. Mary's  
Indian Band, Tobacco Plains Indian Band,  
Lower Kootenay Indian Band and  
?Akisq'nuk First Nation )

[Signature] )

Witness

[Signature] )

Kathryn Teneese, Chair

SIGNED this 08 day of 09  
2011, in the presence of: )

HER MAJESTY THE QUEEN IN RIGHT  
OF THE PROVINCE OF BRITISH  
COLUMBIA, as represented by the  
Minister of Aboriginal Relations and  
Reconciliation )

[Signature] )

Witness

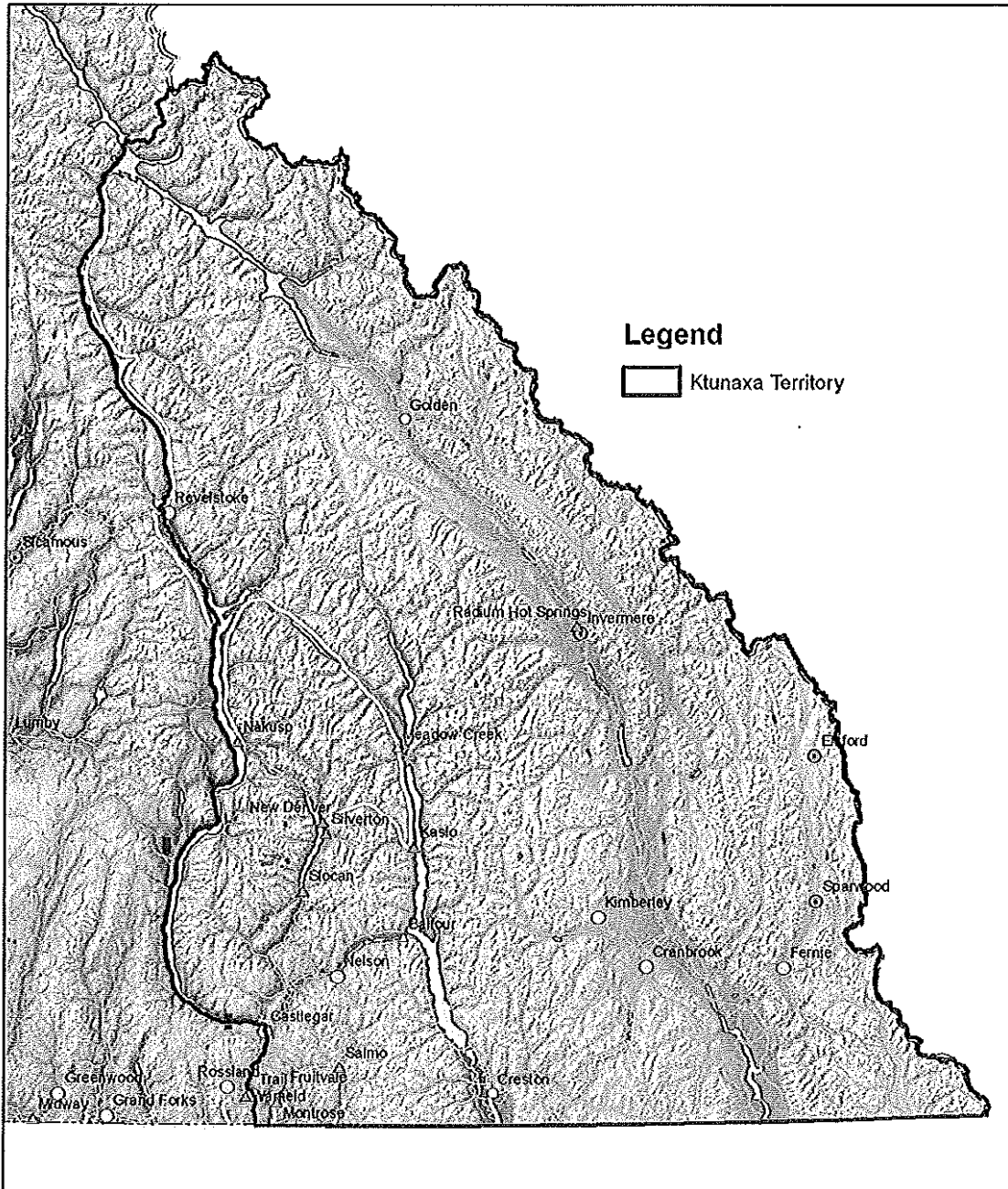
[Signature] )

Minister Mary Polak



# APPENDIX A

## Map of Ktunaxa Territory



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## APPENDIX B

### Revenue Sharing Contribution Methodology

#### 1. Ktunaxa Territory Forest Revenue Sharing Component

- 1.1 In each BC Fiscal Year that this Agreement is in effect, and subsequent to the release by the Minister of Finance of the previous BC Fiscal Year's public accounts of the Province, a summary document will be prepared of the forest revenue, defined as the total of stumpage, waste and annual rent payments received by the Crown for the previous 2 BC Fiscal Years, for each of the following forest districts:
- 1.1.1 Arrow Boundary;
  - 1.1.2 Columbia;
  - 1.1.3 Kootenay Lake; and
  - 1.1.4 Rocky Mountain.
- 1.2 An average forest revenue amount over 2 years will be calculated for the forest districts set out in subsection 1.1.
- 1.3 For the purposes of the summary document in subsection 1.1 of this Appendix, the stumpage, waste and any annual rent payments from eligible forest tenures held by or on behalf of any of the Ktunaxa Parties will not be included in the calculations of forest revenue.
- 1.4 The amount of the forest revenue attributed to the Ktunaxa Territory will be calculated by determining the percent of the Ktunaxa Territory that falls within the Timber Harvesting Land Base in each of the forest districts listed in subsection 1.1 of this Appendix, applied against the average forest revenue calculated under subsection 1.2 of this Appendix.
- 1.5 The amount of forest revenue attributed to the Ktunaxa Territory under subsection 1.4 of this Appendix will be prorated for overlapping territories of other First Nations.
- 1.6 For the purposes of subsection 1.4 of this Appendix, the Province agrees that the latest timber supply review timber harvesting land base data will be used for fiscal year 2011/12 and beyond.
- 1.7 In the first year of this Agreement, the Ktunaxa Territory forest revenue sharing component will be calculated by multiplying 4 percent of the forest revenue

attributed to the Ktunaxa Territory as described in subsections 1.4 and 1.5 of this Appendix.

- 1.8 During the first year of this Agreement, the Parties will consider and confirm the percentage that will be used to calculate the Ktunaxa Territory forest revenue sharing component for the remaining Term of this Agreement in a manner that the Parties agree reflects the nation-level engagement between the Province and the Ktunaxa Nation.
- 1.9 Subject to subsection 1.10, for each BC Fiscal Year that this Agreement is in effect, the calculations outlined in subsections 1.1 to 1.5 of this Appendix will be performed.
- 1.10 If the percentage used to calculate the Ktunaxa Territory forest revenue sharing component is amended under subsection 1.8, the amended percentage will be used for the remaining Term of this Agreement.

## **2. Direct Award Tenure Forest Revenue Sharing Component**

- 2.1 Subsequent to the release by the Minister of Finance of the previous BC Fiscal Year's public accounts of the Province, a summary document will be prepared of the forest revenue, defined as the total of stumpage and waste payments received by the Crown for the previous BC Fiscal Year, for each eligible direct award forest tenure held by or on behalf of each of the Ktunaxa Parties.
- 2.2 In the first year of this Agreement, the direct award forest tenure revenue sharing component will be calculated by multiplying 50 percent of the forest revenue as described in subsection 2.1 of this Appendix.
- 2.3 During the first year of this Agreement, the Parties will consider and confirm the percentage that will be used to calculate the direct award forest revenue sharing component for the remaining Term of this Agreement in a manner that the Parties agree reflects the nation-level engagement between the Province and the Ktunaxa Nation.
- 2.4 Subject to subsection 2.5, for each BC Fiscal Year that this Agreement is in effect, the calculations outlined in subsections 2.1 and 2.2 of this Appendix will be performed.
- 2.5 If the percentage used to calculate the direct award forest revenue sharing component is amended under subsection 2.3, the amended percentage will be used for the remaining Term of this Agreement.

### **3. Forest Revenue Sharing Transition**

- 3.1 The Parties agree that new methods to calculate the Revenue Sharing Contribution will be phased in over the next 3 years.
- 3.2 For each BC Fiscal Year that this Agreement is in effect, a portion of the Revenue Sharing Contribution is calculated by determining the sum of the Ktunaxa Territory forest revenue sharing component and the eligible direct award tenure forest revenue sharing component for that BC Fiscal Year and applying the following percentages to that sum:
- 3.2.1 2011/12 BC Fiscal Year: 50 percent;
  - 3.2.2 2012/13 BC Fiscal Year: 80 percent; and
  - 3.2.3 2013/14 BC Fiscal Year: 100 percent.
- 3.3 For each BC Fiscal Year that this Agreement is in effect, the remaining portion of the Revenue Sharing Contribution is calculated by determining the annual amount of the payments that were made by the Province to the Ktunaxa Parties in any given full year under the Ktunaxa Nation Council Interim Agreement on Forest and Range Opportunities which expired on June 6, 2011, and applying the following percentages to that annual amount:
- 3.3.1 2011/12 BC Fiscal Year: 59 percent;
  - 3.3.2 2012/13 BC Fiscal Year: 55 percent; and
  - 3.3.3 2013/14 BC Fiscal Year: 50 percent.
- 3.4 The Parties agree that if this Agreement is renewed in accordance with section 13 of this Agreement or expires in the 2014/15 BC Fiscal Year, the Revenue Sharing Contribution starting in the 2014/2015 BC Fiscal Year will be the sum of the Ktunaxa Territory forest revenue sharing component and the eligible direct award tenure forest revenue sharing component calculated in this Appendix.

## APPENDIX C

### Band Council Resolutions Approving the Forest Revenue Sharing Agreement