

ECONOMIC AND COMMUNITY DEVELOPMENT AGREEMENT

This Agreement is dated the ___ of _____, 2017

BETWEEN:

Her Majesty the Queen in right of the Province of British Columbia, as represented by the
Minister of Aboriginal Relations and Reconciliation

(**"British Columbia"**)

AND:

Tsay Keh Dene First Nation, on behalf of itself and its Members, as represented by the Chief
and Council

(**"Tsay Keh Dene First Nation"**)

(collectively referred to as the "**Parties**" and individually referred to as a "**Party**")

WHEREAS:

- A. AuRico Metals Inc. proposes to develop the Kemess Underground Mine located within the area Tsay Keh Dene First Nation has identified as its traditional territory;
- B. Tsay Keh Dene First Nation has Aboriginal Rights in its traditional territory;
- C. Tse Keh Nay is an alliance of Tsay Keh Dene First Nation, Takla Lake First Nation and Kwadacha Nation based on a shared history, language, culture and common economic interests and concerns;
- D. Tse Keh Nay and British Columbia wish to work together collaboratively on the Kemess Underground Mine for benefit of the Parties, AuRico Metals Inc. and all British Columbians; and
- E. In the interests of advancing the goal of reconciliation and fostering a closer government-to-government relationship, Tsay Keh Dene First Nation and British Columbia have reached agreement on the sharing of mineral tax revenues for the Kemess Underground Mine on the terms and conditions set out in this Agreement.

NOW THEREFORE the Parties agree as follows:

SECTION 1: DEFINITIONS

1.1 In this Agreement:

"Aboriginal Rights" means asserted or determined Aboriginal rights, including Aboriginal title, as recognized and affirmed by section 35(1) of the *Constitution Act, 1982*;

"Agreement" means this Economic and Community Development Agreement including its attached appendices and schedules and any amendments made to it from time to time in accordance with its provisions;

“Arbitration” means the process set out in subsection 21.11 of this Agreement;

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

“Dispute” means any disagreement arising out of the interpretation or implementation of this Agreement, including any dispute with respect to whether any Party has failed to perform or satisfy any of its obligations under this Agreement, subject to exclusions under subsection 21.2 of this Agreement;

“Effective Date” means the last date on which this Agreement is fully executed by the Parties;

“Engagement Process” means the process to be established in accordance with section 10 of this Agreement;

“Government Actions” means all authorizations, permits, licences, approvals, Crown land dispositions, agreements, completed processes and other decisions, whatsoever entered into or otherwise taken by British Columbia, Provincial Agencies and Provincial Officials, applicable to the Project;

“Mediation” means the process set out in subsection 21.9 of this Agreement;

“Member” means a member of the Tsay Keh Dene First Nation as defined by the Tsay Keh Dene First Nation membership code or as shown in the Tsay Keh Dene First Nation band list within the meaning of the *Indian Act*, R.S.C. 1985, c.1-5;

“Mine” means the Kemess Underground Mine registered with the BC Chief Inspector of Mines;

“Mine Fiscal Year” means a “fiscal year of the mine” as defined in the *Mineral Tax Act*;

“Mineral Tax Act” means the *Mineral Tax Act*, R.S.B.C. 1996, c. 291, as amended from time to time, and legislation in addition to or in substitution therefore which assesses a tax in favour of British Columbia similar to the tax presently assessed under the *Mineral Tax Act*;

“Notice to Terminate” means a notice provided by either Party in accordance with section 17;

“Operator” has the same meaning as in the *Mineral Tax Act*;

“Payment Statement” means the statement in respect of the Project containing the tax information that British Columbia will provide to Tsay Keh Dene First Nation under subsection 3.6;

“Project” means, unless otherwise agreed in writing by the Parties, all Government Actions in or related to the Project Area and Government Actions, including:

- (a) the Mine including its associated infrastructure, access roads, power facilities, and other physical facilities located within the Project Area;
- (b) any changes, modifications or expansions to the Mine within the Project Area;
- (c) all matters relating to the exploration, planning, permitting, construction, maintenance, repair, operation, closure and reclamation of the Mine; and

- (d) any changes or modifications to existing access roads and power lines, facilities, infrastructure or works located outside the Project Area, to the extent required in connection with the Mine;

"Project Area" means, for the purposes of this Agreement, the Kemess Mining Leases area referenced in the map legend and shown on the map attached as Appendix A;

"Proponent" means the Operator who from time to time is responsible for the Project and for paying *Mineral Tax Act* tax payments to British Columbia in relation to the Project;

"Provincial Agency" means a ministry, agency, office, or corporation of the Province of British Columbia;

"Provincial Official" means:

- (a) any minister, public official, director, officer, employee or agent of the Province or a Provincial Agency; and
- (b) any person acting as a decision maker under any enactment of the Province;

"Revenue Sharing Payments" means the payments to be made by British Columbia to Tsay Keh Dene First Nation pursuant to sections 3 and 4; and "Revenue Sharing Payment" means any one such payment;

"Statement of Community Priorities" means the statement that Tsay Keh Dene First Nation will prepare in accordance with subsections 9.1(a) and (b); and

"Term" means the term of this Agreement set out in section 16.

SECTION 2: PURPOSES

2.1 The purposes of this Agreement are to:

- (a) strengthen the government-to-government relationship between the Parties;
- (b) support Tsay Keh Dene First Nation's interest in achieving a greater role for Tsay Keh Dene First Nation in the regional economy;
- (c) recognize Tsay Keh Dene First Nation's interest in receiving a share of revenues derived from the use of resources within its traditional territory;
- (d) enhance the governance capacity of Tsay Keh Dene First Nation for self-government and reduce the socio-economic gaps between Tsay Keh Dene First Nation Members and other non-Aboriginal British Columbians;
- (e) create greater certainty for the Project;
- (f) confirm the engagement processes that the Parties will rely on and follow to fulfil their respective legal obligations regarding consultation associated with the Project; and

- (g) set out the basis by which mineral tax revenue will be shared by British Columbia with Tsay Keh Dene First Nation, including arrangements on how payments will be calculated, when payments will be made and the purposes for which payments may be used.

SECTION 3: PROVINCIAL PAYMENTS

3.1 Definitions

In this section:

“Net Mineral Tax Revenue” means the total amount of tax, penalty and interest paid by the Proponent under the *Mineral Tax Act* in respect of the Project, less the total amount of tax, penalty and interest refunded and interest paid to the Proponent under the *Mineral Tax Act* in respect of the Project, but does not in either case include a Post-Closure Reclamation Amount;

“Overpayment” means an amount paid by British Columbia under this Agreement that exceeds the amount Tsay Keh Dene First Nation was entitled to receive, including a negative Revenue Sharing Payment amount under subsection 3.2, which may occur if a Proponent has paid more tax than required in a previous BC Fiscal Year or British Columbia has shared more tax than required in a previous BC Fiscal Year;

“Post-Closure Reclamation Amount” means an amount paid by the Proponent or refunded to the Proponent in respect of the Project in relation to a reclamation tax credit for a Mine Fiscal Year commencing after production at the Project has ceased; and

“Underpayment” means a Revenue Sharing Payment that was less than the amount Tsay Keh Dene First Nation was entitled to receive due to the inclusion of any tax, interest, or penalties paid by the Proponent that was less than the amount required in a previous BC Fiscal Year, or any other adjustments.

Mineral Tax Revenue Sharing Payment

- 3.2 British Columbia will provide Revenue Sharing Payments to Tsay Keh Dene First Nation that comprise 11.67% of the Net Mineral Tax Revenue calculated as follows:

$(11.67\% \times \text{Net Mineral Tax Revenue for a BC Fiscal Year}) + \text{Underpayment} - \text{Overpayment}$

Calculation and Timing of Revenue Sharing Payments

- 3.3 British Columbia will calculate the Revenue Sharing Payments for each BC Fiscal Year.
- 3.4 If the Revenue Sharing Payment for a BC Fiscal Year ending after the Effective Date is a positive amount, British Columbia will, within one hundred and eighty (180) days after the end of the BC Fiscal Year for which the Revenue Sharing Payment is calculated, pay Tsay Keh Dene First Nation the calculated amount provided that:
 - (a) British Columbia has not received a Notice of to Terminate; or
 - (b) the Revenue Sharing Payment has not been suspended under subsection 18.1.

- 3.5 If a Revenue Sharing Payment is a negative amount due to an Overpayment, the Province may pay up to fifty (50) percent of the amount that would have been paid in the absence of the Overpayment amount to Tsay Keh Dene First Nation, and apply the remaining amount to the Overpayment balance until the Overpayment amount is recovered.

Payment Statements

- 3.6 Within one hundred and fifty (150) days after the end of each BC Fiscal Year, British Columbia will provide Tsay Keh Dene First Nation with a Payment Statement containing the following information:
- (a) Net Mineral Tax Revenue received by British Columbia or refunded or paid to a Proponent by British Columbia in the BC Fiscal Year;
 - (b) the amount of any Overpayment or Underpayment;
 - (c) the amount of the Revenue Sharing Payment; and
 - (d) if applicable, any amount of the Revenue Sharing Payment applied to an Overpayment balance.

Other Payment Provisions

- 3.7 The Parties acknowledge that *Mineral Tax Act* revenues fluctuate and that Revenue Sharing Payments will vary over time.
- 3.8 Tsay Keh Dene First Nation acknowledges that British Columbia is entitled to rely on information provided by the Proponent and that, while British Columbia will use reasonable efforts to ensure the accuracy of the information, the determination of the Net Mineral Tax Revenue is based on approximations and are therefore subject to imprecision.
- 3.9 British Columbia makes no representation or warranty as to the accuracy of the information provided by the Proponent and no proceeding lies against it in relation to any claim that the information provided by the Proponent was inaccurate.
- 3.10 British Columbia will notify the Tsay Keh Dene First Nation in a timely manner of any significant changes made to the *Mineral Tax Act* tax regime.
- 3.11 If during the Term of this Agreement, British Columbia makes significant changes to the *Mineral Tax Act* regime and by virtue of the changes the payments to Tsay Keh Dene First Nation under this Agreement are reduced, the Parties will discuss and take into account potential alternative revenue sharing opportunities with Tsay Keh Dene First Nation.
- 3.12 In the event that the Proponent is no longer responsible for making payments under the *Mineral Tax Act* in relation to the Project, such that there will be no subsequent payment to Tsay Keh Dene First Nation under this Agreement, British Columbia will send to Tsay Keh Dene First Nation a notice of any Overpayment Amount that remains outstanding,

and the Parties will meet to discuss which current or future revenue source(s) the Overpayment Amount may be recovered from.

- 3.13 The Parties acknowledge that mineral tax revenue sharing payments to be made by British Columbia to Tsay Keh Dene First Nation under this Agreement are based on the maximum percentage under British Columbia's current mineral tax revenue sharing policy divided equally between Kwadacha Nation, Takla Lake First Nation and Tsay Keh Dene First Nation. If at a later date British Columbia changes its mineral tax revenue sharing policy to increase the maximum percentage of mineral tax revenue that may be shared by British Columbia with First Nations with existing mineral tax revenue sharing agreements, then the Parties will negotiate an amendment to this Agreement to reflect that policy change, divided equally between Kwadacha Nation, Takla Lake First Nation and Tsay Keh Dene First Nation.

SECTION 4: DELIVERY OF PAYMENTS

- 4.1 Tsay Keh Dene First Nation will:
- (a) establish and maintain in their name a separate account at a Canadian financial institution for the purpose of receiving Revenue Sharing Payments ("Payment Account") into which direct deposits can be made by British Columbia; and
 - (b) provide British Columbia with the address and account information to enable British Columbia to make Revenue Sharing Payments.
- 4.2 British Columbia will deposit Revenue Sharing Payments payable to Tsay Keh Dene First Nation under the Agreement directly into the Payment Account established under subsection 4.1.
- 4.3 For greater certainty, prior to British Columbia making any Revenue Sharing Payment, Tsay Keh Dene First Nation must be in compliance with subsection 4.1.
- 4.4 Tsay Keh Dene First Nation will maintain the Payment Account for as long as there are Revenue Sharing Payments to be made under this Agreement or there is money in it to be disbursed.
- 4.5 British Columbia will be entitled to rely on any notice of change of address or accounts set out in any Tsay Keh Dene First Nation Band Council Resolution received by British Columbia.
- 4.6 Tsay Keh Dene First Nation may settle a trust to receive, the Revenue Sharing Payments, and will provide to British Columbia a legal opinion stating that:
- (a) the trust is validly settled and consistent with the terms of this Agreement including the objective set out in subsection 5.1;
 - (b) the trust has been settled for the stated purpose of benefitting Tsay Keh Dene First Nation and its Members to provide for the professional management and investment of the trust property;
 - (c) the trust provides for an annual audit; and

- (d) the trust requires that the trustees notify British Columbia in the event that there is a change to:
 - (i) the beneficiaries of the trust, or
 - (ii) the primary purpose of the trust as identified in subsection 4.6 (b) above.
- 4.7 The trustees of the trust are required to be legally capable of accepting the rights granted and obligations imposed under this Agreement.
- 4.8 Tsay Keh Dene First Nation will provide to British Columbia a copy of the trust indenture and full name, address and account information respecting the trust.
- 4.9 Notwithstanding subsections 3.2 and 3.4, British Columbia will not be obligated to make any payments to a trust established by Tsay Keh Dene First Nation until subsections 4.6, 4.7, and 4.8 have been complied with to the reasonable satisfaction of British Columbia.
- 4.10 If the trust identified in subsection 4.6 is terminated pursuant to its terms and there remains undistributed trust property upon termination, Tsay Keh Dene First Nation agrees to cause that trust property to be settled on a successor trust with terms and objectives consistent with those of the original trust described in section 4.6.

SECTION 5: USE OF REVENUE SHARING PAYMENTS

- 5.1 Tsay Keh Dene First Nation will, in its sole discretion, use the Revenue Sharing Payments for initiatives consistent with the Tsay Keh Dene First Nation's socio-economic objectives of enhancing the socio-economic well-being of the Tsay Keh Dene First Nation, including but not limited to programs, services or other initiatives in education, health, language and culture, housing, infrastructure, economic development and governance.
- 5.2 Tsay Keh Dene First Nation may use all, or a portion of, Revenue Sharing Payments received in any given year to pursue initiatives undertaken in that year or a previous year, or may hold such payments for initiatives in future years.
- 5.3 Whether or not the Term has ended, Tsay Keh Dene First Nation agrees that it will continue to use the monies received under this Agreement for the objectives set out in subsection 5.1.

SECTION 6: CONFIDENTIAL INFORMATION

- 6.1 Subject to subsections 6.2 and 6.3, Tsay Keh Dene First Nation will keep confidential information that British Columbia marks as "confidential", including Payment Statements and any information that relates to tax payments under the *Mineral Tax Act*, and will not disclose such information to any other person, unless compelled to do otherwise by law.
- 6.2 Tsay Keh Dene First Nation may disclose confidential information to their advisors, including legal, financial, tax and other professional advisors, provided that those advisors agree in writing or are otherwise legally required to keep the information confidential.

- 6.3 Tsay Keh Dene First Nation may disclose the amount of a Revenue Sharing Payment to its Members each year.
- 6.4 Tsay Keh Dene First Nation acknowledges that British Columbia has informed it of the confidentiality requirements under the *Mineral Tax Act*.
- 6.5 British Columbia will keep confidential information that Tsay Keh Dene First Nation marks as "confidential", and will not disclose such information to any other person, except:
- (a) as necessary to support the Engagement Process or decision making process regarding any Government Action, or
 - (b) in accordance with the *Freedom of Information and Protection of Privacy Act*, or as otherwise required by law.
- 6.6 If British Columbia receives a request under the *Freedom of Information and Protection of Privacy Act* for disclosure of confidential information received from Tsay Keh Dene First Nation, the Province will provide Tsay Keh Dene First Nation with an opportunity to express their views regarding any impacts that may arise from a disclosure before disclosing of any such confidential information.

SECTION 7: APPROPRIATION

- 7.1 Notwithstanding any other provision of this Agreement, the Revenue Sharing Payments to be provided by British Columbia to Tsay Keh Dene First Nation are subject to:
- (a) there being sufficient monies available in an appropriation, as defined in the *Financial Administration Act*, to enable British Columbia in any Fiscal Year or part thereof when such payment is required, to make such payment; and
 - (b) 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.
- 7.2 Where a Revenue Sharing Payment that is due under this Agreement is not made to Tsay Keh Dene First Nation because there is insufficient monies available in an appropriation as defined in the *Financial Administration Act*, the Revenue Sharing Payment that is otherwise payable under this Agreement will be carried forward to and become payable in the next BC Fiscal Year that there are sufficient monies in an appropriation until the outstanding Revenue Sharing Payment is paid.

SECTION 8: PAYMENT DISPUTES

- 8.1 If Tsay Keh Dene First Nation disagrees with the amount of a Revenue Sharing Payment Tsay Keh Dene First Nation may give notice to British Columbia and on such notice:
- (a) the Parties will meet as soon as practicable to discuss the matter of concern; and
 - (b) British Columbia will review the matter and take any remedial actions required.

- 8.2 Where British Columbia has taken remedial action under subsection 8.1 or where British Columbia has declined to do so and the disagreement on the amount of a Revenue Sharing Payment is not resolved, the Parties may agree to submit the disagreement to an independent and impartial third party acceptable to the Parties for an independent and non-binding opinion. The Parties will cooperate fully with a third party appointed under this subsection, in accordance with terms of reference developed by the Parties.

SECTION 9: REPORTS

9.1 Tsay Keh Dene First Nation agrees as follows:

- (a) Within three years of the Effective Date of this Agreement, Tsay Keh Dene First Nation will prepare a Statement of Community Priorities that identifies community priorities and outlines goals and specific outcomes that Tsay Keh Dene First Nation intends to fund to help achieve the objectives set out in subsection 5.1.
- (b) Tsay Keh Dene First Nation may amend its Statement of Community Priorities from time to time by written notice to British Columbia. An amendment by Tsay Keh Dene First Nation to its Statement of Community Priorities will be consistent with and further the objectives in section 5.1 of this Agreement.
- (c) On an annual basis following receipt of a Revenue Sharing Payment under this Agreement Tsay Keh Dene First Nation will provide to its Members and make generally available to them a report that describes how the payments received under this Agreement were used during the previous year and how they have helped Tsay Keh Dene First Nation achieve the Statement of Community Priorities referred in 9.1(a).
- (d) Tsay Keh Dene First Nation will maintain financial records with respect to the Revenue Sharing Payments provided under this Agreement in accordance with the relevant Generally Accepted Accounting Principles, such as the International Financial Reporting Standards.
- (e) The documents referred to in subsections 9.1(a) and (b) will be made available to the Province.
- (f) Tsay Keh Dene First Nation will, if requested by British Columbia acting reasonably, provide financial statements with respect to the expenditure of funds from the Payment Account.
- (g) Notwithstanding the termination or expiry of this Agreement, Tsay Keh Dene First Nation will continue to comply with this section until 12 months after Tsay Keh Dene First Nation receives the last Revenue Sharing Payment from British Columbia.

SECTION 10: ENGAGEMENT PROCESS

10.1 Tsay Keh Dene First Nation and British Columbia agree that Tsay Keh Dene First Nation, Takla Lake First Nation and Kwadacha Nation ("Tse Keh Nay") will, within six (6) months from the Effective Date, collectively negotiate in good faith and through

reasonable efforts to reach agreement on a timely, efficient and meaningful engagement process for Government Actions that are proposed after the Effective Date.

- 10.2 For greater certainty the Engagement Process will not include the permits applied for by the Proponent through the initial and coordinated process for proposed Government Actions that will be reviewed by Tse Keh Nay and British Columbia under the collaboration plan for initial permitting of the Project.
- 10.3 The Parties acknowledge that the process for engagement to be established under subsection 10.1 is intended to:
- (a) fulfil British Columbia's legal obligations to consult and, where appropriate, accommodate the Tsay Keh Dene First Nation's Aboriginal Rights regarding proposed Government Actions; and
 - (b) complement contractual arrangements between Tsay Keh Dene First Nation and the Proponent to the extent it is practical to do so and consistent with British Columbia's legal obligation to consult and accommodate Tsay Keh Dene First Nation.
 - (c) create greater certainty for Tsay Keh Dene First Nation, British Columbia and the Proponent.
- 10.4 The engagement process to be established under subsection 10.1 will be based on and give effect to the following principles and objectives:
- (a) engagement by the parties will be conducted between Tse Keh Nay collectively and British Columbia to the extent it is practicable to do so and consistent with British Columbia's legal obligation to consult and accommodate Tsay Keh Dene First Nation;
 - (b) the Engagement Process will facilitate meaningful, efficient and respectful engagement by the British Columbia with Tse Keh Nay as a collective regarding Government Actions and, to the extent it is consistent with the principles and objectives in this section 10, the Engagement Process will use existing structures and processes (e.g. the Mine Development Review Committee). However, consideration will be given by the Parties to building on or modifying existing structure and processes where necessary to meet the principles and objectives in this section 10;
 - (c) the Engagement Process will reflect the level of potential impacts of proposed Government Actions on Tsay Keh Dene First Nation's Aboriginal Rights and the deepest level of engagement will be reserved for and focus on complex or higher impact Government Actions;
 - (d) the Engagement Process will build on the collaboration that has occurred to date between Tse Keh Nay and British Columbia in the Environmental Assessment and initial and coordinated permitting for the Project. For complex and higher impact Government Actions, building on previous collaboration may include striving for consensus and resolving disagreements through an issue resolution process where appropriate;

- (e) the Engagement Process will be designed to facilitate timely, efficient and well-informed decision making and, to that end, formal participation by Tse Keh Nay Chiefs and Assistant Deputy Ministers, where necessary, will be reserved for complex or higher impact Government Actions; and
 - (f) the Engagement Process will recognize each Party's respective decision making processes regarding the Project.
- 10.5 Where an agreement is reached by Tsay Keh Dene First Nation and British Columbia on an Engagement Process under this section 10, that Engagement Process will be reduced to writing and signed by the Parties, and when signed, that Engagement Process will be read together with and deemed to form part of this Agreement.
- 10.6 If the Parties require further time to develop the Engagement Process they may agree in writing to extend the time period to conclude the Engagement Process beyond six (6) months from the Effective Date.
- 10.7 If, after six (6) months from the Effective Date, or after any time extension under subsection 10.6, the Parties are unable to reach agreement on the Engagement Process, the Parties may agree in writing to use an existing process or either Party may provide a Notice to Terminate, in accordance with section 17.

SECTION 11: TSAY KEH DENE ABORIGINAL RIGHTS

- 11.1 This Agreement does not establish, create, expand, amend, define, affirm, recognize, limit, deny, abrogate, replace or derogate from any Tsay Keh Dene First Nation Aboriginal Rights.
- 11.2 British Columbia acknowledges, and enters into this Agreement on the basis, that Tsay Keh Dene First Nation has Aboriginal Rights within its traditional territory. However, no agreement exists between the Parties, and no other final determination has been made, regarding the specific nature, scope or geographic extent of Tsay Keh Dene First Nation Aboriginal Rights. Other processes designed to advance the goal of reconciliation may result in a common understanding regarding the nature, scope and geographic extent of Tsay Keh Dene First Nation Aboriginal Rights or treaty rights.

SECTION 12: KEMESS EAST

- 12.1 The Parties acknowledge that the feasibility study for the Project identifies a new mineral deposit called "Kemess East" that is adjacent to the Project Area and AuRico Metals Inc. has expressed an interest in potentially developing Kemess East at a later date through a mine expansion. If Kemess East is subsequently developed and operated as an expansion, Tsay Keh Dene First Nation may give written notice to the Province that it is interested in this Agreement applying to Kemess East, and where that notice is given, this Agreement will be amended to include Kemess East in this Agreement including, but not limited to, the provisions of this Agreement regarding Revenue Sharing Payments by British Columbia to Tsay Keh Dene First Nation and their calculation.

SECTION 13: CERTAINTY

Acknowledgements by Tsay Keh Dene First Nation

- 13.1 The Parties agree that the Revenue Sharing Payments provided under section 3 of this Agreement are an economic accommodation and constitute a component of any accommodation or compensation that may be required for any potential adverse impacts or infringements to Tsay Keh Dene First Nation's Aboriginal Rights as a result of Government Actions.
- 13.2 If the Tsay Keh Dene First Nation impedes, or effectively stops the operation of the Project by way of:
- (a) obtaining relief in an application or legal proceeding; or
 - (b) challenging or impeding the right of British Columbia or the Proponent, or any of their respective employees, contractors, agents, representatives or invitees, to gain access to the Project, and to carry out any activities associated with the development and operations of the Project

British Columbia may exercise its right to suspend Revenue Sharing Payments pursuant to section 18 or to terminate this Agreement pursuant to section 17.

- 13.3 Tsay Keh Dene First Nation will respond promptly to any discussions sought by British Columbia in relation to any actions by its Members that challenge or impede access by British Columbia or an Operator, or any of their respective employees, contractors, agents, representatives or invitees, to the Project to carry out activities associated with the development and operations of the Project and will work co-operatively with British Columbia to assist in resolving such matters.

Acknowledgements by British Columbia

- 13.4 British Columbia agrees that this Agreement does not prohibit or restrict in any way the right of Tsay Keh Dene First Nation or Members from:
- (a) participating in any regulatory or decision-making processes associated with the Project;
 - (b) participating in government programs for which they may be eligible; or
 - (c) accessing economic opportunities and benefits that are available to Tsay Keh Dene First Nation from any source other than those expressly provided in this agreement.
- 13.5 For greater certainty, nothing in this Agreement is intended to diminish, limit or impair efforts by Tsay Keh Dene First Nation to conclude and implement agreements with the Proponent or any contractors and sub-contractors who may supply goods and services to the Kemess Underground Project.

SECTION 14: CONTINUING OBLIGATIONS

14.1 The Parties acknowledge and agree that sections 6, 13.1 and this section 14 survive the termination of this Agreement.

SECTION 15: ASSIGNMENT

15.1 Tsay Keh Dene First Nation will not assign, either directly or indirectly, this Agreement or any right of Tsay Keh Dene First Nation under this Agreement without the prior written consent of British Columbia.

SECTION 16: TERM

16.1 The term of this Agreement will commence on the Effective Date and will continue for as long as tax, interest and penalties payable by a Proponent are subject to reassessment under applicable legislation, unless terminated in accordance with this Agreement.

SECTION 17: TERMINATION

17.1 Either Party may terminate this Agreement prior to the end of the Term on the grounds set out in subsections 17.3 or 17.4 by giving the other Party ninety (90) days advance written notice of the intent to terminate the Agreement and the reasons for terminating the Agreement.

17.2 During the ninety (90) day period:

- (a) representatives of the Parties will meet in order to discuss the circumstances which gave rise to the written notice and in order to determine whether there is a basis for rescinding the notice;
- (b) the Party that issued the notice to terminate may rescind that notice in writing; and
- (c) the Parties may agree in writing to extend the ninety (90) day notice period.

17.3 Tsay Keh Dene First Nation may terminate this Agreement in accordance with subsection 17.1 if:

- (a) the Parties are unable to reach agreement on an Engagement Process under section 10;
- (b) British Columbia fails to make a payment to Tsay Keh Dene First Nation as contemplated by section 3 other than a failure to pay as a result of a dispute concerning the proper amount of payment;
- (c) British Columbia does not make a Revenue Sharing Payment as a result of the provisions of section 7;
- (d) the representation or warranty made by British Columbia in this Agreement is untrue or incorrect; or
- (e) British Columbia is not in compliance with its obligations under this Agreement.

- 17.4 British Columbia may terminate this Agreement in accordance with subsection 17.1 if:
- (a) the Parties are unable to reach agreement on an Engagement Process under section 10;
 - (b) Tsay Keh Dene First Nation is not in compliance with its obligations under this Agreement;
 - (c) any representation or warranty made by Tsay Keh Dene First Nation in this Agreement is untrue or incorrect;
 - (d) Tsay Keh Dene First Nation does not remedy the cause for suspension of payments under subsection 18.1 within the time required under subsection 18.2(c); or
 - (e) Tsay Keh Dene First Nation impedes or effectively stops operation of the Project as contemplated by subsection 13.2.

SECTION 18: SUSPENSION OF PAYMENTS

- 18.1 British Columbia may suspend making further Revenue Sharing Payments where:
- (a) Tsay Keh Dene First Nation impedes or effectively stops operation of the Project as contemplated by subsection 13.2; or
 - (b) any representation or warranty made by Tsay Keh Dene First Nation in this Agreement is untrue or incorrect in any material respect; or
 - (c) Tsay Keh Dene First Nation provides a Notice to Terminate under subsection 17.1.
- 18.2 Where Revenue Sharing Payments are suspended under subsection 18.1:
- (a) British Columbia will provide notice to Tsay Keh Dene First Nation of the reasons for suspending Revenue Sharing Payments;
 - (b) within ten (10) days of receiving the notice under subsection 18.2(a), either Party may provide a written request to discuss the reasons giving rise to the suspension of Revenue Sharing Payments and the Parties will meet to attempt to resolve the issue through unassisted collaborative negotiation;
 - (c) where the Parties have engaged in unassisted collaborative negotiation under subsection 18.2(b) and the issue that gave rise to the suspension of Revenue Sharing Payments is not resolved within 30 days of the request under subsection 18.2(b), British Columbia may provide notice to terminate in accordance with section 17; and
 - (d) where neither Party has made a request under subsection 18.2(b), British Columbia may provide notice to terminate in accordance with section 17.
- 18.3 Where Revenue Sharing Payments for the Project are suspended under subsection 18.1 and the cause for suspension has been remedied British Columbia will make any

Revenue Sharing Payments it would otherwise have been required to make with respect to the Project within sixty (60) days.

- 18.4 If Revenue Sharing Payments that British Columbia would otherwise have been required to make are suspended and this Agreement is terminated, section 19 will apply to determine the Parties' further rights and obligations under this Agreement, including their rights and obligations in respect of Revenue Sharing Payments suspended under subsection 18.1.

SECTION 19: RULE FOR END OF TERM

- 19.1 If the Term ends other than on the last day of a BC Fiscal Year the Revenue Sharing Payment for that BC Fiscal Year will be payable to Tsay Keh Dene First Nation in relation to that portion of the BC Fiscal Year prior to the date on which the term of this Agreement ends and no payment payable to Tsay Keh Dene First Nation in relation to that portion of the BC Fiscal Year after the date on which the term of the Agreement ends.

- 19.2 Notwithstanding subsections 19.1 upon termination of this Agreement:

- (a) the obligations of British Columbia set out in subsections 3.2 through 3.8 will continue, but only to the extent that tax, penalty or interest is received from, or refunded or paid to, the Proponent by British Columbia in BC Fiscal Years ending between the Effective Date of the Agreement and the termination date;
- (b) British Columbia is fully released and discharged from all of its obligations in respect of any Revenue Sharing Payments suspended under subsection 18.1; and
- (c) subject to section 14, the Parties are otherwise fully released and discharged from the further performance of their respective obligations under the Agreement.

SECTION 20: REPRESENTATIONS AND WARRANTIES

- 20.1 Tsay Keh Dene First Nation represents and warrants to British Columbia, on which British Columbia will rely in entering into this Agreement, the following:

- (a) its band council is a duly constituted band council under the *Indian Act*;
- (b) it has the legal power, capacity and authority to enter into this Agreement on its own behalf and on behalf of its Members;
- (c) it has taken all necessary actions and obtained all necessary approvals through its internal processes to enter into this Agreement for and on behalf of its Members;
- (d) it has obtained or had the opportunity to obtain the advice of its own financial, legal, tax and other professional advisors with respect to this Agreement; and

- (e) it enters into this Agreement for, and on behalf of, all of its Members, and that the Agreement is a valid and binding obligation of Tsay Keh Dene First Nation and its Members.

20.2 British Columbia represents and warrants to Tsay Keh Dene First Nation, on which Tsay Keh Dene First Nation will rely in entering into this Agreement, that it has the authority to enter into this Agreement and to carry out its obligations in accordance with the terms of this Agreement and this Agreement is a valid and binding obligation of British Columbia.

SECTION 21: DISPUTE RESOLUTION

- 21.1 The Parties will endeavor to resolve any Disputes in a co-operative, effective and timely manner.
- 21.2 Section 21 does not apply to Government Actions, engagement under the Engagement Process developed in accordance with section 10; payment disputes under section 8 or to termination of this Agreement pursuant to section 17.
- 21.3 Either Party may give written notice of Dispute to the other Party, which must include a summary of the particulars of the Dispute.
- 21.4 Where a Party issues a notice of Dispute, the Parties will meet within ten (10) days and will attempt to resolve the Dispute through unassisted collaborative negotiation.
- 21.5 The Parties may agree to vary a procedural requirement contained in section 21 as it applies to a particular Dispute.
- 21.6 No Party may commence a court proceeding concerning a Dispute without first proceeding to Mediation as provided for in subsections 21.8 and 21.9, except:
 - (a) to prevent the loss of a right of action due to the expiration of a limitation period;
 - (b) to obtain interlocutory or interim relief; or
 - (c) if the matter is considered by the Party to be of an urgent nature.
- 21.7 Where a Dispute arises in relation to sections 4, 5, 6, 9 or 15 is not resolved through informal collaborative negotiations within sixty (60) days, then with the written agreement of both Parties, either Party may deliver a written notice to Mediate to the other Party, requiring commencement of Mediation.
- 21.8 Where a Dispute other than one referred to in subsection 21.7 is not resolved through informal collaborative negotiations within sixty (60) days and a Party wishes to invoke Mediation, that Party will deliver a written notice to Mediate to the other Party, requiring commencement of Mediation.

Mediation Process

- 21.9 The following will apply to Mediation pursuant to this subsection 21.9:
 - (a) Upon receiving a notice to Mediate, a Party directly engaged in a Dispute will participate in the Mediation.

- (b) The Mediation will be conducted by a neutral mediator who has skill and experience in mediation and who has no authority to impose a solution on the Parties.
- (c) The Mediation will be conducted by one mediator appointed by agreement of the Parties. If there is no such agreement within thirty (30) days after delivery of the notice to Mediate, the mediator will be appointed by the Mediate BC Society using the Society's mediation rules.
- (d) The Mediation will be conducted in the manner that the mediator considers necessary and appropriate to assist the Parties to resolve the dispute in a fair, efficient and cost-effective manner.
- (e) The Mediation is terminated at the earliest of:
 - (i) the expiration of thirty (30) days after the appointment of the mediator or any longer period agreed to by the Parties;
 - (ii) the withdrawal from the mediation of a Party by notice in writing to the mediator, provided that no such Party may withdraw until after the first meeting with the mediator;
 - (iii) the date on which the Parties agree in writing to terminate the Mediation; or
 - (iv) the date on which the Parties sign a written agreement resolving the Dispute.
- (f) The Parties will:
 - (i) on request of the other Party, provide timely disclosure of sufficient information and documents to enable a full examination of the subject matter being negotiated, with the exception of privileged documents and subject to applicable information and privacy legislation and other laws and legal requirements imposing confidentiality requirements;
 - (ii) make every reasonable effort to appoint negotiating representatives with sufficient authority to reach an agreement, or with ready access to such authority; and
 - (iii) negotiate in good faith.
- (g) The Mediation process and all its related proceedings will be and will remain confidential, unless the Parties agree otherwise.
- (h) A Party may withdraw from Mediation at any time by providing written notice of its intent to the mediator.
- (i) The Mediation will not restrict in any way the positions that each of the Parties may take in any dispute, arbitration or court proceeding.

- (j) The mediator will not issue a report or make any recommendations unless requested to do so in writing by the Parties.
- (k) Any agreement reached through Mediation will be recorded in writing, signed by authorized representatives of the Parties and delivered to the Parties.
- (l) The Parties will each bear the costs of their own participation, representation and appointments in the Mediation. The Parties will share equally all common costs of the mediation, including fees of the mediator, costs of meeting rooms, actual and reasonable disbursements incurred by the mediator, and fees of the British Columbia Mediator Roster Society.

21.10 If the Parties are unable to resolve a Dispute through Mediation in accordance with subsection 21.9, and after termination of the Mediation under subsection 21.9(e), then with the written agreement of the Parties (the "Arbitration Agreement"), the Dispute will be referred to and resolved by arbitration in accordance with subsection 21.11.

Arbitration Process

21.11 The following will apply to Arbitration pursuant to this subsection 21.11:

- (a) Unless the Parties otherwise agree, the Arbitration will be conducted by an arbitrator appointed by agreement of the Parties. If there is no such agreement within thirty (30) days after the date of signing of the Arbitration Agreement, the arbitrator will be appointed by the British Columbia International Commercial Arbitration Centre, or if the Centre is unavailable, any other independent and impartial body or individual acceptable to the Parties.
- (b) The Arbitration process and all its related proceedings will be and will remain confidential, unless the Parties agree otherwise.
- (c) Subject to the exceptions in applicable arbitration legislation, the decision of the arbitrator is final and binding on the Parties for the Term.
- (d) Except as otherwise ordered by the arbitrator:
 - (i) the Parties will each bear the costs of their own participation, representation and appointments in the Arbitration, and
 - (ii) the Parties will share equally all common costs of the Arbitration, including fees of the arbitrator, costs of hearing and meeting rooms, actual and reasonable disbursements incurred by the arbitrator, and administration fees of the British Columbia Commercial Arbitration Centre or other appointing authority.

21.12 The Parties may also choose, by mutual agreement, other appropriate approaches to assist in reaching resolution of the Dispute.

21.13 Nothing in section 21 creates a cause of action where none otherwise exists.

SECTION 22: NOTICE AND DELIVERY

22.1 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. It will be effectively given:

- (a) by personal delivery to the address of the Party set out below, on the date of delivery;
- (b) by pre-paid registered mail to the address of the Party mentioned in this Agreement, on the date the registered mail is delivered; or
- (c) by facsimile, to the facsimile number of the Party set out in this Agreement, on the date the facsimile is received.

22.2 The address and facsimile numbers of the Parties are:

- (a) Tsay Keh Dene First Nation:

1940 Third Avenue
Prince George, BC
V2M 1G7
Fax: (250) 562-8899

Attention: Chief & Council

- (b) British Columbia:

Ministry of Aboriginal Relations and Reconciliation
2957 Jutland Road
Victoria, BC V8T 5J9
Fax: (250) 387-6073
Attention: Assistant Deputy Minister,
Negotiation and Regional Operations Division

22.3 Any Party may at any time give notice to the other Party of any change of address or facsimile number in accordance with subsection 22.1.

SECTION 23: GENERAL PROVISIONS

23.1 This Agreement is not a treaty or land claims agreement within the meaning of sections 25 and 35 of the *Constitution Act, 1982*.

23.2 This Agreement does not change or affect the position either Party has, or may have, regarding its jurisdiction, responsibilities and decision-making authority.

23.3 Nothing in this Agreement shall limit or diminish any contractual, equitable or other obligation of the Proponent to Tsay Keh Dene First Nation, nor shall an agreement between Tsay Keh Dene First Nation and the Proponent limit or diminish the Province's

- obligations under this Agreement. For further clarity, nothing in this Agreement precludes Tsay Keh Dene First Nation from:
- (a) continuing to negotiate and implement revenue- and benefits-sharing agreements with proponents and other governments;
 - (b) accessing economic opportunities and benefits, which may be available to Tsay Keh Dene First Nation other than those expressly set out in this Agreement; or
 - (c) participating in government programs for which any of Tsay Keh Dene First Nation may be eligible.
- 23.4 This Agreement is not intended to be interpreted in a manner that would affect or unlawfully interfere with any legislative authority of British Columbia or fetter the discretion of any decision-making authority.
- 23.5 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.
- 23.6 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.
- 23.7 Nothing in this Agreement is to be construed as an acceptance of or admission by a Party of the position of the other Party or as an admission of liability and without limiting the foregoing, this Agreement is not to be construed as an admission of:
- (a) the validity of, or any fact or liability in relation to any claims for compensation for alleged past or future infringements of Aboriginal Rights of any kind whatsoever or whensoever arising in relation to such assertions; or
 - (b) an obligation to provide financial or economic benefits or compensation, including those provided in this Agreement, as part of British Columbia's obligation to consult and, as appropriate, accommodate in relation to the Project.
- 23.8 This Agreement does not constitute an admission that Government Actions have resulted or will result in any unjustified infringement of any Aboriginal Rights.
- 23.9 This Agreement is to be governed by the applicable laws of Canada and British Columbia.
- 23.10 There will be no presumption that any ambiguity in any of the terms of this Agreement should be interpreted in favour of either Party.
- 23.11 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.
- 23.12 If any part of this Agreement is void or unenforceable at law, it shall be severed from this Agreement and the rest of the Agreement shall remain in effect and fully enforceable.

- 23.13 If any part of this Agreement is void or unenforceable at law, the Parties agree to negotiate and attempt to reach agreement, to the extent reasonably possible and as their respective interests may require, on a replacement for the severed part with a view to achieving the intent of the Parties as expressed in this Agreement.
- 23.14 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.
- 23.15 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.
- 23.16 The use of the word "including" is to be read as not limiting the generality of the preceding term or phrase.
- 23.17 In this Agreement, any reference made to a statute includes all regulations made under that statute and any amendments or replacements.
- 23.18 No term, condition, acknowledgement or other provision of this Agreement will be considered to have been waived by the Parties unless such waiver is expressed in writing by the Parties.
- 23.19 All references in this Agreement to a designated section or other subdivision or to an appendix are to the designated section or other subdivision of, or appendix to, this Agreement.
- 23.20 Any reference to a corporate name includes and is also a reference to any corporate name that was a predecessor to, or that is a successor to, such name.
- 23.21 This Agreement will enure to the benefit and be binding on any organization or government that is a successor to or effectively replaces the Tsay Keh Dene First Nation pursuant to any agreement, treaty, land claim agreement, self-government agreement or other agreement that Tsay Keh Dene First Nation, or any other group which Tsay Keh Dene First Nation forms a part, may enter into with Canada or British Columbia or both.
- 23.22 The following appendix is attached to and forms part of this Agreement:
- Appendix A: Map showing Area of the Project
- 23.23 This Agreement may be executed by the Parties in counterparts and by facsimile or scanned copy.

SECTION 24: REVIEW AND AMENDMENTS

- 24.1 Within two (2) years of the date a Revenue Sharing Payment first becomes payable under this Agreement and thereafter every three (3) years, the Parties, will meet to:
- (a) review the effectiveness of the Agreement;
 - (b) review other matters related to the implementation of this Agreement; and
 - (c) consider potential amendments to improve this Agreement.

24.2 Any amendment of this Agreement agreed to by the Parties must be in writing and signed by the Parties.

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

SIGNED in the presence of:

Karin Fidler this 30 day of

March, 2017 at

Prince George :

Karin Fidler

Witness

TSAY KEH DENE FIRST NATION, on behalf of itself and its Members, as represented by the Chief and Council



Chief Dennis Izony

SIGNED in the presence of:

 this 31 day of

March, 2017 at

 :



Witness

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



Minister

APPENDIX A - PROJECT AREA

