SCHEDULE A

STRATEGIC ENGAGEMENT AGREEMENT

Between the Province of British Columbia and the Ktunaxa Nation

This Agreement is dated the 13th day of November, 2013

BETWEEN

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

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

and

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

(each a "Party" and collectively the "Parties")

Whereas the Ktunaxa Nation has Aboriginal Rights within Ktunaxa Territory;

Whereas the Ktunaxa Nation recognizes and supports the United Nations Declaration on the Rights of Indigenous Peoples;

Whereas the Ktunaxa Nation, the Province and Canada are engaged in treaty negotiations;

Whereas 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 Ktunaxa Territory to support self-government;

Whereas the Province seeks to fulfil its consultation and accommodation obligations, including the fulfillment of its duty to consult and, where appropriate, accommodate in a manner that addresses the interests of the Parties;

Whereas the Parties are interested in moving towards shared decision-making in relation to land and resources within Ktunaxa Territory;

Whereas the Ktunaxa Nation is seeking recognition of its jurisdiction in relation to land and resources within Ktunaxa Territory and sees this Agreement as a step towards achieving this objective;

Whereas while the Parties may hold differing views with regard to sovereignty, jurisdiction, title, and ownership over land and resources they intend, without prejudice to their differing views, to work collaboratively and are committed to engaging across a spectrum of land and resource issues to improve business relationships, their government-to-government relationship and fulfil legal obligations*;*

Whereas 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 peoples;

Whereas the Parties recognize that the successful implementation of this Agreement is an incremental step towards the fuller implementation of a government-to-government relationship through a potential treaty with the Ktunaxa Nation or other processes and provides opportunities to build the necessary cooperative working relations that will enhance the Ktunaxa Nation's efforts towards self-government;

Whereas the Parties entered into a Strategic Engagement Agreement on October 22, 2010, which this Agreement is intended to replace as of the Effective Date.

Therefore the Parties agree as follows:

DEFINITIONS

1 In this Agreement

"**Aboriginal Rights**" means

a. asserted aboriginal rights, including aboriginal title, or
b. determined aboriginal rights, including aboriginal title, which are recognized and affirmed by section 35 of the *Constitution Act, 1982*;

"**Agreement**" means this Strategic Engagement Agreement***;***

"**Applicant**" means any person, corporation, society, entity or agency, including the Province and any agent of the Province, that makes an Application;

"**Application**" means an application under consideration by a Provincial Agency, on or after the Effective Date seeking authorization(s) for land and resource use that:

(a) relates to or impacts on provincial Crown lands or resources within Ktunaxa Territory; or

(b) may be reasonably determined to affect Ktunaxa Aboriginal Rights,

including the application document, any materials for amendment, renewal or replacement of approvals, and all supporting material;

"**Application Package**" means an application package referred to in section 2(2) of Appendix B;

"**Business Day**" means any day other than Saturday, Sunday, a statutory holiday and those non-business days identified by the Ktunaxa Nation in accordance with section 1(4) of Appendix C;

"ECDA" means the Economic Community Development Agreement between the Province of British Columbia and the Ktunaxa, dated January 29, 2013, and includes any amendments made to it from time to time in accordance with its provisions;

"**Effective Date**" means November 13, 2013;

"**Engagement Process**" means the engagement process set out in Appendix B, including Schedule 1;

"**Government-to-Government Forum**" means the provincial-Ktunaxa forum established under section 5;

"**Joint Resources Forum**" means the joint resources forum established under Appendix C;

"**Ktunaxa Citizens**" means all those persons who are collectively entitled to exercise the Aboriginal Rights of the Ktunaxa Nation and includes individuals on a Ktunaxa Community's "Band List" within the meaning of the *Indian Act*, RSC 1985 c. I-5*;*

"**Ktunaxa Communities**" means ʔakisq̓nuk First Nation, ʔaq̓am (formerly 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 Engagement Request**" means a request from the Ktunaxa Nation to a Provincial Agency for engagement and discussion on an identified issue related to the use of land and resources as set out in the Engagement Process;

"**Ktunaxa Interests**" means the Aboriginal Rights of the Ktunaxa Nation and its interests within Ktunaxa Territory set out in section 3(1);

"KNC" means the Ktunaxa Nation Council Society, a society incorporated under the laws of the Province of British Columbia;

"**Ktunaxa Land and Resources Agency (KLRA)**" means the agency established by the KNC that

(a) reports to the Ktunaxa Land and Resources Council,

(b) represents the interests of, and engages with, Ktunaxa Communities, as appropriate, and

(c) has the authority to engage with the Province on land and resource management issues in accordance with the Engagement Process set out in this Agreement;

"**Ktunaxa Land and Resources Council**" means the standing committee of the KNC that exercises authority on behalf of KNC with respect to land and resources;

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

"**Ktunaxa Responsible Official**" means the Director, Ktunaxa Land and Resources Agency, and his or her successors, or a designate of the Director;

"**Ktunaxa Territory**" means, for the purposes of this Agreement, that portion of Ktunaxa ʔamakʔis to which this Agreement applies identified by the Ktunaxa Nation and set out in Appendix A;

"**Negotiations and Regional Operations Division"** means that Division of the provincial Ministry of Indigenous Relations and Reconciliation;

"**New Relationship"** means the document developed in March 2005 by British Columbia and the First Nations Leadership Council, representing the Assembly of First Nations-BC Region, First Nations Summit and Union of BC Indian Chiefs, that resulted in a new relationship founded on principles of mutual respect, recognition and reconciliation of Aboriginal interests;

"**Provincial Agency**" means a provincial ministry and branch or division of a provincial ministry listed in Appendix F;

"**Provincial Decision Maker**" means an official or designate of a Provincial Agency, with authority to make statutory decisions with respect to an Application or a matter that requires engagement in accordance with this Agreement;

"**Provincial Engagement Request**" means a request from a Provincial Agency to the Ktunaxa Nation for engagement and discussion on an identified issue related to the use of land and resources as set out in the Engagement Process;

"**Provincial Interests**" means the interests of the Province set out in section 3(2);

"**Provincial Responsible Official**" means a senior manager appointed by the Province in this Agreement;

"**Responsible Officials**" means the Ktunaxa Responsible Official and the Provincial Responsible Official; and

"**Senior Forum**" means the senior forum established under Appendix C.

PURPOSE

2 (1) This Agreement is intended to foster a positive and respectful government-to-government relationship that will

(a) create an environment in which the two governments can work creatively and collaboratively to realize the full potential of the New Relationship vision regarding land and natural resources issues and the Transformative Change Accord,

(b) achieve meaningful engagement, a shared understanding of each Party's respective interests and better informed decisions,

(c) provide an Engagement Process that helps the Parties to focus their respective resources on what they consider to be the most significant Ktunaxa Interests and Provincial Interests,

(d) establish effective procedures for meaningful consultation and accommodation,

(e) provide funding to support the Ktunaxa Nation's participation in the Engagement Process set out in this Agreement,

(f) increase process certainty for the Parties regarding strategic and operational land and resource management issues,

(g) create an environment to help the Parties move towards shared decision-making respecting strategic and operational land and natural resource management issues,

(h) support the Parties' pursuit of opportunities for sharing resource-revenues and other benefits, through the negotiation of further agreements which may include project-specific agreements,

(i) support the negotiation of sector- and project-specific agreements by Provincial Agencies and the Ktunaxa Nation,

(j) support treaty negotiations between the Province, the Ktunaxa Nation and Canada by establishing a government-to-government relationship that may inform the negotiation of appropriate treaty-related provisions that address the relationship between the Parties respecting the management of land and resources within Ktunaxa Territory, and

(k) support other related government-to-government discussions regarding land and resources**.**

INTERESTS

3 (1) Ktunaxa Interests include the following:

(a) enhancing the governance capacity of the Ktunaxa Nation with regard to land and resources and achieving recognition of its jurisdiction;

(b) acting as stewards of land and resources and being involved at all levels of decision-making to carry out effective land and resource management in accordance with Ktunaxa laws, cultural values and priorities;

(c) ensuring the Ktunaxa Nation's Aboriginal Rights are not infringed;

(d) exercising and protecting the Ktunaxa Nation's Aboriginal Rights within Ktunaxa Territory;

(e) identifying, protecting, and managing past, present and future cultural resources, areas and landscapes that contain values significant to the Ktunaxa Nation, including

(i) contemporary and historic ceremonial sites,

(ii) archaeological sites,

(iii) traditional use, spiritual, and medicinal plant harvesting areas, and

(iv) oral history, artefacts, and archival resources;

(f) managing and mitigating potentially negative social and environmental impacts associated with the development of land and resources; and

(g) sharing in the resource revenues and other benefits generated from any development of, or activity in, land and resources within Ktunaxa Territory.

(2) Provincial Interests include the following:

(a) working cooperatively with the Ktunaxa Nation to sustainably manage land and natural resources;

(b) achieving a better understanding of Ktunaxa Interests and their relationship to Provincial Interests;

(c) fulfilling the duty of the Province to consult and accommodate;

(d) effectively carrying out land and resource management in accordance with all applicable provincial laws;

(e) maximizing collaboration between Provincial Agencies to increase the efficiency and effectiveness of the consultation and accommodation process for all Parties;

(f) improving the investment environment for industries;

(g) implementing collaborative approaches to resolving disputes between the Parties;

(h) strengthening the overarching relationship between the Ktunaxa Nation and the Province, building on existing agency-specific agreements, supporting the treaty process and facilitating a smooth transition to treaty implementation; and

(i) sharing the revenues and benefits of land and resource development consistent with the principles of the New Relationship and the goals of the Transformative Change Accord.

RECOGNITION AND RESPECT

4 (1) For the purposes of this Agreement, the Parties recognize and respect Ktunaxa Interests and Provincial Interests and look forward to further developing their government-to-government relationship in order to advance their individual and mutual interests, in an open and respectful manner.

GOVERNMENT-TO-GOVERNMENT FORUM

5 (1) A Government-to-Government Forum is established, will operate in accordance with Appendix C, and will be the primary mechanism for implementing this Agreement.

ENGAGEMENT PROCESS

6 (1) The Engagement Process will be the means through which the Parties will engage on Applications, potential Applications, Provincial Engagement Requests and Ktunaxa Engagement Requests.

(2) The Parties acknowledge that the Engagement Process in this Agreement will constitute the means by which they will seek to:

(a) fulfil their respective obligations arising from the Province's duty to consult with the Ktunaxa Nation; and

(b) develop, where appropriate, measures to accommodate the Ktunaxa Nation in relation to Applications.

(3) The Parties agree that a Provincial Agency may request an Applicant to undertake specific procedural aspects of the consultation process provided the KLRA is notified in a timely manner by the Provincial Agency of the request.

(4) A Provincial Agency making a request under subsection (3) will recommend that the Applicant engage with the KLRA in a manner consistent with this Agreement.

(5) The KNC or the Province may request that the Parties review the effectiveness of the processes implemented under subsections (3) and (4).

(6) Actions undertaken by an Applicant under subsections (3) and (4) may be relied upon by the Province in seeking to fulfil its consultation obligations in relation to the Ktunaxa

Nation, but do not release the Province from its consultation obligations and any other obligations set out in this Agreement.

FUNDING

7 (1) To implement this Agreement, the Province will provide the KNC with an amount not to exceed $1,434,000 as follows:

(a) payment of $210,845 as set out in Appendix D within 30 days after the Effective Date; and

(b) payment of $1,223,155 in accordance with the payment periods and amounts set out Appendix D within 30 days after the end of the preceding payment period or upon receipt of annual reports provided for in Appendix E, whichever is later.

(2) Notwithstanding any other provision in this Agreement, the payment of funds by the Province to the KNC for any purpose under this Agreement is subject to

(a) there being sufficient monies available in an appropriation, as defined in the *Financial Administration Act*, RSBC 1996, c. 138, to enable the Province in any fiscal year or part thereof when such payment is required, to make such payment,

(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, and

(c) execution and delivery to the Province of the Band Council Resolutions referred to in section 12(3) by each Ktunaxa Community, and

(d) the KNC maintaining good standing and status as a duly incorporated society under the *Societies Act*, SBC 2015, c.18.

SOCIO-ECONOMIC OPPORTUNITIES AND REVENUE- AND BENEFIT-SHARING

8 (1) The Parties will, in accordance with Appendix C,

(a) identify socio-economic opportunities, including potential revenue- and benefits-sharing opportunities respecting new major resource projects within Ktunaxa Territory, and

(b) attempt to negotiate agreements respecting the opportunities identified in paragraph (a).

(2) Nothing in this Agreement precludes the Ktunaxa Nation from continuing to negotiate and implement revenue- and benefits-sharing agreements with proponents and Applicants.

LINKAGE TO TREATY

9 (1) The Parties acknowledge that the government-to-government relationship established under this Agreement may serve as a basis for addressing any commitment that may be included in a treaty to negotiate and attempt to reach agreement on a relationship between the Province and the Ktunaxa Nation respecting the management of land, water and resources within Ktunaxa Territory.

EXISTING AGREEMENTS AND PROTOCOLS

10 (1) The following Memorandums of Understanding between the Ktunaxa Nation and the Province are amended as provided in subsection (2):

(a) Memorandum of Understanding to Establish an Effective Government-to-Government Working Relationship for the Management of Fish and Wildlife;

(b) Memorandum of Understanding to Establish an Effective Government-to-Government Working Relationship for the Management of Provincial Parks;

(c) Memorandum of Understanding to Establish an Effective Government-to-Government Working Relationship for Energy and Mineral Development;

(d) Memorandum of Understanding to Establish an Effective Government-to-Government Working Relationship for Land Use Planning; and

(e) Memorandum of Understanding to Establish an Effective Government-to-Government Working Relationship for the Management of Archaeological Resources.

(2) On the Effective Date, the Memorandums of Understanding listed in subsection (1) will be deemed to be amended to include the following clause:

"If a Strategic Engagement Agreement (SEA) is signed by the Parties to this MOU that SEA will supercede and replace all provisions of this MOU, for as long as the SEA is in full force and effect."

CONFIDENTIALITY AND INFORMATION SHARING

11 (1) The Ktunaxa Nation is a custodian of cultural information, some of which is owned by individuals, and is therefore required to ensure that this information is managed and shared according to the owner's wishes.

(2) The Province will provide the KNC access to any publicly available land and resources information related to Ktunaxa Territory for which the Province is a custodian or steward, including data sets and monitoring information.

(3) The Parties acknowledge that information that may be provided by the Ktunaxa Nation may be confidential in nature, and, if so identified in writing, the Province will make all reasonable efforts to prevent the disclosure of that information to the public, except in

accordance with the *Freedom of Information and Protection of Privacy Act* or as otherwise required by law.

(4) If the Province receives a request under the *Freedom of Information and Protection of Privacy Act* for disclosure of information received from the Ktunaxa Nation, the Province will provide the KNC, on behalf of the Ktunaxa Nation, with an opportunity to express its views regarding the potential disclosure.

(5) Information provided to the Province by the Ktunaxa Nation for one purpose shall not be used by the Province for other purposes without the Province first providing the KNC, on behalf of the Ktunaxa Nation, with an opportunity to update and contextualize the information.

(6) The Ktunaxa Nation will assist the Province in determining the use, level of sensitivity and interpretation of any information it provides and the terms on which it may be shared in whole or in part with other parties.

(7) If the Ktunaxa Nation shares confidential information with the Province in accordance with subsection (3), it will only do so, unless otherwise agreed, on the following basis:

(a) this section 11 does not apply to information that is already in the public domain, including in the Remote Access to Archaeological Data (RAAD) database and on other public websites;

(b) the Ktunaxa Nation is satisfied that the Province has established and implemented measures that the Parties agree will ensure that information provided is not shared with or distributed to anyone other than Provincial employees or representatives who directly require that information for purposes under this Agreement and that the information will be returned to the Ktunaxa Nation unless otherwise agreed; and

(c) the Ktunaxa Nation is satisfied with the extent to which it is involved in the use and interpretation of the information.

REPRESENTATION AND WARRANTIES

12 (1) The Province represents and warrants to the Ktunaxa Nation and each of the Ktunaxa Communities that it has the authority to enter into this Agreement and carry out its obligations in accordance with the terms of this Agreement and that this Agreement is a valid and binding obligation of the Province.

(2) The KNC represents and warrants to the Province that, as of the Effective Date, each of the following representations and warranties is true and correct in all material respects:

(a) the KNC is a duly incorporated and subsisting society under the *Societies Act*, SBC 2015, c. 18;

(b) each of the Ktunaxa Communities is a "band" within the meaning of the *Indian Act*, and each has the legal power and capacity to enter into and perform its obligations under this Agreement;

(c) this Agreement has been duly and validly authorized, executed and delivered by the KNC for and on behalf of itself and each of the Ktunaxa Communities;

(d) the KNC has received all authorizations and approvals to enter into and to perform its obligations under this Agreement for and on behalf of itself and, as applicable, each and all of the Ktunaxa Nation, the Ktunaxa Communities and Ktunaxa Citizens; and

(e) without limitation to paragraph (d), the KNC holds all legal authorizations, mandates and approvals that may be necessary or desirable for it to receive payments under this Agreement and, through its governance structure and decision-making processes, it is accountable to Ktunaxa Communities and Ktunaxa Citizens.

(3) The KNC represents and warrants to the Province that each Ktunaxa Community will execute and deliver a true copy of a Band Council Resolution

(a) approving the provisions of this Agreement as set out in a copy of this Agreement, dated for reference November 6, 2013,

(b) authorizing the KLRA to engage with the Province in accordance with the Engagement Process set out in the Agreement on behalf of Ktunaxa Communities and Ktunaxa Citizens, and

(c) authorizing the KNC to enter into this Agreement and to make the covenants, acknowledgements and representations included therein, on its own behalf and on behalf of the Ktunaxa Communities and Ktunaxa Community Members.

(4) The Ktunaxa Nation and each of the Ktunaxa Communities agree that they will immediately notify the Province if the KNC's legal power, capacity or authority to act on behalf of the Ktunaxa Communities and Ktunaxa Citizens in respect of the subject matters of this Agreement is diminished in any way or, in the case of each of the Ktunaxa Communities, if its respective Band Council Resolution referred to in subsection (3) is at any time varied, amended, repealed or replaced.

(5) The KNC agrees that it will, from time to time during the Term following a written request by the Province, provide to the Province a certificate from a senior officer of the KNC confirming that each of the representations and warranties remains true and correct in all material respects.

AMENDMENT

13 (1) Except in the case of proposed amendments of a significant nature referred to subsection (2), the process for amending this Agreement is as follows:

(a) the Responsible Officials must exchange any proposed amendment to the Agreement in writing and provide written documentation indicating the support of the KNC or the Province, as the case may be, for the proposed amendment; and

(b) the Responsible Officials have the authority to agree to the proposed amendments and to amend the Agreement in writing after following the process set out in paragraph (a).

(2) A proposed amendment will be considered to be of a significant nature if it includes potential changes to any of the following:

(a) the Parties;

(b) Ktunaxa Territory as depicted in Appendix A;

(c) section 7 (Funding);

(d) section 17 (General Provisions);

(e) section 18 (Term); and

(f) other matters that the Responsible Officials agree are of a significant nature and should be subject to the amendment process set out in subsection (3).

(3) The amendment process for an amendment referred to in subsection (2) is as follows:

(a) the Responsible Officials must carry out the process outlined in subsection (1)(a);

(b) the Responsible Official representing the Province must present the proposed amendment to the Minister of Aboriginal Relations and Reconciliation and the Responsible Official representing the KNC must present the proposed amendment to the Chair of the KNC; and

(c) the Minister of Aboriginal Relations and Reconciliation, on behalf of the Province, and the Chair of the KNC, on behalf of the Ktunaxa, may agree in writing to the proposed amendments.

AGREEMENT EVALUATION

14 (1) On an annual basis, the Parties will

(a) review and evaluate the terms of this Agreement, its implementation, and the relationships it supports, and

(b) collaboratively develop options to improve this Agreement, its implementation, and the relationships it supports.

(2) The Parties, through the Senior Forum, may agree to have an independent evaluation this Agreement, and the relationships it has helped create.

(3) If the Parties agree to conduct an independent evaluation, then

(a) the Senior Forum will agree on the terms of reference for the evaluation, identify an independent evaluator to undertake the evaluation and provide non-binding recommendations to the Parties, and

(b) the costs of any independent evaluator agreed on under subsection (2) will be shared jointly between the KNC and the Province.

DISPUTE RESOLUTION

15 (1) The Parties acknowledge that this Agreement, including the Engagement Process, is designed to mitigate, reduce or avoid disputes over land and resources management decision-making and is intended in part to reduce the need for the Parties to use formal dispute resolution mechanisms.

(2) This section 15 applies to disputes arising out of the implementation or interpretation of this Agreement.

(3) The Parties will endeavour to resolve issues or disputes that may arise about this Agreement or its implementation in a manner that fosters an improved, ongoing, and respectful government-to-government relationship between the Province and the Ktunaxa Nation.

(4) If a dispute respecting the interpretation or implementation of this Agreement arises, including one that has led to, or could potentially result in, a notice of withdrawal under section 16(1)(b), either the Ktunaxa Nation or the Province may forward the issue to the Responsible Officials for direction or assistance. The Responsible Officials will exchange in writing a description of the issues with respect to which there is a disagreement.

(5) If an issue for dispute resolution has been forwarded to the Responsible Officials, then within 20 Business Days, the Responsible Officials will determine whether

(a) they will take responsibility for the resolution of the dispute themselves by convening a Joint Resources Forum meeting or through some other means, or

(b) they may recommend another form of dispute resolution, such as non-binding facilitation or mediation, or both, under terms agreeable to both Parties.

(6) Nothing in this section 15 prevents a Party from commencing legal proceedings at any time

(a) to prevent the loss of a right to commence proceedings due to the expiration of a limitation period, or

(b) to obtain interlocutory or interim relief that is otherwise available pending resolution of the dispute under this section.

(7) Nothing in this Section 15 creates a cause of action where none otherwise exists.

TERMINATION

16 (1) Notwithstanding any other provision of this Agreement,

(a) the KNC, on behalf of the Ktunaxa, or the Province may terminate this Agreement by giving the other at least 20 Business Days advance written notice of the intent to terminate the Agreement, the date of termination and the reasons for terminating the Agreement by sending that notice to the Responsible Officials,

(b) the Province may withdraw a Provincial Agency from its participation in this Agreement by providing 45 Business Days written notice of the intent to withdraw and stating the reasons for the withdrawal and, at the expiry of the notice period, the list in Appendix F will be deemed to be amended to remove reference to that provincial ministry, agency or office**,**

(c) if the Ktunaxa Nation, KNC or a Ktunaxa Community brings any legal action or proceeding against the Province relating to an alleged failure to adequately consult with respect to matters that are addressed by the Parties through the Engagement Process under this Agreement, the Province may terminate the Agreement under subsection (a) or withdraw a Provincial Agency under subsection (b), and

(d) in recognition of the enduring value of the government-to-government relationship supported by this Agreement and the interests of the Parties to avoid litigation, the Parties will pursue the opportunities presented by this Agreement, including the application of the dispute resolution provisions, to resolve any disagreement related to this Agreement before giving notice of termination under subsection (a) or notice of withdrawal under subsection (b).

(2) If notice of termination of this Agreement is provided pursuant to subsection (1)(a),

(a) the Engagement Process will cease to apply to the Parties, and the Province may no longer rely on the Engagement Process to fulfil its obligation to consult in respect of any such Application, after termination of this Agreement,

(b) Engagement Process steps taken prior to the date of termination may be relied on by the Province to fulfil its obligation to consult in respect of an Application,

(c) the Provincial Responsible Official will inform the Provincial Agencies that the Engagement Process ceases to apply as of the date of termination and that from that time forward it cannot be relied upon to fulfil the Province's obligation to consult with the Ktunaxa Nation, and

(d) sections 11(3), 11(4), 11(5) and 11(7) survive the termination of this Agreement.

(3) If the Province provides a notice of withdrawal of a Provincial Agency from its participation in this Agreement pursuant to subsection (1)(b),

(a) the Engagement Process will cease to apply to that Provincial Agency, and the Province may no longer rely on the Engagement Process to fulfil its obligation to consult in respect of any such Application, after the expiry of the notice period,

(b) Engagement Process steps taken by that Provincial Agency prior to the expiry of the notice period may be relied on by the Province to fulfil its obligation to consult in respect of an Application to that Provincial Agency, and

(c) the Provincial Responsible Official will inform the relevant Provincial Agency that the Engagement Process ceases to apply to it after the expiry of the notice period and that from that time forward it cannot be relied upon to fulfil the Province's obligation to consult with the Ktunaxa Nation.

(4) If the KNC, on behalf of the Ktunaxa, or the Province terminates this Agreement, the KNC will pay to the Province any and all unspent funds provided by the Province under this Agreement within 90 days of termination.

GENERAL PROVISIONS

17 (1) This Agreement will be governed by and construed in accordance with the applicable laws of British Columbia.

(2) This Agreement is not a treaty or a lands claims agreement within the meaning of sections 25 and 35 of the *Constitution Act, 1982*.

(3) This Agreement does not:

(a) define, affirm, recognize, abrogate or derogate from any Aboriginal Rights,

(b) change or affect the position either Party has, or may have, regarding its jurisdiction, responsibilities or decision-making authority and is not intended to be interpreted in a manner that would affect or unlawfully interfere with any legislative authority or the discretion of any decision-making authority,

(c) except as expressly set out herein, limit the position any Party may take in any legal or administrative proceedings or in any discussions, treaty negotiations or other negotiations, or discussions in any other forum, or

(d) constitute any admission of fact or liability.

(4) Nothing in this Agreement limits the ability of the Parties to respond to emergency circumstances.

(5) Nothing in this Agreement is intended to alter the environmental assessment process under the *Environmental Assessment Act*.

(6) This Agreement may be executed in counterparts.

(7) This Agreement and any amendments 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 KNC, on behalf of the Ktunaxa, and by the Province.

(8) There will be no presumption that any ambiguity in any of the terms of this Agreement should be interpreted in favour of any Party.

(9) If any part of this Agreement is void or unenforceable at law, it shall be severed from this Agreement and the remainder of the Agreement shall remain in effect and fully enforceable.

(10) 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 an agreed-to dispute resolution process.

(11) The recitals and headings in this Agreement 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.

(12) 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.

(13) The use of the word "including" does not limit the generality of the preceding term or phrase.

(14) In this Agreement, a reference to a statute includes every amendment to it, every regulation made under it, every amendment made to a regulation made under it and any law enacted in substitution for, or in replacement of, it.

(15) No term, condition, covenant or other provision of this Agreement will be deemed to have been waived unless the waiver is in writing and signed by the Party or Parties giving the waiver.

(16) All references in this Agreement to a specific "section," "subsection" or other subdivision or to an Appendix are to the section, subsection or other subdivision of, or Appendix to, this Agreement.

(17) This Agreement will enure to the benefit of and be binding upon the Parties and their respective successors and assigns.

(18) Unless otherwise agreed by the Parties, this Agreement may not be assigned, either in whole or in part, by either Party.

(19) Where this Agreement contains a reference to a number of days between two events, in calculating the number of days, the day on which the first event happens is excluded and the day on which the second event happens is included.

(20) The following Appendices and Schedules are attached to and form part of this Agreement:

Appendix A Ktunaxa Territory Map;

Appendix B Engagement Process;

Schedule 1 Engagement Level Assessment Criteria;

Appendix C Government-to-Government Forum;

Appendix D Payment Schedule;

Appendix E Annual Report;

Appendix F Participating Provincial Agencies.

TERM

18 (1) The term of this Agreement commences on November 13, 2013 and ends on March 31, 2019, unless this Agreement is terminated earlier under section 16.

(2) The Parties may extend the term of this Agreement and will, at least six months prior to the end date of the term of this extension, decide whether to extend this Agreement and for what further period.

NOTICE

19 (1) If any notice or other communication is required to be given by a Party under this Agreement, it will be made in writing and it will be effectively given by

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

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

c) facsimile, to the facsimile number of the Party set out in this Agreement, on the date the facsimile is sent, or

d) electronic mail (email) to the email address of the individual identified by each Party, with the subject line to state "SEA – (topic)", to receive email notices under this Agreement, on the date the email is sent.

(2) The address, facsimile numbers and email addresses of the Parties are as follows:

(a) for the Ktunaxa:

Ktunaxa Nation Council
Attention: Director, Ktunaxa Land and Resources Agency
7468 Mission Rd
Cranbrook BC V1C 7E5
Fax Number: (250) 489-2438
Email: rwarden@ktunaxa.org

(b) for the Province:

Ministry of Indigenous Relations and Reconciliation
Attention: Regional Manager
205 Industrial Road G
Cranbrook BC V1C 7G5
Fax Number: (250) 489-8529
Email: wayne.giles@gov.bc.ca

(3) Either the KNC, on behalf of the Ktunaxa, or the Province may, from time to time, give written or email notice to the other of any change of address or facsimile number of the Party giving such notice and after the giving of such notice, the address or facsimile number therein specified will, for the purpose of this Agreement, be conclusively deemed to be the address or facsimile number of the Party giving such notice.

(4) The Parties agree that they will utilize electronic and other methods of communication whenever practicable and appropriate.

IMPLEMENTATION

20 (1) The Parties will maintain an implementation plan during the term of this Agreement.

(2) The implementation plan will set out timelines for implementing commitments under this Agreement.

(3) The Parties will provide each other with an opportunity to review communications regarding this Agreement prior to making them publicly available.

NOTE:

THIS DOCUMENT IS THE CONSOLIDATED VERSION OF THE 2013 STRATEGIC ENGAGEMENT AGREEMENT, AS AMENDED BY THE 2017 CONFIRMATION AGREEMENT AND THE 2018 CONFIRMATION AGREEMENT.

THE ORIGINAL 2013 STRATEGIC ENGAGEMENT AGREEMENT, WHICH CAME INTO EFFECT ON NOVEMBER 13, 2013, WAS EXECUTED BY THE CHAIR OF THE KTUNAXA NATION COUNCIL SOCIETY AND THE MINISTER OF ABORIGINAL RELATIONS AND RECONCILIATION.

THIS CONSOLIDATED VERSION IS BROUGHT INTO EFFECT BY THE 2018 CONFIRMATION AGREEMENT, TO WHICH THIS CONSOLIDATED VERSION IS ATTACHED AS SCHEDULE A.

APPENDIX A

MAP

APPENDIX B

ENGAGEMENT PROCESS

GENERAL PROVISIONS

1 (1) The Engagement Process is a bi-lateral process intended to help the Parties achieve a better understanding of their respective interests and the potential impacts that proposed activities may have on those interests.

(2) The terms used in this Appendix have the same meaning as in the Agreement.

(3) This Appendix consists of sections 1 to 9 and Schedule 1.

(4) The Engagement Process may be initiated by any of the following:

(a) an Application;

(b) a Provincial Engagement Request; or

(c) a Ktunaxa Engagement Request.

(5) Nothing in this Agreement prevents the Parties from engaging prior to receipt of an Application, if they expect that an Application will be received.

(6) The Parties agree that

(a) Engagement Levels 1, 2 and 3 do not apply to environmental assessments undertaken pursuant to the *Environmental Assessment Act*,

(b) applicable statutes, regulations and common law, including the Crown's duty to consult and accommodate, continue to apply to environmental assessments,

(c) this Agreement does not affect or prejudice any Party's position or views on the assessment processes or the Crown's duties in respect of environmental assessments, and

(d) where a project is subject to an environmental assessment under the *Environmental Assessment Act*, Engagement Levels 1, 2 and 3 continue to apply to Applications with respect to that project.

(7) If a Provincial Decision Maker does not make a decision regarding an Application within six months of the later of:

(a) the date the Application was referred to the KLRA; or

(b) if the KLRA has provided comments or recommendations on the Application, the date the Provincial Decision Maker received those comments or recommendations,

the Provincial Agency will provide the KLRA an opportunity to update any comments or recommendations regarding the Application prior to the Provincial Decision Maker making a decision.

ENGAGEMENT PROCESS INITIATED BY AN APPLICATION

2 (1) Upon acceptance of an Application, a Provincial Agency will, in accordance with Schedule 1 including consideration of any agreed upon modifiers, assess the engagement level for the Application.

(2) After the assessment under subsection (1), or if notified by the Ktunaxa under section 3(1), the Provincial Agency will send an Application Package to the KLRA and, if it is determined under this Agreement that the Application should be addressed

(a) at Engagement Level 1, the process set out in section 4 will apply,

(b) at Engagement Level 2, the process set out in section 5 will apply, or

(c) at Engagement Level 3, the process set out in section 6 will apply.

(3) If a Provincial Agency determines that an Application is the type of Application that the Parties have agreed will be processed in accordance with Engagement Level 0, then section 3 will apply, unless the Ktunaxa have provided a notice under section 3(1), in which case it will be addressed at Engagement Level 1, 2 or 3.

(4) All Application Packages provided to the KLRA will include the following information:

(a) the project name;

(b) the name of the Applicant;

(c) relevant tracking numbers;

(d) where available to the Provincial Agency, relevant background information on the Application and a description of current activities and any known plans associated with the Application;

(e) where available to the Provincial Agency, comments on or assessments of the Application made by other government agencies;

(f) description of the proposed activities and authorizations required;

(g) UTM, BC Albers coordinates or a digital survey plan with a GIS compatible digital file, as available, of the proposed activity;

(h) maps at a scale of 1:20,000 or other appropriate scale to indicate the location and details of the activity;

(i) the Provincial Agency's proposed engagement level as assessed under subsection (1);

(j) the Province's description of whether and how agreed upon modifiers, including best management practices, were applied in determining the proposed engagement level;

(k) the proposed timeframe for the KLRA to submit its comments on the Application; and

(l) the Provincial Agency contact name, phone number and email address.

(5) On the first and third Wednesday of every month, or the next Business Day following a Wednesday that is not a Business Day, the KLRA will assess whether

(a) the Application Packages received prior to those days are complete,

(b) the engagement level proposed under subsection (4)(i) is appropriate, and

(c) the timeframe proposed under subsection (4)(k) for providing written comments is adequate.

(6) If the Application Package includes materially inaccurate information or is materially incomplete, the timeframe under subsection (4)(k) for the KLRA to submit comments will not begin until the KLRA and the Provincial Agency agree that the Application Package is complete and accurate.

(7) If the KLRA determines that the engagement level proposed under subsection (4)(i) is not appropriate, the KLRA will

(a) propose an alternative engagement level,

(b) provide its reasons and any additional information in support of the alternative engagement level, and

(c) describe whether and how the modifiers set out in Schedule 1 were applied in determining the proposed alternative engagement level.

(8) If the Parties cannot come to an agreement on an engagement level, the Joint Resources Forum will meet within ten Business Days to determine the engagement level.

(9) The Parties may agree to change the engagement level during an engagement as new information becomes available and analysis is undertaken by either or both Parties.

(10) If an Application requires more than one authorization, the Parties will engage at the highest engagement level that is triggered, unless the Parties agree otherwise.

(11) If the KLRA determines that it requires more time to respond to the Application, it will notify the Provincial Agency and the Provincial Agency will either confirm the alternative timeframe or contact the KLRA to determine a mutually acceptable timeframe.

(12) If, at any time before a decision on an Application is made by a Provincial Decision Maker, the KLRA changes or reconsiders its position on the Application, it will immediately notify the Provincial Decision Maker.

(13) If strategic issues are identified that the Parties agree are beyond the scope of the engagement regarding a specific Application, those issues may be brought forward for discussion by the Joint Resources Forum, the Senior Forum or any of their subcommittees.

(14) Notwithstanding subsection (13), engagement on the specific Application will continue in accordance with this Appendix and the outcomes of discussions may inform future engagement on Applications.

APPLICATION ENGAGEMENT LEVEL 0

3 (1) If the Ktunaxa become aware of an Application which would otherwise be processed in accordance with Engagement Level 0, they may request information in respect of it and, within 10 Business Days of receiving the information, the KLRA will notify the Provincial Agency if an Application Package under Section (2) above is required.

(2) The Province will provide an Application Package to the KLRA if notice is received in accordance with subsection (1), but is otherwise not required to provide an Application Package for an Engagement Level 0 Application.

(3) The Parties will, in accordance with section 2(1)(g) of Appendix C, attempt to agree on a list of the types of Applications that will be processed at Engagement Level 0.

(4) Until the Parties have come to an agreement with respect to any categories of Applications under subsection (3),

(a) Provincial Agencies are not required to refer Applications that are among the types of Applications that were not being referred to the Ktunaxa Nation or the Ktunaxa Communities as of October 22, 2010,

(b) Provincial Agencies will, in accordance with section 2(1), consider whether agreed upon modifiers apply to change the engagement level of Applications

described in subsection (a), and

(c) this Agreement does not limit the position the Ktunaxa Nation or the Ktunaxa Communities may take in any legal or administrative proceedings regarding the Province's obligation to consult and accommodate Ktunaxa Aboriginal Rights in relation to an Application referred to in subsection (a).

(5) On an annual basis, Provincial Agencies will seek to compile and provide the Joint Resources Forum with the list of decisions made by that Provincial Agency in the previous 12 months without referral to the KLRA.

APPLICATION ENGAGEMENT LEVEL 1

4 (1) On the second and fourth Wednesday of every month, or the next Business Day following a Wednesday that is not a Business Day, the KLRA will notify the Provincial Agency for each new Application Package received from it on or before the previous Wednesday confirming

(a) whether the Application Package is complete;

(b) the proposed timeframe or proposing an alternative timeframe in accordance with section 2(11);

(c) the proposed engagement level or proposing an alternative engagement level; and

(d) if the KLRA intends to provide written comments respecting Ktunaxa Interests.

(2) If the Provincial Agency does not receive a notice from the KLRA as set out in subsection (1), the Provincial Decision Maker may proceed with the decision and notify the KLRA within ten Business Days after the decision has been made.

(3) If the KLRA notifies a Provincial Agency that it will provide written comments, it will provide those comments within the timeframe specified in the Application Package or an agreed upon alternative timeframe.

(4) If the KLRA does not provide written comments within the timeframe specified or the alternative timeframe established under section 2(11), the Provincial Decision Maker may proceed with the decision and will notify the KLRA within ten Business Days after the decision has been made.

(5) A Provincial Decision Maker will give serious consideration to written comments provided by the KLRA when determining whether to approve an Application.

(6) If a Provincial Decision Maker makes a decision about an Application that he or she believes is consistent with written comments provided under subsection (3), the Provincial Decision Maker will provide, within ten Business Days, written notification

of the decision and, if requested by the KLRA, identify how Ktunaxa Interests have been addressed.

(7) If the Provincial Decision Maker intends to make a decision about an Application that he or she believes is not consistent with the written comments provided under subsection (3), the Provincial Decision Maker, or a senior representative of the Provincial Decision Maker, will notify the KLRA of the proposed decision and, if requested, provide a summary of how KLRA comments have been considered.

(8) If the KLRA wishes to meet to discuss the Application, it will notify the Provincial Decision Maker, or its representatives, within ten Business Days after notification under subsection (7).

(9) If the KLRA provides notification under subsection (8), the KLRA and Provincial Decision Maker will meet within five Business Days or other time period agreed to by the Parties and, if they agree, may invite the Responsible Officials or their representatives to the meeting.

(10) If the KLRA does not notify the Provincial Decision Maker under subsection (8), then the Provincial Decision Maker may proceed with the decision.

(11) A Provincial Decision Maker will give serious consideration to the issues raised by the KLRA at the meeting under subsection (9) when making a decision about an Application.

(12) If a decision is not consistent with the comments provided by the KLRA under subsection (3) or the issues raised by the KLRA at the meeting under subsection (9), the Provincial Decision Maker, or a senior representative of the Provincial Decision Maker, will notify the KLRA of the decision and, if requested by the KLRA, the Provincial Agency will, within ten Business Days after the decision has been made, identify to the KLRA how Ktunaxa Interests have been addressed.

APPLICATION ENGAGEMENT LEVEL 2

5 (1) On the second and fourth Wednesday of every month, or the next Business Day following a Wednesday that is not a Business Day, the KLRA will notify the Provincial Agency for each new Application Package received from it on or before the previous Wednesday confirming

(a) whether the Application Package is complete;

(b) the proposed timeframe or proposing an alternative timeframe in accordance with section 2(11);

(c) the proposed engagement level or proposing an alternative engagement level;

(d) if the KLRA intends to provide written comments respecting Ktunaxa Interests, and

(e) whether it wants to meet to discuss the Application further with the Provincial Agency.

(2) If the Provincial Agency does not receive a notice as set out in subsection (1) or is notified that the KLRA does not intend to provide written comments and does not want to meet to discuss the Application, the Provincial Decision Maker

(a) may proceed with the decision,

(b) will provide, within ten Business Days of making a decision, written notification of the decision, and

(a) if requested by the KLRA, will identify how Ktunaxa Interests have been addressed.

(3) If the KLRA notifies a Provincial Agency under subsection (1)(d) that it will provide written comments, it will provide those comments within the timeframe specified in the Application Package, or an agreed upon alternative timeframe.

(4) If the KLRA does not provide written comments within the timeframe specified or the alternative timeframe established under section 2(11), the Provincial Decision Maker may proceed with the decision and will notify the KLRA within ten Business Days after the decision has been made.

(5) If the KLRA requests a meeting under subsection (1)(e) or if a Provincial Agency requests a meeting, the Parties will meet within ten Business Days or other time period agreed to by the Parties to

(a) discuss the views of both Parties with respect to the Application, including its potential impacts and benefits,

(b) consider any issues on which the Parties disagree,

(c) assess options to address the differences between the Parties, and

(d) where possible, seek consensus on recommendations to the Provincial Decision Maker.

(6) Within ten Business Days of the conclusion of a meeting under subsection (5), the Provincial Agency and the KLRA will inform, either separately or together, the Provincial Decision Maker of the outcome of the meeting and any recommendations about the Application.

(7) The Provincial Decision Maker will give serious consideration to the written comments provided under subsection (3) and the information and recommendations provided under subsection (6) prior to making a decision about the Application.

(8) If a Provincial Decision Maker makes a decision about an Application that he or she believes is consistent with the written comments provided under subsection (3) and the recommendations provided under subsection (6), the Provincial Decision Maker, or a senior representative of the Provincial Decision Maker, will provide, within ten Business Days, written notification of the decision and, if requested by the KLRA, identify how Ktunaxa Interests have been addressed.

(9) If the Provincial Decision Maker intends to make a decision about an Application that he or she believes is not consistent with the written comments provided under subsection (3) and the recommendations provided under subsection (6), the Provincial Decision Maker, or a senior representative of the Provincial Decision Maker, will notify the KLRA of the proposed decision and provide a written summary and how KLRA comments and recommendations have been considered.

(10) If the KLRA wishes to meet to discuss the Application it will notify the Provincial Decision Maker, or its representatives, within ten Business Days after notification under subsection (9).

(11) If the KLRA provides notification under subsection (10), the KLRA and Provincial Decision Maker will meet within five Business Days or other time period agreed to by the Parties and, if they agree, may invite the Responsible Officials or their representatives to the meeting.

(12) If the KLRA does not notify the Provincial Decision Maker under subsection (10), then the Provincial Decision Maker may proceed with the decision.

(13) The Provincial Decision Maker will give serious consideration to the issues raised by the KLRA at a meeting under subsection (11) when making a decision about an Application.

(14) If a decision is made that is not consistent with the written comments provided under subsection (3), the recommendations provided under subsection (6), or the issues raised by the KLRA at a meeting under subsection (11), the Provincial Decision Maker will notify the KLRA of the decision and, if requested by the KLRA, a Provincial Agency will, within ten Business Days after the decision has been made, identify to the KLRA how Ktunaxa Interests have been addressed.

APPLICATION ENGAGEMENT LEVEL 3

6 (1) On the second and fourth Wednesday of every month, or the next Business Day following a Wednesday that is not a Business Day, the KLRA will provide a notice to the Provincial Agency for each new Application Package received from it on or before

the previous Wednesday confirming its agreement with the proposed engagement level or proposing an alternative engagement level.

(2) The Provincial Agency will request that the Joint Resources Forum or a sub-committee established by the Joint Resources Forum meet within 20 Business Days of the KLRA receiving an Application Package under subsection (1), or other time period agreed to by the Parties, to

(a) discuss the nature and scope of the Application,

(b) develop an engagement work plan, and

(c) identify topics to be addressed which may include

(i) potential impacts on and measures to accommodate the Ktunaxa Nation's Aboriginal Rights,

(ii) potential impacts on and measures to address other Ktunaxa Interests,

(iii) potential benefits to the Ktunaxa Nation,

(iv) a process to negotiate accommodation agreements, and

(v) resource revenue-sharing and other benefits, subject to the Parties securing the necessary mandates.

(3) An engagement work plan prepared under subsection (2) will

(a) establish a process and timelines for consultation and completion of an engagement report as set out in subsection (4),

(b) consider developing terms of reference for the sub-committee if established, including its duration,

(c) propose a schedule for meetings,

(d) identify the participating Provincial Agencies,

(e) set out how information-sharing between the Applicant and the KLRA will be coordinated with the Parties' engagement with respect to other Applications, and

(f) identify the resources required, including the financial resources to support the Ktunaxa Nation's participation in the process established under subsection (a).

(4) As part of the process established under subsection (3)(a), the Parties will prepare, either separately or together, and provide to the Provincial Decision Maker a report that sets out

(a) the views of both Parties with respect to the Application, including potential impacts and benefits,

(b) any issues on which the Parties disagree,

(c) an assessment of options to address the differences between the Parties, and

(d) where achieved**,** consensus on recommendations about the Application.

(5) The Provincial Decision Maker will give serious consideration to the information in the report submitted under subsection (4) prior to making a decision about the Application.

(6) If a Provincial Decision Maker makes a decision about an Application that he or she believes is consistent with the KLRA recommendations provided under subsection (4)(d), the Provincial Decision Maker, or a senior representative of the Provincial Decision Maker, will provide, within ten Business Days, written notification of the decision and, if requested by the KLRA, identify how Ktunaxa Interests have been addressed.

(7) If the Provincial Decision Maker intends to make a decision about an Application that he or she believes is not consistent with recommendations provided under subsection (4)(d), the Provincial Decision Maker, or a senior representative of the Provincial Decision Maker, will notify the KLRA of the proposed decision and provide a written summary of how KLRA recommendations have been considered.

(8) If the KLRA wishes to meet to discuss the Application, it will notify the Provincial Decision Maker, or its representatives, within ten Business Days after notification under subsection (7).

(9) If the KLRA provides notification under subsection (8), the KLRA and Provincial Decision Maker will meet within five Business Days or other time period agreed to by the Parties and, if they agree, may invite the Responsible Officials or their representatives to the meeting.

(10) If the KLRA does not notify the Provincial Decision Maker under subsection (8) or the Parties do not meet under subsection (9), then the Provincial Decision Maker may proceed with the decision.

(11) The Provincial Decision Maker will give serious consideration to the issues raised by the KLRA at a meeting under subsection (9) when making a decision about an Application.

(12) After a decision is made regarding an Application, the Provincial Decision Maker, or a senior representative of the Provincial Decision Maker, will notify the KLRA of the decision and a Provincial Agency will, within ten Business Days after the decision has been made, identify to the KLRA how Ktunaxa Interests have been addressed.

PRE-ENVIRONMENTAL ASSESSMENT PROCESS

7 (1) A Responsible Official, on becoming aware of a potential major project that may enter a provincial environmental assessment process or other assessment process, will notify the other Responsible Official of the project as soon as practicable.

(2) Following notification under subsection (1), the Provincial Responsible Official will provide the following information, if known, to the KLRA:

(a) the name of the proponent, the general location and the nature of the activities proposed;

(b) the types of authorizations that may be required for the project; and

(c) the Provincial Agencies that may be involved in providing required authorizations for the project.

(3) Unless the Joint Resources Forum decides it is premature or not required, the Joint Resources Forum will establish a sub-committee following notification under subsection (1) to identify the following:

(a) potential impacts of the proposed project on the Ktunaxa Nation's Aboriginal Rights;

(b) potential impacts on and measures to address other Ktunaxa Interests;

(c) potential measures to accommodate impacts;

(d) information requirements and measures to support information sharing;

(e) the process for transitioning between the environmental assessment process and the Parties' engagement with respect to Applications related to the project;

(f) resources required, including the financial resources to support the Ktunaxa Nation's participation in the processes established under this section 7.

(4) After a proposed project has entered the environmental assessment process under the *Environmental Assessment Act*, the Joint Resources Forum may, to address the issues set out in subsections (3) (d) and (e) and any other matters outside the mandate of the Environmental Assessment Office as determined by that Office, do the following:

(a) establish a subcommittee for that project;

(b) direct a subcommittee that has been established under subsection (3) for that project to continue; or

(c) dissolve a subcommittee that has been established under subsection (3) for that project.

ENGAGEMENT PROCESS INITIATED BY A PROVINCIAL ENGAGEMENT REQUEST

8 (1) If the Province identifies an issue related to, or anticipates a decision regarding, land and resources within Ktunaxa Territory that may affect Ktunaxa Interests, the Province may provide a Provincial Engagement Request to the Ktunaxa Responsible Official.

(2) A Provincial Engagement Request will include

(a) a description of the nature of the issue and relevant background information,

(b) the Province's perspective on how the issue may affect Ktunaxa Interests,

(c) possible options, if any, that the Province may be considering,

(d) the Province's preferred Government-to-Government Forum for discussing the issue with the Ktunaxa Nation,

(e) proposed timelines, and

(f) relevant contact information.

(3) Upon receipt of a Provincial Engagement Request, the Ktunaxa Responsible Official, or designate, will contact the Provincial Responsible Official and arrange, through the Joint Resources Forum or other means, to have the appropriate representatives of the Parties meet within 20 Business Days, or as otherwise agreed by the Parties, to discuss the Provincial Engagement Request and determine the most appropriate means to

(a) share information on the nature of the Provincial Engagement Request,

(b) determine potential impacts and benefits to the Parties, and

(c) determine the most effective and efficient means to implement the Provincial Engagement Request.

(4) For greater clarity, issues that may be addressed under this section 8 include the following:

(a) new policy or changes to existing policy, legislation, regulation or other initiatives that may affect land and resources in Ktunaxa Territory;

(b) new policy or changes to existing policy, legislation, regulation or other initiatives regarding First Nations, including shared-decision making, resource and benefit sharing, and environmental assessment;

(c) changes to a Provincial Agency's organizational structure or resources that may affect its participation in this Agreement; and

(d) processes or potential decisions of a substantive nature, other than in relation to Applications**,** including land use planning, land designations, changes to land use, protected areas, land dispositions under the *Land Act*, changes to existing boundaries, Crown land alienation, Crown land sales, and disposition of Crown reserves of petroleum and natural gas.

ENGAGEMENT PROCESS INITIATED BY A KTUNAXA ENGAGEMENT REQUEST

9 (1) The Ktunaxa Responsible Official may initiate an engagement with the Province to address issues related to land and resources in Ktunaxa Territory by providing a Ktunaxa Engagement Request to the Provincial Responsible Official.

(2) A Ktunaxa Engagement Request will include:

(a) a description of the nature of the issue and relevant background information,

(b) the Ktunaxa Nation's perspective on how the issue may affect Ktunaxa Interests,

(c) possible options, if any, to address the issues raised in the Ktunaxa Engagement Request,

(d) the Ktunaxa Nation's preferred Government-to-Government Forum for discussing the issue with the Province,

(e) proposed timelines, and

(f) relevant contact information.

(3) Upon receipt of a Ktunaxa Engagement Request, the Provincial Responsible Official, or designate, will contact the Ktunaxa Responsible Official and arrange, through the Joint Resources Forum or other means, to have the appropriate representatives of the Parties meet within 20 Business Days, or as otherwise agreed by the Parties, to discuss the Ktunaxa Engagement Request and determine the most appropriate means to

(a) share information on the nature of the Ktunaxa Engagement Request,

(b) determine the potential impacts and benefits to the Parties, and

(c) determine the most effective and efficient means to implement the Ktunaxa Engagement Request.

SCHEDULE 1

ENGAGEMENT LEVEL ASSESSMENT CRITERIA

OVERVIEW

This Schedule provides guidance to Provincial Agencies for determining the appropriate engagement level for assessing the potential impacts of a proposed Application on the Ktunaxa Nation's Aboriginal Rights and may also be used to identify the appropriate engagement level for assessing impacts to other known Ktunaxa Interests.

Under the Engagement Process, the Province will assign a proposed engagement level which will, except in the case of Engagement Level 0 Applications, be referred to the KLRA for review and confirmation.

It is anticipated that the Parties will revise the assessment tools and resulting accuracy of establishing engagement levels over time based on their collaborative experience in working with this Schedule.

The Parties agree that this Schedule is based on the following understandings:

a) the Province has a legal duty to assess impacts to the Ktunaxa Nation's Aboriginal Rights, however, the Parties recognize that this Schedule may also be used to identify the appropriate engagement level for assessing impacts to other known Ktunaxa Interests;

b) this Schedule is intended to facilitate a joint learning process and may be amended to take into account what the Parties have learned;

c) the KLRA is best able to describe potential impacts to Ktunaxa Interests;

d) sample Applications in Table 1 are provided for guidance only and will be further refined by the Parties as experience is gained;

e) it is possible that an activity can frequently be determined to require a low engagement level, however, in a particular instance, that activity may require a higher engagement level due to the values at a specific site;

f) potential cumulative impacts may increase the engagement level; and

g) new information may warrant a change in the engagement level.

ENGAGEMENT LEVEL ASSIGNMENT PROCEDURE

Subject to the general understandings outlined above, the Parties will use the following procedure to assign or determine proposed engagement levels (Levels 0 – 3) for an Application:

STEP 1: Refer to Table 1 (Engagement Level Assessment Criteria) to assign a proposed engagement level, or adjust or confirm that level by assessing available information about the Application and its potential to impact the Ktunaxa Nation's Aboriginal Rights.

Table 1 provides sample Applications that may fit one of the described engagement levels. This table may be further refined by the Parties as experience is gained.

STEP 2: Refer to any agreed upon modifiers under Section 2(1)(d) of Appendix C, including best management practices, to identify where the initial determination of an engagement level may be appropriately moved up or down.

ENGAGEMENT LEVELS:

0 **NO ENGAGEMENT** – No engagement is required, other than providing an annual list of Applications under section 3(5) of Appendix B.

1 **LOW –** Very limited engagement and no additional research is required to assess the potential impacts.

2 **NORMAL** – More focused engagement and additional research is required to assess the potential impacts.

3 **DEEP** – Will require significant collaborative evaluation to design an effective process for the Parties.

TABLE 1: ENGAGEMENT LEVEL ASSESSMENT CRITERIA		
ENGAGEMENT LEVEL	**NATURE AND POTENTIAL IMPACTS OF PROPOSED ACTIVITY**	**SAMPLE APPLICATIONS PROVIDED FOR ILLUSTRATIVE PURPOSES ONLY**
0 (no engagement)	• Negligible potential impact • To be developed during implementation in accordance with section 2(1)(g) and section 2(1)(h)(ii) of Appendix C	• List of types of Applications to be developed during implementation under section 3(3) of Appendix B and in accordance with sections 2(1)(g) and 2(1)(h)(ii) of Appendix C • Until the Parties have come to an agreement with respect to the types of Applications that will be processed at Engagement Level 0, Provincial Agencies are not required to refer Applications that are among the types of Applications that were not being referred to the Ktunaxa Nation or the Ktunaxa Communities as of October 22, 2010
1 (Low)	• Typically small-scale activity • Located in an area of low archaeological potential, i.e., areas where archaeological sites are not likely to be present • Short-term or seasonal • Little or no ground disturbance • Little, no, or temporary impacts on fish and wildlife habitat • Little, no, or temporary impacts on water quality and quantity	• Tenure replacements and renewals, no significant changes • Minor amendments of operational plans • Special use permits • Modifications to existing recreational sites and trails • Land tenure in already disturbed area • Permits under Forest Stewardship Plans, Range Stewardship Plans, Woodlot Licence Plans and Community Forest Agreement Management Plans • *Forest and Range Practices Act* designation of a community watershed • New Notice of Work under the *Mines* Act with a total disturbance area of less than half a hectare

TABLE 1: ENGAGEMENT LEVEL ASSESSMENT CRITERIA		
ENGAGEMENT LEVEL	**NATURE AND POTENTIAL IMPACTS OF PROPOSED ACTIVITY**	**SAMPLE APPLICATIONS PROVIDED FOR ILLUSTRATIVE PURPOSES ONLY**
2 (Normal)	• Typically mid-scale activity • Located in an area where archaeological sites or Ktunaxa cultural heritage sites are known or where archaeological sites are likely to be present • Short to moderate term • Moderate ground disturbance • Minimal or moderate impacts on fish and wildlife habitat, including rare and endangered species • Moderate impacts on water quality and quantity • Smaller scale Crown land alienation	• New roads in watersheds that are already accessible • Operational plans, e.g., forest and range stewardship plan • *Land Act*, subdivision development approvals • Land tenure (e.g. communication site) in undisturbed area • New Notice of Work under the *Mines* Act with a total disturbance area of a half hectare or more
3 (Deep)	• Typically large-scale activity, i.e., major projects that are not currently undergoing a review under the *Environmental Assessment Act* • Large-scale Crown land alienation • Located in an area where there is the potential for high impacts to known/likely archaeological sites or Ktunaxa cultural heritage sites. • Effects or activity persists over long term • Extensive or intensive ground disturbance • Significant impacts on fish and wildlife habitat, including rare and endangered species • Significant impacts on water quality and quantity • New access into large undeveloped wilderness areas	• New resort applications • New replaceable forestry tenures • Water licenses associated with hydro-electric energy production • Major projects that are not currently undergoing a review under the *Environmental Assessment Act*

TABLE 2: MODIFIER CRITERIA (APPLICABLE WHEN CONFIRMED BY THE JOINT RESOURCES FORUM UNDER SECTION 2(1)(d) OF APPENDIX C)	
UP MODIFIERS	**DOWN MODIFIERS**
• if Ktunaxa have expressed dissatisfaction with higher level decision or plan • if there are known areas of Ktunaxa interest/significance – e.g. cultural, sustenance • if there are known areas of archaeological potential • if there are cumulative effects that may have a significant impact on Ktunaxa Interests • if there are species at high risk and high level of habitat sensitivity • if there are significant data gaps required to be addressed to assess major decision	• if best management practices are in place • if higher level decision, plan or agreement including agreements with proponents are in place • if cumulative effects strategy is in place • if reclamation or mitigation plans applicable to an Application are in place

APPENDIX C

GOVERNMENT-TO-GOVERNMENT FORUM

GENERAL

1 (1) The Government-to-Government Forum is comprised of a Senior Forum and a Joint Resources Forum and is responsible for implementing this Agreement including the following:

(a) addressing issues brought forward by the Parties in the Engagement Process set out in Appendix B;

(b) resolving operational, administrative, strategic and regional issues that are of interest to either or both of the Parties;

(c) supporting discussions on how to close the socio-economic gap, further to the objectives of the New Relationship and the Transformative Change Accord;

(d) exploring economic access opportunities arising from land and resources in Ktunaxa Territory;

(e) supporting discussions regarding sustainable use of land and resources;

(f) ensuring that the spirit and intent of existing agreements between the Parties continue to be respected and implemented;

(g) determining how subsequent agreements or initiatives may be developed and appended to this Agreement;

(h) developing mechanisms and tools as required; and

(i) addressing other matters agreed to by the Parties.

(2) The Parties will review the terms of reference for the Joint Resources Forum and the Senior Forum within sixty (60) Business Days of the Effective Date.

(3) The Parties will ensure that their respective representatives have the appropriate authority and mandate to engage on the issues in a substantive manner.

(4) The KLRA will identify those days which will not be counted as "Business Days" to the Province by January 31st of each calendar year, and will notify the Province immediately of any additional non-Business Days that may be identified throughout the calendar year.

JOINT RESOURCES FORUM

2 (1) The Joint Resources Forum will meet monthly, or as otherwise agreed to by the Parties, and is responsible for the following:

(a) addressing the implementation and day-to-day operation of this Agreement as directed by the Senior Forum;

(b) addressing engagements in accordance with Appendix B, including any amendment of the Engagement Process that is agreed to by the Parties;

(c) as required, developing a process to engage on projects with existing authorizations, or projects with multiple Applications;

(d) agreement on modifiers, including practices to be included as best management practices for the purposes of this Agreement;

(e) addressing concerns respecting the application of modifiers, including best management practices;

(f) undertaking preliminary reviews of Provincial Engagement Requests and Ktunaxa Engagement Requests to jointly determine the most appropriate means to address them, including forwarding them to the Senior Forum;

(g) reviewing and agreeing on a list of the types of Applications that are to be addressed at Engagement Level 0;

(h) an implementation subcommittee to meet as required to:

(i) assist the Parties to implement and refine the Engagement Process,

(ii) review the list of the types of Applications that are addressed at Engagement Level 0, including the addition or removal of types of Applications to be addressed at Engagement Level 0, and make recommendations to the Joint Resources Forum,

(iii) discuss and make recommendations to the Joint Resources Forum respecting modifiers, including practices to be included as best management practices, and

(iv) carry out other tasks as directed by the Joint Resources Forum;

(i) fostering coordinated collaborative management relationships on topics of common interest to the Parties, including the following:

(i) fish and wildlife, through a subcommittee that continues in the same form and with the same functions as the Ktunaxa Fish and Wildlife Management Committee established under the Memorandum of

Understanding (MOU) to Establish an Effective Government-to-Government Working Relationship for the Management of Fish and Wildlife, February 2005;

(ii) parks and protected areas, through a subcommittee that continues in the same form and with the same functions as the Ktunaxa-British Columbia Provincial Parks Management Committee established under the Memorandum of Understanding (MOU) to Establish an Effective Government-to-Government Working Relationship for the Management of Provincial Parks, February 2005;

(iii) archaeological and First Nations heritage resources, through a subcommittee in the same form and with the same functions as the Archaeological Resources Management Committee which was to be established under the Memorandum of Understanding to Establish an Effective Government-to-Government Working Relationship for the Management of Archaeological Resources;

(iv) energy, subsurface and petroleum resources;

(v) forest and range resources;

(vi) land and water use planning; and

(vii) potential impacts to Ktunaxa Interests resulting from land and resource development that is subject to approval by Provincial Agencies on private land;

and

(j) engaging in discussions respecting Crown corporations, commissions or third parties that may be responsible for aspects of consultation and accommodation.

(2) The Joint Resources Forum will be co-chaired by the Responsible Officials or their designates and will include provincial and Ktunaxa Nation representatives, whose number and nature may vary depending on the matter to be addressed.

(3) The Joint Resources Forum may establish sub-committees to

(a) fulfil any of its responsibilities, and

(b) address specific Applications under section 6(2) or 7(3) of Appendix B.

(4) In the third-quarter of each fiscal year, or at another time agreed to by the Parties, the Joint Resources Forum will meet to exchange relevant information, including any activities that may impact the Engagement Process**,** about land and resource issues and initiatives in Ktunaxa Territory to inform the planning cycle of each of the Parties.

SENIOR FORUM

3(1) The Senior Forum will meet quarterly or as otherwise agreed to by the Parties and is responsible for the following:

(a) addressing disputes between the Parties in accordance with this Agreement;

(b) sharing information and reviewing the implementation and operation of this Agreement;

(c) oversight of the implementation of the ECDA and management of dispute resolution processes set out in that agreement;

(d) addressing Provincial Engagement Requests and Ktunaxa Engagement Requests that do not fall within the mandate and authority of the Joint Resources Forum or are forwarded to the Senior Forum by the Joint Resources Forum;

(e) addressing Engagement Requests that have been forwarded to the Senior Forum by the Joint Resources Forum under section 2(1)(f);

(f) being the primary forum for the Parties to

(i) discuss shared decision-making processes and the sharing of resource-revenues and other benefits, and

(ii) engage in political-level discussions on issues covered by this Agreement.

(2) The Senior Forum will be co-chaired by the Chair of the KNC and the Regional Executive Director, South Area, Negotiations and Regional Operations Division, Ministry of Indigenous Relations and Reconciliation.

(3) The co-chairs will determine the appropriate representatives of the Parties and seek to ensure they attend Senior Forum meetings as required, and in determining the appropriate representatives, will consider

(a) the purpose of the Senior Forum meeting,

(b) the subjects being addressed, and

(c) the nature of the matter being addressed.

(4) The Senior Forum may establish sub-committees to assist in carrying out the work of the Senior Forum.

(5) The Parties agree to establish two standing committees of the Senior Forum as follows:

(a) a Resource-Revenue and Benefit Sharing Standing Committee to

(i) monitor implementation of resource revenue and benefit sharing arrangements between the parties,

(ii) address disputes referred to it under the ECDA,

(ii) facilitate the Parties entering into negotiations and attempting to conclude resource-revenue and benefit sharing agreements, subject to the Parties securing their respective mandates,

(iii) exchange perspectives and develop recommendations for consideration by the Parties on how to address the Ktunaxa Nation's interest in achieving greater access to economic opportunities associated with natural resource development within Ktunaxa Territory, including appropriate linkages to a potential post-treaty environment, and

(iv) explore opportunities to facilitate such access,

(b) a Shared Decision-Making Standing Committee to

(i) exchange perspectives on shared decision-making,

(ii) explore models of shared decision-making,

(iii) monitor implementation of the framework developed by the Parties to incrementally implement shared decision-making, and

(iv) ensure appropriate linkages to a potential post-treaty environment.

(6) Within 90 Business Days of the Effective Date, the Parties will identify their respective co-chairs for each of the standing committees set out in subsection (5), and within 120 Business Days of the Effective Date, review the terms of reference for each of the committees.

APPENDIX D

PAYMENT SCHEDULE

Payment Period	**Amount**
Payment 1 October 22, 2013 - March 31, 2014	210,845
Payment 2 April 1, 2014 – March 31, 2015	478,000
Payment 3 April 1, 2015 – March 31, 2016	478,000
Payment 4 April 1, 2016 – October 22, 2016	267,155
Payment 5 October 22, 2016 - March 31, 2017	210,845
Payment 6 April 1, 2017 – March 31, 2018	478,000
Payment 7 April 1, 2018 – March 31, 2019	478,000
Total	**2,600,845**

APPENDIX E

ANNUAL REPORT

(SUBMITTED WITHIN 14 BUSINESS DAYS AFTER THE END OF PAYMENT PERIOD)

Agreement Requirement	Expenditures For The Year	Measurement Criteria	Specific Outcomes For The Year
KNC participation in the Government-to-Government (G2G) forums	$	# of meetings/conference calls of the G2G forums # of Engagement Requests initiated	
KNC participation in the Engagement Process	$	Total # of referrals received # referrals responded to by engagement level	
Total	$		

APPENDIX F

PARTICIPATING PROVINCIAL AGENCIES

Divisions and branches of the following provincial ministries have statutory authority with respect to land and resource matters on behalf of the Province and are subject to the terms and conditions of this Agreement:

Ministry of Indigenous Relations and Reconciliation

Ministry of Agriculture

Ministry of Energy, Mines and Petroleum Resources

Ministry of Environment, except for the Environmental Assessment Office

Ministry of Forests, Lands, Natural Resource Operations and Rural Development, including BC Timber Sales

Ministry of Transportation and Infrastructure