

ECONOMIC AND COMMUNITY DEVELOPMENT AGREEMENT

This Agreement is dated the 31st day of March, 2020.

BETWEEN:

LHTAKO DENÉ NATION, on behalf of itself and its Members, as
represented by Chief and Council

("Lhtako Dené")

AND

HER MAJESTY THE QUEEN
IN RIGHT OF THE PROVINCE OF BRITISH COLUMBIA
as represented by the Minister of Indigenous Relations and Reconciliation
("British Columbia")

(each a "Party", together referred to as the "Parties")

Whereas:

- A. The Parties wish to utilize this Agreement to respect each other's interests, while developing an effective long-term working relationship based on mutual respect and recognition that includes sharing mineral tax revenues from the Project;
- B. The Parties, in the spirit of advancing reconciliation, share commitments to strengthen their government-to-government relationship and to close the socio-economic gaps between Lhtako Dené and other British Columbians;
- C. The Agreement sets out the process through which the Parties will consult on ongoing operational decisions related to the Project;
- D. The Project is located within the area that Lhtako Dené identifies as its traditional territory;
- E. Lhtako Dené has Aboriginal Rights in its traditional territory and Lhtako Dené members and their ancestors have used and continue to use the lands and resources in the vicinity of the Project Area;
- F. British Columbia is committed to facilitating and developing a thriving, competitive, safe and environmentally responsible mineral resource sector, and for increasing contributions to the local and provincial economy for the benefit of all British Columbians;

- G. Lhtako Dené is committed to the long-term environmental protection of the Project Area while directing economic benefits from the Project Area to address Lhtako Dené’s socio-economic needs; and
- H. Both Parties acknowledge how Lhtako Dené’s support of the Project through this Agreement assists in the realization of contributions to the local economy for the benefit of Lhtako Dené and other communities in the region.

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, recognized and affirmed by section 35(1) of the *Constitution Act, 1982*;

“Agreement” means this Economic and Community Development Agreement in relation to the Project, including all of its appendices, annexes and schedules;

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

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

“Consultation Process” means the process set out in Schedule 3 or as modified by agreement between the Parties under Article 13 by which British Columbia will fulfill any consultation and accommodation obligations relating to Government Actions related to the Project that may impact Aboriginal Rights after the Effective Date of the Agreement;

“Dispute” means any disagreement regarding the interpretation or implementation of this Agreement for which a written Notice of Dispute is given in accordance with subsection 13.5, but does not include a disagreement that relates to consultations regarding Government Actions or to the calculation of Revenue Sharing Payments;

“Effective Date of the Agreement” means March 31, 2020;

“Freedom of Information and Protection of Privacy Act” means the *Freedom of Information and Protection of Privacy Act*, R.S.B.C. 1996, c. 164;

“Government Actions” means all authorizations, permits, licences, approvals, Crown land

dispositions, whatsoever entered into or otherwise taken by British Columbia, in relation to the Project;

“Member” means an individual who is a member of the Lhtako Dené Nation as shown in its band list, as that term is defined under the *Indian Act*;

“Mine Fiscal Year” means a “fiscal year of a 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;

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

“Notice of a Dispute” means a written notice provided by a Party in accordance with subsection 13.5;

“Notice to Arbitrate” means a notice provided by a Party in accordance with subsection 13.10;

“Notice to Mediate” means a notice provided by a Party in accordance with subsection 13.9;

“Notice to Terminate” means a written notice to terminate this Agreement provided by a Party in accordance with subsection 10.4;

“Operator” means the “operator”, as defined in the *Mineral Tax Act*, of the Project;

“Payment Account” means the account established pursuant to subsection 1.12 of Schedule 2 to receive Revenue Sharing Payments under this Agreement;

“Payment Statement” means the statement in respect of the Project containing the tax information that British Columbia will provide to Lhtako Dené under subsection 1.3 of Schedule 2;

“Permit Amendment” means the amendment to the M-238 Permit, approved by British Columbia on March 13, 2018 and related Government Actions taken by a Provincial Agency;

“Post Closure Reclamation Amount” means an amount paid by the Operator or refunded to the Operator 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;

“Project” means, unless otherwise agreed in writing by the Parties, any and all activities relating to the Mine, the Permit Amendment, and any subsequent Government Actions in or related to the Project Area and includes:

- 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 and any of the elements described in (a) which are situated within the Project Area;
- c) all matters relating to the exploration, planning, permitting, construction, maintenance, repair, operation, closure and reclamation of the Mine and any of the elements described in (a) or (b) which are situated within the Project Area; and
- d) any changes, modifications or expansions to existing access roads and power lines located outside the Project Area, to the extent required in connection with the Mine and any of the elements described in (a), (b), or (c) which are situated within the Project Area;
- e) But does not include, unless the Parties agree otherwise, an extraordinary, unforeseen environmental emergency resulting from the Mine that may have potentially significant adverse effects on Lhtako Dené’s Aboriginal Rights;

“Project Area” means, for purposes of this Agreement, the area shown on the map attached as Schedule 1;

“Provincial Agency” means British Columbia, including any minister, public official or employee of British Columbia, or person acting on behalf of, or as an agent for British Columbia, and any Government Corporation;

“Revenue Sharing Payments” means the payments to be made by British Columbia to Lhtako Dené in accordance with Schedule 2, and **“Revenue Sharing Payment”** means any one such payment; and

“Term” has the meaning given to that term in Section 9 [Term].

Section 2 Purpose

2.1 The purpose of this agreement is to:

- a. confirm the Consultation Process that the Parties will rely on to meet their respective legal consultation obligations in relation to the Project; and
- b. share resource revenue received by British Columbia from the Project with Lhtako Dené so that it may pursue activities that will enhance the social and economic wellbeing of its Members.

Section 3 Confidential Information

3.1 Confidential information

- a. Lhtako Dené will keep confidential any 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.
- b. Notwithstanding subsection 3.1(a), Lhtako Dené may disclose confidential information to its advisors, including legal, financial, tax and other professional advisors, provided that those advisors agree in writing to keep the information confidential.
- c. Notwithstanding any other provision of this Agreement, Lhtako Dené may disclose the amount of actual and projected Revenue Sharing Payments to Members.
- d. Lhtako Dené acknowledges that British Columbia has informed them of the confidentiality requirements under the *Mineral Tax Act*.
- e. Where Lhtako Dené shares knowledge or information with British Columbia for the purposes of this Agreement and that knowledge or information is identified in writing as confidential or sensitive:
 - i. British Columbia will make all reasonable efforts to prevent the disclosure of that information to the public, subject to the *Freedom of Information and Protection of Privacy Act*, or as otherwise required by law; and
 - ii. Where British Columbia receives a request under the *Freedom of Information and Protection of Privacy Act*, for disclosure of confidential information received from Lhtako Dené, British Columbia will provide Lhtako Dené with a notice of the request and the opportunity to express Lhtako Dené’s views regarding the disclosure.

Section 4 Reports

- 4.1 If requested by British Columbia, Lhtako Dené will provide a summary report once per fiscal year, substantially in the form set out in Schedule 4 or in the form provided to its

Members, regarding the projects or initiatives to which Revenue Sharing Payments may have been allocated in the previous fiscal year.

- 4.2** The Parties agree that British Columbia has no liability to Lhtako Dené or its Members for the management of the Lhtako Dené Account established under subsection 1.12 of Schedule 2, or the allocation or use of monies in the Account.

Section 5 Certainty

- 5.1** The Parties agree that the Revenue Sharing Payments provided under this Agreement are an economic accommodation and constitute a component of any accommodation or compensation that may be required for any impacts or infringements to Lhtako Dené's Aboriginal Rights resulting from Government Actions.
- 5.2** If Lhtako Dené directly or indirectly, including by supporting actions by its Members:
- a. challenges or impedes access by British Columbia or the 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, or
 - b. brings, continues or supports a court action or proceeding to challenge or oppose the granting or validity of Government Actions.

British Columbia may exercise its right to suspend Revenue Sharing Payments or to terminate this Agreement pursuant to Section 10 [Suspension of Revenue Sharing Payments and Termination].

- 5.3** Lhtako Dené will work co-operatively with, and provide reasonable assistance to, British Columbia in seeking to resolve any actions by 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.

Section 6 Further Revenue Sharing

- 6.1** If after the Effective 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 in this Agreement or with first nations with existing mineral tax revenue sharing agreements, British Columbia will provide written notice as soon as practicable after the change and the Parties will negotiate in good faith an amendment to this Agreement to reflect that policy change, in accordance with the policy.

Section 7 Continuing Obligations

7.1 The Parties' covenants, rights and obligations, as set out in subsections 3.1 [Confidential Information], 5.1 [component of accommodation], this Section 7 and Schedule 2 subsection 1.7 [End of Term] are intended to survive and to remain fully binding on the Parties and enforceable, despite the expiration of the Term or termination of this Agreement.

Section 8 Assignment

8.1 Lhtako Dené will not assign, either directly or indirectly, this Agreement or any right of Lhtako Dené under this Agreement without the prior written consent of British Columbia, such consent not to be unreasonably withheld.

Section 9 Term

9.1 The Term of this Agreement will commence on the Effective Date and will continue for as long as the tax, interest and penalties payable by an Operator in respect of the Project are subject to payment or reassessment under the applicable legislation.

9.2 Despite subsection 9.1, the Parties may:

- a. agree in writing to terminate this Agreement in its entirety on an earlier date; or
- b. exercise their respective rights to terminate this Agreement pursuant to Section 10 [Suspension of Revenue Sharing Payments and Termination].

Section 10 Suspension of Revenue Sharing Payments and Termination

10.1 British Columbia may suspend the Revenue Sharing Payments to Lhtako Dené where:

- a. Lhtako Dené impedes or effectively stops operation of the Project as per subsection 5.2;
- b. Lhtako Dené continues or supports a court action or proceeding to challenge or oppose the granting or validity of Government Actions; or
- c. any representation or warranty made by Lhtako Dené in this Agreement is untrue or incorrect.

10.2 British Columbia will:

- a. provide written notice to Lhtako Dené of the issue or non-compliance giving rise to any suspended Revenue Sharing Payment under subsection 10.1 prior to suspending the payment; and
- b. make any Revenue Sharing Payments it would otherwise have been required to make within sixty (60) days of the day the cause for the suspension is remedied.

10.3 If the Revenue Sharing Payments are suspended under subsection 10.1 and this Agreement is terminated under subsection 10.4, Lhtako Dené will be deemed to have fully released and discharged British Columbia from all of its obligations in respect of the suspended Revenue Sharing Payments.

10.4 This Agreement may be terminated prior to the end of the Term:

- a. by Lhtako Dené on the grounds set out in subsection 10.8;
- b. by British Columbia on the grounds set out in subsection 10.9;
- c. by mutual agreement of the Parties; or
- d. by a Party providing 90 days' notice.

10.5 Where a Party intends to terminate under subsection 10.4, 10.8 or 10.9 that Party must issue a Notice to Terminate to each other Party that provides:

- a. ninety (90) days notice of the intent to terminate; and
- b. the reasons for terminating.

10.6 A Party may rescind a Notice to Terminate at any time prior to expiration of the ninety (90) day period.

10.7 If a Party issues a Notice to Terminate under subsection 10.8 or 10.9 the other Party will have ninety (90) days to cure any actual breach. The Party issuing the written Notice to Terminate, and the other Party will, within fifteen (15) days of the Notice to Terminate having been delivered, make every reasonable effort to meet to discuss the circumstances which gave rise to the written Notice to Terminate in order to determine whether there is a basis for rescinding the Notice.

10.8 Lhtako Dené may terminate this Agreement where:

- a. British Columbia is not in compliance with its obligations under this Agreement; or
- b. any representation or warranty made by British Columbia in this Agreement is untrue or incorrect.

10.9 British Columbia may terminate this agreement where:

- a. Lhtako Dené is not in compliance with its obligations under this Agreement;
- b. Lhtako Dené challenges or impedes access to the Project as per subsection 5.2(a);
- c. Lhtako Dené brings, continues or supports a court action or proceeding to challenge or oppose the granting or validity of Government Actions as per subsection 5.2(b); or
- d. any representation or warranty made by Lhtako Dené in this Agreement is untrue or incorrect.

10.10 Except as provided in Section 7 [Continuing Obligations], where a Notice to Terminate is not withdrawn within ninety (90) days, the Parties will be released and discharged from their obligations under this Agreement.

Section 11 Consultation on Government Actions

11.1 The process by which the Parties agree that British Columbia will consult on proposed Government Actions during the operational life of mine and, where appropriate, the means by which British Columbia will identify potential measures to accommodate any potential adverse impacts to Lhtako Denés' Aboriginal Rights resulting from the proposed Government Action forms Schedule 3.

11.2 Lhtako Dené agrees that if the Consultation Process is followed, British Columbia has consulted, and where appropriate, has identified potential measures to accommodation potential adverse impacts of Government Actions on Lhtako Dené's Aboriginal Rights.

Section 12 Representations and Warranties

12.1 Lhtako Dené represents and warrants to British Columbia, on which British Columbia will rely in entering into this Agreement, the following:

- a. it has the legal power, capacity and authority to enter into this Agreement and to make the covenants, acknowledgements and representations in this Agreement on its own behalf and on behalf of its Members;
- b. 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;
- c. 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 Lhtako Dené and its Members.

12.2 British Columbia represents and warrants to Lhtako Dené, on which Lhtako Dené will

rely on entering into this Agreement, the following:

- a. it has taken all necessary actions and obtained all necessary approvals to enter into this Agreement;
- b. it has the legal power, capacity and authority to carry out its obligations in accordance with the terms of this Agreement; and
- c. this Agreement is a valid and binding obligation of British Columbia.

Section 13 Dispute Resolution

- 13.1** The Parties will endeavour to resolve any Disputes in a co-operative, effective and timely manner.
- 13.2** The Parties may agree to vary a procedural requirement contained in this section as it applies to a particular Dispute.
- 13.3** The Parties agree to use the processes set out in this section to attempt to resolve all Disputes, including any Dispute that may give rise to a right to terminate pursuant to subsection 10.4 prior to a Notice of Termination being issued.
- 13.4** For greater certainty, the processes set out in this section will not be used:
- a. once a Notice to Terminate has been issued;
 - b. to resolve a disagreement relating to consultation and accommodation in respect of Government Actions under Section 11 [Consultation on Government Actions]; or
 - c. to resolve a disagreement regarding the calculation of Revenue Sharing Payments.
- 13.5** One Party may give a written Notice of Dispute to the other Party which includes a summary of the particulars of the dispute.
- 13.6** The Parties will meet and will attempt to resolve the Dispute through the following unassisted collaborative process:
- a. within fifteen (15) working days, or within a longer agreed to timeframe agreed to by the Parties subject to the Notice of Dispute, the authorized representatives of the Parties will make every reasonable effort to meet and attempt to resolve the Dispute.
- 13.7** No Party may commence a court proceeding concerning a Dispute prior to completion of the unassisted collaborative negotiation pursuant to subsection 13.6, 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.

13.8 Where a Dispute is not resolved through unassisted collaborative negotiation pursuant to subsection 13.6, the Parties may:

- a. exercise their respective rights, including any right to issue a Notice to Terminate; or
- b. by agreement of the Parties, undertake further efforts to resolve the Dispute through one or both of mediation or arbitration, as set out below.

13.9 The following will apply to any mediation that the Parties agree to pursue:

- a. the Party that issued the Notice of Dispute will prepare a Notice to Mediate that states the issue that the Parties have agreed to put to mediation;
- b. the Parties subject to the Notice of Dispute will appoint a mediator who is neutral, objective and experienced in mediation within thirty (30) days of the issuance of the Notice to Mediate. If the Parties cannot agree on the appointment, the Mediate BC Society, or its successor organization, will appoint the mediator from a roster maintained by that organization;
- c. the mediator's role is to facilitate discussion, understanding and dispute resolution between the Parties subject to the Notice of Dispute. The mediator will not have any authority to impose a solution on the Parties;
- d. 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 subject to the Notice of Dispute,
 - ii. the withdrawal from the mediation of a Party subject to the Notice of Dispute 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 subject to the Notice of Dispute agree in writing to terminate the mediation, or
 - iv. the date on which the Parties subject to the Notice of Dispute sign a written agreement resolving the Dispute;
- e. the Parties subject to the Notice of Dispute 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 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;
- f. the mediation process and all its related proceedings will be and will remain confidential, unless the Parties subject to the Notice of Dispute agree otherwise;
- g. a Party may withdraw from mediation at any time by providing written notice of its intent to the mediator, subject to subsection 13.9)(d)(ii);
- h. the mediation will not restrict in any way the positions that each of the Parties may take in any dispute, arbitration or court proceeding;
- i. the mediator will not issue a report or make any recommendations unless requested to do so in writing by the Parties subject to the Notice of Dispute;
- j. any agreement reached through mediation will be recorded in writing, signed by authorized representatives of the Parties subject to the Notice of Dispute and delivered to the Parties subject to the Notice of Dispute; and
- k. the Parties will each bear the costs of their own participation, representation and appointments in the mediation. The Parties subject to a Notice of Dispute 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.

13.10 The following will apply to any arbitration that the Parties agree to pursue:

- a. the Party that issued the Notice of Dispute will prepare a Notice to Arbitrate that states the issue the Parties subject to the Notice of Dispute have agreed to put to arbitration;
- b. the Parties subject to the Notice of Dispute will appoint an arbitrator who is neutral, objective and experienced in arbitration within thirty (30) days of the issuance of the Notice to Arbitrate. If the Parties cannot agree on the appointment, the British Columbia International Commercial Arbitration Centre, or its successor organization, will appoint the arbitrator from a roster maintained by that organization;
- c. the arbitration process and all its related proceedings will be and will remain confidential, unless the Parties subject to the Notice of Dispute agree otherwise;
- d. subject to the exceptions in applicable arbitration legislation, the decision of the

arbitrator is final and binding on the Parties subject to the Notice of Dispute for the term of this Agreement; and

- e. 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 subject to the Notice of Dispute 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.

13.11 The Parties may agree to alternative approaches to assist in reaching resolution of the Dispute.

13.12 Nothing in this Section 13 creates a cause of action where none otherwise exists.

Section 14 Notice and Delivery

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

14.2 The address and facsimile numbers of the Parties are:

- a. Lhtako Dené Nation:
PO Box 4069
Quesnel, BC V2J 3J2
Fax: (250) 747-1341
Attention: Chief
- b. British Columbia:

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

- 14.3** Any Party may at any time give notice to the other Party of any change of address or facsimile number in accordance with subsection 14.1.

Section 15 General Provisions

- 15.1** This Agreement is not a treaty or land claim agreement within the meaning of sections 25 and 35 of the *Constitution Act, 1982*.
- 15.2** This Agreement does not create, expand, amend, define, affirm, recognize, limit, deny, abrogate, extinguish, replace or derogate from any Aboriginal Rights.
- 15.3** This Agreement does not change or affect the position any Party has, or may have, regarding its jurisdiction, responsibilities and decision-making authority.
- 15.4** This Agreement is not intended to be interpreted in a manner that would affect or fetter the discretion of any decision-making authority.
- 15.5** 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.
- 15.6** Except as contemplated herein, this Agreement does not limit the position any Party may take in any legal or administrative proceedings or in any discussions or negotiations between the Parties.
- 15.7** Nothing in this Agreement is to be construed as an acceptance of or admission by any Party of the position of any 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;
 - b. the validity of any territorial claim or assertion of Aboriginal rights by any other

first nation; or

- c. an obligation to provide financial or economic benefits, as provided in this Agreement, as part of British Columbia's obligation to consult and, as appropriate, accommodate in relation to Government Action relating to the Project.

15.8 Nothing in this Agreement precludes Lhtako Dené from:

- a. continuing to negotiate, implement and take steps to enforce any revenue and benefits-sharing agreements with the Operator, proponents and other governments;
- b. accessing economic opportunities and benefits, which may be available to Lhtako Dené, other than those expressly set out in this Agreement; or
- c. participating in government programs for which Lhtako Dené may be eligible.

15.9 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.

15.10 This Agreement may be amended by written agreement duly executed by the Parties.

15.11 The funds received under this Agreement are not, and are not intended to be, considered as own source revenue for any purpose related to federal funding arrangements, either in a treaty or non-treaty agreements.

15.12 Notwithstanding any other provision of this Agreement, Revenue Sharing Payments to be provided by British Columbia to Lhtako Dené 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 BC 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.

Section 16 Interpretation

16.1 This Agreement is to be interpreted so that all the provisions are given as full effect as possible.

16.2 This Agreement will be governed by and construed in accordance with the applicable

laws of British Columbia and Canada.

- 16.3** 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.
- 16.4** 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. The Parties may agree to refer the matter to the dispute resolution process set out in Section 13 [Dispute Resolution].
- 16.5** 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.
- 16.6** 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.
- 16.7** The use of the word “including” is to be read as not limiting the generality of the preceding term or phrase.
- 16.8** In this Agreement, any reference made to a statute includes all regulations made under that statute and any amendments or replacements.
- 16.9** No term, condition, covenant 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.
- 16.10** 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.
- 16.11** Any reference to a corporate entity includes and is also a reference to any corporate entity that was a predecessor to, or that is a successor to, such entity.
- 16.12** This Agreement may be executed in counterparts and by facsimile by the Parties.

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

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

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



Honourable Minister Scott Fraser

March 31, 2020

Date

LHTAKO DENÉ NATION, as represented by



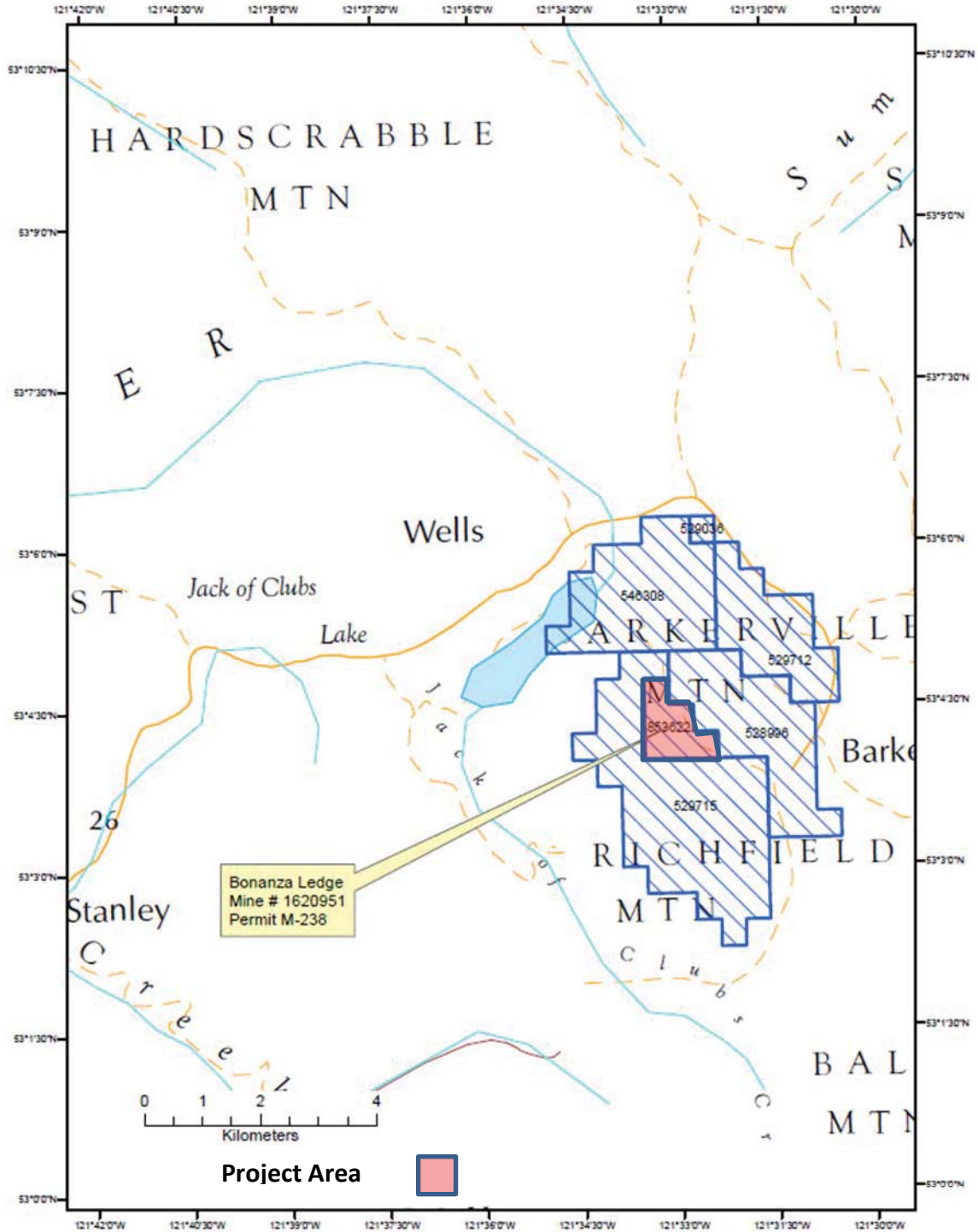
Chief Clifford Lebrun

March 31/20

Date

SCHEDULE 1

Project Area (Shaded) Map Bonanza Ledge Mine



SCHEDULE 2 – Payment Provisions

Section 1 Definitions

1.1 In this Schedule:

“Net Mineral Tax Revenue” has the meaning set out in Section 1 [Definitions] of this Agreement;

“Overpayment” means an amount paid by British Columbia under this Schedule that exceeds the amount Lhtako Dené was entitled to receive, which may occur if an Operator 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; and

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

1.2 **Revenue Sharing Payment.** British Columbia will provide Revenue Sharing Payments to Lhtako Dené calculated as follows:

- a. thirty-five percent (35 %) of the Net Mineral Tax Revenue
- b. any adjustment for Overpayments or Underpayments pertaining to any previous BC Fiscal Year(s).

1.3 **Payment Statements.** Within one hundred and fifty (150) days after the end of each BC Fiscal Year beginning with the first BC Fiscal Year in which British Columbia receives payment from the Operator under the *Mineral Tax Act*, British Columbia will provide Lhtako Dené with a Payment Statement containing the following information:

- a. the Net Mineral Tax Revenue received in the BC Fiscal Year;
- b. the amount of any Overpayment or Underpayment if applicable; and
- c. the amount of the Revenue Sharing Payment

1.4 **Timing of Revenue Sharing Payments.** If the Revenue Sharing Payment for a BC Fiscal Year 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 Lhtako Dené by depositing the Revenue Sharing Payment into the Lhtako Dené Account established under subsection 1.12.

- 1.5 Recovery of Overpayment.** If, in a BC Fiscal Year, the payment amount is negative due to an Overpayment exceeding the Net Mineral Tax Revenue, British Columbia may pay up to fifty (50) percent of the amount that would have been paid in the absence of the Overpayment amount to Lhtako Dené and apply the remaining amount to the Overpayment balance until the Overpayment amount is recovered.
- 1.6 No Further Operator Payments.** If the Operator is no longer responsible for making payments under the *Mineral Tax Act* such that there will be no subsequent Revenue Sharing Payments to Lhtako Dené, British Columbia will notify Lhtako Dené of:
- a. any Underpayment and will pay the Underpayment within one hundred and eighty days (180) of the end of the BC Fiscal Year; and
 - b. any Overpayment that remains outstanding and may deduct the Overpayment from any amounts that may be payable to Lhtako Dené under any other agreement with British Columbia.
- 1.7 End of Term.** If the term of this Agreement ends other than on the last day of a BC Fiscal Year, no payment will be payable to Lhtako Dené in relation to that portion of the BC Fiscal Year after the date on which the term of this Agreement ends.
- 1.8 Fluctuations in Revenues.** Lhtako Dené acknowledges that revenues under the *Mineral Tax Act* may fluctuate and that the Project Payments may vary over time.
- 1.9 Changes to Act.** If, during the term of this Agreement, British Columbia makes changes to the *Mineral Tax Act* tax regime that will have the effect of reducing the Revenue Sharing Payments, British Columbia shall promptly notify Lhtako Dené and the Parties will discuss potential alternative revenue sharing opportunities.
- 1.10 Reliance on Operator Information.** Lhtako Dené acknowledges that British Columbia is entitled to rely on information provided by the Operator 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.
- 1.11 Disclaimer.** British Columbia makes no representation or warranty as to the accuracy of the information provided by the Operator and no proceeding lies against it in relation to any claim that the information provided by the Operator was inaccurate.
- 1.12 Bank Account.** Lhtako Dené will:
- a. establish and maintain in its name a bank account at a Canadian financial institution for the purpose of receiving Revenue Sharing Payments;

- b. provide British Columbia with the information under subsection 1.12 (a) to enable British Columbia to directly deposit the Revenue Sharing Payments;
- c. notify British Columbia of any change under subsection 1.12(a), which will be evidenced by band council resolution which British Columbia will be entitled to rely on; and
- d. maintain the bank account under subsection 1.12(a) until twelve (12) months after the receipt of the last Revenue Sharing Payment.

1.13 Delivery of Payments

- a. British Columbia will make Revenue Sharing Payments to Lhtako Dené by depositing payments directly into the bank account established under subsection 1.12(a).
- b. Lhtako Dené may designate an entity under subsection 1.14 to receive Revenue Sharing Payments under subsection 1.13(a) and, if such a designation is made, Lhtako Dené will notify British Columbia.
- c. All payments which British Columbia is obliged to make pursuant to the Agreement are to be remitted to the bank accounts established under subsection 1.12(a).
- d. For greater certainty, British Columbia will not be obligated to make any payments under this Agreement until Lhtako Dené has complied with subsection 1.12 to the reasonable satisfaction of British Columbia.

1.14 Lhtako Dené 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
- b. the trust has been settled for the purpose of benefitting Lhtako Dené 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 1.14(b) above.

1.15 The trustees of a trust settled in accordance with subsection 1.14 are required to be legally capable of accepting the rights granted and obligations imposed under subsection 1.14.

- 1.16** If a trust is settled in accordance with subsection 1.14, Lhtako Dené will provide to British Columbia a copy of the trust indenture and full name, address and account information respecting the trust.
- 1.17** British Columbia will not be obligated to make any payments to a trust established by Lhtako Dené until subsection 1.14 has been complied with to the reasonable satisfaction of British Columbia.
- 1.18** If the trust identified in subsection 1.14 is terminated pursuant to its terms and there remains undistributed trust property upon termination, Lhtako Dené 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 subsection 1.14, or settled in bank accounts as described in subsection 1.12.
- 1.19** If there is any disagreement about the amount of a Revenue Sharing Payment, Lhtako Dené may give notice to British Columbia and on such notice the Parties will meet as soon as practicable to discuss the matter of concern and British Columbia will review the matter and take any remedial actions required.

SCHEDULE 3

CONSULTATION PROCESS

1. Definitions

In this Schedule:

“Working Days” means any day other than a Saturday or Sunday, National Aboriginal Day or a statutory holiday in British Columbia and does not include any days between December 16 and January 4 on which days the Lhtako Dené Band Office is closed;

“Information Package” has the meaning given to that term in subsection 2(2) of this Schedule; and

“Mines Act Permit Regulation” means *Mines Act Permit Regulation, B.C. Reg. 99/2013*.

2. Consultation Initiation

- (1) When a Provincial Agency receives an application for a Government Action, the Provincial Agency will determine the type of Government Action in accordance with the Criteria Table in Appendix A of this Agreement based on a determination of which set of criteria best describes the potential impacts associated with the Government Action.
- (2) The Provincial Agency will initiate the Consultation Process by providing an Information Package to Lhtako Dené that will include the following:
 - (a) relevant background information and a description of the proposed Government Action(s);
 - (b) location of the proposed Government Action(s) within the Project Area, and associated GIS based information;
 - (c) application(s) and any supporting materials including studies and technical reports submitted by the Operator to the Provincial or prepared by the Province;
 - (d) a description of potential impacts on Lhtako Dené’s Aboriginal Rights, and measures to mitigate and/or accommodate identified impacts to those Aboriginal Rights;

- (e) the primary contact information for the Provincial Agency;
 - (f) identification of the Government Action as Type 1, Type 2 or Type 3 along with a rationale for the selection; and
 - (g) a timeline for the Consultation Process consistent with the timelines established in this Schedule for the selected type of Government Action.
- (3) Where multiple Government Actions are considered at the same time, Provincial Agencies will endeavor to include a description of all Government Actions within a single Information Package.
 - (4) If Lhtako Dené does not agree with the Type of Government Action identified pursuant to subsection 2(2)(f) Lhtako Dené may, within 5 Working Days of receiving the Information Package, provide the Provincial Agency with a written request that the Type of Government Action be changed and will provide the Provincial Agency with information supporting such a request, including potential impacts to Lhtako Dené's Aboriginal Rights from the Government Action.
 - (5) The Provincial Agency will consider such requests and if the request is not accepted, will meet either by phone, video conference or in person with Lhtako Dené representatives within 10 Working Days to discuss the request.
 - (6) Upon making a decision with respect to the request, the Provincial Agency will notify Lhtako Dené of its determination regarding the Type of Government Action at which time the relevant time period for the Consultation Process will begin.

3 Type 1

- (1) Where Lhtako Dené receives an Information Package concerning a Government Action identified as Type 1, Lhtako Dené may, within fifteen (15) Working Days from the date the Information Package is received by Lhtako Dené, provide a response to the Provincial Agency identifying any concerns, comments or suggested mitigations in response to the Information Package.
- (2) The relevant statutory decision maker may make a decision with respect to the application for a Government Action after the expiry of the fifteen (15) Working Day period, unless the Provincial Agency, and Lhtako Dené agree to an extension of time for further Lhtako Dené review, in which case, the statutory decision maker may make a decision after the expiry of the extension period.

4 Type 2

- (1) Where Lhtako Dené receives an Information Package concerning a Government Action identified as Type 2, Lhtako Dené may, within twenty-two (22) Working Days from the date the Information Package is received by Lhtako Dené, provide a response to the Provincial Agency:
 - (a) identifying any concerns, comments or suggested mitigations in response to the Information Package;
 - (b) providing a detailed description of any additional information that Lhtako Dené requests in order to understand the impacts of the proposed Government Action on Lhtako Dené's Aboriginal Rights; and
 - (c) requesting a meeting with the Provincial Agency to further discuss the proposed Government Action.
- (2) The relevant statutory decision maker may make a decision with respect to the proposed Government Action:
 - (a) before the expiry of the twenty-two (22) Working Days if Lhtako Dené indicate in writing that they have no concern with, or no position on, the proposed Government Action; or
 - (b) after the expiry of the twenty-two (22) Working Day period, unless the Provincial Agency and Lhtako Dené agree to an extension of time for further Lhtako Dené review or to arrange a meeting between Lhtako Dené and the Provincial Agency, in which case, the statutory decision maker may make a decision after the expiry of the extension period.
 - (c) If Lhtako Dené provided specific concerns, comments or suggested mitigation measures in relation to the Information Package, the relevant statutory decision maker or the Provincial Agency will notify Lhtako Dené in writing of the decision made regarding the proposed Government Action including any measures taken to respond to concerns, comments or suggested mitigation measures made by Lhtako Dené.

5 Type 3

- (1) Where Lhtako Dené receive an Information Package concerning a Government Action identified as Type 3, Lhtako Dené may provide a response to the Provincial Agency within twenty-two (22) Working Days from the date the Information Package is received by Lhtako Dené that:
 - (a) identifies any concerns, comments or suggested mitigations in response to the Information Package; and

- (b) provides a detailed description of any additional information that Lhtako Dené requires in order to understand the impacts of the proposed Government Action on Lhtako Dené's Aboriginal Rights.
- (2) Alternatively, Lhtako Dené may provide the Provincial Agency with notice that no further consultation is required.
- (3) Within twenty-two (22) Working Days of receiving a response from Lhtako Dené under subsection 5(1) of this schedule, the Provincial Agency and Lhtako Dené will meet either by phone, video conference or in person. Following the meeting, reasonable efforts will be made by both Parties to:
 - (a) Utilize existing committees (e.g. the mine development review committee, major mines permitting process and those which may have been constituted by agreement between Lhtako Dené and the Proponent); and
 - (b) provide available additional technical information requested by Lhtako Dené under subsection 5(1)(b) of this Schedule to properly understand the proposed Government Actions and the potential impact on Aboriginal Rights.
- (4) The Parties will work collaboratively to develop recommendations on proposed mitigations and accommodations through any meetings undertaken through subsection 5(3) of this Schedule.
- (7) At the end of twenty-two (22) Working Days from receiving a response from Lhtako Dené under s. 5(1) of this schedule, the Provincial Agency will provide Lhtako Dené with a summary of potential mitigations and accommodations that have been jointly discussed by the Parties and the summary will be provided to the relevant statutory decision maker.
- (8) Within twenty (20) Working Days of receiving the summary under 5(7) of this schedule, unless the Provincial Agency and Lhtako Dené agree to an extension of time for further Lhtako Dené review, Lhtako Dené will prepare and provide to the Provincial Agency a consultation report that includes:
 - (a) any additional proposed mitigations or accommodations that address any impacts to Aboriginal Rights identified by Lhtako Dené; and
 - (b) if required, any additional submissions regarding Lhtako Dené's views on the proposed Government Action(s).
- (9) If Lhtako Dené includes any additional submissions in the consultation report under 5(8) of this schedule either Party may request an issue resolution meeting with the relevant provincial representative.

- (10) Where meeting is requested to address outstanding issues, the Parties will meet with the relevant provincial representative, and attempt to resolve the issue in question within twenty (20) Working Days from British Columbia receiving submissions through section 5(8) of this Schedule.
- (11) If an issue remains unresolved after the meeting referred to in section 5(10) of this Schedule, each Party will notify the other in writing of the outstanding points of disagreement and any consensus recommendations that may have been reached during the meeting. The record of the outstanding issues will be submitted to the statutory decision maker.
- (12) The relevant statutory decision maker or the Provincial Agency will notify Lhtako Dené in writing of the decision made regarding the proposed Government Action including any measures taken to respond to concerns, comments and suggested mitigation measures provided by Lhtako Dené and how such concerns, comments and suggested mitigation measures were considered in reaching the decision.

Appendix A: Criteria Table

1. Criteria Table

1.1 The Criteria Table contains criteria for determining whether the proposed Government Action Type 1, Type 2 or Type 3 for the purposes of the Consultation Process set out in Article 13 and Schedule 2 of this Agreement.

<p>Type 1: Criteria</p> <p>Negligible perceived impact on Aboriginal Rights, such as:</p> <ul style="list-style-type: none">• Negligible physical impact on land• Negligible fish and wildlife impact• Long standing replacements of existing tenures that created negligible previous impact on Aboriginal Rights• Maintenance of existing infrastructure, but excluding herbicide use or road deactivation
<p>Type 2: Criteria</p> <p>Low to Moderate impact on Aboriginal Rights, such as:</p> <ul style="list-style-type: none">• Low to moderate fish and wildlife impact• Low to moderate impact on Lhtako Dené's access• Low to moderate land alteration or disturbance• Long standing replacements of existing tenures that created a low to moderate previous impact on Aboriginal Rights
<p>Type 3: Criteria</p> <p>Significant impacts on Aboriginal Rights, such as:</p> <ul style="list-style-type: none">• Significant fish and wildlife impacts• Significant water and land impacts• Significant land alteration or disturbance• Major new access structures• Aboriginal activities or rights potentially displaced/irreplaceable in a specific area• Long standing replacements of existing tenures that created significant previous impact on Aboriginal Rights

1.2 In circumstances where criteria from two or more engagement types apply, the engagement level will default to the higher level, unless the Parties agree to the lower level applying.

1.3 The following Government Actions, which are deemed authorizations under the *Mines Act Permit Regulation, B.C. Reg. 99/2013* will be considered Type 1 for the purposes of the Consultation Process:

- (a) induced polarization (IP) surveys using exposed electrodes where an exploration permit is held;
- (b) mineral or coal exploration drill programs and IP surveys in the permitted area of disturbance of a producing mineral or coal mine that is currently operating; and
- (c) extending the term of mineral or coal exploration activities by up to two years.

SCHEDULE 4

Revenue Sharing Payments Summary Report Example

Community Priorities	2021/2022 Planned Expenditures	2021/2022 Actual Expenditures	Outcomes Achieved