

PARTICIPATION AGREEMENT

This Agreement is dated for reference the ____ day of December, 2008

BETWEEN:

Her Majesty the Queen in right of the Province of British Columbia, as represented by the Minister of Energy, Mines and Petroleum Resources

(the "Province")

AND:

Nak'azdli First Nation, on behalf of itself and its Members, as represented by its Chief and Council

(the "Nak'azdli First Nation")

WHEREAS:

- A. The PTP concerns a natural gas pipeline to be constructed between Summit Lake, British Columbia and Kitimat, British Columbia.
- B. The PTP, once constructed, will cross the traditional territories of many First Nations in British Columbia, including the Nak'azdli First Nation.
- C. A number of First Nations whose traditional territories will be crossed by the PTP have formed the First Nations Limited Partnership for the purpose of investing in the PTP.
- D. The Province has entered into an Economic Partnership Agreement with FNLP under which it agrees to make certain payments to FNLP, up to but not exceeding \$35,000,000, subject to certain terms and conditions as set out in the Economic Partnership Agreement.
- E. Each First Nation which participates either directly or indirectly in the FNLP is required by the Economic Partnership Agreement to enter into an agreement with the Province substantially in the form of this Agreement.
- F. It is the intent of the parties that the Economic Partnership Agreement and this Agreement:

- (i) provide an economic opportunity for the Nak'azdli First Nation and the First Nations who are limited partners in the FNLP to participate in the PTP; and
- (ii) establish certainty between Nak'azdli First Nation and the Province, as set out in this Agreement, in respect of the PTP.

NOW THEREFORE the Parties agree as follows:

1. DEFINITIONS:

- 1.1 In this Agreement and the Recitals to this Agreement, unless the context requires otherwise:
- (a) "Economic Partnership Agreement" means the agreement between the Province and FNLP under which the Province agrees to provide up to \$35,000,000 to FNLP in relation to the PTP, a copy of which is attached as Schedule 2;
 - (b) "Event of Default" means any event of default described in section 7.1 of this Agreement;
 - (c) "Nak'azdli First Nation" means the Nak'azdli Indian Band as defined by the *Indian Act*, (Canada), and includes its Members, all of which are intended to refer to the same group of traditional peoples;
 - (d) "First Nations Limited Partnership" or "FNLP" means that limited partnership formed under the laws of British Columbia by the filing of a certificate of limited partnership with the British Columbia Registrar of Companies under number BC0835312, and any amendments thereto made from time to time, with a copy of the FNLP Agreement attached as Schedule 1;
 - (e) "Government Actions" means all processes, decisions, authorizations, permits, licences, approvals, Crown land dispositions, agreements and other actions whatsoever, issued, granted, entered into or otherwise taken by a Provincial Releasee either before or after the date of this Agreement;
 - (f) "Member" means any person who is a member of the Nak'azdli First Nation, as defined by the *Indian Act* (Canada), or Band Membership list maintained by the Nak'azdli First Nation or is otherwise recognized by the Nak'azdli First Nation as a band member, and the respective assigns and successors of that member;

(g) "PTP" means

- (i) the natural gas pipeline, compressor stations, and other plant and equipment, access roads and other physical facilities substantially as described in the British Columbia Environmental Assessment Office Project Approval Certificate dated June 27, 2008 and issued to Pacific Trail Pipelines Limited Partnership (LP),
- (ii) any changes, modifications and additions to the physical facilities described in subsection (i) above,
- (iii) all matters relating to the planning, permitting, construction, maintenance, repair and operation of the facilities described in subsection (i) and (ii) above, and

but specifically does not include changes to the physical facilities described in subsections (i) and (ii) above in respect of which any amendment must be obtained to the Project Approval Certificate for the PTP issued under the British Columbia Environmental Assessment Act; and

(h) "Provincial Releasees" means

- (i) the Province,
- (ii) any minister, public official, employee, or agent of the Province,
- (iii) any government corporation,
- (iv) any director, officer, employee, or contractor acting on behalf of a government corporation, the Province or an agent of the Province, or
- (v) any person acting as a decision maker under any enactment of the Province.

2. ECONOMIC PARTNERSHIP AGREEMENT

- 2.1 The Nak'azdli First Nation acknowledges that the Province is providing an economic opportunity to the Nak'azdli First Nation by way of the Economic Partnership Agreement.

3. RELATIONSHIP

- 3.1 No partnership, joint venture, agency, employment or other legal relationship will be created by or will be deemed to be created by this Agreement or by any actions of the Parties undertaken pursuant to this Agreement.

4. REPRESENTATIONS AND WARRANTIES

- 4.1 The Nak'azdli First Nation represents and warrants to the Province with the intent that the Province will rely thereon in entering into this Agreement, that:
- (a) it has independently investigated its participation in the FNLN and has obtained or had the opportunity to obtain the advice of its own financial, legal, tax, investment and other professional advisors with respect to this Agreement, the Economic Partnership Agreement and the terms of the FNLN Agreement and its participation in FNLN;
 - (b) without limitation to subsection (a)
 - (i) it has satisfied itself as to all matters relating to FNLN,
 - (ii) no obligations are owed to it by the Province in respect of the investment, expenditure or any other use whatsoever which the FNLN may make of the funds received by FNLN under the Economic Partnership Agreement, and
 - (iii) all of its covenants, releases, acknowledgments and other agreements as set out herein will remain binding upon it despite the financial success or lack of success of the FNLN, including any insolvency, winding up or other termination of the FNLN and despite any dispute between Nak'azdli First Nation and the FNLN or any member thereof;
 - (c) it enters into this Agreement for, and on behalf of, all of its Members;
 - (d) it, as represented by its Chief and Council, has the legal power, capacity and authority to accept, execute and deliver this

Agreement and to carry out its obligations under this Agreement, on behalf of the Nak'azdli First Nation and its Members;

- (e) this Agreement is binding upon, and enforceable against the Nak'azdli First Nation and its Members in accordance with its terms; and
- (f) this Agreement has been duly authorized, executed and delivered by and on behalf of the Nak'azdli First Nation and its Members.

4.2 All representations, warranties, covenants and agreements made in this Agreement and all certificates and other documents delivered by or on behalf of the Nak'azdli First Nation are material and will conclusively be deemed to have been relied upon by the Province, notwithstanding any prior or subsequent investigation by the Province.

4.3 The Province represents and warrants to the Nak'azdli First Nation that it has the legal power, capacity and authority to enter into this Agreement and the Economic Partnership Agreement and carry out its obligations thereunder.

5. ACKNOWLEDGEMENTS AND COVENANTS

5.1 The Nak'azdli First Nation acknowledges and covenants that so long as the Province is not in default of its obligations to make payments under the Economic Partnership Agreement (default meaning a failure to make payment within the time required after the satisfaction of all conditions for payment and the final resolution of any dispute relating to any payment or condition of payment as provided for in the Economic Partnership Agreement):

- (a) that the Province has, and will for all purposes be deemed to have, fulfilled its obligations of consultation and accommodation to the Nak'azdli First Nation in relation to the PTP;
- (b) that the PTP, including any Government Action associated with the PTP, will not constitute an unjustified infringement of any aboriginal rights or aboriginal title of the Nak'azdli First Nation;
- (c) that it will not take any actions of any kind, including the bringing of any kind of court actions or proceedings, to directly or indirectly challenge, prevent, hinder or delay the PTP, including challenges to any Government Action associated with the PTP, or to seek any other remedy in respect of such matters, on the basis that the Province has failed to fulfill any duty to consult or accommodate in respect of such matters or that any such matters constitute an

unjustifiable infringement of any aboriginal rights or aboriginal title of the Nak'azdli First Nation; and

- (d) on its own behalf and on behalf of its Members, that the Provincial Releasees are released and forever discharged from any and all claims directly or indirectly relating to consultation or accommodation that Nak'azdli First Nation or its Members may have against the Provincial Releasees in relation to the PTP, including any Government Action associated with the PTP

5.2 In respect of section 5.1, and for greater certainty, if the Province does not make payments pursuant to the Economic Partnership Agreement as a result of either:

- (a) the First Nation Participation Threshold, as that term is defined in the Economic Partnership Agreement, not being satisfied, or not being modified after the meeting referred to in Section 2.10 of the Economic Partnership Agreement, so that it is satisfied,; or
- (b) there not being a sufficient appropriation in a particular fiscal year to allow for the payments to be made,

then the acknowledgements and covenants of the Nak'azdli First Nation will no longer be of any force and effect.

5.3 The Nak'azdli First Nation will:

- (a) from time to time on written request from the Province deliver any letter, certificate or confirmation that may be reasonably required by the Province to provide evidence to any other person of those matters set out in section 5.1;
- (b) in the event that a Member of the Nak'azdli First Nation commences or supports a legal challenge to the validity of this Agreement or any Government Action related to the PTP or otherwise engages in activities which interfere with the review, approval, construction or operation of the PTP, make reasonable efforts, at its expense, to assist the Province in dealing with such legal challenge or activities, including supporting any court actions or proceedings that may be taken by the Province; and
- (c) in the event that any other First Nation challenges the validity of this Agreement or any Government Action or otherwise, or otherwise engages in activities which interfere with the review, approval, construction or operation of the PTP, make reasonable efforts, at its

expense, to assist the Province in dealing with such legal challenge or activities, including supporting this Agreement and the PTP.

- 5.4 For greater certainty nothing in this Agreement or the Economic Partnership Agreement will be construed:
- (a) as an admission by the Province
 - (i) of the validity of any claim by Nak'azdli First Nation to aboriginal or treaty rights within the meaning of section 35 of the Constitution Act, 1982 or that any claim that the PTP, including any Government Action associated with the PTP, has resulted or will result in any unjustified infringement of any such aboriginal or treaty rights, or
 - (ii) that it has an obligation to provide financial or economic accommodation to the Nak'azdli First Nation in respect of the PTP;
 - (b) as an acknowledgement that the Province has fulfilled its obligations of consultation or accommodation to the Nak'azdli First Nation in relation to any project other than the PTP; or
 - (c) to preclude Nak'azdli First Nation from participating in any permitting, regulatory or other decision making process relating to the PTP Project so long as such participation does not in any way derogate from and is not in any way inconsistent with the acknowledgements and covenants set out in section 5.1.

6. NORTHERN ENERGY CORRIDOR DISCUSSIONS

- 6.1 The Nak'azdli First Nation agrees to enter into Northern Energy Corridor discussions with other Participating First Nations and the Province

7. DEFAULT

- 7.1 Any of the following will constitute an Event of Default under this Agreement:
- (a) the Nak'azdli First Nation fails to comply with any of its obligations under this Agreement, the Province provides written notice of the failure to comply to the Nak'azdli First Nation, and the Nak'azdli First Nation does not cure the failure to comply within 10 business days of receipt of notice from the Province; and

- (b) any representation or warranty made by the Nak'azdli First Nation in respect to those matters dealt with in this Agreement to the Province is untrue or incorrect.

7.2 Nak'azdli First Nation acknowledges that one of the conditions precedent to Province's obligation to make payment under the Economic Partnership Agreement is that there be no Event of Default under this Agreement at the time that the payment under the Economic Partnership Agreement would otherwise have become due.

8. NOTICES

8.1 Any notice, document, statement, report, demand or grant desired or required to be given or made pursuant to this Agreement will be in writing and may be given or made if delivered personally to the party to whom it is to be given or made, or if mailed in Canada with postage prepaid addressed to:

if to the Province:

Ministry of Energy Mines and Petroleum Resources
PO Box 9323 5th Floor 1810 Blanshard Street
Victoria, British Columbia
Canada, V8W 9N3

Attention: Max Nock
Director, Major Initiatives Branch

and if to the Nak'azdli First Nation:

Nak'azdli First Nation
P.O. Box 1329
Fort St. James, British Columbia
V0J 1P0

Attention: Chief Councillor

8.2 Any notice, document, statement, report or demand desired or required to be given or made pursuant to this Agreement may be transmitted by facsimile transmission from either party or the Province and will be conclusively deemed validly given to and received by the intended recipient when so transmitted if transmitted to the following numbers:

If to the Province: 250-953-3770; and

If to the Nak'azdli First Nation: 250-996-8010.

8.3 Either party may, from time to time, give written notice to the other party 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 purposes of this Agreement be conclusively deemed to be the address or facsimile number of the party giving such notice.

9. NON-WAIVER

9.1 No term or condition of this Agreement and no breach by one party of any such term or condition will be deemed to have been waived unless such waiver is in writing signed by the other party.

9.2 The written waiver by one party of any breach by the other party of any term or condition of this Agreement will not be deemed a waiver of such term or condition or of any subsequent breach by the other party of the same or any other term or condition of this Agreement.

10. ENTIRE AGREEMENT

10.1 This Agreement constitutes the entire agreement between the parties with respect to the subject matter of this Agreement.

11. FURTHER ACTS AND ASSURANCES

11.1 Each of the parties will, upon the reasonable request of the other, make, do, execute or cause to be made, done or executed all further and other lawful acts, deeds, things, devices, documents, instruments and assurances whatever for the better and absolute performance of the terms and conditions of this Agreement.

12. NOT A TREATY

12.1 This Agreement does not:

- (a) constitute a treaty or land claims agreement within the meaning of section 25 or 35 of the Constitution Act, 1982 (Canada); or
- (b) recognize, affirm, define, deny, limit or amend any aboriginal rights or titles or any responsibilities of the Parties except as set out in this Agreement.

13. INTERPRETATION

13.1 This Agreement will be governed by and construed in accordance with the laws of the Province of British Columbia.

13.2 The headings appearing in this Agreement have been inserted for reference and as a matter of convenience and in no way define, limit or enlarge the scope of any provision of this Agreement.

13.3 Any reference to a statute in this Agreement, whether or not that statute has been defined, includes all regulations at any time made under or pursuant to that statute and amendments to that statute.

13.4 This Agreement will be interpreted and construed with such changes in number and gender as the context so requires.

13.5 Any discretion or obligation of the Province under this Agreement may be exercised or performed by the Minister of Energy, Mines and Petroleum Resources, the Deputy Minister of Energy, Mines and Petroleum Resources, or any person authorized to act for, or on behalf of, any of them.

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

13.7 Each and every covenant, release, acknowledgment and other agreement given, and action to be taken by Nak'azdli First Nation in this Agreement means Nak'azdli First Nation acting by and through its Chief and Council, and will be conclusively deemed to be given or taken, by Nak'azdli First Nation on its own behalf and for and on behalf of its members.

13.8 If any provision of this Agreement or the application thereof to any person or circumstance is invalid or unenforceable to any extent, the remainder of this Agreement and the application of such provision to any other person or circumstance will not be affected or impaired thereby and will be valid and enforceable to the extent permitted by law.

14. SUCCESSORS AND ASSIGNS

14.1 This Agreement will enure to the benefit of and be binding upon the Nak'azdli First Nation and its successors and permitted assigns and the Province and its assigns.

15. BAND COUNCIL RESOLUTION

15.1 Prior to the execution of this Agreement, the Nak'azdli First Nation will deliver to the Province a Resolution made by its Council authorizing the First Nation's representatives named in the Resolution to execute this Agreement on behalf of the Nak'azdli First Nation.

16. EXECUTION BY COUNTERPARTS

16.1 This Agreement may be entered into by each Party signing a separate copy of this Agreement (including a photocopy or facsimile copy) and delivering it to the other Party by facsimile transmission.


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

SIGNED on behalf of Her Majesty the Queen in right of the Province of British Columbia by a duly authorized Representative of the Minister of Energy Mines and Petroleum Resources this ____ day of _____, 2008 in the presence of:

(Witness)

For the Minister of Energy, Mines and Petroleum Resources

SIGNED on behalf of Nak'azdli First Nation by its duly authorized representative this 22 day of December, 2008 in the presence of:



(Witness)

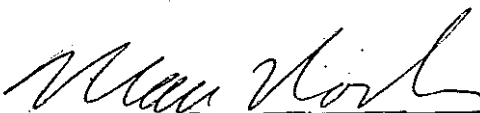


For the Nak'azdli First Nation

Ms. Genevieve Antoine is a Commissioner for Taking Affidavits for British Columbia. The commission expires October 31, 2009

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

SIGNED on behalf of Her Majesty the Queen in right of the Province of British Columbia by a duly authorized Representative of the Minister of Energy Mines and Petroleum Resources this 31 day of MARCH, 2008⁹ in the presence of:

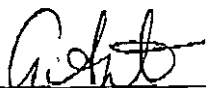


(Witness)



For the Minister of Energy, Mines and Petroleum Resources

SIGNED on behalf of Nak'azdli First Nation by its duly authorized representative this 22 day of December, 2008 in the presence of:



(Witness)



For the Nak'azdli First Nation

Ms. Genevieve Antoine is a Commissioner for Taking Affidavits for British Columbia
The commission expires October 31, 2009