

# NATURAL GAS PIPELINE BENEFITS AGREEMENT

## PRINCE RUPERT GAS TRANSMISSION PROJECT

*Between:*

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

*and:*

THE NISGA'A NATION, as represented by the  
Nisga'a Lisims Government Executive  
("Nisga'a Nation")

*(Collectively the "Parties" and individually a "Party")*



### **WHEREAS:**

- A. New natural gas pipelines are proposed in British Columbia.
- B. The Province, through the Environmental Assessment Office and the Oil and Gas Commission, is engaging with the Nisga'a Nation pursuant to Chapter 10 of the Nisga'a Final Agreement in respect of the assessment of the potential impacts of proposed natural gas pipelines on Nisga'a Section 35 Rights.
- C. The Parties wish to develop an effective long-term working relationship that includes Nisga'a Nation sharing benefits associated with new natural gas pipelines that are built in British Columbia and supporting the development of the Natural Gas Pipeline Project should it be built.

***NOW THEREFORE the Parties agree as follows:***

### **PART 1 INTERPRETATION**

1.1 **Definitions.** In this Agreement:

**"Additional Payment"** means the payment provided in accordance with section 4.3;

**"Agreement"** means this Natural Gas Pipeline Benefits Agreement – Prince Rupert Gas Transmission Project;

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

**"Eligible First Nation"** means a First Nation that the Province, at its sole discretion, determines is eligible to receive Ongoing Benefits under section 4.4 and for greater certainty the Nisga'a Nation is an Eligible First Nation for the purposes of this Agreement.

**"Final Payment"** means the payment provided in accordance with section 4.2(b);

**"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 the Province, any minister, public official, employee or agent of the Province, any government corporation, and any person acting as a decision maker under any enactment of the Province;

**"Initial Payment"** means the payment provided in accordance with section 4.2(a);

**"In-Service Date"** means the first day that the Natural Gas Pipeline Project is placed in-service for transmission of liquefied natural gas (LNG) and is able to make natural gas deliveries to the LNG facility at the terminus of the Natural Gas Pipeline Project;

**“Material Commencement of Construction”** has the meaning given to it in section 4.2(a);

**“Natural Gas Pipeline Project”** means the proposed Prince Rupert Gas Transmission Project, as described in the project description accepted for review by the Provincial Environmental Assessment Office and includes components such as a natural gas pipeline and associated compressor stations, equipment and other physical facilities, valves and meters, power supply sources, equipment staging sites, access roads and rights of ways, construction camps and investigative activities;

**“Nisga’a Final Agreement”** means the Nisga’a Final Agreement entered into among the Nisga’a Nation, Her Majesty the Queen in right of British Columbia, and Her Majesty the Queen in right of Canada, which came into effect on May 11, 2000;

**“Nisga’a Section 35 Rights”** means the rights of the Nisga’a Nation as defined in the Nisga’a Final Agreement and recognized and affirmed by section 35 of the Constitution Act, 1982;

**“Ongoing Benefits”** means financial benefits available from the Province to Eligible First Nations provided in accordance with sections 4.4, 4.5, 4.6, 4.7 and 4.8;

**“Project Payment”** means the payments described under section 4.1 for the Natural Gas Pipeline Project, but does not include any additional payments under section 4.3; and

**“Real Property Tax Coordination Agreement”** means the Real Property Tax Coordination Agreement between the Nisga’a Nation and the Province dated for reference as of July 31, 2014.

## **PART 2 INTERPRETATION.**

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2.1 For purposes of this Agreement:

- (a) “including” means “including, but not limited to” and “includes” means “includes, but not limited to”;
- (b) the recitals and headings are for convenience only, do not form a part of this Agreement and in no way define, limit, alter or enlarge the scope or meaning of any provision of this Agreement;
- (c) 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;
- (d) words in the singular include the plural, and words in the plural include the singular unless the context or any specific definition requires;
- (e) any reference to a corporate entity includes any predecessor or successor to such entity; and
- (f) there will be no presumption that doubtful expressions, terms or provisions in this Agreement are to be resolved in favour of any Party.

## **PART 3 PURPOSE AND SCOPE**

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3.1 **Purpose.** The purpose of this Agreement is to provide financial benefits to the Nisga’a Nation and to secure the Nisga’a Nation’s support in relation to the Natural Gas Pipeline Project.

3.2 **Scope.** This Agreement applies to the Natural Gas Pipeline Project.

## **PART 4 FINANCIAL BENEFITS**

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4.1 **Project Payment.** The Province will provide the Nisga’a Nation with the Project Payment of \$5,070,000 for the Natural Gas Pipeline Project in accordance with section 4.2 (Payment Schedule) and subject to sections 4.12 (Changes to Project Payment) and 7.1 (Conditions Precedent to Funding).

4.2 **Payment Schedule.** The Province will provide the Project Payment in two installments as follows:

- (a) An Initial Payment of one half of the Project Payment will be provided as soon as practicable after all of the following events have occurred:
  - i. the Province receives written confirmation from the proponent that orders have been placed for substantially all of the pipe required for the Natural Gas Pipeline Project;
  - ii. a contract has been entered into with at least one large diameter pipeline general contractor for completion of the work associated with installation of the pipe for one spread having a linear length of more than 25 kilometres for the Natural Gas Pipeline Project; and
  - iii. the completion of production welding along a portion of at least 10 kilometres of a spread of the Natural Gas Pipeline Project(collectively “**Material Commencement of Construction**”).
- (b) A Final Payment of one half of the Project Payment for the Natural Gas Pipeline Project will be provided as soon as practicable after the In-Service Date of that Natural Gas Pipeline Project.
- (c) The Province will provide the Nisga’a Nation with notice of the achievement of Material Commencement of Construction and the In-Service Date as soon as practicable.

4.3 **Additional Payment.** The Province will provide the Nisga’a Nation with an Additional Payment for the Natural Gas Pipeline Project of \$1,014,000 as soon as practicable after the Effective Date.

4.4 **Ongoing Benefits.** Subject to sections 4.5, 4.6, 4.7 and 4.8, the Province will provide a share of Ongoing Benefits of up to \$10,000,000 per year for the Natural Gas Pipeline Project to the Nisga’a Nation and the other Eligible First Nations.

4.5 **Entitlement to Ongoing Benefits.** Subject to sections 4.6 and 4.7, the Nisga’a Nation will be entitled to receive a share of Ongoing Benefits commencing one year after the In Service Date of the Natural Gas Pipeline Project and continuing annually on the anniversary date of the In-Service Date for as long as the Natural Gas Pipeline Project is making natural gas deliveries to the terminus facility.

4.6 **Allocation of Ongoing Benefits.** The Province will not make a determination on the allocation of Ongoing Benefits amongst the Eligible First Nations until after June 30, 2015 in order to allow the Eligible First Nations to negotiate and attempt to reach agreement on the allocation of Ongoing Benefits. On request, the Province will discuss directly with the Nisga’a Nation (and the other Eligible First Nations should they also submit a request) the potential methodologies for the allocation of the Ongoing Benefits.

4.7 **Ongoing Benefits Agreement.** If all of the Eligible First Nations are able to reach agreement on the allocation of the Ongoing Benefits by June 30, 2015, then the Province will allocate the Ongoing Benefits in accordance with such agreement. If all of the Eligible First Nations are unable to reach agreement on the allocation of Ongoing Benefits by June 30, 2015, then the Province will:

- a. allocate a portion of the Ongoing Benefits to each Eligible First Nation in accordance with a consistent and objective methodology determined by the Province;
- b. provide notice to Nisga’a Nation of the amount of its allocation of the Ongoing Benefits as soon as practicable after June 30, 2015; and
- c. negotiate and attempt to reach agreement with Nisga’a Nation on any amendments applicable to this Agreement in respect of the allocation of the Ongoing Benefits to the Nisga’a Nation.

4.8 **Inflation Adjustment.** Where the Province makes inflation adjustments to the Ongoing Benefits payments, such inflation adjustments will be applicable to Nisga’a Nation’s share of the Ongoing Benefits.

4.9 **Additional Opportunities.** Where the Province makes available new types of financial benefits to First Nations relating to the Natural Gas Pipeline Project, the Province will, as soon as practicable, provide notice to the Nisga’a Nation and the Parties will discuss those new types of financial benefits, including the potential terms and conditions in respect of an allocation to the Nisga’a Nation, with the intention of increasing the benefits available to Nisga’a Nation.

- 4.10 **Future Amendments.** Where the benefits under section 4.9 are provided to First Nations under an agreement, the Province and the Nisga'a Nation will negotiate and attempt to reach agreement on any corresponding amendments applicable to this Agreement.
- 4.11 **Further Assurances.** Nothing in this Agreement precludes the Nisga'a Nation from:
- (a) continuing to negotiate and implement revenue and benefits-sharing agreements with proponents and other governments;
  - (b) accessing any economic opportunities and benefits which may be available to the Nisga'a Nation other than those expressly set out in this Agreement; or
  - (c) participating in government programs for which the Nisga'a Nation may be eligible.
- 4.12 **Changes to Project Payment.** If:
- (a) the Westcoast Connector Gas Transmission Project is constructed;
  - (b) the Westcoast Connector Gas Transmission Project is subject to a Natural Gas Pipelines Benefits Agreement between the Province and Nisga'a Nation; and
  - (c) then subsequently a portion of the Natural Gas Pipeline Project is constructed within 70 meters of the as built centerline of Westcoast Connector Gas Transmission Project;
- then the Province may reduce the Final Payment under this Agreement by the lesser of:
- i. 50% of the Project Payment for that portion of the Natural Gas Pipeline Project which is within the 70 meters of the Westcoast Connector Gas Transmission Project; or
  - ii. \$370,000.00.

## **PART 5 CONSULTATION ON NATURAL GAS PIPELINE PROJECTS**

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- 5.1 **Consultation.** The Parties:
- (a) acknowledge that, in respect of the requirements of the Nisga'a Final Agreement, consultation and assessment processes between the Nisga'a Nation and the Province, including through the Environmental Assessment Office (EAO) (consistent with the Kitsault Dispute Settlement Agreement) and the Oil and Gas Commission (OGC), are occurring and are ongoing with respect to the potential impacts of the Natural Gas Pipeline Project on Nisga'a Section 35 Rights arising from Government Actions related to the Natural Gas Pipeline Project; and
  - (b) acknowledge that participation in those processes is expected to be carried out in a timely manner.

## **PART 6 CERTAINTY**

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- 6.1 **Legal Challenges.** Provided the Province is not in default of its obligations under this Agreement, the Nisga'a Nation will not to bring any court actions or proceedings that directly or indirectly challenge any Government Actions in relation to the Natural Gas Pipeline Project on the basis that the Province has failed to fulfill any legal obligations under the Nisga'a Final Agreement or otherwise, including obligations under Chapter 10 of the Nisga'a Final Agreement, or on the basis that the Province has unjustifiably infringed any Nisga'a Section 35 Rights.
- 6.2 **Release.** On receipt of the Initial Payment under section 4.2(a), the Nisga'a Nation releases and discharges the Province from all actions, causes of action, claims, proceedings, debts, duties, demands, damages, interest, fines and costs, expenses, and compensation whatsoever amount, nature and kind arising in relation to the Natural Gas Pipeline Project, including with respect to:
- (a) any Government Actions in relation to the Natural Gas Pipeline Project; and

- (b) all relevant obligations under the Nisga'a Final Agreement or otherwise (including all obligations with respect to Chapter 10 of the Nisga'a Final Agreement).
- 6.3 **Interference.** The Nisga'a Nation will not support or participate in any unlawful acts that frustrate, delay, stop or otherwise physically impede the right of the Province or the Natural Gas Pipeline Project proponent or any of their respective employees, contractors, agents, representatives or invitees to gain access to the Natural Gas Pipeline Project and to carry out any activities associated with the development and operation of the Natural Gas Pipeline Project.
- 6.4 **Continuing Obligations.** The acknowledgements, obligations, covenants and releases set out in Part 6 of this Agreement are intended to remain fully binding and enforceable despite the expiration or termination of this Agreement and despite any matter whatsoever including the determination by a court or tribunal of competent jurisdiction.
- 6.5 **Claims Resolved.** Provided the Province is not in default of its obligations under this Agreement, the Nisga'a Nation agrees that this Agreement resolves all claims arising from any Government Actions in relation to the Natural Gas Pipeline Project with respect to:
- (a) any obligations of the Province to the Nisga'a Nation under the Nisga'a Final Agreement including all obligations under Chapter 10 of the Nisga'a Final Agreement; and
- (b) compensation for infringement of any Nisga'a Section 35 Rights.
- 6.6 **Greater Certainty.** For greater certainty, nothing in this Agreement precludes:
- (a) the Parties from participating in the consultation and assessment processes in accordance with the requirements of the Nisga'a Final Agreement, including through the EAO (consistent with the Kitsault Settlement Agreement including raising concerns with respect to compliance with any terms or conditions of any Government Actions) and the OGC, with respect to the potential impacts of the Natural Gas Pipeline Project and Government Actions in respect thereof on Nisga'a Section 35 Rights; or
- (b) the Nisga'a Nation from taking any actions, steps, causes of action, claims or other proceedings in respect of:
- i. a breach of this Agreement by the Province; or
- ii. the Real Property Tax Coordination Agreement.

## **PART 7** CONDITIONS PRECEDENT

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- 7.1 **Conditions Precedent to Funding.** Notwithstanding any other provision in this Agreement, any payment of funds by the Province to the Nisga'a Nation under this Agreement is subject to:
- (a) there being sufficient monies available in an appropriation, as defined in the Financial Administration Act, 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) the Nisga'a Nation being in compliance with all of its obligations under this Agreement.
- 7.2 **Conditions Precedent to Agreement.** The Province's execution of this Agreement is subject to:
- (a) the Province having obtained all required approvals, including Cabinet and Treasury Board approval; and
- (b) the Nisga'a Nation's representations and warranties under this Agreement being true and correct on the Effective Date.

## PART 8 REPRESENTATIONS AND WARRANTIES

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- 8.1 **Nisga'a Nation Representations.** The Nisga'a Nation represents and warrants to the Province, with the intent and understanding that such representations and warranties will be relied on by the Province in entering into this Agreement, it has the authority to enter into this Agreement and that this Agreement is a valid and binding obligation of the Nisga'a Nation.
- 8.2 **Provincial Representations.** The Province represents and warrants to the Nisga'a Nation, with the intent and understanding that such representations and warranties will be relied on by the Nisga'a Nation in entering into this Agreement, that it has the authority to enter into this Agreement and that this Agreement is a valid and binding obligation of the Province.

## PART 9 COMMENCEMENT

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- 9.1 **Commencement.** This Agreement will commence on the Effective Date.

## PART 10 DISPUTE RESOLUTION

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- 10.1 **Dispute Resolution.** Where a dispute arises regarding the interpretation of the Agreement, the Parties' duly appointed representatives will meet within 30 days to attempt to resolve the dispute and where the Parties are unable to resolve the dispute within 30 days, the Parties may agree to utilize other dispute resolution mechanisms, including mediation.

## PART 11 NOTICE AND DELIVERY

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- 11.1 **Notices.** Any notice, document, statement or report under this Agreement must be in writing, and will be deemed validly given to and received by the other Party, if served personally, on the date of personal service or, if delivered by mail, e-mail or facsimile copier, when received as follows:

if to the Province:

Attention: Provincial Implementation Committee Member  
Implementation and Legislation Branch  
Ministry of Aboriginal Relations and Reconciliation  
395 Waterfront Crescent  
Victoria, B.C.

and if to the Nisga'a Nation:

Attention: Chief Executive Officer  
Nisga'a Lisims Government  
PO Box 231  
New Aiyansh, B.C.V0J 1A0

- 11.2 **Change of Address.** Either Party may, from time to time, give written or e-mail 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.
- 11.3 **Electronic Notice.** The Parties agree that they will utilize electronic and other methods of communication for the purposes of Engagement whenever practicable and appropriate.

## PART 12 GENERAL PROVISIONS

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- 12.1 **Not a Treaty.** The Agreement is not a treaty or land claims agreement within the meaning of sections 25 and 35 of the Constitution Act, 1982.
- 12.2 **No Admissions Provisions.** Nothing in this Agreement:
- (a) is an admission by the Province that that the Natural Gas Pipeline Project or any Government Actions in respect of the Natural Gas Pipeline Project have or will result in an unjustifiable infringement of any Nisga'a Section 35 Rights, or have or will result in any breach of any obligation of British Columbia to the Nisga'a Nation under the Nisga'a Final Agreement or otherwise;
  - (b) is an admission by the Province that it has an obligation to provide financial or economic benefits compensation of any kind whatsoever under the Nisga'a Final Agreement or otherwise to the Nisga'a Nation in relation to the Natural Gas Pipeline Project;
  - (c) is an admission by the Nisga'a Nation that the Province has fulfilled its obligations to the Nisga'a Nation under the Nisga'a Final Agreement or otherwise in respect of any other project; and
- 12.3 **Entire Agreement.** 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.
- 12.4 **Amendment.** This Agreement may be amended from time to time, upon the written agreement of the Parties.
- 12.5 **Validity of Agreement.** If any part of this Agreement is void or unenforceable at law:
- (a) the invalidity of that part will not affect the validity of the remainder, which will continue in full force and effect and be construed as if this Agreement had been executed without the invalid part; and
  - (b) the Parties will negotiate and attempt to reach agreement on a replacement for the part declared or held invalid with a view to achieving the intent of the Parties as expressed in this Agreement.
- 12.6 **Further Acts and Assurances.** 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.
- 12.7 **No Implied Waiver.** Any waiver of:
- (a) a provision of this Agreement;
  - (b) the performance by a Party of an obligation under this Agreement; or
  - (c) a default by a Party of an obligation under this Agreement,
- will be in writing and signed by the Party giving the waiver and will not be a waiver of any other provision, obligation or subsequent default.
- 12.8 **Assignment.** The Nisga'a Nation will not assign, either directly or indirectly, this Agreement or any right of the Nisga'a Nation under this Agreement without the prior written consent of the Province.
- 12.9 **Governing Law.** This Agreement will be governed by and construed in accordance with the laws of British Columbia.
- 12.10 **Execution in Counterpart.** 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:  
**HER MAJESTY THE QUEEN IN RIGHT OF THE PROVINCE OF BRITISH COLUMBIA,**  
as represented by the Deputy Minister of Aboriginal Relations and Reconciliation

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**MINISTER**

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**WITNESS**

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**DATE**

**THE NISGA'A NATION, as represented by the President of the Nisga'a Nation**

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**PRESIDENT**

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**WITNESS**

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**DATE**