

INTERIM REVENUE SHARING AGREEMENT

THIS AGREEMENT is dated effective March 31, 2023.

AMONG:

**HIS MAJESTY THE KING IN RIGHT OF THE PROVINCE OF BRITISH COLUMBIA,
as represented by THE MINISTER OF INDIGENOUS RELATIONS AND
RECONCILIATION and THE MINISTER OF FINANCE AND MINISTER
RESPONSIBLE FOR THE COLUMBIA BASIN TRUST, COLUMBIA POWER
CORPORATION AND THE COLUMBIA RIVER TREATY (together, the "Province")**

AND:

**THE SECWÉPEMC NATION as represented by THE SHUSWAP NATION TRIBAL COUNCIL
SOCIETY**

(Individually a "**Party**" and collectively the "**Parties**")

WHEREAS:

- A. The Parties acknowledge that the Ktunaxa Nation, Secwépemc Nation, and Syilx Okanagan Nation hold Aboriginal Rights within their respective traditional territories, each of which include portions of the Columbia River basin.
- B. The 1964 CRT is an international agreement between Canada and the United States of America to coordinate flood control and optimize hydroelectric energy production on both sides of the border. Canada and the U.S. have begun a process to modernize the CRT.
- C. In acknowledgement that the CRT was negotiated without the participation or consent of the Indigenous Nations and without taking into account impacts to the Aboriginal Rights, culture, economies and ways of life of the Indigenous Nations, the Parties and Canada signed a Negotiations Framework Agreement in 2019 in relation to the modernization of the CRT which purposes include the following:
 - a) establishing the principles, processes and commitments that will govern engagement between the Parties on the CRT Negotiations;
 - b) advancing reconciliation and establishing the means whereby Canada and the Province will seek to obtain the free, prior and informed consent of the Indigenous Nations regarding the CRT Negotiations; and
 - c) enabling the Parties, whether collectively or through separate bilateral processes, to develop additional agreements related to the CRT including, but not limited to, past and ongoing impacts of the CRT to the Indigenous Nations and the domestic implementation of any outcomes of the CRT Negotiations.
- D. The Parties acknowledge that consistent with the Negotiations Framework Agreement:

- a) the nature, scope and geographic extent of the Aboriginal Rights of the Indigenous Nations or their Constituent Communities within the Columbia River basin have not been determined; and
 - b) neither the engagement in relation to the modernization of the CRT undertaken under the terms of the Negotiations Framework Agreement or in respect of this Agreement constitute a rights recognition process.
- E. The Parties wish to enter into this Agreement as part of a collaborative bilateral process between the Indigenous Nations and the Province related to the broader collaborative work being undertaken by the Province and Canada with the Indigenous Nations in relation to the CRT as contemplated by the Negotiations Framework Agreement, including consultation undertaken by the Province and Canada in relation to any legal or constitutional duty, financial accommodations, the development and implementation of redress measures, new CRT governance models and salmon restoration, all in alignment with a modernized Columbia River Treaty that reflects ecosystem function and Indigenous cultural values.
- F. The Parties acknowledge that matters of redress for historic impacts related to the CRT, which include both monetary and non-monetary components, are being discussed by the Indigenous Nations, Canada, and the Province.
- G. The Province has advised the Indigenous Nations that its agreement to participate in the redress discussions is on the basis that it views Canada as responsible for the monetary components of redress, and the Indigenous Nations acknowledge that the Province is participating in the redress discussions on that basis.
- H. The Province is entering into this Agreement to contribute to fulfilling the consultation obligations owed to the Indigenous Nations in relation to the CRT as contemplated by the Negotiations Framework Agreement, including but not limited to an accommodation to address certain impacts of the CRT and the domestic implementation of any outcomes of the CRT Negotiations to the Aboriginal Rights of the Indigenous Nations and their Constituent Communities.
- I. As part of their government-to-government relationship, the Indigenous Nations and the Province have agreed that the Province will share with the Indigenous Nations a portion of Provincial revenues generated from the sale of the Canadian Entitlement, and, as agreed between themselves, the Indigenous Nations will share such portion equally. Each Indigenous Nation will determine the use of the Funds, in accordance with their own internal governance structure and processes, independent of the Province.
- J. The Province of British Columbia has committed to fully adopting and implementing the United Nations Declaration on the Rights of Indigenous Peoples (“**UN Declaration**”). To further that commitment, in 2019, the Province passed the *Declaration on the Rights of Indigenous Peoples Act* which establishes the UN Declaration as the Province’s framework for reconciliation.
- K. The Province has committed in the *Declaration on the Rights of Indigenous Peoples Act* Action Plan to co-develop a new distinctions-based fiscal relationship and framework that supports the operation of Indigenous governments, and new policy frameworks for resource revenue-sharing, in collaboration with the Government of Canada.
- L. The Province, represented by the Minister of Energy, Mines, and Low Carbon Innovation, has set a policy objective to work with BC Hydro to explore possible options for Indigenous ownership

and/or equity interest in BC Hydro infrastructure and Indigenous partnership in clean energy projects.

- M. The Parties wish to enter into discussions to co-develop and seek mandates for a long-term broader benefit sharing agreement.

THEREFORE, the Parties agree as follows:

ARTICLE I DEFINITIONS AND INTERPRETATION

1.01 For the purposes of this Agreement, and the recitals thereto, the following definitions apply:

"Aboriginal Rights" means asserted or determined aboriginal rights, including title, which are recognized and affirmed by section 35 of the Constitution Act, 1982.

"Account" has the meaning given to it in section 3.04;

"Account Information" has the meaning given to it in section 3.04;

"Agreement" means this Interim Revenue Sharing Agreement, including its 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;

"Business Day" means a day other than a Saturday, a Sunday or a statutory holiday in Vancouver, British Columbia;

"Canadian Entitlement" means Canada's half share of the additional power generation capacity from U.S. dams in the Columbia River basin as a result of the construction and operation of dams and impoundment reservoirs in B.C., as more fully described and determined in accordance with the CRT;

"Constituent Communities" means:

- a) with respect to the Ktunaxa Nation: ʔakisq̓nuk First Nation (Columbia Lake), ʔaq̓am (St. Mary's Indian Band), Yaq̓it ʔa-knuq̓li'it (Tobacco Plains Indian Band), and Yaq̓an Nuʔkiy (Lower Kootenay Indian Band);
- b) with respect to the Secwépemc Nation: Adams Lake Indian Band, Neskonlith Indian Band; Shuswap Band, Simpcw First Nation, Splatsín, Bonaparte First Nation, Tk'emlúps te Secwépemc, Skeetchestn Indian Band, Whispering Pines/Clinton Indian Band, and Little Shuswap Lake Band; and
- c) with respect to the Syilx Okanagan Nation: Lower Similkameen Indian Band, Okanagan Indian Band, Osoyoos Indian Band, Penticton Indian Band, Upper Similkameen Indian Band, Upper Nicola Band, and Westbank First Nation;

all of which are "bands" within the meaning of the *Indian Act*;

"CRT" means the Columbia River Treaty, as may be amended over time;

"CRT Negotiations" means the present negotiations concerning the modernization of the CRT;

"Dispute" has the meaning given to it in section 9.01;

"Effective Date" means March 31, 2023;

"Entitlement Revenue" means the payments received by the Province in association with the sale of the Canadian Entitlement over a period of time;

"Fiscal Year" means the one-year period beginning on April 1 of a calendar year and ending on March 31 of the next calendar year;

"Funds" means the total amount payable by the Province to each Indigenous Nation for each Fiscal Year, and, with respect to the Secwépemc Nation, means the amounts calculated in accordance with this Agreement;

"Indigenous Nation" means the following entities: Ktunaxa Nation, as represented by the Ktunaxa Nation Council Society; Secwépemc Nation, as represented by the Shuswap Nation Tribal Council Society; and Syilx Okanagan Nation, as represented by the Okanagan Nation Alliance Society and the Chiefs Executive Council;

"Ktunaxa Nation" means the collectivity of its Members and includes its Constituent Communities and is represented by its Constituent Communities and the Ktunaxa Nation Council Society;

"Member" means an individual who is a member of an Indigenous Nation or any of its Constituent Communities;

"Negotiations Framework Agreement" means the Columbia River Treaty Negotiations Framework Agreement signed in 2019 among Canada, the Province, and the Indigenous Nations, as amended effective June 15, 2021, a copy of which is attached to this Agreement as Schedule "A";

"Public Accounts" means a report issued by the Province which includes the Province's audited financial statements for the past Fiscal Year, usually released late August;

"Q1" means the months April through June;

"Q1 Report" means the 1st Quarterly Report, a financial report issued by the Province for the months April through June, usually released mid-September;

"Q2" means the months July through September;

"Q3" means the months October through December;

"Q3 Report" means the 3rd Quarterly Report, a financial report issued by the Province for the months April through December, usually released with the Budget & Fiscal Plan in late February;

"Q4" means the months January through March;

"Secwépemc Nation" means the collectivity of its Members and includes its Constituent Communities and, for the purposes of this Agreement, is represented by the Shuswap Nation Tribal Council Society;

"Syilx Okanagan Nation" means the collectivity of its Members and includes its Constituent Communities as represented by the Okanagan Nation Alliance Society and the Chiefs Executive Council; and

"Term" has the meaning given to it in section 10.01.

1.02 In 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 and do not define or limit the scope or intent 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 otherwise;
- 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.

ARTICLE II PURPOSE AND SCOPE

2.01 The purposes of this Agreement are to:

- a) share, on an interim basis, a portion of revenues from the sale of the Canadian Entitlement;
- b) advance the reconciliation objectives and support the broader collaborative work being undertaken with Canada and the Province with the Indigenous Nations as part of the CRT Negotiations as contemplated by the Negotiations Framework Agreement, including:
 - i. supporting the continued participation by the Indigenous Nations in the CRT Negotiations;
 - ii. supporting the Indigenous Nations' consideration of whether to provide their free, prior and informed consent to a modernized CRT;
- c) contribute to fulfilling the consultation obligations in relation to any legal or constitutional duty owed to the Indigenous Nations and their Constituent Communities in relation to the CRT and related activities and infrastructure;
- d) provision of a component of accommodation to address certain impacts resulting from the CRT and related activities and infrastructure and the domestic implementation of any outcome of the CRT Negotiations to the Aboriginal Rights of the Indigenous Nations and their Constituent Communities as contemplated by section 2.1.c of the Negotiations Framework Agreement and subject to the terms and conditions of this Agreement; and
- e) commit to a timely process to work to co-develop and seek respective mandates or approvals to develop a long-term broader benefits sharing agreement between the Province and the Indigenous Nations on the understanding that this does not constitute a commitment by any Party to obtain any specific mandates or approvals.

ARTICLE III FUNDING

3.01 Subject to the terms and conditions of this Agreement, and the terms and conditions of substantially similar agreements with the Ktunaxa Nation and the Syilx Okanagan Nation, the

Province will provide the Indigenous Nations an aggregate of 15% of the Entitlement Revenue received by the Province in each Fiscal Year of the Term. The Indigenous Nations each agree to receive an equal share of that funding, and further agree that the use of the Funds by the Indigenous Nations will be determined by the Indigenous Nations in accordance with their governance structure and processes, independent of the Province.

- 3.02 Subject to the terms and conditions of this Agreement, the Province will provide to the Secwépemc Nation, for the benefit of the Secwépemc Nation:
- a) a first contribution consisting of 5% of the Entitlement Revenue for Q1 – Q3 of Fiscal Year 2022/2023, payment of which will be made within 60 days of the release of the Q3 Report for Fiscal Year 2022/2023;
 - b) additional contributions commencing Q1 of Fiscal Year 2023/2024 and continuing until the end of Q3 in the final Fiscal Year of the Term, consisting of:
 - i. 5% of the Entitlement Revenue for Q4 of the previous Fiscal Year and Q1 of the current Fiscal Year; which payment will be made within 60 days of the release of the Q1 Report for the current Fiscal Year; and
 - ii. 5% of the Entitlement Revenue for Q2 and Q3 of the current Fiscal Year, which payment will be made within 60 days of the release of the Q3 Report for the current Fiscal Year; and
 - c) a final contribution consisting of 5% of the Entitlement Revenue for Q4 of the final Fiscal Year of the Term, which payment will be made within 60 days of the release of the Public Accounts for the final Fiscal Year of the Term.
- 3.03 When the Funds are provided, the Province will also provide to the Secwépemc Nation a statement of account setting out how the value of the Funds were established for that payment.
- 3.04 To facilitate receipt of the Funds, the Secwépemc Nation or its delegate will:
- a) establish, and throughout the Term maintain, a banking account at a Canadian financial institution into which an electronic transfer of funds can be made by the Province for the purpose of the Secwépemc Nation receiving monies payable by the Province pursuant to this Agreement (the "**Account**"); and
 - b) provide the Province sufficient address and account information respecting the Account to allow the Province to make an electronic transfer of funds to the Account (the "**Account Information**").

The Parties acknowledges that upon receipt of the Account Information the Province must complete internal work to allow for payments to be processed to the Account, and accordingly that in addition to the time required for such work, delays in establishing the Accounts or providing the Account Information may result in the delay of payments under this Agreement.

ARTICLE IV MODIFICATIONS

- 4.01 Notwithstanding any other provision in this Agreement, if, during the term of this Agreement:

- a) the Secwépemc Nation or any of its Constituent Communities brings, continues or supports a court action or proceeding to challenge or oppose any action taken by the Province in relation to activities associated with the implementation of the CRT; or
- b) the Secwépemc Nation ceases their participation in CRT Negotiations prior to the ratification of a modernized CRT between the U.S. and Canada;

then the Province may, at its discretion and with notice to the Secwépemc Nation in accordance with section 4.04, reduce or modify the value of the Funds paid to the Secwépemc Nation under this Agreement for so long as the events contemplated in this section 4.01 continue.

4.02 Notwithstanding any other provision in this Agreement, if, during the term of this Agreement, a Constituent Community provides notice to the Secwépemc Nation and the Province that it is no longer represented by the Secwépemc Nation:

- a) the Secwépemc Nation will take steps to work directly with the Constituent Community, in accordance with their own internal governance structure and processes, to come to agreement as to how and to what extent the notice from the Constituent Community may affect this Agreement, and if they come to agreement, the Secwépemc Nation will advise the Province of such decision and the Province will cooperate in implementing such arrangement;
- b) if the Secwépemc Nation and the Constituent Community are unable to come to agreement as contemplated by subsection 4.02(a), the Secwépemc Nation will take steps to work with the Constituent Community and the Province to come to agreement as to how the notice from the Constituent Community may affect this Agreement, and the Secwépemc Nation and the Province will make a genuine and good faith effort to come to a resolution, in accordance with the dispute resolution provisions of this Agreement, that is mutually agreeable to the Secwépemc Nation, the Constituent Community and the Province. In association with the resolution process under this subsection, the Province may consider information provided by the Secwépemc Nation and the Constituent Community; and
- c) if the processes set out in subsections 4.02(a) and (b) do not result in an agreement among the Secwépemc Nation, the Constituent Community and the Province after a period of 60 days from Province's receipt of a notice under section 4.02, then the Province may, or may not, at its discretion and with notice to the Constituent Community and the Secwépemc Nation in accordance with section 4.04, reallocate the Funds which would have been provided to the Secwépemc Nation as between the Secwépemc Nation and the Constituent Community. A funding reallocation under this section 4.02 may continue for the remainder of the Term.

4.03 Notwithstanding any other provision in this Agreement, if, during the term of this Agreement, the Province has a legal or constitutional duty to accommodate an Indigenous group which is not an Indigenous Nation or the Constituent Community of an Indigenous Nation with respect to impacts on Aboriginal Rights in relation to the CRT or the domestic implementation of any outcomes of the CRT Negotiations, then the Province may, or may not, at its discretion and with notice to the Secwépemc Nation in accordance with section 4.04, reallocate the Funds which would have been provided to the Secwépemc Nation as between the Secwépemc Nation and the Indigenous group. A funding reallocation under this section 4.03 may continue for the remainder of the Term.

- 4.04 The Province will provide 90 days' notice to the Secwépemc Nation prior to reducing, modifying, or reallocating the Funds under sections 4.01, 4.02 or 4.03. A notice provided by the Province will include the effective date and other terms of the funding modification. During that 90-day notice period, if there is disagreement as to the contents of the notice, the Province and the Secwépemc Nation will make a genuine and good faith effort to come to a mutually agreeable resolution in accordance with the dispute resolution provisions of this Agreement.
- 4.05 A funding notice provided pursuant to section 4.04 will take effect in accordance with its terms, unless other terms are agreed to between the Province and the Secwépemc Nation pursuant to the dispute resolution provisions of this Agreement, with no further action necessary or required on the part of the Province or any other Party in order for such amendment to take effect.

ARTICLE V CONDITIONS PRECEDENT

- 5.01 The obligations of the Parties under this Agreement are subject to:
- a) execution and delivery of this Agreement by the Secwépemc Nation and by the Province on or before March 31, 2023; and
 - b) receipt by the Province of a Band Council Resolution for each of Secwépemc Nation's Constituent Communities satisfactory to the Parties on or before March 31, 2023.
- 5.02 Notwithstanding any other provision in this Agreement, the payment of any Funds by the Province to the Secwépemc Nation under this Agreement is subject to:
- a) there being sufficient monies available in an appropriation, as defined in the *Financial Administration Act*, R.S.B.C. 1996, c. 138 to enable the Province in any Fiscal Year or part thereof when such payment is required, to make such payment;
 - b) Treasury Board, as defined in the *Financial Administration Act*, not having controlled or limited expenditure under any appropriation necessary in order to make such payment; and
 - c) for each Fiscal Year, the Secwépemc Nation providing the Province summary information on how the Funds were used within 120 days from the end of the prior Fiscal Year.
- 5.03 The conditions precedent set out in sections 5.01 and 5.02 are for the sole benefit of the Province and may be waived by the Province on written notice to the Secwépemc Nation.

ARTICLE VI SHARED ASSURANCES AND ACKNOWLEDGEMENTS

- 6.01 The Secwépemc Nation acknowledges that the Funds provided pursuant to this Agreement represent an accommodation by the Province for the current and ongoing impacts of the CRT, and activities and infrastructure related thereto, on the Aboriginal Rights of the Secwépemc Nation and its Constituent Communities.
- 6.02 The Parties acknowledge that the Entitlement Revenue is earned through the sale of electricity, that electricity markets are by their nature volatile, and that the value realized by such sales will

change over time. This Agreement does not guarantee the dollar value of the Entitlement Revenue for any Fiscal Year.

- 6.03 Nothing in this Agreement will be construed to preclude the Secwépemc Nation or its Constituent Communities from accessing other Provincial funding or benefits through programs of general application, in accordance with their criteria.

ARTICLE VII REPRESENTATIONS AND WARRANTIES

- 7.01 The Province represents and warrants to the Secwépemc Nation, with the intent and understanding that these will be relied on by the Secwépemc Nation in entering this Agreement, that:
- a) it has the legal power, capacity and authority to enter into this Agreement;
 - b) the person executing this Agreement on behalf of the Province is duly authorized and has the requisite legal authority to enter into this Agreement and bind the Province to its terms and conditions;
 - c) it has taken all necessary actions and has obtained all necessary approvals to enter into this Agreement;
 - d) it has obtained or had the opportunity to obtain legal advice with respect to this Agreement; and
 - e) this Agreement is a valid and binding obligation upon it.
- 7.02 The Secwépemc Nation, represented by the Shuswap Nation Tribal Council Society, represents and warrants to the Province, with the intent and understanding that these will be relied on by the Province in entering this Agreement, that:
- a) it has the legal power, capacity and authority to enter into this Agreement;
 - b) the person executing this Agreement is duly authorized and has the requisite legal authority to enter into this Agreement and bind the Secwépemc Nation and the Shuswap Nation Tribal Council Society to its terms and conditions;
 - c) it has taken all necessary actions and has obtained all necessary approvals to enter into this Agreement for and on its own behalf and its Constituent Communities and its Members;
 - d) it is a proper rights holder and representative of the Secwépemc Nation, its Constituent Communities, and its Members in relation to potential adverse impacts to Aboriginal Rights as a result of the CRT or the domestic implementation of any outcomes of the CRT Negotiations;
 - e) the Shuswap Nation Tribal Council Society is a duly incorporated society under the *Societies Act* (British Columbia) and is in good standing;
 - f) it has obtained or had the opportunity to obtain legal advice with respect to this Agreement; and
 - g) this Agreement is a valid and binding obligation upon the Secwépemc Nation and the Shuswap Nation Tribal Council Society.

- 7.03 In the event of a breach of representation or warranty under section 7.02, the Province may, at its discretion, cease the payment of Funds or reduce the value of the Funds paid to the Secwépemc Nation under this Agreement.

ARTICLE VIII DISCUSSIONS ON LONG-TERM AGREEMENT

- 8.01 The Parties commit to a timely process to work to co-develop and seek respective mandates to develop a long-term broader benefits sharing agreement between the Province and the Indigenous Nations. Broader sources of revenue and benefits related to the CRT that will be considered in future exploratory discussions include but are not limited to:
- a) ecological stewardship and non-monetary measures;
 - b) the Canadian Entitlement and any other revenues provided through the CRT;
 - c) revenues related to B.C. Hydro infrastructure related to the CRT;
 - d) B.C. Hydro grants;
 - e) other provincial sources (including additional water rentals in the Columbia Basin); and,
 - f) support for acquiring equity positions in clean energy infrastructure.
- 8.02 The Parties commit to work collaboratively to initiate discussions with the B.C. Ministry of Energy, Mines, and Low Carbon Innovation to explore opportunities to advance the work in the Minister of Energy, Mines, and Low Carbon Innovation's mandate letter related to exploring possible options for Indigenous ownership and/or equity interest in B.C. Hydro infrastructure and Indigenous partnership in clean energy projects.
- 8.03 The Parties acknowledge that sections 8.01 or 8.02 of this Agreement do not commit the Parties to obtain any such mandates or approvals from the respective decision makers.

ARTICLE IX DISPUTE RESOLUTION

- 9.01 The Parties recognize that the successful implementation of this Agreement will depend on their ability and willingness to recognize, explore, and resolve differences which may arise among them from time to time, and will endeavour to resolve such differences in a collaborative manner that fosters an improved, ongoing, and respectful government-to-government relationship among them and which is considerate of the Secwépemc Nations' respective internal governance processes and structures. In that regard, the Parties agree to work together collaboratively, openly, and in an interest-based manner to resolve any dispute, claim, difference or question concerning the meaning, effect, implementation of or compliance with this Agreement (any of which being a "**Dispute**") in a cooperative, effective and timely manner.
- 9.02 If a Dispute cannot be resolved in a timely manner, the Parties will refer the matter to their respective senior government representatives or their delegates who will make a genuine and good faith effort to come to a mutually agreeable resolution.

ARTICLE X EFFECTIVE DATE, TERM AND AMENDMENT

- 10.01 This Agreement will commence on the Effective Date and will continue each Fiscal Year until the end of Fiscal Year 2025/2026 (the "**Term**"), unless terminated earlier. The Term may be extended with the written agreement of the Parties, subject to each Party obtaining all required mandates and approvals, including the Province obtaining Cabinet and Treasury Board approvals.
- 10.02 This Agreement will terminate on the effective date of a long-term benefits sharing agreement related to the CRT which includes as parties the Province and the Indigenous Nations.
- 10.03 Any obligation on:
- a) the Province to make a final payment pursuant to section 3.02 (c); or
 - b) the Secwépemc Nations' Nation providing the Province information pursuant to section 5.02 (c),
- will survive the expiration of this Agreement and will continue until satisfied.

ARTICLE XI NOTICE AND DELIVERY

- 11.01 All notices, communications and statements required, permitted or contemplated under this Agreement will be in writing, and may be delivered as follows:
- a) by personal service on a Party at the address of such Party set out below, which will be deemed to have been received by that Party when personally served;
 - b) by email to a Party to the email address of such Party set out below, which will be deemed to have been received by that Party when sent, unless sent after normal business hours on any Business Day, in which case at the beginning of the next Business Day; and
 - c) by mailing, postage prepaid, at the address of such Party set out below which will be deemed to have been received by that Party on the tenth Business Day after the date of mailing.
- 11.02 The addresses for service and the email addresses of the Parties are as follows:

In the case of Secwépemc Nation, as represented by the Shuswap Nation Tribal Council Society:

Valerie Michel
Shuswap Nation Tribal Council
680 West Athabasca Street
Kamloops BC V2H 1C4
778-471-8200
crt@shuswapnation.org

In the case of the Province:

Ricardo Toledo
Chief Negotiator
Ministry of Indigenous Relations and Reconciliation
3rd Floor - 2957 Jutland Road
Victoria BC V8T 5J9

- 11.03 A Party may from time to time change its address for service or its email address or both by giving written notice of such change to the other Party.

ARTICLE XII GENERAL PROVISIONS

- 12.01 This Agreement will not be varied in its terms or amended other than by an instrument in writing dated subsequent to the date hereof and executed by a duly authorized representative of each Party.
- 12.02 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.
- 12.03 Any waiver of a provision of this Agreement; the performance by a Party of an obligation under this Agreement; or a default by a Party of an obligation under this Agreement, must 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.
- 12.04 The rights and remedies of a Party are cumulative with any other rights in this Agreement and the exercise by a Party of its rights hereunder does not preclude it from exercising any other rights or remedies in this Agreement, or otherwise at law or in equity. No remedy is exclusive of any other remedy.
- 12.05 The Secwépemc Nation will not assign, either directly or indirectly, this Agreement or any rights under this Agreement without the prior written consent of the Province, which may be withheld.
- 12.06 This Agreement is for the benefit of and is binding upon the Province and any of its Ministers, officials, servants, employees, agents, successors and assigns and upon the Secwépemc Nation and its present and future Members and any of their respective heirs, descendants, legal representatives, successors and assigns.
- 12.07 This Agreement will be governed by and construed in accordance with the laws of British Columbia and the laws of Canada applicable therein.
- 12.08 The Parties acknowledge this Agreement does not constitute a treaty or land claim agreement within the meaning of sections 25 and 35 of the *Constitution Act, 1982*, and is not intended to recognize, affirm, define, limit, amend, modify, or derogate from any rights recognized and affirmed under section 35 of the *Constitution Act, 1982*.
- 12.09 Nothing in this Agreement will be construed:
- a) as an admission by the Province of the validity of any claim by the Secwépemc Nation or its Constituent Communities to a specific Aboriginal Right;

- b) as an acknowledgment by the Province that it has an obligation to provide financial or economic accommodation to the Secwépemc Nation or its Constituent Communities, as part of the Province's obligation to consult, and if applicable, accommodate in relation to any alleged infringement of the Aboriginal Rights of the Secwépemc Nation or its Constituent Communities in relation to the CRT or the domestic implementation of any outcomes of the CRT Negotiations;
- c) to preclude or limit the Province from relying on the provision of any benefit provided to the Secwépemc Nation under this Agreement in any legal proceeding with respect to the adequacy of financial accommodation or compensation for any alleged infringement of the Aboriginal Rights of the Secwépemc Nation or its Constituent Communities in relation to the CRT or the domestic implementation of any outcomes of the CRT Negotiations;
- d) except as expressly set out herein, to limit the position any Party may take in any legal or administrative proceedings or in any discussions, treaty negotiations or other negotiations, or discussions in any other forum;
- e) to change or affect the position either Party has, or may have, regarding its jurisdiction, responsibilities or decision-making authority and is not intended to be interpreted in a manner that would affect or unlawfully interfere with any legislative authority or the discretion of any decision-making authority, and
- f) to prejudice the Aboriginal Rights of the Secwépemc Nation or its Constituent Communities or the Parties' positions on such rights.

12.010 This Agreement may be entered into by each Party signing a separate copy of this Agreement (including a scan, photocopy or electronic copy) and delivering it by electronic transmission.

12.011 No partnership, joint venture, agency, fiduciary, or employment relationship is created by this Agreement or by any actions of the Parties under this Agreement.

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12.012 Nothing in this Agreement restricts or limits the ability of the Province to consult and to accommodate other Indigenous groups, as appropriate.

IN WITNESS HEREOF this Agreement has been signed by the duly authorized signing authorities of the Parties.

HIS MAJESTY THE KING IN RIGHT OF THE PROVINCE OF BRITISH COLUMBIA, as represented by THE MINISTER OF INDIGENOUS RELATIONS AND RECONCILIATION

Per: 

Name: Minister Murray Rankin

Title: Minister of Indigenous relations and Reconciliation

HIS MAJESTY THE KING IN RIGHT OF THE PROVINCE OF BRITISH COLUMBIA, as represented by THE MINISTER OF FINANCE AND MINISTER RESPONSIBLE FOR THE COLUMBIA BASIN TRUST, COLUMBIA POWER CORPORATION AND THE COLUMBIA RIVER TREATY

Per: 

Name: Minister Katrine Conroy

Title: Minister of Finance and Minister Responsible for the Columbia Bason Trust, Columbia Power Corporation and the Columbia River Treaty

SECWÉPEMC NATION REPRESENTED BY THE SHUSWAP NATION TRIBAL COUNCIL SOCIETY

Per: 

Name: Kúkpi7 Rosanne Casimir

Title: Tribal Chief and Director, Shuswap Nation Tribal Council Society

SCHEDULE "A"
NEGOTIATIONS FRAMEWORK AGREEMENT

**Canada - British Columbia - Columbia Basin Indigenous Nations
Columbia River Treaty Negotiations Framework Agreement**

(Herein to referred to as the “Negotiation Framework”)

BETWEEN:

The Ktunaxa Nation as represented by the Ktunaxa Nation Council

AND:

The Secwepemc Nation as represented by the Shuswap Nation Tribal Council

AND:

The Syilx Nation as represented by the Okanagan Nation Alliance

AND:

Canada as represented by the Department of Foreign Affairs, Trade and Development

AND:

British Columbia as represented by Ministry of Children and Family Development and
the Minister Responsible for the Columbia River Treaty

Hereinafter referred to as the Parties

WHEREAS:

- A. The Indigenous Nations hold Aboriginal rights and title within their respective traditional territories, each of which include portions of the Columbia River Basin;*
- B. The 1964 Columbia River Treaty (CRT) is an international agreement between Canada and the United States of America (the U.S.) to coordinate flood control and optimize hydroelectric energy production on both sides of the border. Canada and the U.S. have begun a process to modernize the CRT;*
- C. The Parties recognize and acknowledge that the CRT was negotiated without the participation or consent of the Indigenous Nations and without taking into account impacts to the title, rights, culture, economies and ways of life of the Indigenous Nations;*

- D. The Parties further recognize and acknowledge that the Indigenous Nations assert that they have suffered, and continue to suffer, profound and long-lasting impacts from the CRT and the construction and operation of hydroelectric facilities governed by its terms;*
- E. Existing Aboriginal and treaty rights are recognized and affirmed in Section 35(1) of the Constitution Act, 1982. Both Canada and British Columbia (B.C.) have committed to a renewed path of reconciliation with Indigenous peoples. Canada and B.C. are committed to working, on a nation-to-nation basis, through discussion and engagement with the Indigenous groups in order to advance reconciliation and renew the relationship through cooperation and recognition of Indigenous rights. Canada and B.C. have fully endorsed the United Nations Declaration on the Rights of Indigenous Peoples (the “U.N. Declaration”) without qualification and committed to implement the U.N. Declaration in partnership with Indigenous peoples, and in accordance with Canada’s constitution;*
- F. B.C.’s Crown corporation British Columbia Hydro and Power Authority (“B.C. Hydro”) is the owner and operator of hydroelectric facilities in Canada, and charged with the implementation of the CRT under the 1963 Canada-B.C. Agreement, and both B.C. and B.C. Hydro are participants with Canada in the CRT Negotiations;*
- G. The Crown has a legal obligation to consult with and, where appropriate, accommodate Indigenous groups whenever the Crown contemplates conduct that may adversely affect section 35 Aboriginal rights and title;*
- H. The consultation process set out in this Agreement is based on the understanding that the nature, scope and geographic extent of the rights and title of the Indigenous Nations within the Columbia River basin have not been determined. The Parties acknowledge that the engagement in relation to the modernization of the CRT undertaken under the terms of this Agreement is not a rights recognition process;*
- I. The Parties agree that the meaningful participation of the Indigenous Nations in relation to CRT Negotiation processes is necessary to seek to obtain their free, prior and informed consent and to advance reconciliation, fulfill the constitutional and legal duties owed by Canada and B.C. to the Indigenous Nations, implement the U.N. Declaration and respect and uphold the laws, customs and governance authorities of the Indigenous Nations; and*
- J. Towards those ends, the Parties have entered into this Agreement to establish the principles, processes and commitments that will govern their engagement regarding the CRT negotiations.*

THE PARTIES AGREE AS FOLLOWS:**1.0 DEFINITIONS**

“Indigenous Nations” means the Ktunaxa Nation, as represented by the Ktunaxa Nation Council, the Secwepemc Nation, as represented by the Shuswap Nation Tribal Council, and the Syilx Nation, as represented by the Okanagan Nation Alliance;

“CRT Negotiations” means the negotiations between Canada, with the participation of BC, BC Hydro and the Observer Group together forming the Canadian delegation, and the U.S. concerning the modernization of the CRT;

2.0 PURPOSES

2.1. The purposes of this Negotiation Framework are to:

- a. establish the principles, processes and commitments that will govern engagement between the Parties on the CRT Negotiations;
- b. advance reconciliation and establish the means whereby Canada and B.C. will seek to obtain the free, prior and informed consent of the Indigenous Nations regarding the CRT Negotiations; and
- c. enable the Parties, whether collectively or through separate bilateral processes, to develop additional agreements related to the CRT including, but not limited to, past and ongoing impacts of the CRT to the Indigenous Nations and the domestic implementation of any outcomes of the CRT Negotiations.

3.0 PRINCIPLES

3.1 The Parties will implement this Negotiation Framework in accordance with the principles and commitments set out in this section.

3.2 The Parties commit to working together to:

- a. engage collaboratively to seek to build consensus;
- b. respect and support each other’s governance processes and structures;
- c. strive for clarity in communications and joint documents;

- d. work efficiently and with due consideration for timelines; and
 - e. share all relevant information in a timely manner in accordance with the confidentiality requirements.
- 3.3 Canada has adopted the “Principles Respecting the Government of Canada’s Relationship with Indigenous Peoples”, which are intended to achieve reconciliation with Indigenous peoples through a renewed nation-to-nation and government-to-government relationship based on recognition of rights, respect, co-operation, and partnership as the foundation for transformative change. Canada is committed to implementing those principles through this Negotiation Framework.
- 3.4 B.C. has developed the “Draft Principles that Guide the Province of British Columbia’s Relationship with Indigenous Peoples”, which affirm B.C.’s desire to achieve a government-to-government relationship based on respect, recognition and exercise of Aboriginal title and rights and to the reconciliation of Aboriginal and Crown titles and jurisdictions. B.C. is committed to implementing those principles through this Agreement.
- 3.5 Canada has fully endorsed the U.N. Declaration without qualification, and committed to implement the U.N. Declaration and the Truth and Reconciliation Commission’s Calls to Action in partnership with Indigenous peoples, and in accordance with Canada’s constitution. The Province of B.C. has committed to fully adopting and implementing the U.N. Declaration and the Truth and Reconciliation Commission’s Calls to Action, and is committed to bringing the principles of the U.N. Declaration into action. Through this Negotiation Framework, Canada and BC will work and cooperate with the Indigenous Nations to aim to advance those commitments and, in particular, seek to obtain the free, prior and informed consent of the Indigenous Nations in relation to the modernization of the CRT.

4.0 STRUCTURE

- 4.1 The Parties will establish a Leadership Table, Negotiation Advisory Team (the “N.A.T.”) and Observer Group as set out below.

Leadership Table

- 4.2 The Leadership Table will consist of one senior leadership representative from each Party. Each Party will also appoint an alternate who can act on its behalf in the absence of the senior leadership representative. Each Party will ensure that its representative is mandated to speak on its behalf and to make decisions on

relevant matters consistent with each Party's governance processes. The Leadership Table will:

- a. provide guidance, as required, to the N.A.T.;
- b. receive updates from the N.A.T. on and, where appropriate, provide input into the CRT Negotiations;
- c. confirm key decisions, actions and outcomes mutually developed by the Parties; and
- d. seek to resolve any outstanding issues between the Parties in accordance with sections 7.3 and 7.4.

N.A.T.

4.3 The N.A.T. will consist of no more than three representatives of each Party, with the option to include legal counsel as needed. Each Party will also appoint one or two alternates who can act on its behalf in the absence of the primary representatives. The N.A.T. will:

- a. serve as the primary forum for the Parties to share information concerning the CRT Negotiations;
- b. as a first order of business, collaboratively develop a list of issues that the Parties will seek to address through the processes established in this Agreement, including any separate agreements established through clause 4.7, and will address the need for confidentiality with respect to that list or any part of it;
- c. be the initial forum for engagement regarding any proposed changes to Canada's negotiation objectives for the CRT Negotiations;
- d. provide advice and seek to collaboratively develop consensus on the negotiation positions to guide and inform Canada's positions and negotiations with the U.S., including responses to positions and issues raised by the U.S.;
- e. collaboratively identify the key issues that the Leadership Table needs to be informed of for purposes of the dispute resolution provisions in sections 4.2(d), 7.3 and 7.4;
- f. ensure the Indigenous Nations are fully informed about the CRT Negotiations;
- g. provide updates to each Party's respective leadership on the status of the CRT Negotiations and engagement with Canada pursuant to this Agreement; and

- h. include in its meetings, as necessary and by consensus, technical experts, including from BC Hydro, to inform and support negotiations preparation sessions.
- 4.4 The N.A.T. will manage and control its own process consistent with the following:
- a. when CRT Negotiations are active, the N.A.T. will meet no less than once per month;
 - b. the N.A.T. may meet in person or by electronic means;
 - c. the N.A.T. will ensure that joint minutes are taken of each meeting and, in particular, that any issue on which consensus has been reached, or any issue of disagreement, is clearly recorded;
 - d. where required, the N.A.T. may create technical working groups to prepare more detailed studies and analysis to support its work;
 - e. the N.A.T. will collaboratively develop and, as required, update a work plan that identifies objectives, timelines, deliverables and budgets to support its work; and
 - f. the N.A.T. will provide support to the CRT Negotiations as needed.

Observer Group

- 4.5 The Parties will establish an Observer Group within the Canadian delegation to the CRT Negotiations consisting of one representative of each Indigenous Nation (the “Observer Group”). Each Indigenous Nation will also appoint an alternate who can act in the absence of the primary representative. The purpose of the Observer Group is to: attend each session of the CRT negotiations between Canada and the United States; observe the negotiations and only participate if directed to do so by Canada’s Chief Negotiator; and report back to the N.A.T. on the negotiations within the confines of the confidentiality agreement that each observer has entered into with Canada. The Parties agree to continue to discuss and seek to reach agreement on the inclusion of legal counsel for the Indigenous Nations in the Observer Group.

Meeting Record

- 4.6 The Parties share an interest in clearly identifying issues on which consensus has been achieved, and outcomes of the CRT Negotiations for which the consent of the Indigenous Nations have been obtained as well as the scope, nature and content of that consent. The Parties will ensure that a clear record of any decision

or recommendation of the N.A.T. or Leadership Table, and of any issue upon which consensus or consent cannot be achieved, are prepared.

Additional Agreements and Processes

- 4.7 The Parties recognize that separate bilateral agreements and processes between Canada, B.C. and each of the Indigenous Nations may be established to complement this Agreement, and commit to avoiding any duplication or overlap between this Agreement and any such agreements or processes.

5.0 FUNDING

- 5.1 The Parties acknowledge that, subject to the expenditures being authorized by law, Canada and B.C. commit to providing capacity funding to the Indigenous Nations to enable their meaningful participation in the processes established through this Negotiation Framework.
- 5.2 Subject to 5.1, the objectives respecting funding are set out in Schedule B to this Negotiation Framework.

6.0 INFORMATION SHARING

- 6.1 The Parties recognize and respect that the Indigenous Nations need to be able to provide input to those negotiations, update their communities and exercise their respective governance processes in a fully informed manner, while also maintaining the confidentiality of the content of the negotiations between Canada and the U.S.
- 6.2 The Leadership Table will be provided with access to the following types of information:
- a. the overarching goals and objectives of the CRT negotiations prepared by the N.A.T.;
 - b. this Agreement and any updates and amendments;
 - c. updates by the N.A.T. on the implementation of this Agreement and on the progress of the CRT Negotiations; and
 - d. any other information that the Leadership Table may request that is not confidential or, where such information is confidential, Canada or B.C. has agreed to share such information and the Parties have signed a confidentiality agreement in relation to that information.

- 6.3 Subject to section 6.5, the N.A.T. will be provided with access to the following types of information:
- a. Canada's and B.C.'s objectives and desired outcomes for a modernized CRT;
 - b. Options to be considered in advancing Canada's negotiating positions to achieve the desired outcomes;
 - c. Relevant and appropriate technical information in support of the development of negotiation options;
 - d. Information on U.S. interests and positions, including tribal interests and positions known publicly (i.e. not obtained in confidence);
 - e. Information on positions of U.S. negotiating team in order to advance Canada's response; and
 - f. Other information that the N.A.T. may request that is not confidential or, where such information is confidential, the Parties have signed a confidentiality agreement in relation to that information.
- 6.4 N.A.T. representatives may provide the following types of information to their respective Indigenous Nations so long as no information that is subject to a confidentiality agreement is included:
- a. the general goals and objectives for the CRT Negotiations as developed by the N.A.T. and the Leadership Table;
 - b. general updates on the status of the CRT Negotiations and the implementation of this Agreement;
 - c. information on U.S. interests and positions, including U.S. tribal interests and positions, so long as that information is already public and confirmed as non-confidential by Canada.
 - d. background information relating to the science and knowledge informing the negotiations in a consumable manner and as appropriate;
 - e. information with respect to any impacts to Indigenous Nations rights and title related to the CRT;
 - f. a summary of how input from leadership and communities will inform the negotiations moving forward; and
 - g. any other information that the Parties determine may be shared without breaching confidentiality.

- 6.5 If requested by Canada or British Columbia, and subject to section 6.6, the Indigenous Nation members of the N.A.T. and the Leadership Table will sign confidentiality agreements substantially in the form attached as Schedule A to this Agreement. For greater clarity, if information that is subject to a confidentiality agreement is subsequently confirmed by Canada or British Columbia, as the case may be, to be non-confidential, that information is no longer subject to the terms of the confidentiality agreement.
- 6.6 Information may only be designated as confidential and subject to a confidentiality agreement if it includes information related to one or more of the following:
- a. negotiating strategies, options and positions;
 - b. specific negotiating objectives and parameters;
 - c. any materials prepared for the purposes of the negotiation meetings;
 - d. unacceptable options;
 - e. potential trade-off areas;
 - f. potential zones of negotiated agreement;
 - g. supporting technical and financial information and data;
 - h. any other information that may affect Canada's negotiating advantage;
 - i. traditional knowledge or traditional use information provided by the Indigenous Nations; or
 - j. information that is exempt from disclosure or that may be withheld from disclosure under federal or provincial law.
- 6.7 The Indigenous Nations may designate information shared with Canada or British Columbia as confidential if it is ordinarily treated by the Indigenous Nations as confidential and, for such information:
- a. Canada and British Columbia will not disclose the information to third parties, subject to applicable access to information legislation; and
 - b. Canada and British Columbia will provide the Indigenous Nations with notice of any request for disclosure of the information under applicable access to information legislation and an opportunity to express any views regarding disclosure of the information.

- 6.8 The Parties will jointly prepare an internal information sharing plan to manage the form, content and timing of information sharing that will address, among other things:
- a. the dissemination of assigned and numbered paper copies of confidential information and ensuring security of documents;
 - b. the electronic dissemination and storage of non-confidential information;
 - c. a protocol for N.A.T. and Leadership Table meetings (chairing, minute taking, follow up action items, tracking etc.); and
 - d. a protocol for general public engagement and communication with the media.

7.0 DISPUTE RESOLUTION

- 7.1 The Parties are required to engage through this Negotiations Framework in good faith and, in the case of Canada and BC, act in accordance with the honour of the Crown. Good faith engagement requires the Parties to, among other things:
- a. collaborate with the goal of reaching mutually acceptable positions on CRT modernization;
 - b. provide timely disclosure of information to enable examinations of relevant subject matter;
 - c. respond appropriately and in a timely manner to proposed negotiating positions;
 - d. give reasonable consideration to positions of the other Party; and
 - e. act consistently with the standard of good faith as articulated in the common law.
- 7.2 The Parties will use informal, collaborative efforts consistent with the purposes and principles of this Agreement to address disputes, prior to using dispute resolution processes set out below.
- 7.3 In the event of a dispute that cannot be resolved by the N.A.T., it will refer the matter to the Leadership Table for direction or decision within 30 days of the Leadership Table receiving the referral. The N.A.T. will provide the Leadership Table with a report setting out a description of the dispute, the positions and rationale taken by the Parties, potential options for resolution identified to date, and any suggested steps to resolve the dispute.

- 7.4 If the Leadership Table receives a dispute referred from the N.A.T., it will take the following steps to meet the 30-day deadline:
- a. discuss the matter at the Leadership Table and seek to resolve the issue in a good faith and collaborative manner;
 - b. identify, if required, further steps that may be taken by the Leadership Table to resolve the dispute;
 - c. if resolution is reached, record the resolution and distribute it to the Parties; and
 - d. if resolution is not reached, ensure the respective views of the Parties are recorded in a joint document and distributed to the Parties.
- 7.5 The Parties will exhaust the process set out above prior to exercising any decision-making power, or pursuing any legal remedies, related to an issue in dispute. For greater clarity, nothing in this section prevents a Party from seeking relief in a court of competent jurisdiction to prevent irreparable harm to a right or other legal interest.
- 7.6 For greater certainty, Canada will not consider proposed substantive language on a matter in the CRT Negotiations that is subject to an active dispute resolution between the Parties.
- 7.7 Subject to 7.6, none of the above may unduly delay or interfere with the timely occurrence of Canada-U.S. negotiation sessions.

8.0 GENERAL

- 8.1 The recitals and Schedules to this Agreement form integral parts of this Agreement.
- 8.2 No amendment or waiver of this Agreement or its Schedules will take effect unless consented to in writing by all of the Parties.
- 8.3 This Agreement will be in effect for a term of two (2) years from the date of signing and will be reviewed by the Parties annually. After two years, the Parties may agree to renew or extend the Agreement for an additional period of time with the opportunity by the Parties to review and revise the Agreement.

- 8.4 A Party may withdraw from this Agreement by providing thirty (30) days written notice to the other Parties. A Party must first exhaust the dispute resolution process prior to giving notice of withdrawal.
- 8.5 The Parties agree that this Negotiation Framework:
- a. will be a vehicle through which consultations will be undertaken in relation to any legal or constitutional duty for Crown consultations in relation to the CRT negotiations and does not create any new or additional legal duties or obligations;
 - b. does not, and is not intended to, define or extinguish any Aboriginal or Treaty rights and is not evidence of the nature or extent of any Aboriginal or Treaty rights;
 - c. is made without prejudice to the positions taken by the Parties with respect to Aboriginal or Treaty rights or the duties owed by Canada and B.C. to the Indigenous Nations regarding the CRT Negotiations and to the positions any Party may take in present or future negotiations and legal proceedings;
 - d. is not a land claims agreement or Treaty within the meaning of sections 25 or 35 of the *Constitution Act, 1982*;
 - e. does not express, and will not be interpreted as expressing, the consent or agreement of the Indigenous Nations to any outcome of the CRT Negotiations;
 - f. does not affect any Aboriginal or Treaty rights of any Aboriginal group; and
 - g. does not and is not intended to contain any admission of fact or liability by any Party.
- 8.6 Any notice or communications required to be given under this Negotiation Framework will be sufficiently given or made for all purposes if by e-mail transmission, if delivered by courier, or if sent by first-class pre-paid registered mail within Canada, addressed as follows:

In the case of the Ktunaxa Nation:

Kathryn Teneese,
Chairperson,
Ktunaxa Nation Council
7825 Mission Rd.,
Cranbrook BC V1C 7E5

kteneese@ktunaxa.org, and cc'ed to
bgreen@ktunaxa.org

In the case of Secwepemc Nation:

Dale Tomma
Shuswap Nation Tribal Council
680 West Athabasca Street
Kamloops, BC, V2H 1C4
778-471-8200
crt@shuswapnation.org

In the case of Syilx Nation:

Pauline Terbasket,
Executive Director,
Okanagan Nation Alliance
101 – 3535 Old Okanagan Highway
250-707-0095
director@syilx.org

In the case of Canada:

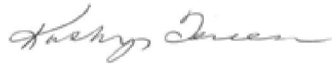
Sylvain Fabi
Executive Director
U.S. Transboundary Affairs Division
Global Affairs Canada
125 Sussex Drive
Ottawa, Ontario, K1A 0G2
343-203-3533
Sylvain.Fabi@international.gc.ca

In the case of British Columbia:

Kathy Eichenberger
Executive Director
Columbia River Treaty
Electricity and Alternative Energy Division
Ministry of Energy, Mines and Petroleum Resources
1810 Blanshard Street
Victoria, British Columbia, V8W 9N1
250-953-3368
Kathy.Eichenberger@gov.bc.ca

Signed in the presence of:

For the Ktunaxa Nation:



Kathryn Teneese,
Chairperson,
Ktunaxa Nation Council

For the Secwepemc Nation:

Kukpi7 Wayne Christian
Tribal Chief
Shuswap Nation Tribal Council

For the Syilx Nation:

Grand Chief Stewart Phillip
Chairman
Okanagan Nation Alliance

For Canada:

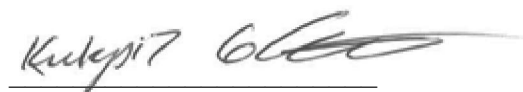
Michael Grant
Assistant Deputy Minister
Americas Branch
Global Affairs Canada

Signed in the presence of:

For the Ktunaxa Nation:

Kathryn Teneese,
Chairperson,
Ktunaxa Nation Council

For the Secwepemc Nation:



Kukpi7 Wayne Christian
Tribal Chief
Shuswap Nation Tribal Council

For the Syilx Nation:

Grand Chief Stewart Phillip
Chairman
Okanagan Nation Alliance

For Canada:

Michael Grant
Assistant Deputy Minister
Americas Branch
Global Affairs Canada

For British Columbia:

Signed in the presence of:

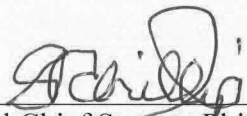
For the Ktunaxa Nation:

Kathryn Teneese,
Chairperson,
Ktunaxa Nation Council

For the Secwepemc Nation:

Kukpi7 Wayne Christian
Tribal Chief
Shuswap Nation Tribal Council

For the Syilx Nation:



Grand Chief Stewart Phillip
Chairman
Okanagan Nation Alliance

For Canada:

Michael Grant
Assistant Deputy Minister
Americas Branch
Global Affairs Canada

Signed in the presence of:

For the Ktunaxa Nation:

Kathryn Teneese,
Chairperson,
Ktunaxa Nation Council

For the Secwepemc Nation:

Kukpi7 Wayne Christian
Tribal Chief
Shuswap Nation Tribal Council

For the Syilx Nation:

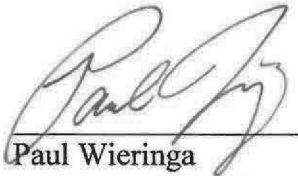
Grand Chief Stewart Phillip
Chairman
Okanagan Nation Alliance

For Canada:



Michael Grant
Assistant Deputy Minister
Americas Branch
Global Affairs Canada

For British Columbia:



Paul Wieringa
Acting Assistant Deputy Minister
Electricity and alternative Energy Division
Ministry of Energy, Mines and Petroleum Resources

Schedule “A”: Form of Confidentiality Agreement

CONFIDENTIALITY AGREEMENT

AMONG:

HER MAJESTY THE QUEEN IN RIGHT OF CANADA, as represented by the Minister of Foreign Affairs
(“Canada”)

AND

HER MAJESTY THE QUEEN IN RIGHT OF BRITISH COLUMBIA, as represented by the Minister of Children and Family Development and the Minister Responsible for the Columbia River Treaty
(“British Columbia”)

AND

KTUNAXA NATION as represented by the Ktunaxa Nation Council Society
(“KNC”)

AND

SECWPEMC NATION as represented by the Shuswap Nation Tribal Council Society
(“SNTC”)

AND

SYILX NATION as represented by the Okanagan Nation Alliance
(“ONA”)

WHEREAS:

- A. Canada and the United States of America are parties to the “Treaty between Canada and the United States of America relating to cooperative development of the water resources of the Columbia River Basin” including its Annexes A and B, signed at Washington, District of Columbia, United States of America on the 17th day of January, 1961, and the Protocol, brought into force by exchange of instruments of ratification and an exchange of notes on September 16, 1964 (the “Treaty”);
- B. Canada and the United States of America will be conducting negotiations concerning the possible continuation, renegotiation or termination of the Treaty after 2024, including with respect to flood control, hydroelectric power generation and other purposes, and to address related issues (the “CRT Discussions”);

C. The Parties wish to maintain in confidence Confidential Information provided by Canada and BC to KNC, SNTC and ONA (the “Indigenous Nations”), or *vice versa*, related to the CRT Discussions, in accordance with the terms and conditions of this Agreement;

NOW THEREFORE, for good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the parties agree as follows:

1. **Definitions.** In this Agreement,
 - a. “**Agreement**” means this confidentiality agreement;
 - b. “**Confidential Information**” means any information or documentation, whether written or oral and regardless of form or format, that is prepared by, for or on behalf of a Party, or received by a Party, in connection with the CRT Discussions, whether before or after the date of this Agreement, where such information or documentation is provided in confidence by a Disclosing Party to a Receiving Party, but excludes information or documentation that is already in the public domain through no breach of this Agreement or that the Parties determine should be made publicly available;
 - c. “**Disclosing Party**” means a Party disclosing Confidential Information pursuant to the terms of this Agreement;
 - d. “**Party**” means a Party to this Agreement and “**Parties**” means the parties to this Agreement; and
 - e. “**Receiving Party**” means a Party receiving Confidential Information pursuant to the terms of this Agreement.

Confidentiality

2. Subject to paragraph 7, the Receiving Party will keep all Confidential Information confidential, subject to the terms of this Agreement. The Receiving Party will safeguard Confidential Information against disclosure and, at a minimum, will employ the same means to protect the Confidential Information as it does to protect its own confidential or proprietary information to make it inaccessible to unauthorized persons.
3. Subject to paragraph 7, the Receiving Party will not at any time reveal, report, publish, transfer or otherwise disclose to any person any Confidential Information without the prior written consent of the Disclosing Party, except the Receiving Party may distribute the Confidential Information to
 - a. in the case of the Indigenous Nations:
 - i. the representatives of the Indigenous Nations listed in the attached Schedule B;

- ii. the servants, employees, consultants, legal counsel and agents of each of the Indigenous Nations who have a need to know such Confidential Information for purposes of the CRT Discussions;
 - iii. any other person who has a need to know such Confidential Information for purposes of the CRT Discussions, and who resides within Canada, with the written consent of the Disclosing Party; and
 - b. in the case of British Columbia or Canada, to ministers, servants, employees, consultants, legal counsel and agents who have a need to know such Confidential Information for purposes of the CRT Discussions,
- provided that the Receiving Party
- c. first advises any such person of the obligation to keep the Confidential Information confidential; and
 - d. has required such person to sign a written acknowledgement in the form set out in Schedule A of their obligation and commitment to keep the Confidential Information confidential in accordance with the terms of this Agreement. The Receiving Party will be responsible for any breach of the confidentiality provisions of this Agreement by any such person.
 4. On request by a Disclosing Party, a Receiving Party will provide copies of acknowledgements, referenced in paragraph (d) immediately above, signed by those persons to whom the Receiving Party has disclosed Confidential Information.
 5. Subject to paragraph 9, upon specific written request by the Disclosing Party, the Receiving Party will promptly return such specifically requested Confidential Information in written form and all copies or other reproductions thereof. Confidential Information that has been included in any analysis or other document prepared by or for the Receiving Party will be held by the Receiving Party subject to the terms of this Agreement or destroyed at the Receiving Party's option. Confidential Information that is included in back-up electronic storage media and that is difficult to separately access, may continue to be held by the Receiving Party subject to the confidentiality obligations of this Agreement.
 6. The Parties acknowledge and agree that disclosure of Confidential Information, other than in accordance with this Agreement, may:
 - a. reveal advice, recommendations, or policy considerations submitted or prepared for submission to the executive council of the Province, or the Queen's Privy Council for Canada, or any of their committees or by or for a minister or public body of a Party;

- b. irreparably harm the conduct by Canada or British Columbia of relations with other governments including a local government or the government of the United States of America or reveal information received in confidence from any such government or any of their agencies;
 - c. irreparably harm the financial or economic interests of the Parties; and
 - d. irreparably harm the negotiating position of Canada and British Columbia with respect to the CRT Discussions and the Treaty and could reasonably be expected to result in the premature disclosure of information about negotiations carried on by or for Canada and British Columbia.
7. The Receiving Party may disclose Confidential Information if and to the extent required by law. In the event that the Receiving Party believes, based on legal advice obtained by it, that it is legally compelled (including by examination for discovery, request or demand for documents, subpoena or freedom of information request or similar process) to disclose any of the Confidential Information, the Receiving Party will give the Disclosing Party prompt prior written notice of such requirement so that the Disclosing Party may seek a protective order or other appropriate remedy and/or waive compliance with the terms of this Agreement. In the event that such protective order or other remedy is not obtained, or the Disclosing Party waives compliance with the terms hereof, the Receiving Party legally compelled to disclose the Confidential Information agrees to provide only that portion of the Confidential Information that is legally required to be disclosed and to exercise all reasonable efforts to seek assurance that confidential treatment will be accorded such Confidential Information that it is legally compelled to disclose.
 8. If Confidential Information is disclosed contrary to this Agreement, the responsible Party will promptly notify the other Party of any unauthorized use or possession of that information and of the steps it has taken to deal with the unauthorized use or possession.
 9. Any obligation under this Agreement for a Receiving Party to return or destroy Confidential Information is subject to all applicable laws regarding document retention and/or destruction. If a Party is prevented by applicable laws from returning or destroying Confidential Information, the Confidential Information will nevertheless remain subject to the confidentiality obligations under this Agreement.

Termination

10. Unless the Parties otherwise agree, and subject to the right of termination set out in paragraph 11, this Agreement will continue in effect indefinitely despite any conclusion or termination of part or all of the CRT Discussions. The Parties agree that they will continue to be bound by this Agreement following

any such conclusion or termination and following any termination of this Agreement as provided in paragraph 11.

11. A Party may terminate its participation in this Agreement, on a prospective basis, by providing 30 days' prior written notice to the other Parties. The notice must include the contemporaneous return to the Disclosing Party of any Confidential Information received by the terminating Party, in accordance with and subject to paragraphs 5 and 9. Such termination will not alter the confidentiality of any Confidential Information received prior to termination or the rights and obligations of the Parties to this Agreement with respect to such Confidential Information.
12. This Agreement revokes and replaces the Confidentiality Agreement dated September 28, 2018 but, notwithstanding, the information shared between the Parties at the September 28, 2018 meeting will continue to be covered by the confidentiality provisions set out in the September 28, 2018 Confidentiality Agreement.

Miscellaneous

13. Notices required or permitted to be given under this Agreement shall be in writing and shall be effectively given if delivered or sent by facsimile or email as follows:
 - i. if to the Ktunaxa Nation Council Society, by the sending notice to:
Fax No.: 250-489-5760
Email: bgreen@ktunaxa.org
Individual: Bill Green – Special Initiatives Advisor
 - ii. if to the Shuswap Nation Tribal Council Society, by sending the notice to:
Fax No: 778-471-5804
Email: crt@shuswapnation.org
Individual: Dale Tomma, CRT Co-ordinator
 - iii. if to the Okanagan Nation Alliance , by sending the notice to:
Fax No: 250-707-0166
Email: director@syilx.org
Individual: Pauline Terbasket, Executive Director
 - iv. if to Canada, to:
Fax No.: 613-944-0760
Email: Stephen.Gluck@international.gc.ca

Individual: Stephen Gluck, Senior Advisor

v. if to British Columbia, to:

Fax No.: 250-952-0258

Email: kathy.eichenberger@gov.bc.ca

Individual: Kathy Eichenberger, Executive Director

- 14. No failure or delay by a Party in exercising any right, power or remedy under this Agreement will operate as a waiver thereof, nor will any single or partial exercise thereof preclude any other or further exercise of any right, power or remedy under this Agreement.
- 15. This Agreement will be governed by and construed in accordance with the laws of the Province of British Columbia.
- 16. This Agreement may be signed in counterparts and each of such counterparts will constitute an original document and such counterparts, taken together, will constitute one and the same instrument. This agreement will come into effect upon the date of the signature of the last Party to this agreement.

IN WITNESS WHEREOF the Parties have executed this Agreement.

[signature blocks to be inserted]

SCHEDULE A

CONFIDENTIALITY ACKNOWLEDGEMENT

Reference is made to the Confidentiality Agreement relating to discussions concerning the Columbia River Treaty (“CRT Discussions”) made the ____ day of _____, 2018 among the Province of British Columbia, the Government of Canada and the [*name of Indigenous Nation party*] (the “Confidentiality Agreement”).

The undersigned acknowledges that any Confidential Information (as defined in the Confidentiality Agreement) received by or to which the undersigned is given access is subject to the terms of the Confidentiality Agreement and the undersigned commits to be bound by the confidentiality obligations under the Confidentiality Agreement as if the undersigned was a Receiving Party under the Confidentiality Agreement.

Signature

Name

Date

SCHEDULE B

Representatives of the Indigenous Nations

Ktunaxa Nation Council

Kathryn Teneese
Chief Alfred Joseph
Chief Joe Pierre
Dan Gravelle
Sandra Luke
Ray Warden
Bill Green
Tim Howard

Shuswap Nation Tribal Council

Kukpi7 Wayne Christian
Chief Barb Cote
Bonnie Leonard
Nathan Matthew
Tim Eugene
Dale Tomma
Risa Schwartz

Okanagan Nation Alliance

Grand Chief Stewart Phillip
Chief Chad Eneas
Chief Keith Crow
Chief Byron Louis
Pauline Terbasket
Dr. Jeannette Armstrong
Rosalie Yazzie
Jay Johnson
Rosanne Kyle

Schedule “B”: Funding objectives for effective Indigenous Nations participation in the CRT Renewal Process

This document is subject to the provisions of Section 5 of the Canada-British Columbia-Columbia Basin Indigenous Nations Columbia River Treaty Negotiations Framework Agreement (“*Negotiations Framework*”).

This document is intended to inform discussions between the Parties respecting adequate funding to enable meaningful Indigenous Nations participation.

Canada and B.C. commit to providing capacity funding to the Indigenous Nations (INs) to enable their meaningful participation in the processes established under the Negotiations Framework.

Core funding. Equivalent amounts of funding will be provided to each of the Indigenous Nations for the following core functions and responsibilities:

- Ensuring that Nation members are adequately informed about the negotiations process, objectives, strategies and outcomes within agreed upon confidentiality limitations. This involves community and nation meetings and preparation and distribution of information/outreach materials;
- Obtaining input and recommendations from Indigenous Nations’ members;
- Providing information to the Indigenous Nations’ (consistent with the Confidentiality Agreement in Schedule A) through the course of negotiations to support directions to staff;
- Obtaining direction from band council members and ONA, KNC and SNTC officials;
- Participation in Indigenous Nations – Canada – BC staff/technical level meetings;
- Participation in Indigenous Nations – Canada – BC policy level meetings on Columbia River Treaty transboundary and domestic issues, and the development of options on CRT governance and benefits sharing;
- Staff review and analysis of proposed objectives, strategies, concept papers, treaty language, etc.;
- Ongoing independent legal advice;
- Participation on the Leadership Table;
- Participation on the Negotiation Advisory Team;
- Participation on the Observer Group; and
- Regular leadership level meetings between Indigenous Nations (individually and collectively), Canada and BC.

Additional negotiated funding for annual treaty renewal workplan implementation. It is anticipated that the CRT renewal process will involve substantial research and analysis needs, including for example: (i) development of ecosystem-based function goals, objectives, measures and scenarios; (ii) development of goals, objectives, measures and

scenarios with respect to the protection of cultural heritage values and resources; (iii) development of options for ongoing implementation of a renewed treaty and governance options, both within and in addition to treaty implementation; and (iv) development and analysis of benefit-sharing options.

Annually, Indigenous Nations, Canada and BC will continue to develop a joint ‘treaty renewal workplan’. This workplan should identify research and analysis tasks required to support the negotiations process and identify the parties which will lead or participate in each of the specified tasks, with timeframes and outcomes identified. This workplan would then support the development and negotiation of supplemental budgets to support the identified tasks.

**COLUMBIA RIVER TREATY NEGOTIATIONS FRAMEWORK AGREEMENT
AMENDING AGREEMENT**

THIS AMENDING AGREEMENT made the 15th day of June, 2021

BETWEEN:

The Ktunaxa Nation as represented by the Ktunaxa Nation Council

AND:

The Secwepemc Nation as represented by the Shuswap Nation Tribal Council

AND:

The Syilx Nation as represented by the Okanagan Nation Alliance

AND:

Canada as represented by the Department of Foreign Affairs, Trade and Development

AND:

British Columbia as represented by the Minister of Forest, Lands, Natural Resource Operations and Rural Development

Hereinafter referred to as the Parties

WHEREAS:

- A. The Parties entered into the Negotiations Framework Agreement dated for reference June 15, 2019 (“**Negotiations Framework Agreement**”).
- B. The Parties wish to extend the term of, and make minor amendments to, the Negotiations Framework Agreement in order to achieve the Parties’ intentions under that agreement.
- C. Section 8.3 of the Negotiations Framework Agreement provides that it may be renewed or extended by agreement of the Parties, and section 8.2 of the Negotiations Framework Agreement provides that no amendment of the agreement will take effect unless consented to in writing by all Parties.
- D. The Parties understand the Minister responsible for the Negotiations Framework Agreement is the Minister of Forest, Lands, Natural Resource Operations and Rural Development.

NOW THEREFORE the Parties agree as follows:

1.0 EXTENSION OF TERM

1.1 In accordance with Section 8.3 of the Negotiations Framework, the Parties hereby extend the term of the Negotiations Framework Agreement for a period of two years commencing on June 15, 2021.

2.0 AMENDMENTS

2.1 Section 8.6 of the Negotiations Framework Agreement is amended to name Valerie Michel as the representative of the Shuswap Nation Tribal Council for the purposes of notice and communications pursuant to this provision, in place of Dale Tomma.

3.0 GENERAL

3.1 All other provisions in the Negotiations Framework Agreement remain the same and in full force and effect.

3.2 This Amending Agreement may be executed in counterpart with the same effect as if Parties had signed the same document. Each counterpart shall be deemed to be an original. All counterparts shall be construed together and shall constitute one and the same Amending Agreement.

Signed in the presence of:

For the Ktunaxa Nation:

Kathryn Teneese

Kathryn Teneese (Nov 26, 2021 14:49 MST)

Kathryn Teneese, Chairperson
Ktunaxa Nation Council

Sandra Luke

Sandra Luke (Nov 25, 2021 16:08 MST)

Sandra Luke, Chairperson
Ktunaxa Lands and Resources Council

For the Secwepemc Nation:

Kukpi7 Wayne Christian, Tribal Chief
Shuswap Nation Tribal Council

For the Syilx Nation:

Chief Clarence Louie, Tribal Chair
Okanagan Nation Alliance

For Canada:

Michael Grant
Assistant Deputy Minister Americas Branch
Global Affairs Canada

For British Columbia:

1.1 In accordance with Section 8.3 of the Negotiations Framework, the Parties hereby extend the term of the Negotiations Framework Agreement for a period of two years commencing on June 15, 2021.

2.0 AMENDMENTS

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Signed in the presence of:

For the Ktunaxa Nation:

Kathryn Teneese, Chairperson
Ktunaxa Nation Council

Sandra Luke, Chairperson
Ktunaxa Lands and Resources Council

For the Secwepemc Nation:



Kukpi7 Wayne Christian, Tribal Chief
Shuswap Nation Tribal Council

For the Syilx Nation:

Chief Clarence Louie, Tribal Chair
Okanagan Nation Alliance

For Canada:

Michael Grant
Assistant Deputy Minister Americas Branch
Global Affairs Canada

For British Columbia:

1.1 In accordance with Section 8.3 of the Negotiations Framework, the Parties hereby extend the term of the Negotiations Framework Agreement for a period of two years commencing on June 15, 2021.

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Signed in the presence of:

For the Ktunaxa Nation:

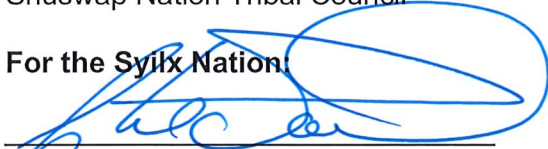
Kathryn Teneese, Chairperson
Ktunaxa Nation Council

Sandra Luke, Chairperson
Ktunaxa Lands and Resources Council

For the Secwepemc Nation:

Kukpi7 Wayne Christian, Tribal Chief
Shuswap Nation Tribal Council

For the Syilx Nation:



Chief Clarence Louie, Tribal Chair
Okanagan Nation Alliance

For Canada:

Michael Grant
Assistant Deputy Minister Americas Branch
Global Affairs Canada

For British Columbia:

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Signed in the presence of:

For the Ktunaxa Nation:

Kathryn Teneese, Chairperson
Ktunaxa Nation Council

Sandra Luke, Chairperson
Ktunaxa Lands and Resources Council

For the Secwepemc Nation:

Kukpi7 Wayne Christian, Tribal Chief
Shuswap Nation Tribal Council

For the Syilx Nation:

Chief Clarence Louie, Tribal Chair
Okanagan Nation Alliance

For Canada:

Grant, Michael Digitally signed by Grant,
Michael
Date: 2021.12.03 15:39:22 -05'00'

Michael Grant
Assistant Deputy Minister Americas Branch
Global Affairs Canada

For British Columbia:



Les MacLaren
Assistant Deputy Minister
Electricity and Alternative Energy Division
Ministry of Energy, Mines and Low Carbon Innovation