



**INCREMENTAL TREATY
AGREEMENT
Wensley Bench**

This Agreement is dated the 28th day of March, 2013.

BETWEEN

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

and

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

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

Whereas:

- A.** The Ktunaxa Nation has Aboriginal Rights within the Ktunaxa Territory;
- B.** The Ktunaxa Parties are engaged with the Province and Canada in negotiating an Agreement-in-Principle in accordance with Stage 4 of the British Columbia Treaty Commission Process and, in those negotiations, the Ktunaxa Parties stated their interest in achieving a greater role in the regional economy;
- C.** The Parties wish to create momentum in the treaty negotiations to conclude a Final Agreement;
- D.** The Parties, in the spirit of the New Relationship vision and the Transformative Change Accord, share commitments to strengthen their government-to-government relationship and to close the socio-economic gaps between aboriginal and non-aboriginal peoples; and
- E.** The Parties recognize that this Agreement will provide the Ktunaxa Nation with economic benefits in advance of a Final Agreement in the spirit and vision of the New Relationship and provides the Ktunaxa Nation with opportunities to build the necessary cooperative working relations that will enhance its efforts towards self-government.

NOW THEREFORE the Parties agree as follows:

ARTICLE 1 - INTERPRETATION

1.1 **Definitions.** In this Agreement:

“Aboriginal Rights” means asserted or determined aboriginal rights, including aboriginal title, which are or may be recognized and affirmed by section 35 of the *Constitution Act, 1982*;

“AIP” means the Ktunaxa Nation Agreement-in-Principle being negotiated by the Parties and Canada in accordance with Stage 4 of the British Columbia treaty negotiation process overseen by the British Columbia Treaty Commission;

“AIP Date” means the date the Parties and Canada initial the AIP as part of completing Stage 4 of the British Columbia Treaty Commission process;

“Closing” means the completion of the transfer of the Lands by the Province to a Designated Company on the Closing Date;

“Closing Date” means the date on which the documents for the transfer of the Lands to a Designated Company under 6.2 are uploaded to the electronic meet and are filed in the Land Title Office;

“Council” and **“Band Council”** mean, in respect of the Ktunaxa Communities, the elected “council” within the meaning of the *Indian Act*;

“Crown Corridor” means a highway (as defined in the *Transportation Act*) and the area of any other road, right-of-way, easement or licence over Crown land that is used for transportation or public utility purposes and that, where the Lands are not surveyed or have to be re-surveyed, is identified in Schedule 1;

“Crown Grant” means a grant (as defined in the *Land Act*) of the fee simple title to Land;

“Designated Company” means a company incorporated under federal or provincial law, all the shares of which are wholly owned directly or indirectly, legally and beneficially, by the Ktunaxa Communities and the KNC and which the Ktunaxa Communities and the KNC have designated to take fee simple title to any of the Lands;

“Effective Date” means the date on which the Final Agreement takes effect;

“Final Agreement” means the Final Agreement to be concluded by the Parties and Canada at the conclusion of Stage 5 of the British Columbia Treaty Commission process;

“Government Action” means all processes, decisions, authorizations, permits, licences, approvals, dispositions, agreements and other actions whatsoever entered into or otherwise taken by a Provincial Official with respect to Crown land and resources either before or after the date of this Agreement;

“GST” means the goods and services tax imposed under the *Excise Tax Act* (Canada);

“ITA Date” means the date on which this Agreement is executed by the Parties;

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

“Ktunaxa Citizens” means all those persons who are collectively entitled to exercise the Aboriginal Rights of the Ktunaxa Nation and includes Ktunaxa Community Members;

“Ktunaxa Communities” means ?Akisq’nuk First Nation, St. Mary’s Indian Band, Tobacco Plains Indian Band, and Lower Kootenay Indian Band, all of which are “bands” within the meaning of the *Indian Act* and for the purposes of this Agreement are represented by the KNC;

“Ktunaxa Community Member” means a member of one of the Ktunaxa Communities as shown in that Ktunaxa Community’s “Band List” within the meaning of the *Indian Act*;

“Ktunaxa Lands” means those lands identified in the Final Agreement which form part of Ktunaxa Lands;

“Ktunaxa Nation” means the collectivity of Ktunaxa Citizens and includes the Ktunaxa Communities and Ktunaxa Community Members and, for the purposes of this Agreement, is represented by the KNC;

“Ktunaxa Territory” means, for the purposes of this Agreement, that portion of the traditional territory in British Columbia claimed by the Ktunaxa Nation that is set out in Schedule 7;

“Lands” means the area on Wensley Bench of approximately 242 hectares as shown for illustrative purposes in Schedule 1 and, following completion and approval of the survey or re-survey of those lands, the area legally described in the survey, which, for greater certainty, will not include any land below the natural boundary (as defined in the *Land Act*) and the area of any Crown Corridor;

“Permitted Encumbrances” means the reservations, exceptions, liens, charges, and interests described in Parts 1 and 2 of Schedule 2 for each of the Lands or any other Permitted Encumbrances agreed to by the Parties;

“Province” means Her Majesty the Queen in right of the Province of British Columbia; and

“Provincial Official” means:

- a) the province or and minister, public official, employee, contractor or agent of the province;
- b) any government corporation or any director, officer, employee, contractor or agent of a government corporation; or
- c) any person acting as a decision maker in any enactment of the Province.

1.2 **Interpretation.** For purposes of this Agreement:

- a) “this Agreement” means this Incremental Treaty Agreement, including the Schedules and any agreement, document or instrument executed or delivered pursuant to this Agreement;
- b) “including” means “including, but not limited to” and “includes” means “includes, but not limited to”;
- c) the 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;
- d) words importing gender include the masculine, feminine or neuter gender and words in the singular include the plural and vice versa;
- e) any reference to a corporate entity includes and is also a reference to any corporate entity that was a predecessor to, or that is a successor to, such entity;
- f) 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;
- g) any reference to the delivery on Closing of an agreement, document or instrument “in the form” of an attached schedule means an agreement, document or instrument substantially in that form with such changes, additions or deletions as may be agreed by the representatives of the Parties;

- h) each and every release, covenant and other agreement given, and action to be taken, by the Ktunaxa Parties under this Agreement means the Ktunaxa Parties acting by and through the KNC, and will be conclusively deemed to have been given, or taken, by the KNC on its own behalf, and for and on behalf of the Ktunaxa Parties; and
- i) there will be no presumption that doubtful expressions, terms or provisions in this Agreement are to be resolved in favour of any Party.

1.3 **Schedules.** The following are the Schedules to this Agreement:

- Schedule 1 – Map of Lands
- Schedule 2 – Permitted Encumbrances
- Schedule 3 – Instruments of Registration (titles, survey plans, charges and other instruments)
- Schedule 4 – Form C Additions to Reserve Restrictive Covenant
- Schedule 5 – Designated Company Agreement
- Schedule 6 – GST Certificate
- Schedule 7 – Map of Ktunaxa Territory in British Columbia

ARTICLE 2 – RECONCILIATION AND PURPOSE

2.1 **Reconciliation.** The Ktunaxa Parties acknowledge and agree that, in the spirit of the New Relationship and to advance Final Agreement negotiations, the Lands transferred to the Ktunaxa Parties in accordance with this Agreement constitute a contribution by the Province towards the reconciliation of the Province's and the Ktunaxa Parties' interests and the settlement of their claims to Ktunaxa Nation aboriginal rights and title within the Ktunaxa Territory through treaty negotiations and, as such, the benefits provided to the Ktunaxa Parties under this Agreement will be counted as a portion of the Province's contribution towards the Final Agreement settlement.

2.2 **Purpose.** The purpose of this Agreement is to:

- a) demonstrate the commitment of the Parties to concluding a Final Agreement; and
- b) in the spirit of the New Relationship, provide the Ktunaxa Parties with land as incremental treaty benefit in advance of a Final Agreement which will be transferred in accordance with this Agreement and will, on the Effective Date, become an element of the Final Agreement.

ARTICLE 3 - COMING INTO EFFECT AND TERMINATION

- 3.1 **Coming into Effect.** This Agreement comes into effect when it has been executed by the Parties.
- 3.2 **Termination.** This Agreement may be terminated in writing:
- a) by the Parties on a date mutually agreed on by the Parties; or
 - b) by the Province or the Ktunaxa Parties, prior to the ministerial order authorizing the disposition of the Lands that are the subject of the ministerial order under 5.2(f).
- 3.3 **Termination on Litigation.** Despite 3.2, the Province may terminate this Agreement, including the transfer of any Lands which have not been completed, in the event the Ktunaxa Parties commences any action or other proceeding relating to a Government Action within the Ktunaxa Territory taken after the ITA Date.
- 3.4 **Survival of Lands Conditions.** Despite 3.2, and subject to the Final Agreement, where any of the Lands are transferred under this Agreement, Articles 7 (Condition of Lands), 10 (Other Covenants) and 12 (Shared Territories) will survive the completion of the transfers or the termination of this Agreement and, for greater certainty, will continue to apply to the Lands.

ARTICLE 4 - REPRESENTATIONS AND WARRANTIES

- 4.1 **Ktunaxa Parties Representations.** The KNC represents and warrants to the Province, with the intent and understanding that they will be relied on by the Province in entering into this Agreement, that:
- a) it enters into this Agreement for, and on behalf of itself, the Ktunaxa Communities and Ktunaxa Community Members;
 - b) the Ktunaxa Community Members have provided the Ktunaxa Kinbasket Treaty Council with a mandate to negotiate an AIP and a Final Agreement;
 - c) it has the legal power, capacity and authority to enter into and to carry out its obligations under this Agreement on its own behalf and on behalf of the Ktunaxa Parties;
 - d) any company designated by the KNC on behalf of the Ktunaxa Parties for the purposes of this Agreement will be a Designated Company;

- e) any Designated Company will have the legal power, capacity and authority to enter into and to carry out its obligations under each agreement and transaction to which it is a party in accordance with this Agreement; and
- f) the Province has fulfilled its obligation to consult with Ktunaxa Parties in relation to the transfer of the Lands to a Designated Company and the Permitted Encumbrances on the Lands.

4.2 **Provincial Representations.** The Province represents and warrants to the Ktunaxa Parties, with the intent and understanding that they will be relied on by the Ktunaxa Parties in entering into this Agreement, that:

- a) it has the legal power, capacity and authority to enter into this Agreement; and
- b) on satisfaction or waiver of the conditions precedent under 5.2, it will have the legal power, capacity and authority to transfer the fee simple title to the Lands to a Designated Company as contemplated by this Agreement.

ARTICLE 5 – CONDITIONS PRECEDENT

5.1 **Band Council Resolution.** Prior to the execution of this Agreement, the KNC will deliver to the Province a Band Council Resolution of each Ktunaxa Community authorizing the KNC to execute this Agreement and to make the covenants, acknowledgements and representations included therein on its own behalf and on behalf of the Ktunaxa Communities and Ktunaxa Community Members.

5.2 **Conditions Precedent to Land Transfers.** The obligation of the Province to transfer any of the Lands to the Ktunaxa Parties 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, when any expenditure in respect of an obligation may be required, to make that expenditure;
- b) the Province and Canada reaching an agreement satisfactory to the Province, in its sole discretion, on cost-sharing the value of the Lands for treaty settlement purposes;
- c) the representations and warranties of the Ktunaxa Parties under this Agreement being true and correct on the applicable Closing Date;

- d) the Province being satisfied that it has fulfilled any consultation obligations it may have with respect to assertions of Aboriginal Rights to the Lands by First Nations other than the Ktunaxa Nation;
 - e) surveys for the Lands which meet the requirements for registration in the Land Title Office having been completed on or before the applicable Closing Date; and
 - f) the Province having given written notice to the KNC that the minister responsible has authorized the disposition of the Lands in accordance with provincial law.
- 5.3 **Satisfaction of Conditions Precedent.** The Province will not be required to satisfy the conditions precedent under 5.2 until such time as the KNC has notified the Province in writing that it is prepared to proceed with the transfer of the Lands under this Agreement.
- 5.4 **Waiver of Conditions Precedent.** The conditions precedent set out in 5.2 are for the sole benefit of the Province and may be waived by the Province on written notice to the KNC.

ARTICLE 6 – TRANSFER OF LANDS

- 6.1 **Pre-Closing Deliveries by the KNC.** Within 60 days of written notice under 5.3, the KNC will deliver to the Province a direction identifying the Designated Company that will take fee simple title to the Lands under 6.2.
- 6.2 **Closing Deliveries by the Province.** Subject to the Permitted Encumbrances and the terms of this Agreement, including the satisfaction or waiver of the conditions precedent under 5.1 and 5.2, the Province will provide the Designated Company identified under 6.1 with a Crown Grant to the Lands within 120 days after the issuance of a ministerial order under 5.2(f).
- 6.3 **Closing Deliveries by the KNC.** Not less than 14 days before the Closing Date, the KNC will execute and deliver, or cause to be executed and delivered, or deliver, as the case may be, to the Province:
- a) a restrictive covenant granted by the Designated Company in the form attached as Schedule 4 in relation to the applicable Lands;
 - b) an agreement executed by the Designated Company in the form attached as Schedule 5 in relation to the applicable Lands;

- c) a certificate signed by an officer of the Designated Company in the form attached as Schedule 6 confirming the Designated Company's GST registration number and registered status;
- d) a letter of undertaking signed by the Ktunaxa Parties' legal counsel undertaking that the restrictive covenant (Schedule 4) will be filed concurrently with the Crown Grant; and
- e) all such other documents that may be necessary or advisable for the Ktunaxa Parties or a Designated Company to provide to complete the transactions contemplated under this Agreement.

6.4 **Registration of Lands.** Subject to the Final Agreement, all Lands transferred under 6.2 will be registered in the Land Title Office.

6.5 **Closing Procedure.** The Parties' respective legal counsel will agree on and confirm in writing the manner in which the documents necessary or advisable to transfer and register the Lands will be produced, managed, exchanged, and delivered. Without limiting the generality of the foregoing, the legal counsel responsible for registering the transfer of the Lands will:

- a) provide a letter of undertaking to legal counsel for the other Party;
- b) use the Land Title and Survey Authority electronic filing system; and
- c) provide all documents filed under 6.5(b) to legal counsel for the other Party.

ARTICLE 7 – CONDITION OF LANDS

7.1 **Lands "As Is".** The Ktunaxa Parties acknowledge and agree that any of the Lands acquired by a Designated Company under this Agreement are acquired "as is".

7.2 **Viability of Lands.** The Ktunaxa Parties acknowledge and agree that the Province has not given any representation or warranty concerning:

- a) physical access to the Lands including, without limitation, overland access;
- b) the economic feasibility of the development of the Lands;
- c) the fitness of the Lands for any particular use, including the intended use of it by the Ktunaxa Parties or by a Designated Company; and

- d) the provisions of any enactments or bylaws of any governmental body which relate to the development, use and occupation of the Lands.

7.3 Environmental Condition. The Ktunaxa Parties:

- a) waive the requirement, if any, of the Province to provide a site profile as defined in the *Environmental Management Act* for any of the Lands; and
- b) acknowledge and agree that the Province has not given any representation or warranty concerning the condition of the Lands, including surface water and groundwater, environmental or otherwise, including the presence or absence of any toxic, hazardous, dangerous or potentially dangerous substances on or under the Lands and on or under any surrounding or neighbouring land and the current and past uses of the Land and any surrounding or neighbouring land.

7.4 Environmental Remediation. The Ktunaxa Parties will from and after the Closing:

- a) assume all environmental liabilities relating to the Lands including, but not limited to, all liability for the clean-up of any toxic, hazardous, dangerous or potentially dangerous substances or conditions on or under the Lands or migrating from the Lands, including surface water and groundwater;
- b) release the Provincial Agencies from and against all claims, demands, liabilities, losses, damages, costs, actions, causes of action, suits and proceedings with respect to all environmental liabilities relating to the Lands, including, but not limited to, any contamination or any other toxic, hazardous, dangerous or potentially dangerous substances migrating from the Lands; and
- c) indemnify and save harmless the Provincial Agencies from and against all claims, demands, liabilities, losses, damages, costs or expenses suffered or incurred by them after the Closing arising out of or in connection with all environmental liabilities relating to the Lands, including, but not limited to, any contamination or any other toxic, hazardous, dangerous or potentially dangerous substances migrating from the Lands.

ARTICLE 8 – ENCUMBRANCES

8.1 Permitted Encumbrances. The Ktunaxa Parties acknowledge that they are familiar with the Permitted Encumbrances and accept fee simple title to the Lands subject to the Permitted Encumbrances and covenants not to do, or allow

to be done, anything that would interfere with any rights under any of the Permitted Encumbrances or that would otherwise result in any claim against the Province by anyone claiming by, through or under a Permitted Encumbrance.

8.2 **Finalization of Permitted Encumbrances.** The Parties acknowledge that between the execution of this Agreement and the registration of the Lands with the Land Title and Survey Authority:

- a) the Permitted Encumbrances may require updating;
- b) the Permitted Encumbrances will be as identified and agreed by the Parties on the Closing Date;
- c) Schedule 2 (Permitted Encumbrances) and Schedule 3 (Instruments of Registration) will be revised and will, as revised, form part of this Agreement; and
- d) the Permitted Encumbrances will be subject to the Final Agreement.

ARTICLE 9 – TRANSACTION COSTS

9.1 **Property Transfer Tax and Other Costs.** The Province is responsible for the following costs in connection with the transfer of the Lands:

- a) the costs or fees associated with the preparation of Crown Grants or any other documents required to register the Lands and Permitted Encumbrances including, without limitation, any fees charged by the Land Title and Survey Authority; and
- b) property transfer tax payable under the *Property Transfer Tax Act* which, for greater certainty, the Province agrees to either pay or waive.

9.2 **Property Survey Costs.** The Ktunaxa Parties are responsible for the cost associated with ensuring the Lands have a survey which meets the requirements for registration in the Land Title Office.

9.3 **Public Utility Permitted Encumbrances.** Despite 9.1 and 9.2, all costs associated with the surveying and registration of Permitted Encumbrances held by a public utility will be the responsibility of the public utility.

9.4 **GST and Charges.** The Ktunaxa Parties are responsible for any federal or provincial sales tax, including GST and any other transfer or registration charges for which the Province has not expressly agreed to accept responsibility under the terms of this Agreement.

- 9.5 **Annual Taxes and Other Costs.** Subject to the Final Agreement, and in accordance with provincial law, the Designated Company is responsible for any and all annual taxes payable in respect of the Lands. For greater certainty, on and after the applicable Closing Date, the Province is not required to assume financial or other obligations with respect to the Lands.

ARTICLE 10 - OTHER COVENANTS

- 10.1 **Other Ktunaxa Parties Covenants.** The Ktunaxa Parties further acknowledge and covenant that:
- a) in order to preserve the possibility of the Lands becoming “Ktunaxa Lands” in accordance with the Final Agreement, the Ktunaxa Parties will not permit the Designated Company to dispose of its fee simple estate in the Lands for a period of time commencing on the applicable Closing Date and ending on the earlier of:
 - i. the 10 year anniversary of the Closing Date; or
 - ii. the Effective Date;
 - b) any of the Lands that may be transferred to a Designated Company in accordance with this Agreement will not be “lands reserved for the Indians” within the meaning of section 91(24) of the *Constitution Act, 1867* or a reserve within the meaning of the *Indian Act* and at no time after Closing will the Ktunaxa Parties seek to add any of the Lands to the reserve lands of any of the Ktunaxa Communities; and
 - c) subject to 11.1, the Lands are subject to provincial and local government laws, including applicable zoning, land use, land development and property tax laws, and at no time after Closing will the Ktunaxa Parties challenge the applicability of provincial laws to the Lands.
- 10.2 **Disposition of Interests in Lands.** Despite 10.1(a), the Ktunaxa Parties may charge or encumber the Lands provided that the KNC advises the intended charge or encumbrance holder in writing that the Lands will, on the Effective Date be transferred by the Designated Company to the Ktunaxa Nation and will become Ktunaxa Lands.
- 10.3 **Indemnity for Charges.** Subject to 10.4, the Ktunaxa Parties will indemnify and save harmless the Province and all Provincial Officials from any and all damages, losses, liabilities or costs that they may suffer or incur in connection with or as a result of any suit, action, claim, proceeding or demand arising in connection with any Permitted Encumbrance, any charge or encumbrance

granted by the Ktunaxa Parties under 10.2 or the transfer of the fee simple estate in the Lands to the Ktunaxa Parties

- 10.4 **Overlaps and Claimed Shared Territories.** 10.3 does not apply to damages, losses, liabilities or costs that the Province or a Provincial Official may suffer or incur in connection with or as a result of any suit, action, claim, proceeding or demand brought by any other aboriginal group against the Province or any Provincial Official with respect to the transfer of the Lands to the Designated Company on behalf of the Ktunaxa Parties in accordance with this Agreement.
- 10.5 **Failure to Ratify.** The restriction on the disposition of the Lands under 10.1(a) will not apply where the Final Agreement is not signed by the authorized representative of the Parties or Canada, or the Final Agreement is not approved, given effect, declared valid and given the force of law under federal law and provincial law.
- 10.6 **Registration of Unregistered Interests.** The Ktunaxa Parties will consent, or will cause the Designated Company to consent, to the registration of any interests identified in Schedule 2 Part 2 which are not registered against the applicable Lands in the Land Title Office on or after the Closing Date.

ARTICLE 11 – STATUS OF LANDS ON EFFECTIVE DATE

- 11.1 **Status of Lands on Effective Date.** As part of the Final Agreement negotiations, the Parties will negotiate the status of the Lands transferred under this Agreement to the Ktunaxa Nation as “Ktunaxa Lands” within the meaning of the Final Agreement.

ARTICLE 12 – SHARED TERRITORIES

- 12.1 **Shared Territories.** The Ktunaxa Parties will discuss issues related to overlaps and claimed shared territories with respect to the Lands with relevant First Nations and will make reasonable efforts to resolve any of those issues.
- 12.2 **Other First Nations’ Litigation.** In the event of any action, proceeding, suit, claim or demand whatsoever, whether known or unknown, and whether in law, in equity or otherwise, brought by any other aboriginal group against the Province or any Provincial Official with respect to the transfer of the Lands to the Designated Company on behalf of the Ktunaxa Parties in accordance with this Agreement, the Ktunaxa Parties will provide the Province with reasonable assistance, upon request, in support of its defence of the action, proceeding, suit, claim or demand.

ARTICLE 13 – LITIGATION

13.1 **Existing Legal Proceedings.** The Parties:

- a) agree that the proceedings in *Ktunaxa Nation Council and Kathryn Teneese, on their own behalf and on behalf of all citizens of the Ktunaxa Nation v. Minister of Forests, Lands and Natural Resource Operations* (B.C.S.C., Vancouver Registry No. S128500) regarding the Province's decision to enter into the Jumbo Glacier Resort Master Development Agreement do not require abeyance for the purposes of this Agreement; and
- b) acknowledge that there is no other existing litigation which requires abeyance for the purposes of this Agreement.

ARTICLE 14 - DISPUTE RESOLUTION

- 14.1 **Representatives.** If a dispute arises between the Province and the Ktunaxa Parties regarding the interpretation of a provision of this Agreement, the Parties or their duly appointed representatives will meet as soon as is practicable to attempt to resolve the dispute.
- 14.2 **Senior Representatives.** If the Parties are unable to resolve differences at the appropriate level, the interpretation issue will be raised to more senior levels of the Province and the KNC.
- 14.3 **Other Means.** The Parties may choose other appropriate approaches to assist in reaching resolution of the interpretation issue.

ARTICLE 15 - NOTICES

- 15.1 **Notices.** Any notice, document, statement, report, demand or grant that any Party may be required or may desire to give to any other Party under this Agreement must be in writing, unless otherwise specified herein, and will be deemed validly given to and received by the addressee, 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:

Deputy Minister
Ministry of Aboriginal Relations and Reconciliation
P.O 9100 Box Stn. Prov. Govt.
Victoria, B.C. V8W 9B1

Fax: (250) 387-6073

and if to the Ktunaxa Parties:

Ktunaxa Nation Council
7468 Mission Road
Cranbrook, BC V1C 7E5
Attention: Chair

Fax: (250) 489-2438

- 15.2 **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.

ARTICLE 16 - GENERAL

- 16.1 **Entire Agreement.** This Agreement is the entire agreement between the Parties in respect of the subject matter of this Agreement and, except as set out in this Agreement, there is no representation, warranty, collateral agreement, condition, right or obligation affecting this Agreement. The Schedules and Appendices to this Agreement form part of this Agreement.
- 16.2 **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.
- 16.3 **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.

- 16.4 **Successors.** This Agreement will enure to the benefit of and be binding on the Ktunaxa Parties and their successors and the Province.
- 16.5 **No Admissions.** Nothing in this Agreement will be construed as an:
- a) admission by the Province of the validity of any claim by the Ktunaxa Parties to a specific treaty or aboriginal right or aboriginal title within the meaning of section 35 of the *Constitution Act, 1982*; or
 - b) acknowledgment by the Province that it has an obligation to provide financial or economic accommodation to the Ktunaxa Parties.
- 16.6 **Not a Treaty.** This Agreement does not:
- a) constitute a treaty or land claims agreement within the meaning of section 25 or 35 of the *Constitution Act, 1982*; or
 - b) recognize, affirm, define, deny, limit or amend any aboriginal rights or titles or any responsibilities of the Parties except as set out in this Agreement.
- 16.7 **No Fettering.** Nothing in this Agreement will be interpreted in a way that fetters the discretion given to any provincial decision-making authority.
- 16.8 **Amendment.** This Agreement may be amended from time to time by agreement of the Parties in writing.
- 16.9 **Governing Law.** This Agreement will be governed by and construed in accordance with the laws of the Province of British Columbia.
- 16.10 **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:

SIGNED in the presence of

Martin Osberg this 27th day
of March, 2013 at
Vancouver, B.C.:

The Ktunaxa Nation Council Society,
on its own behalf and on behalf of the
Ktunaxa Nation, St. Mary's Indian
Band, Tobacco Plains Indian Band,
Lower Kootenay Indian Band and
Akisq'nuk First Nation

P.M. Osberg
Signature of witness

Kathryn Teneese
Kathryn Teneese, Chair

SIGNED in the presence of

Charles Porter this 28th day
of March, 2013 at
Victoria:

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

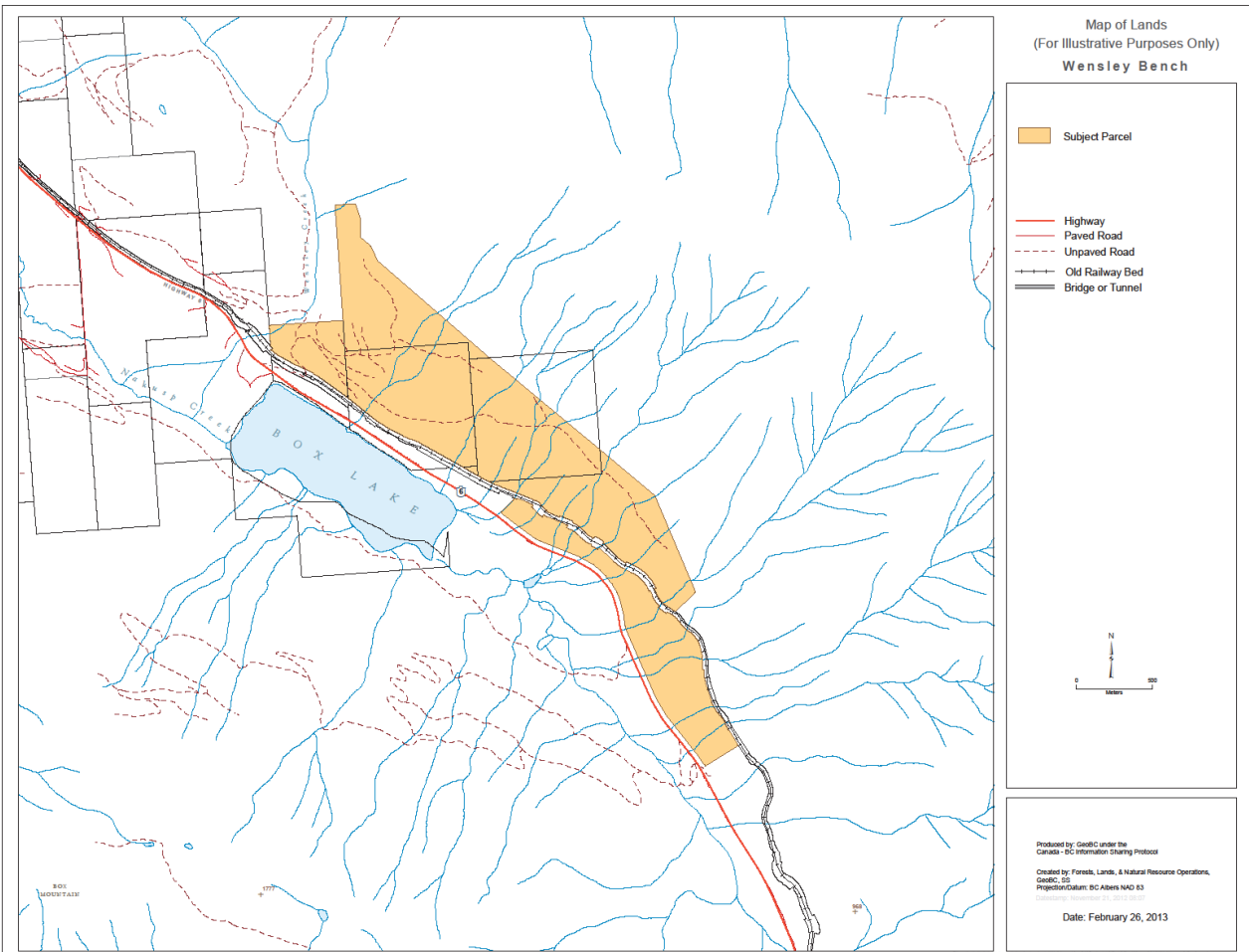
[Signature]
Signature of witness

Ida Chong
Ida Chong, Minister

Schedule 1 – Map of Lands (For Illustrative Purposes Only)

This map is representative only: the survey plan deposited in the Land Title Office (LTO) upon registration supersedes this representative map upon its deposit in the LTO. The official record of the boundaries and extent of the land will be that registered in the LTO as per this Agreement.

For greater certainty, the area within the plan for the Crown Corridor identified as Highway No 6 or Plan 11919 (1979) is not included within the area of the Lands being transferred under this Agreement.



Schedule 2 Part 1 – Permitted Encumbrances
(For Discussion and Illustrative Purposes Only)

Permitted Encumbrances

all interests registered on title under the *Land Title Act* as of the Closing Date

all subsisting exceptions and reservations of interests, rights, privileges and titles contained in any previous Crown grant of the land

all exceptions and reservations contained in section 50(1) of the *Land Act*

any conditional or final water license or substituted water license issued or given under the *Water Act*, or any prior enactment of the Province of British Columbia of like effect, and to the rights of the holder of it to enter on the land and to maintain, repair and operate any works permitted on the land under the license at the date of the crown grant

all subsisting grants to, or subsisting rights of any person made or acquired under the *Mineral Tenure Act*, *Coal Act* or *Petroleum and Natural Gas Act* or under any prior or subsequent enactment of the Province of British Columbia of like effect

all other liens, charges and encumbrances granted by the Province, with the prior written consent of the Ktunaxa Nation prior to the Closing Date

the Ktunaxa Nation acknowledges that all existing interest holders and interests on the Lands may not have been identified in this Schedule prior to the execution of this Agreement and that these unidentified interests continue on the Lands

a restrictive covenant in favour of Her Majesty the Queen in right of the Province of British Columbia to be registered against the title to this property in the form attached as Schedule 4 (Additions to Reserve Restrictive Covenant)

Schedule 2 Part 2 - Permitted Encumbrances – Interests Not Registered on Title
(For Discussion and Illustrative Purposes Only)

Interests Not Registered on Title
Utility and local government Interests for hydro, telephone, cablevision, heating/natural gas, water infrastructure, storm drains, dykes and waste disposal/sewer continue on the Lands shown in Schedule 1B.

Schedule 3 – Instruments of Registration
(titles, survey plans, charges and other instruments)

Schedule 4 - Additions to Reserve Restrictive Covenant

LAND TITLE ACT

FORM C

(Section 233)

Province of
British Columbia

GENERAL INSTRUMENT-PART 1 (This area for Land Title Office Use)

Page 1 of 4 pages

1. APPLICATION: (Name, address, phone number and signature of applicant, applicant's solicitor or agent)

(Signature of Solicitor or Authorized Agent)

2. PARCEL IDENTIFIER(S) AND LEGAL DESCRIPTION(S) OF LAND:*

(PID)

(LEGAL DESCRIPTION)

3. NATURE OF INTEREST:*

Description

Document Reference

Person Entitled to Interest

(Page and paragraph)

Section 219 Covenant

Entire Document

Transferee (Grantee)

4. TERMS: Part 2 of this instrument consist of (select one only)

- | | | | |
|-----|-----------------------------|-------------------------------------|---------------------------------------|
| (a) | Filed Standard Charge Terms | <input type="checkbox"/> | D.F. No. |
| (b) | Express Charge Terms | <input checked="" type="checkbox"/> | Annexed as Part 2 |
| (c) | Release | <input type="checkbox"/> | There is no Part 2 of this instrument |

A selection of (a) includes any additional or modified terms referred to in Item 7 or in a schedule annexed to this instrument. If (c) is selected, the charge described in Item 3 is released or discharged as a charge on the land described in Item 2.

3. TRANSFEROR(S):* (Grantor)

3. TRANSFEREE(S): (Including postal address(es) and postal code(s))* (Grantee)

HER MAJESTY THE QUEEN IN RIGHT OF THE PROVINCE OF BRITISH COLUMBIA as represented by the Minister of Forests, Lands, and Natural Resource Operations, Parliament Buildings, PO Box 9049, STN PROV GOVT, Victoria, British Columbia, V8W 9E2

7. ADDITIONAL OR MODIFIED TERMS:*

N/A

8. EXECUTION(S):** This instrument creates, assigns, modifies, enlarges, discharges or governs the priority of the interest(s) described in Item 3 and the Transferor(s) and every other signatory agree to be bound by this instrument, and acknowledge(s) receipt of a true copy of the filed standard charge terms, if any.

Officer Signature(s)	Execution Date			Party(ies) Signature(s)
	Y	M	D	
				_____ By Its authorized signatory(ies):
				_____ Print Name:
				_____ Print Name:

OFFICER CERTIFICATION:

Your signature constitutes a representation that you are a solicitor, notary public or other person authorized by the *Evidence Act*, R.S.B.C. 1996, c. 124, to take affidavits for use in British Columbia and certifies the matters set out in Part 5 of the *Land Title Act* as they pertain to the execution of this instrument.

* If space insufficient, enter "SEE SCHEDULE" and attach schedule in Form E.
** If space insufficient, continue executions on additional page(s) in Form D.

TERMS OF INSTRUMENT – PART 2

WHEREAS:

- A. The Grantor is the registered owner of:

(the “Land”);

- B. Under section 219 of the *Land Title Act*, there may be registered against title to any land, conditions or covenants in favour of the Grantee that the land, or any specified portion thereof, is not to be used other than in accordance with the terms of a covenant.

NOW THEREFORE THIS AGREEMENT WITNESSETH that in consideration of the sum of One (\$1.00) Dollar now paid by the Grantee to the Grantor, the receipt and sufficiency of which is hereby acknowledged, and pursuant to section 219 of the *Land Title Act*, the Grantor covenants and agrees with the Grantee as follows:

1. The Grantor covenants and agrees that the Grantor will not, in the absence of consent by the Grantee, transfer, alienate or deal with the Land in any manner which would see it incorporated into or become part of:
 - a. Reserves or special reserves as defined in the *Indian Act*; or
 - b. “Lands reserved for the Indians” under section 91(24) of the *Constitution Act, 1867*.
2. Wherever the singular or masculine are used in this Agreement, they shall be construed as meaning the plural or feminine or body corporate where the context or the parties so require.
3. This Agreement shall enure to the benefit of and be binding upon the parties and their respective heirs, executors, administrators, successors and assigns.
4. The Grantor will indemnify and save harmless the Grantee from all actions, causes of action, claims demands, suits, losses, damages, debts, accounts, liabilities, costs, expenses and compensation of any kind, including fees of solicitors and other professional advisors, arising out of any breach, violation or non-performance by the Grantor of the covenants set out in section 1.
5. No term, condition, covenant or other provision of this Agreement will be considered to have been waived by the Grantee unless such waiver is expressed in writing by the Grantee and the waiver by the Grantee of any such term, condition, covenant or other provision of this Agreement will not be construed as or constitute a waiver of any further or other breach of that or any other term, condition, covenant or other provision of this Agreement.

6. This Agreement will be interpreted according to the laws of the Province of British Columbia.
7. Where there is a reference to an enactment of the Province of British Columbia in this Agreement, that reference includes a reference to any subsequent enactment of the Province of British Columbia of like effect and, unless the context otherwise requires, all enactments referred to in this Agreement are enactments of the Province of British Columbia.
8. If any section of this Agreement, or any part of a section, is found to be illegal or unenforceable, that part or section, as the case may be, will be considered separate and severable and the remaining parts or section, as the case may be, will not be affected and will be enforceable to the fullest extent permitted by law.
9. This Agreement will be registered as a charge against the Land pursuant to section 219 of the *Land Title Act*.

IN WITNESS WHEREOF the Grantor has executed this Agreement on Form C attached.

END OF DOCUMENT

Schedule 5 - Designated Company Agreement

This Agreement is dated for reference _____, 2013.

BETWEEN:

HER MAJESTY THE QUEEN IN RIGHT OF THE PROVINCE OF BRITISH COLUMBIA,
represented by the Minister of Aboriginal Relations and Reconciliation [address]

(the "Province")

AND:

_____, a company incorporated under the laws of British Columbia and
having its principle place of business at [address]

(the "Designated Company")

(collectively referred to as the "Parties" and individually referred to as a "Party")

WHEREAS:

- A. The Province and the Ktunaxa Parties have entered into an agreement dated _____ (the "Incremental Treaty Agreement") pursuant to which the Province will transfer to the Designated Company fee simple title to those lands legally described as:

[Insert Legal Description of lands]

(the "Lands")

- B. The Ktunaxa Parties and the Designated Company have agreed that, as a condition of the transfer of the Lands, the Designated Company will execute and deliver this Agreement on the terms set out below.

NOW THEREFORE the Province and the Designated Company agree as follows:

1. **Defined Terms.** The terms "Province" and "Ktunaxa Parties" and any other capitalized terms used in this Agreement and defined in the Incremental Treaty Agreement will have the meaning given to those terms in the Incremental Treaty Agreement.
2. **Environmental Condition.** The Designated Company waives the requirement, if any, of the Province to provide a site profile as defined in the *Environmental Management Act* in connection with its acquisition of the Lands.
3. **ITA Binding.** Without limiting the generality of the foregoing, the terms of the Incremental Treaty Agreement relating to the Lands which are for the benefit of the Province are legally binding on the Designated Company as if the Designated Company

was a party to the Incremental Treaty Agreement, including, without limitation, 4.1, 10.1-10.4 and 10.6 of the Incremental Treaty Agreement.

4. **Enforcement of ITA.** The Province may, in its sole discretion, enforce any term or condition of the Incremental Treaty Agreement, including any obligation, covenant or indemnity of the Ktunaxa Parties, against the Designated Company or the Ktunaxa Parties or the Designated Company and any of the Ktunaxa Parties, as applicable.
5. **Legal Advice.** The Designated Company acknowledges that it has had full opportunity to review the terms and conditions of this Agreement and the Incremental Treaty Agreement, a copy of which is attached as Schedule A, and to seek independent legal advice with respect to their terms and conditions.
6. **Entire Agreement.** This Agreement is the entire agreement between the Parties in respect of the subject matter of this Agreement and, except as set out in this Agreement, there is no representation, warranty, collateral agreement, condition, right or obligation affecting this Agreement. The Schedules and Appendices to this Agreement form part of this Agreement.
7. **Further Acts and Assurances.** 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.
8. **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.
9. **Successors.** This Agreement will enure to the benefit of and be binding on the Designated Company and its successors and the Province.
10. **No Admissions.** Nothing in this Agreement will be construed as an:
 - a) admission by the Province of the validity of any claim by the Ktunaxa Parties to a specific treaty or aboriginal right or aboriginal title within the meaning of section 35 of the *Constitution Act, 1982*; or
 - b) acknowledgment by the Province that it has an obligation to provide financial or economic accommodation to the Ktunaxa Parties.
11. **Not a Treaty.** This Agreement does not:
 - a) constitute a treaty or land claims agreement within the meaning of section 25 or 35 of the *Constitution Act, 1982*; or

- b) recognize, affirm, define, deny, limit or amend any aboriginal rights or titles or any responsibilities of the Parties except as set out in this Agreement.
12. **No Fettering.** Nothing in this Agreement will be interpreted in a way that fetters the discretion given to any provincial decision-making authority.
13. **Amendment.** This Agreement may be amended from time to time by the Parties in writing.
14. **Governing Law.** This Agreement will be governed by and construed in accordance with the laws of the Province of British Columbia.
15. **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.

Signed by the Designated Company as of _____, 20__ by:

[Name of Company]

Per: Authorized Signatory

SIGNED on behalf of HER MAJESTY THE QUEEN IN RIGHT OF THE PROVINCE OF BRITISH COLUMBIA by the Minister of Aboriginal Relations and Reconciliation or the Minister's authorized representative as of _____, 20_____:

Minister of Aboriginal Relations and Reconciliation
or the Minister's authorized representative

Schedule 6 – GST Certificate

Schedule 7 – Map of Ktunaxa Territory in British Columbia

