



**KTUNAXA
NATION**



**BRITISH
COLUMBIA**
The Best Place on Earth

STRATEGIC ENGAGEMENT AGREEMENT

Between the Province of British Columbia and Ktunaxa Nation

This Agreement is dated for reference __22__ day of __October__, 2010

BETWEEN

**HER MAJESTY THE QUEEN IN RIGHT OF
THE PROVINCE OF BRITISH COLUMBIA**

as represented by the Minister of Forests and Range (and Minister Responsible for the Integrated Land Management Bureau), Minister of Environment, Minister of Energy, Mines and Petroleum Resources, Minister of Tourism, Culture and the Arts, Minister of Transportation and Infrastructure, Minister of Agriculture and Lands, and the Minister of Aboriginal Relations and Reconciliation
(hereinafter the “Province”)

and

KTUNAXA NATION

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

(each a “Party” and collectively the “Parties”)

Whereas Ktunaxa Nation has Aboriginal Rights within Ktunaxa Territory that are recognized and affirmed under section 35(1) of the *Constitution Act, 1982*;

Whereas Ktunaxa Nation recognizes and supports the United Nations Declaration on the Rights of Indigenous Peoples;

Whereas the Parties intend to negotiate arrangements to share the revenue and benefits generated from land and resources within Ktunaxa Territory;

Whereas Ktunaxa Nation, the Province and Canada are engaged in treaty negotiations;

Whereas the Province seeks to fulfill its consultation and accommodation obligations, including the fulfillment of its duty to consult and, where appropriate, accommodate in a manner that addresses the interests of the Parties;

Whereas the Parties are interested in moving towards shared decision-making in relation to land and resources within Ktunaxa Territory;

Whereas Ktunaxa Nation is seeking recognition of its jurisdiction in relation to land and resources within Ktunaxa Territory and sees this Agreement as a step towards achieving this objective;

Whereas the Parties hold differing views with regard to sovereignty, jurisdiction, title, and ownership and, without prejudice to their differing views, intend to work collaboratively and are committed to engaging across a spectrum of land and resource issues to improve business relationships, their government-to-government relationship and fulfill legal obligations;

Whereas the Parties are committed to closing the socio-economic gaps, further to the objectives of the New Relationship and Transformative Change Accord; and

Whereas the Parties recognize that the successful implementation of this Agreement is an incremental step towards the fuller implementation of a government-to-government relationship through a potential treaty with Ktunaxa Nation or other processes and provides opportunities to build the necessary cooperative working relations that will enhance Ktunaxa Nation's efforts towards self-government.

Therefore the Parties agree as follows:

DEFINITIONS

1 In this Agreement

“Aboriginal Rights” means asserted or determined aboriginal rights, including aboriginal title, as recognized and affirmed by section 35(1) of the *Constitution Act, 1982*;

“Agreement” means this Strategic Engagement Agreement including its attached Appendices and Schedules;

“Applicant” means any person, corporation, society, entity or agency, including the Province and any agent of the Province, that makes an Application;

“Application” means an application submitted to a Provincial Agency, on or after the Effective Date, for an authorization, licence or permit that:

- (a) relates to or impacts on provincial Crown lands or resources within Ktunaxa Territory; or
- (b) may be reasonably determined to affect Ktunaxa Aboriginal Rights,

and includes the application document, any materials for amendment, renewal or replacement approvals, and all supporting material that is submitted by an Applicant and received by one of the Provincial Agencies implementing this Agreement;

“Application Package” means an application package as set out in section 2(2) of Appendix B;

“**Application Report**” means a report prepared by a Provincial Decision Maker that sets out how Ktunaxa Nation’s Aboriginal Rights and any written comments provided by the KLRA in response to an Application have been addressed;

“**Business Day**” means any day other than Saturday, Sunday, a statutory holiday and those non-business days identified by Ktunaxa Nation in accordance with section 1(4) of Appendix C;

“**Effective Date**” means the date on which the last of the signatories has signed this Agreement;

“**Engagement Process**” means the engagement process set out in Appendix B, including Schedule 1;

“**First Nations Initiatives Division**” means that Division of the Integrated Land Management Bureau under the responsibility of the Minister of Forests and Range;

“**Government-to-Government Forum**” means the provincial-Ktunaxa forum to be established under section 5 and as set out in Appendix C;

“**Implementation Plan**” means the implementation plan for this Agreement which the Parties will complete and maintain as set out in section 20;

“**Joint Resources Forum**” means the joint resources forum established in accordance with Appendix C and whose role is set out in section 2 of Appendix C;

“**Ktunaxa Communities**” means Akisq’nuk First Nation, St. Mary’s Indian Band, Tobacco Plains Indian Band, and Lower Kootenay Indian Band;

“**Ktunaxa Engagement Request**” means a request from Ktunaxa Nation to a Provincial Agency for engagement and discussion on an identified issue related to the use of land and resources as set out in the Engagement Process;

“**Ktunaxa Interests**” means the Aboriginal Rights of Ktunaxa Nation and its interests within Ktunaxa Territory set out in section 3(1);

“**Ktunaxa Land and Resources Agency (KLRA)**” means the agency established by KNC that

- (a) reports to the Ktunaxa Land and Resources Council,
- (b) represents the interests of, and engages with, Ktunaxa Communities, as appropriate, and
- (c) has the authority to engage with the Province on land and resource management issues in accordance with the Engagement Process set out in this Agreement;

“**Ktunaxa Land and Resources Council**” means the standing committee of KNC that exercises authority on behalf of KNC with respect to land and resources;

“**Ktunaxa Nation**” means the collectivity of Ktunaxa People and includes the Ktunaxa Communities and their members and, for the purposes of this Agreement is represented by KNC;

“**Ktunaxa People**” means all those persons who are collectively entitled to exercise the Aboriginal Rights of Ktunaxa Nation;

“**Ktunaxa Responsible Official**” means the Director, Ktunaxa Land and Resources Agency, or his or her designate and his or her successors;

“**Ktunaxa Territory**” means, for the purposes of this Agreement, that portion of the Ktunaxa traditional territory that is set out in Appendix A;

“**Provincial Agency**” means a provincial ministry, agency or office, other than the Environmental Assessment Office, that is represented in this Agreement including its Provincial Decision Makers and any person who has authority or provincial direction to carry out consultation;

“**Provincial Decision Maker**” means an official or designate of any Provincial Agency, with authority to make decisions with respect to an Application or a matter that requires engagement in accordance with this Agreement;

“**Provincial Engagement Request**” means a request from a Provincial Agency to Ktunaxa Nation for engagement and discussion on an identified issue related to the use of land and resources as set out in the Engagement Process;

“**Provincial Interests**” means the interests of the Province set out in section 3(2);

“**Provincial Responsible Official**” means the First Nations Initiative Division manager (Kootenays) and his or her successors;

“**Responsible Officials**” means the Ktunaxa Responsible Official and the Provincial Responsible Official; and

“**Senior Forum**” means the senior forum established in accordance with Appendix C and whose role is set out in section 3 of Appendix C.

PURPOSE

- 2 (1) This Agreement is intended to foster a positive and respectful government-to-government relationship that will
 - (a) create an environment in which the Parties, as two governments, can work creatively and collaboratively to realize the full potential of the New Relationship

vision regarding land and natural resources issues and the Transformative Change Accord,

- (b) achieve meaningful engagement, a shared understanding of each Party's respective interests and better informed decisions,
- (c) provide an Engagement Process that helps the Parties to focus their respective resources on what each of them considers to be the most significant Ktunaxa Interests and Provincial Interests,
- (d) establish effective procedures for meaningful consultation and accommodation,
- (e) provide funding to support Ktunaxa Nation's participation in the Engagement Process set out in this Agreement,
- (f) increase process certainty for each of the Parties regarding strategic and operational land and resource management issues,
- (g) create an environment to help the Parties move towards shared decision-making respecting strategic and operational land and natural resource management issues,
- (h) support the Parties' pursuit of opportunities for sharing resource-revenues and other benefits, through the negotiation of further agreements which may include project-specific agreements,
- (i) support the negotiation of sector- and project-specific agreements by Provincial Agencies and Ktunaxa Nation,
- (j) support treaty negotiations between the Province, Ktunaxa Nation and Canada by establishing a government-to-government relationship that may inform the negotiation of appropriate treaty-related provisions that address the management relationship between the Parties respecting the management of land and resources within Ktunaxa Territory, and
- (k) support other related government-to-government discussions regarding land and resources.

INTERESTS

3 (1) Ktunaxa Interests include the following:

- (a) enhancing the governance capacity of Ktunaxa Nation with regard to land and resources and achieving recognition of its jurisdiction;
- (b) acting as stewards of land and resources and being involved at all levels of decision-making processes to carry out effective land and resource management in accordance with Ktunaxa laws, cultural values and priorities;

- (c) ensuring Ktunaxa Nation's Aboriginal Rights are not infringed;
 - (d) exercising and protecting Ktunaxa Nation's Aboriginal Rights within Ktunaxa Territory;
 - (e) identifying, protecting, and managing past, present and future cultural resources, areas and landscapes, that contain values significant to Ktunaxa Nation, including
 - (i) contemporary and historic ceremonial sites,
 - (ii) archaeological sites,
 - (iii) traditional use, spiritual, and medicinal plant harvesting areas, and
 - (iv) oral history, artefacts, and archival resources;
 - (f) managing and mitigating potentially negative social and environmental impacts associated with the development of land and resources; and
 - (g) sharing in the resource revenues and other benefits generated from any development of, or activity in, lands and resources within Ktunaxa Territory.
- (2) Provincial Interests include the following:
- (a) working cooperatively with Ktunaxa Nation to sustainably manage land and natural resources;
 - (b) achieving a better understanding of Ktunaxa Interests and their relationship to Provincial Interests;
 - (c) fulfilling the ongoing duty of the Province to consult and accommodate;
 - (d) effectively carrying out land and resource management in accordance with all applicable provincial laws;
 - (e) maximizing collaboration between Provincial Agencies to increase the efficiency and effectiveness of the consultation and accommodation process for all Parties;
 - (f) improving the investment environment for industries;
 - (g) implementing collaborative approaches to resolving disputes between the Parties;
 - (h) strengthening the overarching relationship between Ktunaxa Nation and the Province, building on existing agency-specific agreements, supporting the treaty process and facilitating a smooth transition to treaty implementation; and

- (i) sharing the revenues and benefits of land and resource development consistent with the principles of the New Relationship and the goals of the Transformative Change Accord.

RECOGNITION AND RESPECT

- 4 (1) For the purposes of this Agreement, the Parties recognize and respect Ktunaxa Interests and Provincial Interests and look forward to further developing their government-to-government relationship in order to advance their individual and mutual interests, in an open and respectful manner.

GOVERNMENT-TO-GOVERNMENT FORUM

- 5 (1) A Government-to-Government Forum will be established in accordance with Appendix C and it will be the primary mechanism for implementing this Agreement.

ENGAGEMENT PROCESS

- 6 (1) The Engagement Process will be the means through which the Parties will engage on Applications, potential Applications, Provincial Engagement Requests and Ktunaxa Engagement Requests.
 - (2) The Parties acknowledge that the Engagement Process will constitute the means by which Provincial Agencies will seek to fulfill the Province's consultation obligations and, where appropriate, accommodation obligations in relation to Ktunaxa Nation.
 - (3) The Parties agree that a Provincial Agency may request an Applicant to undertake specific procedural aspects of the consultation process provided the KLRA is notified in a timely manner by the Provincial Agency of the request.
 - (4) A Provincial Agency making a request under subsection (3) will recommend that the Applicant engage with the KLRA in a manner consistent with this Agreement.
 - (5) Either Party may request that the Parties review the effectiveness of the processes implemented under subsections (3) and (4).
 - (6) Actions undertaken by an Applicant under subsections (3) and (4) may be relied upon by the Province in seeking to fulfill its consultation obligations in relation to Ktunaxa Nation, but do not release the Province from its consultation obligations and any other obligations set out in this Agreement.

FUNDING

- 7 (1) To implement this Agreement, the Province will provide KNC with an amount not to exceed \$1,651,000 as follows:
 - (a) an advance of \$300,000 on the Effective Date; and

- (b) \$1,351,000 in accordance with Appendix D and quarterly reports as set out in Appendix E.
- (2) Notwithstanding any other provision of this Agreement, the payments to be provided by the Province to KNC are subject to
 - (a) there being a sufficient appropriation, as defined in the *Financial Administration Act*, for the fiscal year in which the payment becomes due to enable the Province to make such payment, and
 - (b) Treasury Board, as defined in the *Financial Administration Act*, not having controlled or limited expenditure under any appropriation necessary in order to make such payment.

SOCIO-ECONOMIC OPPORTUNITIES AND REVENUE- AND BENEFIT-SHARING

- 8** (1) The Parties will, in accordance with Appendix C,
- (a) identify socio-economic opportunities, including potential revenue- and benefits-sharing opportunities respecting new major resource projects within Ktunaxa Territory, and
 - (b) attempt to negotiate agreements respecting the opportunities identified in paragraph (a).
- (2) Nothing in this Agreement precludes Ktunaxa Nation from continuing to negotiate and implement revenue- and benefits-sharing agreements with proponents and Applicants.

LINKAGE TO TREATY

- 9** (1) The Parties acknowledge that the government-to-government relationship established under this Agreement may serve as a basis for addressing any commitment that may be included in a treaty to negotiate and attempt to reach agreement on a relationship between the Province and Ktunaxa Nation respecting the management of land and resources within Ktunaxa Territory.

EXISTING AGREEMENTS AND PROTOCOLS

- 10**(1) The following Memorandums of Understanding between Ktunaxa Nation and the Province are amended:
- (a) Memorandum of Understanding to Establish an Effective Government-to-Government Working Relationship for the Management of Fish and Wildlife;
 - (b) Memorandum of Understanding to Establish an Effective Government-to-Government Working Relationship for the Management of Provincial Parks;

- (c) Memorandum of Understanding to Establish an Effective Government-to-Government Working Relationship for Energy and Mineral Development;
 - (d) Memorandum of Understanding to Establish an Effective Government-to-Government Working Relationship for Land Use Planning; and
 - (e) Memorandum of Understanding to Establish an Effective Government-to-Government Working Relationship for the Management of Archaeological Resources.
- (2) On the Effective Date, the Memorandums of Understanding listed in subsection (1) are amended to include the following clause:

“If a Strategic Engagement Agreement (SEA) is signed by the Parties to this MOU, that SEA will supercede and replace all provisions of this MOU, for as long as the SEA is in full force and effect.”

CONFIDENTIALITY AND INFORMATION SHARING

- 11**(1) Ktunaxa Nation is a custodian of cultural information, some of which is owned by individuals, and is therefore required to ensure that this information is managed and shared according to the owner’s wishes.
- (2) The Province will provide to Ktunaxa Nation access to any publicly available land and resources information related to Ktunaxa Territory for which the Province is a custodian or steward, including data sets and monitoring information.
 - (3) The Parties acknowledge that information that may be provided by Ktunaxa Nation may be confidential in nature, and if so identified in writing, the Province will make all reasonable efforts to prevent the disclosure of that information to the public, except in accordance with the *Freedom of Information and Protection of Privacy Act* or as otherwise required by law.
 - (4) If the Province receives a request under the *Freedom of Information and Protection of Privacy Act*, for disclosure of information received from Ktunaxa Nation, the Province will provide Ktunaxa Nation with an opportunity to express its views regarding any impacts that may arise from a disclosure.
 - (5) Information provided to the Province by Ktunaxa Nation for one purpose shall not be used by the Province for other purposes without the Province first providing Ktunaxa Nation with an opportunity to update and contextualize the information.
 - (6) Ktunaxa Nation will assist the Province in determining the use, level of sensitivity and interpretation of any information it provides and the terms on which it may be shared in whole or in part with other parties.

- (7) If Ktunaxa Nation shares confidential information with the Province in accordance with subsection (3), it will only do so, unless otherwise agreed, on the following basis:
- (a) this section 11 does not apply to information that is already in the public domain, including in the Remote Access to Archaeological Data database and on other public websites;
 - (b) Ktunaxa Nation is satisfied that the Province has established and implemented measures that the Parties agree will ensure that information provided is not shared with or distributed to anyone other than Provincial employees or representatives who directly require that information for purposes under this Agreement and that the information will be returned to Ktunaxa Nation unless otherwise agreed; and
 - (c) it is satisfied with the extent to which Ktunaxa Nation is involved in the use and interpretation of the information.

REPRESENTATION AND WARRANTIES

- 12(1)** The Province represents and warrants that it has the authority to enter into this Agreement and to make the covenants and representations in this Agreement.
- (2) Ktunaxa Nation represents and warrants that
- (a) for the purposes of this Agreement it has the legal power, capacity and authority to act for, and on behalf of, Ktunaxa People and the Ktunaxa Communities,
 - (b) for the purposes of this Agreement KNC has the legal power, capacity and authority to enter into this Agreement for, and on behalf of, Ktunaxa Nation,
 - (c) this Agreement is a valid and binding obligation of KNC, and
 - (d) KNC has taken all necessary actions and obtained all necessary approvals to enter into this Agreement for and on behalf of Ktunaxa Nation and the Ktunaxa Communities and to carry out its obligations under this Agreement.

AMENDMENT

- 13(1)** Except in the case of proposed amendments of a significant nature referred to subsection (2), the process for amending this Agreement is as follows:
- (a) the Responsible Officials must exchange any proposed amendment to the Agreement in writing and provide written documentation indicating their respective representatives' support for the proposed amendment; and
 - (b) the Responsible Officials have the authority to agree to the proposed amendments and to amend the Agreement in writing after following the process set out in paragraph (a).

- (2) A proposed amendment will be considered to be of a significant nature if it includes potential changes to any of the following:
 - (a) the Parties;
 - (b) Ktunaxa Territory as depicted in Appendix A;
 - (c) section 7 (Funding);
 - (d) section 17 (General Provisions);
 - (e) section 18 (Term); and
 - (f) other matters that the Responsible Officials agree are of a significant nature and should be subject to the amendment process set out in subsection (3).
- (3) The amendment process for an amendment referred to in subsection (2) is as follows:
 - (a) the Responsible Officials must carry out the process outlined in subsection (1);
 - (b) the Responsible Official representing the Province must present the proposed amendment to the Minister responsible for the First Nations Initiative Division (currently the Minister of Forests and Range) and the Responsible Official representing KNC must present the proposed amendment to the Chair of KNC; and
 - (c) the Minister Responsible for the First Nations Initiative Division, on behalf of the Province, and the Chair of KNC, on behalf of Ktuxaxa Nation, may agree on the proposed amendment, and they have the authority to amend the Agreement in writing on behalf of their respective Parties.

AGREEMENT EVALUATION

- 14(1)** On an annual basis, the Parties will
- (a) review and evaluate the terms of this Agreement and the relationships it supports, and
 - (b) collaboratively develop options to improve this Agreement and the relationships it supports.
- (2) Two years after the Effective Date, the Parties may identify and agree on an independent evaluator to evaluate this Agreement and the relationships it has helped create, and provide non-binding recommendations to the Parties.
 - (3) The costs of any independent evaluator agreed on under subsection (2) will be shared jointly between KNC and the Province.

DISPUTE RESOLUTION

- 15(1)** The Parties acknowledge that this Agreement, including the Engagement Process, is designed to mitigate, reduce or avoid disputes over land and resources management decision-making and is intended in part to reduce the need for the Parties to use formal dispute resolution mechanisms.
- (2) In recognition of the enduring value of the government-to-government relationship supported by this Agreement and the interests of the Parties to avoid litigation, the Parties will exhaust all possible means through this Agreement to resolve any disagreement related to this Agreement, including the application of the dispute resolution provisions.
- (3) This section 15 applies to disputes arising out of the implementation or interpretation of this Agreement.
- (4) The Parties will endeavour to resolve issues or disputes that may arise about this Agreement or its implementation in a manner that fosters an improved, ongoing, and respectful government-to-government relationship between the Province and Ktunaxa Nation.
- (5) If a dispute respecting the interpretation or implementation of this Agreement arises, either Ktunaxa Nation or the Province may forward the issue to the Responsible Officials for direction or assistance.
- (6) If an issue for dispute resolution has been forwarded to the Responsible Officials, then within twenty (20) Business Days the Responsible Officials will determine whether they will take responsibility for the resolution of the dispute or redirect or recommend another form of dispute resolution.

TERMINATION

- 16(1)** Notwithstanding any other provision of this Agreement,
 - (a) either Party may terminate this Agreement by giving the other Party at least twenty (20) Business Days advance written notice of the intent to terminate the Agreement, the date of termination and the reasons for terminating the Agreement, and
 - (b) if Ktunaxa Nation, KNC or a Ktunaxa Community brings any legal action or proceeding against the Province relating to an alleged failure to adequately consult with respect to matters that are addressed by the Parties through the Engagement Process under this Agreement, such proceeding or action may be grounds for termination of this Agreement by the Province.

- (2) In the event this Agreement is terminated
 - (a) the Responsible Official for the Province will inform the Provincial Agencies that the Engagement Process ceases as of the date of termination and from that time forward cannot be relied upon to fulfill the Province's obligation to consult with Ktunaxa Nation,
 - (b) sections 11(3), 11(4), 11(5) and 11(7) survive the termination of this Agreement.
- (3) If either Party terminates this Agreement, KNC will pay to the Province any and all unspent funds provided by the Province under this Agreement.

GENERAL PROVISIONS

- 17**(1) This Agreement shall be interpreted in a manner consistent with provincial and federal law and the Constitution.
- (2) This Agreement is not a treaty or a lands claims agreement within the meaning of sections 25 and 35 of the *Constitution Act, 1982*.
- (3) This Agreement is not intended to
 - (a) create, amend, define, affirm, recognize, abrogate or derogate from any Aboriginal Rights,
 - (b) change or affect the position either Party has, or may have, regarding its jurisdiction, responsibilities or decision-making authority or be interpreted in a manner that would affect or unlawfully interfere with that decision-making authority,
 - (c) 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, or
 - (d) constitute any admission of fact or liability.
- (4) Nothing in this Agreement limits the ability of the Parties to respond to emergency circumstances.
- (5) Nothing in this Agreement is intended to alter the environmental assessment process under the *Environmental Assessment Act*.
- (6) This Agreement may be executed in counterparts.
- (7) This Agreement and any amendments to it constitute the entire Agreement between the Parties with respect to the subject matter of this Agreement, unless otherwise agreed in writing by the Parties.

- (8) There will be no presumption that any ambiguity in any of the terms of this Agreement should be interpreted in favour of either Party.
- (9) If any part of this Agreement is declared or held invalid, the invalidity of that part will not affect the validity of the remainder of the Agreement which will remain in full force and effect.
- (10) If any part of this Agreement is declared or held invalid, the Parties agree to negotiate and attempt to reach agreement on a replacement for that part with a view to achieving the intent of the Parties as expressed in this Agreement and if no agreement is reached, the Parties may agree to refer the matter to agreed-to dispute resolution processes.
- (11) All headings in this Agreement are for convenience only, do not form a part of this Agreement and are not intended to interpret, or explain the scope, extent or intent of this Agreement or any of its provisions.
- (12) In this Agreement, words in the singular include the plural, and words in the plural include the singular unless the context otherwise requires.
- (13) The use of the word “including” does not limit the generality of the preceding term or phrase.
- (14) In this Agreement, a reference to a statute includes every amendment to it, every regulation made under it and any law enacted in substitution for it or in replacement of it.
- (15) No term, condition, covenant or other provision of this Agreement will be deemed to have been waived unless the waiver is in writing and signed by the Party or Parties giving the waiver.
- (16) All references in this Agreement to a specific “section,” “subsection” or other subdivision or to an Appendix are to the section, subsection or other subdivision of, or Appendix to, this Agreement.
- (17) This Agreement will enure to the benefit of and be binding upon the Parties and their respective successors and assigns.
- (18) Unless otherwise agreed by the Parties, this Agreement may not be assigned, either in whole or in part, by either Party.
- (19) Where this Agreement contains a reference to a number of days between two events, in calculating the number of days, the day on which the first event happens is excluded and the day on which the second event happens is included.

(20) The following Appendices and Schedules are attached to and form part of this Agreement:

Appendix A Ktunaxa Territory Map;

Appendix B Engagement Process;

Schedule 1 Engagement Level Assessment Criteria;

Appendix C Government-to-Government Forum;

Appendix D Payment Schedule;

Appendix E Quarterly Report;

Appendix F Akisq'nuk First Nation Band Council Resolution;

Appendix G St. Mary's Indian Band Band Council Resolution;

Appendix H Lower Kootenay Indian Band Band Council Resolution; and

Appendix I Tobacco Plains Indian Band Band Council Resolution.

TERM

18(1) The term of this Agreement is three years from the Effective Date.

(2) The Parties may extend the term of this Agreement and will, at least six months prior to its expiry, decide whether to extend this Agreement and for what further period.

NOTICE

19(1) Where in this Agreement any notice or other communication is required to be given by any of the Parties, it will be made in writing and it will be effectively given by

- a) delivery to the address of the Party set out below, on the date of delivery,
- b) pre-paid registered mail to the address of the Party mentioned in this Agreement, on the date the registered mail is delivered,
- c) facsimile, to the facsimile number of the Party set out in this Agreement, on the date the facsimile is sent, or
- d) electronic mail (email) to the email address of the individual identified by each Party, with the subject line to state "SEA – (topic)", to receive email notices under this Agreement, on the date the email is sent.

- (2) The address, facsimile numbers and email addresses of the Parties are as follows:

Ktunaxa Nation:

Director
Ktunaxa Land and Resources Agency
7468 Mission Rd
Cranbrook BC V1C 7E5
Fax Number: (250) 489-2438
Email: rwarden@ktunaxa.org

the Province:

Manager
First Nations Initiative Division
205 Industrial Road G
Cranbrook BC V1C 7G5
Fax Number: (250) 489-8506
Email: pamela.cowtan@gov.bc.ca

IMPLEMENTATION

- 20**(1) The Parties will complete an Implementation Plan within 90 days of signing this Agreement and will revise it as required during the term of this Agreement.
- (2) The Implementation Plan will set out timelines for implementing commitments under this Agreement.
- (3) The Parties will provide each other with an opportunity to review communications regarding this Agreement prior to making them publicly available.

KTUNAXA NATION, as represented by:

<original signed by>

Chair, KNC

Date _____

**HER MAJESTY THE QUEEN IN RIGHT OF
THE PROVINCE OF BRITISH COLUMBIA**,
as represented by:

<original signed by>

Minister of Energy, Mines and Petroleum
Resources

Date _____

<original signed by>

Minister of Forests and Range (and Minister
Responsible for the Integrated Land Management
Bureau)

Date _____

<original signed by>

Minister of Transportation and Infrastructure

Date _____

<original signed by>

Minister of Aboriginal Relations and
Reconciliation

Date _____

<original signed by>

Minister of Tourism, Culture and the Arts

Date _____

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Minister of Environment

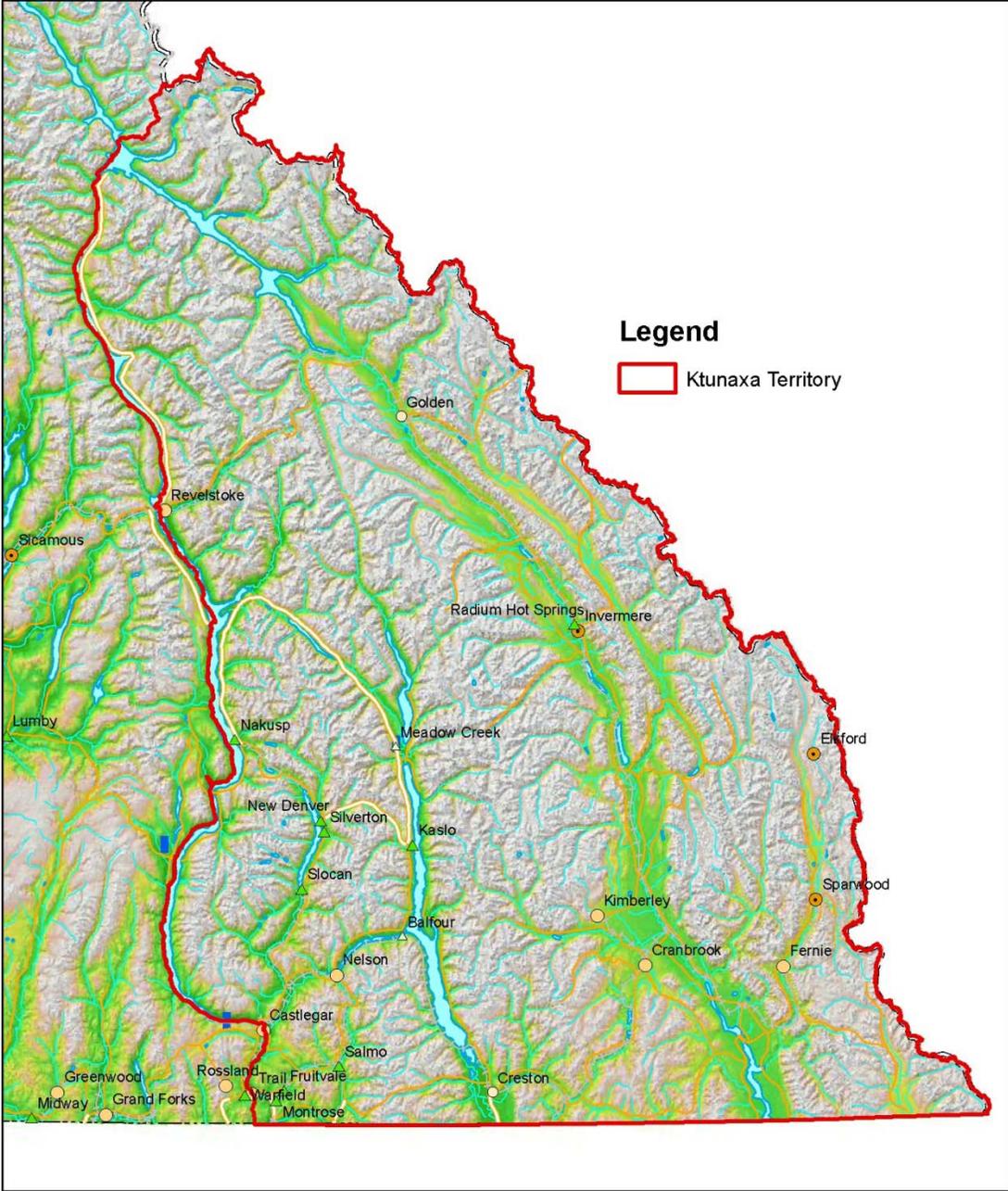
Date _____

<original signed by>

Minister of Agriculture and Lands

Date _____

APPENDIX A
KTUNAXA TERRITORY MAP



APPENDIX B
ENGAGEMENT PROCESS

GENERAL PROVISIONS

- 1 (1) The Engagement Process is a bi-lateral process intended to help the Parties achieve a better understanding of their respective interests and the potential impacts that proposed activities may have on those interests.
- (2) The terms used in this Appendix have the same meaning as in the Agreement.
- (3) This Appendix consists of sections 1 to 9 and Schedule 1.
- (4) The Engagement Process may be initiated by any of the following:
 - (a) an Application;
 - (b) a Provincial Engagement Request; or
 - (c) a Ktunaxa Engagement Request.
- (5) Nothing in this Agreement prevents the Parties from engaging prior to receipt of an Application, if they expect that an Application will be received.
- (6) The Parties agree that
 - (a) Engagement Levels 1, 2 and 3, do not apply to environmental assessments undertaken pursuant to the *Environmental Assessment Act*,
 - (b) applicable statutes, regulations and common law, including the Crown's duty to consult and accommodate, continue to apply to environmental assessments,
 - (c) this Agreement does not affect or prejudice any Party's position or views on the assessment processes or the Crown's duties in respect of environmental assessments, and
 - (d) where a project is subject to an environmental assessment under the *Environmental Assessment Act*, Engagement Levels 1, 2 and 3 continue to apply to Applications with respect to that project.
- (7) If a Provincial Decision Maker does not make a decision regarding an Application within six months of the later of:
 - (a) the date the Application was referred to the KLRA; or

- (b) if the KLRA has provided comments or recommendations on the Application, the date the Provincial Decision Maker received those comments or recommendations,

the Provincial Agency will provide the KLRA an opportunity to update any comments or recommendations regarding the Application prior to making a decision.

ENGAGEMENT PROCESS INITIATED BY AN APPLICATION

- 2 (1) Upon receipt of an Application, a Provincial Agency will assess the Application in accordance with Schedule 1 and will send an Application Package to the KLRA, unless it has determined that the Application should be addressed at Engagement Level 0, and if the Provincial Agency initially determines or it is otherwise determined under this Agreement that the Application should be addressed
 - (a) at Engagement Level 1, the process set out in section 4 will apply,
 - (b) at Engagement Level 2, the process set out in section 5 will apply, or
 - (c) at Engagement Level 3, the process set out in section 6 will apply.
- (2) All Application Packages provided to the KLRA will include the following information:
 - (a) the project name;
 - (b) the name of the Applicant;
 - (c) relevant tracking numbers;
 - (d) where available to the Provincial Agency, relevant background information on the Application and a description of current activities and any known plans associated with the Application;
 - (e) where available to the Provincial Agency, comments on or assessments of the Application made by other government agencies;
 - (f) description of the proposed activities and authorizations required;
 - (g) UTM, BC Albers coordinates or a digital survey plan with a GIS compatible digital file, as available, of the proposed activity;
 - (h) maps at a scale of 1:20,000 or other appropriate scale to indicate the location and details of the activity;
 - (i) the Provincial Agency's initial assessment of the appropriate engagement level under subsection (1);

- (j) the proposed timeframe for the KLRA to submit its comments on the Application;
and
 - (k) Provincial Agency contact name, phone number and email address.
- (3) On the first and third Wednesday of every month, or the next Business Day following a Wednesday that is not a Business Day, the KLRA will
- (a) assess whether the Application Packages received prior to those days are complete,
 - (b) determine whether the engagement level proposed under subsection 2(i) is appropriate, and
 - (c) confirm whether the timeframe proposed under subsection 2(j) for providing written comments is adequate.
- (4) If the Application Package includes materially inaccurate information or is materially incomplete, the timeframe under subsection (2)(j) for the KLRA to submit comments will not begin until the KLRA and the Provincial Agency agree that the Application Package is complete and accurate.
- (5) If the KLRA determines that the engagement level proposed under subsection 2(i) is not appropriate, the KLRA will propose an alternate engagement level and will provide reasons and information to support the proposal.
- (6) If the Parties cannot agree on the engagement level proposed by the KLRA under subsection (5), the matter will be forwarded to the Joint Resources Forum.
- (7) The Parties may agree to change the engagement level during an engagement as new information becomes available and analysis is undertaken by either or both Parties.
- (8) If an Application requires more than one authorization, the Parties will engage at the highest engagement level that is triggered, unless the Parties agree otherwise.
- (9) If the KLRA requires more time to assess the potential impacts of an Application, it will notify the Provincial Agency that the proposed timeframe for submitting comments under subsection (2)(j) is insufficient and will propose an alternative timeframe to complete its assessment of the Application.
- (10) Upon receipt of a notice under subsection (9), the Provincial Agency will either confirm the alternative timeframe or contact the KLRA to determine a mutually acceptable timeframe.
- (11) If, at any time during the engagement process, the KLRA changes or reconsiders its position on the Application, it will immediately notify the Provincial Decision Maker.

APPLICATION ENGAGEMENT LEVEL 0

- 3 (1) On an annual basis, Provincial Agencies will provide, through the Joint Resources Forum, a list of Applications that were processed without referral to the KLRA.
- (2) The Parties recognize Provincial Agencies will not refer types of Applications that are not being referred to the Ktunaxa Nation or the Ktunaxa Communities as of the Effective Date until the Parties come to an agreement in accordance with section 2(4)(b) of Appendix C.

APPLICATION ENGAGEMENT LEVEL 1

- 4 (1) On the second and fourth Wednesday of every month, or the next Business Day following a Wednesday that is not a Business Day, the KLRA will provide a notice to the Provincial Agency for each new Application Package received on or before the previous Wednesday indicating whether the KLRA
 - (a) agrees with the proposed engagement level, and
 - (b) intends to provide written comments.
- (2) If the Provincial Agency does not receive a notice from the KLRA as set out in subsection (1), the Provincial Decision Maker will proceed with the decision and notify the KLRA within ten Business Days after the decision has been made.
- (3) If the KLRA notifies a Provincial Agency that it will provide written comments, it will provide those comments within the timeframe specified in the Application Package or the alternative timeframe established under section 2(9) or 2(10).
- (4) A Provincial Decision Maker will give serious consideration to written comments provided by the KLRA when determining whether to approve an Application.
- (5) If a Provincial Decision Maker makes a decision about an Application that he or she believes is consistent with the written comments provided under subsection (3), the Provincial Decision Maker will provide, within ten Business Days, written notification of the decision and, if requested by the KLRA, identify how Ktunaxa Nation's Aboriginal Rights and written comments have been addressed.
- (6) If the Provincial Decision Maker intends to make a decision about an Application that is not consistent with the written comments provided under subsection (3), the Provincial Decision Maker, or a senior representative of the Provincial Decision Maker, will notify the KLRA and the Provincial Decision Maker and the KLRA, or their representatives, will determine whether to meet to discuss the Application.
- (7) If, under subsection (6), the Provincial Decision Maker, or a senior representative of the Provincial Decision Maker, and the KLRA decide a meeting is required, they will meet within ten Business Days or at a time otherwise agreed.

- (8) The Provincial Decision Maker will not make a decision regarding the Application prior to the meeting under subsection (7).
- (9) A Provincial Decision Maker will give serious consideration to the issues raised by the KLRA at a meeting under subsection (7) when making a decision on an Application.
- (10) Where a decision is not consistent with the comments provided by the KLRA under subsection (3) or the issues raised by the KLRA at a meeting under subsection (7), the Provincial Decision Maker will notify the KLRA of the decision and a Provincial Agency will provide an Application Report to the KLRA within ten Business Days after the decision has been made, unless the Parties agree that an Application Report is not required.

APPLICATION ENGAGEMENT LEVEL 2

- 5 (1) On the second and fourth Wednesday of every month, or the next Business Day following a Wednesday that is not a Business Day, the KLRA will provide a notice to the Provincial Agency for each new Application Package received on or before the previous Wednesday indicating whether the KLRA
 - (a) agrees with the proposed engagement level,
 - (b) intends to provide written comments, and
 - (c) wants to meet to discuss the Application further with the Provincial Agency.
- (2) If the Provincial Agency does not receive a notice as set out in subsection (1) or is notified that the KLRA does not intend to provide written comments and does not want to meet to discuss the Application, the Provincial Decision Maker will
 - (a) proceed with the decision,
 - (b) within ten Business Days of making a decision, provide written notification of the decision, and
 - (c) if requested by the KLRA, identify how Ktunaxa Nation's Aboriginal Rights have been addressed.
- (3) If the KLRA notifies a Provincial Agency under subsection (1)(b) that it will provide written comments, it will provide those comments within the timeframe specified in the Application Package, or the alternative timeframe established under section 2(9) or 2(10).
- (4) If the KLRA requests a meeting under subsection (1)(c) or if a Provincial Agency requests a meeting, the Parties will meet within ten Business Days or at a time otherwise agreed to

- (a) discuss the views of both Parties with respect to the Application, including potential impacts and benefits,
 - (b) consider any issues on which the Parties disagree,
 - (c) assess options to address the differences between the Parties, and
 - (d) where possible, seek consensus on the recommendation for the Provincial Decision Maker.
- (5) Within ten Business Days of the conclusion of a meeting under subsection (4), the Provincial Agency and the KLRA will inform, either separately or together, the applicable Provincial Decision Maker of the outcome of the meeting and any recommended course of action.
- (6) The Provincial Decision Maker will give serious consideration to the written comments provided under subsection (3) and the information and recommendations provided under subsection (5) prior to making a decision about the Application.
- (7) If a Provincial Decision Maker makes a decision about an Application that he or she believes is consistent with the written comments provided under subsection (3) and the recommendations provided under subsection (5), the Provincial Decision Maker will provide, within ten Business Days, written notification of the decision and, if requested by the KLRA, identify how Ktunaxa Nation's Aboriginal Rights, recommendations and written comments have been addressed.
- (8) If the Provincial Decision Maker intends to make a decision about an Application that is not consistent with the written comments provided under subsection (3) and the recommendations provided under subsection (5), the Provincial Decision Maker will notify the KLRA and the Provincial Decision Maker and the KLRA, or their representatives, will determine whether a meeting is required to discuss the Application.
- (9) If, under subsection (8), the Parties decide a meeting is required, they will meet within ten Business Days or at another reasonable and mutually agreeable time.
- (10) The Provincial Decision Maker will not make a decision regarding the Application prior to a meeting under subsection (9).
- (11) The Provincial Decision Maker will give serious consideration to the issues raised by the KLRA at a meeting under subsection (9) when considering whether to approve an Application.
- (12) Where a decision is made that is not consistent with the written comments provided under subsection (3), the recommendations provided under subsection (5), or the issues raised by the KLRA at a meeting under subsection (9), the Provincial Decision Maker will notify the KLRA of the decision and a Provincial Agency will provide an

Application Report to the KLRA within ten Business Days after the decision has been made.

APPLICATION ENGAGEMENT LEVEL 3

- 6 (1) On the second and fourth Wednesday of every month, or the next Business Day following a Wednesday that is not a Business Day, the KLRA will provide a notice to the Provincial Agency for each new Application Package received on or before the previous Wednesday indicating whether the KLRA agrees with the proposed engagement level.
- (2) Unless otherwise directed by the KLRA, within twenty Business Days of the KLRA receiving an Application Package under subsection (1) or a time otherwise agreed to by the Parties, a Provincial Agency will convene a meeting of the Joint Resources Forum or a sub-committee established under the Joint Resources Forum to
 - (a) discuss the nature and scope of the Application,
 - (b) develop an engagement work plan, and
 - (c) identify topics to be addressed which may include
 - (i) potential impacts on and measures to accommodate Ktunaxa Nation's Aboriginal Rights,
 - (ii) potential impacts on and measures to address other interests of Ktunaxa Nation,
 - (iii) potential benefits to Ktunaxa Nation,
 - (iv) a process to negotiate any required accommodation agreements, and
 - (v) resource revenue-sharing and other benefits, subject to each of the Parties securing the necessary mandates.
- (3) An engagement work plan prepared under subsection (2) will
 - (a) establish a process and timelines for consultation and completion of an engagement report as set out in subsection (4),
 - (b) propose a schedule for meetings,
 - (c) identify the participating Provincial Agencies,
 - (d) set out how information-sharing between the Applicant and the KLRA will be coordinated with the Engagement Process between the Parties, and

- (e) identify the resources required, including the financial resources to support Ktunaxa Nation's participation in the Engagement Process.
- (4) As part of the Engagement Process established under subsection 3(a), the Parties will prepare, either separately or together, and provide to the Provincial Decision Maker a report that sets out
 - (a) the views of both Parties with respect to the Application, including potential impacts and benefits,
 - (b) any issues on which the Parties disagree,
 - (c) an assessment of options to address the differences between the Parties, and
 - (d) where achieved, consensus on recommendations for the Provincial Decision Maker.
 - (5) The Provincial Decision Maker will give serious consideration to the information in the report submitted under subsection (4) prior to making a decision about the Application.
 - (6) If a Provincial Decision Maker makes a decision about an Application that he or she believes is consistent with the recommendations provided under subsection (4)(d) the Provincial Decision Maker will provide, within ten Business Days, written notification of the decision and, if requested by the KLRA, identify how Ktunaxa Nation's Aboriginal Rights and the recommendations have been addressed.
 - (7) If the Provincial Decision Maker intends to make a decision about an Application that is not consistent with recommendations provided under subsection (4)(d), the Provincial Decision Maker will notify the KLRA and the Provincial Decision Maker and the KLRA, or their representatives, will determine whether a meeting is required to discuss the Application.
 - (8) If, under subsection (7), the Parties decide a meeting is required, they will meet within five Business Days or at a reasonable and mutually agreeable time.
 - (9) If, under subsection (7), the KLRA notifies the Provincial Decision Maker that it does not wish to meet, the Provincial Decision Maker will proceed with the decision.
 - (10) The Provincial Decision Maker will not make a decision regarding the Application prior to a meeting under subsection (8).
 - (11) The Provincial Decision Maker will give serious consideration to the issues raised by the KLRA at a meeting under subsection (8) when considering whether to approve an Application.

- (12) After a decision is made regarding an Application, the Provincial Decision Maker will notify the KLRA of the decision and a Provincial Agency will provide an Application Report to the KLRA.

PRE-ENVIRONMENTAL ASSESSMENT PROCESS

- 7 (1) A Responsible Official, on becoming aware of a potential major project that may enter a provincial environmental assessment process or other assessment process, will notify the other Responsible Official of the project as soon as possible.
- (2) Following notification under subsection (1), the Provincial Responsible Official will provide the following information, if known, to the KLRA:
 - (a) the name of the proponent, the general location and the nature of the activities proposed;
 - (b) the types of authorizations that may be required for the project; and
 - (c) the Provincial Agencies that may be involved in providing required authorizations for the project.
- (3) Unless the Joint Resources Forum decides it is premature or not required, the Joint Resources Forum will establish a sub-committee following notification under subsection (1) to identify the following:
 - (a) potential impacts of the proposed project on Ktunaxa Nation's Aboriginal Rights;
 - (b) potential impacts and benefits of the proposed project to Ktunaxa Nation and its interests;
 - (c) potential measures to accommodate impacts;
 - (d) information requirements and measures to support continuous information sharing;
 - (e) the process for transitioning between the environmental assessment process and the Engagement Process undertaken by Provincial Agencies in relation to authorizations;
 - (f) resources required, including the financial resources to support Ktunaxa Nation's participation in the Engagement Process.
- (4) After a proposed project has entered the environmental assessment process under the *Environmental Assessment Act*, the Joint Resources Forum may
 - (a) establish a subcommittee for that project, or

- (b) direct a subcommittee that has already been established under subsection (3) for that project to continue

to address the issues set out in subsection (3) (d) and (e) and any other matters outside the mandate of the Environmental Assessment Office as determined by that Office.

ENGAGEMENT PROCESS INITIATED BY A PROVINCIAL ENGAGEMENT REQUEST

- 8** (1) When the Province identifies an issue related to, or anticipates a decision regarding, land and resources within Ktunaxa Territory that may affect Ktunaxa Interests, the Province may provide a Provincial Engagement Request to the Ktunaxa Responsible Official.
- (2) The Provincial Engagement Request will include
- (a) a description of the nature of the issue and relevant background information,
 - (b) the Province’s perspective on how the issue may affect Ktunaxa Interests,
 - (c) possible options, if any, that the Province may be considering,
 - (d) the Province’s preferred Government-to-Government Forum for discussing the issue with Ktunaxa Nation, and
 - (e) relevant contact information.
- (3) Upon receipt of a Provincial Engagement Request, the Ktunaxa Responsible Official, or designate, will contact the Provincial Responsible Official and arrange a meeting of the appropriate representatives of the Parties which may be through the Joint Resources Forum.
- (4) The meeting referred to in subsection (3) will occur within twenty Business Days, or as otherwise agreed by the Parties, to discuss the Provincial Engagement Request and determine the most appropriate means to
- (a) share information on the nature of the Provincial Engagement Request,
 - (b) determine potential impacts and benefits to the Parties, and
 - (c) determine the most effective and efficient means to implement the Provincial Engagement Request.
- (5) For greater clarity, issues that may be addressed under this section 8 include the following:
- (a) new policy or changes to existing policy, legislation, regulation or other initiatives that may affect land and resources in Ktunaxa Territory;

- (b) new policy or changes to existing policy, legislation, regulation or other initiatives regarding First Nations, including shared-decision making, resource and benefit sharing, and environmental assessment;
- (c) changes to a Provincial Agency's organizational structure or resources that may affect its participation in this Agreement; and
- (d) processes or potential decisions of a substantive nature other than Applications, including land use planning, land designations, changes to land use, protected areas, land dispositions under the *Land Act*, changes to existing boundaries, Crown land alienation, Crown land sales, and disposition of Crown reserves of petroleum and natural gas.

ENGAGEMENT PROCESS INITIATED BY A KTUNAXA ENGAGEMENT REQUEST

- 9** (1) A Ktunaxa Responsible Official may initiate an engagement with the Province to address issues related to land and resources in Ktunaxa Territory by providing a Ktunaxa Engagement Request to a Provincial Responsible Official.
- (2) A Ktunaxa Engagement Request will include the following:
- (a) a description of the nature of the issue and relevant background information;
 - (b) Ktunaxa Nation's perspective on how the issue may affect Ktunaxa Interests;
 - (c) possible options, if any, to address the issues raised in the Ktunaxa Engagement Request;
 - (d) Ktunaxa Nation's preferred Government-to-Government Forum for discussing the issue with the Province; and
 - (e) relevant contact information.
- (3) Upon receipt of a Ktunaxa Engagement Request, the Provincial Responsible Official, or designate, will contact the Ktunaxa Responsible Official and arrange a meeting of the appropriate representatives of the Parties which may be through the Joint Resources Forum.
- (4) The meeting referred to in subsection (3) will occur within twenty Business Days, or as otherwise agreed to by the Parties, to discuss the Ktunaxa Engagement Request and determine the most appropriate means to
- (a) share information on the nature of the Ktunaxa Engagement Request,
 - (b) determine the potential impacts and benefits to the Parties, and

- (c) determine the most effective and efficient means to address the Ktunaxa Engagement Request.

SCHEDULE 1
ENGAGEMENT LEVEL ASSESSMENT CRITERIA

OVERVIEW

This Schedule provides guidance to Provincial Agencies for determining the appropriate engagement level for assessing the potential impacts of the activities proposed in an Application to Ktunaxa Nation's Aboriginal Rights and may also be used to identify the appropriate engagement level for assessing impacts to other known Ktunaxa Interests.

Under the Engagement Process, the Province will assign an initial engagement level which will be referred to the KLRA for review and confirmation.

It is anticipated that the Parties will revise the assessment tools and resulting accuracy of establishing engagement levels over time based on their collaborative experience in working with this Schedule.

The Parties agree that this Schedule is based on the following understandings:

- a) the Province has a legal duty to assess impacts to Ktunaxa Aboriginal Rights, however, the Parties recognize that this Schedule may also be used to identify the appropriate engagement level for assessing impacts to other known Ktunaxa Interests;
- b) this Schedule is intended to facilitate a joint learning process and may be amended to take into account what the Parties have learned;
- c) the KLRA is best able to assess potential impacts to Ktunaxa Interests;
- d) sample activities in Table 2 are provided for guidance only;
- e) it is possible that an activity can frequently be determined to require a low engagement level, however, a particular instance of that activity may require a higher engagement level due to the values at a specific site;
- f) potential cumulative impacts may increase the engagement level; and
- g) new information may warrant a change in the engagement level.

ENGAGEMENT LEVEL CRITERIA

Table 1 provides a framework to assign a proposed engagement level to Applications as follows:

- 0 **NIL** – The Parties have agreed beforehand that no notification is required, other than an annual list of Applications.
- 1 **LOW** – Very limited engagement and no additional research is required to assess the potential impacts.
- 2 **MODERATE** – More focused engagement and additional research is required to assess the potential impacts.
- 3 **HIGH** – Will require significant collaborative evaluation to design an effective Engagement Process.

Table 2 provides examples of activities that may fit one of the described engagement levels. This table will be further refined by the Parties as experience is gained.

MODIFIERS – TABLE 3

Modifiers are intended to be used to identify where the initial determination of an engagement level may be appropriately moved up or down depending on the development and implementation of best management practices that are supported by Ktunaxa Nation.

TABLE 1: ENGAGEMENT LEVEL ASSESSMENT CRITERIA		
ENGAGEMENT LEVEL	POTENTIAL IMPACTS OF PROPOSED ACTIVITIES	NATURE OF PROPOSED ACTIVITY
0	NIL	<ul style="list-style-type: none"> • To be developed during implementation
1	LOW	<ul style="list-style-type: none"> • Typically small-scale activity • Located in an area of low archaeological potential, i.e., areas where archaeological sites are not likely to be present • Short-term or seasonal • Little or no ground disturbance • Little, no, or temporary impacts to fish and wildlife habitat • Little, no, or temporary impacts on water quality and quantity
2	MODERATE	<ul style="list-style-type: none"> • Typically mid-scale activity • Located in an area where archaeological sites or Ktunaxa cultural heritage sites are known or where archaeological sites are likely to be present • Short to moderate term • Moderate ground disturbance • Minimal or moderate impacts to fish and wildlife habitat • Moderate impacts on water quality and quantity
3	HIGH	<ul style="list-style-type: none"> • Typically a large-scale activity, i.e., major projects that are not currently undergoing a review under the <i>Environmental Assessment Act</i> • Located in an area where archaeological sites or Ktunaxa cultural heritage sites are known or where archaeological sites are likely to be present • Longer term • Extensive or intensive ground disturbance • Significant impacts to fish and wildlife habitat • Significant impacts on water quality and quantity

TABLE 2: SAMPLE ACTIVITIES	
ENGAGEMENT LEVEL	SAMPLE ACTIVITIES PROVIDED FOR ILLUSTRATIVE PURPOSES ONLY
0	<ul style="list-style-type: none"> • To be developed during implementation
1	<ul style="list-style-type: none"> • Road widening • Tenure replacements and renewals, no significant changes • Minor amendments of operational plans • Special use permits • Recreational sites and trails • Permits under Forest Stewardship Plans, Range Stewardship Plans, Woodlot Licence Plans and Community Forest Agreement Management Plans • <i>Forest and Range Practices Act</i> designation of a community watershed
2	<ul style="list-style-type: none"> • New roads • Operational plans, e.g., forest and range stewardship plan • Crown Land alienation (including sale) • <i>Land Act</i>, subdivision development approvals • New sand/gravel quarries • Exploration permits • Decisions by Mineral Titles Branch
3	<ul style="list-style-type: none"> • New resort applications • New replaceable forestry tenures • Water licenses associated with hydro-electric energy production • Major projects that are not currently undergoing a review under the <i>Environmental Assessment Act</i> • Mines that are not currently undergoing a review under the <i>Environmental Assessment Act</i> • An amendment under section 10 of the <i>Mines Act</i>

TABLE 3: MODIFIERS (UP AND DOWN)	
UP MODIFIERS (PLANNING DOCUMENTS/BMPs, OCP'S NOT IN PLACE)	DOWN MODIFIERS (APPLICABLE IF KTUNAXA NATION HAS BEEN ADEQUATELY CONSULTED ON AND/OR ENDORSED THESE HIGHER LEVEL PLANNING DOCUMENTS)
<ul style="list-style-type: none"> • Ktunaxa dissatisfaction with higher level decision or process • Known areas of Ktunaxa interest/significance – cultural, sustenance, etc. • Areas of known Archaeological Potential • Cumulative effects modifier (i.e. multiple small applications in a small area) which can shift density of development/roads, or with ancillary impacts – for example, the final development may be relatively low impact, but the infrastructure creation (i.e. vegetation removal/road building) may have immediate short term (and larger scale) level of impacts which delay recovery/restoration) • Highly impacted area (currently) • High level of sensitivity – species/habitats at high risk, high level of sensitivity, and significant data gaps to inform decision 	<ul style="list-style-type: none"> • Best Management Practices (BMPs); mapping/information requirements met – initial screening shows that there are no sensitive species/habitats identified through screening; possibly no review/referral required after first year assessment • Higher level planning - Watershed Plan, Lake Management Plan, OCP, Zoning; reviewed through referral; (i.e. referral may be deferred/eliminated if Ktunaxa have provided input to higher level planning exercises and implementation/enforcement)/ Environmental Assessment completed; reviewed through referral/technical committee • Examples of plans completed, in place and supported by approval agencies: Salmo Watershed Plan; Windermere, Columbia, Tie, Rosen, Moyie, Munroe, FIM/SHIM/Fish and Wildlife Assessments and shoreline development guidelines • Forest Stewardship Plans, Range Stewardship Plans and Woodlot Licence Plans • Community Forest Agreements • Provincial Parks Plans • Policy Plans – i.e. Kootenay-Boundary Land Use Plan and Implementation Strategy, Golden Backcountry Recreation Access Plan, Southern Rocky Mountain Management Plan, Cranbrook Recreation Access Management Plan • Kootenay Boundary Higher Level Plan Order (HLPO) Substantial reclamation or mitigation is possible

APPENDIX C

GOVERNMENT-TO-GOVERNMENT FORUM

GENERAL

- 1 (1) The Government-to-Government Forum is comprised of a Senior Forum and a Joint Resources Forum and is responsible for implementing this Agreement including the following:
 - (a) addressing issues brought forward by the Parties in the Engagement Process set out in Appendix B;
 - (b) resolving operational, administrative, strategic and regional issues that are of interest to either or both of the Parties;
 - (c) supporting discussions on how to close the socio-economic gap, further to the objectives of the New Relationship and the Transformative Change Accord;
 - (d) exploring economic access opportunities arising from land and resources in Ktunaxa Territory;
 - (e) supporting discussions regarding sustainable use of land and resources;
 - (f) ensuring that the spirit and intent of existing agreements between the Parties continue to be respected and implemented;
 - (g) determining how subsequent agreements or initiatives may be developed and appended to this Agreement;
 - (h) developing mechanisms and tools as required; and
 - (i) addressing other matters agreed to by the Parties.
- (2) The Parties will develop terms of reference for the Joint Resources Forum and the Senior Forum within 60 Business Days of the Effective Date.
- (3) The Parties will ensure that their respective representatives have the appropriate authority and mandate to engage on the issues in a substantive manner.
- (4) The KLRA will identify those days which will not be counted as “Business Days” to the Province by January 15th of each calendar year, and will notify the Province immediately of any additional non-Business Days that may be identified throughout the calendar year.

JOINT RESOURCES FORUM

- 2 (1)** The Joint Resources Forum will meet monthly, or as otherwise agreed to by the Parties, and is responsible for the following:
- (a) addressing the implementation and day-to-day operation of this Agreement as directed by the Senior Forum;
 - (b) addressing engagements in accordance with Appendix B and the application of modifiers as set out in Schedule 1;
 - (c) undertaking preliminary reviews of Provincial Engagement Requests and Ktunaxa Engagement Requests to jointly determine the most appropriate means to address them, including forwarding them to the Senior Forum;
 - (d) establishing sub-committees to foster coordinated collaborative management relationships on topics of common interest to the Parties, including the following:
 - (i) fish and wildlife, through the subcommittee that continues in the same form and with the same functions as the Ktunaxa Fish and Wildlife Management Committee established under the Memorandum of Understanding (MOU) to Establish an Effective Government-to-Government Working Relationship for the Management of Fish and Wildlife, February 2005;
 - (ii) parks and protected areas, through the subcommittee that continues in the same form and with the same functions as the Ktunaxa-British Columbia Provincial Parks Management Committee established under the Memorandum of Understanding (MOU) to Establish an Effective Government-to-Government Working Relationship for the Management of Provincial Parks, February 2005;
 - (iii) archaeological and First Nations heritage resources, through a subcommittee in the same form and with the same functions as the Archaeological Resources Management Committee which was to be established under the Memorandum of Understanding to Establish an Effective Government-to-Government Working Relationship for the Management of Archaeological Resources;
 - (iv) energy, subsurface and petroleum resources;
 - (v) forest and range resources;
 - (vi) land and water use planning; and
 - (vii) potential impacts to Ktunaxa Interests resulting from land and resource development that is subject to approval by Provincial Agencies on private land;

and

- (e) engaging in discussions respecting Crown corporations and commissions.
- (2) The Joint Resources Forum will be co-chaired by the Responsible Officials or their designates and will include provincial and Ktunaxa Nation representatives, whose number and nature may vary depending on the matter to be addressed.
- (3) The Joint Resources Forum may establish sub-committees to
 - (a) fulfill any of its responsibilities, and
 - (b) address specific Applications under sections 6(2) or 7(3) of Appendix B.
- (4) The Parties agree to establish an implementation sub-committee of the Joint Resources Forum to
 - (a) assist the Parties to implement and refine the Engagement Process, and
 - (b) within the first six months of this Agreement or a time mutually agreed upon by the Parties, discuss and make recommendations regarding the implementation of Engagement Level 0, including the addition or removal of types of Applications to be addressed at Engagement Level 0, and the application of modifiers as set out in Schedule 1.
- (5) In the third-quarter of each fiscal year, or at another time agreed to by the Parties, the Joint Resources Forum will meet to exchange relevant information, including any activities that may impact the Engagement Process, about land and resource issues and initiatives in Ktunaxa Territory to inform the planning cycle of each of the Parties.

SENIOR FORUM

- 3(1) The Senior Forum will meet quarterly or as otherwise agreed to by the Parties and is responsible for the following:
 - (a) addressing disputes between the Parties in accordance with this Agreement;
 - (b) sharing information and reviewing the implementation and operation of this Agreement;
 - (c) addressing Provincial Engagement Requests and Ktunaxa Engagement Requests that do not fall within the mandate and authority of the Joint Resources Forum or are forwarded to the Senior Forum by the Joint Resources Forum;
 - (d) addressing Engagement Requests that warrant senior-level review and consideration and have been forwarded by the Joint Resources Forum under section 2(1)(c);
 - (e) being the primary forum for the Parties to

- (i) discuss shared decision-making processes and the sharing of resource-revenues and other benefits, and
 - (ii) engage in political-level discussions on issues covered by this Agreement.
- (2) The Senior Forum will be co-chaired by the Chair of KNC and the Director of the First Nations Initiatives Division from the Province.
- (3) The co-chairs will determine the appropriate representatives of the Parties and ensure they attend any Senior Forum meeting, and in determining the appropriate representatives, will consider
 - (a) the purpose of the Senior Forum meeting,
 - (b) the subjects being addressed, and
 - (c) the nature of the matter being addressed.
- (4) The Senior Forum may establish sub-committees to assist in carrying out the work of the Senior Forum.
- (5) The Parties agree to establish two standing committees of the Senior Forum as follows:
 - (a) a Resource-Revenue and Benefit Sharing Standing Committee to
 - (i) exchange perspectives on and explore models of resource revenue and benefit sharing,
 - (ii) within one year of the Effective Date, develop a framework within which resource-revenue and benefits sharing negotiations will occur, and
 - (iii) facilitate the Parties entering into negotiations and attempting to conclude resource-revenue and benefit sharing agreements, subject to the Parties securing their respective mandates,and
 - (b) a Shared Decision-Making Standing Committee to
 - (i) exchange perspectives on shared decision-making,
 - (ii) explore models of shared decision-making,
 - (iii) within two years of the Effective Date, develop a framework for incrementally implementing shared decision-making,
 - (iv) initiate implementation of the framework by addressing designations and management of important cultural landscapes, and

- (v) ensure appropriate linkages to a potential post-treaty environment.
- (6) Within 90 Business Days of the Effective Date, the Parties will identify their respective co-chairs for each of the standing committees set out in subsection (5), and within 120 Business Days of the Effective Date, develop a terms of reference for each of the committees.

APPENDIX D
PAYMENT SCHEDULE

Year	Quarter 1 November 1 to January 31 (\$)	Quarter 2 February 1 to April 30 (\$)	Quarter 3 May 1 to July 31 (\$)	Quarter 4 August 1 to October 31 (\$)	Total (\$)
Year 1 2010-2011	98,750	98,750	98,750	98,750	395,000
Year 2 2011-2012	119,500	119,500	119,500	119,500	478,000
Year 3 2012-2013	119,500	119,500	119,500	119,500	478,000
				Total	1,351,000

APPENDIX E
QUARTERLY REPORT

(SUBMITTED ON THE LAST BUSINESS DAY OF EACH QUARTER)

Agreement Requirement	Expenditures For The Quarter	Year-to-date Expenditures	Measurement Criteria	Specific Outcomes For The Quarter
KNC participation in the Government-to-Government (G2G) forums	\$	\$	Percentage of G2G forums attended.	•
KNC participation in the Engagement Process	\$	\$	Percentage of applications processed in accordance with the Engagement Process.	•
Total	\$	\$		

APPENDIX F

**AKISQ'NUK FIRST NATION
BAND COUNCIL RESOLUTION**



BCR. # 011

AKISQ'NUK FIRST NATION
#3050 Highway 93/95, Windermere B.C., V0B 2L2
OFFICE (250) 342-6301 FAX (250) 342-9693

RESOLUTION

THE COUNCIL OF THE AKISQ'NUK FIRST NATION, AT WINDERMERE BRITISH COLUMBIA, ON THIS 14th DAY OF September, 2010, DO HEREBY RESOLVE:

WHEREAS:

- A. *The Ktunaxa Nation has Aboriginal rights within Ktunaxa Territory that are recognized and affirmed under section 35 of the Constitution Act, 1982;*
- B. *The Akisqnuq First Nation and its members are part of the Ktunaxa Nation;*
- C. *The Ktunaxa Nation, as represented by the Ktunaxa Nation Council Society ("KNC"), and British Columbia have negotiated the "BC/Ktunaxa Nation Strategic Engagement Agreement Between the Province of British Columbia and Ktunaxa Nation" (the "Agreement");*
- D. *The Agreement is intended to foster a positive and respectful government-to-government relationship that, among other objectives, will: (i) establish effective procedures for meaningful consultation and accommodation, (ii) create an environment to help them move towards shared decision-making, and (iii) support their pursuit of opportunities for sharing resource-revenues and other benefits through further agreements;*
- E. *The Agreement is an incremental step towards the fuller implementation of a government-to-government relationship and provides opportunities to build the necessary cooperative working relations that will enhance Ktunaxa Nation's efforts towards self-government; and*
- F. *The Agreement is undergoing final legal review and editing;*

THEREFORE BE IT RESOLVED THAT

The Akisqnuq First Nation authorizes Kathryn Teneese, Chair of KNC, to sign the Agreement on its behalf; and the KNC to enter into and participate in the implementation of the Agreement in accordance with its provisions, on behalf of the Akisqnuq First Nation.


CHIEF LORNE SHOVAR


COUNCILLOR ALLAN NICHOLAS

COUNCILLOR SAMANTHA SAM


COUNCILLOR MARGUERITE COOPER


COUNCILLOR BEATRICE STEVENS

APPENDIX G

**ST. MARY'S INDIAN BAND
BAND COUNCIL RESOLUTION**



ST. MARY'S BAND ADMINISTRATION

7470 Mission Road
Cranbrook, BC V1C 7E5

Tel: 250.426.5717

Fax: 250.426.8935

BAND COUNCIL RESOLUTION

	Chronological no. – No consecutive 981-90-269
The council of the St. Mary's Indian Band 7470 Mission Road Cranbrook B.C. V1C 7E5	
Date of duly convened meeting 07/10/10 DD/MM/YYYY Province <B.C.>	

DO HEREBY RESOLVE:

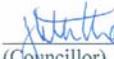
The St. Mary's Indian Band authorizes Kathryn Teneese, Chair of KNC, to sign the Strategic Engagement Agreement subject to final legal and Ktunaxa Nation Executive Council (KNEC) review, and the KNC to enter into and participate in the implementation of the agreement in accordance with its provisions, on behalf of the St. Mary's Band.

Quorum 3

(Chief)



(Councillor)



(Councillor)



(Councillor)

(Councillor)

APPENDIX I

TOBACCO PLAINS INDIAN BAND

BAND COUNCIL RESOLUTION:

TOBACCO PLAINS INDIAN BAND

BOX 76 GRASMERE, B.C. V0B 1R0 (250) 887-3461 / FAX (250) 887-3424

www.tobaccoplains.org

Tobacco Plains Indian Band – SEA- KNC – Adm – 13-10-2010 -14

WHEREAS, at a duly convened Tobacco Plains Indian Band Council meeting held on September 28th 2010 at the Tobacco Plains Indian Band Hall, the following motion was passed:

WHEREAS:

- A. *The Ktunaxa Nation has Aboriginal rights within Ktunaxa Territory that are recognized and affirmed under section 35 of the Constitution Act, 1982;*
- B. *The Tobacco Plains Indian Band and its members are part of the Ktunaxa Nation;*
- C. *The Ktunaxa Nation, as represented by the Ktunaxa Nation Council Society ("KNC"), and British Columbia have negotiated the "BC/Ktunaxa Nation Strategic Engagement Agreement Between the Province of British Columbia and Ktunaxa Nation" (the "Agreement"), attached as Schedule "A";*
- D. *The Agreement is intended to foster a positive and respectful government-to-government relationship that, among other objectives, will: (i) establish effective procedures for meaningful consultation and accommodation, (ii) create an environment to help them move towards shared decision-making, and (iii) support their pursuit of opportunities for sharing resource-revenues and other benefits through further agreements;*
- E. *The Agreement is an incremental step towards the fuller implementation of a government-to-government relationship and provides opportunities to build the necessary cooperative working relations that will enhance Ktunaxa Nation's efforts towards self-government; and*
- F. *The Agreement is undergoing final legal review and editing;*

THEREFORE BE IT RESOLVED THAT

The Tobacco Plains Indian Band authorizes Kathryn Teneese, Chair of KNC, to sign the Agreement in substantially the form as attached; and the KNC to enter into and participate in the implementation of the Agreement in accordance with its provisions, on behalf of the Tobacco Plains Indian Band.


Chief


Councillor


Councillor

Councillor

Councillor

Quorum for this Band is 3