

## Economic Benefits Agreement

This Agreement is dated for reference June 8, 2012

BETWEEN:

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

(hereinafter "British Columbia")

AND:

**FORT NELSON FIRST NATION**,  
as represented by the Chief of the Fort Nelson First Nation,

(hereinafter "Fort Nelson First Nation")

### 1. PREAMBLE

- Whereas** The *Constitution Act, 1982*, section 35, recognizes and affirms the existing Aboriginal and Treaty rights of the Aboriginal peoples of Canada;
- Whereas** Fort Nelson First Nation is an adherent to Treaty No. 8 and has rights recognized and affirmed by section 35(1) of the *Constitution Act, 1982*;
- Whereas** British Columbia and Fort Nelson First Nation seek to agree on the degree to which Fort Nelson First Nation will share in revenues as calculated according to the formula set out in the appendices of this Agreement;
- Whereas** Fort Nelson First Nation decided not to become a party to the Amended Economic Benefits Agreement, 2009, with other Treaty 8 First Nations and British Columbia and instead requested that British Columbia negotiate a separate Economic Benefits Agreement with Fort Nelson First Nation;
- Whereas** Fort Nelson First Nation wishes to obtain a fair share of the resource revenues derived from their traditional territory, including the Horn River Basin;
- Whereas** British Columbia and Fort Nelson First Nation are seeking mutually acceptable reconciliation with respect to section 35(1) rights of the Fort Nelson First Nation that may be impacted by activities that fall within provincial jurisdiction, without prejudice to each Party's interpretation of Treaty No. 8;

**Whereas** The Fort Nelson First Nation is situated in a part of the Province which is expected to undergo significant natural resource developments and activities, including the Horn River Basin shale gas play during the term of this Agreement; and

**Whereas** The Parties acknowledge that British Columbia and First Nations' representatives are engaged in discussions to develop a "New Relationship" between the Province and First Nations and that the discussions may result in new arrangements and enhanced relationships between the Province and First Nations in British Columbia.

**THEREFORE** the Parties agree as follows:

## **2. DEFINITIONS**

2.1 In this Agreement and the preamble hereto:

"Agreement" means this Economic Benefits Agreement, including the following appendices attached to it:

*Appendix 1 Calculation of Quarterly Annual Payments,*

*Appendix 2 Maximum Amount Payable by British Columbia in a Fiscal Year,*

*Appendix 3 Forecasting the British Columbia Final Domestic Demand Implicit Price Index, and*

*Appendix 4 Map;*

"Annual Payments" means the payments to be made by British Columbia pursuant to section 3.2 (which payments are subject to those adjustments described herein), and "Annual Payment" means any one such payment;

"British Columbia" has the meaning given to that term on page 1 of this Agreement;

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

"Consultation Protocol Agreement" means an agreement on the subject of a one-window multiple ministry consultation procedures and timelines to be entered into between British Columbia and Fort Nelson First Nation;

"Effective Date of this Agreement" means the date upon which this Agreement and the OGC-CA have been ratified and are signed by both Parties;

“Equity Payments” means the payments made or to be made by British Columbia as described in section 3.1;

“Fiscal Year” refers to a one-year period commencing on April 1 of the relevant year;

“Fort Nelson First Nation” has the meaning given to that term on page 1 of this Agreement;

“Neutral Appointing Authority” means the British Columbia International Commercial Arbitration Centre or, if the Centre is unavailable to make a required appointment, any other independent and impartial body or individual acceptable to the Parties;

“OGC-CA” means a written agreement entered into between British Columbia and Fort Nelson First Nation providing for a consultation process with respect to oil and gas development activities authorized by the Oil and Gas Commission;

“Parties” means British Columbia and Fort Nelson First Nation, and “Party” means either of them;

“Quarter” means one of the following three-month periods:

- (a) Quarter 1: April 1 to June 30,
- (b) Quarter 2: July 1 to September 30,
- (c) Quarter 3: October 1 to December 31, or
- (d) Quarter 4: January 1 to March 31;

“Term” has the meaning set out in section 7.1; and

“Trust” means the trust established by Fort Nelson First Nation pursuant to section 4.3.

### **3. OBLIGATIONS OF BRITISH COLUMBIA**

3.1 British Columbia agreed to provide the sum of \$5,800,000 to the Fort Nelson First Nation, in two instalments, namely:

3.1.1 a payment of \$2,900,000, which the Parties acknowledge was paid to Fort Nelson First Nation, on its direction, by payment in trust to its solicitors on July 9, 2010 and which the Parties agree will be remitted by Fort Nelson First Nation to the Trust forthwith on its establishment in accordance with section 4.3 of this Agreement; and

3.1.2 a further payment of \$2,900,000 to the Trust, which is payable within thirty (30) days of the date that ratification and signing of the OGC-CA is complete.

- 3.2 Commencing with Fiscal Year 2011/2012 and continuing thereafter for each Fiscal Year during the Term, British Columbia will pay to the Fort Nelson First Nation Annual Payments determined in accordance with the formula set out in Appendix 1. Notwithstanding the foregoing, British Columbia will not be obliged to pay, and Fort Nelson First Nation will not be eligible to receive, an Annual Payment if Fort Nelson First Nation is not in compliance with its obligations under section 4.8 and section 4.9.
- 3.3 The Annual Payment referred to in section 3.2 is subject to a minimum payment which is equal to the sum of the first three quarterly payments for each Fiscal Year, as more particularly described in Appendix 1, and is based on the assumption that this Agreement remains in effect for the whole of the Fiscal Year.
- 3.4 Annual Payments will be made as follows:
- 3.4.1 if the Effective Date of this Agreement is more than thirty (30) days after the end of any of Quarter 1, Quarter 2 or Quarter 3 during Fiscal Year 2011/12, then with respect to each such Quarter, within thirty (30) days following the Effective Date of this Agreement;
- 3.4.2 with regard to the Annual Payment for Quarter 1, Quarter 2 and Quarter 3 of each Fiscal Year during the Term, other than any Quarter in Fiscal Year 2011/12 to which section 3.4.1 applies, within thirty (30) days following the end of the relevant Quarter; and
- 3.4.3 with regard to the Annual Payment for Quarter 4 of each Fiscal Year during the Term, within one hundred and eighty (180) days following the end of the relevant Quarter 4.

For greater certainty, if this Agreement is terminated prior to the last day of a Quarter, no partial Annual Payment will be payable for that Quarter.

- 3.5 In the event of termination of this Agreement, the calculation and payment of Annual Payments in accordance with the formula set out in Appendix 1 are subject to the following rules:
- 3.5.1 if this Agreement is terminated prior to the last day of a Quarter, no partial Annual Payment will be payable for that Quarter;
- 3.5.2 if this Agreement is terminated prior to the last day of Quarter 2 of a Fiscal Year, the minimum Annual Payment amount for that Fiscal Year is equal to the "Quarter 1 Annual Payment";
- 3.5.3 if this Agreement is terminated prior to the last day of Quarter 3 of a Fiscal Year, the minimum Annual Payment amount for that Fiscal Year is equal to the "Quarter 1 Annual Payment" plus the "Quarter 2 Annual Payment";

- 3.5.4 if this Agreement is terminated prior to the last day of Quarter 4 of a Fiscal Year, the minimum Annual Payment amount for that Fiscal Year is equal to the “Quarter 1 Annual Payment” plus the “Quarter 2 Annual Payment” plus the “Quarter 3 Annual Payment”;
- 3.5.5 if this Agreement is terminated on or after the last day of Quarter 1 of a Fiscal Year but prior to the last day of that Fiscal Year, a calculation is to be made following the end of that Fiscal Year using the formula in Appendix 1, in conjunction with all other applicable provisions of this Agreement, in order to determine whether any amount in excess of the applicable minimum Annual Payment is payable to Fort Nelson First Nation; and
- 3.5.6 any payment due under subsection 3.5.5 above will be made within one hundred and eighty (180) days following the end of the Fiscal Year in question and, for purposes of section 3.6, will be deemed to be a Quarter 4 Annual Payment.
- 3.6 In support of the amounts of Annual Payments, British Columbia will, along with each Quarter 4 Annual Payment, provide to Fort Nelson First Nation a statement setting out the documents, reports, figures and calculations relied upon by British Columbia to calculate the Quarter 4 Annual Payment in accordance with Appendix 1, for that Fiscal Year.
- 3.7 Annual Payments will be subject to adjustment by British Columbia from time to time on the following basis:
- 3.7.1 With respect to the calculation of each Quarter 4 Annual Payment made by British Columbia during the Term, the value imputed to the variable identified in Appendix 1 as  $OGR_t$  will, on the basis of available updated information, be reviewed and re-calculated by British Columbia on four (4) separate occasions: one (1), two (2), four (4) and six (6) years following the end of that Quarter;
- 3.7.2 If the review and re-calculation reveals an overpayment by British Columbia, British Columbia will adjust the next occurring Quarter 4 Annual Payment to offset the overpayment (and if there is no subsequent Quarter 4 Annual Payment, Fort Nelson First Nation will repay the amount of the overpayment to British Columbia); and
- 3.7.3 If the review and re-calculation reveals an underpayment by British Columbia, British Columbia will adjust the next occurring Quarter 4 Annual Payment to compensate for the underpayment (and if there is no subsequent Quarter 4 Annual Payment, British Columbia will pay to the Fort Nelson First Nation the amount of the underpayment).

For clarity, the calculation of the variable identified in Appendix 1 as  $EB2_t$  is not subject to re-calculation.

- 3.8 Either British Columbia or Fort Nelson First Nation may request a review of the EB2<sub>t</sub> contained in Appendix 1, twice during the Term: at year 3 to take effect in year 4 and again at year 7 to take effect in year 8. For greater certainty, this provision is not intended to represent an opportunity to re-calculate Annual Payments already made, but as an opportunity to examine the content of the variable for the purpose of future calculations.
- 3.9 The aggregate of all payments attributable to a Fiscal Year pursuant to section 3.2 will be subject to a cap in the amount determined in accordance with Appendix 2 (which amount is subject to adjustment in the manner set out in Appendices 2 and 3). For clarity, the actual calculations to be made pursuant to Appendix 1 are to be based on actual totals, not the cap. For further clarity, the maximum payment amount for a Fiscal Year is based on this Agreement remaining in effect on the last day of each Quarter of that Fiscal Year; and for illustration purposes, the maximum payment is \$3,514,000 (in 2011 dollars).
- 3.10 Notwithstanding any other provision of this Agreement, the payment of any monies by British Columbia under this Agreement is subject to the appropriation of funds by the Legislative Assembly of British Columbia, and to Treasury Board, as defined in the *Financial Administration Act*, not having controlled or limited expenditure under any such appropriation.
- 3.11 The Equity Payments which British Columbia is obliged to make pursuant to this Agreement are to be remitted to the Trust. For greater certainty, British Columbia will not be obligated to make any Equity Payments under this Agreement until Fort Nelson First Nation has complied with section 4.3 to the reasonable satisfaction of British Columbia.
- 3.12 British Columbia will monitor progress in the development of new arrangements and enhanced relationships with First Nations in British Columbia and consider jointly with Fort Nelson First Nation whether to amend this Agreement to reflect these developments.
- 3.13 British Columbia shall disclose to the Fort Nelson First Nation any agreement entered into between British Columbia and another First Nation during the Term of this Agreement that deals with the sharing of economic benefits derived from resources located in the British Columbia portion of the territory encompassed by Treaty 8. Upon receipt by the Fort Nelson First Nation of such agreement, the Parties may, by mutual agreement, review and amend this Agreement accordingly.

#### **4. OBLIGATIONS OF FORT NELSON FIRST NATION**

- 4.1 Fort Nelson First Nation agrees that this Agreement resolves, for the Term, all claims arising with respect to the issues of:

4.1.1 revenue generation, including revenue-sharing and economic benefits; and

- 4.1.2 compensation for infringement, during the Term, of rights recognized and affirmed by section 35(1) of the *Constitution Act, 1982*, but not including compensation for alleged past infringements of rights recognized and affirmed by section 35(1) of the *Constitution Act, 1982*, or for alleged infringements that may occur subsequent to the termination of this Agreement.
- 4.2 Fort Nelson First Nation agrees that by complying with the consultation process provided for in the Consultation Protocol Agreement or the OGC-CA, as applicable to a proposed provincial Crown authorized activity, British Columbia will be deemed to have fulfilled its duty to consult with respect to a proposed provincial Crown authorized activity that may adversely affect rights recognized and affirmed by section 35(1) of the *Constitution Act, 1982*.
- 4.3 Fort Nelson First Nation will, no later than 15 Business Days following the Effective Date of this Agreement, establish and maintain throughout the Term, a Trust to receive Equity Payments and provide to British Columbia a legal opinion stating that:
- 4.3.1 the Trust is validly constituted according to the terms of this Agreement;
- 4.3.2 the trustees of the Trust are legally capable of accepting rights granted and obligations imposed under this Agreement;
- 4.3.3 the Trust may not be collapsed before the fifth anniversary of the Effective Date of this Agreement or the date on which the Agreement has otherwise been terminated; and
- 4.3.4 the primary purpose of the Trust is to benefit the membership of the Fort Nelson First Nation.
- 4.4 Fort Nelson First Nation will repay or, as the case may be, will cause its solicitors or the Trust to repay the Equity Payment, made as acknowledged in section 3.1.1, forthwith on request by British Columbia, if the Consultation Protocol Agreement has not been ratified and signed on or before September 30, 2012 (or such extended date as the Parties may have agreed upon).
- 4.5 Fort Nelson First Nation will repay or will cause the Trust to repay the Equity Payments if this Agreement is terminated prior to the fourth anniversary of the Effective Date of this Agreement. This repayment obligation will be reduced by 20% on the Effective Date of this Agreement and, thereafter, by 20%, at the end of each successive twelve-month period from the Effective Date of this Agreement during the Term, if in each twelve-month period no legal proceedings as described in section 6.2 or 8.3.2 are commenced or activated, if in abeyance, by, respectively Fort Nelson First Nation or a member or members of the Fort Nelson First Nation.
- 4.6 Fort Nelson First Nation will pay its own costs related to the negotiation and implementation of this Agreement and the Consultation Protocol Agreement.

- 4.7 For greater certainty, sections 4.8 and 4.9 do not limit the right of Fort Nelson First Nation to bring judicial review proceedings (in its own name or in the name of its chief acting on behalf of the First Nation) against British Columbia alleging that the Crown has failed to consult properly in relation to a Crown authorization granted during the Term which potentially infringes a right or rights recognized and affirmed by section 35(1) of the *Constitution Act, 1982* and the bringing of such judicial review proceedings by Fort Nelson First Nation will not be a breach of this Agreement by Fort Nelson First Nation.
- 4.8 Fort Nelson First Nation will not actively support or participate in any acts, by members of Fort Nelson First Nation, which interfere with the conduct of provincial Crown authorized activities. Fort Nelson First Nation, as soon as possible, will take all reasonable steps to bring an end to any acts of interference with provincial Crown authorized activities by members of the Fort Nelson First Nation, and, as requested, will work co-operatively with British Columbia, where appropriate.
- 4.9 Fort Nelson First Nation will not support, financially or otherwise, any legal proceedings in which an individual member or individual members of the Fort Nelson First Nation, other than as authorized by Fort Nelson First Nation to do so on behalf of the Fort Nelson First Nation, claim(s) or raise(s) a defence (other than a defence to a charge of a regulatory or criminal offence), based on:
- 4.9.1 an alleged infringement of a right or rights recognized and affirmed by section 35(1) of the *Constitution Act, 1982*, in relation to the geographic area of Treaty No. 8, or
- 4.9.2 a claim with respect to the representations and warranties made by Fort Nelson First Nation in this Agreement.
- 4.10 The Parties agree that this Agreement will not be interpreted to preclude an individual member of the Fort Nelson First Nation from relying upon the exercise of collective rights recognized and affirmed by section 35(1) of the *Constitution Act, 1982*, as a defence to a charge of a regulatory or criminal offence.

## **5. JOINT OBLIGATIONS OF THE PARTIES**

- 5.1 The Parties will make reasonable efforts to ratify and sign the Consultation Protocol Agreement on or before September 30, 2012, or such extended date as the Parties may have agreed upon.
- 5.2 A Party may initiate discussions with the other Party if issues arise which, in the opinion of the Party, may jeopardise this Agreement. The Parties will work together to resolve the issues.



## **6. LEGAL PROCEEDINGS**

- 6.1 Nothing in this Agreement will limit Fort Nelson First Nation's or British Columbia's ability to refer in any court proceeding to the payments made by British Columbia to the Fort Nelson First Nation under this Agreement.
- 6.2 Whether or not the cause of action or review arose before the Term, prior to Fort Nelson First Nation commencing a legal proceeding (other than a judicial review as contemplated in section 4.7), whether by authorization of the Chief or another member or members of Fort Nelson First Nation to do so on its behalf, against British Columbia or to becoming a co-plaintiff or co-petitioner in any proceeding against British Columbia, Fort Nelson First Nation will provide notice to British Columbia of its intention to do so.
- 6.3 The Parties may negotiate and attempt to reach agreement on terms and conditions to place the legal proceeding in abeyance. If agreement is reached on terms and conditions for placing the legal proceeding in abeyance, British Columbia will not exercise its options to terminate this Agreement.
- 6.4 If the legal proceeding includes any person or entity, other than British Columbia or a First Nation or a member of a First Nation (other than Fort Nelson First Nation) that is a party to Treaty No. 8, and that person or entity will not consent to an abeyance, British Columbia will contest the legal proceeding without exercising British Columbia's option to terminate this Agreement.
- 6.5 Fort Nelson First Nation will be able to defend against proceedings commenced by persons, entities or governments where such a defence is necessary to protect the First Nation's rights as recognized and affirmed by section 35(1) of the *Constitution Act, 1982* from competing or adverse claims made in those other proceedings. Such a defence shall not be a basis for termination of this Agreement by British Columbia.
- 6.6 The Parties acknowledge that each has a different position regarding the location of the western boundary of the geographic area of Treaty No. 8 and that nothing in this Agreement is an admission of fact or liability in relation to claims arising with respect to this matter, including the litigation by certain of the Treaty 8 First Nations seeking a declaration of the western boundary of Treaty No. 8 in British Columbia.
- 6.7 Further to section 6.6, the Parties may negotiate, by mutual agreement, amendments to this Agreement if the western boundary of Treaty No. 8 is finally determined in a binding decision.

## **7. TERM OF THIS AGREEMENT**

- 7.1 The Term of this Agreement will commence on the Effective Date of the Agreement and will continue until March 31, 2023, unless this Agreement terminates due to:

7.1.1 the mutual agreement of the Parties; or

7.1.2 termination under any of the sections in Part 8 of this Agreement.

## 8. TERMINATION

- 8.1 Notwithstanding any other provision of this Agreement, either Party may terminate this Agreement prior to the end of the Term by giving the other Party ninety (90) Business Days written notice of the intent to terminate the Agreement. During the ninety (90) Business Days notice period, the representatives of the Parties will meet in order to discuss the circumstances which gave rise to the written notice and, if the Parties agree to do so, may invoke the mediation process under Part 9 of this Agreement, to assist them to determine whether there is a basis for rescinding the notice.
- 8.2 Without limiting any other remedies that may be available to Fort Nelson First Nation, Fort Nelson First Nation will have the right to terminate this Agreement, on thirty (30) Business Days written notice, if British Columbia is not in compliance with its obligations under this Agreement.
- 8.3 Without limiting any other remedies that may be available to British Columbia, British Columbia will have the right to terminate this Agreement, on thirty (30) Business Days written notice,
- 8.3.1 if Fort Nelson First Nation is not in compliance with its obligations under this Agreement; or
- 8.3.2 if an individual member or individual members of the Fort Nelson First Nation, other than as authorized by Fort Nelson First Nation to do so on behalf of the Fort Nelson First Nation, make(s) a claim or raise(s) a defence (other than a defence to a charge of a regulatory offence under provincial law) in a proceeding based on:
- 8.3.2.1 an alleged infringement of a right or rights recognized and affirmed by section 35(1) of the *Constitution Act*, 1982 in relation to the geographic area of Treaty No. 8, or
- 8.3.2.2 a claim with respect to the representations and warranties made by Fort Nelson First Nation in this Agreement.
- 8.4 For greater certainty:
- 8.4.1 the right to terminate this Agreement will not arise in relation to any proceeding that was commenced and disclosed to British Columbia prior to the Effective Date of the Agreement; and
- 8.4.2 sections 4.7, 4.9, 6.2 and 8.3 do not represent an admission that British Columbia is a proper party or has any liability in relation to any of the proceedings identified therein.

8.5 Prior to either Party exercising its right of termination under, respectively, section 8.2, 8.3 or 8.7, a Party will deliver written notice to the other Party specifying the default and requesting that the default be cured within thirty (30) Business Days. If a Party receiving notice of a default does not cure the default to the satisfaction of the Party sending notice within the thirty (30) Business Days, the Party sending the notice of a default may terminate this Agreement on written notice to the defaulting party at any time after the thirty (30) Business Day period.

8.6 If the Parties have not ratified and signed the Consultation Protocol Agreement on or before September 30, 2012 or such extended date as may be agreed to in writing by the Parties, then either Party may terminate this Agreement.

8.7 Without limiting any of the termination rights set out in this Part 8, if the Consultation Protocol Agreement or the OGC-CA is terminated due to:

8.7.1 the exercise of a right to terminate contained in either agreement based on a reason other than default; or

8.7.2 the expiration of the term of either agreement, in the absence of a renewal or replacement,

then British Columbia will have the right to terminate this Agreement.

8.8 For purposes of any calculation required to be made in this Agreement, this Agreement will be deemed to be terminated on the last day of the Quarter immediately preceding the Quarter in which notice of termination is given.

8.9 Upon the expiration or termination of this Agreement, with the exception of the commitments, obligations and covenants of the Fort Nelson First Nation under sections 3.7.2, 4.1, 4.4, 4.5, and 4.2, but as to section 4.2, only with respect to provincial Crown authorized activities for which authorization was given during the Term of this Agreement, and the representations and warranties made by Fort Nelson First Nation in Part 12, Fort Nelson First Nation's commitments, obligations and covenants under this Agreement will cease to be binding on the First Nation and British Columbia's commitments, obligations and covenants under this Agreement will also cease to be binding on British Columbia.

## **9. DISPUTE RESOLUTION**

9.1 For the purposes of this Part 9, a dispute is defined as any disagreement (i) about which written notice of a dispute is given under section 9.2, and (ii) which relates to the interpretation of this Agreement, provided that no part of this Part 9 applies in respect of any aspect of a Crown authorization of an activity which potentially infringes a right or rights recognized and affirmed by section 35(1) of the *Constitution Act, 1982*.

9.2 Any Party may give written notice of a dispute to the other Party, which notice must include a summary of the particulars of the dispute.

- 9.3 Within ten (10) Business Days of receipt of a notice under section 9.2, the Parties will meet and will attempt to resolve the dispute through unassisted collaborative negotiation.
- 9.4 If the meeting under section 9.3 fails to resolve the dispute, any Party may refer the dispute to mediation by delivering a notice to commence mediation to the other Party, and the Parties will, unless otherwise agreed, participate in the mediation process set out in sections 9.5 to 9.11.
- 9.5 If all Parties fail to agree on a mediator within ten (10) Business Days after notice to commence mediation is delivered under section 9.4, on written request of a Party that is copied to the other Party, the appointment will be made by the Mediate BC Society using the Society's mediation rules.
- 9.6 At any time prior to the conclusion of the mediation, a Party may give the mediator and the other Party a written notice, with or without reasons, requiring the mediator to withdraw from the mediation on the grounds that the Party has justifiable doubts as to the mediator's independence or impartiality.
- 9.7 A mediator's appointment terminates if the mediator is required to withdraw under section 9.6, the mediator withdraws from office for any reason, or the Parties agree to a termination of the mediation or this Agreement.
- 9.8 If a mediator's appointment terminates under section 9.7 and the Parties want to continue a mediated process, a replacement mediator will be jointly appointed by the Parties within ten (10) Business Days of termination of the mediator's appointment and, failing agreement, on the written request of a Party, that is copied to the other Party, the appointment will be made by the Mediate BC Society using the Society's mediation rules.
- 9.9 Each Party will each submit to the mediator within five (5) Business Days a summary of the facts and its views on the issue in dispute.
- 9.10 The first mediation session must take place no later than ten (10) Business Days following the appointment of the mediator.
- 9.11 Mediation sessions must not extend beyond fifteen (15) Business Days after the first mediation session and the following will apply:
- 9.11.1 the mediation process and all proceedings in connection therewith will be and will remain confidential;
  - 9.11.2 the mediator will not issue a report or make any recommendations unless requested to do so in writing by all Parties;
  - 9.11.3 a Party may withdraw from mediation at any time by providing written notice of its intent to the mediator; and

- 9.11.4 each Party will assume its own expenses related to the mediation, and the expenses and fees of the mediator will be paid half by the Fort Nelson First Nation and half by British Columbia.
- 9.12 If the mediation process fails to resolve the dispute, the Parties may jointly agree to refer the dispute to an arbitrator pursuant to the *Commercial Arbitration Act*, R.S.B.C. 1996, c. 55.
- 9.13 If the Parties agree to arbitration pursuant to section 9.12, then the following will apply:
  - 9.13.1 the arbitrator will be chosen jointly by the Parties, and failing agreement, the appointment will be made by a Neutral Appointing Authority on the written request of a Party that is copied to the other Party;
  - 9.13.2 the arbitration process and all proceedings in connection therewith will be and will remain confidential;
  - 9.13.3 the decision of the arbitrator will be binding on the Parties for the term of this Agreement; and
  - 9.13.4 each Party participating in the arbitration will bear its own costs of participation, British Columbia will bear one-half of the expenses and fees of the arbitrator or arbitrators, and the Fort Nelson First Nation will bear the other one-half of said expenses and fees.

## 10. NOTICE

- 10.1 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 will be effectively given:
  - 10.1.1 by delivery to the address of the Party set out in section 10.2, on the date of delivery; or
  - 10.1.2 by pre-paid registered mail to the address of the Party, mentioned in this Agreement, on the date the registered mail is delivered; or
  - 10.1.3 by facsimile, to the facsimile number of the Party, mentioned in this Agreement, on the date the facsimile is sent.
- 10.2 The address and facsimile numbers of the Parties are:

Fort Nelson First Nation:  
Chief and Council  
  
RR # 1 Mile 295  
Alaska Highway

British Columbia:  
Ministry of Aboriginal Relations and  
Reconciliation  
PO Box 9051  
Stn Prov Govt

Fort Nelson, BC V0C 1R0  
Fax: 250-774-7260

Victoria, BC V8W 9E2  
Fax: 250-387-6073

Either the Fort Nelson First Nation or British Columbia may, upon written notice provided to the other Party at their address for service, amend their respective address for service.

## **11. AMENDMENT OF AGREEMENT**

11.1 Any amendment of this Agreement agreed to by the Parties must be in writing and signed by the Parties.

## **12. REPRESENTATION AND WARRANTIES**

12.1 Fort Nelson First Nation represents and warrants that it has the authority and legal capacity to enter into this Agreement on behalf of Fort Nelson First Nation and all members of the Fort Nelson First Nation and to make the covenants, representations and warranties contained herein and that this Agreement and the Fort Nelson First Nation Trust have been properly approved and authorized in accordance with its internal processes, all of which constitute legal, valid and binding obligations of Fort Nelson First Nation enforceable in accordance with their terms.

12.2 Fort Nelson First Nation represents and warrants it has taken all necessary action to authorize its Chief to enter into and sign this Agreement and to carry out its provisions on behalf of Fort Nelson First Nation and all members of Fort Nelson First Nation and has the authority for all purposes of this Agreement and the agreements contemplated under it, including, without limitation, the OGC-CA and the Consultation Protocol Agreement.

12.3 The Minister of Aboriginal Relations and Reconciliation is authorized to sign this Agreement on behalf of British Columbia.

12.4 Fort Nelson First Nation acknowledges that the receipt by the Trust of payments contemplated under this Agreement is a good and valid discharge of British Columbia's obligation to make Equity Payments under this Agreement.

## **13. INTERPRETATION OF AGREEMENT**

13.1 Fort Nelson First Nation and their members may enter into business relationships with other companies or persons who choose to do so.

13.2 Fort Nelson First Nation and their members may participate in government programs for which they are eligible.

13.3 This Agreement is not a treaty or a land claims agreement within the meaning of section 25 and 35 of the *Constitution Act, 1982*.

- 13.4 Nothing in this Agreement is to be interpreted as defining, creating, recognizing, suspending, affirming, denying, derogating, abrogating or amending any existing rights of Fort Nelson First Nation within the meaning of sections 25 and 35 of the *Constitution Act, 1982*.
- 13.5 Nothing in this Agreement is intended, nor shall it be deemed, to fetter or derogate from any statutory, regulatory or delegated authority under the Statutes of British Columbia.
- 13.6 The Parties acknowledge that each has a different position regarding the interpretation of Treaty No. 8 and the interpretation of section 35(1) of the *Constitution Act, 1982*, and that nothing in this Agreement is to be construed as an acceptance or an admission by British Columbia or Fort Nelson First Nation of the position of any other Party.
- 13.7 Nothing in this Agreement is to be construed as an acknowledgement or acceptance by British Columbia of Fort Nelson First Nation's assertions of Aboriginal rights or title or an admission of fact or liability, including, without limitation, claims for compensation of any kind arising in relation to such assertions.
- 13.8 Other than as provided in this Agreement, this Agreement will not limit the positions that a Party may take in future negotiations or current or future court actions.
- 13.9 Nothing in this Agreement is to be interpreted as granting or is intended to grant any interest in land and the payments to be made under this Agreement are not royalty payments and are not to be construed as payments of royalties.
- 13.10 In this Agreement, words in the singular include the plural and words in the plural include the singular unless the context or any specific definition otherwise requires.
- 13.11 In this Agreement, any reference made to a statute includes all regulations made under that statute and any amendments or replacement thereof.
- 13.12 No term, condition, covenant or other provision of this Agreement will be considered to have been waived by a Party unless such waiver is expressed in writing by the Party.
- 13.13 This Agreement shall be governed by the applicable laws of Canada and British Columbia.
- 13.14 This Agreement may be executed in counterparts and/or by facsimile by the Parties.
- 13.15 This Agreement, including all Appendices attached to it, constitutes the entire Agreement between the Parties relating to the subject matter of this Agreement and supersedes all prior negotiations and prior agreements, whether written, oral, implied, or collateral, among the Parties with respect to the subject matter of this Agreement.
- 13.16 If any part of this Agreement is determined to be void or unenforceable, it will not affect or impair the validity of any other part of this Agreement which will continue in full force

and effect and be construed as if this Agreement had been executed without the void or unenforceable part.


13.17 Where any part of this Agreement has been severed under section 13.16 and that severance materially affects the intent or implementation of this Agreement, the Parties agree to meet to resolve any issues as may arise as a result of that severance and to amend this Agreement accordingly.

13.18 The Parties agree to do such things, execute such further documents and take such further measures as may be necessary to carry out and implement the terms and conditions of this Agreement.

#### 14. RATIFICATION

14.1 Ratification of this Agreement by Fort Nelson First Nation will take place according to the internal processes of Fort Nelson First Nation, and will include, at a minimum, a Band Council Resolution.


SIGNED this 8 day of June, 2012  
in the presence of:

  
\_\_\_\_\_  
Witness

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

  
\_\_\_\_\_  
Honourable Mary Polak

SIGNED this 8 day of June, 2012  
in the presence of:

  
\_\_\_\_\_  
Witness

FORT NELSON FIRST NATION,  
as represented by the Chief

  
\_\_\_\_\_  
Chief Kathi Dickie



**APPENDIX 1:**

**CALCULATION OF QUARTERLY ANNUAL PAYMENTS**

**Quarter 1 Annual Payment =  $Q1EBP_t = \$285,715$**

**Quarter 2 Annual Payment =  $Q2EBP_t = \$285,715$**

**Quarter 3 Annual Payment =  $Q3EBP_t = \$285,715$**

**Quarter 4 Annual Payment =  $Q4EBP_t$**

$$= [(FNP/T8P \times EB1_t) + (1/6 \times EB2_t)] - (Q1EBP_t + Q2EBP_t + Q3EBP_t)$$

**Where:**

**Q1, Q2, Q3 and Q4** represent the Quarters 1 through 4.

**FNP** is the Fort Nelson First Nation population from Indian and Northern Affairs Canada (now Aboriginal Affairs and Northern Development Canada) (AANDC) Population Statistics Report, Indian Registration System, for 2011/03, region British Columbia, Total by Gender, which the Parties agree is 813.

**T8P** is the sum of populations from AANDC Population Statistics Report, Indian Registration System, for 2011/03, region British Columbia, Total by Gender for Sauteau First Nations, Fort Nelson First Nation, Prophet River First Nation, West Moberly First Nations, Halfway River First Nation, Blueberry River First Nations, and Doig River First Nation, which the Parties agree is 3152.

The Parties agree that the figures FNP and T8P will be subject to review every two years from the Effective Date of this Agreement and adjusted to reflect any change to FNP and T8P as reported by INAC's Population Statistics Report, Indian Registration System.

**t** = Fiscal Year for which payment is being made under this agreement.

Specifically:

- t = 1 = April 1, 2011 to March 31, 2012
- t = 2 = April 1, 2012 to March 31, 2013
- t = 3 = April 1, 2013 to March 31, 2014
- t = 4 = April 1, 2014 to March 31, 2015
- t = 5 = April 1, 2015 to March 31, 2016
- t = 6 = April 1, 2016 to March 31, 2017
- t = 7 = April 1, 2017 to March 31, 2018
- t = 8 = April 1, 2018 to March 31, 2019
- t = 9 = April 1, 2019 to March 31, 2020
- t = 10 = April 1, 2020 to March 31, 2021
- t = 11 = April 1, 2021 to March 31, 2022
- t = 12 = April 1, 2022 to March 31, 2023

$$EB1_t = 0.5\% \times (OGR_t)$$

**Where:**

OGR<sub>t</sub> = collected provincial royalties, calculated in accordance with, as applicable, the Petroleum and Natural Gas Royalty and Freehold Production Tax Regulation and the Net Profit Royalty Regulation made pursuant to the *Petroleum and Natural Gas Act*, as either may be amended or replaced from time to time, collected from oil and gas activities within the area set out in Appendix 4 that is bounded by the “British Columbia/Alberta Border”, the “British Columbia Northern Border” and the “E.B.A. Royalty Line”. This variable will be measured by estimates from the *Oil Ledger Report* and the *Gas Ledger Report* as extracted from the Ministry of Finance’s Petroleum Royalty Management System (PRMS).

$$EB2_{t=1} = \$2,522,975$$

$$EB2_{t=2 \text{ through } 12} = EB2_{t-1} \times [1 + 0.25 \times (\Delta \text{Oil \& Gas Activity}_{t-1 \text{ to } t}) + 0.15 \times (\Delta \text{Forestry Activity}_{t-1 \text{ to } t}) + 0.60 \times (\Delta \text{Mining Activity}_{t-1 \text{ to } t})]$$

**Where:**

t-1 = previous Fiscal Year

$$\Delta \text{Oil \& Gas Activity}_{t-1 \text{ to } t} = [(1/3) \times (NW_t - NW_{t-1})/NW_{t-1} + (1/3) \times (SL_t - SL_{t-1})/SL_{t-1} + (1/3) \times (P_t - P_{t-1})/P_{t-1}]$$

**Where:**

NW = number of new wells drilled on Crown land within the area set out in Appendix 4 that is bounded by the “British Columbia/Alberta Border”, the “British Columbia Northern Border” and the E.B.A. Oil and Gas and Coal Activity Line” that were authorized by the Oil and Gas Commission as measured by estimates of *Wells Drilled Based On Rig Release Date* as extracted from the Oil and Gas Commission Database.

SL = number of kilometres of new seismic lines constructed on Crown land within the area set out in Appendix 4 that is bounded by the “British Columbia/Alberta Border”, the “British Columbia Northern Border” and the “E.B.A. Oil and Gas and Coal Activity Line” that were authorized by the Oil and Gas Commission as measured by estimates of *New Cut Geophysical Lines with Final Plan Cut Length* as extracted from the Oil and Gas Commission Database.

P = number of kilometres of new pipelines constructed on Crown land within the area set out in Appendix 4 that is bounded by the “British Columbia/Alberta Border”, the “British Columbia Northern Border” and the “E.B.A. Oil and Gas and Coal Activity Line” that were authorized by the Oil and Gas Commission as measured by estimates of *Approved Pipeline Length on a “Leave to Open” Status* as extracted from the Oil and Gas Commission Database. See Technical Note below for determining estimates on Crown land.

$$\Delta \text{Forestry Activity}_{t-1 \text{ to } t} = (F_t - F_{t-1})/F_{t-1}$$

**Where:**

F = the volume of logs in cubic metres harvested on Crown land in the Fort Nelson forest district plus the volume of logs in cubic metres harvested on Crown land in the Peace forest district, as measured by estimates of Species "All", Product "All", Grade "Exclude Firmwood Rejects (all grades except Z)", and Billing Type "normal, cruise based, waste and beachcomb" extracted from the Ministry of Forests, Lands and Natural Resource Operations' Harvest Billing System (HBS).

**Where:**

The Fort Nelson forest district and the Peace forest district are as described in the Forest Regions and Districts Regulation as amended from time to time.

$$\Delta \text{Mining Activity}_{t-1 \text{ to } t} = (C_t - C_{t-1})/C_{t-1}$$

**Where:**

C = metric tonnes of coal extracted on Crown land within the area set out in Appendix 4 that is bounded by the "British Columbia/Alberta Border", the "British Columbia Northern Border", and the "EBA Oil and Gas and Coal Activity Line" as measured by estimates of *Marketed Coal Production* as produced by the Ministry of Energy and Mines.

The Parties acknowledge and agree that the methods used to collect and record provincial royalty information and activity data, as set out in this Agreement, may change from time to time. In the event of changes to any of these methods, British Columbia will, as soon as practicable, provide Fort Nelson First Nation with a written statement describing the revised method for collecting and recording the data and the date the revised method comes into effect.

**Rules in the Event of Termination**

In the event this Agreement is terminated on or after the last day of Quarter 1 of a Fiscal Year but prior to the last day of that Fiscal Year, the payment referred to in 3.5.5 is calculated as follows:

$$\text{Payment} = N/4 \times [(FNP/T8P \times EB1_t) + (1/6 \times EB2_t)] - (Q1EBP_t + Q2EBP_t + Q3EBP_t)$$

**Where:**

N equals

- 1 if this Agreement is terminated prior to the last day of Quarter 2;
- 2 if this Agreement is terminated on or after the last day of Quarter 2 but prior to the last day of Quarter 3; or
- 3 if this Agreement is terminated on or after the last day of Quarter 3 but prior to the last day of Quarter 4.

Q1EBP<sub>t</sub>, Q2EBP<sub>t</sub> and Q3EBP<sub>t</sub> refer to amounts actually paid under this Agreement, and if no payment was made for any particular Quarter the amount for that Quarter is zero.

And otherwise terms in the formula have the same meaning as those same terms in the general formula at the beginning of Appendix 1.

**Technical Note:**

The activity measure for pipelines (P) is available in the following sub-categories:

- Crown Land (CL),
- Private Land (PL), and
- Crown-Private Mix (CPM).

Therefore, in order to capture estimates of activity on all Crown land (ACL), estimates for this variable will be calculated on the following basis in each fiscal year:

$$ACL = CL + ( \% CPM)$$

**Where:**

$$\%CPM = (CL \div TL) \times CPM \quad \text{and}$$

$$TL = CL + PL + CPM$$

Where:

TL = the sum of crown and private lands

**APPENDIX 2:**

**MAXIMUM AMOUNT PAYABLE BY BRITISH COLUMBIA IN A FISCAL YEAR**

**Annual Payment Ceiling =  $EBPC_t = \$3,514,000_{2011s}$**

**Where:**

t = Fiscal Year for which payments are being made

Specifically:

- t = 1 = April 1, 2011 to March 31, 2012
- t = 2 = April 1, 2012 to March 31, 2013
- t = 3 = April 1, 2013 to March 31, 2014
- t = 4 = April 1, 2014 to March 31, 2015
- t = 5 = April 1, 2015 to March 31, 2016
- t = 6 = April 1, 2016 to March 31, 2017
- t = 7 = April 1, 2017 to March 31, 2018
- t = 8 = April 1, 2018 to March 31, 2019
- t = 9 = April 1, 2019 to March 31, 2020
- t = 10 = April 1, 2020 to March 31, 2021
- t = 11 = April 1, 2021 to March 31, 2022
- t = 12 = April 1, 2022 to March 31, 2023

**Note:**

For periods t = 1 through to t = 12 inclusive the ceiling value of  $\$3,514,000_{2011s}$  will be adjusted annually by changes in annual British Columbia Final Domestic Demand Implicit Price Index (BCFDDIPI) published by Statistics Canada as follows:

Ceiling value in Fiscal Year t =  $\$3,514,000 \times [BCFDDIPI_n / BCFDDIPI_{2011}]$

Where:  $BCFDDIPI_{2011}$  is the value of BCFDDIPI for the calendar year 2011 published by Statistics Canada, or estimated according to Appendix 3 if not available, at the same time that values for  $BCFDDIPI_n$  are published or estimated in accordance with Appendix 3.

For clarity, BCFDDIPI for calendar year 2011 will apply to Fiscal Year 2011/12. (See Appendix 3)

### APPENDIX 3:

#### FORECASTING THE BRITISH COLUMBIA FINAL DOMESTIC DEMAND IMPLICIT PRICE INDEX

British Columbia Final Domestic Demand Implicit Price Index (BCFDDIPI) published by Statistics Canada is available on a time-lagged basis. For the purposes of this agreement the BCFDDIPI estimate for calendar year  $n$  will be calculated as follows:

- If a British Columbia estimate of BCFDDIPI is not available, of Year  $n$ , and the most recent estimate is for Year  $n-1$ , then
  - $BCFDDIPI_n = (BCFDDIPI_{n-1}) \times (BCFDDIPI_{n-1} / BCFDDIPI_{n-2})$
- If a British Columbia estimate of BCFDDIPI is not available, of Year  $n$ , and the most recent estimate is for Year  $n-2$ , then
  - $BCFDDIPI_n = (BCFDDIPI_{n-2}) \times (BCFDDIPI_{n-2} / BCFDDIPI_{n-3})^2$

Where:

n=1= Calendar 2011	n=9= Calendar 2019
n=2= Calendar 2012	n=10= Calendar 2020
n=3= Calendar 2013	n=11= Calendar 2021
n=4= Calendar 2014	n=12= Calendar 2022
n=5= Calendar 2015	
n=6= Calendar 2016	
n=7= Calendar 2017	
n=8= Calendar 2018	

APPENDIX 4: MAP

