

THIS AGREEMENT made 14 day of March, 2013

## REVENUE SHARING AGREEMENT

**BETWEEN:**

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

**(the “Province”)**

**AND:**

**TAHLTAN CENTRAL COUNCIL, as represented by the President**

**(the “Recipient”)**

**(Collectively the “Parties”, Individually “Party”)**

**RECITALS:**

- A. The Recipient has Aboriginal Interests within its Traditional Territory.
- B. The Province supports the development of clean energy and the sharing with first nations of revenue from clean energy projects, and respects the importance of government to government relationships as contemplated in the New Relationship and the principles of the Transformative Change Accord.
- C. Part 6 of the *Clean Energy Act* enabled the creation of a fund known as the First Nations Clean Energy Business Fund which allows for the sharing of specified land revenues and water rentals with first nations.
- D. The Tahltan Central Council is a registered society constituted to represent, protect and assert Tahltan Nation aboriginal title and rights on behalf of all peoples of Tahltan ancestry.

NOW, THEREFORE, THE PARTIES AGREE AS FOLLOWS:

### **1.0 DEFINITIONS**

1.1 In this Agreement:

“Agreement” means this Revenue Sharing Agreement, including its Schedules;

“Fiscal Year” means April 1 of a calendar year to March 31 of the following calendar year;

“Lifetime” in relation to the Local Project, means the period during which the Local Project continues as a power project for the purposes of section 20 of the Clean Energy Act;

“Local Project” means the projected Power Project described in Schedule 1 of this Agreement;

“Prescribed Land and Water Revenues” means revenue prescribed for the purposes of section 20(4)(b) of the *Clean Energy Act*, which the Province derives from power projects, but is subject to any changes to the revenue prescribed for those purposes made during the Term of this Agreement;

“Power Project” means a power project as defined by section 20(1) of the *Clean Energy Act*;

“Prescribed Percentage” means the product of the percentage prescribed for the purposes of section 20(4)(b) of the *Clean Energy Act* (50% as of the effective date of this Agreement) and the percentage prescribed for the purposes of section 20(5)(a) of the Act (75% as of the effective date of this Agreement), as those percentages are amended from time to time;

“Project Revenue” means Prescribed Land and Water Revenues that

- (a) have been received by the Province in a Fiscal Year during the Term,
- (b) have been received by the Province after the Local Project became a Power Project within the meaning of Section 20 of the *Clean Energy Act*, and
- (c) are from an authorization or water licence necessary for the operation or development of the Local Project;

“Recipient First Nation” means the Tahltan Nation, as represented by the Tahltan Central Council;

“Recipient’s Share” means the amount paid under section 3.1;

“Term” means the term as defined by section 8.1; and

“Treasury Board” means Treasury Board as defined by the *Financial Administration Act*.

## **2.0 PURPOSE**

- 2.1 The purpose of this Agreement is to share Project Revenue received by the Province with the Recipient First Nation.

## **3.0 PAYMENT**

- 3.1 The Province will, within 120 days of the end of a Fiscal Year, pay to the Recipient the Prescribed Percentage of Project Revenue for that year.
- 3.2 The Recipient will establish and maintain throughout the Term a bank account in the name of the Recipient at a Canadian financial institution into which direct deposits may be made by British Columbia for the purpose of receiving monies payable British Columbia pursuant to this Agreement. The Recipient will provide such address and account information respecting this account to enable British Columbia to make direct deposits.

## **4.0 THE RECIPIENT’S REPRESENTATIONS AND WARRANTIES**

- 4.1 The Recipient represents and warrants to the Province, with the intent and understanding that the Province will rely thereon in entering into this Agreement, that:
- (a) it has the legal power, right, capacity and authority to accept, execute and deliver this Agreement and to carry out its obligations under this Agreement;
  - (b) the statements and information provided in the Revenue Sharing Application are true and accurate in all material respects;
  - (c) this Agreement is binding upon, and enforceable against, the Recipient in accordance with its terms;
  - (d) the undersigned representative of the Recipient is duly authorized to enter into this Agreement by a resolution passed at a duly convened meeting of the Recipient's Board of Directors;
  - (e) it has obtained or had the opportunity to obtain the advice of its own financial, legal, tax, and other professional advisors with respect to this Agreement; and
  - (f) it is a registered society duly constituted to represent all peoples of Tahltan ancestry in their efforts to protect, define and assert Tahltan aboriginal rights, including title.

## **5.0 PROVINCIAL REPRESENTATIONS AND WARRANTIES**

- 5.1 The Province represents and warrants to the Recipient that it has the legal authority to enter into this Agreement and carry out its obligation in accordance with it.

## **6.0 RELATIONSHIP**

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

## **7.0 INDEMNITY**

- 7.1 The Recipient will indemnify and save harmless the Province and Provincial Officials, from and against any and all losses, claims, damages, actions, causes of action, cost and expenses that the Province may sustain, incur, suffer or be put to by reason of any act or omission of the Recipient or by any servant, employee, or agent of the Recipient in relation to the performance or non-performance of the Recipient's obligations under this Agreement or breaches of the Warranties and Representations of the Recipient under section 4. This term will survive the expiry or termination of this Agreement.

## **8.0 TERM AND TERMINATION**

- 8.1 This Agreement takes effect on April 1, 2012, and continues for the Lifetime of the Local Project unless terminated under section 8.2.
- 8.2 The Province may terminate this Agreement, immediately by written notice to the Recipient, if:
- (a) any representation or warranty made by the Recipient in this Agreement is untrue or incorrect;

- (b) an amendment or repeal of the *First Nations Clean Energy Business Fund Regulation* or section 20 of the *Clean Energy Act* comes into force and the Province notifies the Recipient of the termination within 90 days of the coming into force of the repeal or amendment.

## **9.0 AMENDMENT**

- 9.1 Any amendments to this Agreement must be in writing and executed by the Parties.

## **10.0 APPROPRIATION**

- 10.1 Notwithstanding any other provision of this Agreement, the payment of money by the Province to the Recipient pursuant to this Agreement is subject to:

- (a) there being sufficient monies available in an appropriation, as defined in the *Financial Administration Act* (the *Financial Administration Act* and every amendment made to that Act being collectively called the “Act”), in any fiscal year or part thereof when any payment of money by the Province to the Recipient falls due pursuant to this Agreement, to make that payment;
- (b) the payment being in accordance with an approved Treasury Board spending plan for the First Nations Clean Energy Business Fund special account; and
- (c) Treasury Board not having controlled or limited expenditure, pursuant to the Act, under any appropriation referred to in the preceding paragraph.

## **11.0 DISPUTE RESOLUTION**

- 11.1 If a dispute arises between the Recipient and British Columbia regarding any aspect of this Agreement, the individuals identified under section 13.3 will meet as soon as is practicable to resolve the dispute.
- 11.2 If the Parties are unable to resolve differences under section 11.1, the issue will be raised to, for the Province, the Assistant Deputy Minister responsible for the First Nations Clean Energy Business Fund, and for the Recipient, the Recipient’s Board of Directors.

## **12.0 GENERAL PROVISIONS**

- 12.1 In this Agreement:
  - (a) all headings are for convenience only and do not form part of this Agreement and are not intended to interpret, define, limit, enlarge, modify or explain the scope, extent or intent of this Agreement or any of its provisions;
  - (b) words in the singular include the plural and words in the plural include the singular unless the context or a specific definition otherwise requires;

- (c) the use of the word “including” is to be read as not limiting the generality of the preceding term or phrase;
  - (d) all references to a designated “section”, “subsection” or other subdivision or to a Schedule are to the designated section, subsection or subdivision of, or Schedule to, this Agreement;
  - (e) any reference to a corporate entity includes and is also a reference to any corporate entity that was a predecessor to, or that is a successor to, such entity; and
  - (f) any reference made to a statute includes all regulations made under that statute and any amendments or replacements for that statute or regulations made under that statute.
- 12.2 This Agreement shall be governed by the applicable laws of the Province and Canada.
- 12.3 This Agreement and any amendments to it, made in accordance with section 9.1, constitute the entire agreement between the Parties with respect to the subject matter of the Agreement, unless otherwise agreed in writing by the Parties.
- 12.4 There will be no presumption that any ambiguity in any of the terms of this Agreement should be interpreted in favor of either Party.
- 12.5 If any part of this Agreement is void or unenforceable at law, it shall be severed from this Agreement and the rest of the Agreement shall remain in effect and fully enforceable.
- 12.6 No term, condition, covenant or other provision of this Agreement and no breach by one Party of any term or condition of this Agreement may be waived unless such waiver is in writing and signed by the other Party.
- 12.7 Time is of the essence.
- 12.8 This Agreement will ensure to the benefit of and be binding upon the Parties and their respective permitted assigns.
- 12.9 Unless otherwise agreed by the Parties, this Agreement may not be assigned, either in whole or in part, by either Party.
- 12.10 *Schedule 1, Clean Energy Project Description*, is attached and forms part of this Agreement.
- 12.11 This Agreement may be entered into by each Party signing a separate copy of the Agreement (including a photocopy or facsimile copy) and delivering it to the other Party by facsimile transmission.
- 12.12 This Agreement is without prejudice to any Aboriginal rights, including title, of the Recipient First Nation whether recognized, proven, asserted or otherwise. Nothing in this Agreement is intended to create, define, diminish, abrogate or extinguish the Aboriginal rights, including title, of the Recipient First Nation.
- 12.13 This Agreement will not limit the positions that a Party may take in future negotiations or court actions.

- 12.14 This Agreement and any decisions made during the term of this Agreement do not change or affect the positions either Party has, or may have, regarding their respective jurisdictions and authorities.
- 12.15 This Agreement does not exclude the Recipient from accessing clean energy economic opportunities and benefits, which may be available to the Recipient, other than those expressly set out in this Agreement.

### **13.0 NOTICE**

- 13.1 Any notice or other communication that is required to be given or that a Party wishes to give to the other Party with respect to this Agreement will be in writing. It will be effectively given:
- (a) by personal delivery to the address of the Party set out in section 13.3;
  - (b) by pre-paid registered mail to the address of the Party set out in section 13.3; or
  - (c) by facsimile, to the facsimile number of the Party set out in section 13.3.
- 13.2 Any notice or communication given in accordance with section 13.1 will be deemed to have been given on the date it is actually received, if received by 4:00 pm. If received after 4:00 pm, it will be deemed to have been received on the next business day.
- 13.3 A notice or communication must be delivered, mailed or sent by facsimile to the intended recipient at the address below:

#### **The Province**

Attention: Michael Matsubuchi  
Director, Fiscal Arrangements and Climate Change  
Ministry of Aboriginal Relations and Reconciliation  
PO Box 9100  
Stn Prov Govt  
Victoria, BC V8W 9B1  
Fax Number: (250) 356-5312

#### **The Recipient**

Attention: Annita McPhee, President  
Tahltan Central Council  
PO Box 69  
Dease Lake, BC V0C 1L0  
Fax Number: (250) 771-3020



## **Appendix 1 – Clean Energy Project Description**

### **The Forrest Kerr Hydroelectric Project**

(Iskut River)

#### **Revenue Sharing Opportunity:**

- Water Licence #: C125855
- Land Tenure #: 6407353
- Land Tenure #: 6407355
- Land Tenure #: 6407354
- Land Tenure #: 6407352
- Land Tenure #: 6407423
- Land Tenure #: 6408220
- Land Tenure #: 6408226

#### **Location:**

Latitude: 56 43' N

Longitude: 130 39' W

#### **Project Overview:**

The Forrest Kerr Hydroelectric Project is a 195MW, run-of-river project located on the Iskut River 140km southwest of Iskut BC. The project comprises of one 21MW and three 58MW hydro generating units. A portion of the Iskut River will be redirected through 3km of tunnels to underground turbines where the water will then be returned to the river further downstream. Power will be interconnected to the BC Hydro grid at the Bob Quinn Lake substation through the proposed 287kV Northwest Transmission Line operated by British Columbia Transmission Corporation. Construction started in July 2010 and is expected to be completed and operational in 2014.