



ECONOMIC AND COMMUNITY DEVELOPMENT AGREEMENT

This consolidated 2017 Agreement is dated the 30 day of March, 2017.

BETWEEN

HER MAJESTY THE QUEEN

IN RIGHT OF THE PROVINCE OF BRITISH COLUMBIA

as represented by the Minister of Aboriginal Relations and Reconciliation
(hereinafter the "Province")

and

**THE KTUNAXA NATION COUNCIL SOCIETY (the "KNC"), on its own
behalf and on behalf of the Ktunaxa Nation,
?akisq̓nuk First Nation, ?aq̓am, Lower Kootenay Indian Band and
Tobacco Plains Indian Band**
(hereinafter the "Ktunaxa Parties")

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

Whereas the Ktunaxa Nation has Aboriginal Rights within Ktunaxa Territory;

Whereas the KNC is the governing entity of the Ktunaxa Nation responsible for Aboriginal Rights and represents the interests of Ktunaxa Citizens;

Whereas on June 26, 2014 the Supreme of Court of Canada found the Tsilhqot'in Nation had established aboriginal title in British Columbia;

Whereas the Parties have a shared commitment to strengthen their relationship, on a government-to-government basis, in a manner which is respectful of the Ktunaxa Nation's interest in fulfilling its stewardship responsibilities in Ktunaxa Territory and the following Ktunaxa Nation vision statement:

"Strong healthy citizens and communities, speaking our languages and celebrating who we are and our history in our ancestral homelands, working together, managing our lands and resources, as a self-sufficient, self-governing nation";

Whereas the Parties, acting on their shared commitments, have entered into a Strategic Engagement Agreement that sets out engagement processes respecting the land and resources within Ktunaxa Territory, including processes for consultation and accommodation and identifying issues related to land and resource use, principles for sharing information, and the establishment of government-to-government forums to address land and resource management activities, shared decision-making and revenue-sharing; and

Whereas the Parties entered into the Economic and Community Development Agreement on January 29, 2013 (the “2013 Agreement”) and wish to amend that agreement by replacing it with this consolidated 2017 Agreement.

Now, therefore, the Parties agree as follows:

DEFINITIONS

1 (1) In this Agreement

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

“Agreement” means this consolidated 2017 Agreement including its attached annexes, Project Appendices and schedules to Project Appendices and any amendments made to it from time to time in accordance with its provisions;

“Band Council Resolution” means a resolution made by a “council of the band” within the meaning of the *Indian Act*, RSC 1985, c.1-5;

“BC Fiscal Year” means a period beginning on April 1 of a calendar year and ending on March 31 of the next calendar year;

“Contributing Project” means a Project identified in a Project Appendix in respect of which the Parties agree to share certain revenues in accordance with the provisions of that Project Appendix;

“Dispute” means any disagreement arising out of the interpretation or implementation of this Agreement including any dispute with respect to whether any Party has failed to perform or

satisfy any of its obligations under this Agreement, including any obligations set out in a Project Appendix;

“Effective Date” means January 29, 2013;

“Government Actions” means all decisions, authorizations, permits, licences, approvals, Crown land dispositions, agreements, and other actions whatsoever entered into or otherwise taken by a Provincial Agency in relation to a Project;

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

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

“Ktunaxa Communities” means ʔakisq̓nuk First Nation, ʔaq̓am, Lower Kootenay Indian Band and Tobacco Plains Indian Band, all of which are “bands” within the meaning of the *Indian Act*;

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

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

“Ktunaxa Territory” means, for the purposes of this Agreement, that portion of Ktunaxa ʔamakʔis to which this Agreement applies identified by the Ktunaxa Nation and set out in Annex A;

“Notice of Withdrawal” means a notice provided to the Province by the KNC on behalf of the Ktunaxa Parties of the Ktunaxa Parties’ intent to terminate a schedule to a Project Appendix or a Project Appendix, as the case may be;

“Notice to Terminate” means a notice provided under subsection 20(4) or 20(7) to terminate a schedule to a Project Appendix, a Project Appendix or this Agreement in its entirety, as the case may be;

“Payment Account” means an account established in accordance with subsection 6(2);

“Project” means an economic activity within Ktunaxa Territory that generates or has the potential to generate revenue for the Province;

“Project Appendix” means an agreement that sets out the provisions specifically relating to the revenue-sharing arrangements for a particular Project that the Province and the KNC on behalf of the Ktunaxa Parties have agreed to incorporate into this Agreement in accordance with section 5;

“Project Payment” means a payment made or to be made by the Province in respect of a Project in accordance with this Agreement;

“Provincial Agency” means a provincial ministry, agency or office that is represented in and bound by the terms of the Strategic Engagement Agreement, including its provincial decision-makers and any person who has authority or provincial direction to carry out consultation;

“Resource-Revenue and Benefit Sharing Standing Committee” means the Resource-Revenue and Benefit Sharing Standing Committee established under the Strategic Engagement Agreement;

“SEA Senior Forum” means the Senior Forum established under the Strategic Engagement Agreement;

“Strategic Engagement Agreement” means the Strategic Engagement Agreement between the Province of British Columbia and the Ktunaxa Nation, dated November 13, 2013 and includes any amendments made to it from time to time in accordance with its provisions, or any replacement agreement; and

“Term” has the meaning given to that word in section 14.

PURPOSES

- 2** (1) The purposes of this Agreement are to
- (a) further strengthen the government-to-government relationship between the Parties,
 - (b) address the Ktunaxa Nation’s interest in receiving a share of the provincial revenues derived from the use of resources

within Ktunaxa Territory to support the Ktunaxa Nation in its efforts to achieve the goals of its vision statement,

- (c) set out the Parties' agreement with respect to how revenues derived from Projects will be shared between them,
- (d) assist the Province in achieving a greater measure of stability and certainty in respect of resource development in Ktunaxa Territory,
- (e) confirm the engagement processes that the Parties will rely on in seeking to meet their respective legal consultation obligations in relation to Projects, and
- (f) provide an agreed upon framework of general terms and conditions relating to revenue-sharing to assist the Parties in developing and administering revenue-sharing arrangements for particular Projects in a cooperative, efficient and timely manner.

REPRESENTATIONS AND WARRANTIES

- 3** (1) The Province represents and warrants to each of the Ktunaxa Parties that it has the authority to enter into this Agreement and to carry out its obligations in accordance with the provisions of this Agreement and this Agreement is a valid and binding obligation of the Province.
- (2) The KNC represents and warrants to the Province that, as of the Effective Date, and throughout the Term, each of the following representations and warranties are, and will be, true and correct in all material respects:
- (a) the KNC is a duly incorporated and subsisting society under the *Societies Act*, SBC 2015, c. 18;
 - (b) each of the Ktunaxa Communities is a "band" within the meaning of the *Indian Act*, and each has the legal power and capacity to enter into and perform its obligations under this Agreement;
 - (c) this Agreement has been duly and validly authorized, executed and delivered by the KNC for and on behalf of itself and each of the Ktunaxa Communities;

- (d) the KNC has received all authorizations and approvals to enter into and to perform its obligations under this Agreement for and on behalf of itself and, as applicable, each and all of the Ktunaxa Nation, the Ktunaxa Communities and the Ktunaxa Citizens, and has provided the Province with a true copy of the KNC resolution approving this consolidated 2017 Agreement;
 - (e) without limitation to paragraph (d), the KNC holds all legal authorizations, mandates and approvals that may be necessary or desirable for it to receive Project Payments on behalf of Ktunaxa Communities and Ktunaxa Citizens and, through its governance structure and decision-making processes, it is accountable to Ktunaxa Communities and Ktunaxa Citizens;
 - (f) each of the Ktunaxa Communities provided a true copy of its Band Council Resolution approving the 2013 Agreement;
 - (g) each of the Ktunaxa Communities will provide a Band Council Resolution to the KNC, and the KNC will make the Band Council Resolutions available to the Province upon request, authorizing the KNC to enter into this Agreement and to make the covenants, acknowledgements and representations included therein, on its own behalf and on behalf of the Ktunaxa Communities and Ktunaxa Community Members; and
 - (h) the applicable Band Council Resolutions have not been varied, amended, repealed or replaced.
- (3) Each of the Ktunaxa Parties agree that they will immediately notify the Province if the KNC's legal power, capacity or authority to act on behalf of the Ktunaxa Communities and Ktunaxa Citizens in respect of the subject matters of this Agreement is diminished in any way or, in the case of each of the Ktunaxa Communities, if its respective Band Council Resolution is at any time varied, amended, repealed or replaced.
- (4) The KNC agrees that it will, from time to time during the Term following a written request by the Province, provide to the Province a certificate from a senior officer of the KNC confirming

that each of the representations and warranties remains true and correct in all material respects.

PROJECT NEGOTIATIONS

- 4** (1) The Parties will seek to identify and pursue potential revenue-sharing opportunities in accordance with this Agreement.
- (2) The SEA Senior Forum, being the primary forum for the Parties to discuss the sharing of resource-revenues and other benefits, will
- (a) identify and prioritize any new revenue-sharing opportunities within Ktunaxa Territory,
 - (b) identify the objectives and interests of the Parties related to any revenue-sharing opportunities identified under paragraph (a) that may inform the development of their respective negotiation mandates, and
 - (c) subject to each securing such mandates as required by the Parties, delegate the negotiation of potential revenue-sharing agreements to the Resource Revenue and Benefits Sharing Standing Committee under the SEA.

PROJECT APPENDICES

- 5** (1) The Elk Valley Coal Mining Revenue Sharing Project Appendix and the Forest Revenue Sharing Project Appendix are attached to and form a part of this Agreement.
- (2) If, following the Effective Date, the Parties agree on provisions regarding revenue-sharing for a Project, then, unless the Parties otherwise agree, those provisions will be set out in a Project Appendix.
- (3) A Project Appendix will include provisions with respect to the following matters:
- (a) the manner in which Project Payments for that Project will be determined and any related Project-specific matters with respect to the verification and review of those determinations by the Parties;
 - (b) the period of time over which revenue will be shared in accordance with the Project Appendix;

- (c) the dates on which, or the timeframes within which, Project Payments are to be made by the Province;
 - (d) the extent to which the Project Payments will constitute an accommodation for the potential impact of a Project on Aboriginal Rights and any associated releases, acknowledgements, and assurances;
 - (e) any confidentiality provisions required to address the particular circumstances of that Project;
 - (f) any additional obligations and obligations that will continue to apply if
 - (i) a Project Appendix or a schedule to a Project Appendix expires,
 - (ii) the KNC or the Province provides a Notice to Terminate a Project Appendix or a schedule to a Project Appendix, or
 - (iii) the KNC provides a Notice of Withdrawal to the Province; and
 - (g) other matters as agreed to by the Parties.
- (4) Once the Parties have agreed to the provisions of a Project Appendix and they have obtained all required approvals in relation to that Project Appendix, the Province and the KNC on behalf of the Ktunaxa Parties will confirm those provisions by signing the Project Appendix.
- (5) A Project Appendix or a schedule to a Project Appendix signed after the Effective Date will be deemed to be incorporated by amendment into this Agreement as an attachment to it on the date specified in the Project Appendix or schedule, as the case may be.
- (6) The KNC and the Province will amend Annex B (List of Project Appendices and Schedules) to indicate the date
- (a) a Project Appendix or a schedule to a Project Appendix was first incorporated into this Agreement, or

- (b) a Project Appendix or a schedule to a Project Appendix was deleted from this Agreement in accordance with subsection 20(11).

DELIVERY OF PAYMENTS

- 6** (1) The Parties agree that Project Payments will be paid to the KNC unless another entity is designated under subsection 7(1).
- (2) The KNC, or another entity designated under subsection 7(1), will establish and maintain in its name a separate Payment Account at a Canadian financial institution for the purpose of receiving Project Payments into which direct deposits can be made by the Province and it will provide the Province the address and account information to enable the Province to make Project Payments.
- (3) The Province will deposit Project Payments under a Project Appendix directly into the Payment Account established under subsection (2).
- (4) Prior to the Province making any Project Payment, the KNC must
 - (a) be in compliance with subsection (2), or
 - (b) provide the confirmation required under subsection 7(2) if another entity is designated under subsection 7(1).
- (5) The Payment Account will be used for the sole purpose of receiving Project Payments under this Agreement.
- (6) The KNC, or another entity designated under subsection 7(1), will maintain the Payment Account for as long as there is money in it to be disbursed.
- (7) The KNC agrees that it
 - (a) adheres to and will continue to adhere to Generally Accepted Accounting Principles, and
 - (b) is and will continue to be audited annually in accordance with public sector accounting standards.

DESIGNATED ENTITY

- 7** (1) The KNC on behalf of the Ktunaxa Parties may designate another entity to receive Project Payments under subsection (6) (1) and, if such a designation is made, the KNC will notify the Province.

- (2) The KNC will ensure and provide confirmation to the Province that the entity designated under subsection (1)
 - (a) possesses the legal capacity to accept Project Payments,
 - (b) will adhere to generally accepted accounting principles, and
 - (c) will be audited annually in accordance with public sector accounting standards.
- (3) The Province will notify the KNC of any change in the Provincial Agency responsible for making Project Payments.

APPROPRIATION

- 8 (1) Despite any other provision of this Agreement, the payment of Project Payments or any other money by the Province under this Agreement is subject to
 - (a) there being sufficient monies available in an appropriation, as defined in the *Financial Administration Act*, RSBC 1996, c. 138, to enable the Province in any fiscal year or part thereof when such payment is required, 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.

REPORTS

- 9 (1) To support the Province in its efforts to account for and report on the use of tax revenues, if requested by the Province, the KNC will, once per BC Fiscal Year, provide a report of the expenditures made in the previous BC Fiscal Year from the Payment Account and the initiatives supported by those expenditures.
- (2) The Parties agree that the Province has no liability to the Ktunaxa Parties or Ktunaxa Citizens for the management of the Payment Account or the allocation or use of monies in the Payment Account.

ASSIGNMENT

- 10** (1) Neither Party will assign, either directly or indirectly, this Agreement or any right under this Agreement without the prior written consent of the other Party.

CONSULTATION PROCESS

- 11** (1) The Parties agree that any consultation required in respect of any Government Actions relating to a Project will be carried out in accordance with the provisions of the Strategic Engagement Agreement but that a Project Appendix may address the extent to which any consultation and accommodation duties have been satisfied in relation to that Project.
- (2) If the Strategic Engagement Agreement expires or is terminated prior to the end of the Term of this Agreement, the Parties will
- (a) continue to rely upon the engagement processes set out in the Strategic Engagement Agreement, or
 - (b) develop alternate engagement processes,
- for the purposes of consultation in relation to a Project.

CONFIDENTIAL INFORMATION

- 12** (1) The Ktunaxa Parties will make all reasonable efforts to keep confidential and to prevent the disclosure of information that the Province marks “confidential”, except as required by law.
- (2) Despite subsection (1), the Ktunaxa Parties may disclose confidential information to their advisors, including legal, financial, tax and other professional advisors, provided that those advisors agree to keep the information confidential.
- (3) Despite any other provision of this Agreement, the Ktunaxa Parties will have the right to disclose the amount of Project Payments to the Ktunaxa Communities and Ktunaxa Citizens.
- (4) Information that may be provided by the Ktunaxa Parties 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, except in accordance with the *Freedom of Information*

and Protection of Privacy Act, RSBC 1996, c. 164, or as otherwise required by law.

- (5) If the Province receives a request under the *Freedom of Information and Protection of Privacy Act*, for disclosure of confidential information received from the KNC, the Province will provide the Ktunaxa Parties with an opportunity to express their views regarding any impacts that may arise from a disclosure before making the disclosure.
- (6) Except as provided in subsection (3), if a Project Appendix includes provisions regarding the confidentiality of information that conflict with this section 12, the provisions of the Project Appendix will govern to the extent of the conflict.

REVIEW AND AMENDMENT

- 13** (1) Within two (2) years of the date a Project Payment first becomes payable under this Agreement and thereafter every three (3) years, the Province and the KNC on behalf of the Ktunaxa Parties, will meet to
- (a) review the effectiveness of the Agreement in contributing to the achievement of the purposes set out in section 2,
 - (b) review other matters related to the implementation of this Agreement, and
 - (c) consider potential amendments to improve this Agreement.
- (2) In addition to the review provided under subsection (1), either the KNC on behalf of the Ktunaxa Parties or the Province may notify the other in writing if it wishes to review this Agreement or any part of this Agreement and to negotiate any potential amendments.
- (3) After notice is provided under subsection (2), the KNC and the Province may, if both agree, commence negotiations of potential amendments to this Agreement.
- (4) Any amendment to this Agreement must be in writing and signed by the KNC on behalf of the Ktunaxa Parties and the Province.

TERM

- 14** (1) The Term of the 2013 Agreement commenced on the Effective Date and this consolidated 2017 Agreement takes effect and replaces the 2013 Agreement on the date it is signed by all of the Parties and will continue for as long as there are revenue-sharing provisions of a Project Appendix in effect.
- (2) Despite subsection (1), the Province and the KNC on behalf of the Ktunaxa Parties may agree in writing to terminate this Agreement in its entirety on an earlier date.
- (3) For greater certainty,
- (a) the termination of this Agreement under subsection (2) prior to the end of its Term will also result in the concurrent termination of all Project Appendices,
 - (b) if either the Province or the KNC on behalf of the Ktunaxa Parties terminates a specific Project Appendix, this will not result in the termination of this Agreement or any other Project Appendix,
 - (c) if either the Province or the KNC on behalf of the Ktunaxa Parties terminates a schedule to a specific Project Appendix, this will not result in the termination of this Agreement, the Project Appendix, any other schedule to the Project Appendix or any other Project Appendix,
 - (d) if the KNC on behalf of the Ktunaxa Parties provides a Notice of Withdrawal from a specific Project Appendix, this will not affect any other Project Appendix, and
 - (e) if the KNC on behalf of the Ktunaxa Parties provides a Notice of Withdrawal from a specific schedule to a Project Appendix, this will not affect any other schedule to that Project Appendix or any other Project Appendix.

CONTINUING OBLIGATIONS

- 15** (1) The Parties' rights and obligations that are
- (a) set out in subsections 6(5), 6(6) and 6(7) and sections 7, 9, 12 and this section 15, or

- (b) specified in a Project Appendix as continuing to apply in accordance with paragraph 5(3)(f)

are intended to survive and to remain fully binding on the Parties and enforceable, despite the expiration of the Term or termination of this Agreement.

DISPUTE RESOLUTION

- 16** (1) The Parties agree that they will endeavour to resolve any Disputes in a co-operative, effective and timely manner and that the KNC will act on behalf of the Ktunaxa Parties with respect to the dispute resolution process set out herein.
- (2) The SEA Senior Forum is responsible for the oversight of the implementation of this Agreement and for the management of the dispute resolution processes set out herein.
 - (3) The Province may not commence a court proceeding concerning a Dispute unless the Province has sent a letter to the KNC setting out the subject matter of the Dispute and, subject to an agreement under subsection (7), has proceeded through the processes set out in sections 17 to 19.
 - (4) The Ktunaxa Parties may not commence a court proceeding concerning a Dispute unless the KNC has sent a letter to the Province setting out the subject matter of the Dispute and, subject to an agreement under subsection (7), has proceeded through the processes set out in sections 17 to 19.
 - (5) Despite subsections (3) and (4), the Province or the Ktunaxa Parties may commence a court proceeding concerning a Dispute in order
 - (a) to prevent the loss of a right of action due to the expiration of a limitation period, or
 - (b) to obtain interlocutory or interim relief.
 - (6) Nothing in section 17, 18 or 19 creates a cause of action where none otherwise exists.
 - (7) The KNC and the Province may agree to waive or vary a procedural requirement set out in this section 16 or sections 17

to 19 as it applies to a particular Dispute or agree to another appropriate approach to resolve the Dispute.

- (8) Sections 16 to 19 do not apply to
 - (a) Disputes in respect of any matter related to a Government Action or to the consultation process provided for in section 11, or
 - (b) a Notice to Terminate.

17 (1) A Dispute in relation to

- (a) the determination of the amount of a Project Payment,
- (b) whether the Province has paid a Project Payment or provided information relating to the Project Payment within the time required under the applicable Project Appendix,
- (c) the interpretation of any provision of a Project Appendix relating to paragraph (a) or (b),
- (d) whether a Party is in breach of any of its commitments under a Project Appendix, or
- (e) any other matter that the KNC and the Province may agree to,

will be referred to the Resource-Revenue and Benefit Sharing Standing Committee and the Parties' representatives on that Committee will attempt to resolve the Dispute as soon as practicable.

(2) The following Disputes will be referred to the SEA Senior Forum:

- (a) any Dispute which is referred to the Resource-Revenue and Benefit Sharing Standing Committee and is not resolved within sixty (60) days of the referral or such longer period as the Committee may agree; and
- (b) any other Dispute,

and the Parties' representatives or their designates to that Forum will meet within fifteen (15) days or such time as agreed to by the KNC and the Province to discuss and attempt to resolve the Dispute.

- 18** (1) If a Dispute referred to the SEA Senior Forum is not resolved within sixty (60) days of the referral, either co-chair of the SEA Senior Forum may refer the Dispute to mediation by providing a notice to mediate to the other co-chair.
- (2) Mediation of a Dispute under a notice to mediate will proceed in the following manner:
- (a) upon the delivery of the notice, the respective co-chairs of
 - (i) the Resource-Revenue and Benefit Sharing Standing Committee, and
 - (ii) the SEA Senior Forum,or their designates, will participate in the mediation;
 - (b) the mediation will be conducted by one mediator appointed by agreement of the KNC and the Province or, if there is no agreement within thirty (30) days after delivery of the notice, the mediator will be appointed by the British Columbia Mediator Roster Society using the Society's mediation rules;
 - (c) the mediation will be conducted in the manner that the mediator considers necessary and appropriate to assist the KNC and the Province to resolve the Dispute in a fair, efficient and cost-effective manner;
 - (d) the mediation is terminated on the earliest of
 - (i) the expiration of sixty (60) days after the appointment of the mediator or any longer period agreed to by the KNC and the Province,
 - (ii) the date either the KNC or the Province withdraws its representatives from the mediation by notice in writing to the mediator, provided that no one may withdraw until after the first meeting with the mediator,
 - (iii) the date on which the KNC and the Province agree in writing to terminate the mediation, or
 - (iv) the date on which the KNC and the Province sign a written agreement resolving the Dispute;
 - (e) the KNC and the Province will

- (i) at the request of the other, provide timely disclosure of sufficient information and documents to enable a full examination of the subject matter of the Dispute, with the exception of privileged documents and subject to applicable information and privacy legislation and other laws imposing confidentiality requirements,
 - (ii) make every reasonable effort to appoint representatives with sufficient knowledge and authority to reach an agreement, or with ready access to such knowledge and authority, and
 - (iii) participate in the mediation in good faith;
 - (f) the mediation process and all its related proceedings will be and will remain confidential, unless the KNC and the Province agree otherwise;
 - (g) subject to paragraph (i), the mediation will not restrict in any way the positions that any of the Parties may take in any dispute, arbitration or court proceeding;
 - (h) the mediator will not issue a report or make any recommendations unless requested to do so in writing by the KNC and the Province;
 - (i) any agreement reached through mediation will be recorded in writing, signed by authorized representatives of the KNC and the Province and delivered to both the KNC and the Province;
 - (j) the KNC and the Province will each bear the costs of their own participation, representation and appointments in the mediation; and
 - (k) the KNC and the Province will share equally all common costs of the mediation, including fees of the mediator, costs of meeting rooms, actual and reasonable disbursements incurred by the mediator, and fees of the British Columbia Mediator Roster Society.
- (3) If the KNC and the Province are unable to resolve a Dispute and the mediation is terminated under paragraph (2)(d) the KNC and the Province may, by written agreement, refer the Dispute for resolution by arbitration under section 19.

- 19 (1)** Arbitration of a Dispute will proceed in the following manner:
- (a) unless the KNC and the Province agree otherwise, the arbitration will be conducted by
 - (i) an arbitrator appointed by agreement, or
 - (ii) if there is no agreement under subparagraph (i) within thirty (30) days after the written agreement under subsection 18(3), an arbitrator appointed by the British Columbia International Commercial Arbitration Centre or, if the British Columbia International Commercial Arbitration Centre is unavailable, an arbitrator appointed by any other independent and impartial body or individual acceptable to the KNC and the Province;
 - (b) the arbitration process and all its related proceedings will be and will remain confidential, unless the KNC and the Province agree otherwise;
 - (c) subject to the exceptions in applicable arbitration legislation, the decision of the arbitrator is final and binding on all Parties; and
 - (d) except as otherwise ordered by the arbitrator, the KNC and the Province will
 - (i) bear the costs of their own participation, representation and appointments in the arbitration, and
 - (ii) share equally all common costs of the arbitration, including fees of the arbitrator, costs of hearing and meeting rooms, actual and reasonable disbursements incurred by the arbitrator, and administration fees of the British Columbia Commercial Arbitration Centre or other appointing authority.

SUSPENSION AND TERMINATION

- 20 (1)** The KNC on behalf of the Ktunaxa Parties may terminate a schedule to a Project Appendix, a Project Appendix or this Agreement in its entirety in accordance with this section 20 if the Province is in material breach of its obligations set out in this Agreement.

- (2) The Province may terminate a schedule to a Project Appendix, a Project Appendix or this Agreement in its entirety in accordance with this section 20 if any one or more of the Ktunaxa Parties are in material breach of their obligations set out in this Agreement.
- (3) The KNC or the Province, as the case may be, must set out the specifics of the material breach relied on in a letter of Dispute and provide that letter to the other Party in accordance with subsection 16(3) or 16(4), as applicable.
- (4) If the Dispute referred to in subsection (3), or a Dispute referred directly to the SEA Senior Forum under a Project Appendix, has not been remedied or otherwise resolved after the dispute resolution processes set out in sections 16 to 19 have been exhausted, the Party providing a letter of Dispute may give the other a Notice to Terminate a schedule to a Project Appendix, a Project Appendix or this Agreement in its entirety, on the date specified in the Notice to Terminate.
- (5) For greater certainty, a Party may not give a Notice to Terminate under this section 20 unless the requirements of subsection (4) have been met.
- (6) For the purposes of subsection (4), the dispute resolution processes set out in sections 16 to 19 will have been exhausted if
 - (a) no notice to mediate is given under subsection 18(1), or
 - (b) notice to mediate is given and the mediation is terminated under paragraph 18(2)(d).
- (7) Despite subsections (4) and (5),
 - (a) if the Province does not make or reduces a Project Payment in the circumstances set out in section 8, the KNC on behalf of the Ktunaxa Parties may terminate a schedule to a Project Appendix, a Project Appendix or this Agreement in its entirety on the date specified in a Notice to Terminate, or
 - (b) if the KNC has provided a Notice of Withdrawal in respect of a Contributing Project set out in a Project Appendix and such notice is not rescinded, either the KNC or the Province may, in accordance with that Project Appendix and subject to subsection (9), provide a Notice to Terminate in respect of a schedule to a Project Appendix for a Contributing Project or a

Project Appendix on the date specified in that Notice to Terminate.

- (8) A Party may rescind a Notice to Terminate by advising the other Party in writing prior to the date specified in the Notice to Terminate.
- (9) A Notice to Terminate provided by the KNC or the Province under paragraph (7)(b) may only terminate a schedule to a Project Appendix or a Project Appendix that the KNC has specified in a Notice of Withdrawal that it intends to terminate.
- (10) Except as provided in section 15 and subject to subsection (8), all Parties will be fully released and discharged from the performance of their obligations as of the date specified in a Notice to Terminate
 - (a) under a Project Appendix in respect of a Contributing Project, if the Notice to Terminate specifies that the schedule to that Project Appendix in respect of that Contributing Project is terminated,
 - (b) under a Project Appendix, if the Notice to Terminate specifies that that Project Appendix is terminated, or
 - (c) under this Agreement in its entirety, if the Notice to Terminate specifies that this Agreement in its entirety is terminated.
- (11) Despite subsection 13(4), if a Notice to Terminate a schedule to a Project Appendix or a Project Appendix is given under subsection (4) and is not rescinded under subsection (8), this Agreement is and will be deemed to be amended to delete the schedule or Project Appendix from it as of the date specified in the Notice to Terminate.
- (12) Subject to subsections (13) and (16) and section 15, all Parties shall remain bound by their respective obligations under this Agreement until it is terminated despite any breach by any one or more of the Parties of their obligations set out in this Agreement.
- (13) If one or more of the Ktunaxa Parties are in material breach of their obligations under section 6, 7, 9 or 10 of this Agreement, or any representation or warranty made by the Ktunaxa Parties in this Agreement is untrue or incorrect in any material respect, the

Province may suspend making further Project Payments and provide the KNC a letter of Dispute setting out the specific material breach or untrue or incorrect representation or warranty relied on.

- (14) If the Province suspends making further Project Payments under subsection (13), the Parties will refer the matter to the SEA Senior Forum for dispute resolution in accordance with subsection 17(2).
- (15) If Project Payments payable by the Province under a Project Appendix are suspended under subsection (13) and the material breach is remedied or the representation or warranty required by this Agreement is made true and correct in all material respects prior to the date specified in a Notice to Terminate, the Province will make any Project Payments under a Project Appendix within sixty (60) days after that material breach is remedied or the representation or warranty is made true and correct in all material respects.
- (16) If Project Payments payable by the Province under a Project Appendix are suspended under subsection (13) and the material breach is not remedied or the representation or warranty required by this Agreement is not made true and correct in all material respects prior to the date specified in a Notice to Terminate, the Province will be fully released and discharged from all of its obligations in respect of those suspended Project Payments.

GENERAL PROVISIONS

- 21** (1) This Agreement is not a treaty or a land claims agreement within the meaning of sections 25 and 35 of the *Constitution Act, 1982*.
- (2) This Agreement does not create, amend, define, affirm, recognize, limit, abrogate, extinguish, replace or derogate from any Aboriginal Rights of the Ktunaxa Nation.
 - (3) Nothing in this Agreement is to be interpreted or construed as waiving, limiting or abrogating any rights the Ktunaxa Nation may have, at any time, to seek recognition through a judicial or quasi-judicial process of the Ktunaxa Nation's Aboriginal Rights.
 - (4) Except as expressly set out herein, this Agreement does not limit the position a Party may take in any legal or administrative

proceedings or in any discussions or negotiations between the Ktunaxa Parties and the Province.

- (5) Nothing in this Agreement is to be construed as an acceptance of or admission by a Party of the position of another Party regarding any matter, including its jurisdiction, responsibilities or decision-making authority or as an admission of liability.
- (6) No partnership, joint venture, agency, fiduciary or employment relationship will be deemed to be created by this Agreement or by any actions of the Parties under this Agreement.
- (7) This Agreement does not constitute an admission by the Province that a Project, including any Government Action associated with a Project, has resulted or may result in any unjustified infringement of any Aboriginal Rights of the Ktunaxa Nation.
- (8) This Agreement does not constitute an admission by the Province of an obligation to provide financial or economic benefits, as provided in this Agreement, as part of the Province's obligation to consult and accommodate in relation to a Project.
- (9) This Agreement does not address and is not intended to be interpreted as addressing compensation for alleged past or future infringements of the Aboriginal Rights of the Ktunaxa Nation that are not related to a Project.
- (10) For greater certainty, this Agreement does not address and is not intended to be interpreted as addressing compensation for alleged past or future infringements of the Aboriginal Rights of the Ktunaxa Nation that are related to a pre-existing operation that is a predecessor to a Project, where the Project is an expansion or a modification of the pre-existing operation.
- (11) This Agreement is not intended to
 - (a) limit or diminish the consideration, determination or implementation of non-monetary forms of accommodation to address potential impacts of Government Actions on the Aboriginal Rights of the Ktunaxa Nation, or
 - (b) be interpreted in a manner that would adversely affect or interfere with the discretion of any decision-making authority of either Party.
- (12) For greater certainty, nothing in this Agreement

- (a) limits or waives the Ktunaxa Parties' right, if any, to hold the Province accountable for compliance with, or implementation of, mitigation and accommodation measures developed in accordance with processes established under the Strategic Engagement Agreement, the environmental assessment process administered by the Environmental Assessment Office, or any other regulatory process, or
 - (b) releases the Province from any duties, obligations, or potential liabilities it may have related to the environmental management and operation of any Project.
- (13) Nothing in this Agreement precludes any of the Ktunaxa Parties from
 - (a) continuing to negotiate and implement revenue- and benefits-sharing agreements with proponents and other governments,
 - (b) accessing economic opportunities and benefits, which may be available to the Ktunaxa Nation, other than those expressly set out in a Project Appendix, or
 - (c) participating in government programs for which any of the Ktunaxa Parties may be eligible.
- (14) This Agreement is not intended to limit or diminish any present or future fiscal transfer agreements between the Parties for programs unrelated to this Agreement and its Project Appendices.
- (15) The funds received under this Agreement are not, and are not intended to be, considered as own source revenue for any purpose related to federal funding arrangements, either in a treaty or other agreement.
- (16) If the Strategic Engagement Agreement expires or is terminated prior to the end of the Term of this Agreement, the Province and the KNC on behalf of the Ktunaxa Parties will establish such bodies as are required for the purposes of this Agreement to fulfill the functions of the Resource-Revenue and Benefit Sharing Standing Committee and the SEA Senior Forum.
- (17) The KNC and the Province have each obtained or had the opportunity to obtain the advice of its own financial, legal, tax and other professional advisors with respect to this Agreement.

NOTICE AND DELIVERY

- 22** (1) If any notice or other communication is required to be given by a Party under this Agreement, it will be made in writing and it will be effectively given by
- (a) personal delivery to the address of the other Party set out below, on the date of delivery,
 - (b) pre-paid registered mail to the address of the other Party set out below, on the date the registered mail is delivered,
 - (c) facsimile to the facsimile number of the other Party set out below, on the date the facsimile is received, or
 - (d) email to the email address of the other Party set out below, on the date the email is received.

The address, facsimile numbers and email addresses are:

- (a) for the Ktunaxa Parties:
Ktunaxa Nation Council
7468 Mission Rd
Cranbrook BC V1C 7E5
Fax: (250) 489-2438
Attention: Director, Ktunaxa Land and Resources Agency
Email address: rwarden@ktunaxa.org
cc: Director of Finance, Ktunaxa Nation Council
Email address: larmstrong@ktunaxa.org
- (b) for the Province:
Ministry of Aboriginal Relations and Reconciliation
PO Box 9100 Stn Prov Govt
Victoria, BC V8W 9B1
Fax: (250) 387-6594
Attention: Assistant Deputy Minister, Negotiations and
Regional Operations Division, MARR
Email: Douglas.S.Scott@gov.bc.ca
- (3) Any notice or other communications will be deemed to have been given on the date it is actually received if received before 4:00 pm Mountain Standard Time or on the next business day if received after 4:00 pm Mountain Standard Time.

- (4) The KNC or the Province may at any time give notice to the other of any change of information in accordance with subsection (1).

INTERPRETATION

- 23** (1) This Agreement is to be interpreted so that all the provisions are given as full effect as possible.
- (2) If the interpretation of this Agreement results in a conflict between the provisions in this Agreement, the following rules of interpretation apply, unless the context requires otherwise:
 - (a) the main body of this Agreement will prevail over any attachments, including annexes, Project Appendices and schedules to Project Appendices, and
 - (b) the main body of a Project Appendix will prevail over any attachments to the Project Appendix, including schedules.
 - (3) This Agreement will be governed by and construed in accordance with the applicable laws of British Columbia.
 - (4) 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 KNC on behalf of the Ktunaxa Parties and the Province.
 - (5) There will be no presumption that any ambiguity in any of the provisions of this Agreement should be interpreted in favour of any Party.
 - (6) If any provision of this Agreement is found by a court of competent jurisdiction to be void or unenforceable at law, it will be severed from this Agreement and the remainder of the Agreement will remain in full force and effect.
 - (7) If any provision of this Agreement is found by a court of competent jurisdiction to be void or unenforceable at law, the Parties agree to negotiate and attempt to reach agreement on a replacement for that provision with a view to achieving the intent of the Parties as expressed in this Agreement and, if no agreement is reached, the KNC and the Province may agree to refer the matter to the mediation process set out in section 18.

- (8) All headings in this Agreement are for convenience only and do not form a 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.
- (9) In this Agreement, words in the singular include the plural and words in the plural include the singular, unless the context otherwise requires.
- (10) The use of the word “including” does not limit the generality of the preceding term or phrase.
- (11) In this Agreement, a reference to a statute includes all regulations made under that statute and any amendments or replacements.
- (12) No term, condition, covenant or other provision of this Agreement will be deemed to have been waived unless such waiver is expressed in writing and signed by the Party giving the waiver.
- (13) 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.
- (14) This Agreement may be entered into by the Province and the KNC on behalf of the Ktunaxa Parties respectively signing a separate copy of this Agreement, including a photocopy or faxed or scanned copy, and delivering it to the other by fax or electronic mail. Each facsimile or scanned copy will be deemed to be an original for all purposes and all counterparts taken together will be deemed to constitute one document.
- (15) The Minister of Aboriginal Relations and Reconciliation may delegate to one or more employees or agents of the Province any one or more of his or her non-statutory powers or duties under this Agreement.

Intentional break – Agreement continues on next page.

(16) The KNC may delegate to one or more of its employees or agents any one or more of its powers or duties under this Agreement.

SIGNED in the presence of

Ray Warden this 15 day
of March, 2017 at
Cranbrook, B.C.:

The Ktunaxa Nation Council Society,
on its own behalf and on behalf of the
Ktunaxa Nation, ʔakisq̓nuk First
Nation, ʔaq̓am, Lower Kootenay Indian
Band, and Tobacco Plains Indian
Band



Signature of witness



Kathryn Teeese, Chair

SIGNED in the presence of

Edward Sem this 30 day
of March, 2017 at
Vancouver:

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



Signature of witness



John Rustad, Minister

ANNEX A

Map



ANNEX B

LIST OF PROJECT APPENDICES AND SCHEDULES

Project Appendix / Schedule	Date first incorporated into this Agreement	Termination Date
Elk Valley Coal Mining Revenue Sharing Project Appendix / Schedule 2 – Elkview Mine Contributing Project	January 29 th , 2013	
Forest Revenue Sharing Project Appendix	January 29 th , 2013	
Elk Valley Coal Mining Revenue Sharing Project Appendix / Schedule 3 – Line Creek Mine Contributing Project	The date on which this consolidated 2017 Agreement comes into effect.	
Elk Valley Coal Mining Revenue Sharing Project Appendix / Schedule 4 – Greenhills Mine Contributing Project	The date on which this consolidated 2017 Agreement comes into effect.	



KTUNAXA
NATION



FOREST REVENUE SHARING PROJECT APPENDIX

DEFINITIONS

1 (1) In this Project Appendix

“Delegated Decision Maker” means a person with authority, as delegated by the Minister and including the Minister, to make statutory decisions with respect to forest and range resources under provincial legislation as amended from time to time;

“Eligible Forest Tenure” means a direct award forest tenure under a Forest Tenure Opportunity Agreement that is eligible for forest revenue sharing under the Province’s policy in relation to Crown land and timber volumes referenced in the *Forest Revitalization Act*, SBC 2003, c.17;

“Forest Tenure Opportunity Agreement” means an agreement signed between the Minister and a First Nation that provides for the Minister to direct award forest tenure under the *Forest Act*, RSBC 1996, c. 157;

“Licensee” means a holder of a forest tenure or a range tenure;

“Main Agreement” means sections 1 through 23 of the Economic and Community Development Agreement;

“Minister” means the Minister of Forests, Lands and Natural Resource Operations having the responsibility, from time to time, for the exercise of powers in respect of forests and range matters;

“Operational Plan” means a Forest Stewardship Plan, Woodlot Licence Plan, Range Use Plan or Range Stewardship Plan, as those terms are defined in forest and range legislation, that has or will have effect in the Ktunaxa Territory; and

“Timber Harvesting Land Base” means the portion of the total land area of a management unit considered by the Ministry of Forests, Lands and Natural Resource Operations to contribute to, and be available for, long-term timber supply.

- (2) Words and expressions that are not defined in this Project Appendix but defined in the Main Agreement have the meanings ascribed to them in the Main Agreement, unless the context otherwise requires.

SCOPE

- 2** (1) This Project Appendix applies to forest and range activities in the Ktunaxa Territory.

PROJECT PAYMENTS

- 3** (1) Subject to section 7, the Province will, during the term of this Project Appendix, make annual Project Payments, calculated in accordance with schedule 1 (Calculation of Project Payments), and the Project Payments will be disbursed in two equal payments: the first payment to be paid on or before September 30th, and the second payment to be paid on or before March 31st.
- (2) For the purposes of determining the amount of a Project Payment for a partial BC Fiscal Year, the amount will be prorated for each month or part thereof that this Project Appendix is in effect.
- (3) Before November 30th of each year during the term of this Project Appendix, the Province will give the KNC notice of the Project Payment for the following BC Fiscal Year, including the summary document and calculations identified in schedule 1 (Calculation of Project Payments), and the Ktunaxa Parties agree that such notice will have the effect for the purposes of this Project Appendix of describing the amount of the Project Payment under this Project Appendix for that following BC Fiscal Year.

ACKNOWLEDGEMENTS AND COVENANTS

- 4** (1) The Ktunaxa Parties acknowledge that forest revenues received by the Province fluctuate and that the Project Payments under this Project Appendix will vary over time.
- (2) The Ktunaxa Parties acknowledge and agree that the Project Payments made under section 3 constitute an accommodation for potential infringements on the Aboriginal Rights of the Ktunaxa Nation in relation to any Government Actions related to forest and range activities and any forest or range practices carried out pursuant to an Operational Plan.
- (3) The Ktunaxa Parties agree that during the term of this Project Appendix, if the consultation process set out in section 11 of the Main Agreement (Consultation Process) is followed, the Province will have

adequately met the procedural aspects of its obligation to consult with respect to potential infringements of the Aboriginal Rights of the Ktunaxa Nation in the context of any Government Action related to forest and range activities that the Province will take and any forest or range practices that may be carried out under an Operational Plan in the Ktunaxa Territory.

- (4) The Ktunaxa Parties covenant and agree that during the term of this Project Appendix they will
 - (a) not challenge or support a challenge to a Government Action related to forest and range activities or an Operational Plan or activities carried out pursuant to those decisions or plans, by way of legal proceedings or otherwise, on the basis that, contrary to subsection (2), the Project Payments provided for in section 3 do not provide an accommodation for impacts on the Aboriginal Rights of the Ktunaxa Nation, and
 - (b) respond immediately to any discussions sought by the Province in relation to any acts of intentional interference by any Ktunaxa Citizen with provincially authorized forest and/or range activities and will work co-operatively with the Province to assist in resolving any such matters.

SECURITY DEPOSITS

- 5 (1) In recognition of the Ktunaxa Parties agreeing to the provisions of this Project Appendix, the Province, at the request of one or more of the Ktunaxa Communities or a legal entity controlled by one or more of the Ktunaxa Communities, may choose not to request a silviculture deposit pertaining to a licence issued further to an agreement between one or more of the Ktunaxa Communities or a legal entity controlled by one or more of the Ktunaxa Communities, and the Province.
- (2) The Ktunaxa Parties agree that the Province may apply any payment that the KNC is entitled to receive under this Project Appendix, to a maximum of the amount that the Province would have obtained in a silviculture deposit, to fully or partially satisfy any unfulfilled financial obligations of a Ktunaxa Party to the Province arising from a licence issued further to an agreement between one or more of the Ktunaxa Communities, or a legal entity controlled by one or more of the Ktunaxa Communities, and the Province.

- (3) Prior to the Province applying any payment to satisfy unfulfilled financial obligations of a Ktunaxa Party arising from a licence in accordance with subsection (2), the Province will notify the KNC and that Ktunaxa Party of the unfulfilled financial obligation and will discuss the proposed action with them.

TERM

- 6** (1) The provisions of this Project Appendix will take effect as of October 1, 2016 and unless renewed in accordance with section 8, or terminated earlier in accordance with any of the provisions hereof, will continue until September 30, 2017.

SUSPENSION AND TERMINATION

- 7** (1) The Province may suspend the making of Project Payments under this Project Appendix if one or more of the Ktunaxa Parties have outstanding unfulfilled financial obligations to the Province arising from a licence issued further to a forest tenure between one or more of the Ktunaxa Parties and the Province.
- (2) Subsections 20(13) through 20(15) of the Main Agreement (Suspension and Termination) apply to the suspension of Project Payments under subsection (1), with such changes as may be necessary.
- (3) If this Project Appendix is terminated prior to September 30, 2017, the Project Payment payable for the BC Fiscal Year in which the termination becomes effective will be prorated to the termination date.

RENEWAL OF THE PROJECT APPENDIX

- 8** (1) Six (6) months before this Project Appendix expires, if the provisions of this Project Appendix are being met, the Province and the KNC will, if both Parties have received such authorizations as they may require, begin negotiations for the renewal of this Project Appendix or for a new Project Appendix.

- (2) Despite subsection (1) and section 6, the Parties will, if both Parties have received such authorizations as they may require, begin negotiations for a new Forest Revenue Sharing Project Appendix at the Ktunaxa Nation's request, which may come into effect prior to September 30, 2017.

SIGNED in the presence of

Ray Warden this 15 day
of March, 2017 at

Cranbrook, B.C.:

The Ktunaxa Nation Council Society,
on its own behalf and on behalf of the
Ktunaxa Nation, ʔakisq̓nuk First
Nation, ʔaq̓am, Lower Kootenay Indian
Band and Tobacco Plains Indian Band


Signature of witness


Kathryn Teneese, Chair

SIGNED in the presence of

Edward Sem this 30 day
of March, 2017 at
Vancouver:

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


Signature of witness


John Rustad, Minister

SCHEDULE 1

CALCULATION OF PROJECT PAYMENTS

KTUNAXA TERRITORY BASED COMPONENT

- 1** (1) In each BC Fiscal Year that this Project Appendix is in effect, and subsequent to the release by the Minister of Finance of the previous BC Fiscal Year's public accounts of the Province, a summary document will be prepared of the forest revenue, defined as the total of stumpage, waste and annual rent payments received by the Crown for the previous 2 BC Fiscal Years, for each of the following forest districts:
- (a) Selkirk; and
 - (b) Rocky Mountain.
- (2) An average forest revenue amount over 2 years will be calculated for the forest districts set out in subsection (1).
- (3) For the purposes of the summary document in subsection (1), the stumpage, waste and any annual rent payments from Eligible Forest Tenures held by or on behalf of any of the Ktunaxa Communities will not be included in the calculations of forest revenue.
- (4) The amount of the forest revenue attributed to the Ktunaxa Territory will be calculated by determining the percentage of the Ktunaxa Territory that falls within the Timber Harvesting Land Base in each of the forest districts listed in subsection (1), applied against the average forest revenue calculated under subsection (2).
- (5) The amount of forest revenue attributed to the Ktunaxa Territory under subsection (4) will be prorated for overlapping territories of other First Nations.
- (6) For the purposes of subsection (4), the Province agrees that the latest timber supply review timber harvesting land base data will be used for fiscal year 2012/13 and beyond.
- (7) The Ktunaxa Territory based component of the Project Payment under this Project Appendix will be calculated by multiplying five percent (5%) of the forest revenue attributed to the Ktunaxa Territory as described in subsections (4) and (5) (the "Ktunaxa Territory Based Component").

KTUNAXA DIRECT AWARD TENURE-BASED COMPONENT

- 2** (1) Subsequent to the release by the Minister of Finance of the previous BC Fiscal Year's public accounts of the Province, a summary document will be prepared of the forest revenue, defined as the total of stumpage, and waste payments received by the Crown for the previous BC Fiscal Year, for each Eligible Forest Tenure held by or on behalf of each of the Ktunaxa Parties.
- (2) The Ktunaxa direct award tenure-based component of the Project Payment under this Project Appendix will be calculated by multiplying seventy five percent (75%) of the forest revenue as described in subsection (1) (the "Ktunaxa Direct Award Tenure Based Component").

PROJECT PAYMENT TRANSITION

- 3** (1) The Parties agree that a transition to revenue sharing based entirely on forest revenue will be phased in, in accordance with subsection (2).
- (2) For each BC Fiscal Year that this Project Appendix is in effect, a portion of the Project Payment is calculated by adding the total of the Ktunaxa Territory Based Component to the Ktunaxa Direct Award Tenure Based Component for that BC Fiscal Year (the "Project Payment Transition").
- (3) For the 2016/17 BC Fiscal Year that this Project Appendix is in effect, the remaining portion of the Project Payment is calculated by determining the value of the payments that were made by British Columbia to the Ktunaxa Parties in any given full year under the *Ktunaxa Nation Council Interim Agreement on Forest & Range Opportunities* ("the Annual Amount") and applying 40 percent to that Annual Amount.
- (4) Despite subsection (3), if the Project Payment Transition calculation for BC Fiscal Year 2016/17 under subsection (2) provides:
- (a) an amount calculated under sections 1 and 2 that is equal to or greater than the annual payments received under the *Ktunaxa Nation Council Interim Agreement on Forest & Range Opportunities*, then the Ktunaxa Parties shall only receive the annual payments described by the Project Payment Transition calculation in subsection (2) for BC Fiscal Year 2016/17;

- (b) an amount calculated under the Project Payment Transition calculations in subsections (2) and (3) that is greater than the annual payments received under the *Ktunaxa Nation Council Interim Agreement on Forest & Range Opportunities*, then the Ktunaxa Parties shall only receive an annual payment for BC Fiscal Year 2016/17 that is equal to the annual payment received under the *Ktunaxa Nation Council Interim Agreement on Forest & Range Opportunities*.



KTUNAXA
NATION



ELK VALLEY COAL MINING REVENUE SHARING PROJECT APPENDIX

DEFINITIONS

1 (1) In this Project Appendix

“Incremental Production” means

- (a) in respect of a new Mine, all coal mined from coal reserves within the area of a Contributing Project, and
- (b) in respect of an expansion of an existing Mine, the portion of all coal mined from coal reserves within the area of a Contributing Project which would not have been mined in the absence of a Permit Amendment and Government Actions;

“Main Agreement” means sections 1 through 23 of the Economic and Community Development Agreement;

“Mine” means a “mine” as defined in the *Mineral Tax Act, RSBC 1996, c. 291*;

“Mine Fiscal Year” means the “fiscal year of the mine” as defined in the *Mineral Tax Act*;

“Mineral Tax Act” means the *Mineral Tax Act*, as amended from time to time, and legislation in addition to or in substitution thereof which assesses a tax on minerals or mining in favour of the Province similar to the tax presently assessed under the *Mineral Tax Act*;

“Operator” has the same meaning as in the *Mineral Tax Act*;

“Permit” means a “permit” as defined in the *Mines Act*;

“Permit Amendment” means the amendment of a Permit for a Contributing Project effective as of the date set out in the schedule for that Contributing Project; and

“Specified Date” means

- (a) the date specified in accordance with paragraph 3(2)(c) on which the Parties agree to incorporate a schedule for a Contributing Project into the Agreement as an attachment to this Project Appendix, or
- (b) in the case of a schedule attached to this Project Appendix, the date that is set out in Annex B of the Main Agreement.

- (2) Words and expressions that are not defined in this Project Appendix but defined in the Main Agreement have the meanings ascribed to them in the Main Agreement, unless the context otherwise requires.

SCOPE

- 2** (1) This Project Appendix applies to Projects for the expansion of existing and new coal mining operations in coal reserves in the traditional Ktunaxa districts of Qukin ʔamakʔis and Camna ʔamakʔis, also known as the Elk Valley, British Columbia.

CONTRIBUTING PROJECTS

- 3** (1) A Project may become a Contributing Project if the Parties agree and
- (a) if it is reviewable
 - i. under the *Environmental Assessment Act*, SBC 2002, c. 43, an environmental assessment certificate has been issued, or
 - ii. by an advisory committee established by the chief inspector of mines in accordance with section 9 of the *Mines Act*, and has been authorized by Government Action,
 - (b) the Project has undergone an assessment by the KNC and the KNC on behalf of the Ktunaxa Parties has notified the Province that it wishes to proceed to develop a Contributing Project schedule, and
 - (c) the Parties agree in writing to the matters set out in subsection (2).
- (2) If the conditions set out in paragraphs (1)(a) to (c) have been met, the Parties will set out in a schedule
- (a) a written description of the Contributing Project,
 - (b) a map showing the location and the boundaries of the Contributing Project area, and
 - (c) the date that the schedule will be deemed to be incorporated by amendment into the Agreement in accordance with subsection 5(5) of the Main Agreement (Project Appendices).
- (3) A Project will become a Contributing Project on its Specified Date.
- (4) If, after the Specified Date, an application to amend the Permit or environmental assessment certificate for a Contributing Project that

- (a) is reviewable
 - (i) under the *Environmental Assessment Act* and an environmental assessment certificate has been issued, or
 - (ii) by an advisory committee established by the chief inspector of mines in accordance with section 9 of the *Mines Act*, and has been authorized by Government Action, and
- (b) has undergone an assessment by the KNC and the KNC on behalf of the Ktunaxa Parties has notified the Province that it wishes to proceed with an amendment to the Contributing Project schedule, the Parties will amend the Contributing Project schedule for that Contributing Project.
- (5) Despite subsection 13(4) of the Main Agreement (Review and Amendment), this Project Appendix is and will be deemed to be amended to include the schedule referred to in subsection (2) on the Specified Date.
- (6) If, after the Specified Date, the KNC notifies the Province that it is sufficiently concerned about the potential impacts of an amendment to the Permit or the environmental assessment certificate for a Contributing Project and is unable to agree to amend the Contributing Project schedule under subsection 4, the Parties will request that the SEA Senior Forum meet and endeavour to address the issues with respect to a potential amendment to the Contributing Project schedule.
- (7) If the SEA Senior Forum receives a request under subsection (6), the SEA Senior Forum will meet within fifteen (15) days after receiving the request, or such time as agreed to by the KNC and the Province, and endeavour to develop options and potential solutions to resolve the matter.
- (8) If the SEA Senior Forum is unable to resolve a matter referred to it under subsection (6),
 - (a) the existing Contributing Project schedule will remain in effect until
 - (i) Incremental Production associated with that Contributing Project schedule ceases,
 - (ii) the Contributing Project schedule is amended, or
 - (iii) the Contributing Project schedule is terminated,

and

- (b) the Parties will amend the Contributing Project schedule for that Contributing Project to set out the date of the Permit Amendment that the Parties have not yet agreed to incorporate in that schedule.

PROJECT PAYMENTS

- 4 (1) In this section 4 and in schedule 1 (Calculation of Project Payments)

“Incremental Mineral Tax Revenue” means Net Mineral Tax Revenue attributable to Contributing Projects, as determined by the Province based on Incremental Production for each Contributing Project;

“Net Mineral Tax Revenue” means the amount calculated by the following formula

$$(A - B) \times 0.98$$

where

A = the total amount of tax, penalty and interest paid by Operators under the *Mineral Tax Act* in respect of Mines, not including any amount paid in relation to a reclamation tax credit in respect of a Mine for a Mine Fiscal Year commencing after production at the Mine has ceased;

and

B = the total amount of tax, penalty and interest refunded and interest paid to the Operators under the *Mineral Tax Act* in respect of Mines, not including any amount paid or refunded in relation to a reclamation tax credit in respect of a Mine for a Mine Fiscal Year commencing after production at the Mine has ceased;

“Overpayment” means an amount paid under this Project Appendix that exceeds the amount the Ktunaxa Parties were entitled to receive, including

- (a) an amount paid because of an inaccurate Incremental Production figure being used to calculate a Project Payment, or
- (b) a negative Project Payment amount (which may occur if an Operator has paid more tax than required in a previous BC Fiscal Year);

“Underpayment” means an amount that the Ktunaxa Parties were entitled to receive under this Project Appendix in respect of Incremental Mineral Tax Revenue in a BC Fiscal Year, but did not receive as part of the Project Payment for that BC Fiscal Year, including an amount not paid because of an inaccurate Incremental Production figure being used to calculate a Project Payment.

- (2) The Parties agree that the KNC will act on behalf of the Ktunaxa Parties with respect to the Project Payments in this section 4 and section 5.

How Amount Payable for a Mine Fiscal Year is Determined

- (3) The total amount payable for each Mine Fiscal Year under this Project Appendix will be
 - (a) thirty seven and one-half percent (37.5%) of the first twenty three million dollars (\$23,000,000) of Incremental Mineral Tax Revenue for the Mine Fiscal Year, and
 - (b) five percent (5%) of any Incremental Mineral Tax Revenue for the Mine Fiscal Year exceeding twenty three million dollars (\$23,000,000).
- (4) The Province will determine Incremental Mineral Tax Revenue based on Incremental Production for the Mine Fiscal Year to which the Net Mineral Tax Revenue relates.
- (5) If the Operator has not reported its Incremental Production for the Mine Fiscal Year at the time a Project Payment is calculated, the Province will estimate the Incremental Production for the purpose of determining the Incremental Mineral Tax Revenue under subsection (4).
- (6) The Province may make an adjustment in a subsequent BC Fiscal Year if it determines that a calculation of Incremental Mineral Tax Revenue was based on an inaccurate Incremental Production figure, and the adjustment may result in an Underpayment or Overpayment.

Calculation and Timing of Annual Project Payments

- (7) Project Payments will be calculated for each BC Fiscal Year in accordance with schedule 1 (Calculation of Project Payments).
- (8) If the Project Payment for a BC Fiscal Year is a positive amount, the Province will pay that amount within one hundred and fifty (150) days after the end of the BC Fiscal Year for which the Project Payment is

calculated, subject to receipt of written notice from the KNC of its acceptance of the Payment Statement under paragraph 6(2)(a).

- (9) If a Project Payment for a BC Fiscal Year is a negative amount due to an Overpayment, the Province
- (a) may withhold up to fifty (50) percent of the amount that would have been paid in the absence of the Overpayment amount, and the withheld amount will be applied to the Overpayment balance until the Overpayment amount is recovered, and
 - (b) will pay the amount that is not withheld under paragraph (a) in the same manner as Project Payments are made under subsection (8).

Payment Statement

- (10) Within one hundred and twenty (120) days after the end of each BC Fiscal Year, the Province will provide to the KNC a financial statement containing the following information:
- (a) with respect to each Mine Fiscal Year for which Incremental Mineral Tax Revenue was received by the Province or refunded or paid to an Operator by the Province in the BC Fiscal Year, the following amounts, as defined in schedule 1 (Calculation of Project Payments):
 - (i) Current Revenue;
 - (ii) Cumulative Revenue; and
 - (iii) the Mine Fiscal Year Amount;
 - (b) the amount of any Underpayment or Overpayment resulting from adjustments made under subsection (6); and
 - (c) the amount of the Project Payment.

Other Payment Provisions

- (11) In the event that the Operators are no longer responsible for making payments under the *Mineral Tax Act*, in relation to the Mines, such that there will be no subsequent Project Payments under this Project Appendix, the Province will consult with the KNC respecting any Overpayment that remains outstanding, and the Province may, in its sole discretion, waive the Overpayment in consideration of the two percent (2%) reduction reflected in the definition of Net Mineral Tax Revenue or confirm that the Overpayment will be deducted from any

other current Mine or future Mine sector Project Payments to be made under this Agreement.

- (12) If this Project Appendix is terminated prior to the last day of a Mine Fiscal Year,
 - (a) the obligations of the Province set out in subsections (3) through (11) and section 5 will continue, but only to the extent that Incremental Mineral Tax Revenue is received from, or refunded or paid to, an Operator by the Province in relation to Mine Fiscal Years or portions thereof occurring before the date this Appendix is terminated, and
 - (b) no Project Payment will be payable under this Project Appendix in relation to that portion of the Mine Fiscal Year after this Project Appendix is terminated or any subsequent Mine Fiscal Year.
- (13) The Province will notify the KNC of any significant changes made to the *Mineral Tax Act* tax regime.
- (14) If during the Term, the Province makes significant changes to the *Mineral Tax Act* tax regime, the Parties may negotiate alternative mine revenue sharing opportunities.
- (15) The Ktunaxa Parties acknowledge that *Mineral Tax Act* revenues fluctuate and any Project Payments from the Province will vary over time and that the determination of Incremental Production and the revenues under the Act attributable to it are based on approximations and are therefore imprecise and may be inaccurate.
- (16) The Province is entitled to rely upon information provided by the Operator, including the Operator's report of Incremental Production for a Mine Fiscal Year, in determining Incremental Production and in calculating Incremental Mineral Tax Revenue under this section 4.
- (17) The Province will make reasonable efforts to ensure the accuracy of information that is used to determine Incremental Production and to calculate Incremental Mineral Tax Revenue but makes no warranty or representation as to the accuracy of such information and no action or proceeding lies against it in relation to any claim that information or the determination of Incremental Production was inaccurate.
- (18) Subject to subsection 19, despite any other provision of the Main Agreement or this Project Appendix, the Province has no obligation to

make a Project Payment in respect of a Mine Fiscal Year prior to the Specified Date for a Contributing Project.

- (19) If, prior to the end of a BC Fiscal Year,
- (a) the Parties are negotiating but have not reached agreement on a proposed new Contributing Project schedule, or an amendment to an existing Contributing Project schedule,
 - (b) the Parties have reasonable cause to believe that an agreement on a new Contributing Project schedule or an amendment to an existing Contributing Project schedule will be reached, and
 - (c) the Province has received incremental mineral tax revenue from that Project in that BC Fiscal Year for the project that would be subject to the terms of the proposed new Contributing Project schedule, or an amendment to an existing Contributing Project schedule,

then the Parties may agree to enter into a written agreement prior to the end of the BC Fiscal Year with respect to the amount that would have been payable if the Contributing Project schedule had been in effect for that fiscal year to allow the Province to accrue that amount, in accordance with the terms of the written agreement.

AUDITS AND APPEALS

- 5** (1) The Ktunaxa Parties acknowledge that the Province may audit an Operator from time to time to review the accuracy of *Mineral Tax Act* payments over a specific period of time, and also understand that an Operator may appeal any assessment or reassessment of tax, penalty or interest to the Minister responsible for administering the *Mineral Tax Act* and then to a court.
- (2) The Ktunaxa Parties acknowledge that any audits or appeals referred to in subsection (1) may affect the amount of the Project Payments the Province will provide in subsequent years, and may also affect the amounts that may be deducted under subsections 4(6) and (11).
- (3) If the Province conducts an audit of an Operator, the Province will report in writing to the KNC the results of the audit and specifically whether the Operator had made overpayments, underpayments or

correct payments under the *Mineral Tax Act* for the period of time subject to the audit.

- (4) In the event of any appeal by an Operator of any assessment or reassessment, the Province will report in writing to the KNC the results of the appeal.
- (5) If there is a disagreement between the Parties about the accuracy of the information that is used to determine Incremental Production and to calculate Incremental Mineral Tax Revenue, the Ktunaxa Parties may refer the matter to the Dispute resolution process in accordance with Section 17 of the Main Agreement (Dispute Resolution).

CERTAINTY

- 6** (1) The Parties agree that Project Payments received by the Ktunaxa Nation in respect of a Contributing Project are an economic accommodation and constitute a component of any accommodation or compensation that may be required for any impacts or infringements to the Aboriginal Rights of the Ktunaxa Nation as a result of Government Actions related to that Contributing Project taken from and including the date of the Permit or Permit Amendment specified in the Contributing Project schedule to the date of the receipt of the Project Payment.
- (2) The KNC will, within twenty-five (25) days of receipt of a Payment Statement,
 - (a) indicate acceptance of a Payment Statement by way of written notice to the Province's representatives on the Resource Revenue and Benefits Sharing Standing Committee,
 - (b) refer the matter to the Dispute resolution process as set out in section 5 (5), or
 - (c) provide a Notice of Withdrawal in accordance with section 8.
- (3) The Province may suspend Project Payments in respect of a Contributing Project if any one or more of the Ktunaxa Parties adversely affect, or effectively stop, the mining operations on or production from a Contributing Project by
 - (a) impeding, or attempting to impede, access by the Province, (including any Provincial Agency), the Operator, or any of their respective employees, contractors, agents, representatives or

invitees, to the Contributing Project to carry out activities associated with the development and operation of the Contributing Project, or

(b) obtaining relief in an application or legal proceeding.

- (4) If the Province suspends, or notifies the KNC that it intends to suspend, a Project Payment under subsection (3), either Party may provide a letter of Dispute to the other Party under paragraph 17(2)(b) of the Main Agreement (Dispute Resolution).
- (5) Nothing in this section 6 modifies, limits or otherwise affects the Province's duty to consult with the Ktunaxa Parties, or the ability of the Ktunaxa Parties to raise, or the ability of the Province to consider and address, any concerns regarding the proposed issuance of an environmental assessment certificate, proposed amendment of a Permit or other proposed Government Action related to a Contributing Project through the consultation processes set out in section 11 of the Main Agreement (Consultation Process), or under subsections 3(4) and 3(6) to (7) of this Project Appendix.
- (6) The Ktunaxa Parties will work collaboratively with the Province to resolve issues relevant to the Parties that may adversely affect the implementation of this Agreement or adversely affect, challenge or impede authorized activities associated with the Contributing Project area.
- (7) For greater certainty, nothing in subsection (1), (2) or (3) is intended to preclude the Ktunaxa Parties from bringing an action or other proceeding against a person other than the Province with respect to a Contributing Project.

CONTINUING OBLIGATIONS

- 7** (1) The Parties' covenants, rights and obligations, as set out in subsection 6(1), this section 7, and section 9 are intended to survive and to remain fully binding on the Parties and enforceable despite
- (a) the giving of a Notice of Withdrawal in respect of a Contributing Project,
 - (b) the giving of a Notice to Terminate a Contributing Project schedule,
 - (c) the termination of a Contributing Project,

- (d) the termination or expiry of any one or more of the Main Agreement, any Project Appendix or any schedule to a Project Appendix, or
- (e) a determination by a court or a tribunal of competent jurisdiction or other finding with respect to the Ktunaxa Nation's Aboriginal Rights.

NOTICE OF WITHDRAWAL

- 8** (1) The KNC on behalf of the Ktunaxa Parties may give the Province a Notice of Withdrawal in respect of a Contributing Project, which describes the matter that gave rise to the Notice of Withdrawal.
- (2) For greater certainty, the KNC may give a Notice of Withdrawal in respect of a Contributing Project regardless of whether the Province has taken any Government Actions in that BC Fiscal Year in respect of that Contributing Project.
- (3) In the event that the KNC gives a Notice of Withdrawal under subsection (1) and at the request of the KNC, the SEA Senior Forum will meet within fifteen (15) days after the Notice of Withdrawal is delivered and endeavour to resolve the matter that gave rise to the Notice of Withdrawal.
- (4) If a Notice of Withdrawal given under subsection (1) is not rescinded within sixty (60) days after its delivery, either the KNC on behalf of the Ktunaxa Parties or the Province may terminate the schedule to this Project Appendix in respect of that Contributing Project in accordance with paragraph 20(7)(b) of the Main Agreement (Suspension and Termination).
- (5) In the event that the KNC provides a Notice of Withdrawal under subsection (1), the Province may suspend making further Project Payments for that Contributing Project.
- (6) If the Notice of Withdrawal provided under subsection (1) is rescinded and the Province has suspended one or more Project Payments under subsection (5), the Province will make those suspended Project Payments within sixty (60) days after the Notice of Withdrawal is rescinded.
- (7) If the Notice of Withdrawal provided under subsection (1)

- (a) is not rescinded prior to the date specified in a Notice to Terminate, the Province will be fully released and discharged from all of its obligations in respect of Project Payments suspended under subsection (5), or
- (b) is rescinded prior to the date specified in a Notice to Terminate under subsection (4), the Party that issued that Notice to Terminate will rescind it and will advise the other Party in writing.

CONFIDENTIAL INFORMATION

- 9 (1) Despite any other provision of this Agreement, the KNC will have the right to disclose the amount of the Project Payment to Ktunaxa Community Members and Ktunaxa Citizens each year.
- (2) The Ktunaxa Parties acknowledge that the Province has informed them of the confidentiality requirements under the *Mineral Tax Act*.

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TERM

- 10 (1)** This Project Appendix will remain in effect for so long as tax, interest and penalties payable by the Operator in relation to a Contributing Project referred to herein are subject to reassessment under applicable legislation, unless this Project Appendix is terminated under section 20 of the Main Agreement (Suspension and Termination).

SIGNED in the presence of

Ray Warden this 15 day
of March, 2017 at
Cranbrook, B.C.:

The Ktunaxa Nation Council Society,
on its own behalf and on behalf of the
Ktunaxa Nation, ʔakisq̓nuk First
Nation, ʔaq̓am, Lower Kootenay Indian
Band, and Tobacco Plains Indian
Band


Signature of witness


Kathryn Teneese, Chair

SIGNED in the presence of

Edward Sem this 30 day
of March, 2017 at
Vancouver:

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


Signature of witness


John Rustad, Minister

SCHEDULE 1

CALCULATION OF PROJECT PAYMENTS

Definitions

1. In this schedule:

“BC Fiscal Year Total” or “BCFYT” means the sum of the Mine Fiscal Year Amounts calculated under this schedule in respect of all Mine Fiscal Years for which there is Current Revenue;

“Cumulative Revenue” or “CmRv” means, in respect of a Mine Fiscal Year, Current Revenue plus Previous Revenue;

“Current BC Fiscal Year” means the BC Fiscal Year for which the Project Payment is being calculated;

“Current Revenue” or “CrRv” means, in respect of a Mine Fiscal Year, the amount of Incremental Mineral Tax Revenue for the Mine Fiscal Year received by the Province or refunded or paid to an Operator by the Province in the Current BC Fiscal Year;

“Mine Fiscal Year Amount” or “MFYA” means, in respect of a Mine Fiscal Year, the amount calculated under section 3 or 4 of this schedule;

“Outstanding Overpayments” or “OsOp” means the total of:

- (a) any Overpayment remaining as a result of the Project Payment for the BC Fiscal Year immediately before the Current BC Fiscal Year being a negative amount; and
- (b) all other Overpayments that have not been included in the calculation of a previous Project Payment;

“Outstanding Underpayments” or “OsUp” means the total of all Underpayments that have not been included in the calculation of a previous Project Payment;

“Previous BC Fiscal Years” means BC Fiscal Years before the Current BC Fiscal Year;

“Previous Revenue” or “PR” means, in respect of a Mine Fiscal Year, the amount of Incremental Mineral Tax Revenue for the Mine Fiscal Year received by the Province or refunded or paid to an Operator by the Province in all Previous BC Fiscal Years.

Calculation of Project Payment

2. The amount of the Project Payment for a BC Fiscal Year will be calculated according to the following formula:

$$\text{Project Payment} = \text{BCFYT} + \text{OsUp} - \text{OsOp}$$

Calculation of a single Mine Fiscal Year Amount if Current Revenue is Positive

3. If Current Revenue is a positive amount, the Mine Fiscal Year Amount will be calculated according to the following formulas:

(a) if Cumulative Revenue is less than or equal to twenty-three million dollars (\$23,000,000),

$$\text{MFYA} = 37.5\% \times \text{CrRv};$$

(b) if Cumulative Revenue is greater than twenty-three million dollars (\$23,000,000) and Previous Revenue is less than twenty-three million dollars (\$23,000,000),

$$\text{MFYA} = 37.5\% \times (\$23,000,000 - \text{PR}) + 5\% \times (\text{CmRv} - \$23,000,000);$$

(c) if Previous Revenue is greater than or equal to twenty-three million dollars (\$23,000,000),

$$\text{MFYA} = 5\% \times \text{CrRv}.$$

Calculation of a single Mine Fiscal Year Amount if Current Revenue is Negative

4. If Current Revenue is a negative amount, the Mine Fiscal Year Amount will be calculated according to the following formulas:

(a) if Previous Revenue is less than or equal to twenty-three million dollars (\$23,000,000),

$$\text{MFYA} = 37.5\% \times \text{CrRv};$$

(b) if Previous Revenue is greater than twenty-three million dollars (\$23,000,000) and Cumulative Revenue is less than twenty-three million dollars (\$23,000,000),

$$\text{MFYA} = 37.5\% \times (\text{CmRv} - \$23,000,000) + 5\% \times (\$23,000,000 - \text{PR});$$

(c) if Cumulative Revenue is greater than or equal to twenty-three million dollars (\$23,000,000),

$$\text{MFYA} = 5\% \times \text{CrRv}.$$

SCHEDULE 2

ELKVIEW MINE CONTRIBUTING PROJECT

CONTRIBUTING PROJECT DESCRIPTION

- 1** (1) The “Contributing Project” in this “Schedule 2 – Elkview Mine Contributing Project” is the Elkview Mine located approximately 3 kilometers east of Sparwood, British Columbia and includes the following:
 - (a) the area within the C-2 Permit boundaries shown on Figure 1 (Contributing Project Area);
 - (b) all associated infrastructure, operations sites, pit and dump areas, access roads, power facilities and other physical facilities;
 - (c) any changes or modifications to the elements described in paragraph (b) that may be made from time to time and do not require an assessment by the KNC under paragraph 3(4)(b) of the Elk Valley Coal Mining Revenue Sharing Project Appendix (Project Appendix); and
 - (d) all matters relating to the exploration, planning, permitting, construction, maintenance, repair, operation and reclamation of the Elkview Mine.
- (2) Incremental Production from the Elkview Mine Contributing Project is the coal production enabled by the C-2 Permit Amendment dated January 20, 2012.
- (3) In accordance with paragraph 3(8)(b) of the Project Appendix, the Parties have not yet agreed to incorporate the C-2 Permit Amendment dated December 5, 2016.
- 2** (1) For greater certainty, an application to amend a Permit submitted after the Specified Date is subject to section 11 of the Main Agreement (Consultation Process) and subsections 3(4) and 3(6) to (8) of the Project Appendix.
- (2) If an amendment to a Permit is authorized by Government Action after the Specified Date and the KNC on behalf of the Ktunaxa Parties has provided written confirmation under paragraph 3(4)(c) of the Project Appendix (Contributing Projects), supporting the amendment, then the

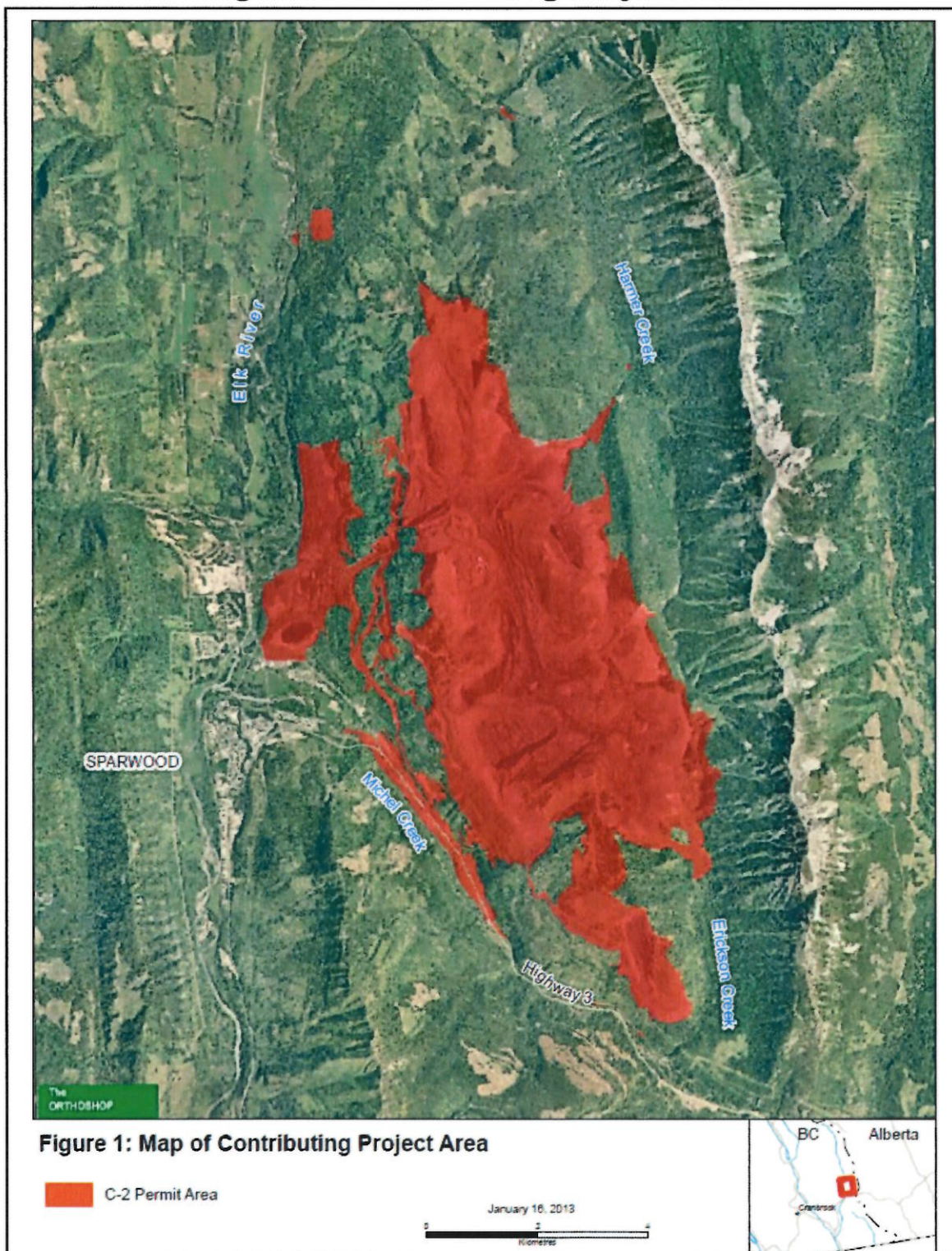
Parties will amend this “Schedule 2 – Elkview Mine Contributing Project”.

- (3) The process for the KNC to issue a Notice of Withdrawal in respect of this “Schedule 2 – Elkview Mine Contributing Project” is set out in section 8 (Notice of Withdrawal) of the Project Appendix.

CONSULTATION

- 3** (1) Nothing in this “Schedule 2 – Elkview Mine Contributing Project” modifies, limits or otherwise affects the Province’s duty to consult with the Ktunaxa Parties, or the ability of the Ktunaxa Parties to raise, or the ability of the Province to consider and address, any concerns regarding the proposed issuance of an environmental assessment certificate, proposed amendment of a Permit or other proposed Government Actions related to this Contributing Project, through the consultation processes set out in section 11 of the Main Agreement, or under subsections 3(4) and 3(6) to (7) of the Project Appendix.

Figure 1: Contributing Project Area



SPECIFIED DATE FOR THE CONTRIBUTING PROJECT

- 4 (1) The Specified Date for this "Schedule 2 - Elkview Mine Contributing Project" is January 29th, 2013.

SIGNED in the presence of

Ray Warden this 15 day
of March, 2017 at
Cranbrook, B.C.:

The Ktunaxa Nation Council Society,
on its own behalf and on behalf of the
Ktunaxa Nation, ʔakisq̓nuk First
Nation, ʔaq̓am, Lower Kootenay Indian
Band, and Tobacco Plains Indian
Band



Signature of witness



Kathryn Teneese, Chair

SIGNED in the presence of

Edward Sem this 30 day
of March, 2017 at
Vancouver:

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


Signature of witness


John Rustad, Minister

SCHEDULE 3

LINE CREEK MINE CONTRIBUTING PROJECT

CONTRIBUTING PROJECT DESCRIPTION

- 1 (1) The “Contributing Project” in this “Schedule 3 – Line Creek Mine Contributing Project” is the Line Creek Mine located approximately 22 kilometers northeast of Sparwood, British Columbia and includes the following:
 - (a) the area within the C-129 Permit boundaries shown on Figure 1 (Contributing Project Area);
 - (b) all associated infrastructure, operations sites, pit and dump areas, access roads, power facilities and other physical facilities;
 - (c) any changes or modifications to the elements described in paragraph (b) that may be made from time to time and do not require an assessment by the KNC under paragraph 3(4)(b) of the Elk Valley Coal Mining Revenue Sharing Project Appendix (Project Appendix); and
 - (d) all matters relating to the exploration, planning, permitting, construction, maintenance, repair, operation and reclamation of the Line Creek Mine.
- (2) Incremental Production from the Line Creek Mine Contributing Project is the coal production enabled by the C-129 Permit Amendment dated November 1, 2013 and all subsequent amendments to the C-129 Permit and Government Actions that authorize the expansion of the mining operations within the Contributing Project Area described in paragraph 1(1)(a).
- 2 (1) For greater certainty, an application to amend a Permit submitted after the Specified Date is subject to section 11 of the Main Agreement (Consultation Process) and subsections 3(4) and 3(6) to (8) of the Project Appendix.
- (2) If an amendment to a Permit is authorized by Government Action after the Specified Date and the KNC on behalf of the Ktunaxa Parties has provided written confirmation under paragraph 3(4)(c) of the Project Appendix (Contributing Projects), supporting the amendment, then the

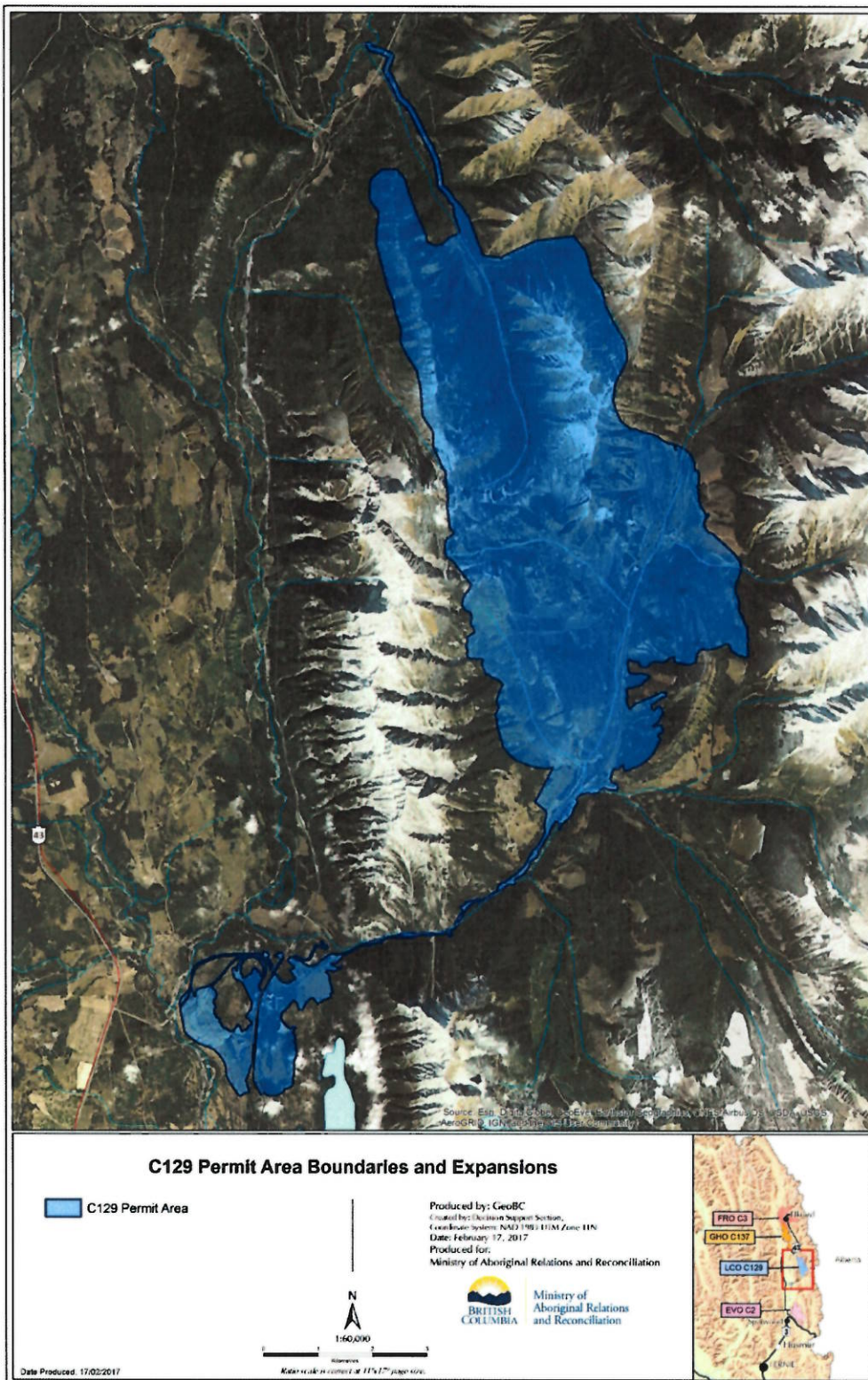
Parties will amend this “Schedule 3 – Line Creek Mine Contributing Project”.

- (3) The process for the KNC to issue a Notice of Withdrawal in respect of this “Schedule 3 – Line Creek Mine Contributing Project” is set out in section 8 (Notice of Withdrawal) of the Project Appendix.

CONSULTATION

- 3** (1) Nothing in this “Schedule 3 – Line Creek Mine Contributing Project” modifies, limits or otherwise affects the Province’s duty to consult with the Ktunaxa Parties, or the ability of the Ktunaxa Parties to raise, or the ability of the Province to consider and address, any concerns regarding the proposed issuance of an environmental assessment certificate, proposed amendment of a Permit or other proposed Government Actions related to this Contributing Project, through the consultation processes set out in section 11 of the Main Agreement, or under subsections 3(4) and 3(6) to (7) of the Project Appendix.

Figure 1: Contributing Project Area



SPECIFIED DATE FOR THE CONTRIBUTING PROJECT

- 4 (1) The Specified Date for this "Schedule 3 - Line Creek Mine Contributing Project" is 30 day of March, 2017.

SIGNED in the presence of

Ray Warden this 15 day
of March, 2017 at
Cranbrook, B.C.:

The Ktunaxa Nation Council Society,
on its own behalf and on behalf of the
Ktunaxa Nation, ʔakisq̓nuk First
Nation, ʔaq̓am, Lower Kootenay Indian
Band, and Tobacco Plains Indian
Band

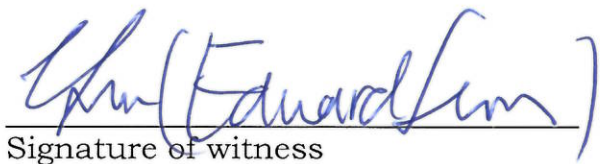

Signature of witness


Kathryn Teneese, Chair

SIGNED in the presence of

Edward Sem this 30 day
of March, 2017 at
Vancouver:

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


Signature of witness


John Rustad, Minister

SCHEDULE 4

GREENHILLS MINE CONTRIBUTING PROJECT

CONTRIBUTING PROJECT DESCRIPTION

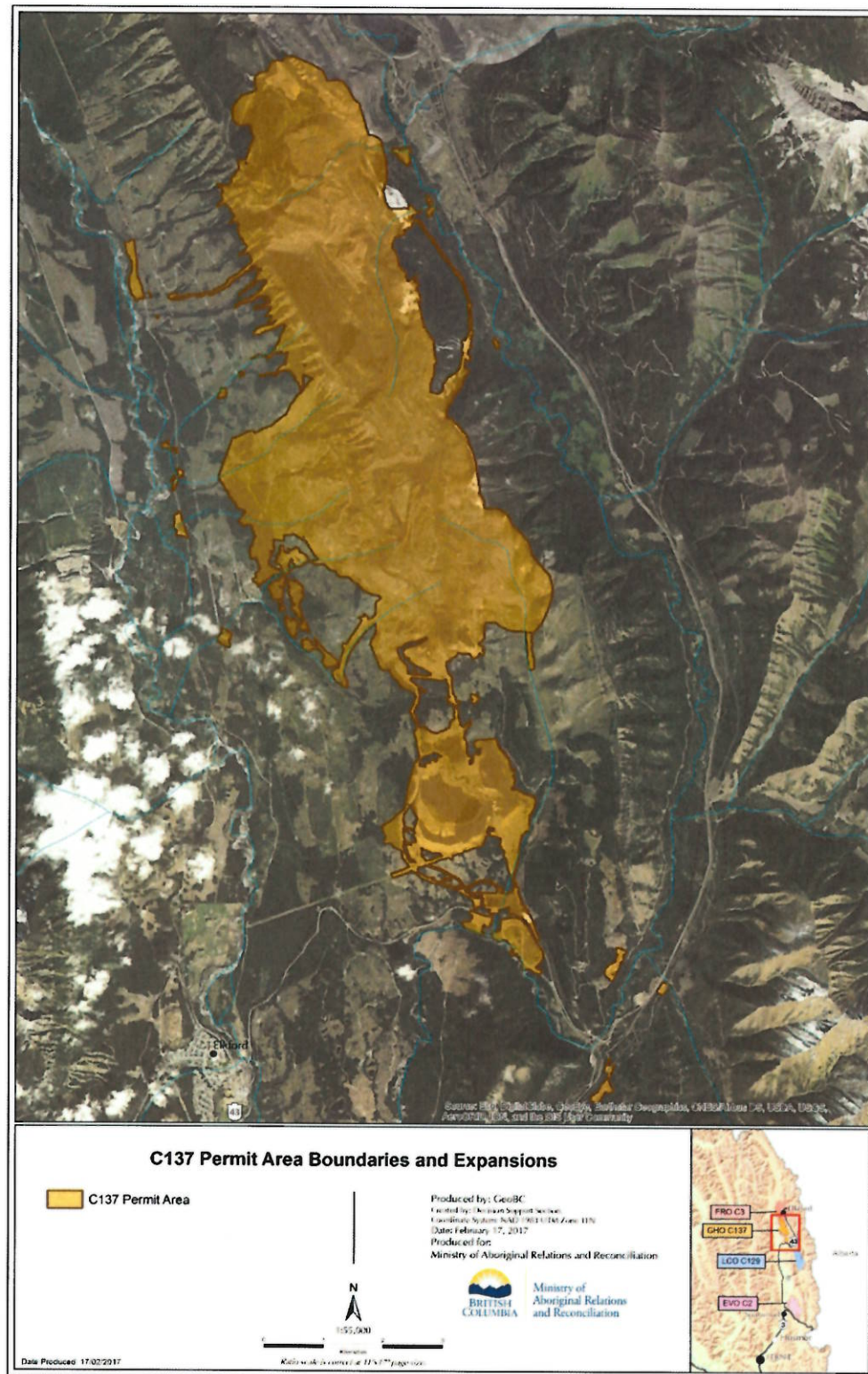
- 1** (1) The “Contributing Project” in this “Schedule 4 – Greenhills Mine Contributing Project” is the Greenhills Mine located approximately 8 kilometers northeast of the community of Elkford, British Columbia and includes the following:
 - (a) the area within the C-137 Permit boundaries shown on Figure 1 (Contributing Project Area);
 - (b) all associated infrastructure, operations sites, pit and dump areas, access roads, power facilities and other physical facilities;
 - (c) any changes or modifications to the elements described in paragraph (b) that may be made from time to time and do not require an assessment by the KNC under paragraph 3(4)(b) of the Project Appendix; and
 - (d) all matters relating to the exploration, planning, permitting, construction, maintenance, repair, operation and reclamation of the Greenhills Mine.
- (2) Incremental Production from the Greenhills Mine Contributing Project is the coal production enabled by the C-137 Permit Amendment dated April 29, 2016 and all subsequent amendments to the C-137 Permit and Government Actions that authorize the expansion of the mining operation within the Contributing Project Area described in paragraph 1(1)(a).
- 2** (1) For greater certainty, an application to amend a Permit submitted after the Specified Date is subject to section 11 of the Main Agreement (Consultation Process) and subsections 3(4) and 3(6) to (8) of the Project Appendix.
- (2) If an amendment to a Permit is authorized by Government Action after the Specified Date and the KNC on behalf of the Ktunaxa Parties has provided written confirmation under paragraph 3(4)(c) of the Project Appendix (Contributing Projects), supporting the amendment, then the Parties will amend this “Schedule 4 – Greenhills Mine Contributing Project”.

- (3) The process for the KNC to issue a Notice of Withdrawal in respect of this “Schedule 4 – Greenhills Mine Contributing Project” is set out in section 8 (Notice of Withdrawal) of the Project Appendix.

CONSULTATION

- 3** (1) Nothing in this “Schedule 4 – Greenhills Mine Contributing Project” modifies, limits or otherwise affects the Province’s duty to consult with the Ktunaxa Parties, or the ability of the Ktunaxa Parties to raise, or the ability of the Province to consider and address, any concerns regarding the proposed issuance of an environmental assessment certificate, proposed amendment of a Permit or other proposed Government Actions related to this Contributing Project, through the consultation processes set out in section 11 of the Main Agreement, or under subsections 3(4) and 3(6) to (7) of the Project Appendix.

Figure 1: Contributing Project Area



SPECIFIED DATE FOR THE CONTRIBUTING PROJECT

- 4 (1) The Specified Date for this "Schedule 4 - Greenhills Mine Contributing Project" is the 30 day of March, 2017.

SIGNED in the presence of

Ray Warden this 15 day
of March, 2017 at
Cranbrook, B.C.:

The Ktunaxa Nation Council Society,
on its own behalf and on behalf of the
Ktunaxa Nation, ʔakisq̓nuk First
Nation, ʔaq̓am, Lower Kootenay Indian
Band, and Tobacco Plains Indian
Band



Signature of witness



Kathryn Teneese, Chair


SIGNED in the presence of

Edward Sem this 30 day
of March, 2017 at
Vancouver:

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



Signature of witness



John Rustad, Minister