

Project No. 1598922
Prince George Hearing

BRITISH COLUMBIA UTILITIES COMMISSION'S INQUIRY RESPECTING SITE C

SUBMISSION OF THE McLEOD LAKE INDIAN BAND

PRINCE GEORGE HEARING, SEPTEMBER 29, 2017

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PART 1.0—SUMMARY AND OVERVIEW OF SUBMISSIONS

1. McLeod Lake Indian Band ("**MLIB**") supports the completion of Site C for two reasons:

- a) Site C provided a watershed moment in the relationship between MLIB and BC Hydro, and thus the provincial Crown and MLIB. The negotiation of the agreements for Site C between MLIB and the Crown reset the relationship between BC Hydro and MLIB by acknowledging and accommodating past impacts and establishing a new working relationship by entering into the March 30, 2016 Renewal Agreement between BC Hydro and MLIB (the "**Renewal Agreement**"). The Renewal Agreement advanced reconciliation. Suspension or termination of Site C would unwind that progress.
- b) Suspending or terminating Site C would give rise to significant financial hardships for MLIB. MLIB, its members, and its businesses would lose opportunities that could not be replaced.

2. MLIB views the Impact Benefit Agreement ("**IBA**"), Contracting Agreement and Tripartite Land Agreement as integral to the Renewal Agreement and the renewed relationship between BC Hydro and MLIB. MLIB was required to approve the IBA, the Contracting Agreement and the Tripartite Land Agreement before BC Hydro would execute the Renewal Agreement. Undoing one of those agreements undoes all of them and will require extensive negotiations and reparations. It also sets back the relationship between MLIB and the Crown, and impairs reconciliation.

3. Further, the IBA, Contracting Agreement and Tripartite Land Agreement and Renewal Agreement address and accommodate impacts to MLIB's title and rights caused by Site C. Any decision to continue, suspend or terminate Site C could adversely affect the accommodations

the Crown agreed to provide MLIB with respect to impacts to MLIB's title and rights. Any decision to continue, suspend or terminate Site C triggers the Crown's duty to consult MLIB. The decision to continue, suspend or terminate Site C is the type of strategic decision that Supreme Court of Canada has confirmed triggers the duty to consult (*Haida Nation v. British Columbia (Minister of Forests)*, 2004 SCC 73, ("**Haida**") at para. 76).

4. The current inquiry into Site C (the "**Site C Inquiry**") by the British Columbia Utilities Commission (the "**Commission**") is not sufficient to discharge that duty and uphold the honour of the Crown.

5. The Commission has a legal duty to report to the Lieutenant Governor in Council that:

- a) the Crown's duty to consult MLIB with respect to Site C has been triggered;
- b) to date, consultation has not yet begun;
- c) the Crown must provide additional avenues for consultation with MLIB with respect to any decision for Site C;
- d) the Crown is obliged to begin that consultation as early as possible and cannot rely on after-the-fact consultation once the decision has been made;
- e) the Crown, in discharging the duty to consult, cannot subsume the consideration of the impacts to MLIB's title and rights in the consideration of financial impacts – it instead must consider any financial impacts with regard to their potential to adversely affect MLIB's title and rights; and
- f) the Crown, in exercising its discretion with respect to Site C, must consider how that decision will advance or impair reconciliation between the Crown and MLIB.

6. Further, in reporting to the Lieutenant Governor in Council, the Commission must identify that suspending or terminating Site C will have the following unaccommodated impacts to MLIB's title and rights:

- a) the basis for entering in the Renewal Agreement will be fundamentally altered, resulting in unravelling reconciliation between the Crown and MLIB, and requiring the renegotiation of the Renewal Agreement between BC Hydro and MLIB;
- b) Site C construction has already created impacts to MLIB's title and rights;
- c) if BC Hydro or the Crown suspend or terminate the package of accommodation the Crown agreed to provide MLIB for those impacts, then accommodation for those impacts will no longer be sufficient and the Crown must consult with MLIB to reach agreement with MLIB in relation to new and additional accommodation for the impacts that have already been, and will be, caused by the construction and remediation of Site C;
- d) contracting opportunities that were intended by the Renewal Agreement and the Contracting Agreement to accommodate for physical and economic impacts to MLIB's title and rights will need to be replaced.

7. In addition, the Lieutenant Governor in Council must know that the transfer of lands under the Tripartite Land Agreement needs to proceed regardless of any decision about Site C. The transfer of lands to MLIB under the Tripartite Agreement was not just intended to accommodate MLIB for impacts to Site C, but was expressly tied to the reparations for past impacts addressed in the Renewal Agreement.

8. In the event of termination, any surplus Crown lands will need to be disposed of to MLIB to compensate for past impacts to MLIB's title and rights and to satisfy MLIB's ongoing land claims.

9. BC Hydro will also be required to pay any outstanding payments due under the IBA or Contracting Agreement.

PART 2.0—DUTY TO CONSULT

2.1 THE SUSPENSION OR TERMINATION IF SITE C TRIGGERS THE DUTY TO CONSULT

10. The Supreme Court of Canada has confirmed that the honour of the Crown is always at stake in the Crown's dealings with Indigenous communities (*Haida*, at para. 16). Here, the honour of the Crown gives rise to a duty to consult MLIB in relation to any potential suspension or termination of Site C because the Crown has knowledge of MLIB's Aboriginal title or rights, and, the conduct the Crown is contemplating may adversely impact MLIB's rights (*Haida*, para. 35).

11. MLIB exercises treaty rights under the Treaty No. 8 Area (as Treaty No. 8 uses that term), which is affected by the construction and operation of Site C. MLIB exercises Aboriginal title and rights in its Claimed Traditional Territory (as Treaty No. 8 uses that term). In respect of those treaty and Aboriginal title and rights, and the impacts and infringements Site C would cause to those rights, MLIB has executed the following agreements with respect to Site C with BC Hydro:

- a) the Renewal Agreement;
- b) the Impact Benefit Agreement with BC Hydro for Site C dated March 30, 2016 (the "**IBA**"); and

- c) the related Contracting Agreement for Site C dated July 5, 2016 (the **“Contracting Agreement”**).

12. Also in respect of MLIB’s treaty and Aboriginal title and rights, and the impacts and infringements Site C would cause to those rights, MLIB has executed Tripartite Land Agreement, dated July 19, 2016, with respect to Site C among MLIB, BC Hydro, and the Ministry of Aboriginal Relations and Reconciliation on behalf of the province of British Columbia (the **“Tripartite Land Agreement”**, and collectively with the Renewal Agreement, the IBA and the Contracting Agreement, the **“Site C Agreements”**).

13. The Site C Agreements constitute an important step in reconciliation between MLIB and the Crown as it is represented by BC Hydro and the Province of British Columbia. The Site C Agreements seek to advance reconciliation and address important past, present, and future impacts to MLIB’s treaty rights and Aboriginal title and rights. Suspending or terminating Site C will adversely affect MLIB’s treaty rights and Aboriginal title and rights and accommodations provided for impacts to those rights.

14. As a result, the Crown’s duty to consult MLIB with respect to the decision to suspend or terminate Site C is triggered.

2.2 THE COMMISSION DOES NOT HAVE THE REQUISITE POWERS TO EFFECT CONSULTATION WITH MLIB

15. Regulatory processes can fulfill the duty to consult if, among other things, the enabling statute has given the decision-maker the necessary remedial powers to address potential impacts to Aboriginal title and rights (*Rio Tinto Alcan Inc. v. Carrier Sekani Tribal Council*, 2010 SCC 43 (**“Rio Tinto”**) at paras. 58 to 63). However, the Supreme Court of Canada has found that the Commission does not have the remedial powers to effect consultation on behalf of the Crown, (*Rio Tinto*, paras. 60 and 74). The Order in Council 244, approved August 2, 2017, (the

“OIC”) mandating the Commission to investigate and report on the implications of continuing, suspending or terminating Site C, does not provide the Commission with the necessary remedial powers to effect consultation with MLIB.

16. The Site C Inquiry conducted by the Commission is not Crown consultation and does not in any way discharge the Crown’s duty to consult MLIB about the potential suspension or termination of Site C.

2.3 WHEN REGULATORY PROCESSES ARE NOT SUFFICIENT TO DISCHARGE THE DUTY TO CONSULT, THE CROWN MUST PROVIDE OTHER AVENUES FOR CONSULTATION

17. When an administrative body’s statutory powers are insufficient to effect consultation and accommodation, the Crown must provide other avenues for consultation (*Chippewas of the Thames First Nation v. Enbridge Pipelines Inc.*, 2017 SCC 41, at para. 32; *Clyde River (Hamlet) v. Petroleum Geo-Services Inc.*, 2017 SCC 40, at para. 22).

18. Upholding the honour of the Crown and discharging the duty to consult are constitutional obligations that reside upstream of legislative regimes and regulatory processes. The Crown cannot legislate out of upholding the honour of the Crown; nor can it legislate out of the duty to consult (*Halalt First Nation v. British Columbia (Environment)*, 2011 BCSC 945, at para. 652). Likewise, regulatory processes cannot avoid the duty to consult; when they do, that regulatory process will be flawed and any decision that flows from it will be vulnerable to challenge (*Ross River Dena Council v. Government of Yukon*, 2012 YKCA 14, at paras. 34 to 40; *Ka’a’Gee Tu First Nation v. Canada (Attorney General)*, 2007 FC 763 at para. 121).

19. Here, the Crown must establish a separate government-to-government process with MLIB to address potential impacts of any potential suspension or termination of Site C.

2.4 THE COMMISSION HAS A DUTY TO ASSESS THE ADEQUACY OF CONSULTATION THUS FAR AND REPORT THAT IT HAS BEEN INADEQUATE

20. The Supreme Court of Canada has confirmed that the Commission's power to decide issues of law includes addressing constitutional issues that are properly before it and assessing the adequacy of Crown consultation (*Rio Tinto*, paras. 69 to 73). Further, even when mainly focused on economic issues, the Commission's powers to consider questions of law "are broad enough to include the issue of Crown consultation with Aboriginal groups" (*Rio Tinto*, para. 70).

21. The OIC mandating the Commission to advise the Lieutenant Governor in Council on Site C does not expressly exclude the consideration of the adequacy of consultation (see *Rio Tinto*, para. 69). Instead, the OIC requires the Commission to "advise on the implications of" continuing, suspending or terminating Site C (paragraph 3(a)) and to consult interested parties while doing so (paragraph 3(d)).

22. Further, the OIC expressly states that the Commission "may exercise any of its powers under the Act to carry out the inquiry" (paragraph 3(f)). As the OIC does not expressly exclude the Commission's power to consider questions of law, the Commission must consider the adequacy of consultation with respect of any decision to continue, suspend or terminate Site C (see *Rio Tinto*, paras. 59 to 60 and 69 to 74).

23. *Rio Tinto*, the *Utilities Commission Act*, RSBC 1996, c. 473 (the "**Act**") and the OIC require the Commission to assess the adequacy of consultation with MLIB, regarding the completion, suspension or termination of Site C.

2.5 POTENTIAL FINANCIAL IMPACTS MUST BE CONSIDERED AS IMPACTS TO MLIB'S TITLE AND RIGHTS

24. A tribunal, or administrative body, in order to discharge the duty to consult, or assess the adequacy of consultation, must consider impacts as impacts to Aboriginal title or rights. The

consideration of impacts to Aboriginal rights cannot be subsumed in the consideration of ancillary or related issues such as environmental or financial impacts (*Clyde River (Hamlet) v. Petroleum Geo-Services Inc.*, 2017 SCC 40, at paras. 45 and 51; *Chippewas of the Thames First Nation v. Enbridge Pipelines Inc.*, 2017 SCC 41, at paras. 54 and 60).

25. The OIC expressly requires the Commission to report on the financial impacts of completing, suspending or terminating Site C. When considering such impacts, the Commission must consider financial impacts with respect to their potential impact on MLIB's title and rights. It is insufficient just to consider the financial impacts of terminating the IBA, the Contracting Agreement or the Tripartite Land Agreement; the impacts, both financial and non-financial, must be assessed for the potential to impact MLIB's title and rights. Further, the Crown must consult on those potential impacts before making any decision with respect to Site C.

2.6 THE CROWN CANNOT CONTRACT OUT OF THE DUTY TO CONSULT

26. The Crown cannot contract out of the honour of the Crown or the duty to consult. The Crown's constitutional duty always applies independently and regardless of the expressed or implied intention of the parties (*Haida Nation v. British Columbia (Minister of Forests)*, 2004 SCC 73, at para. 42; *Beckman v. Little Salmon/Carmacks First Nation*, 2010 SCC 53 at para. 61; *Behn v. Moulton Contracting Ltd.*, 2013 SCC 26, at para. 27; *Canada v. Brokenhead First Nation*, 2011 FCA 148, at para. 25; *Canada v. Long Plain First Nation*, 2015 FCA 177, at paras. 115 and 119 to 120; *Fort Chipewyan Métis Nation of Alberta Local #125 v. Alberta*, 2016 ABQB 713, at para. 101; *Nunatsiavut v. Canada (Attorney General)*, 2015 FC 492, paras. 125 and 129 to 130; and *Saugeen First Nation v. Ontario (MNR)*, 2017 ONSC 3456, at para. 19).

27. The termination provisions in the IBA, the Contracting Agreement, and the Tripartite Land Agreement state that payments or other obligations under the Site C Agreements would

be suspended or discontinued if Site C was suspended or terminated. They do not exclude further payments or consultation. They are silent as to what would be required between the Crown and MLIB after the suspension or termination of the Site C Agreements because the common law on the duty to consult with respect to Aboriginal title and rights prevails. In the event that BC Hydro elects to suspend or terminate the Site C Agreements, the Crown has a constitutional duty to consult with MLIB with respect to how that suspension or termination affects MLIB's title, rights and any accommodations provided for impacts to MLIB's title and rights. No contractual language could obviate the Crown's constitutional obligation to do so. No contractual language could replace the consultation and accommodation required to address the facts on the ground if and when suspension or termination occurred.

2.7 STEPS THE CROWN MUST TAKE TO ENSURE CONSULTATION IS EFFECTIVE

28. The Crown must begin to consult with MLIB regarding any action it plans to take regarding Site C that could affect MLIB's rights under the Site C Agreements. It is best if consultation occurs early, but it must occur before the decision is made. Consultation after the fact is never sufficient to uphold the honour of the Crown (*Musqueam Indian Band et al. v. City of Richmond et al.*, 2005 BCSC 1069 at para. 116; *Wahgoshig First Nation v. Her Majesty the Queen in Right of Ontario et al.*, 2011 ONSC 7708 at para. 54).

29. When a Crown decision-maker is exercising discretion, it must consider how the decision will advance or impair reconciliation (*Kainaiwa/Blood Tribe v Alberta (Energy)*, 2017 ABQB 107, at paras. 129 and 130).

PART 3.0—IMPACTS TO THE RENEWAL AGREEMENT IF SITE C IS TERMINATED OR SUSPENDED

30. Historically, MLIB and BC Hydro had a fractious relationship, unbefitting the honour of the Crown. The development of infrastructure in the MLIB Territory occurred without

consultation, consent or accommodation and had a devastating effect on MLIB and its members. As Chief Harley Chingee of MLIB has stated in his affidavit sworn on September 27, 2017 (the “**Affidavit**”), since the 1950s, and until very recently, BC Hydro has developed “its core infrastructure in the MLIB Territory without consultation with MLIB and without MLIB’s consent” (para. 7). The development of that infrastructure:

...continues to have profound effects on MLIB and its members, including the ways in which MLIB and its members exercise their Aboriginal title and rights over their lands and resources and their connections to their neighbouring Aboriginal communities. Those impacts had a devastating effect on the MLIB community and its members. The most enormous impact came from the creation of the Williston Reservoir (Affidavit, para. 8).

31. For MLIB, the development of the Williston Reservoir created the most significant impacts of all of BC Hydro’s infrastructure:

Williston Reservoir and other BC Hydro infrastructure created profound pain and hardship for MLIB and its members. Members were displaced from their traditional hunting, trapping and fishing areas. Trapping, hunting and fishing in areas like Cutthumb Creek could no longer be practiced. The Parsnip drainage system could no longer be used. Species like the arctic grayling and caribou herds were severely impacted. Moose were also affected and became scarce in our territory. The fish in Williston Reservoir are known to be contaminated with mercury and cannot be used as a food source.

Members could not trap, hunt or fish like they used to. Members lost the ability to provide for themselves and the ability to pass those traditional skills onto their children. By the 1980s, almost all members had abandoned trapping. It was no longer viable as a way to feed yourself and your family or as a way to make money. Many families left McLeod Lake and moved to centres like Prince George. The displacement from their homes and their livelihoods meant that many MLIB members had to go on social assistance (Affidavit, paras. 10 and 11).

32. The Renewal Agreement addressed some of those impacts and was a watershed moment in the relationship between BC Hydro and MLIB that moved reconciliation forward between MLIB and the provincial Crown. It reset the relationship between MLIB and BC Hydro by acknowledging the past impacts and establishing a foundation for a more productive

relationship between MLIB and BC Hydro. Suspending or terminating Site C would unravel the Renewal Agreement and require a new agreement to be put in place.

33. In the Affidavit, Chief Chingee stated that:

Approving the Renewal Agreement was difficult for MLIB. The first time the Renewal Agreement was put to the MLIB community, it was rejected. It was only after negotiations for the other agreements associated with Site C had advanced that MLIB was able to put the Renewal Agreement before the MLIB members again (Affidavit, para. 15).

34. The Renewal Agreement required MLIB to approve and execute the IBA, the Contracting Agreement, and the Tripartite Land Agreement before BC Hydro would execute the Renewal Agreement. In the Renewal Agreement, BC Hydro promises to make contracting opportunities available for MLIB in future BC Hydro projects and expressly lists Site C as one of those projects.

35. For MLIB, the Renewal Agreement, the IBA, the Contracting Agreement, and the Tripartite Land Agreement were all part of the same package. Chief Chingee in the Affidavit states that:

In determining if the Renewal Agreement was acceptable, MLIB weighed not just the benefit and accommodation measures contained within it, but also the aggregate of the benefit and accommodation measures in the Site C Agreements. MLIB would not have entered into the Renewal Agreement if the associated benefits created by the Site C Agreements were not part of the package. MLIB considers the Renewal Agreement's accommodation for past impacts and infringements of MLIB title and rights insufficient in isolation from the other Site C Agreements (Affidavit, para. 16).

36. It would not be consistent with the honour of the Crown for BC Hydro to suspend or terminate Site C without consulting MLIB about how that affects the package of benefits that was integral to the Renewal Agreement, and resetting the new relationship between MLIB and BC Hydro.

37. For MLIB, it was important that BC Hydro acknowledged that “the Williston Reservoir forever changed MLIB’s connection with the MLIB Territory and created profound hardships within the MLIB community (Affidavit, para. 13), and that BC Hydro “recognized that a new relationship was needed between MLIB and BC Hydro” (Affidavit, para. 13). Terminating Site C and not honouring the agreements MLIB approved as a requirement of the Renewal Agreement would not be consistent with the honour of the Crown. When considering promises made to Aboriginal groups in respect of promises made by the Crown, the Crown must interpret those promises in a purposive way and ensure those promises are upheld (*Manitoba Metis Federation Inc. v. Canada (Attorney General)*, 2013 SCC 14, para. 128).

PART 4.0—IMPACTS FLOWING FROM THE IBA IF SITE C IS TERMINATED OR SUSPENDED

38. Construction of Site C has already caused impacts on MLIB’s title and rights, but only a very small portion of the accommodation for those impacts has been provided. If Site C is suspended or terminated, then the Crown will need to consult with MLIB regarding what accommodation has been provided, and what new and additional accommodation must be provided for impacts that have already occurred, and may continue to occur.

39. The Crown must know that the benefits provided in the IBA do not represent a maximum level for accommodation if Site C is suspended or terminated. The Crown will need to address new circumstance by consulting and providing accommodations that are appropriate to those circumstances in which the decision is made (*Taku River Tlingit First Nation v. British Columbia (Minister of Environment)*, 2014 BCSC 1278, at paras. 53, 63 and 70; *Huu-Ay-Aht First Nation et al. v. The Minister of Forests et al.*, 2005 BCSC 697, para. 123; *Chartrand v. British Columbia (Forests, Lands and Natural Resource Operations)*, 2015 BCCA 345, at para. 79).

PART 5.0—IMPACTS FLOWING FROM CONTRACTING AGREEMENT IF SITE C IS CONTINUED, SUSPENDED OR TERMINATED

40. In the Affidavit, Chief Chingee stated that the termination or suspension of Site C will cause undue hardship for MLIB (para. 28). MLIB businesses have incurred significant expenses in preparing for contracting opportunities for Site C. Most of those expenses “were financed based on at least six to eight years of contracting opportunities” (Affidavit, para. 28). With only two years of contracting opportunities, “(t)he suspension of termination of Site C would mean the end of MLIB’s construction business” (Affidavit, para. 28).

41. The Renewal Agreement recognized that the Williston Reservoir and other BC Hydro infrastructure displaced MLIB members from their traditional livelihoods and that MLIB aspired to become “an economically thriving community” (Renewal Agreement, para. 5, page 1). The Renewal Agreement further promised MLIB contracting opportunities on BC Hydro projects (Renewal Agreement, para. 5, page 4), and listed Site C as such a project in Appendix A to the Renewal Agreement. The Contracting Agreement does not just flow from the IBA. It also flows from BC Hydro’s acknowledgement of past impacts and its promise to help MLIB develop self-sustaining livelihoods for its members to replace the livelihoods destroyed by previous BC Hydro infrastructure.

42. The suspension or termination of Site C would have the opposite effect. Instead of making MLIB and its members better off through participation in Site C, suspending or terminating Site C would leave MLIB and its members worse off. BC Hydro’s biggest promise to MLIB for economic development would be gone. Businesses would not survive. Members would still not have the economic opportunities that were promised to accommodate for Site C’s impacts and to replace the livelihoods destroyed by previous BC Hydro infrastructure. Instead, past infrastructure and its impacts would endure and the impacts from Site C would persist.

43. The honour of the Crown requires that BC Hydro consult with MLIB before it decides to suspend or terminate Site C. The honour of the Crown also requires that BC Hydro accommodate MLIB for those impacts to its title and rights. As part of that consultation and accommodation, BC Hydro needs to discuss what contracting opportunities will be provided for the remediation of Site C with MLIB. MLIB wants to ensure that any contracting opportunities it will have for such remediation are equivalent or better than it would have had if Site C continues.

44. If Site C continues, MLIB will require consultation with BC Hydro regarding its process for awarding contracts. As Chief Chingee stated in the Affidavit:

MLIB has had problems with the bidding process for contracts. It discussed those concerns directly with the CEO of BC Hydro and the Minister of Energy, Mines and Petroleum Resources. After that things have improved, but more work needs to be done. If Site C continues, MLIB would expect BC Hydro to remedy this by providing MLIB with more direct award contracts (Affidavit, para. 30).

PART 6.0—IMPACTS FLOWING FROM TLA IF SITE C IS SUSPENDED OR TERMINATED

45. The Renewal Agreement expressly connected the Tripartite Land Agreement with the new relationship BC Hydro was forging with MLIB and BC Hydro's regret for past impacts and promise not to repeat the mistakes of the past (Renewal Agreement, paras. 4 and 6, page 5). To not transfer the 2,500 acres would be to repeat those same mistakes.

46. The Tripartite Land Agreement was to provide MLIB will lands to "restore a small portion of the MLIB Territory to the use and control of MLIB" (Affidavit, para. 29). By placing those lands in the control of MLIB, it could use those lands to exercise its Aboriginal title and rights. Any decision to suspend or terminate the proposed transfer of those lands triggers the duty to

consult both with respect to promised accommodation for past impacts and the impacts created by Site C.

47. The Crown also still needs to address MLIB's outstanding land claims. The lands promised by the Tripartite Land Agreement "would still not be sufficient to accommodate MLIB for past impacts to the MLIB Territory and MLIB's title and rights" (Affidavit, para. 29). If Site C is suspended, then the Crown will have at its disposal expropriated fee simple lands that it can use to address outstanding MLIB claims. The Crown must consult with MLIB before any disposal of that land, and MLIB expects that if Site C is terminated, that those surplus fee simple lands held by the Crown will be used to address MLIB claims (*Musqueam Indian Band v. British Columbia (Minister of Sustainable Resource Management)*, 2005 BCCA 128, paras. 66 and 67, and 94).

PART 7.0—IMPACTS TO MLIB TERRITORY IF SITE C IS SUSPENDED OR TERMINATED

48. If Site C is suspended or terminated, "the territory will be left looking like a moonscape. Large sections of the MLIB Territory have been deforested. Many slopes would need to be stabilized to prevent erosion" (Affidavit, para. 33). More importantly, those impacts will need to be addressed. As Chief Chingee stated in the Affidavit:

Those impacts will need to be remediated. Some may not be able to ever be remediated to MLIB's satisfaction. For those impacts, MLIB will bear the full brunt of the impacts as if Site C had been constructed, but MLIB will not receive the full payments, contracting opportunities and land that the Crown promised in accommodation for those impacts and infringements (Affidavit, para. 35).

49. If Site C is suspended or terminated, then the Crown will have a duty to ensure that those impacts do not remain unaccommodated. MLIB will expect Crown consultation on how its Territory will be remediated. MLIB will expect to be awarded direct-award contracts to remediate its Territory so that MLIB can fulfill its role as the stewards of its Territory and so it is

accommodated for impacts caused by Site C and other BC Hydro infrastructure. The honour of the Crown requires that such contracting opportunities are equal or greater than those currently agreed to under the Contracting Agreement.

50. Further, if Site C is suspended or terminated, some impacts may never remediated. MLIB will expect the Crown to fulfill its constitutional duty to accommodate MLIB for such impacts and by ensuring that monetary payments and land transfers are negotiated that would be equal or more than those agreed to in the IBA and Tripartite Land Agreement.

PART 8.0—CONCLUSION

51. The Crown's duty to consult and accommodate MLIB has been triggered by the Province's decision to review Site C to determine if it should be completed, suspended or terminated.

52. The Commission cannot discharge that duty, but must report to the Lieutenant Governor in Council that the duty has not been discharged and that consultation has not even begun. The Commission must ensure that its report states that Crown must consult MLIB about any potential decision regarding Site C and must consider how such a decision would advance or impair reconciliation.

53. Suspending or terminating Site C affects agreements between BC Hydro and MLIB not just with respect to impacts caused by Site C, but also historical impacts caused by the development of BC Hydro's infrastructure in MLIB's Territory. The honour of the Crown requires that in suspending or terminated Site C, the Crown cannot leave MLIB worse off than it would have been had Site C proceeded. To ensure that does not happen, if Site C is suspended or terminated, BC Hydro must provide MLIB with:

- a) monetary benefits equal or greater than those provided by the IBA;

- b) contracting opportunities whose aggregate value is equal or greater than the amount agreed to in the Contracting Agreement; and
- c) lands that are equal or greater than the 2,500 acres promised by the Tripartite Land Agreement.

54. MLIB would like to begin the consultations necessary with the Crown to ensure that any decision with respect to Site C upholds the honour of the Crown.

55. MLIB respectfully requests that the Panel conducting the Site C Inquiry include the information contained in MLIB's submissions in its report to the Lieutenant Governor in Council.

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SUBMISSIONS OF McLEOD LAKE INDIAN BAND

General Delivery
McLeod Lake, B.C.
V0J 2G0

**BRITISH COLUMBIA UTILITIES COMMISSION INQUIRY
RESPECTING SITE C**

AFFIDAVIT OF CHIEF HARLEY CHINGEE

I, HARLEY CHINGEE, Chief of the McLeod Lake Indian Band, with an address of General Delivery, McLeod Lake, BC, V0J 2G0, SWEAR THAT:

1. I have personal knowledge of the facts and matters deposed to by me, save and except those which are stated to be based on information and belief and where so stated I verily believe them to be true. For matters in which I was not directly involved, I have informed myself by reviewing the relevant materials.

2. I am a member and the elected Chief of the McLeod Lake Indian Band (“**MLIB**”), I have served as the elected Chief since June 2, 2017 and since 2002, I have served on MLIB Council for a total of five years.

PART 1.0—MLIB ADHESION TO TREATY 8

3. MLIB is a “band” within the meaning of section 2(1) of the *Indian Act*, RSC 1985, c 1-5 and our members are “Aboriginal peoples of Canada” within the meaning of section 35 of the *Constitution Act, 1982*.

4. MLIB adhered to Treaty No. 8 on the 30th day of September, 1999 by executing the McLeod Lake Indian Band Treaty No. 8 Adhesion and Settlement Agreement with Canada and the Province of British Columbia (the “**Treaty 8 Adhesion**”).

5. As an adherent to Treaty 8, MLIB continues to exercise treaty rights within the Treaty No. 8 Area, as that term is defined in the Treaty 8 Adhesion.

6. The Treaty 8 Adhesion did not limit MLIB's right to exercise its Aboriginal title rights within MLIB's Claimed Traditional Territory, as that term is defined in the Treaty 8 Adhesion (collectively with the Treaty No. 8 Area, the "**MLIB Territory**"). A true copy of the map used to depict MLIB's Claimed Traditional Territory in the Treaty 8 Adhesion is attached to this affidavit as Exhibit "A".

PART 2.0—HISTORICAL RELATIONSHIP BETWEEN MLIB AND BC HYDRO

7. Starting in the 1950s, BC Hydro began developing its core infrastructure in the MLIB Territory without consultation with MLIB and without MLIB's consent.

8. That infrastructure included dams, reservoirs, generating stations, and transmission lines that forever changed the MLIB Territory and MLIB's ability to exercise its Aboriginal title and rights within it. BC Hydro's infrastructure in the MLIB Territory continues to have profound effects on MLIB and its members, including the ways in which MLIB and its members exercise their Aboriginal title and rights over their lands and resources and their connections to their neighbouring Aboriginal communities. Those impacts had a devastating effect on the MLIB community and its members. The most enormous impact came from the creation of the Williston Reservoir.

PART 3.0—IMPACTS OF THE WILLISTON RESERVOIR

9. In 1968, the BC Hydro built the W.A.C. Bennett Dam, and in the process created the Williston Reservoir in the MLIB Territory. The Williston Reservoir flooded over 600 square

miles of the MLIB Territory, submerging them and putting them beyond the use of MLIB and its members. The Williston Reservoir destroyed some of the best timber resources in the province and took away the ability of many of MLIB members to earn a living from forestry in their community.

10. Williston Reservoir and other BC Hydro infrastructure created profound pain and hardship for MLIB and its members. Members were displaced from their traditional hunting, trapping and fishing areas. Trapping, hunting and fishing in areas like Cutthumb Creek could no longer be practiced. The Parsnip drainage system could no longer be used. Species like the arctic grayling and caribou herds were severely impacted. Moose were also affected and became scarce in our territory. The fish in Williston Reservoir are known to be contaminated with mercury and cannot be used as a food source.

11. Members could not trap, hunt or fish like they used to. Members lost the ability to provide for themselves and the ability to pass those traditional skills onto their children. By the 1980s, almost all members had abandoned trapping. It was no longer viable as a way to feed yourself and your family or as a way to make money. Many families left McLeod Lake and moved to centres like Prince George. The displacement from their homes and their livelihoods meant that many MLIB members had to go on social assistance.

12. MLIB was never consulted nor consented to the creation of the Williston Reservoir and was not accommodated for those impacts. Some Elders were promised free electricity, but that was never provided.

PART 4.0—THE RENEWAL AGREEMENT BETWEEN MLIB AND BC HYDRO

13. In an effort to renew its relationship with BC Hydro, MLIB entered into the Renewal Agreement with BC Hydro on March 30, 2016, a true copy of which is attached as Exhibit “B” to this affidavit. MLIB sees the Renewal Agreement as BC Hydro’s acknowledgement that the Williston Reservoir forever changed MLIB’s connection with the MLIB Territory and created profound hardships within the MLIB community. For MLIB, the Renewal Agreement demonstrated that BC Hydro, and the Crown, finally recognized that a new relationship was needed between MLIB and BC Hydro. MLIB sees the Renewal Agreement as an essential step in reconciliation between MLIB and the Crown.

14. MLIB took the necessary steps to ratify the Renewal Agreement through a community vote, including discussing the Renewal Agreement, the Impact Benefit Agreement with BC Hydro for Site C dated March 30, 2016 (the “IBA”), the related Contracting Agreement for Site C dated July 5, 2016 (the “**Contracting Agreement**”) and the Tripartite Land Agreement dated July 19, 2016, among MLIB, BC Hydro and the Ministry of Aboriginal Relations and Reconciliation on behalf of the province of British Columbia (the “TLA”). A true copy of the TLA is attached to this affidavit as Exhibit “C”.

15. Approving the Renewal Agreement was difficult for MLIB. The first time the Renewal Agreement was put to the MLIB community, it was rejected. It was only after negotiations for the other agreements associated with Site C had advanced that MLIB was able to put the Renewal Agreement before the MLIB members again.

16. As the Renewal Agreement required MLIB to approve and execute the IBA, the Contracting Agreement and the TLA (the “**Site C Agreements**”) before BC Hydro would enter

into the Renewal Agreement, MLIB considered all of those agreements during the community ratification process. For MLIB, the Renewal Agreement and the Site C Agreements are a package of accommodations intended to address past impacts, and in particular the impacts of the Williston Reservoir, as well the impacts that would be created by Site C. In determining if the Renewal Agreement was acceptable, MLIB weighed not just the benefit and accommodation measures contained within it, but also the aggregate of the benefit and accommodation measures in the Site C Agreements. MLIB would not have entered into the Renewal Agreement if the associated benefits created by the Site C Agreements were not part of the package. MLIB considers the Renewal Agreement's accommodation for past impacts and infringements of MLIB title and rights insufficient in isolation from the other Site C Agreements.

PART 5.0—THE IBA

17. MLIB sees the IBA as an important step in establishing an enduring and productive relationship with BC Hydro and in tandem with the Renewal Agreement an important step in the process of reconciliation between MLIB and the Crown.

18. Sadly, MLIB now does not view the IBA's payments as fair accommodation. MLIB now understands that BC Hydro has provided much larger payments to other First Nations for other BC Hydro projects of similar scope. MLIB is now questioning how this could come to be and how the Crown's honour is upheld when there is such wide discrepancy between the accommodations provided different First Nations for the similar impacts.

19. Regardless of whether not the IBA's monetary payments are fair, for MLIB, the monetary benefits -- including the 70-year stream of payments -- due under the IBA are an essential element of accommodation from the Crown not just for the impacts caused by Site C to

MLIB's title and rights, but also for past impacts to MLIB title and rights caused by BC Hydro in the development of its infrastructure in the MLIB Territory.

20. MLIB has received the first payment that was due after the IBA's Effective Date. It has not received the payment that will come due after the second anniversary of the Commencement of Construction. MLIB has not received any of the stream of payments that are to be paid annually after the In Service Date.

21. MLIB has fulfilled all its obligations under the IBA. It fulfilled all the conditions precedent to make the IBA effective, including:

- a) completing a community ratification process pursuant to MLIB Election Code and providing BC Hydro with notice of the community's approval of the IBA;
- b) executing a duly passed Band Council Resolution approving the IBA;
- c) delivering confirmation letters in support of Site C to:
 - 1) the British Columbia Environmental Assessment Office;
 - 2) the Canadian Environmental Assessment Agency;
 - 3) the Ministry of Forests, Lands and Natural Resource Operations;
 - 4) the Comptroller of Water Rights;
 - 5) the Ministry of Environment;
 - 6) Ministry of Energy and Mines;

7) Fisheries and Oceans Canada; Transport Canada; and

8) Natural Resources Canada; and

d) executing the Contracting Agreement and the TLA.

22. MLIB has also fulfilled all of its obligations under the IBA including continuing to work with BC Hydro on a good faith basis with respect to the construction of Site C.

PART 6.0—THE CONTRACTING AGREEMENT

23. MLIB is a community that needs to build the capacity of its people. The changes caused by settlement and industrialization in the MLIB Territory, including the Williston Reservoir, Site C and other BC Hydro infrastructure, have profoundly and permanently changed how members of MLIB live and sustain themselves. It was essential for MLIB that BC Hydro, in the Renewal Agreement, acknowledged that the impacts that it created to the MLIB Territory forever changed the way MLIB exercises its title and rights and the way its members sustain themselves and that BC Hydro further acknowledged MLIB's aspiration to become a thriving self-reliant community. With those acknowledgements MLIB relied on BC Hydro's promise in the Renewal Agreement to increase participation in BC Hydro business opportunities. The Renewal Agreement specifically listed Site C as a project for which BC Hydro would make contracting opportunities available to BC Hydro and MLIB relied on availability of such contracting opportunities when entering into the Renewal Agreement.

24. MLIB views the Contracting Agreement as fulfillment of the promises BC Hydro made in the Renewal Agreement and the IBA to increase contracting opportunities for MLIB. For MLIB, the Contracting Agreement is an essential element of the process of reconciliation

between MLIB and the Crown. BC Hydro's infrastructure destroyed the MLIB Territory that MLIB and its members used to sustain themselves. The Contracting Agreement provides a foundation for MLIB and its members to develop new economically sustainable livelihoods.

25. MLIB completed all of the conditions precedent for the Contracting Agreement, including a community ratification process.

26. MLIB has upheld all of its commitments for the Contracting Agreement including identifying MLIB Businesses who are available for construction opportunities for Site C and providing all the agreed information BC Hydro would require to determine the suitability of MLIB Businesses for Site C contracting opportunities.

27. To date, MLIB Business have only received a portion of the opportunities it expected from the Contracting Agreement.

28. If Site C is suspended or terminated it will be an economic catastrophe for MLIB. MLIB Businesses have made themselves available for pending Site C opportunities. Those MLIB Businesses have incurred expenses such as preparing for bids, hiring staff and purchasing equipment. All those expenditures were financed based on at least six to eight years of contracting opportunities. We are only two years into those six to eight years. The suspension of termination of Site C would mean the end of MLIB's construction business. What was supposed to be an opportunity to build capacity and revitalize MLIB would have the opposite effect: companies and jobs would be lost and people would need to leave the MLIB Territory to pursue other economic opportunities if Site C is suspended or terminated.

PART 7.0—THE TLA

29. MLIB are a people of the land. To build the Williston Reservoir, and other BC Hydro infrastructure, BC Hydro took that land from MLIB, or made it unusable to MLIB and its members. The 2,500 acres that would be provided to MLIB through the TLA would restore a small portion of the MLIB Territory to the use and control of MLIB. Even though that land transfer would be an important step in the process of reconciliation between MLIB and the Crown that BC Hydro promised to undertake in the Renewal Agreement and which was effected by the IBA, Contracting Agreement and TLA, the lands promised in the TLA would still not be sufficient to accommodate MLIB for past impacts to the MLIB Territory and MLIB's title and rights.

PART 8.0—MLIB'S POSITION REGARDING ACCOMMODATION IF SITE C CONTINUES

30. MLIB has had problems with the bidding process for contracts. It discussed those concerns directly with the CEO of BC Hydro and the Minister of Energy, Mines and Petroleum Resources. After that things have improved, but more work needs to be done. If Site C continues, MLIB would expect BC Hydro to remedy this by providing MLIB with more direct award contracts.

31. MLIB also believes that the accommodation provided under the Site C Agreements does not uphold the honour of the Crown and should be revisited during this process through direct government-to-government consultation.

PART 9.0—IMPACTS TO MLIB IF SITE C IS SUSPENDED

32. Suspending Site C will create great uncertainty for MLIB. The futures of MLIB Businesses and members will be left in limbo.

33. Portions of the MLIB Territory will be left unusable to MLIB and its members during any period of suspension without knowing if those impacts will be remediated. If BC Hydro walks away from Site C now, the territory will be left looking like a moonscape. Large sections of the MLIB Territory have been deforested. Many slopes would need to be stabilized to prevent erosion.

34. Likewise if Site C is suspended, MLIB's construction company may not survive during that suspension. MLIB would like to discuss with the Crown how it will assist MLIB ensuring the economic viability of its companies during any suspension.

PART 10.0—IMPACTS TO MLIB IF SITE C IS TERMINATED

35. Construction activities for Site C have already begun in the MLIB Territory. Impacts have already occurred. Those impacts will need to be remediated. Some may not be able to ever be remediated to MLIB's satisfaction. For those impacts, MLIB will bear the full brunt of the impacts as if Site C had been constructed, but MLIB will not receive the full payments, contracting opportunities and land that the Crown promised in accommodation for those impacts and infringements. The lack of full accommodation for those impacts will seriously set back the process of reconciliation between MLIB, BC Hydro and the provincial Crown.

10.1 CONTRACTS FOR REMEDIATION

36. If Site C is suspended or terminated, MLIB require contracting opportunities to remediate the impacts of construction. As MLIB and its members are stewards of the MLIB Territory, it will be imperative to MLIB and its members that they conduct the necessary remediation.

37. MLIB, MLIB Businesses and members will also need contracting opportunities to replace cancelled or suspended contracts. Without the contracting opportunities provided by Site C, MLIB Businesses may not remain viable. Some members may need to leave MLIB to pursue jobs and contracts elsewhere.

10.2 ACCOMMODATION FOR IMPACTS INCURRED

38. If Site C is suspended or terminated the benefits and accommodation provided by the Renewal Agreement, the IBA, the Contracting Agreement and the TLA will all need to be re-evaluated and renegotiated on a government-to-government basis.

39. The lands promised under the TLA to be transferred regardless of any decision about Site C. If Site C is terminated, MLIB would expect the surplus Crown land expropriated for Site C to be disposed to MLIB to restore territory that has been affected over the years, to settle land claims and to advance reconciliation.

40. MLIB does not view the current accommodation provided by the IBA to be sufficient. The sum currently agreed to should not be as a potential ceiling for any accommodation agreed to for impacts if Site C is suspended or terminated.

41. MLIB would expect to be provided direct award contracting opportunities for remediation of Site C in excess of the amounts currently agreed in the Contracting Agreement.

**PART 11.0—CROWN'S DUTY TO CONSULT MLIB REGARDING
TERMINATION OR SUSPENSION OF SITE C**

42. MLIB views the Renewal Agreement, the IBA, the Contracting Agreement and the TLA all as a part of a package intended to move reconciliation between MLIB and the Crown forward by acknowledging and accommodating not just the impacts created by Site C, but also past impacts created by BC Hydro infrastructure. Terminating or suspending Site C would deny MLIB that package of accommodation and move reconciliation between MLIB and the Crown backwards.

43. MLIB wants BC Hydro to uphold the honour of the Crown and honour the Renewal Agreement, the IBA, the Contracting Agreement and the TLA. MLIB entered into all of those agreements in good faith and in an effort to move reconciliation with the Crown forward.

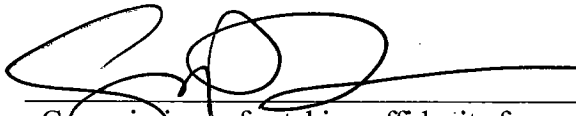
44. MLIB expects the Crown to consult with it before it makes any decision regarding Site C. To date, the Crown has not adequately consulted MLIB about the potential adverse impacts to its title and rights that would be caused by the termination or suspension of Site C.

45. Suspending or terminating Site C will require the renegotiation of the Renewal Agreement. Elements of the Renewal Agreement that were fundamentally necessary for MLIB's agreement to the Renewal Agreement will no longer be present.

PART 12.0—SUMMARY

46. MLIB entered into the Renewal Agreement, the IBA, the Contracting Agreement and the TLA as part of the larger and ongoing process of reconciliation between MLIB and the Crown. Terminating or suspending Site C fundamentally changes those agreements and sets back the process of reconciliation between MLIB and the Crown. Terminating or suspending Site C would mean that MLIB had incurred impacts, some of which it considers infringements of its title and rights, without receiving the accommodation that was agreed to for those impacts.

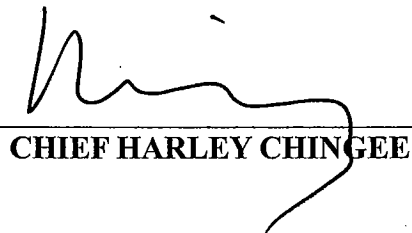
AFFIRMED BEFORE ME at the City of
Prince George, in the Province of British
Columbia, on September 27, 2017.



Commissioner for taking affidavits for
British Columbia

SEAN JONES

GOWLING WLG (CANADA) LLP
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TELEPHONE: (604) 443-7600



CHIEF HARLEY CHINGEE

**This is Exhibit "A" referred to in the
Affidavit of CHIEF HARLEY CHINGEE,
sworn (or affirmed) before me on
September 27, 2017.**



A Commissioner for taking Affidavits for
British Columbia

SEAN JONES
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Canada

Schedule 'A'

McLeod Lake Indian Band Claimed Traditional Territory
(for the purpose of Article 2, McLeod Lake Indian Band
Treaty No. 8 Adhesion and Settlement Agreement)

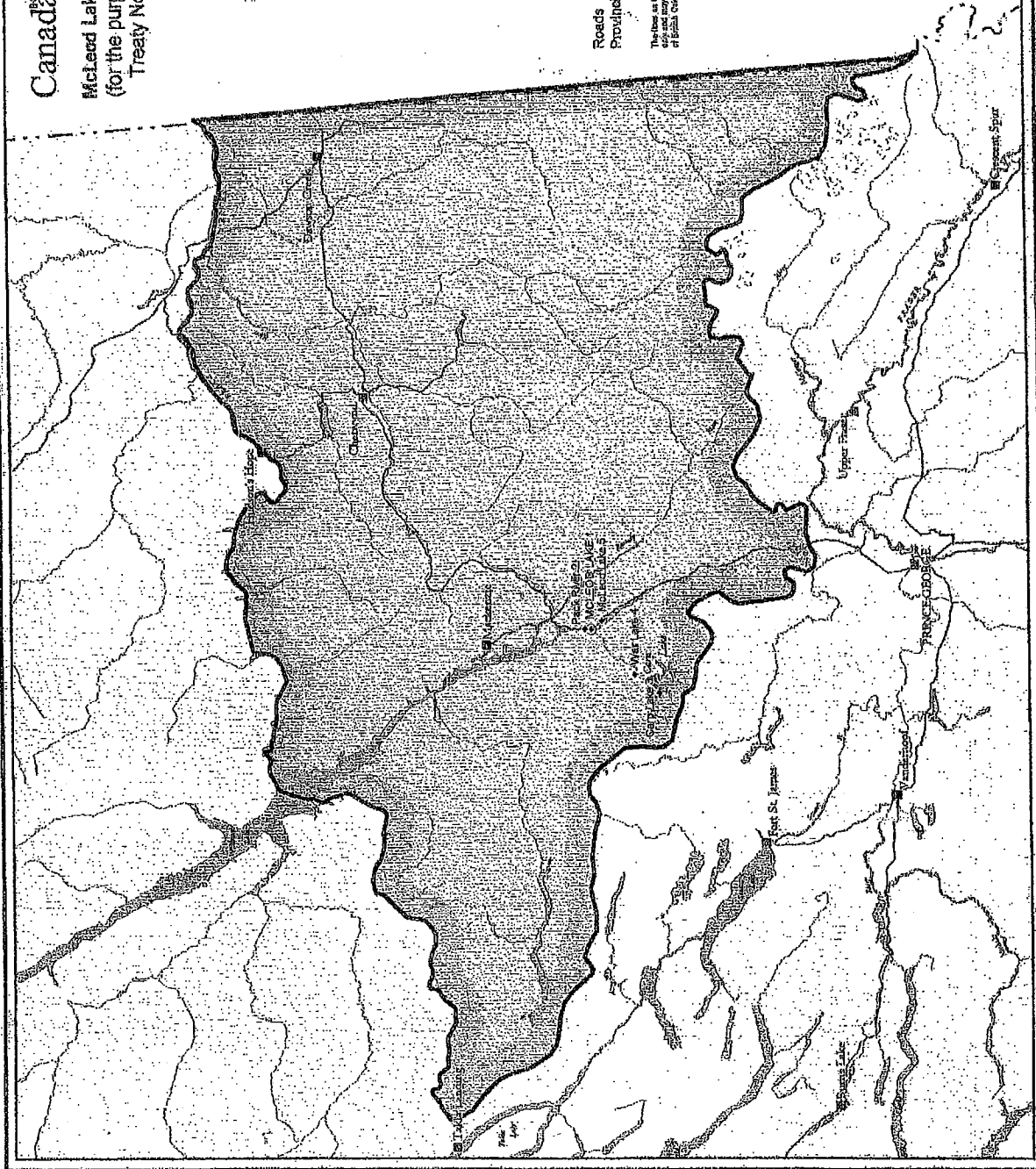
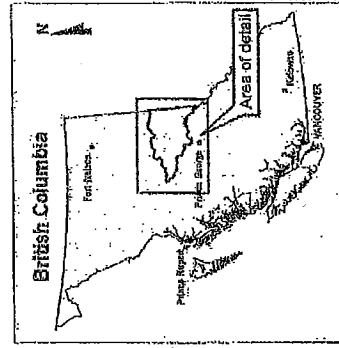
August 30, 1999



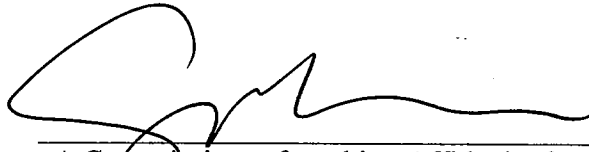
McLeod Lake Indian Band
Main Community
Reserves

Roads
Provincial Boundary

The lines on this map indicate the approximate boundaries of claimed traditional territory. They are not boundaries of British Columbia, or the Government of Canada, and are not to be used for legal purposes.



**This is Exhibit "B" referred to in the
Affidavit of CHIEF HARLEY CHINGEE,
sworn (or affirmed) before me on
September 27, 2017.**



A Commissioner for taking Affidavits for
British Columbia

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**McLeod Lake Indian Band and BC Hydro
Renewal Agreement – March 30th, 2016**

BC Hydro and McLeod Lake Indian Band ("McLeod Lake") wish to enter into this Renewal Agreement to acknowledge our past as shared by McLeod Lake's elders, leaders and members, to achieve reconciliation of this past, and to work together to build a forward looking relationship.

Purpose of Renewal Agreement: Moving Forward from a Shared Past

McLeod Lake and BC Hydro have lived together in McLeod Lake's Traditional Territory and have a shared past. As Tse'khéne people, the McLeod Lake community is a proud and healthy Nation built on a strong foundation of traditional knowledge and values. Beginning in the 1950s, BC Hydro developed its existing core infrastructure, consisting of dams, reservoirs, generating stations and a transmission system, much of it located in the Traditional Territory, to serve the electricity needs of British Columbians.

Through its elders, leaders and members, McLeod Lake has shared with BC Hydro the painful stories and personal hardships experienced by its community during the original development of this existing infrastructure. BC Hydro has listened to these experiences and acknowledges that this historical development had and continues to have a profound effect on the community of McLeod Lake. In particular, BC Hydro has heard from McLeod Lake elders, leaders and members the ways in which their lands and resources and their connections to neighbouring Aboriginal communities have been forever changed by the development of the Williston Reservoir.

BC Hydro deeply regrets these impacts. We will not repeat the mistakes of the past. It is time to turn the page and start a new chapter in our shared history. Hearing these stories has fortified BC Hydro's resolve to forge a renewed and everlasting relationship with McLeod Lake that is collaborative and mutually beneficial.

This Renewal Agreement is rooted in a joint vision that our successful future together will be shaped by doing business in a transparent, open and integrative way that respects the distinct cultural values of McLeod Lake and promotes an economically thriving community. There are two fundamental elements to this Renewal Agreement: i) a payment of \$6 million to support McLeod Lake's elder care initiative; and ii) the principles, goals and pathway to advance a renewed engagement process between us, including some immediate business initiatives by BC Hydro. This renewed engagement process is intended to be an iterative lasting relationship, with new priorities and goals developed over time based on our continuing dialogue and exchange of ideas.

A. Elder Care Initiative

To care for its elders, the keepers of traditional knowledge and values, McLeod Lake has identified an immediate need to provide care and services to its Elders including upgrades to their accommodation to provide them with greater comfort. In recognition of our shared history and the difficulties some of these elders have experienced in their lifetime, including the effects of the original development of BC Hydro's existing infrastructure, BC Hydro wishes to assist McLeod Lake in its efforts to restore and sustain the health, well-being and cultural vitality of the community. As a contribution towards the care, services and support to McLeod Lake Elders, BC Hydro will pay to McLeod Lake the total amount of \$6,000,000 if McLeod Lake has duly authorized, signed and delivered the Impact and Benefits Agreement between BC Hydro and McLeod Lake for the Site C Project (the "IBA") and the associated Tripartite Land Agreement and Contracting Agreement, and BC Hydro has received evidence from

McLeod Lake to BC Hydro's reasonable satisfaction that such agreements were the subject of a positive community ratification vote, on or before July 31, 2016. This is a one-time, lump sum payment that will be paid by BC Hydro within 7 days after execution of this Renewal Agreement into the escrow account identified in the Escrow Agreement between the parties and Fasken Martineau DuMoulin LLP ("Escrow Agreement") and released in accordance with the terms and conditions of the Escrow Agreement. BC Hydro will deliver the release instruction contemplated by the Escrow Agreement to the escrow agent instructing the release of the funds to McLeod Lake promptly upon receipt of the duly authorized and signed agreements together with such evidence of positive community ratification from McLeod Lake. If paid to McLeod Lake in accordance with the Escrow Agreement, this payment is to be used at the sole discretion of McLeod Lake, with no ongoing role for BC Hydro, towards the care, services and support to McLeod Lake Elders.

B. Our Shared Future and Living Together

BC Hydro understands that McLeod Lake's vision is to build self-reliance and to enhance the economic, cultural, spiritual and social needs of its community. BC Hydro will continue to serve the growing electricity needs of British Columbians over the coming decades and wishes to integrate support for McLeod Lake's vision with carrying out our business. By working together in a transparent and dynamic way to align our mutual business and economic interests, we believe we can build a strong shared future. Given the wide variety of future BC Hydro projects and upgrades over the next decade (as contemplated in BC Hydro's Ten Year Capital Plan), as well as our ongoing daily business activities, this collaboration will provide job and contract opportunities that will create economic benefits to McLeod Lake businesses and members, and will support BC Hydro's operations. A strong shared future is the cornerstone of the proposed Renewed Engagement Process, discussed below.

C. Renewed Engagement Process: Guiding Principles and Establishment of Joint Working Group

BC Hydro and McLeod Lake are committed to developing a renewed engagement process that is collaborative and mutually beneficial. This collaboration entails each of us explaining our respective interests and objectives and linking them to the management of BC Hydro's proposed capital projects and ongoing business activities across the Traditional Territory. BC Hydro and McLeod Lake agree that the early sharing of information, meaningful dialogue, and participation will foster confidence in working together with predictability, trust and respect. The guiding principles for the Renewed Engagement Process are to:

- Foster recognition and respect, including equal acknowledgement of the distinctive world views and values held by McLeod Lake and BC Hydro;
- Create full transparency of BC Hydro projects and activities in the Traditional Territory;
- Establish a forum for ongoing dialogue; and
- Explore innovative avenues for achieving mutual objectives.

The Renewed Engagement Process will be developed and implemented through the establishment of a Joint Working Group ("JWG"), which is expected to be formed within 6 months of the execution of this Renewal Agreement. The composition of the JWG members, the frequency and approach to meetings (such as whether they are quarterly, the location of meetings and the use of advanced agendas) and its role and mandate will be developed together by McLeod Lake and BC Hydro at the time the JWG is formed. As a starting point, a proposed mandate for the JWG is to:

- Refine the joint goals and commitments identified below, at their discretion, and develop new or evolving priorities and goals to achieve the mutual objectives of McLeod Lake and BC Hydro;

- Develop an effective consultation process or protocol that enables the parties to engage in timely, sustained and constructive dialogue on BC Hydro capital projects and that serves the interests of both parties. Once the consultation process or protocol have been developed the JWG's role in consultation on BC Hydro capital projects will be to:
 - Ensure the adequate deployment of resources to advance consultation across all BC Hydro projects in a mutually satisfactory manner having regard to the nature of the interests at stake for both parties from each particular project and the individual project schedules.
 - Find solutions to significant issues that have not been resolved through discussion at the technical/project level
 - Coordinate the presentation times and audiences for the annual and rolling updates of BC Hydro's projects and ongoing activities and identify any further activities that may promote sharing of knowledge, information and experiences, including through workshops;
- Review BC Hydro employment and training opportunities for McLeod Lake members, which may include a capacity and skills gap analysis, and develop mechanisms to assist members in benefitting from those opportunities;
- Review BC Hydro contracting opportunities that may be of interest to McLeod Lake businesses and member-owned businesses and develop a process for promoting those opportunities with members;
- Share with BC Hydro the activities and interests of the McLeod Lake community; and
- Discuss mechanisms for continually improving the relationship between McLeod Lake and BC Hydro in accordance with the spirit and intent of this Agreement.

BC Hydro will provide a financial contribution to support the work of the JWG;

During the period that the JWG is developing a new consultation process or protocol, BC Hydro will continue to consult on its projects and activities in accordance with its current practice, which includes consultation in any other manner agreed to by the parties. McLeod Lake and BC Hydro further understand that their relationship relating to BC Hydro's proposed Site C Project will be governed by a separate Impact and Benefits Agreement.

D. Proposed Joint Goals and Development of Mutual Commitments

BC Hydro has given thought to some initial joint goals that may be useful to develop and task the JWG with for further consideration and to establish related mutual commitments (other than the immediate commitment related to the Summer Youth Hire Program as set out in paragraph 2 below):

1. Business Transparency: BC Hydro's Projects and Activities

BC Hydro understands that it is important to McLeod Lake that it receive timely information about BC Hydro's proposed business activities to enable McLeod Lake to meaningfully understand, plan and participate in BC Hydro's business and proposed activities. This early information sharing allows us, together, to ask questions, share perspectives and interests, understand and identify ways to avoid or mitigate impacts to McLeod Lake's treaty rights and consider opportunities.

To facilitate this goal, BC Hydro is committed to delivering an annual overview about BC Hydro's business addressing: a) BC Hydro's current Ten Year Capital Plan to explain BC Hydro's projects that are underway or anticipated in the Peace Region (Appendix A is a list of such projects as of

March 2015), including sharing our longer term regional plan so BC Hydro and McLeod Lake can jointly review the broader horizon and explore, early on, information needs and mitigation strategies; and b) its ongoing and normal-course activities such as vegetation and right of way management work, road maintenance and reservoir levels. During each calendar year, this overview may be supplemented with a rolling semi-annual update of these projects and ongoing activities, as needed.

BC Hydro is interested to learn about McLeod Lake's evolving community goals, plans and activities and we hope that you will share these with us as part of this dialogue.

2. Training and Employment Opportunities

BC Hydro understands that McLeod Lake members have an interest in jobs at BC Hydro and wish to understand the type of training and skills needed for these jobs. BC Hydro is committed to increasing the participation of McLeod Lake members in BC Hydro training, education and employment opportunities by best matching the career interests and/or skills of McLeod Lake members with these opportunities and BC Hydro's business needs. For example, specific job opportunities can be realized through sponsoring apprenticeships for power line technicians or electricians.

As an immediate commitment to advance this goal, for the summer of 2016, BC Hydro will allocate one summer position in its Summer Youth Hire Program for a qualified MELB high school candidate. McLeod Lake and BC Hydro will work together to identify a potential candidate by no later than April 30, 2016. If a potential candidate is not identified for the 2016 Summer Youth Hire Program, a renewed effort will be made to identify someone in early 2017. In addition, BC Hydro is interested in employing a McLeod Lake member as an intern with BC Hydro.

3. Contracting Opportunities

BC Hydro knows that McLeod Lake has aspirations to continue to grow its business opportunities to sustain an economically thriving and self-reliant community. To support this, BC Hydro is committed to increasing the participation of McLeod Lake businesses in BC Hydro business opportunities, by best matching the capacity-building and business interests of McLeod Lake, its businesses and member-owned businesses with these opportunities and BC Hydro's business needs. As a discussion starting point, BC Hydro has attached as Appendix A a list of projects (as of March 2015) that are underway or anticipated that may provide McLeod Lake and other Aboriginal Groups with contract opportunities. This could include entering into agreements with McLeod Lake or its wholly owned company Duz Cho Construction LP.

4. Archaeological Protection

BC Hydro understands that heritage resources are important for preserving McLeod Lake's stories and culture.

BC Hydro wishes to develop with McLeod Lake a collaborative approach to BC Hydro's archaeological activity in the Traditional Territory. Issues to be addressed in the collaborative approach will include: the early identification of archaeological concerns relating to planned BC Hydro activities, conflicts between existing BC Hydro infrastructure and known archaeological and cultural sites, archaeological methods to be used, and discussion toward a BC Hydro regional strategy for archaeological work.

E. Additional Initiatives

There will be other areas that we can collaboratively build on over time to align BC Hydro's core business programs with McLeod Lake's interests. The following are some preliminary ideas:

Power Smart: BC Hydro understands that McLeod Lake is interested in improving energy conservation and efficiency. BC Hydro will provide Power Smart education and support community members in accessing Power Smart programs. For example, this initiative could include a community outreach team to participate in McLeod Lake community events and BC Hydro could host a community meeting to help members to access existing BC Hydro Power Smart programs.

Customer Care Support: A BC Hydro Customer Care representative will visit the community as necessary to review with members their electricity bills, to help them understand the billing and payment options and to ensure the appropriate payment plans (if necessary) are in place.

Sustainable Energy Programs: BC Hydro understands that McLeod Lake has an interest in fostering sustainable energy development. BC Hydro has a variety of programs that promote energy development in local communities. BC Hydro will share information about these programs with McLeod Lake to enhance its knowledge and opportunities to participate in such energy programs.

Other: Other items for discussion may be raised by the JWG.

F. Condition Precedent

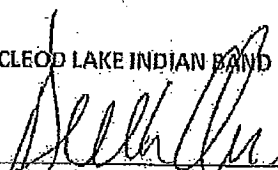
This Renewal Agreement has been signed by the Chief of McLeod Lake in accordance with an executed Band Council Resolution delivered to BC Hydro as of, March 30, 2016, and stating that the McLeod Lake will carry out a community ratification vote to obtain approval for this Renewal Agreement. The parties agree that, other than BC Hydro's obligations in Section A (Elder Care Initiative) and Section D – paragraph 2 (Training and Employment Opportunities – Summer Youth Hire Program), which obligations are effective as of the date hereof, the obligations under this Renewal Agreement are subject to, and will not be effective until, McLeod Lake confirms to BC Hydro, by way of a Band Council Resolution, the results of the community ratification vote (being that this Renewal Agreement has been approved by a simple majority of McLeod Lake members with voting rights who have cast ballots) and that the process followed for such community ratification vote was in accordance with all applicable McLeod Lake governance practices, whether under legislation or by way of traditional or customary practices.

G. An Iterative Relationship

McLeod Lake and BC Hydro recognize that a robust engagement process must be evaluated and refreshed over time. The JWG will review the Renewed Engagement Process as it evolves under this Renewal Agreement on a periodic basis, at least every 3 years, to ensure this process continues to meet the mutual interests of McLeod Lake and BC Hydro.

By their respective signatures below, each of McLeod Lake and BC Hydro agree to this Renewal Agreement and look forward to working together to build a lasting relationship.

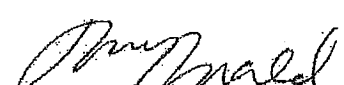
MCLEOD LAKE INDIAN BAND by its authorized representative:


Name: Derek Orr

Title: Chief

Date: March 30/16

BRITISH COLUMBIA HYDRO AND POWER AUTHORITY


Name: Jessica McDonald

Title: President & CEO

Date: March 30/16


Appendix A: Upcoming Capital Projects**a) Projects Currently Underway**

GMS Bennett Dam Rip Rap Upgrade
Bennett Dam Spillway Chute Interim Upgrade
PCN Flood Discharge Gates Reliability Improvement
GMS Spillway Gate Upgrade
Melke Wind Energy Interconnection
Overhead Rating Restoration 11364
Peace System Access Program/Boat Ramps (Dunlevy, Blackfoot, Mackenzie)
Dawson Creek/Chetwynd Area Transmission
GMS Visitor Centre
Hudson Hope Housing project

b) Projects Anticipated in the Future

GMS Dam & Related Structure Seismic Upgrade
GMS (Bennett Dam) Core Upgrades
GMS Decommission LLO
PCN Re-drilling of Dam Foundation drains
GMS G1-10 Control System Upgrade
U9-U10 Turbine Overhaul
Peace Canyon Dam seismic upgrade
Peace Region Electrical Supply
Clean Power Call Peace RAS
Murray River Interconnection
GMS Water Supply
Site C Clean Energy Project

**This is Exhibit "C" referred to in the
Affidavit of CHIEF HARLEY CHINGEE,
sworn (or affirmed) before me on
September 27, 2017.**



A Commissioner for taking Affidavits for
British Columbia

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**SITE C PROJECT
TRIPARTITE LAND AGREEMENT**

This Agreement is dated July 19, 2016

BETWEEN:

MCLEOD LAKE INDIAN BAND, a "band" within the meaning of the *Indian Act*, R.S.C. 1985, c. 1-5 for and on behalf of itself and all of its Members, as represented by its Chief and Council

("MLIB")

AND:

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

("British Columbia")

AND:

BRITISH COLUMBIA HYDRO AND POWER AUTHORITY, a corporation continued under the authority of the *Hydro and Power Authority Act*, R.S.B.C. 1996, c. 1-5

("BC Hydro")

WHEREAS:

- A. BC Hydro is undertaking the Site C Project as part of an overall regeneration program to invest in and renew British Columbia's electricity system and as a source of clean and renewable energy;
- B. The Site C Project is located in territory covered by Treaty 8 over which MLIB has Section 35 Rights;
- C. BC Hydro and MLIB have, concurrently with this Agreement, entered into an Impact and Benefits Agreement and a Contracting Agreement relating to the Site C Project and its Operation;
- D. The Impact and Benefits Agreement provides for, among other things:

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- a) financial payments by BC Hydro to MLIB;
 - b) confirmation of the transfer of certain parcels of provincial Crown land from British Columbia to MLIB pursuant to this Agreement; and
 - c) confirmation of the implementation of Land Management Measures for certain areas of provincial Crown land pursuant to this Agreement;
- E. The Contracting Agreement provides for additional benefits to MLIB, including:
- a) providing MLIB Businesses with the opportunity to be awarded work related to the Site C Project; and
 - b) working with MLIB to develop training, apprenticeship and employment opportunities for MLIB Members;
- F. This Agreement provides for the transfer of the Lands identified in Schedule B "1" and "2" and the consideration of the implementation of Land Management Measures for the Schedule C Lands identified in Schedule C "1"; and
- G. This Agreement is intended to assist with MLIB's economic and social development and to ensure that there are opportunities for MLIB to exercise its Section 35 Rights.

NOW THEREFORE, in consideration of the mutual covenants and agreements contained in this Agreement, and other good and valuable consideration the receipt and sufficiency of which the Parties acknowledge, the Parties agree as follows:

ARTICLE 1 - INTERPRETATION

1.1 Definitions. In this Agreement:

"Adequate Survey" means a survey that meets the requirements for Land Title Office registration as defined under the *Land Title Act*;

"Agency" means any permitting, regulatory or government decision-making body from whom an Authorization is required or to whom an application for an Authorization is made, or that is making a decision or developing a plan in respect of the Site C Project;

"Agreement" means this Tripartite Land Agreement, including the Schedules and any agreement, document or instrument executed or delivered pursuant to this Agreement;

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"Authorization" means any approval, permit, licence, tenure or other authorization applied for, issued or required to enable the Site C Project and its Operation, including:

- a) the Federal Decision Statement authorizing the Site C Project, issued to BC Hydro on October 14, 2014, and re-issued on November 25, 2014, pursuant to the *Canadian Environmental Assessment Act (Canada)*;
- b) the provincial Environmental Assessment Certificate #E14-02 authorizing the Site C Project, issued to BC Hydro on October 14, 2014 pursuant to the *Environmental Assessment Act (BC)*;
- c) any required approval by Fisheries and Oceans Canada, Transport Canada, Natural Resources Canada or any other federal department;
- d) any decision by a Public Official to approve, enable or support the Site C Project and its Operation; and
- e) any amendments to the foregoing which may be required from time to time;

"Band Council Resolution" means a resolution of the MLIB band council, duly passed in accordance with the *Indian Act*, substantially in the form set out in Schedule A "1";

"Closing Date" means the date or dates on which the documents for the transfer of the Lands to a Designated Company are uploaded to the electronic meet and are filed in the Land Title Office;

"Commencement of Construction" means the date that construction activities begin on the Site C Project following receipt of all Authorizations to permit BC Hydro to build the Site C Project, such date to be determined by BC Hydro in its discretion and notice of that date to be provided by BC Hydro to British Columbia and MLIB;

"Confirmation Letter" means the letter to be provided by MLIB to British Columbia in the form set out in the Impact and Benefits Agreement;

"Contracting Agreement" means the Contracting Agreement entered into concurrently with this Agreement between BC Hydro and MLIB;

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

"Crown Grant" means a Crown grant as defined in the *Land Act*;

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"Designated Company" means a company incorporated under federal or provincial law, all the shares of which are wholly owned directly or indirectly, legally and beneficially, by MLIB and which MLIB has designated to take fee simple title to any of the Lands;

"Effective Date" means the later of: the date on which the notice provided to BC Hydro pursuant to Section 5.1(b) which confirms that MLIB has satisfactorily completed the community ratification process is received by BC Hydro; and the date on which this Agreement is fully executed by all of the Parties;

"GST" means the goods and services tax imposed under the *Excise Tax Act (Canada)* or equivalent tax imposed under federal or provincial law;

"Impact and Benefits Agreement" or "IBA" means the Impact and Benefits Agreement entered into concurrently with this Agreement between BC Hydro and MLIB;

"In Service Date" means the date, of which notice is provided by BC Hydro to British Columbia and MLIB, on which the first of the six generating units that form part of the Site C Project is, in the determination of BC Hydro, capable of continuously generating electricity in a manner that meets BC Hydro's system interconnection requirements, as those requirements are described in the BC Hydro document entitled "60kV to 500 kV Technical Interconnection Requirements for Power Generators" and as that document may be updated, amended or replaced from time to time;

"Land Management Measures" means the measures identified and implemented under 14.1 to protect the Schedule C Lands;

"Lands" means the lands identified for illustrative purposes in Schedule B "1" and described in Schedule B "2";

"Member" means a member of the McLeod Lake Indian Band as defined in the McLeod Lake Indian Band Membership Code;

"Operation" means the ongoing use, operation and maintenance, repair, replacement, upgrade, removal, abandonment or required remediation, of all or any part of the constructed Site C Project, or of any other Works that are required or undertaken to make the Site C Project functional for its intended use and purpose, or any other activity required or undertaken in connection with the Site C Project, from the In Service Date to the completion of decommissioning of the Site C Project as determined by BC Hydro in its discretion and of which notice is provided by BC Hydro to British Columbia and MLIB;

"Parties" means British Columbia, BC Hydro and MLIB, or their permitted successors or assigns, and **"Party"** means any one of them;

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"Permitted Encumbrances" means the reservations, exceptions, liens, charges, and interests described in Part 1 and 2 of Schedule B "3" for each of the Lands or any other Permitted Encumbrances agreed to by the Parties and registered as a charge on title;

"Proceeding" means any claim, demand, cause of action or action made before a court or any proceeding before a court, including a judicial review or appeal of an Agency or a court decision, or any hearing before an Agency or other board, commission, tribunal, arbitrator or other judicial, quasi-judicial or administrative decision-maker;

"PST" means the sales tax imposed under the *Sales Tax Act (BC)* or equivalent tax imposed under federal or provincial law;

"Public Official" means:

- a) the British Columbia Cabinet or Treasury Board, or the board of directors of BC Hydro;
- b) any minister, provincial official, employee, contractor, agent or representative of British Columbia, including any statutory decision-maker; or
- c) any director, officer, employee, contractor, agent or representative of a government corporation, including BC Hydro.

"Schedule C Lands" means the area identified for illustrative purposes in Schedule C "1" which may be subject to a land management measure and which, for greater certainty, will not be transferred to MLIB;

"Section 35 Rights" or "MLIB Section 35 Rights" means the Aboriginal and treaty rights of MLIB, including as an adherent to Treaty 8, recognized and affirmed by section 35(1) of the *Constitution Act, 1982*;

"Site C Project" means the proposed third dam and hydroelectric generating station on the Peace River and associated structures on or adjacent to the Peace River in northwestern British Columbia, as more fully described in Schedule D "2";

"Site C Project and its Operation" also means the Site C Project or its Operation, or both;

"Treaty 8" means Treaty No. 8, a treaty concluded on several dates in 1899 and in subsequent years between Her Majesty the Queen by her Commissioners for Canada and the Cree, Beaver, Chipewyan and other First Nations, inhabitants of the territory described in the Treaty 8 document, and each other signatory or adherent to Treaty 8, including MLIB; and

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"Works" includes licences, easements, rights-of-way, roads, telecommunication services, components, equipment, infrastructure and facilities, including transmission lines, related to the generation, transmission or distribution of electricity.

1.2 Schedules. The following are the Schedules to this Agreement:

MLIB Administrative Schedules

- Schedule A "1" – Form of Band Council Resolution

Land Transfer Schedules

- Schedule B "1" – Map(s) of Lands
- Schedule B "2" – Description of Lands
- Schedule B "3" – Permitted Encumbrances
- Schedule B "4" – Form of Permitted Encumbrances
- Schedule B "5" – Form C Additions to Reserve Restrictive Covenant
- Schedule B "6" – Agreement of Designated Company
- Schedule B "7" – GST Certificate
- Schedule B "8" – Property Transfer Tax

Land Management Schedules

- Schedule C "1" – Map of Land Management Areas

Site C Project Schedules

- Schedule D "1" – Map of Site C Project Area
- Schedule D "2" – Site C Project Description

1.3 Schedules B "1" and B "2". For greater certainty, Schedules B "1" and B "2" will identify those Lands which are "proximate land" and which may be added to the applicable MLIB Indian Reserve under 13.1 and those Lands which are not "proximate land" whose reservation as an MLIB Indian Reserve will be reviewed by British Columbia on a case-by-case basis under 13.2.

1.4 Amendment of Schedules. The Parties acknowledge and agree that between the Effective Date and the In Service Date Schedule B and Schedule C may require updating and that British Columbia may from time to time after the Effective Date update those Schedules. British Columbia will provide updated Schedules to the Parties which will be deemed to form part of this Agreement and, for greater certainty, will not constitute an amendment to this Agreement.

ARTICLE 2 – PURPOSE

2.1 Purpose. The purpose of this Agreement is to:

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- a) transfer to MLIB those parcels of provincial Crown land identified as Lands, and to implement those Land Management Measures identified in this Agreement;
- b) confirm the provision of benefits related to the Site C Project and its Operation by BC Hydro to MLIB;
- c) confirm that MLIB has been adequately consulted and accommodated with respect to any potential adverse impact of the Site C Project and its Operation on MLIB's Section 35 Rights;
- d) confirm that any infringement of MLIB's Section 35 Rights resulting from the Site C Project and its Operation has been justified; and
- e) provide British Columbia and BC Hydro with legal certainty with respect to the Site C Project and its Operation.

2.2 **Separate Agreements.** The Impact and Benefits Agreement and Contracting Agreement are separate agreements and are governed by their respective terms.

ARTICLE 3 - TERM AND TERMINATION

- 3.1 **Coming into Effect.** Subject to 3.2 and 3.3, this Agreement commences on the Effective Date and continues until completion of the decommissioning of the Site C Project.
- 3.2 **Delay, Suspension or Abandonment.** If BC Hydro determines at any time, whether before or after the granting of all Authorizations, to delay, suspend or abandon the Site C Project and its Operation, British Columbia may, in its sole discretion, on 60 prior days' notice to MLIB and BC Hydro:
- a) delay or suspend the transfer of the Lands and the implementation of the Land Management Measures where BC Hydro has delayed, suspended or abandoned the Site C Project; or
 - b) terminate this Agreement where BC Hydro has abandoned the Site C Project and terminated the Impact and Benefits Agreement.
- 3.3 **Termination for Breach.** In addition to 3.2, British Columbia may terminate this Agreement in the event any of the representations or warranties under 4.1 are or become incorrect, any part of Article 16, 17 or 18 is declared invalid under 22.2, or BC Hydro terminates the Impact and Benefits Agreement in accordance with its terms.
- 3.4 **Relief from and Resuming Obligations.** If:

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- a) this Agreement is terminated under 3.2 or 3.3, British Columbia will have no further obligations to MLIB under this Agreement except such obligations which this Agreement expressly provides will survive termination;
 - b) British Columbia delays or suspends the transfer of the Lands or the implementation of the Land Management Measures under 3.2, British Columbia will be relieved from performing these and any related obligations for the duration of such delay or suspension;
 - c) British Columbia delays or suspends the transfer of the Lands or the implementation of the Land Management Measures under 3.2, and BC Hydro notifies British Columbia and MLIB that it has recommenced the Site C Project, then British Columbia's obligations will resume, including the transfer of any Lands and the implementation of Land Management Measures which have not been completed.
- 3.5 **Obligations Not Released.** Notwithstanding 3.4, MLIB may retain any Lands transferred to it by British Columbia before the termination of this Agreement under 3.2(b).
- 3.6 **Effect of Delay, Suspension or Abandonment.** Any Lands transferred by British Columbia to MLIB or any Land Management Measures implemented by British Columbia prior to the delay, suspension or abandonment of the Site C Project and its Operation will be deemed to constitute:
- a) adequate consultation and accommodation with respect to any potential adverse impact on MLIB's Section 35 rights resulting from the Site C Project and its Operation; and
 - b) justification of any infringement of MLIB's Section 35 Rights resulting from the Site C Project and its Operation.
- 3.7 **Survival of Lands Conditions.** Notwithstanding 3.2 or 3.3, where any of the Lands are transferred under this Agreement, Articles 9, 12, and 13 will survive the completion of the transfers or the termination of this Agreement and, for greater certainty, will continue to apply to the Lands.

ARTICLE 4 - REPRESENTATIONS AND WARRANTIES

- 4.1 **MLIB Representations.** MLIB represents and warrants to British Columbia and BC Hydro, with the intent and understanding that they will be relied on by British Columbia and BC Hydro in entering into this Agreement, that:
- a) it, and not any other band, group, entity, organization or person, is the proper representative and exclusive holder of MLIB's Section 35 Rights for

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the purposes of this Agreement, including consultation and accommodation with respect to the Site C Project and its Operation;

- b) the Members include all those Aboriginal persons who are entitled to exercise MLIB Section 35 rights, and MLIB is entitled to enter into this Agreement on behalf of its Members in relation to MLIB Section 35 rights;
- c) it has taken all necessary actions and obtained all necessary approvals, including a community ratification vote in accordance with MLIB processes, to enter into and authorize the execution of this Agreement, including the passing of the Band Council Resolution and the authorization of the individual signing this Agreement on behalf of MLIB;
- d) it has, for and on behalf of MLIB and its Members, the legal power, capacity and authority to enter into this Agreement, to carry out its obligations and to make or provide, without limitation, the acknowledgements, agreements, representations and warranties, releases and indemnities under this Agreement;
- e) any company designated by the MLIB for the purposes of this Agreement will be a Designated Company;
- f) any Designated Company has the legal power, capacity and authority to enter into and to carry out its obligations under each agreement and transaction to which it is a party in accordance with this Agreement; and
- g) British Columbia has fulfilled its obligation to consult with MLIB in relation to the transfer of the Lands to a Designated Company, the Permitted Encumbrances on the Lands and the Land Management Measures.

4.2 British Columbia Representations. British Columbia represents and warrants to MLIB and BC Hydro, with the intent and understanding that they will be relied on by MLIB and BC Hydro in entering into this Agreement, that:

- a) it has the legal power, capacity and authority to enter into this Agreement and to carry out its obligations under this Agreement; and
- b) on satisfaction or waiver of the conditions precedent under 5.2 and, as applicable, 5.3 and 5.4, it will have the legal power, capacity and authority to transfer the fee simple title to the Lands to a Designated Company and to implement the Land Management Measures.

4.3 BC Hydro Representations. BC Hydro represents and warrants to MLIB and British Columbia, with the intent and understanding that they will be relied on by MLIB and British Columbia in entering into this Agreement, that:

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- a) it has the legal power, capacity and authority to enter into this Agreement and to carry out its obligations under this Agreement; and
- b) all necessary actions have been taken to authorize the execution of this Agreement, including the authorization of the individual signing this Agreement.

4.4 **Survival of Representations.** The representations and warranties of each of the Parties under 4.1 to 4.3 will survive the execution and completion of any transactions under this Agreement and will continue in full force and effect for the benefit of the other Parties.

ARTICLE 5 – CONDITIONS PRECEDENT

5.1 **Required Documents.** MLIB will:

- a) prior to or upon the execution of this Agreement, deliver to British Columbia and BC Hydro a fully executed and duly passed Band Council Resolution in the form set out in Schedule A "1";
- b) upon satisfactory completion of the community ratification process pursuant to the MLIB Election Code, execute and deliver to BC Hydro the notice signed by the Chief of MLIB in the form attached as Schedule G of the IBA; and
- c) on the Effective Date, deliver to British Columbia a Confirmation Letter.

It is a condition precedent to the performance of the Party's obligations under this Agreement that MLIB has delivered to BC Hydro the notice required pursuant to paragraph (b) above.

5.2 **Conditions Precedent (General).** British Columbia's obligation to transfer the Lands and implement the Land Management Measures is subject to:

- a) MLIB having delivered the documents under 5.1, and BC Hydro and MLIB having executed the Impact and Benefits Agreement and the Contracting Agreement relating to the Site C Project and its Operation;
- b) MLIB having completed a community ratification process pursuant to the MLIB Election Code and, on satisfactory completion of the community ratification process, the Chief of MLIB having provided to BC Hydro the signed notice in the form attached as Schedule G of the IBA;
- c) MLIB's representations and warranties under this Agreement being and continuing to be true and correct;

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- d) MLIB having complied with all applicable terms and conditions under this Agreement;
- e) British Columbia having:
 - i) completed, where applicable, consultations with First Nations, third parties who are entitled to the benefit of the Permitted Encumbrances, and local governments or governmental authorities;
 - ii) determined, where applicable, that any overlapping claims by or conflicts with other First Nations which have or assert rights under s. 35(1) of the *Constitution Act, 1982* in the territory in which the Lands and Schedule C Lands are located have been resolved or otherwise addressed to the satisfaction of British Columbia;
 - iii) resolved any financial liability British Columbia may have, including third party claims for compensation; and
 - iv) obtained all required approvals, including Cabinet and Treasury Board approval;
- f) there being sufficient monies available in an appropriation, as defined in the *Financial Administration Act*, to enable British Columbia in any fiscal year, when any expenditure in respect of an obligation may be required, to make that expenditure; and
- g) the Site "C" Project achieving Commencement of Construction and not being subject to delay, suspension or abandonment.

5.3 Conditions Precedent to Land Transfers. In addition to and without limiting the conditions precedent under 5.2, British Columbia's obligation to transfer the Lands to MLIB is subject to:

- a) Adequate Surveys for the Lands having been completed on or before the applicable Closing Date;
- b) if the Lands are transferred in phases, all obligations of MLIB and the Designated Company having been fully performed in accordance with this Agreement with respect to all previously transferred Lands; and
- c) British Columbia having given notice that the minister responsible has authorized the disposition of the Lands in accordance with provincial law.

5.4 Conditions Precedent to Land Management Measures. In addition to and without limiting the conditions precedent under 5.2, British Columbia's obligation to implement the Land Management Measures is subject to:

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- a) finalization of the selection of the Lands under 6.4 and the Schedule C Lands under 14.1 and 14.2; and
 - b) its obtaining approval to designate the Schedule C Lands under a Land Management Measure.
- 5.5 **Waiver of Conditions Precedent.** The conditions precedent under 5.2 to 5.4 are for the sole benefit of British Columbia and may be waived by British Columbia on notice to BC Hydro and MLIB.

ARTICLE 6 – LAND SELECTION

- 6.1 **Land Selection.** Within one year after the Effective Date, or such other time as the Parties may agree, MLIB will identify provincial Crown lands for inclusion as the Lands, such lands to comprise 2,500 acres (1,012 hectares), more or less, and to be located within MLIB's traditional territory.
- 6.2 **Alternative Lands.** In the event that the lands identified by MLIB under 6.1 are not eligible for inclusion as the Lands based on the factors under 6.3, MLIB will identify such other lands within its traditional territory as may be required for inclusion as the Lands having regard for the factors under 6.3.
- 6.3 **Statusing of Land Selection.** Within one year after MLIB's identification of land under 6.1 and 6.2, or such other time as the Parties may agree, British Columbia will complete the statusing of those lands having regard for, among other things:
- a) the location, condition and contiguity of the lands, including their proximity to the Site C Project and their environmental condition;
 - b) any interests in the lands, including fee simple interests, options to purchase fee simple interests, leases, or options to renew leasehold interests;
 - c) any tenures or encumbrances on the lands, including road and utility rights-of-way, and access to adjacent or proximate lands;
 - d) the appraised, or where available the assessed, value of the lands, the terms of such appraisals to be reviewed by the Parties;
 - e) any potential third party claims for compensation; and
 - f) any overlapping claims by other First Nations.

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- 6.4 **Finalization of Land Selection.** British Columbia will provide MLIB with the results of the land statusing and where some of the lands are not eligible for inclusion as the Lands based on the factors under 6.3, or where MLIB has advised British Columbia that MLIB no longer wishes to include those lands based on the results provided by British Columbia, those lands will, subject to 6.3, be replaced with alternative lands.
- 6.5 **Interim Protection of Lands.** British Columbia will seek approval to withdraw the lands finalized under 6.4 from disposition under s. 16 of the *Land Act* on an interim basis. The interim withdrawal will remain in place until the earlier of:
- a) termination of the interim withdrawal under the terms of its approval; or
 - b) transfer of the lands to MLIB as the Lands under 8.3.
- 6.6 **Completion of Land Schedules.** On finalization of the selection of the lands under 6.4, Schedules B "1", B "2", B "3" and B "4" will be updated and will form part of this Agreement.
- 6.7 **Best Efforts Obligation.** The Parties acknowledge and agree that British Columbia will use its best efforts to identify and transfer to MLIB lands identified under 6.1 or 6.2 in the quantum specified in 6.1 having regard for the factors under 6.3.

ARTICLE 7 – SURVEY OF LANDS

- 7.1 **Surveys.** BC Hydro will ensure that there is an Adequate Survey of the exterior boundaries of the Lands, including any surveys required by statute for the registration of any third party Permitted Encumbrance. For greater certainty, any internal boundary surveys will be the sole responsibility of MLIB, including those required for any subdivision of the Lands.
- 7.2 **Survey Protocol.** For the purposes of 7.1, the Parties will develop and agree on a protocol for the priority and timing of Adequate Surveys for the Lands, including proposed Closing Dates, having regard for:
- a) MLIB's priorities;
 - b) efficiency and economy, including the availability of British Columbia land surveyors;
 - c) the necessity to clarify the boundaries due to imminent public or private development on adjacent lands; and
 - d) the requirements under provincial law, including legislated timelines.

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- 7.3 **Lands Programs Branch.** The development of a survey protocol under 7.2 will include the ministries responsible for the transfer of provincial Crown land.

ARTICLE 8 – TRANSFER OF LANDS

- 8.1 **Registration of Lands.** All Lands transferred under 8.3 will be registered in the Land Title Office.
- 8.2 **Pre-Closing Deliveries by MLIB.** Not less than 60 days before the Closing Date determined by the Parties under 8.4, MLIB will deliver to British Columbia a direction identifying the Designated Company that will take fee simple title to the Lands under 8.3.
- 8.3 **Closing Deliveries by British Columbia.** Subject to the Permitted Encumbrances and the terms of this Agreement, including the satisfaction or waiver of the conditions precedent under 5.2, and 5.3, British Columbia will, with respect to each transfer, provide the Designated Company identified under 8.2 with a Crown Grant transferring the indefeasible title to the Lands on the Closing Date.
- 8.4 **Determination of Closing Date.** The Parties will determine the Closing Date for the transfer of indefeasible title to the Lands. The Closing Date will be in accordance with the survey protocol developed and agreed to by the Parties under 7.2.
- 8.5 **Closing Deliveries by MLIB.** Not less than 14 days before the Closing Date, MLIB will execute and deliver, or cause to be executed and delivered, or deliver, as the case may be, to British Columbia:
- a) a restrictive covenant granted by the Designated Company in the form attached as Schedule B "5" in relation to the applicable Lands that are not identified as "proximate land" in Schedules B "1" and B "2";
 - b) an agreement executed by the Designated Company in the form attached as Schedule B "6" in relation to the applicable Lands;
 - c) a certificate signed by an officer of the Designated Company in the form attached as Schedule B "7" confirming the Designated Company's GST registration number and registered status;
 - d) a letter of undertaking signed by MLIB's legal counsel undertaking, among other things, that the restrictive covenant (Schedule B "5") will be filed concurrently with the Crown Grant for the applicable Lands and that British

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Columbia will be provided with a signed copy of the Designated Company Agreement (Schedule B "6") and the GST certificate (Schedule B "7");

- e) a consent signed by MLIB in relation to the Property Transfer Tax in the form attached as Schedule B "8"; and
- f) all such other documents that may be necessary or advisable for MLIB or a Designated Company to provide to complete the transactions contemplated under this Agreement.

8.6 Closing Procedure. The legal counsel for MLIB and British Columbia will confirm in writing the manner in which the documents necessary or advisable to transfer and register the Lands will be produced, managed, exchanged and delivered. Without limiting the generality of the foregoing, legal counsel responsible for registering the Lands will:

- a) provide a letter of undertaking to legal counsel for the other Parties;
- b) use the Land Title and Survey Authority electronic filing system; and
- c) provide all documents filed under 8.5 to legal counsel to the other Parties.

ARTICLE 9 – CONDITION OF LANDS

9.1 Lands "As Is". MLIB acknowledges and agrees that any of the Lands acquired by a Designated Company under this Agreement are acquired "as is".

9.2 Viability of Lands. MLIB acknowledges and agrees that British Columbia and BC Hydro have not given any representation or warranty concerning:

- a) physical access to the Lands including, without limitation, overland access;
- b) the economic feasibility of the development of the Lands;
- c) the fitness of the Lands for any particular use, including the intended use of the Lands by MLIB or by a Designated Company; or
- d) the provisions of any enactments or bylaws of any governmental body which relate to the development, use and occupation of the Lands.

9.3 Environmental Condition. MLIB:

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- a) waives the requirement, if any, of British Columbia or BC Hydro to provide a site profile as defined in the *Environmental Management Act* for any of the Lands; and
- b) acknowledges and agrees that British Columbia and BC Hydro have not given any representation or warranty concerning the environmental condition of the Lands (including surface water and groundwater), including the presence or absence of any toxic, hazardous, dangerous or potentially dangerous substances on or under the Lands or on or under any surrounding or neighbouring land, or the current or past uses of the Land or any surrounding or neighbouring land.

9.4 Environmental Remediation. MLIB will from and after the Closing Date:

- a) assume all environmental liabilities relating to the Lands including all liability for the clean-up of any toxic, hazardous, dangerous or potentially dangerous substances or conditions on or under the Lands or migrating from the Lands (including surface water and groundwater);
- b) release British Columbia, BC Hydro and all Public Officials from and against any and all claims, demands, causes of action, actions, expenses, costs, including legal fees, losses, damages, or any other liability with respect to all environmental liabilities relating to the Lands, including any contamination or any other toxic, hazardous, dangerous or potentially dangerous substances migrating from the Lands; and
- c) indemnify and save harmless British Columbia, BC Hydro and all Public Officials from and against any and all claims, demands, causes of action, actions, expenses, costs, including legal fees, losses, damages, or any other liability that they may suffer or incur, directly or indirectly, after the Closing Date arising out of or in connection with all environmental liabilities relating to the Lands, including any contamination or any other toxic, hazardous, dangerous or potentially dangerous substances migrating from the Lands.

9.5 Effect of 9.4. For greater certainty:

- a) 9.4 applies where:
 - i) any contamination relating to the Lands, whether disclosed or undisclosed, known or unknown, created or existing, arose before the Closing Date or arose before and continues after the Closing Date; and
 - ii) any environmental liability relating to the costs of remediation of the Lands are incurred after the Closing Date and relate to

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contamination that arose before the Closing Date or arose before and continues after the Closing Date; and

- b) 9.4 does not apply in respect of any environmental liability relating to the Lands results from the acts or omissions of British Columbia or BC Hydro after the Closing Date.

ARTICLE 10 – ENCUMBRANCES

- 10.1 **Permitted Encumbrances.** MLIB acknowledges and agrees, upon receipt of the updated Schedules under 6.6 and as of the Closing Date, that it is familiar with the existence and terms of the Permitted Encumbrances and accepts fee simple title to the Lands subject to the Permitted Encumbrances and that it will not do, or allow to be done, anything that would interfere with any rights under any of the Permitted Encumbrances or that would otherwise result in any claim against British Columbia or BC Hydro by anyone claiming by, through or under a Permitted Encumbrance.
- 10.2 **Form of Permitted Encumbrances.** The Permitted Encumbrances will be in the form to be attached as Schedule B "4" upon completion of the land statusing and finalization of land selection pursuant to 6.4, and will include any modifications that MLIB and the holder of the Permitted Encumbrance may have agreed to in writing.
- 10.3 **Amendments to Permitted Encumbrances.** The Parties acknowledge and agree that between the Effective Date and the Closing Date, British Columbia may require that the Permitted Encumbrances be amended to:
 - a) comply with current provincial policies and practices, and any legal requirements; and
 - b) correct any errors or omissions to the form of Permitted Encumbrances attached as Schedule B "4".
- 10.4 **Amendments Form Part of Agreement.** Where any amendments are made under 10.3, Schedule B "3" (Permitted Encumbrances) will be revised and will, as revised, form part of this Agreement.
- 10.5 **Registration of Unregistered Interests.** MLIB will consent, or will cause the Designated Company to consent, to the registration of any interests identified in Schedule B "3" Part 2 which are not registered against the applicable Lands in the Land Title Office on or after the Closing Date.

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- 10.6 **Indemnity for Charges.** MLIB will indemnify and save harmless British Columbia, BC Hydro and all Public Officials from and against all claims, demands, causes of action, actions, expenses, costs, including legal fees, losses, damages or any other liability that they may suffer or incur, directly or indirectly, in connection with or as a result of any Proceeding arising out of MLIB's or a Designated Company's acts or omissions in connection with any Permitted Encumbrance where the Proceeding is settled or is successful.
- 10.7 **Conduct of Litigation.** For the purposes of 10.6:
- a) British Columbia will notify MLIB of any Proceeding to which the Indemnity may apply;
 - b) British Columbia will have exclusive conduct of the Proceeding in accordance with the *Attorney General Act*;
 - c) British Columbia will not settle any Proceeding without first discussing the terms of settlement with MLIB; and
 - d) MLIB may intervene in the Proceeding at its own expense.

ARTICLE 11 – TRANSACTION COSTS

- 11.1 **Crown Grant.** British Columbia is responsible for preparing the Crown Grants relating to the Lands.
- 11.2 **Registration, Tax and Other Costs.** BC Hydro is responsible for the following costs in connection with the transfer of the Lands:
- a) any costs associated with any appraisals necessary for the valuation of the Lands;
 - b) the cost associated with ensuring the Lands have an Adequate Survey;
 - c) any costs or fees associated with the preparation and issuance of Crown Grants and any other documents required to register the Lands and Permitted Encumbrances;
 - d) any fees charged by the Land Title Office or the Land Title and Survey Authority relating to the registration of the Lands and Permitted Encumbrances; and
 - e) the determination and payment of property transfer tax payable under the *Property Transfer Tax Act*.

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- 11.3 GST, PST and Other Charges.** BC Hydro is responsible for any federal or provincial sales tax, including GST and PST.
- 11.4 Annual Taxes and Other Costs.** The Designated Company is responsible for any and all annual taxes payable in respect of the Lands in accordance with provincial law. For greater certainty, on and after the applicable Closing Date, British Columbia and BC Hydro are not required to assume any financial or other obligations with respect to the Lands.
- 11.5 Effect of Delay, Suspension or Abandonment.** British Columbia will not be liable for or otherwise obligated to reimburse BC Hydro for any costs incurred by BC Hydro under 11.2 or 11.3, including any survey costs, in the event the Site C Project and its Operation is delayed, suspended or abandoned under 3.2.

ARTICLE 12 – STATUS OF LANDS

- 12.1 Status and Use of Lands.** Subject to Lands that are added to reserves in accordance with 13, the Lands transferred to MLIB or a Designated Company under this Agreement:
- a) will not be "lands reserved for the Indians" within the meaning of section 91(24) of the *Constitution Act, 1867* or a reserve within the meaning of the *Indian Act*; and
 - b) will be subject to provincial and local government laws, including applicable zoning, land use, land development and property tax laws, and at no time will MLIB or a Designated Company challenge the applicability of provincial laws to the Lands.

ARTICLE 13 – ADDITIONS TO RESERVE

- 13.1 Additions of Proximate Lands to Reserve.** Subject to 13.4, British Columbia will not object to a request by MLIB to the Federal Crown for the transfer and designation of the land identified as "proximate land" in Schedules B "1" and B "2" as reserve land as part of the applicable MLIB Indian Reserve in accordance with the Federal Crown's addition to reserve requirements.
- 13.2 Additions of Other Lands to Reserve.** MLIB may, on notice to British Columbia, request that British Columbia not object to a request by MLIB to the Federal Crown for the transfer and designation of other land not identified as "proximate land" in Schedules B "1" and B "2" as reserve land as an MLIB Indian Reserve in accordance with the Federal Crown's addition to reserve requirements provided that nothing in this Agreement requires British Columbia to support the request.

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- a) British Columbia will notify MLIB and the Federal Crown in writing if it does not object to MLIB's request under 13.2; and
- b) MLIB will not seek to add any of the Lands to its reserve lands under 13.2 if British Columbia does not notify MLIB and Canada of its non-objection under 13.3(a).

13.4 Removal of Restrictive Covenant. British Columbia will cancel the restrictive covenant attached as Schedule B "5" insofar as it applies to the parcel described in 13.3(a) if the Federal Crown accepts MLIB's request under 13.2.**13.5 MLIB Acknowledgements.** MLIB acknowledges and agrees that:

- a) neither British Columbia nor BC Hydro is responsible for any applications or any costs or expenses that may be required in connection with the addition of the Lands under 13.1 or 13.2 to reserve status, including any costs or expenses associated with environmental or other studies;
- b) any application by MLIB to transfer the Lands under 13.1 or 13.2 to the Federal Crown for designation as a reserve will proceed on the express condition that they remain subject to the Permitted Encumbrances; and
- c) this Agreement does not impose any obligations on British Columbia, BC Hydro, or any other person to construct or provide at its cost or expense any work or service to or for the benefit of the Lands under 13.1 or 13.2, including any roads, sewers, drains, water supply, lighting, garbage disposal, or other works or services of improvement or convenience.

ARTICLE 14 – LAND MANAGEMENT MEASURES**14.1 Determination of Management Areas.** Within one year after the Effective Date, British Columbia and MLIB will finalize and review the Schedule C Lands and determine whether they should have specific land management measures applied having regard for:

- a) the nature and location of the Lands;
- b) any other agreements between British Columbia and MLIB relating to the Schedule C Lands; and
- c) any tenures or encumbrances relating to the Schedule C Lands.

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- 14.2 **Completion of Schedule C "1".** On finalization of the Schedule C Lands, Schedule C "1" will be updated and will form part of this Agreement.
- 14.3 **Land Management Recommendation.** Where British Columbia and MLIB agree that some or all of the Schedule C Lands should be subject to land management measures, British Columbia will, as soon as practicable following Commencement of Construction, and subject to 5.2 and 5.4, recommend land management measures for the Schedule C Lands.

ARTICLE 15 - FORCE MAJEURE

- 15.1 **Force Majeure.** If British Columbia is prevented from completing the transfer of the Lands or the implementation of the Land Management Measures due to any event or circumstance that was not caused by and is not reasonably within its control it will not be deemed to be in default or breach of this Agreement for the duration of such event or circumstance, but will resume the performance of such obligations when such event or circumstance no longer prevents British Columbia from completing the transfer of the Lands or the implementation of the Land Management Measures.
- 15.2 **Notice of Force Majeure.** British Columbia will deliver notice to BC Hydro and MLIB explaining the nature of the force majeure event or circumstance, the date it commenced and its anticipated duration, if known.

ARTICLE 16 - LEGAL CERTAINTY

- 16.1 **Consultation and Accommodation.** Subject to 16.5, MLIB and its Members acknowledge and agree that:
 - a) they consent, and do not and will not oppose or object, to the Site C Project or its Operation or the granting of any Authorization necessary for or applied for by or on behalf of BC Hydro in connection with the Site C Project or its Operation;
 - b) this Agreement, the Impact and Benefits Agreement and the Contracting Agreement, constitute:
 - i) adequate consultation and accommodation with respect to any potential adverse impact of the Site C Project or its Operation on MLIB Section 35 Rights; and
 - ii) justification of any infringement of MLIB Section 35 Rights resulting from the Site C Project or its Operation;

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- c) this Agreement, the Impact and Benefits Agreement and the Contracting Agreement are entered into in full and final satisfaction of any past, present or future claim MLIB and its Members may have relating to the adequacy of consultation and accommodation with respect to or any infringement of MLIB's Section 35 Rights resulting from the Site C Project and its Operation, including any civil claims of any nature whatsoever, including private or public nuisance, relating to the Site C Project and its Operation; and
- d) other than as may be provided for under the Impact and Benefits Agreement, they will not seek additional financial or economic consideration or other accommodation from:
 - i) British Columbia, BC Hydro or Canada with respect to the Site C Project and its Operation, including with respect to any issuance or renewal of an Authorization; or
 - ii) any contractor or any other entity that is working directly or indirectly on behalf of BC Hydro in relation to the Site C Project and its Operation.

16.2 Continuing Effect of Authorizations. MLIB and its Members acknowledge and agree that they will recognize and respect the Authorizations that have been or may be granted.

16.3 Adverse Actions. MLIB and its Members acknowledge and agree that they will not:

- a) support or engage in any action or assert or exercise any MLIB Section 35 Rights in a manner that might directly or indirectly have an adverse impact on or frustrate, delay, interfere with or stop:
 - i) the Site C Project or its Operation; or
 - ii) the ongoing use, operation, maintenance, repair, replacement or upgrade of any Works that are required for the Site C Project or its Operation;
- b) challenge, object to or oppose publicly or in any Proceeding on any grounds the Site C Project or its Operation, including BC Hydro's legal authority to undertake the Site C Project and its Operation; or
- c) provide financial or other support to any individual or group for the purposes of challenging, objecting to or opposing publicly or in any Proceeding on any grounds the Site C Project or its Operation, including the matters set out in 16.3(b).

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16.4 Resolution of Adverse Actions. In the event that one or more Members engages in, or MLIB becomes aware that one or more Members intend to engage in, any action prohibited under 16.3, MLIB will, at the request of British Columbia or BC Hydro, at its own expense take all reasonable actions to prevent, resolve or remedy those actions, including:

- a) providing notice to British Columbia and BC Hydro of the Members' actions;
- b) promptly informing the Members in writing, with a copy to British Columbia and BC Hydro, that their actions are in breach of this Agreement and that MLIB does not support their actions;
- c) working cooperatively with British Columbia and BC Hydro to prevent, resolve or remedy those actions, including participating in discussions with British Columbia and BC Hydro; and
- d) providing written affidavit material to support British Columbia and BC Hydro in seeking and obtaining injunctive relief in respect of the actions of the Members.

16.5 Participation in Public Processes. MLIB or any Members may participate in any permitting, regulatory or other government decision-making process relating to the issuance of any Authorizations, the Site C Project or its Operation, including raising any environmental concerns or proposing reasonable avoidance or mitigation measures as part of such process, provided that such participation and any concerns raised by MLIB or its Members:

- a) are not based on the argument that there has been inadequate consultation or accommodation with respect to, or an infringement of, its Section 35 Rights resulting from the Site C Project and its Operation;
- b) are consistent with MLIB's consent to and support for the Site C Project, and do not in any way derogate from or breach any of its acknowledgements, agreements or obligations under this Agreement; and
- c) are raised in an effective and efficient manner and are completed in a timely manner in keeping with the timelines established by the relevant permitting, regulatory or other government decision-making body.

ARTICLE 17 – RELEASE AND LIMITATION OF LIABILITY

17.1 General Release. MLIB releases and forever discharges British Columbia, BC Hydro and all Public Officials from and against any and all claims, demands, causes of action, actions, expenses, costs, including legal fees, losses, damages, or any other liability, including civil claims, that they may suffer or incur, directly or indirectly, resulting or arising from the impact or effect of the Site

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C Project and its Operation in accordance with all applicable laws and Authorizations, and for certainty excluding any such claims that MLIB may suffer or incur as a result of a breach of this Agreement by British Columbia or BC Hydro.

- 17.2 **Set Off.** Any financial harm incurred or suffered by British Columbia or BC Hydro as a result of MLIB's breach of this Agreement, including any requirement to indemnify British Columbia or BC Hydro, may be set off by BC Hydro against any payments payable by BC Hydro to MLIB under the Impact and Benefits Agreement.
- 17.3 **Limitation.** No Party will have any claim against or liability to another Party in relation to this Agreement under any cause of action or theory of liability for any special, indirect, incidental, punitive, exemplary or consequential losses or damages, including pure economic loss, or loss of opportunity, profit, revenues, production, earnings or contract.

ARTICLE 18 - NO PREJUDICE AND NON-DEROGATION

- 18.1 **No Admission.** Nothing in this Agreement, in the negotiation of this Agreement or in any correspondence or document leading to this Agreement, including any term sheet, will be interpreted or construed as an acknowledgement, recognition or admission by British Columbia, BC Hydro or Canada that:
- a) the Site C Project and its Operation infringe MLIB's Section 35 Rights; or
 - b) it has any liability to MLIB or its Members, including any obligation to provide any financial, economic or other accommodation to MLIB.
- 18.2 **Non-Derogation.** Without in any way affecting the express acknowledgements, agreements and obligations set out in 16.1 to 16.5 and 17.1, the Parties acknowledge and agree that nothing in this Agreement in any way defines, amends or denies the existence of any MLIB Section 35 Rights.

ARTICLE 19 - DISPUTE RESOLUTION

- 19.1 **Representatives.** If a dispute arises between the Parties regarding the interpretation of a provision of this Agreement, the Parties or their duly appointed representatives will meet as soon as is practicable to attempt to resolve the dispute.
- 19.2 **Senior Representatives.** If the Parties are unable to resolve the dispute at that level, the interpretation issue will be raised to more senior levels of the Parties.

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- 19.3 **Other Means.** The Parties may choose other appropriate approaches to assist in reaching resolution of the interpretation issue.

ARTICLE 20 - NOTICES

- 20.1 **Notices.** Any notice, document, statement, report, demand or grant that any Party may be required or may desire to give to any other Party under this Agreement must be in writing, unless otherwise specified herein, and will be deemed validly given to and received by the addressee, if served personally, on the date of personal service or, if delivered by mail, e-mail or facsimile copier, when received as follows:

If to British Columbia:

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

Fax: (250) 387-6073

If to BC Hydro:

BC Hydro
12th Floor – 333 Dunsmuir Street
Vancouver, B.C. V6B 5R3

Fax: (604)

If to MLIB:

McLeod Lake Indian Band
61 Sekani Drive
McLeod Lake, BC
V0J 2G0
Attention: Chief

Fax: (250) 750-4420

- 20.2 **Change of Address.** Any Party may, from time to time, give written or e-mail notice to the other Parties of any change of address or facsimile number of the Party giving such notice and after the giving of such notice, the address or facsimile number therein specified will, for purposes of this Agreement be conclusively deemed to be the address or facsimile number of the Party giving such notice.

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ARTICLE 21 - INTERPRETATION**21.1 Interpretation.** For purposes of this Agreement:

- a) the recitals and headings are for convenience only, do not form a part of this Agreement and in no way define, limit, alter or enlarge the scope or meaning of any provision of this Agreement;
- b) "including" means "including, but not limited to" and "includes" means "includes, but not limited to";
- c) the use of the singular includes the plural and the use of the plural includes the singular;
- d) words importing gender include the masculine, feminine or neuter gender and words in the singular include the plural and vice versa;
- e) in the calculation of time under this Agreement, "business days" means any day from Monday to Friday, except any such day that is a statutory holiday in British Columbia;
- f) any reference to a corporate entity includes any predecessor or successor to such entity;
- g) any reference to the delivery on the Closing Date of an agreement, document or instrument "in the form" of an attached schedule means an agreement, document or instrument substantially in that form with such changes, additions or deletions as may be agreed by the representatives of the Parties;
- h) a reference to an agreement between two or more of the Parties includes that agreement, as it may be amended from time to time in accordance with its terms;
- i) a reference to a statute includes every amendment to it, every regulation made under it, every amendment made to a regulation made under it and any law enacted in substitution for, or in replacement of, it; and
- j) the rule of construction that ambiguities are to be resolved against the drafting party does not apply to the interpretation of this Agreement, and there will be no presumption that doubtful or ambiguous expressions, terms or provisions in this Agreement are to be resolved in favour of any Party.

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21.2 No Implied Waiver. Any waiver of:

- a) a provision of this Agreement;
- b) the performance by a Party of an obligation under this Agreement; or
- c) a default or breach by a Party of an obligation under this Agreement,

will be in writing and signed by the Party giving the waiver and will not be a waiver of any other provision, obligation or subsequent default or breach.

21.3 No Fettering. Nothing in this Agreement will be interpreted in a way that fetters the discretion given to any Public Official in an enactment.**21.4 Not a Treaty.** This Agreement does not:

- a) constitute a treaty or land claims agreement within the meaning of section 25 or 35 of the *Constitution Act, 1982 (Canada)*; or
- b) define, amend or deny the existence of MLIB's Section 35 Rights or any responsibilities of the Parties except as set out in this Agreement.

ARTICLE 22 – ENTIRE AGREEMENT

22.1 Entire Agreement. This Agreement constitutes the entire agreement between the Parties relating to the subject matter of this Agreement and, except as set out in this Agreement, British Columbia and BC Hydro have not made any representation, warranty, collateral agreement or agreed to any condition, right or obligation affecting this Agreement. Without limiting the generality of the foregoing, nothing in the negotiation of this Agreement, or in any correspondence or document leading to this Agreement, including any term sheet, forms part of this Agreement.

22.2 Validity of Agreement. The Parties will not challenge the validity of any provision of this Agreement. If any part of this Agreement is declared or held invalid for any reason by a court of competent jurisdiction:

- a) subject to law, the invalidity of that part will not affect the validity of the remainder, which will continue in full force and effect and be construed as if this Agreement had been executed without the invalid part; and
- b) the Parties will negotiate and attempt to reach agreement on a replacement for the part declared or held invalid with a view to achieving the intent of the Parties as expressed in this Agreement.

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Notwithstanding 22.2(a) and (b), if any part of Article 16, 17 or 18 is declared or held invalid, in addition to any other remedy it may have, British Columbia is entitled to immediately terminate this Agreement on notice to BC Hydro and MLIB.


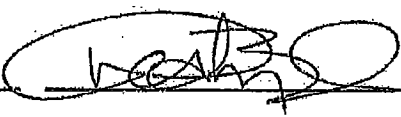
ARTICLE 23 - GENERAL

- 23.1 **Further Acts and Assurances.** Each of the Parties will, upon the reasonable request of another Party, do further lawful acts and deliver such further documents in a timely fashion as are reasonably required from time to time in order to fully perform and carry out the terms of this Agreement.
- 23.2 **Successors.** This Agreement will enure to the benefit of and be binding on British Columbia, BC Hydro and MLIB and their successors and, without limiting the generality of the foregoing, this Agreement and MLIB's obligations under it will be assumed and adopted by any successor organization or government, or any new organization or government that effectively replaces MLIB, under any self-government agreement or other agreement that MLIB, or any other group of which it forms a part, may enter into with Canada, British Columbia or both, or that MLIB may obtain through litigation or court declaration.
- 23.3 **Assignment.** BC Hydro may assign all or part of its rights and obligations under this Agreement to any successor or assignee of BC Hydro's rights and obligations relating to the Site C Project provided that any such successor or assignee agrees in writing to be bound by the terms of this Agreement. MLIB may not assign its rights or obligations under this Agreement, in whole or in part, except as may be required to give effect to 23.2.
- 23.4 **Amendment.** This Agreement may be amended by the Parties in writing.
- 23.5 **Governing Law.** This Agreement will be governed by and construed in accordance with the laws of British Columbia and Canada, as applicable.
- 23.6 **Legal Advice.** Each Party acknowledges that it has obtained or has had the opportunity to obtain independent legal advice relating to the terms and conditions of this Agreement, the Impact and Benefits Agreement and the Contracting Agreement, and that the signatories have read and understand the terms and conditions of the foregoing agreements.
- 23.7 **Execution in Counterpart.** This Agreement may be entered into by each Party signing a separate copy of this Agreement (including a photocopy or facsimile copy) and delivering it to the other Party by facsimile or other electronic means of transmission.

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IN WITNESS WHEREOF the Parties have executed this Agreement as set out below:

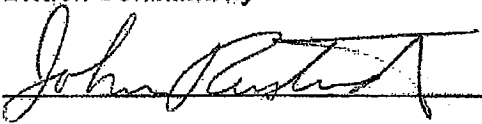
Signed on behalf of the McLeod Lake
Indian Band by

Vine Solonas Elizabeth Solonas

Zephheria Solonas

Signed on behalf of Her Majesty the
Queen In Right of British Columbia of
British Columbia by

 _____

Signed on behalf of British Columbia
Hydro And Power Authority by

 Jessica L. McDonald

_____ President & CEO

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Schedule A "1" – Form of Band Council Resolution

Whereas BC Hydro and Power Authority ("BC Hydro") is undertaking the development, construction and operation of the Site C Project, a third dam and 1100 megawatt hydroelectric generating station on the Peace River, together with all associated components, in northwestern British Columbia, near Fort St. John;

And whereas the Site C project is located in an area covered by Treaty 8 and over which the McLeod Lake Indian Band ("MLIB"), as an adherent to Treaty 8, has Section 35 Rights;

And whereas MLIB and BC Hydro have negotiated the Impact and Benefits Agreement and the Contracting Agreement, and MLIB, BC Hydro and British Columbia have negotiated the Tripartite Land Agreement (collectively "the Agreements"), drafts of which have been provided to and reviewed by each of the undersigned members of Council;

And whereas MLIB has, through the Agreements and the Joint Environmental Assessment Process, and the conditions contained in the Environmental Assessment Certificate and the Federal Decision Statement, been adequately consulted and accommodated with respect to the Impacts of the Site C Project and its Operation on its Section 35 rights;

And whereas the Agreements are subject to satisfactory completion of the community ratification process pursuant to the MLIB Election Code;

Now therefore the Council of MLIB hereby:

- (a) approves the terms of the Agreements substantially in the form provided to and reviewed by each of the undersigned, which are subject to satisfactory completion of the community ratification process pursuant to the MLIB Election Code, and authorizes _____ to enter into, execute and deliver the Agreements, and each of the documents contemplated by the Agreements, on behalf of MLIB, its Council and each of the members of MLIB;
- (b) resolves to commence the community ratification process in respect of the Agreements pursuant to and in compliance with the MLIB Election Code;
- (c) authorizes the Chief of MLIB to, upon satisfactory completion of the community ratification process pursuant to the MLIB Election Code, execute a Condition Satisfaction Notice and deliver such notice to BC Hydro; and
- (d) authorizes _____ to do all such further and other acts and things and to execute and deliver all such further and other documents as may be necessary in order to carry out the intent of the

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Agreements and to perform the obligations of MLIB under the Agreements.

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Schedule B "1" – Map of Lands for Illustrative Purposes

To be completed at a later date pursuant to Article 6.

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Schedule B "2" – Description of Lands

To be completed at a later date pursuant to Article 6.

Where the Lands are registered in the Land Title Office or have been adequately surveyed, insert the legal description.

Where the Lands are not surveyed or have to be re-surveyed in order for title to be raised in the Land Title Office, insert the following (or similar) description:

the area [of approximately X hectares] as shown for illustrative purposes in Schedule 1 and, following completion and approval of the survey or re-survey of those lands, the area legally described in the survey, which, for greater certainty, will not include any land below the natural boundary (as defined in the *Land Act*) and the area of any Crown Corridor, or any submerged lands

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Schedule B "3" Part 1 - Permitted Encumbrances

Permitted Encumbrances
all interests registered on title under the <i>Land Title Act</i> as of the Closing Date
all subsisting exceptions and reservations of interests, rights, privileges and titles contained in any previous Crown grant of the land
all exceptions and reservations contained in section 50(1) of the <i>Land Act</i>
any conditional or final water license or substituted water license issued or given under the <i>Water Act</i> , or any prior enactment of British Columbia of British Columbia of like effect, and to the rights of the holder of it to enter on the land and to maintain, repair and operate any works permitted on the land under the license at the date of the crown grant
all subsisting grants to, or subsisting rights of any person made or acquired under the <i>Mineral Tenure Act</i> , <i>Coal Act</i> or <i>Petroleum and Natural Gas Act</i> or under any prior or subsequent enactment of British Columbia of British Columbia of like effect
all other liens, charges and encumbrances granted by British Columbia, with the prior written consent of the McLeod Lake Indian Band prior to the Closing Date
all existing interests on the Lands in favour of existing interest holders, including any such interests or interest holders that may not have been identified in this Schedule prior to the execution of this Agreement
a restrictive covenant in favour of Her Majesty the Queen in right of British Columbia of British Columbia to be registered against the title to certain Lands in the form attached as Schedule B "5" (Additions to Reserve Restrictive Covenant)

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Schedule B "3" Part 2 - Permitted Encumbrances-Interests Not Registered on Title

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

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Schedule B "4" – Form of Permitted Encumbrances

To be completed at a later date pursuant to Article 6.

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Schedule B "5" - Addition to Reserve Restrictive Covenant

LAND TITLE ACT

FORM C

(Section 233)

Province of
British ColumbiaGENERAL INSTRUMENT-PART 1 (This area for Land Title Office Use)

Page 1 of 4 pages

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

(Signature of Solicitor or Authorized Agent)

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

(PID)

(LEGAL DESCRIPTION)

3. NATURE OF INTEREST:*

Description

Document Reference

Person Entitled to Interest

(Page and paragraph)

Section 219 Covenant

Entire Document

Transferee (Grantee)

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

(a) Filed Standard Charge Terms

☐

D.F. No.

(b) Express Charge Terms

☒

Annexed as Part 2

(c) Release

☐

There is no Part 2 of this instrument

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

3. TRANSFEROR(S):* (Grantor)3. TRANSFEE(S): (Including postal address(es) and postal code(s))* (Grantee)

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

7. ADDITIONAL OR MODIFIED TERMS:*

N/A

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

Officer Signature(s)

Execution Date

Y	M	D

Party(ies) Signature(s)

_____ By
 its authorized signatory(ies):

 Print Name:

 Print Name:

OFFICER CERTIFICATION:

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

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

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TERMS OF INSTRUMENT - PART 2

WHEREAS:

- A. The Grantor is the registered owner of:

(the "Land");

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

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

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

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

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

END OF DOCUMENT

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Schedule B "6" - Designated Company Agreement

This Agreement is dated for reference _____, 20__.

BETWEEN:

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

("British Columbia")

AND:

BRITISH COLUMBIA HYDRO AND POWER AUTHORITY, a corporation continued under the authority of the *Hydro and Power Authority Act*, R.S.B.C. 1996, c. 1-5

("BC Hydro")

AND:

MCLEOD LAKE INDIAN BAND, a "band" within the meaning of the *Indian Act*, R.S.C. 1985, c. 1-5 for and on behalf of itself and all of its Members as represented by its Chief and Council

("MLIB")

AND:

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

(the "Designated Company")

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

WHEREAS:

- A. British Columbia, BC Hydro and MLIB have entered into the Tripartite Land Agreement dated _____ (the "TLA") pursuant to which British Columbia will transfer to the Designated Company fee simple title to those lands legally described as:

[Insert Legal Description of lands]

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(the "Lands")

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

NOW THEREFORE the Parties agree as follows:

1. **Defined Terms and Interpretation Provisions.** The terms "British Columbia", "BC Hydro" and "MLIB" and any other capitalized terms used in this Agreement and defined in TLA will have the meaning given to those terms in the TLA and the interpretation provisions under 21.1 of the TLA will apply to this Agreement.
2. **TLA Binding.** The terms of the TLA relating to the Lands which are for the benefit of British Columbia or BC Hydro are legally binding on the Designated Company as if the Designated Company was a party to the TLA.
3. **Environmental Condition.** Without limiting the generality of the foregoing, the Designated Company waives the requirement, if any, of British Columbia or BC Hydro to provide a site profile as defined in the *Environmental Management Act* in connection with its acquisition of the Lands.
4. **Enforcement of TLA.** British Columbia and BC Hydro may, in their sole discretion, enforce any term or condition of the TLA, including any acknowledgement, agreements, representations and warranties, releases, indemnities or any other obligation of MLIB, against the Designated Company or MLIB or both of them.
5. **Legal Advice.** The Designated Company acknowledges that it has had the opportunity to obtain independent legal advice relating to the terms and conditions of this Agreement and the TLA, a copy of which is attached as Schedule A, and that the signatories have read and understand the terms and conditions of the foregoing agreements.
6. **Validity of Agreement.** The Parties will not challenge the validity of any provision of this Agreement. If any part of this Agreement is declared or held invalid for any reason by a court of competent jurisdiction:
 - a) subject to law, the invalidity of that part will not affect the validity of the remainder, which will continue in full force and effect and be construed as if this Agreement had been executed without the invalid part; and
 - b) the Parties will negotiate and attempt to reach agreement on a replacement for the part declared or held invalid with a view to achieving the intent of the Parties as expressed in this Agreement.

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7. **Entire Agreement.** This Agreement constitutes the entire agreement between the Parties relating to the subject matter of this Agreement and, except as set out in this Agreement, British Columbia has and BC Hydro have not made any representation, warranty, collateral agreement or agreed to any condition, right or obligation affecting this Agreement. Without limiting the generality of the foregoing, nothing in the negotiation of this Agreement, or in any correspondence or document leading to this Agreement, including any term sheet, forms part of this Agreement.
8. **Further Acts and Assurances.** The Parties will, upon the reasonable request of the other, make, do, execute or cause to be made, done or executed all further and other lawful acts, deeds, things, devices, documents, instruments and assurances whatever for the better and absolute performance of the terms and conditions of this Agreement.
9. **No Implied Waiver.** Any waiver of:
 - a) a provision of this Agreement;
 - b) the performance by a Party of an obligation under this Agreement; or
 - c) a default or breach by a Party of an obligation under this Agreement;will be in writing and signed by the Party giving the waiver and will not be a waiver of any other provision, obligation or subsequent default or breach.
10. **Successors.** This Agreement will enure to the benefit of and be binding on the Designated Company and its successors and British Columbia.
11. **No Admissions.** Nothing in this Agreement, in the negotiation of this Agreement or in any prior document leading to this Agreement will be construed as an acknowledgment by British Columbia or BC Hydro that it has an obligation to provide any financial, economic or other accommodation to MLIB.
12. **Not a Treaty.** This Agreement does not:
 - a) constitute a treaty or land claims agreement within the meaning of section 25 or 35 of the *Constitution Act, 1982* (Canada); or
 - b) recognize, affirm, define, deny, limit or amend any aboriginal rights or titles or any responsibilities of the Parties except as set out in this Agreement.
13. **No Fettering.** Nothing in this Agreement will be interpreted in a way that fetters the discretion given to any Provincial Official in an enactment.

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14. **Amendment.** This Agreement may be amended from time to time by the Parties in writing.
15. **Governing Law.** This Agreement will be governed by and construed in accordance with the laws of British Columbia and Canada, as applicable.
16. **Execution in Counterpart.** This Agreement may be entered into by each Party signing a separate copy of this Agreement (including a photocopy or facsimile copy) and delivering it to the other Party by facsimile or other electronic means of transmission.

Signed on behalf of Her Majesty the
Queen In Right of British Columbia of
British Columbia by the Minister of
Aboriginal Relations and Reconciliation or
the Minister's authorized representative as
of _____, 20____.

Signed on behalf of British Columbia
Hydro And Power Authority as of
_____, 20____ by:

Signed on behalf of the McLeod Lake
Indian Band as of _____,
20____ by:

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

[Name of Company]

Per: Authorized Signatory

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Schedule B "7" – GST CertificateCERTIFICATE AS TO REGISTRATION STATUS OF PURCHASER
(FORM 221(2)(b))

Certificate as to Registration Status of Purchaser

(Paragraphs 221(2)(b) and (c))

FROM: [the "Vendor"]

TO: [the "Purchaser"]

RE: [the "Property"]

THE PURCHASER HEREBY CERTIFIES TO THE VENDOR PURSUANT TO PARAGRAPHS 221(2)(b) AND (c) OF THE EXCISE TAX ACT (THE "ACT") THAT THE PURCHASER:

is a prescribed recipient under the Act.

[OR]

is registered under Part IX of the Act, its registration number is [number] and the Purchaser will account for the tax payable in respect of the purchase of the Property in accordance with the Act.

The Purchaser acknowledges that the Vendor is relying on this Certificate in connection with the sale of the Property.

Each term that is used in the Certificate and that is defined in, and for the purposes of, Part IX of the Act has the meaning assigned to it in Part IX of the Act.

DATED [month, day, year].

[Name of Corporate Vendor]

[Name of Individual Vendor]

Per: _____

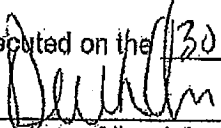
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Schedule B "8"

Consent of MLIB in relation to
Property Transfer Tax Matters

TO WHOM IT MAY CONCERN:

1. Article 11 of the Site C Tripartite Land Agreement (the Agreement) between the Province of British Columbia, BC Hydro and the McLeod Lake Indian Band ("MLIB"), executed [date of execution], provides that BC Hydro is responsible for property transfer tax payable under the *Property Transfer Tax Act* (RSBC 1996), c. 378 in relation to the transfer of land under the Agreement (the Property Transfer Tax).
2. In the event that:
 - a. an exemption from Property Transfer Tax is not enacted prior to the date on which payment of that tax is due, or
 - b. the Province pays the Property Transfer Tax,
 then MLIB hereby
 - c. authorizes the Ministry of Finance and the Ministry of Aboriginal Relations and Reconciliation, and BC Hydro to deal directly with one another in regard to all matters relating to the Property Transfer Tax, and
 - d. agrees that if there is any refund payable in respect of the Property Transfer Tax paid by the Province or BC Hydro, then the amount of that refund may be retained by payee.

Executed on the 30 day of March, 2016

 Signature of the duly authorized signatory for the McLeod Lake Indian Band

Derek Orr CHIEF.
 Name and Title (please print)

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Schedule C "1" – Map of Land Management Areas

To be completed at a later date pursuant to Article 14.

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Schedule D "1" -- Map of Site C Project Area

See attached.

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Schedule D "2" – Site C Project Description

The Site C Project is the project described in Volume 1, sub-sections 4.3 to 4.5 of the Amended Environmental Impact Statement for the Site C Clean Energy Project prepared by BC Hydro and submitted to the Joint Review Panel on August 2, 2013, and as authorized by the EAC and FDS.

The Site C Project consists of a proposed third dam and hydroelectric generation station on the Peace River together with all associated structures, to be constructed and operated in northeastern British Columbia, near Fort St. John.

In general terms, the components of the Site C Project are:

- Dam, generating station, and spillways;
- Reservoir;
- Substation and transmission lines to Peace Canyon Dam;
- Highway 29 realignment;
- Quarried and excavated construction materials;
- Worker accommodation; and
- Road and rail access.

General Delivery
McLeod Lake, B.C.
V0J 2G0

AFFIDAVIT OF CHIEF HARLEY CHINGEE

**BRITISH COLUMBIA UTILITIES COMMISSION INQUIRY
RESPECTING SITE C**

Project No.: 1598922
Prince George Hearing