

**PERMIT**

BETWEEN:

**HER MAJESTY THE QUEEN IN RIGHT OF CANADA,**  
as represented by the Minister of Indigenous Services

AND:

**[FIRST NATION],**  
as represented by the Council

AND:

**[PERMITTEE'S NAME]**

For lands in [Reserve Name] Indian Reserve No. [#]

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## PERMIT

This permit is dated for reference [Month Day, Year] and is made between:

**HER MAJESTY THE QUEEN IN RIGHT OF CANADA,**  
as represented by the Minister of Indigenous Services

(referred to as “Canada”)

and:

**[FIRST NATION],**  
a “band” within the meaning of the *Indian Act*, as represented by the Council

(referred to as the “First Nation”)

and:

**[PERMITTEE'S NAME]****[If the Permittee is a corporation, limited liability partnership, society, utility or municipality, then type a comma after the Name of Permittee and include the statute under which the entity received its authority and its incorporation number, if applicable. Corporate example: , incorporated under the *Business Corporations Act*, SBC 2002, c. 57; Incorporation No. X12345 Limited Partnership example: , incorporated under the *Business Corporations Act*, SBC 2002, c. 57; Incorporation No. X12345, as general partner of [NAME OF LIMITED PARTNERSHIP], registered under the *Partnership Act*, RSBC 1996 c 348; Registration No. X12345 End of option]**

(referred to as the “Permittee”).

### BACKGROUND:

- A. The Permit Area is part of the Reserve, which is held for the use and benefit of the First Nation.
- B. The First Nation negotiated with the Permittee the permitting arrangement set out in this Permit and the terms and conditions were negotiated between the Parties.

- C. The Council consented to the issuance of this Permit and authorized its signatories to execute this Permit on behalf of the First Nation, as evidenced by the Band Council Resolution attached as Schedule A.
- D. Canada is authorized to issue this Permit under subsection 28(2) of the *Indian Act*.

**NOW THEREFORE**, for mutual consideration, the Parties agree as follows:

## **1. DEFINITIONS**

1.1 In this Permit, including the recitals, the following terms have the meanings ascribed to them in this section:

**“Additional Fees”** means any amount payable to Canada under this Permit, other than Annual Fees. (see 3.8 & 7.8).

**“Alterations”** means any substantial (in the reasonable opinion of Canada or the First Nation) alterations, restorations, renovations, relocations, reductions, additions, expansions, reconstructions, removals, replacements, repairs or modifications of all or part of the Improvements.

**“Annual Fees”** means the amounts set out in section 4.3.

**“Appraisal”** means a written opinion of the Fair Market Fees prepared by an Appraiser in accordance with generally accepted appraisal practices.

**“Appraiser”** means a Person who is accredited as an appraiser by the Appraisal Institute of Canada or its successor.

**“Architect”** means a person who is licensed as an architect in the province of British Columbia.

**“Artifact”** means any burial site, human remains or any item of archeological or cultural interest.

**“Authority”** means any federal, provincial, municipal, First Nation or other governmental authority having jurisdiction in respect of the Permit Area, or the use of the Permit Area, including any utility company lawfully acting under its statutory power.

**“Authorized Uses”** means the uses referred to in section 3.4.

**“Commencement Date”** means [Month Day, Year].

**“Construction Plan”** means, dependent on the stage of construction, individually or collectively, plans, design briefs, construction specifications, cost estimates, and

any other documents about the Improvements reasonably required by each of Canada and the First Nation, prepared and certified by an Architect or Engineer, on the basis that they may be relied upon by each of the Parties, including all site plans drawn to scale showing the following required features with appropriate dimensions:

- (a) Boundary lines with dimensions and acreage, natural and artificial features of the Permit Area and contiguous property.
- (b) “North” arrow.
- (c) Title block, including drawing scale, date, developer’s name and address and reference numbers.
- (d) Location, dimension, size and construction specifications of all Improvements.

“**Contaminant**” includes any toxic substance, deleterious substance, hazardous substance, hazardous waste, hazardous recyclable, ozone-depleting substance, halocarbon, pesticide, and waste, and any similar substance defined in any Environmental Laws of Canada or the province of British Columbia, whether or not applicable to the Lands.

“**Council**” means the First Nation’s “council of the band” within the meaning of the *Indian Act*.

“**Engineer**” means a person who is licensed as an engineer in the province of British Columbia.

“**Environment**” has the meaning given it in the *Canadian Environmental Protection Act, 1999*, SC 1999, c 33.

“**Environmental Laws**” means:

- (a) any Laws relating, in whole or in part, to the assessment or protection of the Environment; and
- (b) any decisions, determinations, mitigation measures, standards, codes, guidelines or environmental protection measures made pursuant to those Laws.

“**Environmental Review**” means Canada’s environmental review process referred to in subsection 9.2.

“**Fair Market Fees**” means the most probable annual fee that the Permit Area should bring in a competitive and open market, reflecting all conditions of this Permit and assuming the following conditions:

- (a) Canada and the Permittee are typically motivated, well informed, well advised and are acting prudently in an arm’s length transaction.

- (b) A reasonable time is allowed for exposure in the open market and the fees represent the normal consideration for the Permit Area unaffected by undue stimuli or special fees or concessions granted by anyone associated with the transaction.
- (c) The Permit Area is owned by Canada in fee simple, free of all charges and encumbrances other than those registered in the Registry, and the inalienability or Indian reserve status of the Reserve is not a discounting factor and will not be used as a basis to lower valuation in comparing the Permit Area to other properties, whether or not such properties are Indian reserve lands.
- (d) The Permit Area does not include any Improvements made after the Commencement Date and the contributory value of the Permittee's Improvements will not be taken into account.

**“Fees”** means Additional Fees, Annual Fees and Fair Market Fees.

**“First Nation Fees”** means any amount payable to the First Nation under this Permit.

**“Gross Negligence or Willful Misconduct”** means any act or failure to act (whether sole, joint or concurrent) by a Party that was intended to cause or was in reckless disregard of, or wanton indifference to, the harmful consequences to the safety or property of a Person which the Party knew, or should have known, would result from such act or omission, but does not include any act or failure to act that constitutes mere ordinary negligence or was done or omitted to be done in accordance with the express instructions or approval of the relevant Parties.

**“Improvements”** means improvements, as determined according to the common law, including any buildings, structures, works, facilities, infrastructure, services, landscaping and other improvements (including any equipment, machinery, apparatus and other such fixtures forming part of or attached to the improvements) made by the Permittee or any Person on the Permit Area due to the rights of the Permittee under this Permit and that are, from time to time, situated on the Permit Area, including any Alterations to any of them and the following pre-existing improvements: (*list*).

**“Indian Act”** means the *Indian Act*, RSC 1985, c I-5.

**“Initial Period”** means the five-year period starting on the Commencement Date and ending on [Month Day, Year].

**“Laws”** means all laws, statutes, regulations, codes and by-laws, as amended or replaced from time to time.

**“Party”** means a party to this Permit and **“Parties”** means more than one of them.

**“Period”** means, as the case may be:

- (a) the Initial Period;

- (b) a five-year period starting on the day following the end of a preceding five-year period; or
- (c) the last period of the Term, which may be less than five years, starting on the day following the end of the last full five-year period.

“**Permit**” means this agreement, and all Schedules attached to it, as amended from time to time.

“**Permit Area**” means the area more particularly known and described as:

[Legal Description].

“**Person**” includes any individual, partnership, firm, company, corporation, incorporated or unincorporated association or society, co-tenancy, joint venture, syndicate, fiduciary, estate, trust, bank, government, governmental or quasi-governmental agency, board, commission or authority, organization or any other form of entity however designated or constituted, or any group, combination or aggregation of any of them.

“**Project**” has the meaning given it in section 81 of the *Impact Assessment Act*, S.C. 2019, c. 28, s. 1, but does not include a project that is in one of the classes of projects designated under section 88 of that Act, and any similar concept in any amended, succeeding, or replacement Law.

“**Registry**” means the registry with registration jurisdiction over the Permit Area.

“**Release**” includes discharge, dispose of, spray, inject, inoculate, abandon, deposit, spill, leak, leach, seep, pour, emit, empty, throw, dump, place or exhaust.

“**Reserve**” means [Reserve Name] Indian Reserve No. [#].

“**Schedule**” means an attachment to this Permit labeled as a Schedule, which forms part of and is integral to the Permit.

“**Substantial Completion**” means the date on which a written certificate by an Architect or Engineer is delivered to each of Canada and the First Nation certifying to them that the Improvements are substantially complete in all material respects, in a proper and workmanlike manner, and in accordance with the Construction Plan and the requirements in this Permit, except for deficiencies the correction of which, in the opinion of the Architect or Engineer, will be adequately addressed by the Permittee.

“**Taxes**” means any tax of an Authority applicable to the granting of this Permit or the payment of Fees.

“**Term**” means the period starting on the Commencement Date and expiring on [Month Day, Year], unless this Permit otherwise ends early.

“**Trustee**” means a trust company appointed in writing by the First Nation.

## **2. INTERPRETATION AND GENERAL PROVISIONS**

2.1 **Definitions** – Defined words are capitalized for ease of reference. A defined word may be read as having an appropriate corresponding meaning when it is used in the plural or verb form.

2.2 **Parts of the Permit** – These are the parts of this Permit: article (1.); section (1.1); subsection (1.1.1); and paragraph (1.1.1.1). Unless stated otherwise, any reference in this Permit to an article, section, subsection, or paragraph means the appropriate part of this Permit.

2.3 **Headings** – All headings in this Permit have been inserted as a matter of convenience and for reference only and in no way define, limit, enlarge, modify or explain the scope or meaning of the Permit or any of its provisions.

### **2.4 Extended Meaning**

2.4.1 A word in the singular form may be read in the plural form if the context allows it and a word in the plural form may be read in the singular form if the context allows it. All genders are included in any gender expressed.

2.4.2 The words “include”, “includes” and “including” are to be read as if they are followed by the phrase “without limitation”.

2.4.3 The phrase “this Permit ends” includes an ending by expiration of the Term and an earlier termination. The phrases “earlier termination” and “early termination” include a surrender.

2.4.4 The phrase “on the Permit Area” includes in, under and above the Permit Area.

2.5 **Joint and Several** – If the Permittee is more than one Person, then all covenants and agreements of the Permittee are joint and several.

2.6 **Statutes** – Any reference to a statute means that statute, and any regulations made under it, all as amended or replaced from time to time.

2.7 **Governing Laws** – This Permit will be governed by and interpreted in accordance with the applicable Laws of Canada and of the Province of British Columbia.

2.8 **Entire Agreement** – This Permit constitutes the entire agreement between the Parties with respect to the subject matter of this Permit and supersedes and revokes any and all previous discussions, negotiations, arrangements, letters of



intent, offers and representations. There are no other covenants, agreements, representations or warranties between the Parties whatsoever other than those set out in this Permit.

- 2.9 **Modification** – Any modifications of this Permit will be in writing and executed in the same manner as this Permit.
- 2.10 **Consent and Approval** – Unless any part of this Permit states otherwise, when a Party is required to provide consent or approval under this Permit, that consent or approval will not be unreasonably withheld.
- 2.11 **Time is of the Essence** – Time is of the essence in this Permit and time will remain of the essence notwithstanding any extension granted to a Party.
- 2.12 **Severability** – If any part of this Permit is declared or held invalid for any reason, the invalidity of that part will not affect the validity of the remainder of the Permit, which will continue in full force and effect and be construed as if this Permit had been executed without the invalid part.
- 2.13 **Survival of Obligations and Rights** – If a part of this Permit states that it survives when this Permit ends, then the survival of that part is only to the extent required for the performance of any obligations, and the exercise of any rights, pertaining to it.
- 2.14 **Others Performing the Permittee’s Obligations** – The Permittee may allow any Person to perform the Permittee’s obligations under this Permit, but in doing so the Permittee will ensure performance of such obligations by such Persons and it in no way affects the Permittee’s obligation to perform.

### 3. USE OF THE PERMIT AREA

#### 3.1 Permittee’s Rights to the Permit Area

3.1.1 Canada hereby authorizes the Permittee to use the Permit Area non-exclusively during the Term, subject to every other part of this Permit.

3.1.2 This is a license. The rights provided under this Permit do not, and will not be deemed to, convey or confer on the Permittee any title, fee, estate, or other right “in rem” in the Permit Area.

3.2 **Prior Rights** – This Permit is subject to any existing interest or right given for or attaching to the Permit Area, whether or not the Permittee has notice of such prior interest or right.

3.3 **Subsequent Rights** – The Permittee acknowledges that Canada and the First Nation may authorize, as to their respective jurisdictions and authorities, further use and occupation of the Permit Area, subject to the Permittee’s rights under this Permit.

- 3.4 **Authorized Uses** – The Permittee will not use the Permit Area for any purposes except for the following authorized uses:
- [List the Uses]
- 3.5 **Nuisance** – Except as required by the construction or removal of the Improvements, the Permittee will not cause or permit any nuisance on the Permit Area.
- 3.6 **Waste**
- 3.6.1 The Permittee will not cause or permit the commission of any waste of the Permit Area.
- 3.6.2 The Permittee will not cause or permit the removal of any sand, gravel, topsoil, or other constituent material of the Permit Area, except as required by the clearing and construction permitted under this Permit and applicable Laws, in which case, such removal will not constitute waste.
- 3.7 **Garbage** – The Permittee will not cause or permit any garbage or debris to be placed or left at the Permit Area, except as is reasonably necessary in accordance with the Authorized Uses.
- 3.8 **Inspection** – Canada and the First Nation may inspect (including the conducting of site assessments, audits or other tests on, and investigations of) the Permit Area at any time during the Term. If the inspection is in response to a default of this Permit, or if, in the process of inspecting the Permit Area, a default is discovered or confirmed, then Canada's reasonable expenses under this section are deemed to be Additional Fees and the First Nation's reasonable expenses under this section are deemed to be First Nation Fees.
- 3.9 **Artifacts and Survey Monuments**
- 3.9.1 If any Artifact is discovered on the Permit Area, then the Permittee will immediately cease any work in the area of such Artifact and promptly notify the First Nation of such Artifact. If there are no applicable First Nation or federal Laws relating to the disturbance of such Artifact, then the Permittee will comply with the requirements set out in the *Heritage Conservation Act*, RSBC 1996, c 187, even if not applicable on the Reserve, and with the reasonable requirements of the First Nation.
- 3.9.2 If the Permittee causes or permits a legal survey monument to be disturbed, damaged or destroyed during the Term, then the Permittee will ensure that it is replaced by a licensed surveyor to the satisfaction of the Surveyor General of Canada.
- 3.10 **Representations about the Permit Area and its Use**

- 3.10.1 The Permittee acknowledges and agrees that Canada is authorizing the Permittee's use of the Permit Area on an "as is – where is" basis.
- 3.10.2 The Permittee acknowledges and agrees that neither Canada, the First Nation, their respective officials, servants, employees, agents, contractors, subcontractors or other legal representatives, nor the Council has made any representations or warranties with respect to:
- 3.10.2.1 the condition of the Permit Area, including the Permit Area's compliance with applicable Laws or the presence of Contaminants on the Permit Area;
  - 3.10.2.2 issues of title or encumbrances affecting title;
  - 3.10.2.3 access to and from the Permit Area; or
  - 3.10.2.4 the suitability of the Permit Area for the Permittee.
- 3.10.3 The Permittee represents and warrants that, prior to the Commencement Date, it conducted an inspection of the Permit Area, including any investigations that it deemed prudent regarding the Permit Area's compliance with applicable Laws, title, encumbrances, access and the presence of Contaminants on the Permit Area.
- 3.10.4 The Permittee represents and warrants that it is satisfied that the Permit Area is suitable for its intended uses and that those uses are within the Authorized Uses.

#### **4. FEES**

4.1 **Payments** – All payments made by the Permittee to Canada under this Permit will be:

- 4.1.1 paid in Canadian dollars;
- 4.1.2 made payable to the Receiver General for Canada;
- 4.1.3 paid without any prior demand, set-off, deduction or abatement; and
- 4.1.4 accompanied by any applicable Taxes.

4.2 **Outstanding Amounts** – Canada may apply any outstanding amounts owed to it by the Permittee under the Permit as Canada sees fit.

#### **4.3 Annual Fees**

4.3.1 The Permittee will pay Annual Fees to Canada in the following amounts, plus applicable Taxes, on or before [Month Day]:

- 4.3.1.1 in the Initial Period, an amount of \$[Amount] per year; and
- 4.3.1.2 in each subsequent Period, the greater of the Annual Fees paid in the previous Period or Fair Market Fees.
- 4.3.2 Canada will deposit the Annual Fees received to an account for the benefit of the First Nation and the Permittee acknowledges that it has no right to a refund of Annual Fees from Canada or the First Nation if this Permit ends early.
- 4.4 **Fair Market Fees Determination** – The process to determine Fair Market Fees is as follows:
  - 4.4.1 No later than 90 days and no more than 120 days before the beginning of a Period the Permittee will obtain an Appraisal (the “Permittee’s Appraisal”) for that Period and deliver a copy of the Permittee’s Appraisal to each of Canada and the First Nation. The Permittee’s choice of Appraiser and terms of reference for the Appraisal must be approved by each of Canada and the First Nation in advance.
  - 4.4.2 If either Canada or the First Nation does not agree with the Fair Market Fees determination in the Permittee’s Appraisal, then, within 120 days of receipt of the Permittee’s Appraisal, such Party (at its expense if subsection 4.4.6 does not apply) will obtain an Appraisal (the “Second Appraisal”), a copy of which such Party will promptly deliver to each of the other Parties.
  - 4.4.3 If the Fair Market Fees determination in the Permittee’s Appraisal is:
    - 4.4.3.1 equal to or higher than the Second Appraisal, then Fair Market Fees are determined to be the amount in the Permittee’s Appraisal;
    - 4.4.3.2 no more than 15.0% lower than the Second Appraisal, then Fair Market Fees are determined to be the amount in the Second Appraisal; or
    - 4.4.3.3 more than 15.0% lower than the Second Appraisal, then the Second Appraiser and the Permittee’s Appraiser will promptly discuss the two appraisals so as to attempt to reconcile the differences between their Appraisals and jointly determine Fair Market Fees within 60 days of the delivery of the Second Appraisal to the Permittee.
  - 4.4.4 If the Appraisers are unable to jointly determine Fair Market Fees within the 60-day period set out in paragraph 4.4.3.3, then the Permittee and the Party who retained the Second Appraiser will agree upon a third, independent Appraiser to promptly review the two Appraisals and determine Fair Market Fees, which determination is binding upon the Parties.
  - 4.4.5 If the Permittee fails to comply with subsection 4.4.1 in the time allowed, then Canada may at any later time obtain an Appraisal and determine Fair Market Fees based on the valuation in that Appraisal, which determination is binding on

the Parties. When Fair Market Fees are determined under this subsection, Canada will promptly notify the Permittee and the First Nation of such amount.

- 4.4.6 If Canada obtains an Appraisal under subsection 4.4.5, or either Canada or the First Nation obtains an Appraisal under subsection 4.4.2 that is in the category set out in paragraph 4.4.3.3, then:
- 4.4.6.1 the expense for such Appraisal will, upon notice, be immediately due as Additional Fees or First Nation Fees, as the case may be, which the Permittee will promptly pay; and
- 4.4.6.2 the costs for the work of the Appraisers in paragraph 4.4.3.3 and subsection 4.4.4 will be paid solely by the Permittee.
- 4.5 **Additional Fees** – If, at any time before or after this Permit ends, Canada incurs any expenses by reason of any failure of the Permittee to perform or observe any of the Permittee’s obligations to Canada under this Permit, then the amount of each expense, together with interest, accruing from the date of such expense, and an administration fee of 15% of the expenses will be payable to Canada as Additional Fees and will be promptly paid by the Permittee on notice from Canada.
- 4.6 **First Nation Fees** – If, at any time before or after this Permit ends, the First Nation incurs any expenses by reason of any failure of the Permittee to perform or observe any of the Permittee’s obligations to the First Nation under this Permit, then the amount of each expense, together with interest, accruing from the date of such expense, and an administration fee of 15% of the expenses will be payable to the First Nation as First Nation Fees and will be promptly paid by the Permittee on notice from the First Nation. First Nation Fees will be paid in Canadian dollars, accompanied by any applicable Taxes, and without any set-off, deduction, or abatement.
- 4.7 **Arrears to Bear Interest** – If Fees or any other sum owing to Canada or the First Nation by the Permittee under this Permit are not paid when due, then the Permittee will pay interest on the unpaid amount at the prime lending rate established by the Bank of Canada, calculated quarterly and compounded semi-annually, plus 5% per annum, from the date the Fees or sum are due until the date that the payment is received. This stipulation for interest will not prejudice or affect any remedies of Canada or the First Nation under this Permit or otherwise, or be construed to relieve the Permittee from any default in paying Fees or other sum at the time and in the manner specified in this Permit.
- 4.8 **Survival of Sections** – Sections 4.5 - 4.7 survive when this Permit ends.

## 5. CONSTRUCTION

5.1 **No Construction Before Review** – The Permittee will not construct any Improvements, or alter the Permit Area in anticipation of such construction, without first having:

5.1.1 obtained all applicable approvals and authorizations for such Improvements under section 5.3;

5.1.2 delivered an applicable Construction Plan for such Improvements under section 5.4; and

5.1.3 obtained a written determination from Canada under section 9.2 that the applicable Project pertaining to such Improvements may proceed.

### 5.2 Stop Work Orders and Injunctions

5.2.1 If section 5.1 is breached, then, in addition to any other remedy available to either Canada or the First Nation:

5.2.1.1 each such Party may issue a “stop work order”, which such Party is entitled to post in conspicuous locations on the Permit Area and the Permittee must ensure that all unauthorized work on the Permit Area ceases;

5.2.1.2 the First Nation may bar any Person who is providing any services for the construction of Improvements or the alteration of the Permit Area until such time as the breach is rectified by obtaining all of the required approvals, authorizations and determinations required under section 5.1;

5.2.1.3 the Permittee will promptly remediate any damage to the Permit Area and any other area on the Reserve arising from such breach that is not otherwise approved of, authorized or consented to in a determination as required by section 5.1; and

5.2.1.4 each such Party is entitled to obtain an injunction from a court of competent jurisdiction against the continuation of such breach, such Party’s costs of which (including legal costs on a solicitor and own client basis) are to be paid promptly upon notice as Additional Fees or First Nation Fees, as the case may be.

5.2.2 Canada and the First Nation will notify each other of their actions under this section.

5.3 **Authority Authorization** – The Permittee will apply to all appropriate Authorities for any applicable approvals or authorizations necessary for the Permittee to construct any Improvements.

- 5.4 **Construction Plan** – For any Improvements proposed to be constructed, the Permittee will provide to each of Canada and the First Nation a certified Construction Plan that is consistent with this Permit.
- 5.5 **Release of Liability** – The Permittee, on its behalf and on behalf of any Person deriving an interest from, or on the Permit Area because of, the Permittee’s rights under this Permit, acknowledges and agrees that neither Canada nor the First Nation (or the Council) owes a duty of care to the Permittee or any such Person in reviewing any Construction Plans, as such review is solely for the benefit of Canada and the First Nation, respectively. As such, the Permittee releases each of Canada, the First Nation, the Council, and their respective officials, servants, employees, agents, contractors, subcontractors and other legal representatives from any liability associated with their respective reviews of, and the Permittee’s implementation of, any Construction Plans. This section survives when this Permit ends.
- 5.6 **Construction Compliance**
- 5.6.1 Once all applicable approvals, authorizations, plans and determinations referred to in section 5.1 have been obtained, finalized or delivered, as the case may be, for any Improvements, the Permittee will promptly construct such Improvements in a proper and workmanlike manner and in accordance with such approvals, authorizations, plans and determinations and all British Columbia building, fire, electrical and other similar codes in effect at the time of such construction to the same extent as if the Permit Area was on fee simple lands in the province owned by a private individual.
- 5.7 **Security for Construction** – The Permittee will, prior to constructing any Improvements, deliver to the First Nation concurrent with the applicable certified Construction Plan written evidence that a performance bond, letter of credit or other similar security has been obtained in an amount at least equal to 50% of the estimated cost of the work and that will cover the payment of all labour and material in connection with the work. Such security must be in a form satisfactory to the First Nation with sureties, if required, approved by the First Nation.
- 5.8 **Drawings**
- 5.8.1 The Permittee will promptly deliver to each of Canada and the First Nation reproducible as-built or record drawings of completed Improvements, certified by an Architect or Engineer, that industry standards and British Columbia codes have been met.

## 6. IMPROVEMENTS

- 6.1 **Damage to, or Destruction of, Improvements** – If any Improvements are damaged or destroyed during the Term, then:

- 6.1.1 the Permittee will promptly notify each of Canada and the First Nation;
  - 6.1.2 this Permit will not be deemed to have ended;
  - 6.1.3 there will be no reduction or postponement of Fees; and
  - 6.1.4 the Permittee will repair or replace the Improvements within a reasonable time and, to the extent possible, to a standard at least substantially equal in quality of material and workmanship to the original material and workmanship.
- 6.2 **Repair & Maintenance** – Neither Canada nor the First Nation will be required to maintain or make any repairs or Alterations to any Improvements. The Permittee will repair and maintain the Improvements in good order and condition in all respects to the standard consistent with the age and nature of the Improvements as would be maintained by a prudent owner.

## 7. **INSURANCE**

- 7.1 **Errors and Omissions Insurance** – The Permittee will provide evidence to each of Canada and the First Nation that errors and omissions insurance, with minimum limits of \$1,000,000 per claim and annual aggregate, is obtained with respect to design work of the Architects or Engineers on any Improvements to be constructed.
- 7.2 **Construction Insurance** – From the date that construction is started on the Permit Area, including the stockpiling of construction materials on the Permit Area in anticipation of construction, to Substantial Completion, and any other time an Improvement is being constructed, the Permittee will ensure that the following insurance is obtained and maintained:
- 7.2.1 Commercial general liability insurance against claims for bodily injury (including death), personal injury or property damage arising in connection with the use of the Permit Area for construction. The policy will be written on a commercial general liability basis with liability limits of at least \$5,000,000 per occurrence (or any other higher amount that either Canada or the First Nation reasonably requires by delivery of notice to the Permittee before construction begins) and with each of Canada and the First Nation as additional insureds.
  - 7.2.2 “Wrap-up” construction insurance to cover “all risks” of physical damage to, or loss of, the Improvements (including goods and materials to be incorporated in the Improvements while in storage at the site or in transit to it) and must include the perils of flood and earthquake (for any properties located in earthquake zones classified as high to extreme by the Institute for Catastrophic Loss Reduction or its successor.) The policy will be written in an amount at least equal to such Improvements’ full replacement value, plus no less than 25% of budgeted “soft costs”, and with the First Nation as a named insured with loss



payable to the Permittee and the First Nation as their respective interests may appear.

**7.3 Liability & Property Insurance** – Subject to section 7.2, the Permittee will ensure that the following insurance is maintained during the Term and any other period it may be on the Permit Area, including any period where the Permittee is removing the Improvements under section 12.2, notwithstanding section 12.5:

7.3.1 Commercial general liability insurance against claims for bodily injury (including death), personal injury or property damage arising in connection with the use of the Permit Area. The policy will be written on a commercial general liability basis with liability limits of at least \$[Amount] per occurrence (or to any higher amount that either Canada or the First Nation reasonably requires by delivery of notice to the Permittee) and with each of Canada and the First Nation as additional insureds.

7.3.2 Property insurance to cover “all risks” of physical damage to, or loss of, the Improvements and must include the perils of flood and earthquake (for any properties located in earthquake zones classified as high to extreme by the Institute for Catastrophic Loss Reduction or its successor) and blanket by-laws and sewer backup coverage. The policy will be written in an amount at least equal to such Improvements’ full replacement value, with the First Nation as a named insured with loss payable to the Permittee and the First Nation as their respective interests may appear.

7.3.3 Any other insurance that may be reasonably required from time to time by either Canada or the First Nation and that a prudent owner of the Permit Area or the Improvements would obtain.

#### **7.4 General Insurance Provisions**

7.4.1 Every insurance policy required under this Permit in which Canada or the First Nation is an additional or named insured will contain:

7.4.1.1 an agreement by the insurer that it will not cancel the policy without first giving such Party at least 30 days prior notice;

7.4.1.2 a clause to the effect that any release from liability entered into prior to any loss will not affect the right of such Party to recover;

7.4.1.3 a waiver of subrogation by the insurers against such Party; and

7.4.1.4 a provision that the policies will not be invalidated by any act, omission or negligence of any Person that is not within the knowledge or control of such Party.

- 7.4.2 All property insurance policies will include either a stated amount co-insurance endorsement or, alternatively, confirm that no co-insurance applies, to prevent any Parties from becoming co-insurers.
- 7.4.3 All insurance required under this Permit will include the features customarily included in that type of insurance on similar Improvements in British Columbia by prudent owners and any features that Canada or the First Nation reasonably requires. The insurance will not include any non-standard, special, or unusual exclusions or restrictive endorsements without first getting the written consent of each of Canada and the First Nation.
- 7.4.4 The Permittee will not do anything, or permit or suffer anything to be done, at the Permit Area that might cause the insurance policies required by this Permit to be invalidated or cancelled.
- 7.4.5 On the Commencement Date, the Permittee will promptly deliver certificates evidencing every insurance policy that is required by this Permit to each Party insured under such insurance, and will deliver to each such Party, at least 15 days before the expiry of any such insurance, a certificate of renewal, or other evidence satisfactory to each such Party, that the insurance has been renewed or replaced.
- 7.4.6 The Permittee will provide each of Canada and the First Nation with a written statement, prepared and signed by a qualified insurance professional, confirming that the insurance policies obtained for the benefit of such Party satisfy the terms of the Permit.
- 7.4.7 The Permittee will, upon request from Canada or the First Nation, deliver to the requesting Party a certified copy of every requested insurance policy.
- 7.5 **Release of Insured Claims** – The Permittee releases:
- 7.5.1 Canada and Canada’s officials, servants, employees, agents, contractors, subcontractors and other legal representatives from all liability for loss (including economic loss), damage or injury (including any loss, damage or injury that may arise out of the negligence or omission of any of them) in any way caused by or resulting from any of the perils or injury against which it has covenanted in this Permit to insure; and
- 7.5.2 the First Nation and the First Nation’s officials, servants, employees, agents, contractors, subcontractors and other legal representatives from all liability for loss (including economic loss), damage or injury (including any loss, damage or injury that may arise out of the negligence or omission of any of them) in any way caused by or resulting from any of the perils or injury against which it has covenanted in this Permit to insure.
- 7.6 **Payment of Loss under Insurance**

- 7.6.1 The insureds to whom moneys are payable under any or all of the policies of insurance required to be obtained under subsections 7.2.2 or 7.3.2 will ensure that, notwithstanding the terms of the policy or policies, such insurance moneys are directed to be paid to the Trustee.
- 7.6.2 The insureds will direct the Trustee to use such insurance moneys for the repair or replacement of the Improvements for which such insurance moneys were paid against certificates of the Architect (or such other Person as the First Nation and the Permittee may agree upon) who is in charge of such repair or replacement.
- 7.7 **Cancellation of Insurance** – The Permittee will immediately notify each of Canada and the First Nation if any insurance policy in which such Party is an insured is:
- 7.7.1 cancelled or threatened to be cancelled, and promptly deliver evidence of a certificate of renewal or other evidence satisfactory to such Party that the insurance has been renewed or replaced at least 15 days before the cancellation of such policy; or
- 7.7.2 suspended, and promptly provide evidence to such Party that the policy has been reinstated or replaced.
- 7.8 **Payment of Insurance Premiums** – If the insurance premiums are not paid when they become due, then the insured Canada or First Nation may pay them or obtain any insurance that such Party deems necessary, in such Party's sole discretion, and such Party's payment for this are Additional Fees or First Nation Fees, as the case may be, immediately due and payable by the Permittee upon delivery of notice from such Party.
- 7.9 **Release of Insurable Claims** – So long as the Permittee is an emanation of the Crown, a Crown agent, or another Person authorized to utilize this section by each of Canada and the First Nation, sections 7.1 - 7.8 do not apply and the Permittee releases: (is this like Power & Light on N'Kwala?)
- 7.9.1 Canada and Canada's officials, servants, employees, agents, contractors, subcontractors and other legal representatives from all liability for loss (including economic loss), damage or injury in any way caused by or resulting from their respective actions or omissions (whether intentional or negligent) that results in bodily injury (including death), personal injury or property damage; and
- 7.9.2 the First Nation and the First Nation's officials, servants, employees, agents, contractors, subcontractors and other legal representatives from all liability for loss (including economic loss), damage or injury in any way caused by or resulting from their respective actions or omissions (whether intentional or negligent) that results in bodily injury (including death), personal injury or property damage.

## **8. LAWS / TAXES / UTILITIES**

### **8.1 Compliance with Laws**

- 8.1.1 The Permittee will comply with all applicable Laws regarding this Permit, the Permit Area and any activity on the Permit Area and will require and ensure that any other Person on the Permit Area because of the Permittee's rights under this Permit also complies with all applicable Laws regarding this Permit, the Permit Area and any activity on the Permit Area.
- 8.1.2 The Permittee will promptly deliver to each of Canada and the First Nation copies of any notice from an Authority requiring something to be done, or stop being done, on the Permit Area. Once the matter under the notice has been resolved to the Authority's satisfaction, the Permittee will promptly deliver proof, satisfactory to each of Canada and the First Nation, evidencing the resolution.
- 8.1.3 On request from Canada or the First Nation, the Permittee will either promptly deliver to such Party information from an Authority about the Permittee's compliance, or promptly arrange for written authorization to allow such Party to receive information from an Authority about the Permittee's compliance or non-compliance with applicable Laws.

### **8.2 Taxes**

- 8.2.1 Without limiting the generality of section 8.1, the Permittee will promptly pay all applicable taxes, trade licences, rates, levies, duties and assessments of any kind, together with all charges, penalties and interest imposed by any Authority, regarding the Permittee's interest in this Permit, the use and occupation of the Permit Area under this Permit or the payment of Fees or other amounts payable by the Permittee.
- 8.2.2 Without in any way relieving or modifying the obligation of the Permittee to comply with subsection 8.2.1, the Permittee may contest or appeal the validity or amount of any tax, trade licence, rate, levy, duty, assessment, charge, penalty or interest referred to in subsection 8.2.1, provided that the Permittee promptly commences any proceedings to contest or appeal such validity or amount and continues the proceedings with all due diligence and does not cause a charge, encumbrance or claim to be made against the Permit Area.
- 8.2.3 The Permittee will, on request by Canada or the First Nation, provide such Party with official receipts of the Authority or other proof satisfactory to such Party evidencing payment of any applicable taxes, trade licences, rates, levies, duties, assessments, charges, penalties or interest.

### **8.3 Utilities**

- 8.3.1 Neither Canada nor the First Nation will be required to provide any services, utilities or facilities to the Permit Area. The Permittee will secure or provide, and

will maintain, all services, utilities and facilities required from time to time for its use of the Permit Area.

- 8.3.2 The interruption of any service, utility or facility provided to the Permit Area will not be considered a disturbance of the Permittee's use of the Permit Area or render either Canada or the First Nation liable for any loss, injury or damages to the Permittee or relieve the Parties from their obligations under this Permit.

## 9. ENVIRONMENT

### 9.1 Compliance with Environmental Laws

- 9.1.1 The Permittee will not use the Permit Area to generate, manufacture, refine, treat, transport, store, handle, transfer, produce, Release or process any Contaminants, except as may be reasonably required for the Authorized Uses and in compliance with applicable Environmental Laws.
- 9.1.2 The Permittee will not carry out any operations or activities, or construct any Improvements, that in the reasonable opinion of either Canada or the First Nation materially increase the risk of liability to such Party (whether directly or indirectly) as a result of the application of Environmental Laws.
- 9.1.3 If Canada or the First Nation reasonably determines that the promulgation of, or the amendment to, any applicable Environmental Laws has materially increased the probability or extent of such Party's liability under such Environmental Laws with respect to the Authorized Uses, then the Permittee is responsible to each of Canada and the First Nation for such potential liability and the Parties will, if a Party reasonably considers it necessary, negotiate an amendment to this Permit to better reflect this assumption of, and provide a process of payment for, such potential liability by the Permittee.

### 9.2 Environmental Review

- 9.2.1 For the purposes of this section:

9.2.1.1 **“Decision Maker”** means the Minister, when the Minister is representing Canada under this Permit, and means the Council, or a Person designated by the Council, if the First Nation takes over the position of Canada under this Permit by operation of law;

9.2.1.2 **“Designated Project”** has the meaning given to it in the *Impact Assessment Act*, S.C. 2019, c. 28, s. 1, and any similar concept in any amended, succeeding, or replacement Law; and

9.2.1.3 **“Minister”** means the Minister of Indigenous Services or any successor or replacement Minister.

- 9.2.2 This section does not apply to a Designated Project.

- 9.2.3 The Permittee will deliver to the Decision Maker (and, if the Minister is the Decision Maker, then also to the First Nation) any information about a proposed Project reasonably requested by the Decision Maker, including:
- 9.2.3.1 an environmental review report of such Project that includes such information as the Decision Maker reasonably requires; and
  - 9.2.3.2 a certificate from an Architect or Engineer certifying that such Project complies with the Construction Plan and this Permit,  
  
to enable the Decision Maker:
  - 9.2.3.3 to determine the environmental effects of such Project as the Decision Maker may by applicable Law be required to make; or
  - 9.2.3.4 if no applicable Law requires such determination, then, in the discretion of the Decision Maker, to determine whether or not, subject to any mitigation measures that the Decision Maker reasonably requires, the Project is likely to cause any significant adverse environmental effects.
- 9.2.4 If the Decision Maker is not reasonably satisfied with any information delivered under subsection 9.2.3, then the Decision Maker will notify the Permittee of each inadequacy (and, if the Minister is the Decision Maker, deliver a copy of such notification to the First Nation.) The Permittee will ensure that the inadequacies are addressed to the reasonable satisfaction of the Decision Maker, which revised information the Permittee will deliver to the Decision Maker (and, if the Minister is the Decision Maker, then also to the First Nation.)
- 9.2.5 If the Decision Maker determines that the Project may proceed, then the Permittee will:
- 9.2.5.1 ensure that the Project, including site preparation, construction, operation and decommissioning of the Project, will comply with any mitigation measures, including monitoring and compliance, that the Decision Maker reasonably requires under such determination; and
  - 9.2.5.2 deliver to the Decision Maker (and, if the Minister is the Decision Maker, then also to the First Nation) certification by an Architect or Engineer, or applicable professional, of the implementation, within the timelines specified in such determination, of all mitigation measures, including monitoring and compliance, required under such determination.
- 9.2.6 If the Decision Maker reasonably determines that the Project may not proceed, then:
- 9.2.6.1 the Decision Maker will deliver reasons for such determination to the Permittee (and, if the Minister is the Decision Maker, deliver a copy to the First Nation); and

9.2.6.2 the Permittee releases Canada, the Decision Maker, the First Nation, and their respective officials, servants, employees, agents, contractors, subcontractors and other legal representatives for the inability of the Permittee to use the Permit Area as anticipated.

9.3 **Environmental Bond** – The Permittee acknowledges that Canada may require security for the decommissioning of a Project as a mitigation measure in a determination under an Environmental Review of such Project. If such security is required, then the Permittee will provide Canada with security (such as an environmental bond, letter of credit or other security) reasonably acceptable to Canada, in an amount reasonably acceptable to Canada, for the decommissioning of such Project. That security will be provided to Canada promptly after notification and will remain a paid up, valid security until the completion of the decommissioning of the Project, whether that is before or after this Permit ends.

#### 9.4 **Environmental Site Assessment**

9.4.1 Prior to the execution of this Permit, the Permittee completed an environmental site assessment of the environmental condition of the Permit Area immediately prior to the Commencement Date, report of which is titled [Name of Report] and dated [Month Day, Year], and states that it may be relied upon by all Parties and the Permittee agrees that all Parties may rely upon it.

9.4.2 Within 8 months before the expiration of the Term, or within 120 days after the earlier termination of this Permit, the Permittee will complete an environmental site assessment of the environmental condition of the Permit Area at that time and will provide each of Canada and the First Nation with a report, reasonably satisfactory to each of them, on such condition. The report will state that it may be relied upon by all Parties and the Permittee agrees that all Parties may rely upon it.

9.4.3 The environmental site assessment reports referred to in subsections 9.4.1 and 9.4.2 will be *prima facie* evidence of the environmental condition of the Permit Area immediately prior to the Commencement Date and immediately prior to the expiration of this Permit or immediately after the earlier termination of this Permit, as the case may be.

9.4.4 By the end of the Term, or within 60 days after the report referred to in subsection 9.4.2 is issued if this Permit ends early, the Permittee will remediate any Contamination of the Permit Area arising from the Permittee's (or any Person on the Permit Area because of the Permittee's rights under this Permit) use of the Permit Area to the environmental condition of the Permit Area identified in the report referred to in subsection 9.4.1 or to such other environmental condition as may be reasonably acceptable to both Canada and the First Nation, but, if Canada and the First Nation disagree upon such other environmental condition, then to the more stringent requirements of either of them.

## 9.5 Contaminants and Releases

9.5.1 By the end of the Term or within 90 days after the earlier termination of this Permit, the Permittee will remove from the Permit Area any Contaminants that are, or have been, located, stored or incorporated on the Permit Area by the Permittee or any Person on the Permit Area because of the Permittee's rights under this Permit and, upon removal, will promptly provide each of Canada and the First Nation with documentation satisfactory to each of them, confirming the completion of the removal satisfactory to each of them and any Authority.

9.5.2 Upon the Release of any Contaminants by the Permittee or any Person on the Permit Area because of the Permittee's rights under this Permit, the Permittee will:

9.5.2.1 immediately deliver notice to Canada, the First Nation and any appropriate Authority of the occurrence of the Release;

9.5.2.2 ensure that any notice includes details relating to the Release, including the time and extent of the Release, the estimated amount of such Contaminants, the remedial action taken prior to the delivery of the notice, and the remedial action that the Permittee intends to take in order to contain or rectify the Release;

9.5.2.3 immediately remove from the Permit Area such Contaminants, and take all remedial action necessary to fully rectify the effects of the Release, in compliance with all reasonable requests by each of Canada and the First Nation and all applicable Environmental Laws;

9.5.2.4 provide each of Canada and the First Nation with an environmental site assessment report, satisfactory to each of them specifying the Permittee's activities under paragraph 9.5.2.3 and the state of the Permit Area after the completion of such activities as compared to the state of the Permit Area prior to the Release, and stating that such report may be relied upon by all Parties, and the Permittee agrees that all Parties may rely on such report; and

9.5.2.5 undertake such further activities as either Canada or the First Nation may reasonably require to remove such Contaminants and rectify the Release, based on the report referred to in this subsection.

9.6 **Representations and Warranties** – The Permittee represents and warrants to each of Canada and the First Nation that:

9.6.1 the Permittee's operations on the Permit Area do not involve the location, storage, incorporation, manufacture or Release of any Contaminants except in accordance with this Permit; and



9.6.2 neither the Permittee nor its affiliates or their respective directors or senior officers have been prosecuted for any offences or received any orders or administrative, monetary or other similar penalties under any Environmental Laws.

9.7 **Survival of Article** – This article survives when this Permit ends.

## 10. ASSIGNMENTS

10.1 **Assignments Require Consent** – The Permittee may not assign its interest in this Permit without the consent of each of Canada and the First Nation and no assignment is valid until the proposed assignee has executed a written agreement with the Parties substantially in the form of the Assignment Consent Agreement attached as Schedule B.

10.2 **No Relief by Assignment** – An assignment will not relieve or discharge the Permittee from any of its covenants or agreements under this Permit unless the Party benefitting from such covenant or agreement has agreed, in writing, to release the Permittee from such obligation or liability. For greater certainty, any such agreements by Canada and the First Nation need not be consistent with each other.

10.3 **Registration** – The Permittee will ensure that all assignments of its interest in this Permit are submitted to the Registry in a registerable form promptly after execution.

## 11. DEFAULTS AND EARLY TERMINATION

### 11.1 Insolvency

11.1.1 Each of the following are considered to be an event of insolvency:

11.1.1.1 When the Permittee makes an assignment for the benefit of creditors or otherwise starts proceedings under any bankruptcy or insolvency Laws.

11.1.1.2 When a receiver (including a receiver-manager, interim receiver, trustee, liquidator or other custodian) of the Permittee's interest in the Permit Area is appointed.

11.1.1.3 When the Permittee is declared or becomes bankrupt or insolvent.

11.1.1.4 If the Permittee is a corporation or limited partnership, when any application, petition, certificate or order is made or granted to wind-up or dissolve the Permittee, voluntarily or not.

11.1.2 The Permittee will promptly deliver notice to each of Canada and the First Nation of the happening of any of the events in subsection 11.1.1.

11.1.3 An event of insolvency is deemed to be an incurable default of this Permit and, upon such default, Canada may, without providing a default notice, take advantage of any remedy available to it at law, including declaring the Term ended by delivering a termination notice to the Permittee, with a copy to the First Nation.

**11.2 Defaults on Obligations Owed to Canada**

11.2.1 If the Permittee defaults on any obligation owed to Canada under this Permit, then Canada may deliver to the Permittee a default notice, with a copy to the First Nation.

11.2.2 The Permittee will cure the default identified in a default notice within 15 days of delivery for a default of an outstanding Fees payment under the Permit. If the Permittee does not cure such default within 15 days, then Canada may take advantage of any remedy available to it at law, including declaring the Term ended by delivering a termination notice to the Permittee, with a copy to the First Nation.

11.2.3 The Permittee will cure the default identified in a default notice within 30 days of delivery for a default of any obligation other than an outstanding Fees obligation. If such default:

11.2.3.1 can reasonably be cured within 30 days after the default notice is delivered and the Permittee fails to cure such default within the 30 days; or

11.2.3.2 cannot reasonably be cured within 30 days after the default notice is delivered and the Permittee does not begin to cure such default within the 30 days to the reasonable satisfaction of Canada or continue to cure such default with due diligence after beginning to cure,

then Canada may take advantage of any remedy available to it at law, including declaring the Term ended by delivering a termination notice to the Permittee, with a copy to the First Nation.

11.2.4 If a default is not cured within the time provided for under this Permit, then Canada may, with unrestricted access to the Permit Area, cure such default in Canada's sole discretion. Any of Canada's expenses will be Additional Fees promptly payable by the Permittee upon delivery of notice from Canada.

11.2.5 If Canada begins to cure a default, then Canada will have no obligation to continue to cure such default to completion and Canada is not liable for any losses or expenses suffered by the Permittee, or any Person on the Permit Area due to the rights of the Permittee under this Permit, arising due to Canada's actions under this section.

**11.3 Defaults on Obligations Owed to the First Nation**

11.3.1 If the Permittee defaults on any obligation owed to the First Nation under this Permit, then the First Nation may deliver to the Permittee a default notice, with a copy to Canada.

11.3.2 The Permittee will cure the default identified in a default notice within 30 days of delivery. If such default:

11.3.2.1 can reasonably be cured within 30 days after delivery of the notice and the Permittee fails to cure such default within the 30 days; or

11.3.2.2 cannot reasonably be cured within 30 days after delivery of the notice and the Permittee does not begin to cure such default within the 30 days to the reasonable satisfaction of the First Nation or continue to cure such default with due diligence after beginning to cure,

then the First Nation may take advantage of any remedy available to it at law. For greater certainty, the First Nation may not terminate this Permit as a remedy.

11.3.3 If a default is not cured within the time provided for under this Permit, then the First Nation may, with unrestricted access to the Permit Area, cure such default in the First Nation's sole discretion. Any of the First Nation's expenses will be First Nation Fees promptly payable by the Permittee upon delivery of notice from the First Nation.

11.3.4 If the First Nation begins to cure a default, then the First Nation will have no obligation to continue to cure such default to completion and the First Nation is not liable for any losses or expenses suffered by the Permittee, or any Person on the Permit Area due to the rights of the Permittee under this Permit, arising due to the First Nation's actions under this section.

## **12. END OF PERMIT**

12.1 **Surrender of the Permit** – When this Permit ends, the Permittee will peaceably vacate, and surrender and yield its use of, the Permit Area to Canada and the First Nation, as to their respective interests, in the condition required by the terms of this Permit and, subject to subsection 12.2, all Improvements will be the property of the First Nation absolutely, free of all encumbrances and for no compensation.

12.2 **Notice to Remove Improvements** – If, on or before the 90th day after this Permit ends, the First Nation notifies the Permittee that the Improvements described in such notice are to be removed from the Permit Area, then the Permittee will promptly remove them and will leave the remainder of the Permit Area in good and substantial repair and condition and free from all debris to the reasonable satisfaction of the First Nation.

- 12.3 **Failure to Remove Improvements** – If the Permittee does not promptly remove the Improvements as required under section 12.2, then the First Nation may remove and dispose of them in the First Nation’s sole discretion and return the Permit Area to a good and substantial repair and condition and free from all debris. Upon notice from the First Nation, the Permittee will promptly pay all First Nation Fees expenses incurred under this section. The First Nation will not be responsible to the Permittee, or any Person on the Permit Area due to the rights of the Permittee under this Permit, for any loss suffered by the Permittee or such Person, as the case may be, as a result of the First Nation’s actions under this section.
- 12.4 **Remove Debris** – When this Permit ends, the Permittee will promptly remove any garbage or debris from the Permit Area so that the Permit Area is in a clean condition to the reasonable satisfaction of the First Nation.
- 12.5 **Access After Termination** – The Permittee is entitled to access the Permit Area when this Permit ends only at the reasonable times and on the reasonable conditions set by the First Nation, and only to be able to perform any of the Permittee's obligations that survive after this Permit ends.
- 12.6 **Survival of Article** – This article survives when this Permit ends.

### 13. INDEMNITIES

- 13.1 **Permittee’s Indemnity of Canada** – The Permittee will indemnify and hold harmless Canada and Canada’s officials, servants, employees, agents, contractors, subcontractors and other legal representatives from and for any claims, demands, actions, suits or other proceedings, judgments, damages, penalties, fines, costs (including reasonable legal fees, on a solicitor and own client basis, and reasonable consultant and expert fees), liabilities, losses (including any diminution in the market value of the Permit Area, based on the Authorized Uses) and sums paid in settlement of any claims that arise during or after the Term and are in any way based upon, arise out of or are connected with:

13.1.1 a default of any of the Permittee's obligations under this Permit;

13.1.2 any injury to, or death of, any Person on the Permit Area during the Term in any way due to the actions or omissions of the Permittee, or any Person on the Permit Area due to the rights of the Permittee under this Permit;

13.1.3 any damage to, or loss of, property by any Person during the Term in any way due to the actions or omissions of the Permittee, or any Person on the Permit Area due to the rights of the Permittee under this Permit;

13.1.4 Canada reviewing a Construction Plan;

13.1.5 the Decision Maker determining under an Environmental Review that a Project should not proceed; or

13.1.6 Canada's curing or attempt to cure a default of this Permit,

but not if due to the Gross Negligence or Willful Misconduct of Canada or Canada's officials, servants, employees, agents, contractors, subcontractors or other legal representatives, unless such negligence or misconduct involves a peril against which the Permittee is obligated to obtain and maintain insurance.

**13.2 Permittee's Indemnity of First Nation** – The Permittee will indemnify and hold harmless the First Nation and the First Nation's officials, servants, employees, agents, contractors, subcontractors and other legal representatives from and for any claims, demands, actions, suits or other proceedings, judgments, damages, penalties, fines, costs (including reasonable legal fees, on a solicitor and own client basis, and reasonable consultant and expert fees), liabilities, losses (including any diminution in the market value of the Permit Area, based on the Authorized Uses) and sums paid in settlement of any claims, that arise during or after the Term and are in any way based upon, arise out of or are connected with:

13.2.1 a default of any of the Permittee's obligations under this Permit;

13.2.2 any injury to, or death of, any Person on the Permit Area during the Term in any way due to the actions or omissions of the Permittee, or any Person on the Permit Area due to the rights of the Permittee under this Permit;

13.2.3 any damage to, or loss of, property by any Person during the Term in any way due to the actions or omissions of the Permittee, or any Person on the Permit Area due to the rights of the Permittee under this Permit;

13.2.4 the First Nation reviewing a Construction Plan;

13.2.5 the First Nation's curing or attempt to cure a default of this Permit; or

13.2.6 the First Nation's removal and disposal of any Improvements and Trade Fixtures, and returning the Permit Area to a good and substantial repair and condition and free from all debris, under section 12.3,

but not if due to the Gross Negligence or Willful Misconduct of the First Nation or the First Nation's officials, servants, employees, agents, contractors, subcontractors or other legal representatives, unless such negligence or misconduct involves a peril against which the Permittee is obligated to obtain and maintain insurance.

**13.3 Survival of Article** – This article survives when this Permit ends.

## 14. DELIVERY

### 14.1 General Requirement

14.1.1 All notices, requests, demands, consents and approvals under this Permit, which will be in writing, and all Fees or First Nation Fees to be paid, will be delivered in accordance with this article to the following addresses:

To Canada:

Director, Lands and Economic Development  
Indigenous Services Canada  
British Columbia Regional Office  
600-1138 Melville Street  
Vancouver, British Columbia V6E 4S3  
Fax: (604) 775-7149

To the First Nation:

[First Nation]  
[First Nation's Address]  
Fax: [#]

To the Permittee:

[Permittee's Name]  
[Permittee's Address]  
Fax: [#]

14.1.2 If the postal service is interrupted or threatened to be interrupted, then any notice, request, demand, consent and approval will only be sent by means other than mail.

### 14.2 Date of Delivery

14.2.1 With respect to any Fees or First Nation Fees, they will not be considered to be delivered until actually received by Canada or the First Nation, respectively .

14.2.2 With respect to any notice, request, demand, consent or approval, if any question arises as to the date on which delivery occurred, then it will be deemed to have been delivered:

14.2.2.1 if sent by fax, the day of transmission if transmitted before 3:00 p.m., otherwise, the next day;

14.2.2.2 if sent by mail, on the sixth day after the notice was mailed; or

14.2.2.3 if sent by any means other than fax or mail, the day it was received.

14.3 **Change of Contact Information** – Any Party may change its contact information shown in this Permit by informing the other Parties of the new contact

information, and the change will take effect on the effective date set out in the notice or 30 days after the notice is delivered, whichever is later.

## **15. DISPUTE RESOLUTION**

### **15.1 Disputes Involving Canada**

15.1.1 Any dispute arising from or under this Permit involving Canada that is not resolved by negotiation will be resolved by referral, in the first instance, to the Federal Court of Canada or any replacement or successor court having jurisdiction.

15.1.2 If the Federal Court of Canada refuses jurisdiction or does not determine the dispute, then a Party to the dispute may refer it to any other court that has jurisdiction and the Parties may exercise any other right or remedy they have under this Permit or otherwise.

### **15.2 Disputes Not Involving Canada**

15.2.1 Any dispute arising from or under this Permit solely between the First Nation and the Permittee will be resolved as follows:

15.2.1.1 Negotiation: The Party who wishes a dispute to be resolved will deliver a dispute notice to the other Party. Each Party will promptly designate a senior representative who will attempt in good faith to resolve the dispute by negotiation.

15.2.1.2 Mediation: If negotiation does not resolve the dispute within 15 days of delivery of the dispute notice, then either Party may deliver a mediation notice to the other Party. The Parties will then promptly appoint a qualified, impartial and experienced mediator, the cost of which will be paid equally by both Parties. If the Parties cannot agree on a mediator within 15 days of delivery of the mediation notice, then the mediator will be appointed by the British Columbia International Commercial Arbitration Centre (or its successor, or a similar body if neither is available). Within 10 days of appointment of a mediator, each Party will provide the mediator and each other with a written statement of its position about the dispute and summary of the arguments supporting its position. The mediator will meet with the Parties in his or her sole discretion in an attempt to resolve the dispute. The Parties will provide any additional information requested by the mediator. The mediator may hire experts, the cost of which will be paid equally by the Parties unless the mediator orders a different division.

15.2.1.3 Arbitration: If the dispute is not resolved within 30 days of the appointment of a mediator, then, on application by any Party, the dispute may be referred to a single arbitrator under the *Arbitration Act*,

RSBC 1996, c 55. The decision of the arbitrator is final and binding on the Parties. The cost of the arbitrator will be paid equally by the Parties unless the arbitrator orders a different division.

15.2.2 For greater certainty, if the First Nation takes over the position of Canada under this Permit by operation of law, then any dispute arising between the Parties from or under this Permit will be resolved under this section 15.2 and not section 15.1.

## 16. MISCELLANEOUS

- 16.1 **Deemed Conditions and Covenants** – All agreements, terms, conditions, covenants, provisions, duties and obligations to be performed or observed by the Permittee under this Permit for the benefit of Canada are deemed to be conditions as well as covenants.
- 16.2 **No Presumption** – There will be no presumption that any ambiguity in any of the terms of this Permit will be interpreted in favour of any Party.
- 16.3 **No Cost to Canada or First Nation** – Except as otherwise explicitly set out in this Permit, neither Canada nor the First Nation will be responsible during the Term for any costs, charges or expenses arising from or relating to the Permit Area, the use or occupancy of the Permit Area, or any of the Permittee's obligations under this Permit.
- 16.4 **Binding on Successors** – This Permit will be for the benefit of and be binding upon each Party's respective heirs, successors, executors, administrators, assigns and other legal representatives.
- 16.5 **Remedies are Cumulative** – Notwithstanding any part of this Permit that provides a specific remedy, all remedies under this Permit or at law may be exercised at the same time and the exercise of one remedy does not preclude the exercise of any other remedy.
- 16.6 **No Waiver** – No condoning, excusing or overlooking of any default of this Permit will operate as a waiver by, or otherwise affect the respective rights of, the other Parties in respect of any continuing or subsequent default. No waiver of these rights will be inferred from anything done or omitted to be done by any Party, except by an express waiver in writing.
- 16.7 **No Assumption of Responsibility** – No consent or absence of consent by either Canada or the First Nation will in any way be an assumption of responsibility or liability by such Party for any matter subject to or requiring such Party's consent.
- 16.8 **Not a Joint Venture** – Nothing in this Permit will be construed as creating a relationship of agency, partnership, joint venture or other such association between any of the Parties.



- 16.9 **Corporate Authority** – The Permittee represents and warrants that the Permittee:
- 16.9.1 has the corporate authority under its documents of incorporation to enter into this Permit and to perform all of the covenants and agreements contained in this Permit;
  - 16.9.2 is a corporation duly incorporated under the Laws of the province of British Columbia;
  - 16.9.3 is not a reporting company and is a valid and subsisting company in good standing with the British Columbia corporate registry; and
  - 16.9.4 will remain in good standing with the British Columbia corporate registry.
- 16.10 **Authority** – The Permittee represents and warrants that:
- 16.10.1 the Permittee has the corporate authority under its documents of incorporation to enter into this Permit and to perform all of the covenants and agreements contained in this Permit;
  - 16.10.2 the Permittee is the general partner of a limited partnership formed under the Laws of British Columbia;
  - 16.10.3 the Permittee is a corporation duly incorporated under the Laws of British Columbia, is not a reporting company, and is a valid and subsisting company in good standing with the British Columbia corporate registry;
  - 16.10.4 the Permittee will remain in good standing with the British Columbia corporate registry; and
  - 16.10.5 the limited partnership agreement sets out that [#] percent of the units of the partnership are beneficially held by the limited partner and [#] percent of the units are held by the general partner.
- 16.11 **Counterpart Execution** – This Permit may be executed in one or more counterparts, each of which is considered to be an original but all of which together constitute one and the same document. Each Party will promptly deliver its originally executed Permit to the other Parties.

**The Parties** have executed this Permit on the dates indicated below.

**HER MAJESTY THE QUEEN IN RIGHT  
OF CANADA**, as represented by the  
Minister of Indigenous Services

\_\_\_\_\_  
[Name]

Date signed by Canada:\_\_\_\_\_

EXECUTED in the presence of: )

) **[FIRST NATION]**, as represented by the  
) Council  
)  
)  
)  
)  
)  
)

\_\_\_\_\_  
[Name]

\_\_\_\_\_  
Witness as to the First Nation's  
authorized signatories )

) [Name]

) Date signed by the First Nation:\_\_\_\_\_

)  
) We are authorized to sign on behalf of the  
) First Nation  
)

EXECUTED in the presence of: )

) **[PERMITTEE'S NAME]**  
)  
)

) **If the Permittee is a limited partnership,**  
) **they sign as:**  
)  
)

) **[PERMITTEE'S NAME]**, general partner of  
) **[NAME OF LIMITED PARTNERSHIP]**  
)  
)

\_\_\_\_\_  
Witness as to the Permittee's  
authorized signatory )

) [Name]

) [Title]

) Date signed by the  
) Permittee:\_\_\_\_\_

)  
) I am authorized to sign on behalf of the  
) Permittee  
)

**SCHEDULE A**

**BAND COUNCIL RESOLUTION**

WHEREAS:

- A. We have negotiated a “Permit” to be entered into between Her Majesty in right of Canada, [First Nation], and [Permittee's Name], to which this resolution is to be attached as a schedule; and
- B. The terms used in this resolution that are defined in the Permit have the same meaning as in the Permit.

BE IT RESOLVED that the Council, on behalf of [First Nation]:

- A. has read and understood the Permit terms;
- B. has been advised by Canada to receive independent legal and financial advice about the Permit before executing it and has been advised to continue to obtain such advice about the First Nation’s rights and obligations throughout the Term of the Permit;
- C. consents to the execution of the Permit on its terms; and
- D. authorizes any two members of the Council to execute the Permit on behalf of the First Nation.

**DATED** \_\_\_\_\_, 20\_\_.

Quorum for the Council is \_\_\_\_\_ members.

\_\_\_\_\_  
Chief

\_\_\_\_\_  
Councillor

\_\_\_\_\_  
Councillor

\_\_\_\_\_  
Councillor

\_\_\_\_\_  
Councillor

**SCHEDULE B**

**ASSIGNMENT CONSENT AGREEMENT**

This agreement commences on [Month Day, Year] and is made

BETWEEN:

**HER MAJESTY THE QUEEN IN RIGHT OF CANADA,**  
as represented by the Minister of Indigenous Services

(“Canada”)

AND:

**[FIRST NATION],**  
a band within the meaning of the *Indian Act* as represented by the Council

(the “First Nation”)

AND:

**[PERMITTEE’S NAME]** [If the Permittee is a corporation, limited partnership, society, utility or municipality, then type a comma after the Permittee’s Name and include the statute under which the entity received its authority and its incorporation number, if applicable. Corporate example: , incorporated under the *Business Corporations Act*, SBC 2002, c. 57; Incorporation No. X12345 **Limited Partnership example:** , incorporated under the *Business Corporations Act*, SBC 2002, c. 57; Incorporation No. X12345, as general partner of **[NAME OF LIMITED PARTNERSHIP]**, registered under the *Partnership Act*, RSBC 1996 c 348; Registration No. X12345 **End of option]**

(the “Permittee”)

AND:

**[ASSIGNEE’S NAME]** [If the Assignee is a corporation, limited partnership, society, utility or municipality, then type a comma after the Assignee’s Name and include the statute under which the entity received its authority and its incorporation number, if applicable. Corporate example: , incorporated under the *Business Corporations Act*, SBC 2002, c. 57; Incorporation No. X12345 **Limited Partnership example:** , incorporated under the *Business Corporations Act*, SBC 2002,

c. 57; Incorporation No. X12345, as general partner of **[NAME OF LIMITED PARTNERSHIP]**, registered under the *Partnership Act*, RSBC 1996 c 348; Registration No. X12345 **End of option]**

(the “Assignee”)

(Collectively the “Parties”).

## **BACKGROUND**

- A. Canada authorized the Permittee to use the Permit Area, by way of a permit to which the First Nation is a Party and which is dated [Month Day, Year] and registered in the Registry under No. [#] (the “Permit”).
- B. The Permittee wants to assign its right and interest in the Permit to the Assignee by entering into an assignment agreement, which is attached as Schedule “A” to this agreement (the “Assignment”).
- C. Under the Permit, the Assignment is not valid without the consent of each of Canada and the First Nation and without the Parties entering into this agreement.

**NOW THEREFORE**, in consideration of the representations, warranties, obligations, covenants and agreements in this agreement, the Parties agree as follows:

### **1. Consent**

- 1.1 Each of Canada and the First Nation hereby consent to the Assignment.

### **2. Covenants and Representations of Assignee**

- 2.1 The Assignee covenants with each of Canada and the First Nation to observe and perform all of the obligations, covenants and agreements in the Permit to be observed or performed by the Permittee from and after the date of the assignment of the Permit.
- 2.2 The Assignee has inspected the Permit Area and confirms that neither Canada, the First Nation, their respective officials, servants, employees, agents, contractors, subcontractors or other legal representatives, the Council, nor any member of the First Nation, have made any representations or warranties with respect to:
  - 2.2.1 the condition of the Permit Area, including the Permit Area’s compliance with applicable Laws or the presence of Contaminants on the Permit Area;
  - 2.2.2 issues of title or encumbrances affecting title;
  - 2.2.3 access to and from the Permit Area; or

- 2.2.4 the suitability of the Permit Area for the Assignee.
- 2.3 The Assignee makes the same representations and warranties to each of Canada and the First Nation that the Permittee made in the Permit.
- 2.4 The Assignee represents and warrants to each of Canada and the First Nation that the person or persons signing this agreement on the Assignee's behalf have the authority to bind the Assignee to this agreement.

**3. General**

- 3.1 The Permit will survive the execution of this agreement and will not merge in this agreement.
- 3.2 Any terms not defined in this agreement but defined in the Permit have the same meanings that are given to them in the Permit.
- 3.3 This agreement will ensure to the benefit of and be binding upon the Parties and their respective heirs, administrators, successors, representatives and assigns.
- 3.4 All headings are for convenience and reference only. They are not to be used to define, limit, enlarge, modify or explain the scope or meaning of any provision.
- 3.5 This agreement may be executed in one or more counterparts, each of which is considered to be an original but all of which together constitute one and the same document.

The Parties have executed this agreement as of the date first written above.

**HER MAJESTY THE QUEEN IN RIGHT OF CANADA**, as represented by the Minister of Indigenous Services

\_\_\_\_\_  
[Name]

Date signed by Canada: \_\_\_\_\_

EXECUTED in the presence of:

) **[FIRST NATION]**, as represented by the  
) Council

)  
)  
)  
)  
)

\_\_\_\_\_  
[Name]

\_\_\_\_\_  
Witness as to the First Nation's  
authorized signatories

)  
)  
)  
)  
)  
)  
)

\_\_\_\_\_  
[Name]

Date signed by the First Nation: \_\_\_\_\_

We are authorized to sign on behalf of the  
First Nation

EXECUTED in the presence of:

)  
)  
)

**[PERMITTEE'S NAME]**

**If the Permittee is a limited partnership,  
they sign as:**

**[PERMITTEE'S NAME], general partner of  
[NAME OF LIMITED PARTNERSHIP]**

\_\_\_\_\_  
As to the Permittee's authorized  
signatory

)  
)  
)  
)  
)

\_\_\_\_\_  
[Name]

I am authorized to sign on behalf of the  
Permittee

EXECUTED in the presence of:

)  
)

**[ASSIGNEE'S NAME]**

**If the Assignee is a limited partnership,  
they sign as:**

**[ASSIGNEE'S NAME], general partner of  
[NAME OF LIMITED PARTNERSHIP]**

\_\_\_\_\_  
As to the Assignee's authorized  
signatory

)  
)  
)  
)

\_\_\_\_\_  
[Name]

I am authorized to sign on behalf of the  
Assignee

**SCHEDULE “A” TO AN ASSIGNMENT CONSENT AGREEMENT**

*(attach a copy of the assignment agreement)*