

## AGREEMENT

THIS AGREEMENT is dated for reference the 16 day of Jan 2014 *Q.*

AMONG:

**HER MAJESTY THE QUEEN IN RIGHT OF THE  
PROVINCE OF BRITISH COLUMBIA**, as represented by the  
Minister of Technology, Innovation and Citizens' Services

(the "**Province**")

AND:

Kwikwetlem First Nation , as represented by its Chief and  
Council.

( "**Kwikwetlem**")

(each a "**Party**" and together the "**Parties**")

## WHEREAS:

- A. The Province is proposing to dispose of the Lands under the Release of Assets for Economic Generation project and has consulted with Kwikwetlem with respect to the Proposed Disposition.
- B. Kwikwetlem asserts aboriginal rights, including aboriginal title in its traditional territory, which includes areas encompassed by the Lands.
- C. The Province and Kwikwetlem wish to enter into this Agreement to establish certainty with respect to the fulfilment of any obligations that the Province may have to consult and accommodate Kwikwetlem for any Infringements that may arise as a result of the Proposed Disposition or any related statutory approvals on Kwikwetlem's asserted aboriginal rights, including aboriginal title, whether or not substantiated in law, on the terms and conditions set out in this Agreement.

NOW THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by each Party, the Parties covenant and agree as follows:

## 1. DEFINITIONS

- 1.1 In this Agreement the following terms and expressions have the following meanings:

"**Agreement**" means this Agreement and all of its schedules, and any amendments or extensions negotiated in furtherance of this Agreement;

**“Council”** has the meaning given to the phrase “council of the band” as set out in the *Indian Act*;

**“Indian Act”** means the *Indian Act*, R.S.C. 1985, c. I-5, as amended;

**“Infringement”** includes, but is not restricted to, claims based upon:

- (a) challenges to the constitutional validity of provincial legislation authorizing the granting or authorization of interests in the Lands;
- (b) the granting or authorization of interests in the Lands to any person by the Province or the BC Transportation and Financing Authority (“BCTFA”);
- (c) the exercise by any person of rights associated with interests granted or authorized by the Province or the BCTFA with respect to the Lands;
- (d) decisions by the Province BCTFA relating to the Lands;
- (e) breach or alleged breach of fiduciary duty by the Province relating to the Lands;  
and
- (f) any other aspect of infringement by the Province or the BCTFA that may be defined, from time to time, by the courts;

**“Kwkwetlem”** means Kwkwetlem First Nation, a band as defined by the *Indian Act*, and includes its Members;

**“Lands”** means the Provincial properties identified as Parcels #1, 2, 3, 4, 5, 6, 7, 8, 9 10, 11, 12, 14, 15, 16, 17, 18, 21, 33, 43, and 44 in Schedule “A” as depicted on the map attached as Schedule “B” and the properties described in Schedule “C”;

**“Member”** means a member of Kwkwetlem as defined by the *Indian Act*, of Kwkwetlem;

**“Proposed Disposition”** means the sale or disposition of the Lands, including the granting of any interest in the Lands, any future construction, development, maintenance, access, operation or regulation of the Lands or the future disposition of any interest in the Lands by the Province or BCTFA, requests to provide statutory approval for the disposition of the Lands, any related statutory approvals, and all other matters incidental to any of these activities.

**“Resolution”** means a resolution passed by Kwkwetlem at a duly convened meeting of Kwkwetlem Chief and Council.

## **2. CERTAINTY**

- 2.1 In consideration of the payment to be made by the Province under section 3.1 Kwikwetlem acknowledges and agrees that:
- (a) the consultation undertaken by the Province and accommodation set out in this Agreement are acceptable to Kwikwetlem and constitutes full and sufficient consultation and accommodation for all Infringement of the aboriginal rights and title asserted by Kwikwetlem, whether or not substantiated in law, that may result from the Proposed Disposition;
  - (b) Kwikwetlem will not challenge or impede, directly or indirectly or otherwise, the Proposed Disposition; and
  - (c) any action taken by Kwikwetlem to frustrate, delay, stop or otherwise impede the Proposed Disposition will cause loss and damage to the Province and the BCTFA which cannot be adequately compensated for by an award of damages and that an injunction to restrain such action would be the only adequate remedy.
- 2.2 Kwikwetlem acknowledges that it has entered into this Agreement on its own behalf, and on behalf of its Members.
- 2.3 Kwikwetlem, on its own behalf, and on behalf of its Members, hereby releases and forever discharges the Province and the BCTFA, its respective employees, servants, agents, successors and assigns, of and from all actions, causes of action, claims, proceedings, debts, duties, demands, damages, interest, fines and costs, expenses and compensation of whatsoever amount, nature and kind arising from all past, present or future Infringement by the Province of all Kwikwetlem's aboriginal rights or aboriginal title, whether or not substantiated in law, as a result of the Proposed Disposition, either directly or indirectly, or any consequential action taken on or within the Lands.
- 2.4 Without restricting the generality of section 2.3, Kwikwetlem, on its own behalf, and on behalf of its Members, covenants not to bring or continue any action or other proceeding, at law or in equity, on its own behalf or on behalf of its Members, against the Province or the BCTFA, in regard to the subject matter of the release in section 2.3.
- 2.5 Kwikwetlem indemnifies the Province and the BCTFA for all claims made against the Province, its employees, servants, agents, successors, and assigns respecting:
- (a) the subject matter of the release in section 2.3;
  - (b) the covenant by Kwikwetlem in section 2.4; and
  - (c) any breach of this Agreement by Kwikwetlem.
- 2.6 For greater certainty, this Agreement, including sections 2.1 to 2.5, is not intended to provide, and does not provide, a release, settlement, agreement or indemnity for any claims or Infringement of aboriginal rights and aboriginal title, arising directly or

indirectly, in respect of any or matters or lands other than with respect to the Proposed Disposition or the Lands..

2.7 This Agreement does not:

- (a) constitute a treaty or land claims agreement within the meaning of sections 25 or 35 of the *Constitution Act, 1982* and is separate and apart from the British Columbia treaty process;
- (b) abrogate or derogate from the aboriginal rights and aboriginal title of Kwikwetlem, except as expressly contemplated by this Agreement;
- (c) create, recognize, define, deny, limit or amend any of the rights and responsibilities of the Parties except as contemplated by this Agreement; or
- (d) limit any position either Party may take in present or future negotiations or any legal proceedings, except as contemplated by this Agreement.

2.8 This Agreement is intended to be binding upon the Parties from the time of its signing.

2.9 Kwikwetlem agrees to deliver a Resolution to the Province, on or before the execution date of this Agreement, authorizing Kwikwetlem's representative to sign this Agreement.

2.9 This Agreement is binding upon the Parties from the time of its signing.

### **3. PAYMENT**

3.1 The Province will, within sixty (60) days of executing this Agreement, deliver a payment in the sum of eight million dollars (\$8,000,000.00) to Kwikwetlem by delivering a cheque to Kwikwetlem at its address provided in paragraph 5.13.

### **4. NO PREJUDICE AND NO ADMISSIONS**

4.1 This Agreement does not constitute any admission of facts and will not be construed as an admission of liability on the part of any of the Parties.

4.2 Nothing in this Agreement constitutes an admission of the existence of aboriginal rights or title in respect of the Proposed Disposition or the Lands or that the Proposed Disposition will result in any unjustified infringement of any aboriginal rights, including aboriginal title that may exist.

### **5. ADDITIONAL PROVISIONS**

#### ***Representations and Warranties***

5.1 Kwikwetlem warrants and represents to the Province that it:

- (i) has sought and received independent legal advice with respect to the legal nature and effect of this Agreement and that it has the full legal authority to sign this Agreement;
  - (ii) enters into this Agreement on its own behalf, and on behalf of its Members and
  - (iii) has the legal power, capacity and authority to enter into this Agreement and to carry out its obligations set out in this Agreement.
- 5.2 The Province represents and warrants to Kwikwetlem that it has the authority to enter into this Agreement and to carry out its obligations set out in this Agreement.

### ***Interpretation and Extended Meanings***

- 5.3 In this Agreement, words importing gender shall include all genders, words importing the singular include the plural and vice versa, words importing persons include individuals, partnerships, associations, trusts, unincorporated organizations, corporations and government authorities, and unless otherwise clear from the context, “including” means “including but not limited to” and “includes” means, “includes but is not limited to”, and any reference to a section or any schedule will mean the respective section or schedule of this Agreement, unless otherwise stated.
- 5.4 The body of this Agreement and any schedules to this Agreement will be read together and interpreted as one document.
- 5.5 The captions and headings contained in this Agreement are for convenience only and do not define or limit the scope or intent of this Agreement.
- 5.6 Where there is a reference to an enactment of the Province of British Columbia or of Canada in this Agreement, that reference will include a reference to any subsequent enactment of the Province of British Columbia or Canada, as the case may be, of like effect.
- 5.7 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 sections, as the case may be, will not be affected and will be enforceable to the fullest extent permitted by law.

### ***Time is of the essence***

- 5.8 Time is of the essence of this Agreement.

### ***Further Acts***

- 5.9 The Parties will perform such further acts and execute and deliver such further documents and instruments as may be reasonably required to give effect to this Agreement.

### *Applicable Laws*

- 5.10 This Agreement will be governed by and interpreted in accordance with the laws of the Province of British Columbia and Canada applicable therein.

### *Entire Agreement*

- 5.11 This Agreement constitutes the entire agreement between the Parties with respect to the subject matter set forth herein and it supersedes and replaces all other agreement, negotiations, or understandings between the Parties with respect to the subject matter of this Agreement. There are no collateral agreements or undertaking related to the subject matter hereof.

### *No Relationship*

- 5.12 Nothing in this Agreement will be construed to create a relationship of agency, partnership, fiduciary or any other similar relationship.

### *Notices*

- 5.13 Any notices or other communications required or permitted to be given pursuant to this Agreement must be in writing and must be delivered to, faxed, emailed, sent by postage prepaid mail or courier and addressed to the Parties as follows:

in the case of the Province:

Dyne Torgeson, Executive Lead  
Release of Assets for Economic Generation  
4000 Seymour Place –W109  
PO Box 9412 Stn Prov Govt  
Victoria BC, V8Z 3L1  
Dyne.Torgeson@gov.bc.ca

in the case of: Kwikwetlem:

Chief Ron Giesbrecht  
2 – 65 Colony Farm Rd  
Coquitlam, BC  
V3C 5X9  
Ron@kwikwetlem.com

or to such other address or number as a Party may notify the others in accordance with this section, and if so delivered will be deemed to have been given when delivered, or at the time of confirmation of electronic transmission if sent by facsimile, if such day is a business day, otherwise the next business day following, and if mailed will be deemed to

have been given on the third business day after the date of mailing. In the event of cessation of mail service, actual delivery is required.

#### ***Amendment***

- 5.14 This Agreement may be amended from time to time by the Parties only by an instrument in writing executed by all Parties.

#### ***Term***

- 5.15 Upon execution by all Parties, this Agreement shall come into effect as of the reference date shown on page one of this Agreement.

#### ***Enurement***

- 5.16 This Agreement enures to the benefit of and is binding upon the Province, Kwikwetlem and its Members, and their respective descendants, heirs, executors, administrators, successors and permitted assigns, provided that a Party may assign this Agreement only with the prior written consent of the Parties.

#### ***Waiver***

- 5.17 No term, condition, covenant or other provision of this Agreement will be considered to have been waived by a Party unless the Party expresses such waiver in writing. The waiver by a Party of any breach by another Party of any 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 the same or any other term, condition, covenant or other provision and the consent or approval of a Party to any act by another Party requiring the consent or approval of the Party will not be considered to waive or render unnecessary such consents or approvals to any subsequent same or similar act by the other Party.

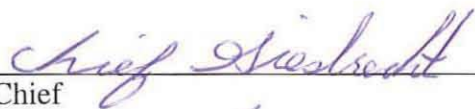
#### ***Conditions of Funding***

- 5.18 Notwithstanding any other provision of this Agreement, the amount of any funding provided by the Province under the terms of this Agreement is subject to:
- (i) the appropriation of funds by the Legislative Assembly of British Columbia;
  - (ii) Treasury Board, as defined in the *Financial Administration Act*, R.S.B.C. 1996, c. 138, as amended, not having controlled or limited expenditure under any appropriation referred to in subparagraph (i) above; and
  - (iii) an appropriation being available for this Agreement in the fiscal year when the payment falls due, as per subsection 28(1) of the *Financial Administration Act*, R.S.B.C. 1996, c. 138, as amended.

***Execution and Delivery of Agreement***

5.19 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 a method provided for in paragraph 5.13.

**IN WITNESS WHEREOF** the Parties have caused this Agreement to be executed by their duly authorized representatives and signatories as of the reference date first set out above.

  
\_\_\_\_\_  
Chief

  
\_\_\_\_\_  
Councillor:


\_\_\_\_\_  
Councillor:

  
\_\_\_\_\_  
Witnessed By:

  
\_\_\_\_\_  
Witnessed By:

\_\_\_\_\_  
Witnessed By:

**HER MAJESTY THE QUEEN IN RIGHT  
OF BRITISH COLUMBIA:**

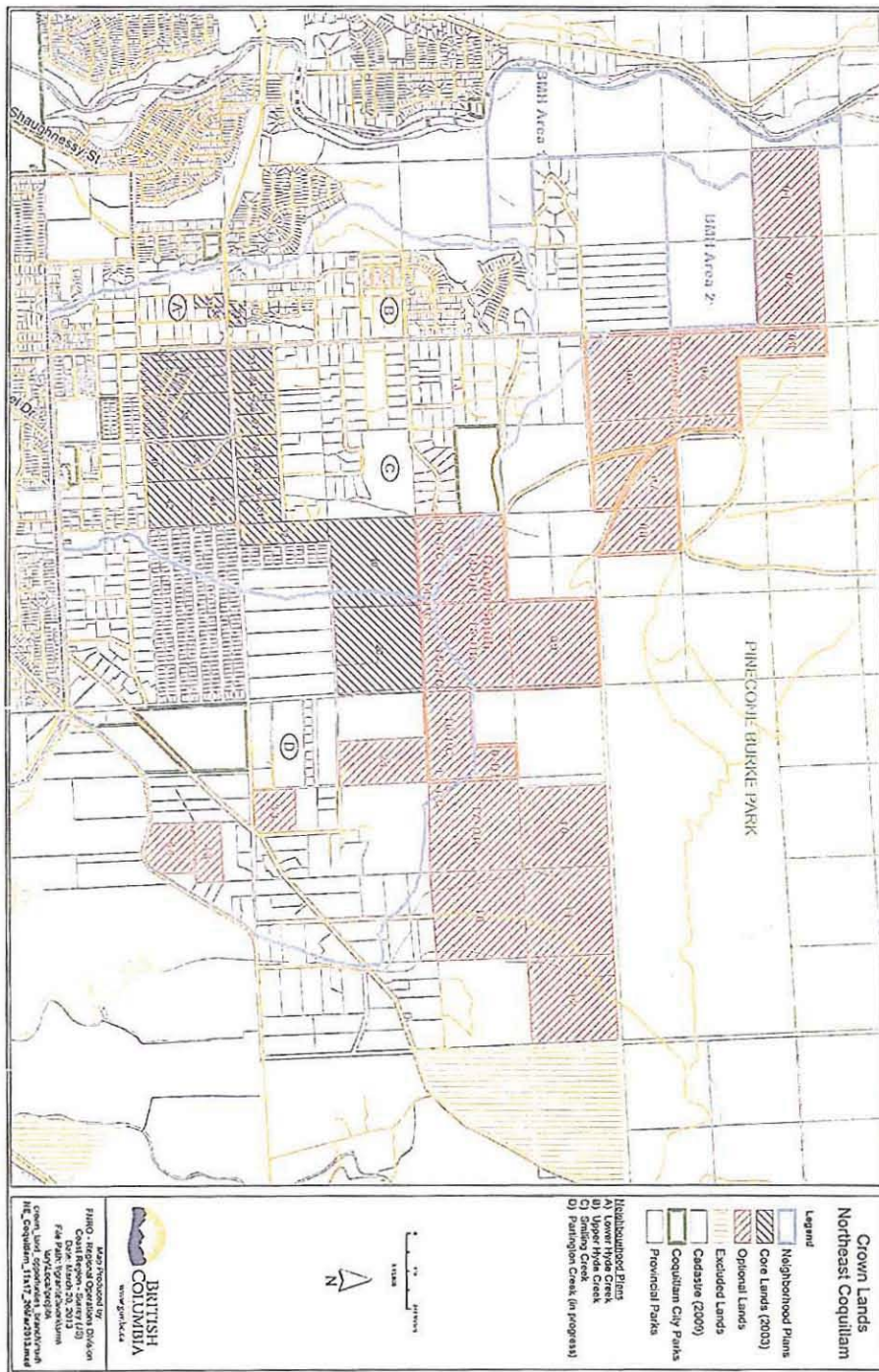
  
\_\_\_\_\_  
Minister of Technology, Innovation and  
Citizens' Services or authorized representative

  
\_\_\_\_\_  
Witnessed by:

### SCHEDULE A -

Project Name	Legal Description	PID	Area (ac) est
<b>BURKE MOUNTAIN</b>			
Parcel #1	NA	NA	30
Parcel #2	NA	NA	30
Parcel #3	NA	NA	9.3
Parcel #4	NA	NA	31.2
Parcel #5	NA	NA	4.8
Parcel #6	Legal Subdivision 4 Sec 18 Twp 40 NWD		37.35
Parcel #7	NA	NA	34.4
Parcel #8	NA	NA	16
Parcel #9	NA	NA	38.8
Parcel #10	NA	NA	37
Parcel #11	NA	NA	38.7
Parcel #12	NA	NA	38.7
Parcel #14 (2408211)	Legal Subdivision 10 Sec 18 Twp 40 NWD	015-390-370	40
Parcel #15	Legal Subdivision 9 Sec 18 Twp 40 NWD Except part contained in Pincone-Burke Provincial Park	015-390-721	40
Parcel #16	NW 1/4 of NW 1/4 Sec 17 Twp 40 NWD except park	015-390-667	28.2
Parcel #17	S 1/2 of NW 1/4 Sec 17 Twp 40 NWD	015-390-683	42.26
Parcel #18	NA	NA	38.7
Parcel #21	Legal Subdivision 5 Sec 17 Twp 40 except W 660 ft NWD	015-390-586	19.6
Parcel #33	THE WEST HALF OF THE SOUTH EAST QUARTER OF THE SOUTH WEST QUARTER OF SECTION 17 TOWNSHIP 40 EXCEPT: PARCEL "A" (EXPLANATORY PLAN 10343) SECONDLY: PARCEL "B" (EXPLANATORY PLAN 15690) AND THIRDLY: PART DEDICATED ROAD IN PLAN LMP 2774 NWD	006-475-752 (part)	8.75
Parcel #43	Parcel One (Explanatory Plan 10840) of Lot D Section 8 Twp 40 NWD 4166	013-877-577	8.5
Parcel #44	Lot "A" except Parcel "One" (Explanatory Plan 17398) Sec 8 Twp 40 NWD	013-877-551	11.5

### SCHEDULE B



## SCHEDULE C

Sector	Name	Address	Legal Description	Municipality	Parcel Size
S. 17					
T&I	1005 Ewen Avenue	1005 Ewen Avenue	Plan BCP41510, District Lot 757, Group 1, New Westminster Land District, CLOSED ROAD	New Westminster	1.22 acres
T&I	1050 Boyd St	1050 Boyd St	Plan BCP41511, District Lot 757, Group 1, New Westminster Land District, CLOSED ROAD	New Westminster	2.23 acres
T&I	2201 and 2205 Marine Drive	2201 and 2205 Marine Drive	Lot 23, Block 2, Plan NWP2974, District Lot 172, Group 1, New Westminster Land District, Except Plan BCP38670  Parcel A, Plan BCP41509, District Lot 172, Group 1, New Westminster Land District, (REFERENCE PLAN BCP41509); DEDICATED ROAD ON STATUTORY RIGHT OF WAY PLAN 71501	New Westminster	0.16 acres
T&I	520 - 21st Street	520 - 21st Street	Lot 54, Plan LMP3717, District Lot 172, Group 1, New Westminster Land District, Except Plan 19717, PART OF; PLAN 3103	New Westminster	1.85 acres
T&I	502 20th St	502 20th St	Lot 57, Plan NWP43169, District Lot 172, Group 1, New Westminster Land District, Except Plan 67172, 72327, BCP40857	New Westminster	2.0 acres



March 10, 2014

Chief Giesbrecht  
Kwikwetlem First Nation  
2-65 Colony Farm Rd  
Coquitlam BC V3C 5X9

**Re: Benefits Agreement**

Please find the enclosed cheque number 14473450 in the amount of \$8,000,000 as per the benefits agreement between the Kwikwetlem First Nation and the Province of British Columbia relating to land dispositions under the Release of Assets for Economic Generation project.

Please have a representative sign the photocopy of the cheque, as attached to confirm for our records that you have received it and return it to me by mail.

We appreciate your cooperation with these matters. Please do not hesitate to contact me, should you need to, at 250-387-6337.

Sincerely,

Dyne Torgeson  
Executive Lead  
Release of Assets for Economic Generation

Attachment: 1



TB Meeting Date: January 16, 2014  
Cabinet Ratified: January 29, 2014  
333735

Confidential

Kim Henderson  
Deputy Minister  
Corporate Initiatives, Office of the Premier  
272 West Annex - Parliament Buildings  
Victoria BC V8W 9E1

Dear Ms Henderson:

Re: First Nations Accommodation – Release of Assets for Economic Generation (RAEG)

I am writing to advise you as the Deputy Minister responsible for the above project that Treasury Board has approved your request to access the 2013/14 Contingencies (All Ministries) and New Programs Vote for up to s. 12 to fund the following First Nation Accommodation agreements under the RAEG initiative:

Not Responsive

- o \$8.0 million for the Kwikwetlem First Nation in relation to 21 properties at Burke Mountain and 8 other properties in Coquitlam, Delta, and New Westminster.

Not Responsive

Sincerely,

Michael de Jong, Q.C.  
Chair

cc: Sarf Ahmed  
Associate Deputy Minister and Executive Financial Officer  
Ministry of Technology, Innovation and Citizens' Services

Deborah Fayad  
Assistant Deputy Minister and Executive Financial Officer  
Ministry of Finance