

Capacity Agreement (“Agreement”)

This Agreement is made effective the _____ day of _____, 2016 (Effective Date)

BETWEEN

OIL AND GAS COMMISSION, a corporation of the Province of British Columbia continued through the *Oil and Gas Activities Act* (Commission)

-and-

[FIRST NATION], as represented by the Chief and Council
[FIRST NATION]

Collectively “the Parties”

BACKGROUND

- A. Members of **[FIRST NATION]** are signatories to Treaty No. 8 of 1899 and collectively have treaty rights recognized and affirmed by section 35(1) of the *Constitution Act, 1982*.
- B. The Commission is the British Columbia oil and gas regulator and is, in accordance with provincial legal obligations, responsible for consulting **[FIRST NATION]** on the potential impacts of proposed oil and gas activities.
- C. The Parties wish to ensure that capacity funding is provided in recognition of the consultation operations of the **[FIRST NATION]** Land Office from **[DATE]** to **[DATE]**.

NOW THEREFORE THE PARTIES AGREE AS FOLLOWS:

1. In this Agreement “oil and gas activity” or “oil and gas activities” means an activity for oil and gas exploration and development, including any related or ancillary activity, for which authorization is given by the Commission or a designated employee of the Commission for the activity or activities.

2. As contribution to the anticipated costs of the oil and gas activity operations of **[FIRST NATION]** Land Office from the Effective Date through to and including **[DATE]**, the COMMISSION will pay to the **[FIRST NATION]**, the sum of **[\$ AMOUNT]** per month, or a prorated amount for partial months.
3. Each monthly payment of **[\$ AMOUNT]** referenced in section 1 above shall be made on or before the later of:
 - a. The date seven (7) days after the Effective Date; or
 - b. The first business day of each month.
4. Prior to the termination date referenced in section 10, the Parties may assess this Agreement and by mutual consent, may extend this Agreement.
5. In accordance with common law, the Commission will consult with **[FIRST NATION]** on relevant applications for oil and gas activities which are received by the Commission and **[FIRST NATION]** will participate in those consultations. This Agreement is without prejudice to any position either Party may take with respect to whether the Commission's Interim Consultation Procedure with Treaty 8 First Nations or the geographical scope of the Commission's consultation with **[FIRST NATION]** are consistent with the common law duty to consult.
6. **[FIRST NATION]** agrees to respond to the Commission in a timely manner regarding applications referred to the **[FIRST NATION]** (as referenced in section 5 above).
7. **[FIRST NATION]** will not request fees or levies from any person engaged in an oil and gas activity for **[FIRST NATION]** review of applications referred to **[FIRST NATION]** by the Commission.
8. The Parties recognize that **[FIRST NATION]** and persons engaged in oil and gas activities may enter into separate agreements and arrangements addressing matters other than those described in section 7 above, including fee for service arrangements for monitoring work.
9. **[FIRST NATION]** will not encourage, financially support or actively participate in direct actions by any members of a Treaty No. 8 First Nation that physically interfere or do interfere with Commission authorized activities, other than legal proceedings to challenge authorizations.
10. The term of this Agreement is from the Effective Date to **[DATE]**, unless extended by mutual agreement in accordance with section 4 or terminated earlier in accordance with section 11.
11. Notwithstanding section 10, either Party may terminate this Agreement prior to the termination date by giving the other Party 30 Calendar Days' written notice.

12. The maximum amount payable under this Agreement is [**\$ AMOUNT**].

The Parties have executed this Agreement, as of the Effective Date:

OIL AND GAS COMMISSION

[FIRST NATION CHIEF]

[PRINTED NAME]
[TITLE]

[PRINTED NAME]
Chief, [FIRST NATION]

