

OIL & GAS CONSULTATION AGREEMENT

This Agreement is dated for reference this 13th day of May, 2015.

BETWEEN

**HER MAJESTY THE QUEEN (IN RIGHT OF
THE PROVINCE OF BRITISH COLUMBIA**, as represented by
the Minister of the Ministry of Natural Gas Development and by the Oil and Gas Commission

("British Columbia")

AND

SAULTEAU FIRST NATIONS,
as represented by its Chief and Council

(the "SFN")

(Collectively, the "Parties")

BACKGROUND

The Parties are committed to establishing consultation processes that will create greater certainty for SFN, British Columbia and the oil and gas industry, fulfill the Crown's duty to consult and, as appropriate, accommodate by avoidance or mitigation of any potential adverse impacts on the exercise of SFN's rights under Treaty No. 8 as recognized and affirmed by section 35(1) of the Constitution Act, 1982, and identify opportunities, as may be appropriate in the circumstances, for the Crown to address other interests and concerns of SFN.

The Parties acknowledge that in accordance with the applicable legal principles established by the courts, the terms of Treaty No. 8 are to be interpreted in light of the wording of the treaty, the historical facts and circumstance, including the "oral promises" or assurances of the Treaty Commissioners, at the time the treaty was made or adhered to by a First Nation.

SFN is concerned about the effects of oil and gas development on the exercise of the SFN's rights under Treaty No. 8 as recognized and affirmed by section 35(1) of the *Constitution Act, 1982* and wishes to work with British Columbia to create meaningful opportunities for their engagement with British Columbia in various aspects of the processes related to oil and gas development.

British Columbia wishes to develop its oil and gas resources in a safe and environmentally responsible manner, while meeting its legal obligations to SFN, and has an interest in engaging SFN in various aspects of the processes related to oil and gas development.

THEREFORE the Parties agree as follows:

PART I. DEFINITIONS

1.1 In this Agreement:

"Agreement" means this Oil & Gas Consultation Agreement including the appendices attached to it;

"Agreement Area" means the geographic area as shown on the map attached in Appendix A, which is subject to the Consultation Processes under this Agreement;

"Applicant" means any person or corporation who submits an Application;

"Application" means an application submitted to OGC or a designated employee of the OGC for approval of an Oil and Gas Activity proposed to be carried out within the Agreement Area and which may potentially adversely impact SFN Section 35(1) rights;

"Application Referral Package" means the documentation described in section 5.4;

"Classification Criteria" means the criteria for Notification, Standard or Complex for the purposes of the Consultation Process set out in Part V;

"Complex" means the level of consultation as determined by OGC for the purposes of referrals under section 5.4 and consultation following the timelines and steps under sections 5.16 to 5.27;

"Consultation Processes" means the processes described in Part IV in relation to Tenure Referrals and in Part V in relation to Oil and Gas Activities, and "Consultation Process" means either process as the context indicates;

"Fiscal Year" means the period from April 1 in one year to March 31 in the next year;

"SFN Lands Office" means the office and staff assigned by SFN to receive referrals and engage on SFN's behalf in consultation under the Consultation Processes;

"SFN Section 35(1) Rights" means the rights of SFN as recognized and affirmed by Section 35(1) of the *Constitution Act, 1982*;

"Implementation Committee" means a committee established by the Parties as described in Part VII;

"Initial Impact Assessment" means, for the purposes of the Consultation Process for Tenure Referrals, a review of a Proposed Parcel disposition as contemplated in section 4.5 and, for the purposes of the Consultation Process for Oil and Gas Activities, means a review of a proposed

Application as contemplated in section 5.7 and "Initial Impact Assessment Form" means a document summarizing an Initial Impact Assessment in the case of a Tenure Referral completed by MNGD under section 4.4.1 or in the case of an Oil and Gas Activity, completed by OGC under section 5.4.1;

"Issue Resolution Process" means the two stage process set out in sections 5.28 to 5.32;

"MNGD" means the Ministry of Natural Gas Development as established under the *Ministry of Energy and Mines Act*, RSBC 1966, c 298;

"Notice of Public Tender" means a notice of a public tender respecting one or more Proposed Parcels pursuant to section 71(2) of the *PNG Act*;

"Notification" means the level of consultation as determined by OGC for the purposes of referral under section 5.4 and notice under section 5.15;

"OGC" means the Oil and Gas Commission continued under the *Oil and Gas Activities Act*, [SBC 2008] c. 36;

"OGC staff" means those staff of OGC who are involved in the processing of Applications under the Consultation Process but who do not make statutory decisions in relation to Applications;

"Oil and Gas Activity" or "Oil and Gas Activities" means an activity or activities for oil and gas exploration and development on Crown land within the Agreement Area, including any related activity or activities (for example, construction of camps) and related geophysical exploration, well sites, access roads, pipelines, facilities, and water use, for which authorization is given by OGC or a designated employee of OGC for the activity or activities, or in relation to the proposed activity or activities, under:

- (a) the *Oil and Gas Activity Act*, SBC 2008, c. 36,
- (b) a specified enactment that is currently, or may from time to time during the term of this Agreement, be specified under the *Oil and Gas Activity Act*, [SBC 2008] c. 36,
- (c) the *Water Act*, RSBC 1996, c.483, in the case of water licences for the diversion, use or storage of water,
- (d) a delegation of authority under other provincial legislation, or
- (e) such other provincial legislation as may be brought into effect from time to time during the term of this Agreement in substitution for or to replace, whether in whole or in part, any of the enactments listed in paragraphs (a) to (d).

"Oil and Gas Activity Referral Package" means the Application and related documents as described in section 5.4;

"Oil and Gas Activity Review and Response Period" means the applicable period of time as provided under section 5.16, or as may be extended by OGC on request of SFN under section

5.18, for SFN to provide its written response to an Application in an Oil and Gas Activity Referral Package;

"PNG Act" means the *Petroleum and Natural Gas Act*, [RSBC 1996] c. 361;

"Proponent" means a person or corporation requesting the inclusion of a Proposed Parcel in a Notice of Public Tender issued under the *PNG Act*;

"Proposed Parcel" means an area, as described by MNGD based on the Petroleum and Natural Gas Grid under the *PNG Act*, for which underlying Crown petroleum and natural gas rights are being considered for inclusion in a Notice of Public Tender for the purpose of a potential tenure disposition under the *PNG Act*;

"Standard" means the level of consultation as determined by OGC for the purposes of referral under section 5.4 and consultation following the timelines and steps under sections 5.16 to 5.27;

"Tenure" means a tenure disposing of Crown petroleum or natural gas rights made pursuant to the *PNG Act*;

"Tenure Referral" means a proposed Tenure disposition with respect to a Proposed Parcel within the Agreement Area in respect of which a Tenure Referral Package is provided by MNGD to SFN for the purposes of consultation;

"Tenure Referral Discussion Period" means the period of time during which SFN and MNGD may engage in discussions under section 4.14 in an attempt to resolve SFN concerns regarding any potential adverse impacts on SFN Section 35(1) Rights;

"Tenure Referral Initial Review and Response Period" means the applicable period of time as provided under section 4.6, section 4.10, or section 4.11, for SFN to provide its written response to a Tenure Referral Package;

"Tenure Referral Package" means the documentation described in section 4.4;

"Tenure term" or "caveat" means any term or caveat attached to a disposition of Crown petroleum or natural gas rights made pursuant to the *PNG Act*;

"Term" has the meaning set out in section 9.1; and

"Working Days" means any day other than a Saturday or Sunday, National Aboriginal Day or a statutory holiday in British Columbia and does not include any of the days between December 26 to January 1 on which the SFN Land Office is closed.

PART II. PURPOSE AND SCOPE

- 2.1 This Agreement describes the processes for consultation between the Parties with respect to Applications for Oil and Gas Activities and Tenure Referrals that have the potential to adversely impact the exercise of SFN Section 35(1) Rights.
- 2.2 The Parties acknowledge that the Consultation Processes:
 - 2.2.1 provide a meaningful opportunity for SFN to review Applications and Tenure Referrals, and to provide input and advice directly to the appropriate statutory decision maker in relation to potential adverse impacts of a proposed Oil and Gas Activity or Tenure disposition on SFN Section 35(1) Rights, and to have SFN's input and advice seriously considered and, where appropriate, demonstrably integrated into the decision consistent with the terms of Treaty No. 8 and the honour of the Crown; and
 - 2.2.2 provide opportunity, as may be appropriate in the circumstances, for the Crown to address other interests and concerns of SFN.
- 2.3 The purpose of the Agreement is to support SFN's participation in the Consultation Processes so as to improve SFN's ability to identify for British Columbia, within the timeframes established by the Agreement, any potential adverse impacts of a proposed Oil and Gas Activity or a Tenure disposition on SFN Section 35(1) Rights and to provide input and advice on measures to avoid or mitigate such impacts as may be appropriate.
- 2.4 The purpose of the funding under the Agreement is described in Appendix C.
- 2.5 The Parties will maintain a positive and respectful working relationship through the Consultation Processes and acknowledge the role of clear communication between them in supporting that objective.

PART III. FACILITATING EARLY COMMUNICATION

- 3.1 MNGD and SFN will work together to develop an information letter for posting on MNGD's website to provide the oil and gas industry with relevant contact information for SFN.

PART IV. TENURE REFERRAL CONSULTATION PROCESS

Area

- 4.1. Tenure Referral Packages will be sent to SFN by MNGD for Proposed Parcels within the Agreement Area.

Process

- 4.2 Following MNGD's review of a request from a Proponent for the posting of Proposed Parcel, MNGD will provide to SFN a Tenure Referral Package.
- 4.3 The Tenure Referral Package may include more than one Proposed Parcel.
- 4.4 The Tenure Referral Package will include:
 - 4.4.1 an Initial Impact Assessment Form completed by MNGD for the Proposed Parcels listed in the form, and
 - 4.4.2 Map(s) showing the location of a Proposed Parcel.
- 4.5 The Initial Impact Assessment Form will summarize for the Proposed Parcels included in a Tenure Referral Package:
 - 4.5.1 MNGD's review of the information that MNGD is aware of, has access to and reasonably believes would be relevant to a consideration of any potential adverse impacts arising from the Proposed Parcel disposition on the exercise of SFN Section 35(1) Rights, as follows:
 - 4.5.1.1 the type of Tenure and any non confidential information provided by a Proponent regarding the strata requested in relation to the Proposed Parcel;
 - 4.5.1.2 approved provincial land and resource management plans;
 - 4.5.1.3 existing Tenures (*petroleum and natural gas*);
 - 4.5.1.4 previously Proposed Parcels that MNGD has currently deferred or postponed from disposition and that are within reasonable proximity to the Proposed Parcel;
 - 4.5.1.5 any known information regarding,
 - (1) the exercise of SFN Section 35(1) Rights within reasonable proximity of the Proposed Parcel; or
 - (2) sensitive areas identified by SFN that are within reasonable proximity to the Proposed Parcel;
 - 4.5.1.6 proximity to SFN's Indian Reserves;

- 4.5.1.7 areas established by MNGD for a limited time-period, in respect of which MNGD may not accept Tenure requests, namely,
 - (1) resource review areas; or
 - (2) no disposition notation areas;
- 4.5.1.8 as established by British Columbia under the applicable legislation
 - (1) parks, protected areas and ecological reserves;
 - (2) wildlife habitat areas and ungulate winter ranges;
 - (3) other recreation or conservancy areas; and
 - (4) any pre-tenure management; and
- 4.5.2. MNGD's initial impact assessment of any adverse impacts on the exercise of SFN Section 35 (1) Rights taking into consideration, as applicable, the information described in section 4.5.1.
- 4.6 Subject to section 4.11, SFN will provide a written response to a Tenure Referral Package within the later of:
 - 4.6.1 20 Working Days following the receipt of the Tenure Referral Package;
 - 4.6.2 the deadline identified in the Tenure Referral Package; or
 - 4.6.3 if applicable, the date to which the response time is extended under section 4.10.
- 4.7 SFN will submit its written response to MNGD, where possible by email, and will indicate:
 - 4.7.1 if, and the extent to which, in its preliminary view, SFN considers that the potential issuance of a Tenure for the Proposed Parcel may have a potential adverse impact on the exercise of SFN Section 35(1) Rights; and
 - 4.7.2 options to avoid or minimize any such impact, including any potential Tenure terms or caveats developed by the MNGD and SFN or established by MNGD that could be applied to any Tenure issued.
- 4.8 SFN and MNGD may jointly develop standardized Tenure terms or caveats that may be proposed to be attached as a notice to a Proposed Parcel.
- 4.9 SFN may, by notice to MNGD, where possible sent by email, request an extension of the time under section 4.6.1 to provide its response to a Tenure Referral Package for a specific Proposed Parcel, identifying the Proposed Parcel of concern.
- 4.10 MNGD will not unreasonably withhold its consent to a reasonable request under 4.9, provided that:

- 4.10.1. the extension request is received by MNGD prior to the expiration of the response period under section 4.6.1; and
- 4.10.2. SFN agrees to provide a response by the extended date consented to by MNGD.
- 4.11. SFN and MNGD may agree, in advance, that in exceptional circumstances, and on a case by case basis, SFN will respond to a Tenure Referral Package in less than 20 Working Days.
- 4.12. If SFN does not respond to a Tenure Referral Package for a Proposed Parcel within the Tenure Referral Initial Review and Response Period, MNGD will give notice to SFN at least 3 Working Days in advance of the expiry of the applicable Tenure Referral Initial Review and Response Period that MNGD will be proceeding to a decision on the Proposed Parcel after that time.
- 4.13. If MNGD proceeds with a disposition in relation to a Proposed Parcel in the circumstance described in section 4.12, the disposition notice will include the following caveat:
"Parcel located within SFN's Agreement Area"
In the event that MNGD and SFN jointly develop standardized Tenure terms or caveats, MNGD will apply any such tenure terms or caveats as may be relevant to the Proposed Parcel.
- 4.14. If SFN responds to a Tenure Referral Package within the Tenure Referral Initial Review and Response Period, indicating that, in SFN's view, the potential issuance of a Tenure for the Proposed Parcel will have an adverse impact on the exercise of SFN Section 35(1) Rights, SFN and MNGD will discuss the concerns raised by the SFN and, if appropriate, the manner in which they may be avoided or mitigated.
- 4.15. The discussion under section 4.14 will be by email, telephone or face to face meeting, and will establish as mutually agreeable, or falling agreement, as MNGD determines reasonable in the circumstances, a plan of action for the conduct of the consultation that identifies:
- 4.15.1. the concerns raised by the SFN;
- 4.15.2. the timeline(s) for the completion of the consultation;
- 4.15.3. the number and scope of any additional meeting(s), if required;
- 4.15.4. if any field visits or any studies may reasonably be required to inform the consultation; and
- 4.15.5. if any additional information or consultation steps may reasonably be required for the purposes of the consultation.
- 4.16. SFN and MNGD will make reasonable efforts to carry out the consultation in accordance with the plan of action established under section 4.15.
- 4.17. If SFN and MNGD are unable to resolve a concern identified under section 4.15.1 within the timelines established under section 4.15.2, MNGD will provide to SFN a written summary of:

- 4.17.1 the information relevant to the unresolved concern, and
- 4.17.2 its rationale for concluding the consultation.
- 4.18 MNGD will seriously consider SFN's written response under section 4.7, and any further information exchanged by SFN and MNGD during any Tenure Referral Discussion Period, including any Tenure terms or caveats or other options identified by SFN for avoiding or minimizing potential adverse impacts upon SFN Section 35 (1) Rights, after which, MNGD may make a decision with respect to a Proposed Parcel consistent with, as applicable in the circumstances, any constitutional obligations owing to SFN.
- 4.19 In the exercise of the statutory authority with respect to the issuance of a Tenure for a Proposed Parcel, MNGD, amongst other things, may consider proceeding to disposition with or without Tenure terms, deferring, or not proceeding to disposition.
- 4.20 Notification of the public tender of Proposed Parcels including any Tenure terms or caveats attached to a parcel, will be provided to SFN by MNGD's publication of Notices of Public Tender.
- 4.21 Notification of the disposition of a Tenure subject to a Tenure Referral will be provided to SFN by MNGD's publication of the listing of offers accepted on the conclusion of the Notice of Public Tender process in which the Tenure was offered for disposition.
- 4.22 As a goal, MNGD and SFN will work toward the electronic exchange of information. Once SFN and MNGD have agreed that information may be conveyed by MNGD electronically to SFN, MNGD will no longer provide to SFN paper copies of any Tenure Referral Packages or other communications in relation to the Tenure Referral Consultation Process.

PART V. OIL AND GAS ACTIVITY APPLICATIONS CONSULTATION PROCESS

General

- 5.1 OGC and SFN will seek to achieve the goal of exchanging information related to referrals of Applications for Oil and Gas Activities electronically within 6 months of both Parties' electronic communication being operational.

Pre-Application and Early Engagement

- 5.2 In order to facilitate the efficiency of consultation, OGC will encourage parties that may be contemplating Oil and Gas Activities to engage in dialogue with SFN during the project planning stages to identify whether multiple applications may be contemplated as part of a potential Applicant's long term oil and gas development planning.

- 5.3 OGC will encourage Applicants to contact SFN and to share information relating to proposed Applications directly with SFN at a level of detail commensurate with the scale and scope of the Oil and Gas Activities proposed by an Applicant.

Oil and Gas Activity Application Referral Package

- 5.4 An Application Referral Package referred to SFN by OGC will include:
- 5.4.1 the streaming classification of the Application under section 5.6 and any rationale as set out in the Initial Impact Assessment Form completed by OGC;
 - 5.4.2 the Application, including, as set out in the Application, the information under section 5.7;
 - 5.4.3 any maps submitted by the Applicant to OGC with its Application; and
 - 5.4.4 any other information as described in section 5.7 that OGC determines to be relevant to the review of the Application.
- 5.5 OGC will provide shape files relating to Applications referred to SFN, if a Shape File Sharing Agreement is in effect between SFN and OGC.

Initial Impact Assessment and Classification Streaming of Applications

- 5.6 Following review of an Application received by OGC from an Applicant, OGC will make an initial impact assessment of any potential adverse impact on the exercise of SFN Section 35(1) Rights relating to the Application pursuant to section 5.7 and will confirm the level of consultation for the Application as Notification, Standard, or Complex.
- 5.7 OGC will review information required to be provided by the Applicant or otherwise reasonably available to it to assess an appropriate level of consultation for the Application, including:
- 5.7.1 the name and contact information of the Applicant;
 - 5.7.2 the location of the proposed Oil and Gas Activity;
 - 5.7.3 the scope of the proposed Oil and Gas Activity, including any infrastructure or equipment required to carry out the activity and any geospatial data on anticipated total land disturbance from the activity proposed;
 - 5.7.4 any roads proposed to be constructed to carry out the proposed Oil and Gas Activity;
 - 5.7.5 to the extent known to the Applicant, the order in which any proposed Oil and Gas Activities will be carried out and the approximate timeframe;

- 5.7.6 where the Oil and Gas Activity is planned in phases, a description of each phase of the activity, including:
 - 5.7.6.1 any estimated increases to dust, noise and odours from the proposed activity;
 - 5.7.6.2 any mitigation activities that will be undertaken; and
 - 5.7.6.3 the nature and extent of vehicle traffic required to conduct the proposed activity;

- 5.7.7 land and resource management information related to the area of the proposed Oil and Gas Activity, including:
 - 5.7.7.1 information from completed OGC area based analyses or any similar analyses completed by British Columbia;
 - 5.7.7.2 parks, protected areas or ecological reserves as established by British Columbia;
 - 5.7.7.3 ungulate winter ranges, wildlife habitat areas or old growth management areas as established by British Columbia under the applicable provincial legislation;
 - 5.7.7.4 known habitat locations for species-at-risk that may be potentially adversely impacted by the proposed Oil and Gas Activity;
 - 5.7.7.5 as authorized by British Columbia under the applicable provincial legislation, existing Provincial land, forestry, wind, coal, or petroleum or natural gas tenures or other tenures;
 - 5.7.7.6 authorized Oil and Gas Activities being carried out in reasonable proximity to the area of the proposed Oil and Gas Activity;

- 5.7.8 any information in relation to the area of the proposed Oil and Gas Activity known to OGC regarding:
 - 5.7.8.1 the exercise of any specific SFN Section 35(1) Rights in the area; or
 - 5.7.8.2 areas of cultural significance to SFN;
 - 5.7.8.3 SFN's land use management plan, if any, and to the extent that the plan information has been directly disclosed to OGC and made available by SFN to the Applicant;
 - 5.7.8.4 potential SFN's Treaty Land Entitlement land selection areas; and

- 5.7.9 any other information identified and determined by OGC to be reasonably relevant to the assessment of the nature and scope of or the seriousness of any potential adverse impacts on SFN Section 35(1) Rights as potentially adversely affected by the proposed Oil and Gas Activity.

Classification Criteria

- 5.8 OGC may determine, based on OGC's initial impact assessment, that an Application will be streamed at a different classification than the Classification Criteria guidelines indicate.
- 5.9 The criteria for Notification and Standard classifications are set out in sections 5.10 and 5.11, respectively, and for Complex classifications, in sections 5.12 and 5.13.

Notification Classification

- 5.10 The criteria for the Notification classification are:
 - 5.10.1 An Application, an amendment to an approved Oil and Gas Activity, or a revision to an Application, that is for improved health or safety or provides an overall benefit to the environment, including site restoration and remediation activities on the site of an authorized Oil and Gas Activity and which has minimal potential to impact adversely any SFN Section 35(1) Rights;
 - 5.10.2 An Application, an amendment to an approved Oil and Gas Activity or a revision to an Application which will implement an accommodation measure identified through consultation with SFN and which SFN has agreed satisfactorily addresses any adverse impacts on SFN Section 35(1) Rights;
 - 5.10.3 An Application, amendment to an approved Oil and Gas Activity or a revision to an Application where the activity is to be carried out within a review corridor, as defined in the applicable application manual published by OGC, on which SFN was previously consulted with no outstanding concerns;
 - 5.10.4 An Application, an amendment to an approved Oil and Gas Activity or a revision to an Application which:
 - 5.10.4.1 is immediately off an established access route;
 - 5.10.4.2 requires less than 500 metres of new road;
 - 5.10.4.3 requires less than or equal to 1 ha of clearing;
 - 5.10.4.4 will not impact archaeological resources; and
 - 5.10.4.5 is located in or adjacent to a related project in relation to which OGC completed consultation with SFN within the 2 year period prior to the referral of current Application or amendment and which concluded with no outstanding site specific concerns;
 - 5.10.5 An Application, an amendment to an approved Oil and Gas Activity or a revision to an Application, for:
 - 5.10.5.1 a subsequent well on an existing pad for which no new land is required; or

- 5.10.5.2 an additional pipeline within an existing right of way for which no new land is required;
- 5.10.6 An Application, an amendment to an approved Oil and Gas Activity or a revision to an Application for water use, if:
 - 5.10.6.1 the point of diversion is not within an area established through an order under section 34 or 35 of the Environmental Protection and Management Regulation, BC Reg. 200/2010;
 - 5.10.6.2 the total withdrawal per point of diversion identified in the Application, or amendment, is less than or equal to 10,000 m³;
 - 5.10.6.3 the point of diversion is not located within, as agreed to by OGC and mapped in OGC's data base, either a sensitive waterbody, or an area of known cultural significance to SFN; and
 - 5.10.6.4 the use is not primarily intended for hydraulic fracturing.

Standard Classification

- 5.11 The Classification Criteria for the Standard classification are: an Application, a revision to an Application or an amendment to an approved Oil and Gas Activity that does not meet the criteria set out for either the Notification or the Complex classifications.

Complex Classification

- 5.12 If the Application does not meet the Classification Criteria set out for Notification classification under section 5.10 and meets one or more of the criteria set out in section 5.13, the Application will be streamed as Complex.
- 5.13 The criteria for the Complex classification are:
 - 5.13.1 An Application for a new activity proposed to be located in an area known to OGC to be of cultural significance to SFN;
 - 5.13.2 An Application for a new activity in an area identified in an approved Provincial Land and Resource Management Plan as a Special Management Zone designated for wildlife or environmental objectives, a Major River Corridor or a Protected Area identified in an approved Provincial Land and Resource Management Plan;
 - 5.13.3 An Application for a new activity which includes a permanent water crossing of an S1 or S2 stream as classified under the *Environmental Protection and Management Regulation*, BC Reg. 200/2010;
 - 5.13.4 An Application for a new 3D geophysical activity;
 - 5.13.5 An Application for a new pipeline that has an overall length greater than 15km or has a segment longer than 10km;

- 5.13.6 An Application for construction of a new road longer than 5km or of new road segments, which segments taken together total more than 5km;
 - 5.13.7 An Application for a new gas processing plant larger than 2 ha;
 - 5.13.8 An Application for a new well site pad for multiple wells;
 - 5.13.9 An Application for a new development project; or
 - 5.13.10 An Application which requires an environmental assessment under provincial or federal legislation.
- 5.14 If OGC and SFN agree on mapping areas within the Agreement Area for the purposes of assigning a consultation level to an area, then, if an Application relates to a location within an area that SFN and the OGC have agreed to and OGC has mapped as being "Notification", "Standard" or "Complex", consultation on that Application will proceed according to the agreed classification.

Timelines and Steps

- 5.15 In the case of an Application streamed as Notification, OGC may proceed to a decision when the Application Referral Package is forwarded to SFN.
- 5.16 From the date of SFN's receipt of an Oil and Gas Activity Referral Package, SFN will have a period of:
- 5.16.1 10 Working Days to respond as described in section 5.19, to an Application streamed as Standard; and
 - 5.16.2 20 Working Days to respond as described in section 5.19, to an Application streamed as Complex.
- 5.17 SFN may comment on the appropriateness of the streaming of an application as Standard or Complex within 5 Working Days of the receipt of an Oil and Gas Activity Referral Package.
- 5.18 Prior to the expiry of the Oil and Gas Review and Response Period under section 5.16, SFN may request an extension for any of the reasons set out in Appendix B and such requests will not be unreasonably denied by OGC.
- 5.19 Prior to the expiry of the Oil and Gas Review and Response Period, SFN will provide written response and input on the Application specifying, if in SFN's preliminary view it does so, the manner in which the proposed Oil and Gas Activity represents a potential adverse impact on the exercise of SFN Section 35(1) Rights, and any views SFN may have as to the manner in which any such potential adverse impact can be avoided or mitigated.
- 5.20 If OGC does not receive a response from SFN within the Oil and Gas Activity Review and Response Period, OGC will give notice to SFN at least 3 Working Days in advance of the expiry of the applicable Oil and Gas Referral Review and Response Period that OGC will be proceeding to a decision after that time.

- 5.21 If OGC has received advice or input from SFN as provided in section 5.19 within the Oil and Gas Activity Review and Response Period, SFN and OGC staff will engage in consultation and attempt to resolve SFN concerns regarding potential adverse impacts on SFN Section 35(1) Rights.
- 5.22 OGC staff will engage in a discussion under section 5.21 with SFN, by email, phone or meeting face to face, and will establish, as mutually agreeable, or failing agreement, as OGC determines reasonable in the circumstances, a plan of action for the consultation that identifies:
- 5.22.1 concerns raised by SFN under section 5.19;
 - 5.22.2 the timelines for the completion of the consultation;
 - 5.22.3 the number and scope of any additional meeting(s) required, if any;
 - 5.22.4 if any field visits or any studies may reasonably be required to inform the discussion; and
 - 5.22.5 what, if any, additional information or consultation steps are required.
- 5.23 SFN and OGC staff will make reasonable efforts to carry out the consultation in accordance with the plan of action as established under section 5.22.
- 5.24 OGC staff assigned to make recommendations in respect to an Application will seriously consider all relevant information, including the input and advice provided by SFN, and will make recommendations to the statutory decision maker with respect to the Application that, to the extent appropriate to the circumstances, seek to avoid or mitigate potential adverse impacts on the exercise of SFN Section 35(1) Rights.
- 5.25 If a concern raised by SFN has not been resolved within the timelines established under section 5.22, OGC will:
- 5.25.1 notify SFN, at least 3 Working Days, or longer by mutual agreement, prior to making a recommendation to the statutory decision maker that the Application proceed to decision;
 - 5.25.2 provide SFN with a summary of the information relevant to the concern raised and how any proposed mitigative measures and the recommendations made under section 5.24 seek to avoid or mitigate, or otherwise accommodate, a potential adverse impact on the exercise of the SFN Section 35(1) rights; and
 - 5.25.3 include in the summary a description of how SFN's advice and input has been integrated where possible into the recommendations, particularly with respect to any SFN traditional knowledge provided by SFN to OGC.

- 5.26 OGC will provide SFN with a copy of the statutory decision maker's written decision with respect to an Application that OGC and SFN proceeded through, but have been unable to resolve in, the Issue Resolution Process.
- 5.27 A written decision provided under section 5.26 will include, as the statutory decision maker determines relevant in the circumstance of the decision, a summary of:
- 5.27.1 Information the statutory decision maker considered in the assessment of any adverse impacts on the exercise of SFN Section 35(1) Rights, including the input and advice provided by SFN in the Consultation Process;
 - 5.27.2 any measures taken to demonstrably integrate SFN's input and advice with regard to any potential adverse impact on the exercise of SFN Section 35(1) Rights into the plan for the proposed Oil and Gas Activity, including any measures to avoid or mitigate any potential adverse impacts on the exercise of SFN Section 35(1) Rights; and
 - 5.27.3 consideration of, as applicable to the area in which the Oil and Gas Activity is proposed to be located or carried out, any OGC area based analyses, water management strategies or caribou management strategies currently in effect or as may from time to time be developed by British Columbia.

Issue Resolution Process

- 5.28 This process applies to issues raised by SFN that are specific to an Application and which are within the scope of the authority of the statutory decision maker under the *Oil and Gas Activities Act* to address.
- 5.29 SFN may initiate the Issue Resolution Process during the 3 Working Day notice period described in 5.25.1 by request in writing to OGC together with a memorandum summarizing the issue from the SFN's perspective.
- 5.30 Prior to the expiry of the 3 Working Day notice period given by the OGC to the SFN under section 5.25.1, SFN may request in writing an extension of time to submit its written request and memorandum under section 5.29 for any of the reasons set out in Appendix B and such request will not be unreasonably denied by OGC.
- 5.31 The Issue Resolution Process will be comprised of two stages:
- 5.31.1 In stage one, the Director of the SFN Land Office and OGC Executive Director will make all reasonable efforts to meet and attempt to resolve the issue within 5 Working Days of SFN's request to initiate the Issue Resolution Process. If the meeting does not occur within 10 Working Days of the SFN's request to initiate the Issue Resolution Process and an alternate meeting date is not agreed to, then OGC will forward its recommendations to the statutory decision maker. If the issue cannot be resolved at the meeting, then within 3 Working Days of the end of the 10 Working Day period, the SFN Land Office Director and OGC Executive Director will

produce and submit to OGC and SFN, either jointly or separately, a summary of any resolutions reached, remaining outstanding issues and any recommendation as to whether the Issue should proceed to stage two.

5.31.2 In stage two, the Commissioner or designate will meet with the Chief or designate and attempt to resolve the issue within 5 Working Days of their receipt of the submission or submissions from SFN Land Office Director and OGC Executive Director. The outcome of that meeting will be communicated by either Party's representative to the statutory decision maker. If the meeting does not occur within 10 Working Days of the recommendation to proceed to stage two and an alternate date is not agreed to, then OGC will forward its recommendations to the statutory decision maker.

5.32 If SFN does not make all reasonable efforts to comply with any of its obligations under the Issue Resolution Process, OGC may send a further notice to SFN indicating that the Issue Resolution Process is at an end and OGC will proceed to making a decision and will notify SFN of the decision made.

PART VI. INFORMATION PROTECTION AND MANAGEMENT

6.1 British Columbia acknowledges that this Agreement is not intended to affect any proprietary interests in the traditional knowledge of SFN, and that such traditional knowledge is a valuable source of information about the land and natural resources in the Agreement Area.

6.2 British Columbia acknowledges that information provided by SFN in the course of a particular consultation process under this Agreement may not be relevant to another consultation process. The Parties agree that as part of any subsequent consultation process, OGC or MNGD will discuss with SFN the accuracy, currency or relevancy of any previously provided information and, as appropriate will take into account any further information SFN may provide.

6.3 If British Columbia receives a request under the *Freedom of Information and Protection of Privacy Act*, R.S.B.C. 1996 c. 165, for the disclosure of information received from and specifically identified as confidential by SFN, British Columbia will provide SFN with an opportunity to express its views regarding any impacts that may arise from the requested disclosure. British Columbia will take reasonable steps, subject to the disclosure requirements under the above cited *Freedom of Information and Protection of Privacy Act*, R.S.B.C. 1996 c. 165, to protect SFN information from disclosure under that legislation, including the characterization of such information as being exempt from disclosure whenever possible.

PART VII. IMPLEMENTATION

- 7.1 The Parties will establish an Implementation Committee to oversee the implementation of this Agreement with participation by the appointed representatives of SFN, OGC, and MNGD and other government agencies as required.
- 7.2 The Implementation Committee will meet regularly but not less than semi-annually, with additional meetings as required.
- 7.3 The Implementation Committee will conduct, but not more frequently than annually, a periodic review of the effectiveness and efficiency of the Consultation Processes under this Agreement.
- 7.4 The Implementation Committee will assist the Parties in their efforts to implement the electronic exchange of information as contemplated under sections 4.20 to 4.22 and section 5.1.
- 7.5 The Implementation Committee may discuss topics of mutual interest to the Parties relating to the implementation of this Agreement.
- 7.6 The topics for discussion by the Implementation Committee may include:
 - 7.6.1 water use information collected and maintained by OGC that may be requested by SFN relating to:
 - 7.6.1.1 the volume of water approved and the actual volume of water extracted for use in Oil and Gas Activities authorized by OGC,
 - 7.6.1.2 the effect of water approvals made by OGC on water bodies, wetlands and water sources within 1,000 metres of a proposed well site or facility before and after extraction,
 - 7.6.1.3 any additives used or proposed to be used in conjunction with water use for hydraulic fracturing, or
 - 7.6.1.4 the total volume of water disposed of through deep well injections relating to authorized Oil and Gas Activities; and
 - 7.6.2 the potential for incorporation into the Initial Impact Assessment of new tools or analyses completed by British Columbia for environmental or industrial development purposes that may be applicable to oil and gas development.

- 7.7 British Columbia will invite SFN to provide input and advice in respect of Valued Ecosystem Components for any applicable Area-Based Analysis for the Montney Basin as may be proposed to be established by British Columbia for that geographic area. In particular, OGC will be seeking First Nation input regarding the identification and refinement of environmental and socio-cultural values and any First Nation tactical information that may improve OGC's analysis.
- 7.8 The Implementation Committee may make recommendations to the Parties proposing amendments to the Agreement.
- 7.9 Annually, the OGC Commissioner or the Deputy Commissioner or designate and the Chief of SFN will meet to discuss any implementation issues associated with the Agreement.

PART VIII. FINANCIAL CONTRIBUTION

- 8.1 OGC will provide funding to SFN for the purposes, subject to the terms and in the manner set out in Appendix C.
- 8.2 During the Term, SFN will not request from any person or corporation any fees, levies, compensation or other charges for the review of Tenure Referrals or Oil and Gas Activities, other than:
 - 8.2.1 charitable donations and gifts unconditionally and voluntarily made by a person or corporation to SFN that are permitted under the *Income Tax Act*;
 - 8.2.2 costs that may be incurred due to meeting legislative requirements or safety issues; and
 - 8.2.3 costs associated with the participation by SFN or its members in the preparation of studies as may be agreed upon by SFN and any particular Proponent or Applicant, provided that such studies will not be a pre-requisite to SFN's engagement in the Consultation Processes under this Agreement.
- 8.3 Section 8.2 is not intended to prevent separate bilateral agreements that may be entered into between SFN and oil and gas companies. It is recognized that such agreements are a valuable tool to encourage the employment of SFN contractors, to foster training and employment opportunities, and to facilitate long term mutually beneficial business relationships.

PART IX. TERM AND TERMINATION

- 9.1 The term of this Agreement is from the effective date described in section 16.2 to March 31, 2024, unless terminated earlier in accordance with section 9.2.
- 9.2 Notwithstanding section 9.3, either Party may terminate this Agreement prior to the end of the Term by giving the other Party 90 Working Days written notice. During the 90 Working

Days notice period, the Parties will meet in order to discuss the circumstances which gave rise to the written notice and to determine whether there is a basis for rescinding the notice.

- 9.3 British Columbia will not terminate this Agreement solely on account of the commencement by SFN of a legal proceeding initiating a judicial review of a decision of the OGC or MNGD subject to consultation under this Agreement.

PART X. DISPUTE RESOLUTION

- 10.1 This Part applies to disputes arising out of the interpretation or implementation of this Agreement, other than disputes relating to issues to which the Issue Resolution Process applies or that arise in the Consultation Process on a Tenure Referral.
- 10.2 A Party may initiate the dispute resolution process by providing to the other Party a written notice setting out a description of the issue in dispute and any attempts to resolve the dispute.
- 10.3 Unless a later date is agreed to by the Parties, within 10 Working Days of a Party's receipt of written notice under section 10.2 from the other Party to the dispute, the Parties' designated representatives will meet to seek to resolve the issue in dispute.
- 10.4 If the dispute remains unresolved after the process provided for in sections 10.2 and 10.3, the Chief of SFN and the Commissioner or designate or a designate of MNGD, or depending on the subject matter of the dispute, all three representatives, will meet to seek to resolve the issue in dispute.

PART XI. NOTICE

- 11.1 A communication will be considered to have been given, made, or delivered and received:
- 11.1.1 where delivered personally or by courier, on the next business day after the business day on which it was received by the addressee or a representative of the addressee;
 - 11.1.2 where transmitted by fax or electronic mail and the sender receives confirmation of the transmission, on the next business day after the business day on which confirmation was transmitted; or
 - 11.1.3 where delivered by any method for which confirmation of delivery is provided, when receipt is acknowledged by the addressee.
- 11.2 For purposes of communications under the Consultation Processes, the addresses, including as indicated therein, the facsimile and electronic addresses, for:
- 11.2.1 MNGD, will be as set out in the Tenure Referral Package; and
 - 11.2.2 OGC, will be as set out in the Oil and Gas Activity Referral Package.

11.3 Subject to section 11.2, the address and facsimile numbers of the Parties are:

<p>SFN: Chief and Council Saulteau First Nations P.O. Box 1020 Chetwynd, British Columbia, V0C 1J0 Fax: 250-788-7261</p>	<p>British Columbia: <i>For OGC related matters:</i> Deputy Commissioner Oil and Gas Commission 6534 Airport Road Fort St. John, BC V1J 4M6 Fax: 250-794-5390</p>	<p><i>For MNGD related matters:</i> Executive Director Tenure and Geoscience Branch, Upstream Development Division, Ministry of Natural Gas Development, PO Box 9326 Stn Prov Govt Victoria, BC V8W 9N3 Fax: 250 952-0291</p>
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11.4 Either SFN or MNGD or OGC may, upon written notice provided to the other Party at their address for notice, amend their respective address for notice.

PART XII. REPRESENTATION AND WARRANTIES

12.1 SFN represents and warrants that:

12.1.1 Its Chief has the authority to sign this Agreement as evidenced by resolution of the Band Council; and

12.1.2 SFN has the authority and legal capacity to enter into this Agreement and to carry out its provisions on behalf of SFN and all members of SFN.

12.2 The Minister of MNGD and the Commissioner of OGC are authorized to sign this Agreement on behalf of British Columbia.

PART XIII. GENERAL PROVISIONS

13.1 This Agreement does not constitute a treaty or a land claim agreement within the meaning of sections 25 and 35 of the *Constitution Act, 1982*.

13.2 This Agreement does not create, expand, limit, amend, deny, derogate, abrogate, extinguish or replace any SFN Section 35(1) Rights.

13.3 The Parties acknowledge that each of them has a differing position regarding the interpretation of Treaty No. 8 and SFN Section 35(1) Rights. Without limiting any other provision of this Agreement, the definition of the "SFN Section 35(1) Rights" is not to be

construed as an acceptance of or admission by a Party of the position of the other Party with regard to the interpretation of Treaty No. 8 and of the rights of SFN as recognized and affirmed by section 35(1) of the *Constitution Act, 1982*.

- 13.4 The Parties acknowledge that each has a different position regarding the location of the western boundary of the geographic area of Treaty No. 8 and that nothing in this Agreement is an admission of fact or liability in relation to claims arising with respect to this matter, including the litigation by certain of the Treaty 8 First Nations seeking a declaration of the western boundary of Treaty No. 8 in British Columbia. The delineation of the Agreement Area is done only for the purposes of this Agreement, and in particular for the purpose of facilitating the Consultation Processes. Further, the Parties may negotiate, by mutual agreement, amendments to the Agreement if the western boundary of Treaty No. 8 is finally determined in a binding decision.
- 13.5 Nothing in this Agreement is to be construed as an acceptance by a Party of the position of the other Party regarding its jurisdiction, responsibilities and decision-making authority or an admission by a Party of the existence of any claims, obligations or liability.
- 13.6 Nothing in this Agreement is to be interpreted as granting or is intended to grant any interest in land.
- 13.7 This Agreement does not limit the positions either Party may take in any legal or administrative proceedings or in any discussions or negotiations between the Parties.
- 13.8 Nothing in this Agreement is intended to, or will be interpreted to affect any aboriginal or treaty right of any other aboriginal people.
- 13.9 Nothing in this Agreement obliges British Columbia to act in a manner inconsistent with provincial law, federal law or constitutional law, or fetters, or is to be interpreted as fettering, the discretion of a statutory decision-maker.
- 13.10 No term, condition, covenant or other provision of this Agreement will be considered to have been waived by the Parties unless such waiver is expressed in writing by the Parties.
- 13.11 Each Party will, on the reasonable request of the other party, perform the acts, execute and deliver the writings, and give the assurances as may be reasonably necessary to give full effect to this Agreement.
- 13.12 This Agreement may be amended by written agreement of the Parties.

PART XIV. INTERPRETATION

- 14.1 In this Agreement,

- 14.1.1 words in the singular include the plural and words in the plural include the singular unless the context or any specific definition otherwise requires;
 - 14.1.2 "including" means "including, but not limited to" and "includes" means "includes, but not limited to";
 - 14.1.3 references to a statute of British Columbia includes every amendment to it, every regulation made under it, every amendment made to a regulation made under it and any law enacted in substitution for or in replacement of it;
 - 14.1.4 headings are for convenience only and do not form part of this Agreement and in no way define, limit, alter or enlarge the scope or meaning of any provision of this Agreement; and
 - 14.1.5 a reference to a Part of this Agreement includes all of the sections under the Part referenced unless otherwise specified.
- 14.2 Where this Agreement contains a reference to a number of days between two events, in calculating that number of days, the day on which the first event happens is excluded and the day on which the second event happens is included.
- 14.3 This Agreement and any amendment to it constitute the entire Agreement between the Parties with respect to the subject matter of this Agreement, unless otherwise agreed in writing by the Parties.
- 14.4 If any part of this Agreement is void or unenforceable at law:
- 14.4.1 that part will be severed from this Agreement and the rest of the Agreement will remain in full force and effect;
 - 14.4.2 the Parties will negotiate and attempt to reach agreement on a replacement for the severed part with a view to achieving the intent of the Parties as expressed in this Agreement; and
 - 14.4.3 the Parties may agree to refer a disagreement on the replacement of the severed part to the dispute resolution process set out in Part X.
- 14.5 This Agreement is governed by, and is to be interpreted and construed in accordance with, the laws applicable in British Columbia.
- 14.6 There will be no presumption that any ambiguity in any of the terms of this Agreement should be interpreted in favour of either Party.
- 14.7 The following are the Appendices to this Agreement and form part of this Agreement:
- Appendix A Agreement Area (Map)
 - Appendix B Reasons for Extension of the Oil and Gas Activity Review and Response Period
 - Appendix C Funding

PART XV. RATIFICATION

- 15.1 Ratification of this Agreement by SFN will take place according to the internal process of SFN and will include, at a minimum, a Band Council Resolution.
- 15.2 British Columbia ratifies this Agreement when the Commissioner of OGC is authorized to do so by the Lieutenant Governor in Council, and both the Minister of MNGD and the Commissioner, or their authorized representatives, have executed the Agreement.

PART XVI. EXECUTION AND EFFECTIVE DATE

- 16.1 This Agreement may be executed and delivered by facsimile and in counterpart, and such counterparts, when executed and delivered, will be deemed to constitute original documents and all such counterparts together will constitute one and the same agreement.