

# **LOWER NICOLA** **INDIAN BAND**

**Lands Management Advisory Committee**

## **LMAC Virtual Meeting: Monday, July 27, 2020**

### **Details to Join Skype Meeting by Phone:**

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**Dial-in toll number: 1 (647) 260-0507**

**Conference ID: 430 048 000 #**

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If you would like to join by Skype to see meeting materials as we discuss them, find details on the LNIB website or email [Jerrica.Joe@lnib.net](mailto:Jerrica.Joe@lnib.net) for more information.

#### **Notes:**

- 1.** *To maintain audio quality and meeting flow, non-LMAC attendees may be muted during the meeting.*
- 2.** *Attendees may enter a “waiting room” as LMAC members get set up; everyone is let in as soon as we are ready to start (typically 5-10 minutes after 4:00pm).*
- 3.** *Questions and comments can be submitted to [Jerrica.Joe@lnib.net](mailto:Jerrica.Joe@lnib.net) prior to the meeting to be addressed during or after the meeting.*

**Lower Nicola Indian Band  
Lands Management Advisory Committee  
Meeting Agenda**

July 27, 2020, 4:00pm  
Virtual Skype Meeting

TIME	ITEM	PRESENTER
4:00	<b>1. MEETING OPENING</b> 1.1. Opening Prayer 1.2. Introductions	
4:10	<b>2. ADMINISTRATION</b> 2.1. Adoption of Agenda 2.2. Adoption of Minutes <i>Reference Materials: 2020-06-29 LMAC Meeting Minutes draft</i>	
4:20	<b>3. PRESENTATIONS</b> 3.1. <b>Trans Mountain Expansion Project &amp; LNIB Lands</b> <i>Reference Materials: 2020-07-22 Presentation to LMAC re TMEP Easement; LNIB TMEP Permits</i>	Tyson Lamarch, Miller Titerle & Co.
5:20	<b>4. FOR INFORMATION AND DISCUSSION</b> 4.1. <b>Enforcement Law Review: Community Justice Process</b> <i>Reference Materials: ILRU Conflict Resolution Literature Review</i> 4.2. <b>Business Licensing Law Review</b> <i>Reference Materials: 2020-06-18 LNIB Business Licensing Law Draft 01</i>	Stephen Jimmie  Stephen Jimmie
6:55	<b>5. MEETING CONCLUSION</b> 5.1. Next LMAC Meeting	

**Lower Nicola Indian Band  
Lands Management Advisory Committee  
Meeting Minutes**

July 13, 2020, 4:00 pm  
Virtual Skype Meeting

<b>Present:</b>	Bill Bose (Chair)	Gene Moses	Louise Moses
	Hrolfe Joe (Co-Chair)	Robert Sterling	Sondra Tom
<b>Absent:</b>	Madeline Lanaro		
<b>Council:</b>	William Sandy		
<b>Guests:</b>	Shawn Speirs, Lands Advisory Board Resource Centre (LABRC) Lindsay Hutchinson, Land Forest People (LFP)		
<b>Staff:</b>	Stephen Jimmie	Jerrica Joe	Monica Pettinger

**1. MEETING OPENING**

The meeting was called to order at 4:09 PM. All attendees participated via phone or computer.

**1.1. OPENING PRAYER**

An opening prayer was offered by Bill Bose.

**1.2. INTRODUCTIONS**

The LNIB Lands Department's new Lands Agent, Monica Pettinger, introduced herself to the LMAC.

**2. ADMINISTRATION**

**2.1. ADOPTION OF AGENDA**

**Motion (01):** That the LMAC Meeting Agenda dated July 13, 2020, be adopted with the following amendment:

- Add 2.2 Conflict of Interest Declaration

**Moved: Sondra Tom**

**Seconded: Gene Moses**

**Motion Carried**

**2.2. CONFLICT OF INTEREST DECLARATION**

Discussion ensued on whether Robert Sterling has a conflict of interest regarding agenda item 5.1 *Lot 11 Dispute Resolution Process*. Robert Sterling chose to declare a conflict of interest regarding this item.

**2.3. ADOPTION OF MINUTES**

*Reference Materials: 2020-06-29 LMAC Meeting Minutes draft*

**Motion (02):** That the LMAC Meeting Minutes dated June 29, 2020, be adopted with the following amendments:

- In item 4.2, change "in" to "if"

- Remove noted introduction of Kristopher Por in item 6.2

**Moved: Louise Moses**

**Seconded: Sondra Tom**

***Motion Carried***

It was asked when the compiled research document of what other communities' approaches to Community Justice Processes will be circulated. This has been prepared and shall be circulated at the next meeting.

### **3. PRESENTATIONS**

#### **3.1. SOLID WASTE MANAGEMENT PLAN**

*Reference Materials: LNIB SWM Presentation Present; LNIB SWM Presentation Future; 2020-02-22 Open House Pamphlet*

Lindsay Hutchinson provided an introduction of herself as well as Land Forest People Consulting (LFP). Lindsay presented the reference materials, starting with the *Present* presentation, followed by the *Open House Pamphlet*, then the *Future* presentation.

Points of discussion and questions included:

- Non-recyclable materials occasionally found in recycling bins, and education around which materials are accepted in curbside recycling bins;
- Communal wooden garbage bins, their current condition, and possible replacement options;
- Illegal dumping, which may be due in part to misconceptions about disposal fees and a lack of information about items which can be dropped off at the Lower Nicola Eco-Depot for free;
- Potential residential garbage collection and possible annual user fees;
- Mitigating residential waste through composting, recycling bins larger than garbage bins, and user fees based on garbage bin size;
- Potential to add signs on the way to known illegal dumping areas, which denote items that are free to dispose of at the Eco-Depot, to help discourage dumping;
- Shawn Speirs mentioned that the Lands Advisory Board Resource Centre (LABRC) is looking for test cases of First Nations under Land Code using their environmental protection laws to prosecute violators, such as illegal dumpers, and could assist with funds for private prosecution--Shawn mentioned that LNIB could be a good candidate if the situation arises;

Lindsay informed the LMAC that additional questions or comments can be shared with Stephen or Jerrica. Lindsay departed the meeting at 5:19 PM.

### **4. TRAINING AND OPPORTUNITIES**

#### **4.1. UPCOMING WEBINARS**

*Reference Materials: LABRC Webinar & Workshop 2020 Schedule*

Jerrica reviewed the schedule for upcoming LABRC webinars. LMAC members were invited to join these webinars, and those interested in any upcoming webinars or workshops were asked to inform Jerrica to be registered. It was noted that future training opportunities will continue to be shared as they emerge.

## 5. UNFINISHED BUSINESS

### 5.1. LOT 11 DISPUTE RESOLUTION PROCESS

*Reference Materials: Lot 11 Draft Dispute Resolution Process; Draft LMAC Resolution 2020-05*

Robert Sterling departed the meeting at 5:31 PM for the discussion and vote on this agenda item.

Stephen reviewed the background information and reference materials, outlining the proposed procedure and the next steps towards the resolution of the dispute.

Discussion ensued on Lisa and Fred Sterling's ability to seek recourse if they dispute the process or decision. It was commented that the procedure appears well thought out and fair-minded. Discussion ensued on the desire for the Lot 11 dispute resolution to take place at a special meeting, outside of a regular Chief and Council meeting, given their lengthy meetings and the importance of this decision.

**Motion (03):** That the LMAC supports and recommends that Chief and Council approve the Proposed Lot 11 Dispute Resolution Procedure, setting specific dates noted in the procedure.

**Moved: Sondra Tom**

**Seconded: Gene Moses**

**Motion Carried**

*Robert Sterling did not participate in the discussion or vote, having declared a conflict of interest.*

*Sondra Tom disconnected from the call during the vote but voiced her support once she reconnected.*

Stephen mentioned that this item will be submitted for consideration at the July 21, 2020, Chief and Council meeting. Discussion ensued on any updates and next step for the LMAC beyond passing this resolution (2020-05). Stephen summarized the process for approving this dispute resolution procedure, for which LMAC's role is complete with the passing of the LMAC Resolution 2020-05.

## 6. FOR INFORMATION AND DISCUSSION

### 6.1. ENFORCEMENT LAW REVIEW: COMMUNITY JUSTICE PROCESS

Stephen reminded LMAC that it was requested of them at a past meeting to investigate options for the Community Justice Process in the LNIB Enforcement Law and asked if any members had input at this time.

Gene and Louise have discussed the xitlix with community members and others, and are unsure of the feasibility of the xitlix in current-day situations. They mentioned a possibility of a committee or council of 10-12 people, who would apply to and be selected by Chief and Council, from the LNIB community or potentially other Land Code communities. In practice, three members of this council could be selected by a combination of Chief and Council, the offender, and other affected parties; this would spread the decision-making responsibilities among an alternating group. Gene intends to discuss this matter with more Elders. Gene and Louise's suggestion was met with a favourable opinion and mention of additional considerations if people from outside LNIB were included in this committee, given the variances in land ownership principles in different communities.

Shawn Speirs was asked about Community Justice Process approaches being carried out in other communities. He mentioned that other communities are still determining the best approach for themselves, and have not yet implemented processes, though these will be shared by the LABRC once they are ready. Stephen mentioned research that was previously compiled regarding community justice processes in other First Nations communities, which will be shared at the next LMAC meeting.

Discussion ensued on documentation of decisions that are made during a community justice process and eventual case files which could be referred to as precedence in the future. Shawn shared that other communities are considering precedence systems, decisions made by panels, and the challenges with the wording and written record of decisions being contrary to oral tradition.

A comment was made regarding language and terms to be used in the Community Justice Process, including a desire to avoid the term “judge.” Discussion ensued on the process development and the importance of community input during the development phase. Attendees discussed implementing the Enforcement Law before or after developing the Community Justice Process, and the participation required to amend the Enforcement Law after enactment to include a Community Justice Process.

## 6.2. BUSINESS LICENSING LAW REVIEW

*Reference Materials: LNIB Business Licensing Law Draft 01*

Stephen overviewed the overall purposes of this law in setting out processes, requirements, and enforcement tools regarding businesses—including retail cannabis businesses—on LNIB lands. LNIB does not currently regulate or issue business licenses.

LMAC started the review of the draft Law, with a member reading aloud, from the Preamble.

Questions and comments included:

- The need for community engagement regarding potential business types and activities which could be prohibited on reserve—including the sale of alcohol—to determine what the LNIB community would like to allow and prohibit;
  - The results of a survey regarding cannabis on LNIB lands was conducted last fall, which yielded results in favour of allowing retail cannabis businesses on LNIB reserves;
- Interest in and inquiries about opening retail cannabis businesses to open on LNIB land, creation of a clear process and guidelines for this type of business;

LMAC would like surveys of LNIB members conducted regarding permitting the sale or delivery of alcohol and adult entertainment stores and movie theatres, and would like to know how things are done in cities.

**ACTION (01):** Lands staff will look into conducting a survey regarding business types to be allowed or prohibited on LNIB lands.

The review of this draft law shall continue at the next meeting, starting at section 10.

## 7. MEETING CONCLUSION

### 7.1. NEXT LMAC MEETING

Discussion ensued on when to hold the next LMAC meeting.

**Decision (01):** Next Meeting: Monday, July 27, 2020, at 4:00 PM.

**Motion (04):** That the Lands Management Advisory Committee meeting be concluded at 7:04 PM.

**Moved: Sondra Tom**

**Seconded: Gene Moses**

**Motion Carried**



# TRANS MOUNTAIN EXPANSION RESERVE LAND CROSSING

Tyson Lamarsh  
Miller Titerle Law Corporation  
July 23, 2020



## Topics

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- + Background
- + Issues
- + Role of LMAC
- + Options & Next Steps



MT  
+Co.

# BACKGROUND

## Background: Overview of Trans Mountain Expansion

- + Twinning of the existing Trans Mountain Pipeline
- + Existing pipeline built in 1950s will continue to operate
- + New pipe will expand capacity to 890,000 barrels per day from 300,000
- + Approved by federal and provincial governments



Inherent Aboriginal Rights and Title

- + Nlaka'pamux Territory
- + Consultation and accommodation
- + No veto

**Mutual Benefits Agreement**

Indian Act Reserve Land Rights

- + LNIB Reserve Land
- + Complete Control

**Easement**



## Background: What Does Trans Mountain Need?

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- + Trans Mountain needs an Easement under Land Code to cross LNIB reserves
  - + An Easement is non-exclusive and would give TMP the right to use the land for a right of way
  - + The land could still be used for certain other things, like grazing
- + New Easement through LNIB reserves will usually require consent of LNIB and land holders



## Background: Potential Benefits of Easement

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### + **Environmental Protections**

- + Can require Trans Mountain to:
  - + monitor the pipeline for spills and maintenance
  - + immediately advise land holders and LNIB of any spill or safety risk
  - + comply with a mutually-developed emergency response plans

### + **Remediation Obligations**

- + Can require Trans Mountain to:
  - + in the event of a spill, remediate to numerical residential environmental standards
  - + in the case of permanent shut down, conduct an environmental assessment and remediate



## Background: Potential Benefits of Easement

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### + **Responsibilities of Trans Mountain**

- + Determine what Trans Mountain can and cannot do in certain areas
- + Impose requirements in the case of discovery of a Heritage Site
- + Require compensation for damage to property
- + Ensure land restored to original state after construction, including vegetation management

### + **Financial Benefits**

- + Land holders have negotiated substantial financial compensation
- + LNIB may negotiate compensation for band land
- + LNIB will also receive ongoing tax revenue and a one time lump sum payment of \$2 million under its MBA



## Background: Result of No Easement

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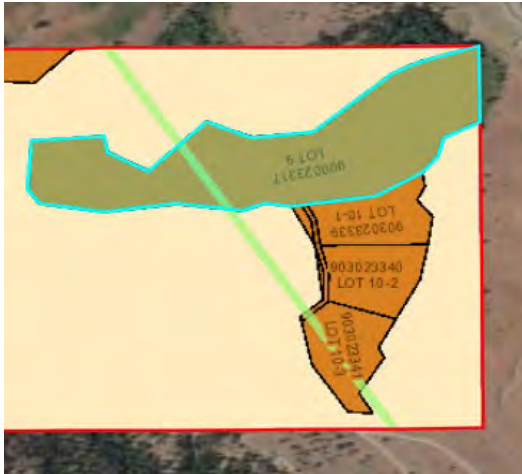
- + If no easement, Expansion can be built around LNIB's reserves
  - + No financial compensation
  - + No environmental protections or other rights
  - + Existing pipe will still go through the reserve
  - + New pipe will still create environmental risks to LNIB's reserve land

MT  
+Co.

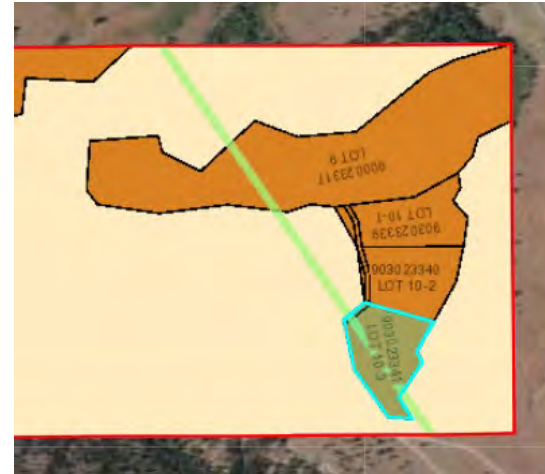
# ISSUES



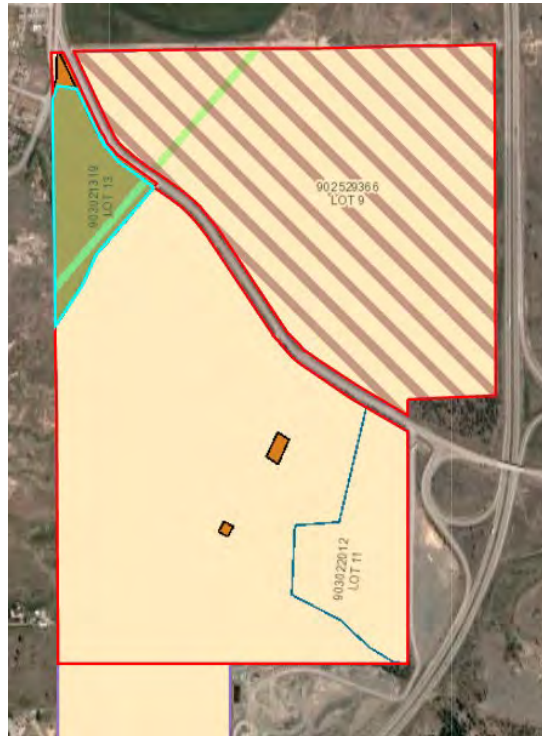
LOT 9



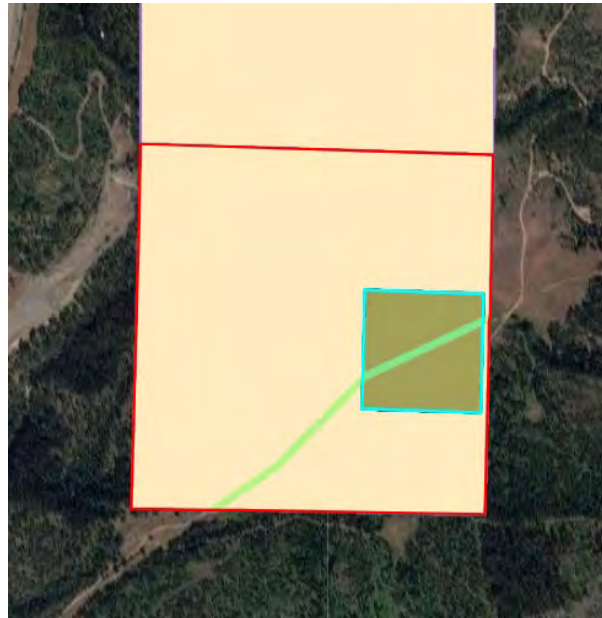
LOT 10-3



**LOTS 13 & 15**



**18 ACRES AS DESCRIBED (LOT 3)**





# ROLE OF LMAC



## Role of Lands Management Advisory Committee

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- + Part of the mandate of the LMAC is to make recommendations to Council regarding whether certain Interests in LNIB Land should be granted
- + The Easement requested by Trans Mountain would be an Interest in LNIB Land
- + The LMAC can also recommend laws, policies and procedures re LNIB Land to Council



## Role of Lands Management Advisory Committee

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- + What does all of this mean?
  - + The LMAC is an integral part of the process and next steps for LNIB and land holders granting an Easement to Trans Mountain
  - + The LMAC will play a role in developing the content of an Easement for Trans Mountain
  - + At this stage, the LMAC may need to give direction on the terms of the Easement and potential negotiation with Trans Mountain



# NEXT STEPS



## Summary of Recommended Next Steps

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- + Settle terms of the Easements
- + Confirm process for Easement approval
- + Determine compensation for LNIB land
- + Present Easement to LMAC for recommendation
- + Present to Council for approval





## Discussion Topics

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- + Easement terms (environmental, access, spill remediation, etc.)
- + LNIB Compensation
  - + LMAC has fiduciary duty to membership
  - + Land holders have negotiated significant financial compensation
  - + Trans Mountain is currently only offering appraised value to LNIB (plus \$2 million lump sum under the MBA and ongoing tax revenue)
  - + Negotiating for significant financial compensation may strain relationship with Trans Mountain
- + Approval process and timeline

MillerTiterle  
+Company

**PIPELINE WORKS AND ACCESS PERMITS**  
**with Temporary Work Space Permit**  
**for**  
**Trans Mountain Expansion Project**

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<b>PIPELINE PERMIT#:</b>
<b>DATE OF PERMIT:</b>
<b>AGENT/APPLICANT:</b>
<b>PROPERTY INFORMATION/LEGAL DESCRIPTION:</b>
This Permit deals with:
(a) as to the Pipeline Works Permit created under Article 6 - those portions of the CP Parcels (as defined in section 3.2) and the First Nation Lands (as defined in section 3.2) that are included in the area shown outlined in heavy line on the plan registered in the Canada Lands Surveys Records as _____ [NTD: Insert] (the “ <b>Pipeline Right of Way Area</b> ”)
and
(b) as to the Access Permit created under Article 7 – those portions of the CP Parcels and the First Nation Lands shown on the plan registered in the Canada Lands Surveys Records as _____ [NTD: Insert] (the “ <b>Access Areas</b> ”)
and
(c) as to the Temporary Work Space Permit created under Article 8 - those portions of the CP Parcels and the First Nation Lands that are included in the areas designated as “TWS Area” on the plan attached to this Permit as Schedule C (the “ <b>TWS Areas</b> ”).

**THE PARTIES TO THIS PERMIT ARE:**

**TRANS MOUNTAIN PIPELINE L.P., by its general partner, TRANS MOUNTAIN PIPELINE ULC**

(the “**Company**”)

and

**LOWER NICOLA INDIAN BAND**, a band within the meaning of the *Indian Act* (Canada)

(“**First Nation**”)

and

**CERTAIN ALLOTMENT HOLDERS OR THEIR ACTUAL OR POTENTIAL BENEFICIARIES**

being those individuals listed in Schedule A

(collectively, the “**CP Holders**”)

“**Company**”, “**First Nation**” and “**CP Holders**” are more fully defined in section 3.2 below.



## BACKGROUND

- A. The Company owns, operates and maintains the Existing Trans Mountain Pipeline System (hereinafter defined) and part of it is located within the Pipeline Right of Way Area;
- B. The Company wishes to expand the Existing Trans Mountain Pipeline System by the construction of the Expansion Project (hereinafter defined);
- C. First Nation has taken over control and management of First Nation Lands and resources pursuant to the *First Nation Land Management Act* (Canada) and has enacted the *First Nation Land Code* dated for reference April 1, 2016 and effective December 1, 2016 (the “**Land Code**”);
- D. The Company, the CP Holders and First Nation have engaged in negotiations and the CP Holders and First Nation have agreed to grant to the Company the rights and interests in the Pipeline Right of Way Area, the Access Areas and the TWS Areas on and subject to the terms set out in this document in order to enable the Company to use such Areas for the purposes, and on the terms, stated in this document;
- E. Council has sought input from the Lands Management Advisory Committee and believes it is in the best interests of First Nation to make the grants and to enter into covenants and agreements contained in this document; and
- F. Council has provided written consent to the granting of this Permit in accordance with the Land Code, a certified copy of which is attached to this Permit as Schedule E.

**NOW THEREFORE** in consideration of the sum of Ten CAD (\$10.00) Dollars paid by the Company to each of the CP Holders and to First Nation, the receipt whereof by each of the CP Holders and First Nation is acknowledged, and in consideration of the covenants and agreements on the part of the Company herein set forth and contained, First Nation and the CP Holders do grant, covenant and agree with the Company as set out below:

### **Article 1. CONDITIONAL GRANTS**

Despite the grants of permits under the Land Code under Article 6, Article 7 and Article 8 (the “**Permits**”) the Company shall not in any manner be entitled to exercise its rights thereunder until:

- (a) **[intentionally deleted].**

For the avoidance of doubt the condition set out in this Article 1 shall be conclusively deemed to have been satisfied upon the completion of the construction of the Pipeline Works.

### **Article 2. INTENT**

The Permits are issued in accordance with the Land Code and First Nation Laws for the purposes of granting the Company a right-of-way Within the Pipeline Right of Way Area for the Pipeline Works (hereinafter defined), granting the Company a right of way for access to and from the Pipeline Right of Way Area over the Access Areas, and granting the Company temporary use of the TWS Areas for the construction of the Pipeline Works in the Pipeline Right of Way Area, and provide no rights whatsoever with respect to any additional (more than one) pipeline. For greater certainty, no pipeline in addition to the pipeline included in and forming part of the

Pipeline Works and the Existing Pipeline Works, or either, shall be constructed, installed or operated on the Pipeline Right of Way Area or anywhere else on First Nation Lands under the Pipeline Works Permit (hereinafter defined) or this Permit.

### **Article 3. DEFINITIONS**

#### **3.1 Land Code Definitions**

In this Permit, definitions from the Land Code apply.

#### **3.2 Other Definitions**

In this Permit, the following definitions apply:

- (a) **"Abandon"** or **"Abandoning"** means to remove permanently from service;
- (b) **"Access Areas"** means those portions of the CP Parcels and First Nation Lands shown on the plan registered in the Canada Lands Surveys Records as \_\_\_\_\_ [NTD: Insert];
- (c) **"Access Permit"** means the permit issued under the Land Code as created under Article 7;
- (d) **"Access Works"** has the meaning ascribed by section 7.1;
- (e) **"Adjacent Lands"** means those parts of the CP Parcels outside of the Pipeline Right of Way Area in which use or activities by landowners are regulated under the *CERA*;
- (f) **"Approval by Company"** means an approval in writing by the Company under this Permit or otherwise, including any conditions of approval;
- (g) **"Authority"** means any government (including any governmental or quasi-governmental authority, commission or board), including First Nation, having jurisdiction;
- (h) **"Authority Permits"** means all certificates, licences, permits and approvals from Authorities required under the *CERA* and other Laws for the carrying out and completion of any Work by, or the operations of, the Company on the Pipeline Right of Way Area, Access Areas or TWS Areas under the provisions of this Permit, including as required by this Permit;
- (i) **"CERA"** means the *Canadian Energy Regulator Act*, SC 2019, c 28, s. 10, which repealed and replaced the NEB Act, and any new regulations made under *CERA*, all as amended or replaced from time to time. Such regulations as were made under the NEB Act remain in force under the *CERA* until they are repealed or others made in their stead;
- (j) **"Clean Soil"** means Soil comprised of material of any kind or nature of which land in its natural state is composed, that does not contain any construction debris or other waste, and that meets the standards for residential use under Laws made by First Nation and under the EMA Standards, provided that in the event of conflict the Laws made by First Nation shall govern;

- (k) **“Commission”** means the commission established under the *CERA* and any successor having regulatory authority in respect of the Expansion Project;
- (l) **“Company”** means Trans Mountain Pipeline L.P., by its general partner, Trans Mountain Pipeline ULC and their respective successors and assigns;
- (m) **“Contaminant”** means
  - (i) any pollutant or toxic, dangerous, deleterious or hazardous substance or material as defined, listed, prohibited, controlled, or regulated by any Law; and
  - (ii) any substance that when released in to the natural environment, including the atmosphere and a body of water, causes or is likely to cause harm, adverse impact, damage or degradation to, or impairment of, the environment, risk to or an adverse effect on human safety or health, injury to or material discomfort to any person or animal or plant life, damage to property, or material interference with the normal conduct of business including, radioactive materials, explosives and Products;
- (n) **“CP Holders”** means the persons listed in Schedule A and their respective heirs, executors, administrators, successors and assigns;
- (o) **“CP Holder’s Parcels”** means the CP Parcel or Parcels of which a CP Holder holds or otherwise has an interest in an Allotment or an undivided interest in an Allotment;
- (p) **“CP Parcels”** means the parcels of land described in Schedule B and any other parcels of land from time to time in whole or in part included in the Pipeline Right of Way Area, Access Areas or TWS Areas due to subdivision or consolidation of those parcels of land or any part thereof;
- (q) **“Dispute”** has the meaning ascribed to it in section 34.1;
- (r) **“Effective Date”** means the date specified in section 45.1 below;
- (s) **“EMA Standards ”** means the standards in or referenced by Part 6 of the *Contaminated Sites Regulation* under the *Environmental Management Act* (British Columbia) or replacements thereof from time to time (including the definitions and schedules applicable thereto);
- (t) **“Emergency”** means an imminent threat to the safety and security of the public or workers, the safety and security of the Pipeline Works, or the safety and security of the environment;
- (u) **“Emergency Response Plan”** means a procedures manual for responding to incidents involving activities and operations in respect of the Pipeline Works and the Existing Pipeline Works that result in an Emergency or could adversely affect property, the environment or people;

- (v) **“Excavation”** means a mine, quarry, well, pit, hole, trench, ditch, foundation or other excavation of any kind or nature of, on or under land;
- (w) **"Existing Pipeline Works"** means the segment of the Existing Trans Mountain Pipeline System Within the Pipeline Right of Way Area, including a single line of pipe for the transportation of Product and all installations, equipment, fittings and facilities Within the Pipeline Right of Way Area associated with, appurtenant, affixed or incidental to that single line of pipe as used for that purpose, including drips, valves, fittings, connections, meters and cathodic protection equipment, and telecommunication and electrical facilities used for or in the operation and maintenance thereof, as altered, replaced, reconstructed and repaired from time to time;
- (x) **"Existing Trans Mountain Pipeline System"** means the pipeline system for the transportation of Product from Edmonton, Alberta to Burnaby, British Columbia that is owned and operated by the Company, together with all related facilities and infrastructure, as constructed as of the date of this Permit under certificates of public convenience and necessity issued by the National Energy Board (which certificates are considered to have been issued under the *CERA*);
- (y) **"Expansion Project"** means the proposed expansion of the Existing Trans Mountain Pipeline System to increase its current nominal capacity of 300,000 bpd to a nominal capacity of 890,000 bpd, comprised of:
  - (i) pipeline facilities that complete a twinning of the Existing Trans Mountain Pipeline System in Alberta and British Columbia with about 981 km of new buried pipeline;
  - (ii) new and modified facilities, such as pump stations and tanks; and
  - (iii) additional tanker loading facilities at the Westridge Marine Terminal in B.C.;all as described in the project application filed with the National Energy Board in December 2013, and specifically including the portion of such expansion that is proposed to be developed, constructed and operated on, under or upon the Pipeline Right of Way Area;
- (z) **"Expansion Project Certificate"** means the certificate or certificates of public convenience and necessity for the Expansion Project as issued by the National Energy Board (which certificates are considered to have been issued under the *CERA*), the Commission, or both, as amended, replaced or renewed under the provisions of the *CERA*;
- (aa) **“First Nation”** means the Lower Nicola Indian Band, and as to its interest in the CP Parcels and First Nation Lands in whole or in part included in the Pipeline Right of Way Area, Access Areas and TWS Areas, includes its successors and assigns;
- (bb) **“First Nation Lands”** means LNIB Land, as defined in the Land Code;
- (cc) **“General Manager”** means the First Nation employee specified as such from time to time by the Council;

- (dd) **“Generally Accepted Practices”** means generally accepted practices employed by the pipeline industry in Canada, as may change and develop from time to time, including environmental practices for the construction, operation, maintenance, deactivation and abandonment of oil pipelines within Canada, including the Remediation Process Guide;
- (ee) **"Heritage Object"** means a physical object including a fragment that, reasonably, has or may have Heritage Value to First Nation;
- (ff) **"Heritage Site"** means a particular area of land that, reasonably, has or may have Heritage Value to First Nation;
- (gg) **“Heritage Value”** means archaeological, historical, traditional, cultural, spiritual, ceremonial, aesthetic, scientific or educational worth or usefulness;
- (hh) **“Improvement”** means a building, structure, erection, pipe, pole, tower, road, pavement, foundation, improvement or thing of any kind or nature constructed or installed Within land;
- (ii) **"including"** means including without limitation;
- (jj) **“Incompatible Use”** means any use, activity or thing Within the Pipeline Right of Way or the Access Areas, or both, and during the continuance of the Temporary Work Space Permit Within the TWS Areas, that:
  - (i) would materially interfere with, disrupt or delay the exercise of the Company’s rights under this Permit, including inspection, patrol and testing Within the Pipeline Right of Way Area, Access Areas, or TWS Areas; or
  - (ii) imperils the safety or security of the Pipeline Works, or any part thereof, or any person or property in relation to the Pipeline Works or any part thereof,and includes the use of any part of the Pipeline Right of Way Area or Access Areas, or both, for, the carrying out Within the Pipeline Right of Way Area or Access Areas, or both, of, or the existence Within the Pipeline Right of Way Area or Access Areas, or both, of, and during the continuance of the Temporary Work Space Permit the use of any part of the TWS Areas for, the carrying out Within the TWS Areas of, or the existence Within the TWS Area of, any Excavation, dumping or removing Soil, or any Improvement; but does not include any use, activity or thing Within the Pipeline Right of Way Area or TWS Areas for which an Approval by Company exists and for which any conditions of that Approval by Company are complied with;
- (kk) **"Integrity Dig"** means an excavation in or around the Pipeline Works within the Pipeline Right of Way Area for the purposes of visually inspecting, repairing or maintaining the Pipeline Works;
- (ll) **“Land Code”** has the meaning ascribed to it in recital C;

- (mm) **“Laws”** means all laws, statutes or regulations, including by-laws, ordinances, orders and codes by an Authority, including:
- (i) laws relating, in whole or in part, to the assessment, protection and enhancement of the environment, protection of Heritage Objects and Heritage Sites, public health, public safety, and the transportation of dangerous goods;
  - (ii) any decisions, determinations, mitigation measures, standards, codes, guidelines, policies or environmental protection measures pursuant to such laws; and
  - (iii) all applicable Authority Permits;
- (nn) **“National Energy Board”** means the board established under the NEB Act;
- (oo) **“NEB Act”** means the *National Energy Board Act* R.S.C., 1985, c. N-7, and regulations thereunder, which has been repealed and replaced by the *CERA*, and regulations thereunder. Such regulations as were made under the NEB Act remain in force under the *CERA* until they are repealed or others made in their stead;
- (pp) **“Parties”** means all of the Company, the **First Nation** and the CP Holders;
- (qq) **“Permit”** means this Pipeline Works and Access Permits with Temporary Work Space Permit agreement, as it may be amended from time to time;
- (rr) **“Permits”** has the meaning ascribed to it in Article 1;
- (ss) **“Pipeline Construction”** means the construction of the Pipeline Works within the Pipeline Right of Way Area;
- (tt) **“Pipeline Right of Way Area”** means those portions of the CP Parcels and First Nation Lands that are included in the area shown outlined in heavy line on the plan registered in the Canada Lands Surveys Records as \_\_\_\_\_ **[NTD: Insert]**;
- (uu) **“Pipeline Works”** means the single line of pipe for the transportation of Product and all installations, equipment, fittings and facilities associated with, appurtenant, affixed or incidental to that single line of pipe as used for that purpose, including drips, valves, fittings, connections, meters and cathodic protection equipment, and telecommunication and electrical facilities used for or in the operation and maintenance thereof, that are constructed and installed Within the Pipeline Right of Way Area under and in accordance with the Expansion Project Certificate, as altered, replaced, reconstructed and repaired from time to time in accordance with the provisions of this Permit;
- (vv) **“Pipeline Works Permit”** means the permit issued under the Land Code and as created under Article 6;
- (ww) **“Placed Soil”** means Soil that has been deposited, dumped or placed on land;

- (xx) **“Prior Uses”** means any land use that existed on any Pipeline Right of Way Area, Access Area, or Temporary Work Space Area immediately prior to any activities occurring pursuant to any Permit;
- (yy) **“Product”** means oil, other liquid and gaseous hydrocarbons, and products thereof;
- (zz) **“Remediation”** means action to eliminate, limit, correct, counteract, mitigate or remove any Contaminant from soils or groundwater or the adverse effects on the environment or human health of any Contaminant within soils or groundwater to Remediation Standards, carried out in accordance with Generally Accepted Practices and Laws;
- (aaa) **“Remediation Process Guide”** means the Remediation Process Guide of the Commission, as amended or replaced from time to time;
- (bbb) **“Remediation Standards”** means in respect of any Contaminants in Soil, surface water, groundwater, sediment or vapour the most stringent of the following standards: (i) the EMA Standards, (ii) standards under Laws coming into force after the date hereof, and (iii) the standards of the Canadian Council of Ministers of the Environment (or successor organization) and, in determining the applicable standards, the use of the land will be deemed to be residential use;
- (ccc) **“Soil”** means soil, fill, earth, sand, gravel, and other material of any kind or nature of which land is composed;
- (ddd) **“Spill”** means any spill, discharge, leak, release or migration of a Contaminant, in any quantity, on or about the Pipeline Right of Way Area, the Access Areas, the TWS Areas or any other First Nation Lands, resulting from Work carried out by, or the operations of, the Company on the Pipeline Right of Way Area, the Access Areas or the TWS Areas under the rights hereby granted;
- (eee) **“Temporary Work Space Permit”** means the permit under the Land Code created under Article 8;
- (fff) **“Term”** means the term of the Permits determined in accordance with Article 5;
- (ggg) **“TWS Areas”** means those portions of the CP Parcels and First Nation Lands that are included in the areas designated as “TWS Area” on the plan attached to this Permit as Schedule C;
- (hhh) **“Vegetation”** means trees, shrubs, nursery stock and other vegetation and includes the limbs or growth of any vegetation;
- (iii) **“Within”** means across, over, under, in, through and on; and
- (jjj) **“Work”** includes work, activities, operations and the construction and installation of Improvements.

### **3.3 Schedules.**

The following Schedules are attached to and form a part of this Permit:

Schedule A – CP Holders

Schedule B – CP Parcels

Schedule C – Temporary Work Space Area

Schedule D – Vegetation Management Plan

Schedule E – First Nation Consent

## **Article 4. INTERPRETATION**

### **4.1 References to Laws**

Any reference to Laws means applicable Laws in force, as they may be amended, revised, consolidated or substituted from time to time.

### **4.2 References to Generally Accepted Practices**

Any reference to Generally Accepted Practices shall not include any Generally Accepted Practices that conflict with Laws.

### **4.3 First Nation Representatives**

Any matters that involve First Nation will be dealt with by the Chief, the Lands Manager, or their lawful designates, as the authorized representatives for First Nation.

### **4.4 Interpretation**

Wherever the singular or the masculine or neuter gender is used in this Permit, it shall be construed as if the plural or other appropriate gender, as the case may be, had been used where the context so requires, and *vice versa*.

## **Article 5. TERM**

Subject to section 28.5, the term of the Permits is from the Effective Date set out in section 45.1 below until the earlier of:

- (a) the Pipeline Right of Way Area is no longer required by the Company for the Pipeline Works, including for performance and observance of its obligations under Article 28;
- (b) the Company provides First Nation written notice of its desire to terminate the Permits and the Company has fulfilled all of its obligations under this Permit including under Article 28;
- (c) the Parties agree on the replacement of the Permits, and the replacement are granted and in effect; and
- (d) the date that is 99 years after the Effective Date.



## **Article 6. USE OF PIPELINE RIGHT OF WAY AREA BY COMPANY**

### **6.1 Grant of Permit for Pipeline Purposes**

CP Holders and First Nation do grant and issue to the Company a “Permit” in and to those portions of the CP Parcels and First Nation Lands, to the extent of their interests, included in the Pipeline Right of Way Area for the use of Pipeline Right of Way Area for the following purposes and for no other purpose, save as otherwise expressly provided hereby:

- (a) to construct, install, operate, maintain, inspect, patrol (including by aerial patrol), alter, remove, replace, reconstruct and repair the Pipeline Works and to perform and observe its obligations hereunder including compliance with the Emergency Response Plan when required, and for such purposes remove from the Pipeline Right of Way Area any Improvements, Soil, Placed Soil or Vegetation on the Pipeline Right of Way Area, and to carry out surveys, tests and examinations Within the Pipeline Right of Way Area and to place Clean Soil on the Pipeline Right of Way Area;
- (b) to remove from the Pipeline Right of Way Area any Incompatible Use on the Pipeline Right of Way Area from time to time, including any Improvement, Soil, Placed Soil or Vegetation from time to time on the Pipeline Right of Way Area that is an Incompatible Use, and to place Soil on the Pipeline Right of Way Area to fill in any Excavation thereon; and
- (c) enter, labour, go, be, return, pass and repass Within the Pipeline Right of Way Area for the foregoing purposes and generally to do Within the Pipeline Right of Way Area all things necessary or incidental to the undertaking of the Company in connection with the foregoing.

### **6.2 Storage on Pipeline Right of Way Area**

The Company shall not make use of the Pipeline Right of Way Area for the storage of any materials, equipment, vehicles or other thing except during the period of the conduct or carrying out of any Work permitted or required hereunder, and periods immediately before and after the conduct or carrying out of any such Work, and provided that such use in relation to any Work shall be only for the minimum time as is reasonable in the circumstances. Except in an Emergency the Company will not store anything on the Pipeline Right of Way Area, except for any storage authorized under this section, unless it has provided advance written notice of at least 48 hours to First Nation and affected CP Holders.

### **6.3 Clean Soil Only**

The Company shall only bring onto, store or place Clean Soil on the Pipeline Right of Way Area. For certainty the Company shall not store, place or reuse on the Pipeline Right of Way Area any Soil that it excavates on or from the Pipeline Right of Way Area or otherwise from First Nation Lands that is not Clean Soil.

### **6.4 Fences and Berms**

The Company will not in any way fence or construct berms or ditches on, or block access to, any part of the Pipeline Right of Way Area, except during the period of the conduct or carrying out of any Work permitted or required hereunder and periods immediately before and after the conduct

or carrying out of any such Work, and provided that such use in relation to any Work shall be only for the minimum time as is reasonable in the circumstances. Except in an Emergency the Company will not fence or construct berms on, or block access to, any part of the Pipeline Right of Way Area unless it has provided advance written notice of at least 48 hours to First Nation and affected CP Holders.

## **6.5 [Redacted]**

**[Redacted]**

## **6.6 Prior Interests**

The Company acknowledges and agrees that the Pipeline Works Permit is granted under this Permit subject to the prior registered interests in the CP Parcels and that the Pipeline Works Permit does not confer any right to do anything within the Pipeline Right of Way Area, with the exception of the activities agreed to under this Pipeline Works Permit, that violates the terms of such interests or any of them except with the agreement of the holders or holder of the interests or interest.

## **Article 7. USE OF ACCESS AREAS BY COMPANY**

### **7.1 Grant of Permit for Access Purposes**

CP Holders and First Nation do grant and issue to the Company a "Permit" in and to those CP Parcels and First Nation Lands, to the extent of their interests, included in the Access Areas for the use of Access Areas for the following purposes and for no other purpose, save as otherwise expressly provided hereby:

- (a) the transportation of persons and all types of property over the Access Areas in connection with the use of the Pipeline Right of Way Area and TWS Areas under this Permit;
- (b) doing on, over and through the Access Areas all acts, things and matters necessary, required or desirable for the safe and efficient transportation of persons and property over them, as aforesaid, including without limitation maintaining, repairing, renewing and replacing works that are used, or are necessary or desirable for such purposes, including without limitation roads and all works ancillary thereto (together the "**Access Works**");
- (c) clearing and keeping Access Works and the Access Areas free and clear of anything which, in the opinion of the Company, acting reasonably, constitutes or may constitute a danger to or an obstruction of the Access Works, or interferes with the use of the Access Works under and in accordance with this Permit; and
- (d) generally to do Within the Access Areas all things necessary or incidental to the undertaking of the Company in connection with the foregoing.

### **7.2 No Obligation as to Works:**

For certainty nothing herein shall obligate the Company to construct, install or reconstruct any Access Works on the Access Areas or any portion thereof, or keep up, maintain, repair, renew or replace any Access Works now or hereafter on the Access Areas, whether or not used by the Company under this Permit; provided however that the Company shall cause to be repaired and restored at its sole cost any damage or degradation to Access Works constructed or maintained in

the Access Areas by CP Holders or First Nation that results from the exercise of the rights granted under section 7.1 of this Permit.

### **7.3 [Redacted]**

**[Redacted]**

### **7.4 Prior Interests**

The Company acknowledges and agrees that the Access Permit is granted under this Permit subject to the prior registered interests in the CP Parcels and that the Access Permit does not confer any right to do anything within the Access Areas, with the exception of the activities agreed to under this Access Permit, that violates the terms of such interests or any of them except with the agreement of the holders or holder of the interests or interest.

## **Article 8. USE OF TWS AREAS BY COMPANY**

### **8.1 Grant of Permit for Temporary Use in the construction of the Pipeline Works**

CP Holders and First Nation do grant and issue to the Company a “Permit” in and to those portions of the CP Parcels and First Nation Lands, to the extent of their interests, included in the TWS Areas for the use of TWS Areas in connection with Pipeline Construction and the performance and observance of the obligations on the part of the Company in respect of the TWS Areas under this Permit, and for the use of TWS Areas for those purposes, and for no other purpose save as otherwise expressly provided hereby to:

- (a) carry out surveys, tests and examinations, place Clean Soil, and carry out excavations on the TWS Areas;
- (b) remove from the TWS Areas any Incompatible Use, including any Improvement, Soil, Placed Soil or Vegetation from time to time on the TWS Areas that is an Incompatible Use, and to place Clean Soil on the TWS Areas to fill in any Excavation thereon; and
- (c) enter, labour, go, be, return, pass and repass Within the TWS Areas for the foregoing purposes and generally to do Within the TWS Areas all things necessary or incidental to the undertaking of the Company in connection with the foregoing.

### **8.2 Lapse of Temporary Work Space Permit**

Save only for the performance and observance of any outstanding obligations in respect of the restoration of TWS Areas following Pipeline Construction on the part of the Company under this Permit, the Company’s rights under the Temporary Work Space Permit shall lapse and determine and be of no further force or effect whatsoever on completion of Pipeline Construction. Upon the completion of the performance and observance of such obligations the Company shall at the request of the CP Holders or any of them execute and register such documents as may be necessary to evidence the discharge the Temporary Work Space Permit from the records of any public registry in which it this Permit has been registered.

### **8.3 Following Construction**

Following the completion of the construction and installation of the Pipeline Works the Company shall as soon as possible, provided that weather and soil conditions permit, and except as otherwise agreed in writing by the CP Holders for the affected CP Parcels:

- (a) cause all materials, equipment, vehicles and other things that have been brought onto the TWS Areas for Pipeline Construction, including all construction debris, to be removed from the TWS Areas;
- (b) in compliance with section 8.5, grade and contour the TWS Areas using suitably compacted Clean Soil, and replace all topsoil removed from it, so that it is generally level with surrounding land, and is suitable for any Prior Uses of it on the part of the CP Holders for the affected CP Parcels; and
- (c) ensure that any potential hazards or safety risks resulting from such construction and installation or any part of it are removed or addressed, including by Remediation in accordance with Article 26 if required, and restore Improvements on the TWS Areas and otherwise leave the TWS Areas so they are suitable for any Prior Uses thereof on the part of the CP Holders for the affected CP Parcels.

### **8.4 Storage on TWS Areas**

The Company shall not make use of the TWS Areas for the storage of any materials, equipment, vehicles or other thing except during the period of the conduct or carrying out of any Work permitted or required hereunder, and periods immediately before and after the conduct or carrying out of any such Work, and provided that such use in relation to any Work shall be only for the minimum time as is reasonable in the circumstances. Except in an Emergency the Company will not store anything on the TWS Areas unless it has provided advance written notice of at least 48 hours to First Nation and affected CP Holders.

### **8.5 Clean Soil Only**

The Company shall only bring onto, store or place Soil that is Clean Soil on the TWS Areas. For certainty the Company shall not store, place or reuse on the TWS Areas any Soil that it excavates on or from the TWS Areas or otherwise from First Nation Lands that it not Clean Soil.

### **8.6 Fences and Berms**

The Company will not in any way fence or construct berms or ditches on, or block access to, any part of the TWS Areas, except during the period of the conduct or carrying out of any Work permitted or required hereunder and periods immediately before and after the conduct or carrying out of any such Work, and provided that such use in relation to any Work shall be only for the minimum time as is reasonable in the circumstances. Except in an Emergency the Company will not fence or construct berms on, or block access to, any part of the TWS Areas unless it has provided advance written notice of at least 48 hours to First Nation and affected CP Holders.

### **8.7 [Redacted]**

[Redacted]

## **8.8 Prior Interests**

The Company acknowledges and agrees that the Temporary Work Space Permit is granted under this Permit subject to the prior registered interests in the CP Parcels and that the Temporary Work Space Permit does not confer any right to do anything within the TWS Areas, with the exception of the activities agreed to under this Temporary Work Space Permit, that violates the terms of such interests or any of them except with the agreement of the holders or holder of the interests or interest.

## **Article 9. FOR CERTAINTY**

### **9.1 Supplemental Grant**

First Nation agrees with the Company that if and to the extent any CP Parcel or part of a CP Parcel included in the Pipeline Right of Way Area, the Access Areas or TWS Areas is hereafter, from time to time, not included in an Allotment, as the result of an Allotment being cancelled or other reason, the same shall be and remain subject to the Pipeline Works Permit, Access Permit and Temporary Works Space Permit (if it has not determined under the provisions hereof) respectively; and to that end First Nation does hereby join in, ratify and adopt the grants of the Permits under this Permit and as holder of a reversionary interest in the CP Parcels does grant the Permits to the Company its successors and assigns, and does acknowledge and agree to and with the Company, its successors and assigns, that the Permits will encumber the interest of First Nation and its successors and assigns in the CP Parcels.

### **9.2 Contractual Licence**

First Nation agrees with the Company that if and to the extent there is no Allotment as to any CP Parcel or part of a CP Parcel included in the Pipeline Right of Way Area, Access Areas or TWS Areas, whether now or from time to time in the future, and the Permits or any of them is not exercisable in respect of the part of the Pipeline Right of Way Area, Access Areas or TWS Area for which there is no Allotment by virtue of section 9.1 or otherwise, the Company shall have in respect such part of the Pipeline Right of Way Area, Access Areas or TWS Areas a contractual licence, to use it for the same purposes as under the Pipeline Works Permit, Access Permit or Temporary Works Space Permit (if it has not determined under the provisions hereof), as is applicable. First Nation agrees that if the Company shall have a contractual licence for the use of any part of the Pipeline Right of Way Area, Access Area or TWS Area under this section 9.2, then in the event that the First Nation disposes of any interest therein it shall cause the grantee of such interest to provide reasonable accommodation to the Company for the use thereof for the purposes permitted under the Pipeline Works Permit, Access Permit or Temporary Works Space Permit (if it has not determined under the provisions hereof), as is applicable, on terms agreed to by the Company, acting reasonably, such that on the completion of that disposition the Company shall have good and sufficient rights for the use thereof generally on the terms of this Permit, *mutatis mutandis*.

### **9.3 Terms to Remain Binding**

First Nation and the Company agree that during any period of time during which the whole or any part of a CP Parcel included in the Pipeline Right of Way Area, Access Areas or the TWS Area is not included in an Allotment, as set out above, the covenants and agreements expressed in this Permit shall, to the extent applicable, be binding on and take effect to the benefit of First Nation and the Company as to and in respect of the part of the Pipeline Right of Way Area, Access Areas

or TWS Areas for which there is no Allotment, as though First Nation was a CP Holder in respect thereof.

**Article 10. QUIET ENJOYMENT**

Each CP Holder and First Nation agrees as to its CP Holder's Parcels and First Nation Lands, as applicable, that the Company shall peaceably hold and enjoy the rights and interests therein hereby granted and given without hindrance, molestation or interruption on the part of the CP Holder or on the part of a person, firm or corporation claiming by, through, under or in trust for the CP Holder or First Nation. Subject to the provisions of section 8.2 and in Article 46:

- (a) nothing done or not done by the Company on or about or in relation to the Pipeline Works, the Pipeline Right of Way Area, the Access Areas, the TWS Areas or First Nation Lands under this Permit or otherwise shall affect or result in any suspension, limitation or termination of the rights and interests in the Pipeline Right of Way Area, Access Areas and TWS Areas hereby granted and given or the Company's rights and obligations under this Permit; and
- (b) in no event shall any of the CP Holders, First Nation, or any other person having an interest in the Pipeline Right of Way Area, the Access Areas or the TWS Areas interfere with, hinder, molest or interrupt the Company in its use and enjoyment of the rights and interests herein granted.

**Article 11. NATURE OF PERMITS**

The Permits are for use of specified areas of First Nation Lands. They grant only the non-exclusive rights in and to the Pipeline Right of Way Area, Access Areas and TWS Areas as specifically set out herein and for certainty do not grant any exclusive possessory right or exclusive proprietary interest to the Company, nor any rights to or ownership of Natural Resources or Soils found Within the Pipeline Right of Way Area, the Access Areas or the TWS Areas, except only the parts of them that are necessary to be dug, carried away or used in the course of the carrying out of any Works permitted or required under this Permit.

**Article 12. USE OF PIPELINE RIGHT OF WAY AREA AND ADJACENT LANDS BY CP HOLDERS**

**12.1 No Interference**

Each CP Holder and First Nation agrees with the Company that he or she shall not make, do, install or construct or permit or suffer to be made, done, installed or constructed:

- (a) any Incompatible Use:
  - (i) Within that part of the Pipeline Right of Way Area included in his or her CP Holder's Parcels or First Nation Lands, as applicable; or
  - (ii) during the continuance of the Temporary Work Space Permit, Within that part of the TWS Areas included in his or her CP Holder's Parcels or First Nation Lands, as applicable; or
- (b) any use, activity or thing, including an Improvement, Within that part of the Adjacent Lands included in his or her CP Holder's Parcels or First Nation Lands, as applicable, that

disturbs or interferes with the Pipeline Works or the operation, safety or security of the Pipeline Works unless an Approval by Company exists for such use, activity or thing and any conditions of that Approval by Company are complied with.

## **12.2 For Certainty**

The Company acknowledges that the CP Holders shall be at liberty to make, do, install or construct or permit or suffer to be made, done, installed or constructed, in accordance with Laws:

- (a) Within the Pipeline Right of Way Area and the TWS Areas , any use, activity or thing, including an Improvement, that is not an Incompatible Use; and
- (b) Within the Adjacent Lands, any use, activity or thing, including an Improvement, that does not disturb or interfere with the operation, or the safety or security, of the Pipeline Works or the exercise of the Company's rights under this Permit.

## **12.3 Issuance of Approvals by Company**

The Company shall:

- (a) within 20 business days after receiving a request in writing from the CP Holders of a CP Parcel for an Approval by Company for any proposed use, activity or thing, including an Improvement, Within part of the Pipeline Right of Way Area or the Adjacent Lands, or during the continuance of the Temporary Work Space Permit Within part of the TWS Areas, included in the CP Parcel, acting reasonably, issue the Approval by Company, or where it is not issued, advise the applicants of the reasons for not issuing the Approval by Company, including any reasonable conditions on which the Company is prepared to issue the Approval by Company;
- (b) acting reasonably, consult with the CP Holders for a CP Parcel concerning the form and content of a request in writing for an Approval by Company for any proposed use, activity or thing, including an Improvement, Within part of the Pipeline Right of Way Area or the Adjacent Lands, or during the continuance of the Temporary Work Space Permit Within part of the TWS Areas, included in the CP Parcel, including as to reasonable conditions to be included in the request; and
- (c) on an enquiry being made to it in writing by the CP Holders for a CP Parcel as to an Approval by Company, for any proposed use, activity or thing, including an Improvement, Within part of the Pipeline Right of Way Area or the Adjacent Lands, or during the continuance of the Temporary Work Space Permit Within part of the TWS Areas, included in the CP Parcel, and any other approval, permit or licence required from the Company under Laws for the proposed use, activity or thing, and the provision to it of all reasonably necessary information including plans, drawings and specifications, specify any reasonable conditions on which it would grant such Approval by Company, or other approval, permit or licence, as would be required to abate any potential disturbance or interference with the exercise by the Company of the Pipeline Works Permit, during the continuance of the Temporary Work Space Permit with the exercise by the Company of that Permit, with the Pipeline Works, or with the operation, safety or security, of the Pipeline Works, resulting from the proposed use, activity or thing.

**Article 13. PATROLLING OF THE PIPELINE WORKS**

Following the construction and installation of the Pipeline Works the Company will patrol and inspect the Pipeline Right of Way Area, including by aerial patrols, in accordance with Laws and Generally Accepted Practices.

**Article 14. MONITORING, INCLUDING GROUNDWATER**

**14.1 Company to Monitor**

The Company will monitor the Pipeline Works, including for Spills, in accordance with Laws and Generally Accepted Practices.

**14.2 Notification**

The Company will immediately advise First Nation and affected CP Holders of any Spill detected by its monitoring of the Pipeline Works and keep them informed of Work undertaken or to be undertaken to further investigate any Spill, or suspected or possible Spill, and the results thereof. Spills shall be dealt with in accordance with Article 26.

**Article 15. MAINTENANCE OF PIPELINE WORKS**

**15.1 General Maintenance**

The Company will maintain, or cause to be maintained, the Pipeline Works in a good state of maintenance and repair, and in accordance with Laws and Generally Accepted Practices.

**15.2 Integrity Digs**

The Company shall provide the Lands Manager with sufficient notice and in any event, except in an Emergency, at least 48 hours in advance of any proposed Integrity Dig on the Pipeline Right of Way Area. Except in an Emergency, no Integrity Dig shall occur on the Pipeline Right of Way Area without an authorized First Nation representative present throughout, unless specifically authorized in writing by the Lands Manager. First Nation agrees to work cooperatively with the Company in relation to any Integrity Digs in the Pipeline Right of Way Area and not to unreasonably withhold its consent of the Lands Manager in fulfilling the obligations of this section. The results of any Integrity Dig and any planned actions resulting from the Integrity Dig shall be provided to the Lands Manager as soon as practicable.

If any Integrity Dig discovers or results in a Spill it shall be dealt with, and any Remediation required as a result shall be carried out, under and in accordance with Article 26

The Lands Manager or First Nation's agents shall be entitled to enter the Pipeline Right of Way Area, upon providing the Company at least 48 hours notice, at any time for the purpose of inspecting and ascertaining the condition or state of repair thereof, or verifying that the covenants and other provisions of this Project Document are being complied with, in cooperation and coordination with, and, at the Company's option, participation by, the Company's authorized representatives.



## **Article 16. RESTORATION OF THE PIPELINE RIGHT OF WAY AREA**

### **16.1 Following Work**

Following the conduct or carrying out on any part of the Pipeline Right of Way Area of any Work permitted or required hereunder by, or on the behalf of, the Company that results in the disturbance of any part of the Pipeline Right of Way Area or anything on it, or following any decommissioning or permanent shut-down, as soon as weather and soil conditions permit, the Company shall, except as otherwise agreed in writing by First Nation and the CP Holders for the affected CP Parcels:

- (a) cause all materials, equipment, vehicles and other things that have been brought onto that part of the Pipeline Right of Way Area for the conduct or carrying out of any Work by or on the behalf of the Company, including all construction debris, to be removed from the Pipeline Right of Way Area;
- (b) in compliance with section 6.3, grade and contour that part of the Pipeline Right of Way Area using suitably compacted Clean Soil, and replace all topsoil removed from it, so that it is generally level with surrounding land, and is suitable for use by the Company under this Permit and for any Prior Uses of it on the part of the CP Holders for the affected CP Parcels that were not Incompatible Uses; and
- (c) ensure that any potential hazards or safety risks resulting from such Work or any part of it are removed or addressed, including by Remediation in accordance with Article 26 if required, and restore Improvements on that part of the Pipeline Right of Way Area for which there is an Approval by Company and for which there has been compliance with any conditions that are part of that Approval by Company, and otherwise leave that part of the Pipeline Right of Way Area so it is suitable for use by the Company under this Permit and for any Prior Uses of it on the part of the CP Holders for the affected CP Parcels that were not Incompatible Uses.

### **16.2 Vegetation Management**

The Company will periodically carry out maintenance of the surface area Pipeline Right of Way Area and clear Vegetation, other than crops that are not an Incompatible Use, from the Pipeline Right of Way Area in accordance with Laws and Generally Accepted Practices and the Vegetation Management Plan attached as Schedule D to this Permit.

### **16.3 Perform on Notice**

Upon First Nation giving the Company notice in writing setting out any default on the part of the Company in the performance and observance of its obligations under this Article 16, the Company shall commence the curing of such default as soon as possible in the circumstances and thereafter diligently prosecute the curing of it within 60 days or such longer period as is reasonably required in the circumstances.

## **Article 17. REMOVE REFUSE AND DEBRIS**

### **17.1 Company to Do**

The Company will collect and dispose of all refuse and debris resulting from its use of the Pipeline Right of Way Area and during the continuance of the Temporary Work Space Permit, the TWS Areas, in accordance with Laws and Generally Accepted Practices.

### **17.2 Perform on Notice**

Upon First Nation giving the Company notice in writing setting out any default on the part of the Company in the performance and observance of its obligations under section 17.1, the Company shall commence the curing of such default as soon as possible in the circumstances and thereafter diligently prosecute the curing of it within 30 days, or such longer period as is reasonably required in the circumstances and agreed to by the Company and the First Nation. If the Company shall fail to cure a default specified in such a notice in writing within such 30 day period, or longer as agreed to by the Company and the First Nation, First Nation is authorized to cure the default (following consultation with affected CP Holders) in accordance with Laws and Generally Accepted Practices. All reasonable costs and expenses incurred and expenditures made by or on behalf of First Nation in so doing, less any recoverable taxes, together with an administrative fee of of such costs, expenses and expenditures, shall be paid by the Company to First Nation forthwith on demand in writing accompanied by a statement particularizing such costs, expenses and expenditures and copies of supporting invoices and receipts.

### **Article 18. WASTE**

The Company shall not cause, permit or allow the commission of any wilful or voluntary waste on or in the Pipeline Right of Way Area and during the continuance of the Temporary Work Space Permit, the TWS Areas, or any other First Nation Lands.

### **Article 19. MINIMIZE DAMAGE**

The Company will carry out and conduct all Work on the Pipeline Right of Way Area and during the continuance of the Temporary Work Space Permit, TWS Areas, in a proper and workmanlike manner and in a manner that causes no greater:

- (a) damage to the Pipeline Right of Way Area or TWS Areas, as the case may be; or
- (b) interference with uses, activities and things Within the Pipeline Right of Way Area and TWS Areas that are not Incompatible Uses and that comply with Laws,

than would be typical for like Work carried out and conducted by the Company along the right of way for the Existing Trans Mountain Pipeline System on lands having similar density and type of development as the First Nation Lands that are nearby to the Pipeline Right of Way and TWS Areas.

### **Article 20. COMPENSATION FOR DAMAGES**

#### **20.1 Compensate in Accordance with CERA**

The Company shall compensate the CP Holders for any and all damages suffered as a result of the operations of the Company in accordance with the provisions of the *CERA* governing compensation.

#### **20.2 Without Limitation**

For certainty and without limitation the Company shall compensate the CP Holders for any damage to personal property and Improvements of every kind or nature that results from the operations of the Company provided that:

- (a) if such personal property is located on the Pipeline Right of Way Area or TWS Areas it is not an Incompatible Use or part of an Incompatible Use; and
- (b) if such Improvements are located on the Pipeline Right of Way Area or TWS Areas there is an Approval by Company for them and there has been compliance with any conditions that are part of that Approval by Company (provided that compliance with such conditions shall not be a condition of compensation if the failure to comply has no relevance to the damage).

### **20.3 Otherwise Compensated**

For certainty the Company's obligation to compensate under this section shall not extend to any damages for which the party claiming damages has been or will be otherwise compensated by the Company, including by payment for the rights and interests hereby granted, or has been or will be otherwise compensated by the Company as a result of the entry into this Permit.

## **Article 21. COMPLIANCE WITH LAWS AND PAYMENT OF TAXES**

### **21.1 Company to Comply**

All Work carried out on the Pipeline Right of Way Area and the TWS Areas by or on the behalf of the Company under the rights hereby granted will be carried out in accordance with this Permit, Laws and Generally Accepted Practices.

### **21.2 Pay Taxes**

Without limiting section 21.1, the Company will pay when due (subject to any appeals allowed under Laws) all fees, charges, taxes, rates and assessments payable by the Company under Laws in relation to the Permits, the Pipeline Right of Way Area, the Access Areas, the TWS Areas, the Pipeline Works, or the operation of the Pipeline Works.

### **21.3 For Certainty**

The Company shall pay all of such fees, charges, taxes, rates and assessments throughout the Term, regardless of whether or not the Pipeline Works are in operation.

### **21.4 Provide Receipts**

First Nation will promptly provide the Company with copies of official receipts (or other reasonably satisfactory evidence) showing payment of any such fees, charges, taxes, rates or assessments levied by First Nation.

## **Article 22. ENVIRONMENTAL ASSESSMENTS**

All Work carried out on the Pipeline Right of Way Area and TWS Areas by, or on the behalf of, the Company under the rights hereby granted will be undertaken in compliance with requirements for environmental assessments under Laws. If an order or approval is required under Laws for any Work the Company will comply with all conditions of such order or approval.

## **Article 23. ENVIRONMENTAL PROTECTION**

### **23.1 No Release of Contaminants**

The Company will not cause, suffer or permit any Spill, and will ensure that its agents, contractors, employees or others for whom it is responsible in law, do not cause, suffer or permit any Spill, except in accordance with Laws.

### **23.2 Implement Measures**

The Company will implement and comply with any specifications, mitigative measures and environmental protection measures regarding the use, emission, discharge, storage or disposal of any Contaminant required by any Authority under Laws and such specifications, mitigative measures and environmental protection measures will become covenants which form part of this Permit.

## **Article 24. EMERGENCY RESPONSE PLAN**

### **24.1 Company to Prepare and Maintain**

The Company shall develop an Emergency Response Plan in accordance with the conditions of the Expansion Project Certificate in consultation with First Nation. The Emergency Response Plan will:

- (a) meet the requirements of the *CERA* and regulations;
- (b) be substantially replaced only in consultation and collaboration with First Nation;
- (c) be reviewed and updated on an annual basis after taking into account any submissions of First Nation concerning it;
- (d) include roles and responsibilities in the event of an Emergency;
- (e) provide descriptions and location of response equipment, including information on how to access the response equipment on a 24-hour basis;
- (f) include descriptions of initial actions to be taken when someone reports an incident involving an activity or operation in respect of the Pipeline Works or the Existing Pipeline Works and relevant documentation including maps, forms, and agreements;
- (g) include procedures to mitigate associated environmental impacts;
- (h) include up-to-date internal and external contact lists including e-mail addresses and phone numbers and a communication protocol for the Company to contact First Nation and CP Holders for the affected CP Parcels and for First Nation and those CP Holders to be able to contact the Company; and
- (i) include details of areas of environmental concern and other areas requiring special consideration or protection;

#### **24.2 Update According to Laws**

The Company will update the Emergency Response Plan at least annually as required to reflect the result of the engagement contemplated in section 24.1(c) and changes in Laws and Generally Accepted Practices applicable to the subject matter of section 24.1.

#### **24.3 Provide Copy of Plan**

The Company will:

- (a) upon the signing of this Permit provide a copy of the then current Emergency Response Plan to First Nation; and
- (b) provide an electronic copy of the Emergency Response Plan to First Nation on the same being updated or as requested in writing by First Nation.

#### **24.4 Work with First Nation**

Consultation with First Nation for the development of the Emergency Response Plan will include the review of First Nation's emergency response programme and the Company will take First Nation's emergency response programme into account in the preparation of the Emergency Response Plan. First Nation and the Company will work cooperatively toward a unified approach under the Emergency Response Plan and First Nation's emergency response programme for dealing with any Emergency resulting from circumstances occurring on the Pipeline Right of Way Area or in respect of the Pipeline Works or the Existing Pipeline Works. In the event of an Emergency on First Nation Lands covered by the Emergency Response Plan and for certainty in the event of any Emergency in respect of the Pipeline Works or the Existing Pipeline Works, the Company will invite First Nation to participate in unified command for dealing with that Emergency and to cooperatively develop and execute the incident action plan for that Emergency.

#### **24.5 [Redacted] [Redacted]**

#### **24.6 Emergency Response Costs**

In the event of an Emergency on First Nation Lands covered by the Emergency Response Plan, and for certainty in the event of any Emergency in respect of the Pipeline Works or the Existing Pipeline Works, the Company shall reimburse First Nation for all costs reasonably incurred by First Nation as a result of its involvement in responding to the Emergency within 60 days of receipt from First Nation of a written statement setting out those costs in reasonable detail accompanied by copies of supporting invoices.

### **Article 25. DUTY TO REPORT**

#### **25.1 Duty to Report Spills**

The Company shall report any Spill to First Nation immediately upon it becoming known to the Company, regardless of the level or severity and regardless of any thresholds for reportable spills set out in any Laws and shall continue to advise First Nation on an ongoing basis as to the details of such Spill as such details become known to the Company. Duty to Maintain Records

The Company shall maintain records of any Spills within or affecting First Nation Lands and any damage or malfunction of the Pipeline Works likely to result in a Spill within or affecting First Nation Lands.

## **Article 26. SPILLS, EMERGENCIES, AND REMEDIATION**

### **26.1 Company to Take Remedial Action**

If there is any Spill then, immediately following discovery of the Spill by the Company, or any order or violation notice issued under any Laws in respect thereof, the Company will immediately notify First Nation and thereafter immediately take any and all necessary mitigative action and carry out Remediation using the appropriate technology, design or repair in accordance with the Emergency Response Plan, Laws and Generally Accepted Practices.

### **26.2 If Risk to Health or Safety**

Upon First Nation or any CP Holder giving the Company notice in writing that a Spill has resulted in an immediate material risk to the health or safety of any person whether on or off the Pipeline Right of Way Area in the opinion of First Nation or the CP Holder, acting reasonably, the Company shall perform and observe its obligations under section 26.1 to the extent necessary to abate any immediate material risk as soon as that can be accomplished using reasonable best efforts. In the event that such an incident occurs the Company shall reimburse First Nation for the reasonable costs of providing for the health and safety of First Nation Members affected by the incident.

### **26.3 Perform on Notice**

Upon First Nation giving the Company notice in writing setting out any default on the part of the Company in the performance and observance of its obligations under section 26.1, the Company shall commence the curing of such default as soon as possible in the circumstances and thereafter diligently prosecute the curing of it within 30 days, or such longer period as is reasonably required in the circumstances and agreed to by the Company and the First Nation. For certainty the curing of any such default shall include application for and obtaining all Authority Permits required for such purpose.

## **Article 27. OWNERSHIP**

### **27.1 Contaminants**

If Contaminants are brought or created upon the Pipeline Right of Way Area or any other First Nation Lands by the Company or those for whom it is responsible at law in the course of the exercise of the rights granted under this Permit, then, notwithstanding any rule or law to the contrary, all such Contaminants shall be and remain the sole and exclusive property of the Company and shall not be or become the property of First Nation or CP Holders notwithstanding the degree of affixation of the Contaminants, or the Pipeline Works, or the Improvements, fixtures, materials or goods containing the Contaminants, to the Pipeline Right of Way Area or other First Nation Lands, and notwithstanding the expiry or termination of the Permits.

### **27.2 Pipeline Works**

Notwithstanding that the Pipeline Works or any part is or becomes affixed to the Pipeline Right of Way Area the title thereto shall, until the Pipeline Works are surrendered or the Permits are

terminated, remain in the Company and the Company may at any time remove the whole or any part of the Pipeline Works.

## **Article 28. PERMANENT CESSATION OF USE OF PIPELINE WORKS**

### **28.1 Cessation of Use**

The Company may at any time, in accordance with Laws, temporarily or permanently cease the use of the Pipeline Works for the transportation, storage and handling of Product.

### **28.2 Permanent Shut Down**

If the Company permanently ceases the use of the Pipeline Works the Company will carry out such Work in relation to the Pipeline Works, the Pipeline Right of Way Area and other First Nation Lands as is required under this Permit, Laws, and Generally Accepted Practices, including carrying out Remediation in accordance with Article 26 of the Pipeline Right of Way Area and other First Nation Lands that have been affected by Contaminants as a result of the construction, installation, operation, maintenance, inspection, removal, replacement, reconstruction or repair of the Pipeline Works, or other Work or use carried out or conducted in respect of the Pipeline Works, in any case whether before or after the Permits becoming effective under section 45.1. Without limitation of the foregoing the Company will at its own cost within a reasonable period of time following such permanent cessation of use consistent with timing for like Work carried out and conducted along the right of way for the Existing Trans Mountain Pipeline System:

- (a) complete an environmental assessment of the Pipeline Right of Way Area and any part of the First Nation Lands that is appropriate to include in such assessment;
- (b) remove the Pipeline Works from the Pipeline Right of Way Area or carry out such Work as is required to leave the Pipeline Works in place within the timeline and in the manner authorized by the appropriate Authority or as otherwise required under Laws, provided that if permitted under Laws the Company shall pursue such option, as between removal of the Pipeline Works and leaving them in place, as is best for the health, safety and convenience of persons and the environment;
- (c) take any and all necessary mitigative action and complete all Remediation in accordance with Article 26 using appropriate technology, design or repair in accordance with this Permit, Laws and Generally Accepted Practices in relation to any Contaminant brought or created upon the Pipeline Right of Way Area or any other First Nation Lands in the course of the exercise of the rights granted under this Permit;
- (d) leave the Pipeline Right of Way Area free from all garbage and debris resulting from of the use thereof under this Permit;
- (e) take any and all necessary action to restore the Pipeline Right of Way Area in accordance with section 16.1; and
- (f) promptly after such Work is completed, prepare and provide to First Nation a final report confirming that it has been completed in accordance with Laws.

### **28.3 If Risk to Health or Safety**

Upon First Nation or any CP Holder giving the Company notice in writing that circumstances described in such notice that are to be dealt with by mitigative action or Remediation on the part of the Company under section 28.2 have resulted in an immediate material risk to the health or safety of any person whether on or off the Pipeline Right of Way Area in the opinion of First Nation or the CP Holder, acting reasonably, the Company shall perform and observe its obligations under section 28.2 to the extent necessary to abate any immediate material risk as soon as that can be accomplished using reasonable best efforts. In the event that such circumstances exist the Company shall reimburse First Nation for the reasonable costs of providing for the health and safety of First Nation Members affected by them.

### **28.4 Perform on Notice**

Upon First Nation giving the Company notice in writing setting out any default on the part of the Company in the performance and observance of its obligations under this section 28.2 in accordance with the provisions hereof, the Company shall commence the curing of such default as soon as possible in the circumstances and thereafter diligently prosecute the curing of it within 180 days or such longer period as is reasonably required in the circumstances. For certainty the curing of any such default shall include application for and obtaining all Authority Permits required for such purpose.

### **28.5 No Termination Until**

Despite any provision of this Permit neither the Permits nor the rights of the Company under them shall terminate upon or following the Company permanently ceasing the use of the Pipeline Works unless and until the Company:

- (a) has completed all of the Work in respect of the Pipeline Works, the Pipeline Right of Way Area and other First Nation Lands, including for certainty any removal and inspections, required under this Permit, Laws and Generally Accepted Practices upon the Company permanently ceasing the use of the Pipeline Works; and
- (b) is free of any obligation under this Permit and Laws to carry out further Work in respect of the Pipeline Works, the Pipeline Right of Way Area and other First Nation Lands including as to inspections.

### **Article 29. RELEASE**

The Company will not have any claim, demand, action, suit or proceeding against a CP Holder or First Nation, or their servants or agents, or persons for whom it may at law be responsible, for detriment, damage, accident or injury of any nature whatsoever or howsoever caused to the Pipeline Works, the Pipeline Right of Way Area, the TWS Areas or to any person or property thereon, unless due to the gross negligence or deliberate misconduct of the CP Holder or First Nation, or their servants or agents, or persons for whom it may at law be responsible.

### **Article 30. INSURANCE**

#### **30.1 Amount**

The Company shall, during the Term, at its sole expense, obtain and maintain commercial, third-party, general liability insurance in such amounts and on such terms as a prudent oil pipeline



operator should maintain. In no case shall the insurance coverage be less than the amounts required under the CERA.

### **30.2 Subrogation**

The insurance referred to in section 30.1 shall, if applicable, contain a waiver of any subrogation rights the Company's insurers may have against First Nation and against those for whom First Nation is responsible in law except in the case of negligence of First Nation, its members, employees, servants and agents and all those for whom First Nation may at law be responsible.

### **30.3 Additional Insureds**

First Nation and the CP Holders will be named as additional insureds on Company's commercial general liability policies, but only with respect to liability arising out of Company's indemnity obligations in this Permit.

### **30.4 Cross Liability**

The insurance referred to in section 30.1 shall, if applicable, provide for cross liability, that is to say, that the insurance shall apply to each named insured and each additional insured in the same manner as though separate policies were issued in respect of any action brought against any of the insureds by any other insured, subject to the limit of liability available under such insurance.

## **Article 31. INDEMNITY**

### **31.1 Indemnity under CERA**

The Company shall indemnify each of the CP Holders, and First Nation, from all liabilities, damages, claims, suits and actions arising out of the Pipeline Works and operations of the Company, (including operations of the Company under this Permit), other than liabilities, damages, claims, suits and actions resulting from gross negligence or willful misconduct on the part of the CP Holder or First Nation, as the case may be.

### **31.2 Additional**

The Company shall indemnify and promptly pay each of the CP Holders, on written notice, for any losses or expenses (including legal fees on a solicitor-client basis) arising in any way because of the injury or death of any person resulting from of the use of the Pipeline Right of Way Area, the Access Area or the TWS Areas by the Company under this Permit, unless due to from gross negligence or willful misconduct on the part of the CP Holder.

### **31.3 Survival**

This article survives the termination of this Permit.

## **Article 32. HERITAGE RESOURCES**

### **32.1 Notice**

The Company will give immediate notice to First Nation if evidence of human remains, a Heritage Object or a Heritage Site is encountered during any Work whatsoever on the Pipeline Right of Way Area or TWS Areas and will await First Nation's written instructions before proceeding with any Work on the Pipeline Right of Way Area or TWS Areas in the vicinity of the discovery.

### **32.2 Comply with Laws**

Any Work undertaken by the Company under this Article will be done in accordance with Laws.

### **32.3 Emergency**

Notwithstanding section 32.1 in the event of an Emergency or time sensitive maintenance the Company will take immediate steps necessary to protect any of human remains, Heritage Object or Heritage Site encountered during any Work whatsoever on the Pipeline Right of Way Area or TWS Areas to the extent practicable in the circumstances. In these Emergency situations the Company will endeavour to obtain oral instructions from First Nation before undertaking any Work.

### **32.4 Providing Instructions**

First Nation will act reasonably and as quickly as practicable when providing oral or written instructions to the Company under Article 32 and such instructions shall not unreasonably interfere with the Company's exercise of the rights under this Permit in compliance with Laws.

### **32.5 The Company has No Claim**

The Company will not have any ownership of, property or intellectual property in or in relation to, or right to, any human remains, Heritage Object or Heritage Site located in, on or under the Pipeline Right of Way Area or TWS Areas.

## **Article 33. COMMUNICATIONS**

### **33.1 General Communications**

The Parties agree that it is in their interests to communicate in an open manner regarding all operations and activities carried out under this Permit and to resolve disputes or potential disputes arising in relation to such operations and activities, whether under this Permit or otherwise, informally, expeditiously and acting in good faith.

### **33.2 Appoint Representatives**

To facilitate communications and maintain a good working relationship between the Parties each of First Nation and the Company will maintain the appointment of an individual who acts as a representative under this Article 33 for First Nation and the CP Holders in the case of the representative from time to time appointed by First Nation and for the Company in the case of the representative of the Company from time to time appointed by the Company. Initially the representative for First Nation and the CP Holders shall be:

(a) Lands Manager, Lower Nicola Indian Band,

and the representative for the Company shall be:

(b) [insert representative of Company]. [NTD Trans Mountain to provide]

### **33.3 Duties**

The representatives under section 33.2 shall:

- (a) meet as required by either of them to discuss issues arising in respect of operations and activities carried out under this Permit and concerns raised by the Parties or any of them in that regard;
- (b) provide guidance to the Parties, individually or collectively, in relation to such issues and concerns; and
- (c) identify and if possible resolve disputes arising in respect of operations and activities carried out under this Permit outside the formal dispute resolution process provided for in Article 34 including by the establishing protocols agreed to by the Parties to such disputes or potential disputes for the avoidance or abatement of the matter giving rise to the dispute or potential dispute.

The representative for First Nation and the CP Holders shall co-ordinate the provision of information concerning his or her activities under this Article 33 to and with the CP Holders.

#### **Article 34. DISPUTE RESOLUTION**

##### **34.1 In Accordance with this Article**

In the event of any dispute between the Parties arising under or in relation to this Permit or the rights and obligations of the Parties or any of them under it (“**Dispute**”), unless the same is determinable under the mediation and arbitration provisions of the *CERA* the same shall be decided as provided in this Article 34.

##### **34.2 Negotiations**

The Parties agree to make every reasonable effort in good faith to settle any Dispute through direct negotiations between their respective representatives within 20 business days following a written request by a party to the dispute in that regard. In the case of First Nation and CP Holders such negotiations shall be conducted by the Chief and in the case of the Company such negotiations shall be conducted by the chief executive officer of the Company.

##### **34.3 Mediation**

Should the parties to a Dispute be unable to resolve the Dispute by means of negotiation, it shall be submitted to non-binding mediation upon notice of mediation being given by one of the parties to the Dispute, who shall share the common costs, including mediator's fees, on an equal basis.

##### **34.4 Arbitration**

If the parties are unable to settle a Dispute within 90 Business Days of notice of mediation being given, or any other period agreed upon by the parties to the Dispute, any of them may by notice in writing require that the Dispute be referred to and finally resolved by arbitration administered by the British Columbia International Commercial Arbitration Centre pursuant to its Rules. The place of arbitration shall be Vancouver, British Columbia, Canada. The decision of the arbitrator shall be final and binding upon the Parties. The arbitrator shall be authorized to make a determination of and assess responsibility for the costs of the arbitration.

**Article 35. NOTICE REQUIREMENTS.**

**35.1 Addresses**

Any notice, request or other communication required by or affecting the Permits must be in writing and may be given to the Parties by delivery, registered mail or by facsimile or other electronic transmission which permits the creation of a hard copy, postage or charges prepaid, addressed to:

(a) in the case of the Company:

Suite 2700, Stock Exchange Tower  
300 – 5th Avenue S.W.,  
Calgary, Alberta, T2P 5J2  
Attention: Legal Department

Telephone: 1 (403) 514-6500  
Fax: 1 (403) 514-6643

(b) in the case of First Nation and the CP Holders:

Lower Nicola Indian Band  
181 Nawishaskin Lane  
Merritt, B.C V1K 0A7

Attention: Lands Manager

Telephone: 250-378-5157  
Facsimile Number: 250-378-6188

**35.2 When Deemed Given**

Any notice given by mail pursuant to this article will be deemed to have been effectively given on the seventh (7<sup>th</sup>) business day following the date of mailing. Notices given by delivery or facsimile transmission shall be deemed to have been given on the date of delivery or receipt provided that delivery or receipt takes place prior to 4 p.m. on a business day and otherwise on the next business day following delivery or receipt.

**35.3 Change of Address**

Addresses may be changed from time to time by either party giving written notice to the other. In the event of any disruption of postal service, notices will be delivered. If notice is given by facsimile it shall also be mailed on the same day it is sent by facsimile.

**Article 36. REMEDIES NOT EXCLUSIVE**

No exercise of any specific right or remedy by a CP Holder will prejudice or preclude that CP Holder from exercising any other right or remedy provided by this Permit or allowed at law or in equity. No right or remedy provided to the CP Holders by this Permit or at law or in equity will be exclusive or dependent upon any other such right or remedy, and each of them may, from time to time, exercise any one or more such rights or remedies independently or in combination.

**Article 37. ABORIGINAL RIGHTS AND TITLE**

The Permits are without prejudice to First Nation's aboriginal rights and title and does not, in any way, abrogate, derogate from, suspend, limit or adversely alter First Nation's aboriginal rights and title; provided that any such rights and title in respect of the Pipeline Right of Way Area, Access Areas and TWS Areas shall be and remain subject to the rights and interests therein created by and under this Permit.

**Article 38. INVALIDITY**

If any part of this Permit is ruled invalid by a court of competent jurisdiction, then that part is severable, and the rest of this Permit will continue in effect, as modified if necessary, and be interpreted as if this Permit had been made without the invalid part.

**Article 39. HEADINGS**

Captions and headings in this Permit are inserted for convenience and reference only and are not intended to describe, define or limit the scope, extent or intent of this Permit, or any provision thereof.

**Article 40. ENTIRE AGREEMENT**

**40.1 Other Agreements Concerning Subject Matter**

This Permit sets forth the entire agreement and understanding of the Parties with respect to the subject matter hereof and supersedes all prior agreements and understandings between the Parties with respect thereto, whether written or oral, and there are no promises, covenants, agreements, conditions, representations, warranties or collateral agreements whatsoever, express or implied, between the Parties with respect to the subject matter hereof, other than those contained in this Permit. Provided however that nothing in this section shall affect the rights and obligations of the Parties set forth in any other agreement in writing concerning the Pipeline Right of Way Area, the Access Areas, TWS Areas or First Nation Lands, or any part thereof, that is expressed to take effect despite any provision to the contrary contained in this Permit. No modification or amendment of this Permit shall be binding unless executed in writing by the Parties.

**40.2 Other Permits**

Nothing in this Permit shall affect or prejudice the Company's rights in respect of the Pipeline Right of Way Area, the Access Areas, TWS Areas or First Nation Lands under the provisions of any permit under the Land Code created and held by the Company under another instrument and instruments collateral or ancillary thereto, or under Laws.

**Article 41. SURVIVE TERMINATION**

Notwithstanding any other provision in this Permit, upon the expiry for any reason of the rights hereby granted all sections of this Permit which by their nature should survive termination will survive termination, including without limitation, indemnities, liability for reclamation, warranty disclaimers and limitations of liability.

**Article 42. APPLICABLE LAWS**

This Permit is governed by, and is to be interpreted in accordance with, the laws of Canada and British Columbia. For certainty the Parties acknowledge and agree that they will be subject to the

general law, including the common law and equity, in respect of the subject matter of this Permit and their relationships between each other under and as a result of this Permit.

**Article 43. AUTHORIZATIONS**

The Company will obtain all Authority Permits which may be required under Laws for the exercise of the rights hereby granted.

**Article 44. WAIVER**

Any waiver of an obligation must be in writing. No waiver is to be inferred from anything done or omitted to be done.

**Article 45. EFFECTIVE DATE**

**45.1 When Effective and Registration**

- (a) The Permits shall be effective upon execution and delivery by the Parties and this Permit having been registered in accordance with the Land Code.
- (b) First Nation will, promptly after receipt of a fully-executed copy of this Permit, register it in the Register in accordance with the Land Code and provide the Company and the CP Holders with registration particulars.

**45.2 Warranty as to Preconditions**

First Nation and the CP Holders represent and warrant that there are no preconditions to the interests in the Pipeline Right of Way Area, the Access Areas or the TWS Areas given and granted under the this Permit being enforceable under the Land Code and other applicable Laws other than registration as specified in subsection 45.1, and that the Permits comply with the Land Code and other applicable Laws including any requirements set by the Governing Body under that Code and Laws.

**Article 46. DEFAULT AND TERMINATION**

**46.1 Insolvency**

Notwithstanding anything herein contained, if the Company should at any time during the Term:

- (a) make an assignment for the benefit of creditors pursuant to the *Bankruptcy and Insolvency Act*;
- (b) be adjudged bankrupt pursuant to the *Bankruptcy and Insolvency Act* provided that such order shall have remained in force for no less than thirty (30) days and shall not have been stayed;
- (c) file any petition or institute any proceedings under the *Bankruptcy and Insolvency Act*, *Companies Creditors Arrangement Act*, or similar legislation affecting the rights of creditors generally;
- (d) be subject to the appointment of a receiver or trustee who is not discharged within sixty (60) days from the date of such appointment; or

- (e) Abandon the Pipeline Right of Way Area, or demonstrate an intention to Abandon the Pipeline Right of Way Area;

it will be lawful for First Nation and the CP Holders, in their sole discretion, upon notice to the Company, to declare the Term ended and subject to the survival of all clauses containing obligations concerning the condition of the Pipeline Right of Way Area, warranties and indemnities, the Permits terminated and thereupon, the estate or Term will absolutely cease and terminate without re-entry or any other act or any suit or legal proceedings to be brought or taken.

#### **46.2 Recovery**

Despite any termination under this Article 46, First Nation and the CP Holders shall nevertheless be entitled to recover from the Company any monies owing by the Company under this Permit as at such termination or in respect of the period prior to such termination and enforce any reclamation or environmental remediation clauses.

#### **46.3 Other Defaults**

If the Company fails or neglects to perform or observe any of the terms or conditions hereby agreed upon or such other term the default of which is specifically addressed in this Permit, First Nation, following consultation with and in accordance with direction from the CP Holders, may give written notice to the Company of the default and if the default relates to failure by the Company to pay monies owed by the Company hereunder or is a fundamental breach of the terms of this Permit and:

- (a) the Company does not within 90 days remedy, or undertake to remedy, the default to the satisfaction of First Nation and the CP Holders; or
- (b) no remedy by way of damages, injunction, mandatory order or other court order would be an adequate remedy for the default,

then First Nation, following consultation with and in accordance with direction from the CP Holders, may give written termination notice to the Company of its intention to terminate the Permits upon expiry of 90 days from the date of such notice, and upon the expiry of such period (or such longer period as is reasonably required to remedy the default) without the default being remedied by the Company to the reasonable satisfaction of First Nation, following consultation with and in accordance with direction from the CP Holders, the Permits will be cancelled unless, prior to the expiry of such period, the Company has submitted to a court of the competent jurisdiction the determination as to whether there has been reasonable compliance with the said conditions precedent to the termination

### **Article 47. ENURING AND ASSIGNMENT**

#### **47.1 Successors and Assigns**

The Permits and the provisions hereof shall enure to the benefit of and be binding upon the respective heirs, executors, administrators, successors and assigns of the Parties.

#### **47.2 No Assignment Without Consent**

Neither this Permit nor any interest herein nor the benefit of any interest in the Pipeline Right of Way Area hereunder shall be transferred nor assigned in whole or in part by the Company, by any

means, without the prior written consent of First Nation, such consent not to be unreasonably withheld. The Company shall not sub-lease, sub-licence or otherwise part or share possession of the Pipeline Right of Way Area with any other person whatsoever, nor shall it authorize any third party use thereof without the prior written consent of First Nation, such consent not to be unreasonably withheld. For greater certainty, it will be reasonable for First Nation to withhold consent if the transferee or assignee does not demonstrate sufficient assets to fulfil the financial obligations pursuant to this Permit and to any agreement relating to fees or benefits for the use of the Pipeline Right of Way Area, Access Area or TWS Areas, or if the transferee or assignee does not have a demonstrated record of operating a pipeline in a reasonable, diligent and prudent manner.

A transfer or issuance of the shares of the Company, which would have the result of transferring effective control of the Company, or any other change in the corporate structure of the Company, which would have the same result, shall not be deemed to be an assignment contemplated by this section. In the case of a transfer or issuance of the shares of the Company such that effective control of the Company is transferred, the Company shall provide First Nation with written notice of such transfer or issuance within 30 days of the transaction.

The Company or a legal representative of the Company shall provide to the Lands Manager, within 30 days from the date of issuance, an original, duplicate original or certified true copy of any of the following documents relating to the Company or to the Pipeline Right of Way Area:

- (a) evidence of change of name;
- (b) evidence of amalgamation or dissolution in the case of the Company;
- (c) caveats affecting the Pipeline Works or Pipeline Right of Way Area;
- (d) any court orders affecting the Pipeline Works or Pipeline Right of Way Area, including those for sale or foreclosure; and
- (e) a discharge of mortgage or a discharge of any other encumbrance affecting the Pipeline Right of Way Area.

**Article 48. SIGNATURE IN COUNTERPARTS**

This Permit may be signed in one or more counterparts. A signed counterpart may be delivered by one party to the other party by facsimile transmission and a facsimile so transmitted will constitute an original document. Signed counterparts held by a party, taken together, will constitute one and the same document.

*[Signature page follows]*



*[Signature page to Pipeline Works and Access Permits with Temporary Work Space Permit]*

THE PARTIES AGREE THE PARTIES ARE SIGNING THIS PERMIT DOCUMENT AS OF THE REFERENCE DATE FIRST ABOVE WRITTEN.

**[NTD: Insert signature blocks]**

**SCHEDULE A  
CP HOLDERS**

[NTD: Insert]

**SCHEDULE B  
CP PARCELS**

[NTD: Insert]

**SCHEDULE C  
TWS AREA**

**[NTD: Insert]**

**SCHEDULE D  
VEGETATION MANAGEMENT PLAN**

*[Attached]*

**[NTD: Attach]**

**SCHEDULE E**  
**FIRST NATION CONSENT**

*[Attached]*

**[NTD: Attach]**

## ILRU Conflict Resolution Literature Review

### Tribunals/Panels/Committees

Some Indigenous communities have developed, or are developing, dispute resolution tribunals, panels, or committees. These processes can be organized by one community, a tribal council, or by a partnership between several communities. They often work together with other models, like mediation or peacemaking, or even with courts. These models have formal and transparent structures, policies, and procedures. There are clear rules and a process with clearly defined steps. They are usually public rather than private.

Name	Communities served?	Who can access it?	How do parties access it?	Issues dealt with?	Steps in Process?	Outcomes?
<b>Long Plain First Nation</b>	Long Plain First Nation in Manitoba.	Longs Plain First Nation members.	A participant seeking the resolution of a dispute is required to file a written notice of appeal with the Land Authority within 30 days of becoming aware of the issue. This must include the issues, facts, and arguments relied on and relief sought.	Applies to disputes around "interests and rights in Lands." <sup>36</sup> The tribunal does not deal with Chief and Council decisions that are unrelated to lands, to housing decisions or administration of estates, unless all the immediate relatives consent.	Parties move through the following ordered stages of dispute resolution: "facilitated discussions," appeal, or as a final option, court adjudication. If the parties are unable to reach consensus through facilitated discussion, the appeals stage is triggered.	The Appeal Panel may order an action be taken or stopped; confirm, reverse, substitute a decision; or refer a matter back for a new decision. The decisions of the Appeal Panel must be in writing and signed by the Chair and are binding except for review by a court of competent jurisdiction.
<b>Anishina-bek Nation Tribunal and Commission</b>	39 Anishinabek First Nations in Ontario.	First Nations, citizens, and non-members of the Anishina-bek Nation.	This is typically used where mediation or sharing circles may not work well for the parties or where the parties would like a decision made.	The tribunal's issues vary and includes nation-wide disputes such as between First Nations, governance and administration, election codes, constitutions, matrimonial real property, citizenship, etc.	Typically, three community members, who are trained in hearing evidence, sit on a panel and hear the parties. In cases where the community panel members may be in conflict with the dispute or the parties, a panel member may be brought in from another community.	The panel is given the authority to hear evidence, make recommendations, and to make a final decision.
<b>Treaty Four Administrative Tribunal</b>	34 First Nations in Treaty 4 territory.	First Nation members where the First Nation law designates the Tribunal as the dispute resolution mechanism.	It is intended to be available when disputes cannot be resolved at the community level through other processes (mediation and peacemaking attempted first).	The tribunal deals with disputes involving the application of First Nation laws in Treaty 4 territory. Does not deal with criminal matters or make decisions dealing with awards for costs or damages.	The process involves five stages: 1. determination of Treaty 4 jurisdiction, 2. pre-hearing stage, 3. the hearing, 4. decision writing, and 5. after the decision  Lawyers for both disputing parties may be present but are precluded from actively participating and cross examination is limited.	The Tribunal can make findings of fact and settle disputes through the application of First Nation law. They may also make non-binding recommendations on possible ways to resolve the conflict, suggest "recommendations on the development [and] implementation of First Nation law and policy," and issue "interim orders or injunctions during the course of its proceedings." While recommendations of the tribunal are non-binding, "the agreement to participate in the adjudicative process amounts to consenting to the binding Tribunal decision."

Source: Indigenous Law Research Unit, Faculty of Law, University of Victoria: Hadley Friedland, Jessica Asch and Dr. Val Napoleon - A Toolkit for On-Reserve Matrimonial Real Property Dispute Resolution (pp. 27-45). Retrieved from: <http://coemrp.ca/wp-content/uploads/2015/12/Final-MRP-DR-Toolkit-Version-1.0.pdf>

### Circle Processes

Some Indigenous communities have adopted circle models of decision-making and dispute resolution. These typically address issues involving harm or safety concerns and are most commonly connected to criminal justice or child protection systems. Circle processes are called many different things, but tend to follow a similar format, with certain elements in common. All participants have to consent to participating in them. They are facilitated by a trained facilitator. They are usually private with only the participants and invited others being involved and aware of what happens. Family, community members, and professionals may be invited to participate and there is a focus on involving extended family and community where possible.

#### Common Steps in Circle Processes

1. Referral:	Depending on the issue, participants may be referred through the court system, the child welfare system, or, in some cases, they can self- refer or be referred through Chief and Council or other community-based helpers or service-providers.
2. Preparation:	A trained and paid facilitator talks to the referred individuals and identifies family, extended family and community members, elders, supporters and professionals who should be present. The facilitator usually talks privately and individually to all possible participants, to gauge the dynamics, risks, and likelihood of success. In some processes, an elder or spiritual leader may also be involved. In some processes, there may be behavioural or spiritual preparation required.
3. Opening:	The facilitator welcomes participants to the circle. Sometimes an elder or spiritual leader will open with a prayer, a smudge or a brief ceremony. Rules and expectations are clearly outlined for safety.
4. Introductions/ Role Identification:	Most circle processes begin with a round of introductions, with all people identifying their roles and why they are present.
5. Issue Identification	The facilitator invites all participants to talk about how they view the issue. This may include sharing impacts or taking responsibility, as well as discussing worries, strengths, priorities, interests, and hopes. Participants may feel and share strong emotions. This step may be more or less structured but it is always facilitated by a trained facilitator.
6. Teaching/ Expanding Understanding:	There is often a teaching component to circle processes. Where elders, spiritual leaders, or other knowledgeable and respected people are involved, they may give cultural or spiritual teachings, advice or words of hope and encouragement. Where professionals are involved, they may discuss rules, expectations, and resources available to help.
7. Development of a plan or resolution:	The facilitator may assist or may leave while participants develop an action plan or proposed resolution. This plan or resolution is usually put into writing. It may or may not follow a pre-made form.
8. Acceptance of the plan or resolution:	The facilitator or someone else with authority (e.g., a social worker in child welfare matters) reviews the proposed plan or resolution and suggests modifications as required and accepts or approves it. Typically, participants sign this agreement, which the facilitator types up afterwards, gives to participants, and keeps on file.
9. Closing:	The facilitator brings the circle to a close. Typically, all participants are given a chance to say something and check in about how they feel. Where elders or spiritual leaders are involved, they may end with a prayer, smudge, or brief ceremony.
10. Follow-up:	The facilitator should follow up to see if the agreement or plan is being carried out. This may include assistance to connect to resources, or the provision of support and problem-solving. There may be specific timelines and dates to check in about progress, as well as consequences or alternate resolutions when a plan is not being followed. There may be an additional closing ceremony or celebration when the plan is complete, or a positive report to an authority like a court or government department involved.

Source: Indigenous Law Research Unit, Faculty of Law, University of Victoria: Hadley Friedland, Jessica Asch and Dr. Val Napoleon - A Toolkit for On-Reserve Matrimonial Real Property Dispute Resolution (pp. 27-45). Retrieved from: <http://coemrp.ca/wp-content/uploads/2015/12/Final-MRP-DR-Toolkit-Version-1.0.pdf>



### Some Circle Examples:

	1. Communities served?	2. Who can access it?	3. How do parties access it?	4. Issues dealt with?	5. Steps in Process?	Outcomes?
Tsuu T'ina Office of the Peacemaker <sup>47</sup>	Tsuu T'ina Reserve in southern Alberta	Residents of the Tsuu T'ina First Nation	Cases go through the Tsuu T'ina Court. Cases are reviewed by the Crown counsel and the coordinator and, matters are diverted from regular court to the Office of the Peacemaker for resolution if appropriate. Participation must be voluntary and victims (if there are any) must agree to the peacemaking process.	Reserve bylaws and all criminal matters other than homicide and sexual assaults.	The process follows a standard routine, with an opening, 4 rounds, and a closing. There is preparatory work and follow up.	The offender signs an agreement to follow through with certain tasks according to the resolution reached within circle. Once these tasks are completed, there is a final peacemaking circle with a ceremony and celebration. The matter is then returned to court with the peacemaker's report. The prosecutor assesses the outcome and the nature of the offence and may withdraw charges or submit the report to the court for serious offences.
Qwi:qwelstóm - Stó:lō Healing and Peacemaking Circles <sup>48</sup>	24 Stó:lō First Nations in British Columbia	Residents of 24 Stó:lō First Nations	There are referrals from the RCMP (pre-charge), Crown Counsel (post-charge), probation officers (pre-sentence), department of fisheries and oceans, Xyolhemeylh, the Ministry of Children and Family Development, community members, and self-referrals. The person who has done the harm must take responsibility for it.	Criminal matters, to replace trial process, make sentencing recommendations, reintegrate offenders after prison, or develop healing plan as part of sentencing or probation orders. Community issues, such as family disputes, custody concerns, divorce settlements and improving relations between community members and professionals, between community members and Stó:lō employees, between Stó:lō staff and supervisors.	The process varies depending on the issue and whether it is a healing or peacemaking process. Participants are required to abstain from drugs and alcohol and rest for four days prior to a circle.	The outcome varies based on the issue, it may result in sentencing recommendations, healing plans, or agreements between participants.
Meenoostahtan Minisiwin Family Justice Program <sup>49</sup>	17 First Nation Communities in northern Manitoba plus Thompson, Winnipeg, the Pas, and Gillam.	First Nations families, children and service providers living in these areas.	There are referrals from Child and Family Services [CFS], CFS agencies, schools, Chief and Council, court system, community service providers, and self-referrals. Issues must be related to a mandated CFS matter and participation must be voluntary.	All aspects of mandated child welfare, other situations where children's best interests are at risk, including: care placement, parent-child conflict, family-agency-system conflicts, service plans for neglect and abuse, family violence, larger community-wide conflicts, advocacy for families trying to access service and to address larger systemic problems affecting children and families.	The process varies depending on the issue. It may include lengthy and complex shuttle diplomacy and use of representatives where warranted.	The outcome is a Family Action Plan, which details how the long-term care and protection of children will be addressed, including who and what resources need to be involved, each participant's contribution, monitoring, and contingencies. Standard follow up is 1, 3, and 6 months following agreement, but varies greatly according to specific issue and needs.

Source: Indigenous Law Research Unit, Faculty of Law, University of Victoria: Hadley Friedland, Jessica Asch and Dr. Val Napoleon - A Toolkit for On-Reserve Matrimonial Real Property Dispute Resolution (pp. 27-45). Retrieved from: <http://coemrp.ca/wp-content/uploads/2015/12/Final-MRP-DR-Toolkit-Version-1.0.pdf>

### Mediation/Arbitration

Some First Nations who have implemented their own land codes have decided to require or recommend that separating couples involved in matrimonial real property disputes attempt to reach an agreement through mediation prior to going to arbitration, a tribunal, or a court to resolve the matter. Interestingly, many provincial courts across Canada have a similar requirement or offer mediation services for family law matters. Where mediation is required there are usually exceptions made for certain circumstances, such as cases involving power imbalances or intimate partner violence. A First Nation may refer parties to an already existing outside roster of provincially regulated mediators, or create its own inside roster. Where First Nations create their own roster of mediators, they may include elders or other knowledgeable and respected community-based people on the roster, who can add cultural, spiritual, or ceremonial aspects to the mediation process. Mediation is a highly individualized and private process that typically results in a signed, written agreement or a confidential report stating why and on what issues an agreement cannot be reached. Agreements reached or confidential reports explaining why an agreement could not be reached are then filed with land managers.

First Nation:	Is mediation mandatory or voluntary?	Mediation Roster – Is it maintained inside or outside community?	What is the next step if an agreement is not reached?
Beecher Bay First Nation	Mandatory	Inside community, Council maintains rosters, they must include “one or more elders qualified to apply traditional laws of the big house.”	Court
Kitselas and Westbank First Nations	Mandatory	Outside the community, parties access the BC Mediator Roster Society.	Court
Six Nations	Mandatory	Inside the community, mediators are drawn from inside the community and given mediation training if necessary.	Iroquois Dispute Resolution Tribunal

Source: Indigenous Law Research Unit, Faculty of Law, University of Victoria: Hadley Friedland, Jessica Asch and Dr. Val Napoleon - A Toolkit for On-Reserve Matrimonial Real Property Dispute Resolution (pp. 27-45). Retrieved from: <http://coemrp.ca/wp-content/uploads/2015/12/Final-MRP-DR-Toolkit-Version-1.0.pdf>

# BUSINESS LICENSING LAW

Enacted on \_\_\_\_\_

\_\_\_\_\_  
Authorized signatory for LNIB

\_\_\_\_\_  
[NAME]

DEPOSITED IN THE <b>REGISTRY OF LAWS</b>
ON ____/____/____ (Day/Mo/Year)
_____ Signature of Law Clerk

*BUSINESS LICENSING LAW*

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## BUSINESS LICENSING LAW

### PREAMBLE

#### WHEREAS:

- A. Under sections 6.1 and 6.2 of the Land Code, Council may make laws in relation to LNIB Land, including relating to the regulation, licensing and control of businesses on LNIB Land;
- B. Under section 14.2 of the Land Code, Council may, after full and fair consideration of any recommendations of the Lands Management Advisory Committee, establish mandatory standards, criteria and forms for Interests and Licences in LNIB Land;
- C. Under section 31.2 of the Land Code, Council may, by enacting a Law, delegate administrative authority in relation to the Land Code or a Law to an individual or body established or authorized under the Land Code;
- D. Following consultation with its Members, LNIB has decided to allow retail cannabis businesses to operate on LNIB Land;
- E. The province regulates the retail sale of cannabis in British Columbia under the *Cannabis Control and Licensing Act* (the "Act"). The Act provides the following:
  - (i) a provincial cannabis licence is required for a Person to sell cannabis, including on LNIB Land,
  - (ii) the province must not issue, or in certain cases, must not amend, a provincial cannabis licence for a retail cannabis business proposed to be located on LNIB Land unless LNIB recommends the province issue, or amend, the licence,
  - (iii) where LNIB decides to give comments and recommendations on an application to issue or amend a provincial cannabis licence, if the issuance of the licence may affect nearby residents, LNIB must gather the views of residents of an area determined by LNIB in respect of the application, and
  - (iv) LNIB may, by law, impose fees on the applicant in order to recover the costs incurred in assessing the application;
- F. In order to facilitate the process for licensing retail cannabis businesses on LNIB Land, LNIB intends to coordinate its review with the province's review of the related provincial cannabis licence;
- G. Council wishes to implement
  - (i) a business licensing system to track and regulate the conduct of business on LNIB Land, and
  - (ii) a process to govern how LNIB provides comments and recommendations on provincial cannabis licences.

**NOW THEREFORE** the Council enacts as follows:

### PART 1 - CITATION, APPLICATION, DEFINITIONS AND INTERPRETATION

## BUSINESS LICENSING LAW

### Citation

1. This Law may be cited as the Business Licensing Law.

### Application

2. This Law applies to all LNIB Land.

### Definitions

3. (1) In this Law:

"adult entertainment store" means a portion of or the entire premises where:

- (a) the business of selling or offering for sale sex paraphernalia or graphic sexual material is carried on,
- (b) one or more pornographic film viewers are made available for use by the public, or
- (c) where "adult films" as defined by the *Motion Picture Act* (British Columbia), and any regulations enacted under that Act are made available to any person for sale or rent;

"adult movie theatre" means a motion picture theatre where adult or restricted designated motion pictures, as defined by the *Motion Picture Act* (British Columbia), and any regulations enacted under that Act, are shown;

"applicable laws" means applicable Laws and applicable federal and provincial enactments;

"B.C. Building Code" means the British Columbia Building Code established under the *Building Act* (British Columbia) or related legislation;

"business" means carrying on a commercial or industrial activity or undertaking of any kind or nature, and providing professional, personal or other services for the purpose of gain or profit, but does not include an activity carried on by the governments of LNIB, British Columbia or Canada, the agencies of said governments or corporations owned by said governments or by any public transit authority or its subsidiaries;

"cannabis" has the same meaning as in the *Cannabis Act*, S.C. 2018, c. 16, subject to any prescribed modifications;

"*Cannabis Control and Licensing Act*" means the *Cannabis Control and Licensing Act*, SBC 2018, c 29

"community consultation" means gathering the views of residents of LNIB Land in accordance with section 25;

"daycare" means a day care or child care service or facility, not including a school, where a person, in exchange for payment of some form, offers or provides care for at least three children who are not related to the care giver by blood or marriage;

## BUSINESS LICENSING LAW

“enforcement officer” means the Lands Manager and any person appointed by Council, from time to time, to ensure compliance with this Law, and includes any delegate, the RCMP and any peace officer;

“licence” means either a standard business licence or a retail cannabis business licence;

“licensee” means a Person who holds a valid licence;

"non-resident business" means a business that is carried out on LNIB Land by a Person who does not have a premises on LNIB Land;

"operator" means the owner or proprietor of a business;

"premises" means a store, office, shop, building, home, warehouse, factory, structure, enclosure, temporary or permanent fruit or vegetable stand, yard or other definite area occupied or capable of being occupied by a Person for the purpose of a business and includes any area situated within any of the foregoing where a separate class or type of business is carried on, by a separate operator;

“province” means the British Columbia Liquor and Cannabis Regulation Branch within the Ministry of the Attorney General, or any branch, department or ministry that becomes responsible for provincial regulation of retail cannabis businesses;

“provincial cannabis licence” means a “licence” for a “retail store” as those terms are defined in the *Cannabis Control and Licensing Act* and the *Cannabis Licensing Regulation*, BC Reg 202/2018;

“retail cannabis business” means any business that sells cannabis or products containing cannabis directly to the public on LNIB Land, but does not include the sale of medical cannabis whether through a compassion club, a non-profit society or as a dispensary;

“retail cannabis business licence” means a licence to carry on a retail cannabis business on or within LNIB Land issued by LNIB in accordance with this Law;

“standard business licence” means a licence to carry on any business that operates on LNIB Land issued in accordance with this Law other than a retail cannabis business.

- (2) In addition to the terms defined in this Law, terms used in this Law may be defined in the Land Code.

### Interpretation

4. (1) A reference in this Law to an enactment is to be construed as including a reference to that enactment as it may be amended from time to time.
- (2) A reference in an enactment to a section is a reference to a section of this Law.
- (3) A reference in this Law to a subsection or paragraph is a reference to a subsection or paragraph of the section or subsection in which the reference occurs.



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- (4) 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.
- (5) Unless otherwise expressly provided, the structures, organizations, bodies, principles and procedures established or used in this Law will be guided and interpreted in accordance with the culture, traditions and customs of LNIB.

### **Severability**

5. The provisions of this Law are severable, and where any provision of this Law is for any reason held to be invalid by a decision of a court of competent jurisdiction, the invalid portion must be severed from the remainder of this Law and the decision that it is invalid must not affect the validity of the remaining portions of this Law.

### **Validity**

6. Nothing under this Law must be rendered void or invalid by
  - (a) an error or omission in a notice, form, permit or other document given or authorized under this Law; or
  - (b) a failure of LNIB or their delegate to do something within the required time.

## **PART 2 – ADMINISTRATIVE PROVISIONS**

### **Delegation of authority to Lands Manager**

7. Council delegates to the Lands Manager Council's authority to
  - (a) grant a standard business licence and otherwise exercise the necessary administrative authority to administer standard business licences in accordance with this Law; and
  - (b) suspend or revoke a licence in accordance with section 40.

### **Delegation of Lands Manager's duties**

8. With the exception of the authority delegated by Council to the Lands Manager under section 7, the Lands Manager may delegate any of his or her duties under this Law to any employee in the LNIB Lands Department.

## **PART 3 – GENERAL REQUIREMENTS**

### **Prohibitions**

9. (1) Except as set out in this Law and subject to section 11, a Person must not carry on a business on or within LNIB Land unless the Person holds a valid licence for the carrying on of the business and any conditions of the licence have been met.

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- (2) For certainty, the prohibition under subsection (1) applies to a Person carrying on a non-resident business, including any Person carrying on a business for any purpose on or within LNIB Land that is not being carried out from or within a premises.
- (3) A Person must not carry on a business at a premises other than at the premises specified for that business in a valid licence.
- (4) Unless otherwise authorized under a Law or applicable federal or provincial law, a Person must not carry on a business or solicit for charity, or any other purpose, on any road or highway that is wholly or partially on or within LNIB Land.
- (5) The following businesses are prohibited on or within LNIB Land:
  - (a) adult entertainment stores;
  - (b) adult movie theatres;
  - (c) a place that is kept or occupied, or resorted to by one or more persons, for the purpose of prostitution (or a “common bawdy-house” as defined in the *Criminal Code of Canada*);
  - (d) the sale, offering for sale, or delivery for sale of alcohol;
  - (e) the propagation, compounding or production of a controlled substance as defined in the *Controlled Drugs and Substances Act (Canada)* except in strict compliance with a Law or applicable federal or provincial law; and
  - (f) the sale of any controlled substance as defined in the *Controlled Drugs and Substances Act (Canada)*, except by a licensed pharmacist or in strict compliance with a Law or applicable federal or provincial law.

### Persons ineligible to hold licence

#### 10. A Person is not eligible to be issued a licence if

- (a) the Person is not in good standing with LNIB with regard to any financial debts or arrears, including in relation to property tax owing under the LNIB Property Taxation Law;
- (b) the Person has been convicted under any Law or an applicable law of another First Nation, or under provincial or federal laws in relation to the activities of the business for which the applicant has applied; or
- (c) the applicant is the owner of a business whose licence was suspended or revoked under this Law and that suspension or revocation was not reversed or set aside.

### Scope, exemptions and authority to waive

#### 11. (1) The exemptions set out in this section are subject to any Law enacted in relation to:

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- (a) removal and punishment of a Person trespassing on LNIB Land or frequenting LNIB Land for prohibited purposes;
  - (b) prevention of nuisance; or
  - (c) protection of the community.
- (2) A licence is not required for any of the following, provided the Person undertaking the business complies with all applicable laws and LNIB policies, including the LNIB Housing Policy, in addition to all federal and provincial health and safety standards:
- (a) renting apartment suites or units where not more than two (2) suites or units are made available for rent;
  - (b) door-to-door sale of newspapers published in Canada;
  - (c) public schools;
  - (d) teaching music, handicrafts or art as a home occupation where such teaching involves not more than one class of five (5) students at one time;
  - (e) garage sales or yard sales held by Members or occupants of LNIB Land where there are fewer than four (4) days per year of sales;
  - (f) sales of catered foods or baked goods cooked or prepared in a Member's home or the home of an occupant of LNIB Land;
  - (g) subject to any Law that regulates access to LNIB Land, delivery of food including pizza and fast foods;
  - (h) non-commercial, periodic fund-raising events by Members or organizations or occupants of LNIB Land;
  - (i) selling carvings, crafts, and other art work created by Members;
  - (j) providing or delivering services by a licensed professional including a doctor, lawyer, accountant, consultant, dentist, nurse, ophthalmologist, optometrist, registered massage therapist, physiotherapist or similar professional;
  - (k) courier or postal services; or
  - (l) small-scale home-based activities by Members or occupants of LNIB Land including, but not limited to, Avon, Herbalife, and Tupperware.

### **Application for a licence**

- 12.** (1) A Person may apply for a licence for the first time to carry on a new business or for a business that exists at the time this Law comes into force by submitting an application to the Lands Manager in the form specified by Council and paying the applicable fee.
- (2) An application under subsection (1) must include, at a minimum:

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- (a) the name, address, phone number, incorporation number (if applicable), nature and location of the business including the legal description of any premises from which the business operates;
  - (b) the name, address, and phone number of the operator or owner of the business;
  - (c) if the premises are located on LNIB Land that is subject to a Certificate of Possession, a letter of authorization from the holder of the Certificate of Possession (if not the applicant) consenting to the operation of the business from the premises.
  - (d) an acknowledgement that the licence does not provide authorizations for land use or other matters and that other permits or authorizations may be required;
  - (e) an acknowledgement that the holder of the licence must allow access to enforcement officers and other individuals authorized by Council or authorized by a Law to monitor compliance with the conditions set out in the licence;
  - (f) an acknowledgement that
    - i. the Person has not been convicted under any Law or an applicable law of another First Nation, or under provincial or federal laws in relation to the activities of the business for which the applicant has applied, and
    - ii. if the applicant is the owner of a business, the applicant has not had its licence suspended or revoked under this Law that was not reversed or set aside; and
  - (g) a signed release and waiver releasing and indemnifying LNIB against any claims in relation to the business or premises for which the licence is being sought.
- (3) The application form under this section must be signed by the Person who is the owner of the business, or by their duly authorized agent, or in the case of a corporation, signed by a director of the corporation or a duly authorized agent of the corporation or in the case of partnerships, joint ventures, or multiple owners, signed by any one of such partners or owners and such partner or owner will be deemed to be duly authorized by all the remaining partners or owners.

### **Preconditions**

- 13.** If a business requires approvals from other regulatory agencies in order to operate in compliance with all applicable laws and other requirements, the applicant must include with the application proof that the applicable preconditions have been met, including, but not limited to, the following:
- (a) for any business, proof of all applicable insurance policies;
  - (b) for any premises, confirmation from the Lands Department that the proposed use of the land or premises complies with a law that regulates development on LNIB Land, and any applicable land use plan or zoning law;
  - (c) for any premises, proof of compliance with all applicable fire safety, sanitation and building regulations;

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- (d) for an automobile dealership, proof of licensing under the *Motor Dealers Act* (British Columbia);
- (e) for a daycare facility, proof of licensing under the *Child Care Licensing Regulation* (British Columbia);
- (f) for the construction or alteration of a restaurant or food premises, as defined in the *Food Premises Regulation* (BC) or its successor, proof of approval by a health official under the *Health Act* (British Columbia);
- (g) for the preparation, distribution and selling of foods other than pre-packaged or pre-bottled foodstuffs, proof of a food service permit under the *Food Premises Regulation* (British Columbia);
- (h) for gaming facilities, proof of licensing under under a Law or applicable federal or provincial law;
- (i) for the provision of professional services, proof of applicable professional certifications, licensing and insurance.

### PART 4 - REQUIREMENTS FOR STANDARD BUSINESS LICENCES

#### Application of Part 4

14. This Part applies only to standard business licences.

#### Preliminary review of application

15. (1) As soon as practicable after receiving a standard business licence application and the applicable fees, the Lands Manager will review the application to determine the following:

- (a) the applicant is eligible to obtain a licence under section 10; and
  - (b) the application is complete in accordance with section 12 and complies with all applicable preconditions listed at section 13.
- (2) If an application complies with the requirements listed at subsection (1), the Lands Manager will provide the application and any other relevant materials to the Lands Management Advisory Committee.
- (3) If an application fails to comply with subsection (1)(a) or (b), the Lands Manager will provide written notice to the applicant that the application fails to meet the Law's requirements and advising of any steps that may be taken to qualify for a licence in a future application.

#### Lands Management Advisory Committee review

16. (1) Subject to subsection (2), as soon as practicable following their receipt of an application and all applicable materials provided by the Lands Manager under section 15, the Lands Management Advisory Committee must, acting reasonably, make a recommendation to the

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Lands Manager on whether to approve or refuse to approve the application for a standard business licence supported with reasons.

(2) If the Lands Management Advisory Committee recommends the Lands Manager approve an application for a licence, the Lands Management Advisory Committee may recommend that the approval be subject to certain terms and conditions, which may include, without limitation the following requirements:

- (a) that specified insurance be obtained;
- (b) restricting the number of occupants allowed on the premises of the business; or
- (c) specifying hours of operation.

(3) The Lands Management Advisory Committee's recommendation must be provided to the Lands Manager within 14 calendar days of making their recommendation.

### **Lands Manager's decision**

17. (1) As soon as practicable following the Lands Manager's receipt of the Lands Management Advisory Committee's recommendation on a standard business licence, upon consideration of the recommendation, the application and all applicable materials, the Lands Manager may

- (a) approve the application for a standard business licence, of which approval may include any reasonable terms or conditions; or
- (b) despite any other provision in this Law, refuse to approve an application for a standard business licence, setting out written reasons.

(2) The Lands Manager must provide notice of their decision by

- (a) issuing a standard business licence to the applicant that shows all applicable terms or conditions; or
- (b) notifying the applicant that the application for the standard business licence has been refused with a copy of the Lands Manager's written reasons.

### **Start date and term**

18. (1) Subject to subsections (2) and (3), a standard business licence will be granted for one calendar year commencing on the 1<sup>st</sup> day of January and will terminate on the 31<sup>st</sup> day of December in the year the licence was issued.

(2) The Lands Manager may authorize a standard business licence to commence after January 1st with a term not to extend beyond the 31st day of December in the year the licence was issued.

(3) The Lands Manager may grant a seasonal or temporary standard business licence to a Person who intends to carry on a business on a seasonal or temporary basis.

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- (4) For certainty, a Person seeking a seasonal or temporary licence is subject to the same application and approval process as required for a standard business licence in accordance with this Law.

### **Annual renewals**

- 19.** (1) A licensee may apply to renew their standard business licence each year by submitting an application to renew to the Lands Manager in the form specified by Council and paying the applicable fee on or before December 31<sup>st</sup> of the year the licence is set to terminate.
- (2) An application under subsection (1) must include the information provided at section 12(2).
- (3) The Lands Manager will issue a standard business licence to the licensee for a renewed one-year term if
- (a) the application information required at sections 12(2)(a) and (b) has not changed from the licensee's previous licence application; and
  - (b) the business is in compliance with all applicable laws and requirements.
- (4) The licensee must apply for a new licence in accordance with this Law if any of the information required at sections 12(2)(a) and (b) has changed from the licensee's previous licence application.

### **Changing the premises**

- 20.** (1) A licensee may apply to change the premises in which they carry on the licensed standard business by submitting an application to the Lands Manager in the form specified by Council and paying the applicable fee.
- (2) The Lands Manager will approve an application to change the premises under subsection (1) where the Lands Manager is satisfied that the applicant has complied with all applicable laws and other requirements.
- (3) The Lands Manager must provide notice of their decision by
- (a) issuing an amended standard business licence to the applicant that shows all applicable terms or conditions; or
  - (b) notifying the applicant that the application to amend the standard business licence has been refused with a copy of the Lands Manager's written reasons.

### **Licence cancelled**

- 21.** (1) The Lands Manager will cancel a standard business licence and provide notice to the licensee if:
- (a) the associated application is approved in error; or
  - (b) the associated application is approved due to a misrepresentation or concealment of fact.

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- (2) In the event an application is approved under circumstances described at subsection (1), the applicant is not entitled to a refund of any fees.

### **PART 5 – REQUIREMENTS FOR RETAIL CANNABIS BUSINESS LICENCES**

#### **Application of Part 5**

**22.** This Part applies only to retail cannabis business licences.

#### **Licence application**

**23.** In addition to the licence application requirements under section 12, an application for a retail cannabis business must be made by the occupier of the premises at which the retail cannabis business will be located and must be accompanied by:

- (a) proof that the applicant has applied for a provincial cannabis licence and an indication of the status of the province's review, or proof that the applicant has been issued a valid provincial cannabis licence;
- (b) proof that the retail cannabis business is not within 300 metres of any school, youth centre, daycare, cultural area, or religious area;
- (c) a plan satisfactory to the Lands Manager that addresses:
  - i. 24-hour security coverage of the premises for which the licence is issued,
  - ii. a robbery prevention plan, and
  - iii. management and control of noise, odour, traffic and patron conduct;
- (d) proof that the retail cannabis business is not a part of another business retail operation;
- (e) a plan demonstrating how the applicant will prevent minors from entering the premises;
- (f) a list of all associates of the applicant and employees of the retail cannabis business that includes their contact information; and
- (g) an acknowledgment by the applicant that the applicant is responsible for the cost of community consultation on the proposed retail cannabis business in a manner specified by the Lands Manger.

#### **Preliminary review**

**24.** (1) As soon as practicable after receiving an application for a retail cannabis business licence and the applicable fees, the Lands Manager will review the application to determine the following:

- (a) the applicant is eligible to obtain a licence under section 10; and



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- (b) the application is complete in accordance with sections 12,13 and 23.
- (2) Subject to subsection (4), if an application complies with the requirements listed at subsection (1), the Lands Manager will provide the application and any other relevant materials to the Lands Management Advisory Committee.
- (3) If an application fails to comply with subsection (1)(a) or (b), the Lands Manager will provide written notice to the applicant that the application fails to meet the Law's requirements and advising of any steps that may be taken to qualify for a licence in a future application.
- (4) Where the province requires LNIB's recommendation before issuing a provincial cannabis licence for the proposed retail cannabis business, the Lands Manager will carry out the necessary steps to comply with the province's requirements, which may include conducting community consultation.

### Community consultation

- 25.** (1) Where LNIB carries out community consultation on a provincial cannabis licence associated with a proposed or licensed retail cannabis business, the community consultation will be carried out as follows:
- (a) in a manner directed by the Lands Manager and that complies with the *Cannabis Control and Licensing Act*; and
  - (b) at the expense of the applicant.
- (2) Upon completion of community consultation held under this section, the Lands Manager will compile the feedback obtained from the community consultation in a written report which will be provided to the Lands Management Advisory Committee under section 26 for a new application or to Council under section 30 for an application to change the premises of the retail cannabis business.

### Lands Management Advisory Committee review application

- 26.** (1) Subject to subsection (2), as soon as practicable following their receipt of an application for a retail cannabis business licence and the written report of community consultation under section 25, if held, the Lands Management Advisory Committee must, acting reasonably, and in consideration of the materials provided, make a recommendation to Council on whether to approve or refuse to approve the application supported with reasons.
- (2) If the Lands Management Advisory Committee recommends Council approve an application for a retail cannabis business licence, the Committee may recommend that the approval be subject to certain terms and conditions, which may include, without limitation the following requirements:
- (a) that specified insurance be obtained;
  - (b) restricting the number of occupants allowed on the premises of the business;
  - (c) specifying hours of operation; or

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- (d) if applicable, measures to address specific concerns raised during community consultation held under section 25.
- (3) The Lands Management Advisory Committee's recommendation must be provided to the Lands Manager within 14 calendar days of making their recommendation.

### **Council decision and issuance of licence**

27. (1) Within 14 calendar days of the Lands Management Advisory Committee's recommendation under section 26(1), the Lands Manager will provide to Council their recommendation, the application for a retail cannabis business and the written report of community consultation under section 25, if held.
- (2) As soon as practicable following their receipt of materials provided under subsection (1) and taking into account the Lands Management Advisory Committee's recommendation and feedback received during community consultation, if held,
    - (a) subject to subsection (3), Council may approve the application subject to any reasonable terms and conditions; or
    - (b) despite any other provision in this Law, refuse to approve the application, setting out written reasons.
  - (3) Where the province requires LNIB's recommendation before issuing the provincial cannabis licence associated with the proposed retail cannabis business,
    - (a) Council's approval of an application for a retail cannabis business licence must not take effect until the licensee has provided the Lands Manager with evidence of the provincial cannabis licence for the retail cannabis business; and
    - (b) LNIB will take all necessary steps to comply with the province's requirements.
  - (4) For certainty, Council must not recommend that the province issue a provincial cannabis licence if the applicant does not comply with this Law.
  - (5) The Lands Manager will provide notice of Council's decision on an application under subsection (1) to the applicant and, subject to subsection (6), issue the licence.
  - (6) For an application considered under subsection (3), the Lands Manager must notify the applicant that the retail cannabis business licence will not be issued until the applicant has provided the Lands Manager with evidence of the provincial cannabis licence for the retail cannabis business.
  - (7) Upon the Lands Manager receiving evidence of a provincial cannabis licence for a retail cannabis business that received conditional approval under this section, the Lands Manager must issue the retail cannabis business licence to the licensee.
  - (8) The term of a retail cannabis business licence must correspond with the term of the provincial cannabis licence.

### **Conditions of every retail cannabis business licence**

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28. (1) A licensee for a retail cannabis business must notify the Lands Manager of any changes to
- (a) the provincial cannabis licence for the retail cannabis business; and
  - (b) the list of associates provided with the licence application under section 23(f).
- (2) In accordance with the *Cannabis Control and Licensing Act* and regulations, a retail cannabis business is prohibited from engaging in any other business activities in the premises that are licensed as a retail cannabis business. For clarity, this includes hosting an automated teller machine, offering cheque cashing services, and offering liquor sales.
- (3) When a retail cannabis business is closed, all floor inventory must be removed from display areas and placed in a secure locked storage vault at the premises.
- (4) The owner and operator of a retail cannabis business is required to ensure the safety of their employees, patrons and neighbours.
- (5) Subject to Council limiting the hours in a retail cannabis business licence, operating hours for a retail cannabis on LNIB Lands must be between 9:00am and 9:00pm and during operating hours, a retail cannabis business must have no fewer than two (2) employees working at any given time.

### Annual renewals

29. (1) A licensee may apply to renew their retail cannabis business licence each year by submitting an application to renew to the Lands Manager in the form specified by Council and paying the applicable fee on or before the expiry date set out on their licence.
- (2) An application under subsection (1) must
- (a) include the information provided at section 12(2); and
  - (b) evidence of the licensee's renewed provincial cannabis licence.
- (3) The Lands Manager will issue a retail cannabis business licence to the licensee for a renewed one-year term if
- (a) the application information required at sections 12(2)(a) and (b) has not changed from the licensee's previous licence application;
  - (b) the business is in compliance with all applicable laws and requirements; and
  - (c) the provincial cannabis licence has been renewed for another year.
- (4) The term of a renewed retail cannabis business licence must correspond with the term of the provincial cannabis licence.
- (5) The licensee must apply for a new retail cannabis business licence in accordance with this Law if any of the information required at sections 12(2)(a) and (b) has changed from the licensee's previous licence application .

**Changing the premises**

30. (1) Subject to subsection (2), a licensee may apply to change the premises in which they carry on the licensed retail cannabis business by submitting an application to the Lands Manager in the form specified by Council and paying the applicable fee.
- (2) Except where the province requires LNIB's recommendation before changing the premises of the retail cannabis business in the provincial cannabis licence, a licensee's application under subsection (1) must include evidence of the associated provincial cannabis licence showing the address of the new premises.
- (3) Subject to subsection (5), the Lands Manager will confirm the application to change the premises under subsection (1) is complete and provide the application and any applicable materials to Council.
- (4) As soon as practicable following its receipt of the application and any materials under subsection (3), Council may
- (a) subject to subsection (5), approve an application to change the premises if the proposed change will comply with all applicable laws and other requirements; or
  - (b) despite any other provision in this Law, refuse to approve the application, setting out written reasons.
- (5) Where LNIB's recommendation is required before the province will change the premises in a provincial cannabis licence associated with a retail cannabis business,
- (a) LNIB will carry out the necessary steps to comply with the province's requirements, which may include community consultation in accordance with section 25; and
  - (b) Council's approval to change the premises of a retail cannabis business licence must not take effect until the licensee has provided the Lands Manager will evidence of the amended provincial cannabis licence showing the address of the new premises.
- (6) For certainty, Council must not recommend that the province change the premises in a provincial cannabis licence if the applicant does not comply with this Law.

**Issuing the amended licence**

31. (1) The Lands Manager will provide notice of Council's decision on an application under section 30 to the licensee and subject to subsection (2), issue an amended licence.
- (2) For an application considered under section 30(5), the Lands Manager must notify the applicant that the retail cannabis business licence will not be amended until the applicant has provided the Lands Manager with evidence of the amended provincial cannabis licence showing the address of the new premises.
- (3) Upon the Lands Manager receiving evidence of an amended provincial cannabis licence for a retail cannabis business that received conditional approval under this section, the Lands Manager must issue the retail cannabis business licence to the licensee.

**Licence cancelled**

32. (1) Council will cancel a retail cannabis business licence and provide notice to the licensee if:
- (a) the associated application is approved in error; or
  - (b) the associated application is approved due to a misrepresentation or concealment of fact.
- (2) In the event an application is approved under circumstances described at subsection (1), the applicant is not entitled to a refund of any fees.

**PART 6 – GENERAL REQUIREMENTS FOR ALL LICENCES**

**Separate business**

33. For the purposes of this Law, where a business is carried on, within, or from more than one premises on or within LNIB Land, the business carried on within or from each premises is deemed to be a separate business.

**Business purchases and licence transfers**

34. (1) Every licence issued under this Law is specific and exclusive to the Person and premises named in the licence and may not be transferred, given, lent or sold to another Person or used at another premises.
- (2) Where any Person purchases from another Person the controlling interest in a business licensed under this Law, the existing licence of that business will expire sixty (60) days after the purchase and if the purchaser wishes to continue operating the business, the purchaser must submit a new licence application in accordance with this law.

**Access for inspection and enforcement**

35. Every licence is deemed to grant access to the business or premises by an enforcement officer for inspections and enforcement in relation to this Law.

**Requirement to post or carry**

36. (1) A holder of a licence must post the licence and keep it posted in a conspicuous place on the premises for which it was issued.
- (2) A holder of a licence for a non-resident business must carry the licence on their person at all times while carrying on the business on or within LNIB Land.

**Fees**

37. (1) An applicant for a licence is responsible for paying the applicable application fee and annual licence fee set out at Schedule A.

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- (2) The fee to apply for a licence on a seasonal or temporary basis under section 18(3) will be prorated to reflect the applicable term of the licence.
- (3) Annual licence fees are not refundable except:
  - (a) if the licence application is withdrawn prior to the issuance of the licence; or
  - (b) the licence application is refused.

### **Licence no longer required**

- 38. (1) Every licensee must notify the Lands Manager in writing when the licence is no longer required.
- (2) The licence will be cancelled upon receipt of notification under subsection (1) or on the date indicated in the notification as the end of business operations.
- (3) A licensee is not entitled to a refund or partial refund of the licence fee.

### **Liability**

- 39. The Lands Manager's or Council's approval or refusal to approve a licence
  - (a) is not evidence that a business, premises or any associated approvals are valid or legal; and
  - (b) does not create any liability on behalf of LNIB.

## **PART 7 - ENFORCEMENT**

### **Suspending or revoking a licence**

- 40. (1) In addition to any other remedies or penalties under this Law or any other applicable laws, if the Lands Manager has reasonable cause, the Lands Manager may, after giving notice to the holder of the licence
  - (a) suspend the licence for all or part of the year; or
  - (b) revoke the licence.
- (2) Upon suspending or revoking a licence under subsection (1), the Lands Manager may restrict a Person from holding a licence for up to three years for reasonable cause.
- (3) Without limiting the interpretation of "reasonable cause" under subsections (1) or (2), the following may serve as grounds to suspend or revoke a Person's licence or restrict a Person from holding a licence:
  - (a) the Person is convicted of an indictable offence;
  - (b) the Person is convicted of an offence under a Law, an applicable law of another First Nation, or under provincial or federal laws in relation to the activities of the business

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for which the licensee is licensed or with respect to the premises named in the licence;

- (c) the Person has ceased to meet the lawful requirements to carry on the business for which they are licensed or relating to the premises named in the licence;
- (d) the Person has failed to renew their licence within thirty (30) days of the expiry date;
- (e) the Person has failed to pay property tax pursuant to the LNIB Property Taxation Law, or has otherwise failed to comply with the LNIB Property Taxation Law or an order issued under that law; or
- (f) the Person has, in the reasonable opinion of the Lands Manager:
  - (i) engaged in such gross misconduct relating to the business or to the premises named in the licence as to warrant the suspension, revocation or restriction of the licence,
  - (ii) conducted business, performed a service, or displayed, offered for sale, or sold or distributed to a Person actually or apparently under the age of sixteen years anything that may be harmful or dangerous to the health or safety of a Person actually or apparently under the age of sixteen years, or
  - (iii) carried on any business without a licence.

### **Authority of enforcement officers**

**41.** (1) In addition to any powers set out in a Law addressing the enforcement of Laws and the authority of enforcement officers and without limiting an enforcement officer's powers at law, an enforcement officer is authorized to do the following for the purpose of performing his or her duties or exercising his or her powers in relation to this Law:

- (a) issue a stop work order to any Person who carries out a business without receiving a licence if required under this Law, which includes for certainty, carrying out a business if the Person's licence is suspended or was revoked under section 40 or has been rendered invalid under section 44;
  - (b) where a business is being carried out without a licence, an enforcement officer may:
    - (i) order that a premises, or a portion of a premises, be closed, shut down, sealed off, or otherwise made unavailable for business use until there is a valid licence in place for that premises, or
    - (ii) order any vehicle entering LNIB Land for what the enforcement officer believes is a prohibited purpose under this Law to turn around or comply with this Law before entering LNIB Land.
- (2) An order under subsection (1)
- (a) may be registered in court and enforced as a court order; and
  - (b) continues in force until

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- (i) the condition that led to the order is remedied, or
- (ii) the activity that is the subject of the order receives a valid licence under this Law.

### **PART 8- RIGHT OF RECONSIDERATION**

#### **Right of Reconsideration by Council**

- 42.** (1) An applicant or licensee who wishes reconsideration of a decision of the Lands Manager made under this Law must, within thirty (30) business days of receipt of notice of the decision, deliver to Council a written request stating the grounds upon which the request for reconsideration is based, together with any relevant supporting information or evidence and the applicable fee as set out in Schedule A.
- (2) Council must consider the request within thirty (30) days of receipt of the notice.
- (3) Council may concur with, modify, or reverse the decision of the Lands Manager, and must provide written notification to the applicant or licensee and to the Lands Manager of the decision.
- (4) For certainty, there is no right of reconsideration of Council's decision to refuse to approve an application for a retail cannabis business licence or an application to change the premises of a licensed retail cannabis business.

### **PART 9 - OFFENCES AND PENALTIES**

#### **Offences**

- 43.** (1) A Person who does any of the following commits an offence:
- (a) provides false or misleading information in order to obtain a licence;
  - (b) carries out an activity prohibited under this Law without having first received a valid authorization;
  - (c) neglects or refrains from doing anything required to be done pursuant to the provisions of this Law;
  - (d) otherwise contravenes this Law; or
  - (e) obstructs, interferes with or denies access to an enforcement officer or other individual who is designated to enforce this Law.
- (2) A Person who commits an offence or who contravenes an order made by a court in relation to this Law is guilty of an offence and liable on summary conviction to a fine of not more than \$10,000 or to imprisonment for a term of not more than three months, or to both.



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- (3) A fine payable under subsection (2) must be remitted to LNIB by the court, after reasonable court costs have been deducted.
- (4) Despite subsection (2), LNIB may also authorize the Lands Manager or enforcement officer to issue a ticket or violation notice to impose a sanction or fine for contraventions of this Law.

### **Contravention renders licence invalid**

- 44.** In addition to any other remedies or penalties under this Law, or any other applicable laws, any Person who contravenes, violates or permits any act or thing to be done in contravention of, or neglects or refrains from doing anything required to be done pursuant to the provisions of this Law renders their licence invalid.

## **PART 10 – Regulations**

### **Regulations**

- 45.** (1) Council may make any regulations it considers necessary or advisable for purposes under this Law.
- (2) For certainty, the powers of the Council under subsection (1) include the power to make regulations:
- (a) respecting the form and content of applications, notices, reports, licences and other documents that are required or permitted under this Law;
  - (b) prescribing consultation and public input requirements in respect of applications provided for in this Law;
  - (c) defining words and expressions that are used but not defined in this Law; and
  - (d) generally for the purpose of giving effect to this Law.
- (3) Subsection (2) does not restrict Council from approving matters listed in that subsection by Resolution.

## **PART 11- AMENDMENT**

### **Substantive amendments to this law**

- 46.** With the exception of a minor amendment described at section 47, an amendment or repeal of this Law must only be made by Council as recommended by the Lands Management Advisory Committee in accordance with the Land Code.

### **Minor amendments**

- 47.** (1) Council may approve a minor amendment to this Law by Resolution.
- (2) For the purposes of subsection (1), minor amendments mean:

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- (a) amendments to correct typographical errors;
- (b) amendments required to reference any relevant new or amended Law;
- (c) amendments ordered by any court of competent jurisdiction; and
- (d) amendments which serve to clarify this Law, where there is no reasonable dispute about the intention underlying the original provision.

**PART 12 – Coming Into Force**

**Coming Into Force**

**48.** This Law comes into force on the date it is passed by Resolution.

**THIS LAW IS HEREBY DULY ENACTED** by Council on the \_\_\_ day of \_\_\_\_\_, 20\_\_\_, at \_\_\_\_\_, in the Province of British Columbia.

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**SCHEDULE "A"**

**ADMINISTRATIVE FEES**

Application fee for a standard business licence s. 37(1)	\$200
Annual fee for a standard business licence s. 37(1)	\$100
Application fee for a retail cannabis business licence s. 37(1)	\$1000
Annual fee for a retail cannabis business licence s. 37(1)	\$500
Application to reconsider a decision of the Lands Manager (refusal to approve an application for a standard business licence; suspension or suspension of standard business licence or retail cannabis business licence) s. 42	\$50