

**Interior to Lower Mainland  
Capacity Funding Agreement**



## CAPACITY FUNDING AGREEMENT

**THIS AGREEMENT** dated as of the \_\_\_\_ day of \_\_\_\_\_, 2007.

### **BETWEEN:**

The «**Band**» First Nation, an Indian Band within the meaning of the *Indian Act*, R.S.C. 1985, c. 15 as amended, for and on behalf of itself and all the members of the Band, as represented by the Band Chief and Council.

(the “«Band»”)

### **AND:**

**BRITISH COLUMBIA HYDRO AND POWER AUTHORITY**, a corporation continued under the authority of the *Hydro and Power Authority Act*, R.S.B.C. 1996, c. 212, as amended.

(“**BC Hydro**”)

### **WHEREAS:**

- A. BCTC is proposing to build a new transmission line between the interior and lower mainland in order to meet growing electricity demands, and ensure a reliable and efficient transmission system.
- B. Part of the Project is located within an area over which the «Band» asserts Aboriginal Title and Rights;
- C. Under the *Transmission Corporation Act*, S.B.C. 2003, c. 44 and a number of designated agreements between British Columbia Transmission Corporation (BCTC) and BC Hydro, BCTC is responsible for operating BC Hydro’s transmission system and for planning, constructing and obtaining all regulatory approvals for enhancements, reinforcements and expansions to the transmission system;
- D. Pursuant to the designated agreements between BCTC and BC Hydro, BC Hydro retains primary responsibility for properties and property rights, and for aboriginal relations with respect to transmission system assets, operations and new capital projects;
- E. The «Band» and BC Hydro wish to establish a framework to continue consultations regarding the Project, and provide capacity to the «Band» to participate in the regulatory processes associated with, and all related

consultations regarding the Project on «Band» interests, and «Band» Aboriginal Rights and Title.

**NOW THEREFORE** the Parties agree as follows:

## **1 DEFINITIONS**

**“Agreement”** means this Agreement, including any appendices attached hereto;

**“«Band» Community”** means any of the LIST OF BAND NAMES, each an Indian Band within the meaning of the *Indian Act*, R.S.C. 1985, c. I-5, as amended, and **“«Band» Communities”** means all such bands;

**"Aboriginal Title and Rights"** means the aboriginal rights, including aboriginal title, asserted by the «Band»;

**“BCEAA”** means the *British Columbia Environmental Assessment Act* as amended or replaced from time to time;

**“BCTC”** means the British Columbia Transmission Corporation;

**“CEAA”** means the *Canadian Environmental Assessment Act* as amended or replaced from time to time, and the Canadian Environmental Assessment Agency, as the case may be;

**"Consultation Process"** means the process of consultation set out by the applicable regulatory and governmental authorities in respect of the Project, including, but not limited to, any processes determined by the EAO, and CEAA, and as further set out in, and contemplated by, this Agreement;

**“EAO”** means the BC Environmental Assessment Office;

**“Environmental Assessment”** means the environmental assessment of the Project by the EAO and CEAA;

**"Funding"** means the funds paid by BC Hydro to the «Band» in accordance with section 4;

**“Parties”** means BC Hydro and the «Band», and their respective successors and assigns, and **“Party”** means either one of the Parties;

**“Project”** means the construction of a new 500 kV transmission line between its Nicola Substation and Meridian Substation, including upgrades to existing substation(s) and/or construction of a new substation as may be required by the Project route;

**“Traditional Territory”** means the collective of the areas identified by each of the «Band» Communities as their asserted traditional territory, as defined on the map attached as Appendix D.

## **2 PURPOSE**

- 2.1 The Parties agree that the purpose of this Agreement, and the provision of the Funding by BC Hydro to the «Band», is for the Parties to undertake the Consultation Process, including but not necessarily limited to:
- a. Ensuring that the «Band» is fully informed about the Project;
  - b. Ensuring the Parties work together to participate in and carry out the Consultation Process ;
  - c. Ensuring that the «Band» is provided with opportunities to identify to BC Hydro and applicable regulatory bodies any potential impacts (adverse and beneficial) of the Project on «Band» Aboriginal Title and Rights;
  - d. Providing opportunities for the Parties to identify strategies to avoid, mitigate, manage and/or otherwise accommodate potential adverse impacts of the Project on «Band» Aboriginal Title and Rights;
  - e. Assisting the «Band» to participate fully in the EAO, and CEAA, processes and to do so in a manner which is in keeping with the prescribed timelines of these agencies, BC Hydro and BCTC; and
  - f. Supporting the negotiation of any subsequent agreements that the Parties may wish to enter into relating to the Project, this may include agreements relating to training, employment, or contracting opportunities.

### **3 CONSULTATION PROCESS**

- 3.1 In furtherance of the purposes in section 2, the «Band» agrees to:
- a. Participate and cooperate fully and in a timely manner in the Environmental Assessment of, and any regulatory processes associated with the Project, including the preparation and delivery of any concerns, issues, reports, submissions or comments respecting the Project;
  - b. Review maps of the Project route and provide BC Hydro with a clear expression of the geographic relationship between, and the «Band» interests in respect of, the Traditional Territory and the Project route;
  - c. Attend regular meetings with BC Hydro/BCTC, at mutually agreed upon intervals coordinated with the timing of the Environmental Assessment and other regulatory processes applicable to the Project as well as the construction planning, design and tendering phase of the Project;
  - d. Undertake and provide the studies and reports in accordance with the deliverables and timelines identified in Appendix A and C ; and
  - e. Provide to BC Hydro reports, summaries and other Project related materials, information and other relevant materials in sufficient form and detail to enable BC Hydro to understand and assess the potential impact of the Project on the «Band».

### **4 CAPACITY FUNDING**

- 4.1 BC Hydro will provide the Funding to the «Band» to assist the «Band» to implement this Agreement and to participate in the Consultation Process in accordance with the amounts and conditions of payment of the Funding as set out in Appendices A and B.
- 4.2 Upon written agreement of the Parties, the Parties may amend the amount of the Funding if there is additional work required to participate in the Consultation Process that was not contemplated by the Parties at the time of entering into this Agreement.

### **5 TIMELINES AND TERMINATION**

- 5.1 This Agreement will remain in force until the completion of the construction of the Project unless the Parties agree in writing to extend the term of this Agreement.
- 5.2 Notwithstanding section 5.1, either Party may terminate this Agreement with 30 days written notice to the other Party.

- 5.3 If either Party terminates this Agreement, BC Hydro will provide the Funding for any costs or amounts incurred by the «Band» as of the date of written notice of this Agreement.
- 5.4 Except as provided for in section 5.3 or unless otherwise agreed to in writing by BC Hydro, BC Hydro shall have no further obligation to provide the Funding to the «Band» after the termination of this Agreement.

## **6 EXISTING RIGHTS AND OBLIGATIONS OF THE PARTIES**

- 6.1 Upon signing this Agreement, the «Band» will provide to BC Hydro, and subsequently as directed by BC Hydro, to any regulatory bodies undertaking a review or assessment of the Project or making any decisions required for the Project to proceed, including the EAO, and CEAA, written confirmation, in the form attached to this Agreement as Appendix E, that BC Hydro and the «Band» have entered into this Agreement.
- 6.2 Nothing in this Agreement creates any legal partnership, co-venture, or principal and agent relationship between the Parties.
- 6.3 Nothing in this Agreement shall be construed as an expressed or implied acceptance by BC Hydro or of the Province of British Columbia of any «Band» Aboriginal Title and Rights.
- 6.4 This Agreement shall not be interpreted as in any way derogating from or modifying any of the rights and obligations of either party under any existing agreement (including right of way agreements or water licenses) legislation or the Constitution of Canada.
- 6.5 Nothing in this Agreement indicates acceptance by the «Band» of federal or provincial crown jurisdiction over or ownership of land, water or other resources within the territories traditionally used by the «Band».

## **7 CONFIDENTIALITY**

- 7.1 The terms and conditions of this Agreement and any agreements reached pursuant to the Consultation Process, including all communications, negotiations, term sheets or draft agreements leading to those agreements, are confidential and may not be disclosed by either Party except:
- a. by BC Hydro to BCTC;
  - b. by BC Hydro to its or BCTC's contractors, representatives or agents, provided that such contractors, representatives or agents are bound by confidentiality provisions similar in nature and effect as those set out in this Agreement;
  - c. by BC Hydro to a court or regulatory body, including the EAO, and CEAA, undertaking a review or assessment of the Project, or making any decisions required for the Project to proceed;

- d. with the consent of the other Party; or
  - e. as may be required by law.
- 7.2 Except where identified by a Party as confidential, all information provided to the «Band» by BC Hydro or BCTC and provided to BC Hydro or BCTC by the «Band» with regard to the Project will be considered public by the Parties.
- 7.3 Subject to the exceptions regarding disclosure provided for in sub-sections 7.1.(a) – 7.1.(e), the Parties agree that any information that is identified as confidential will not be released or disclosed to any other entity or individual without first obtaining the written consent of the other Party, such consent not to be unreasonably withheld.

## **8 REPRESENTATIONS AND WARRANTIES**

- 8.1 The «Band» represents and warrants to BC Hydro that:
- a. It has the full authority and mandate to enter this Agreement, receive payments and fulfill the obligations under this Agreement on behalf of the «Band» and its members; and
  - b. The execution and delivery of this Agreement and the completion of the transactions contemplated herein have been duly authorised by all requisite action on the part of the «Band».
- 8.2 Each Party represents and warrants to the other that it has retained and received independent legal advice regarding this Agreement.
- 8.3 The Parties agree that the rule of construction that ambiguities are to be resolved against drafting parties does not apply to the interpretation of this Agreement, and that there will be no presumption that any doubtful or ambiguous expression is to be resolved in favour of either Party.

## **9 GENERAL**

- 9.1 Any notice, direction, payment or any or all material that either Party may be required or desired to give or deliver to the other Party shall be in writing and shall be given by personal delivery, by facsimile, by mailing or by courier, in each case addressed to the intended recipient as follows:

to «Band»



to **BC Hydro**  
Attention: James Ross  
Senior Negotiator  
Aboriginal Relations and Negotiations  
16<sup>th</sup> floor – 6911 Southpoint Drive  
Burnaby, BC  
V3N 4X8  
Fax: \_\_\_\_\_

Or such address or addresses as a Party may, from time to time, designate in writing.

- 9.2 In the case of any dispute or disagreement regarding this Agreement, the Parties agree that their designated representatives will first try to resolve such dispute or disagreement. If a dispute or disagreement cannot be resolved by the respective Parties' representatives, the Parties agree that the Director, Aboriginal Relations and Negotiations for BC Hydro and «Address1» for the «Band» will meet to discuss such dispute or disagreement and attempt to resolve it in a timely manner.
- 9.3 Neither party may assign any right, benefit, or interest in or under this Agreement without the written consent of the other party.
- 9.4 Section 7 of this Agreement shall survive the termination of this Agreement.
- 9.5 No provision of this Agreement or breach thereof will be deemed to have been waived by a Party unless such waiver has been made in writing.
- 9.6 Any amendments to this Agreement must be in writing and executed by the Parties.
- 9.7 The headings in this Agreement have been added for ease of reference and in no way define the scope of any provision of this Agreement.
- 9.8 Time shall be of the essence in this Agreement and no variation of this Agreement shall operate as a waiver of this provision.
- 9.9 This Agreement contains the whole agreement between the Parties with respect to the matters herein, and there are no express or implied representations, warranties, terms, conditions other than as expressly set forth or referred to in this Agreement.
- 9.10 If any provision of this Agreement is found to be invalid or unenforceable, it shall be severed from this Agreement to the extent of its invalidity or unenforceability, without affecting the remainder of the Agreement.

- 9.11 If any part of this Agreement is declared or held invalid or unenforceable by a court of competent jurisdiction, the Parties agree to negotiate and attempt to reach agreement on a replacement for the part declared or held invalid with a view to achieving the intent of the Parties as expressed in this Agreement.
- 9.12 This Agreement shall be construed in accordance with the laws of Canada and the laws of the Province of British Columbia, as applicable.

**IN WITNESS WHEREOF** the Parties hereto have executed this Agreement as of the day and year first above written.

SIGNED on behalf of the **«Band»**  
**«Address1»**  
by the authorized representative of the «Band»:

Per:

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SIGNED on behalf of the  
**BRITISH COLUMBIA HYDRO AND POWER AUTHORITY:**  
Per:

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APPENDIX A

**Approved Budget**

The Parties have estimated the amount of time required to comply with the Consultation Process. BC Hydro will provide Funding subject to the Payment Schedule outlined in Appendix B.

Task	Deliverable	Approved Budget	Initial Payment Upon Signing of Agreement	Subsequent Installments
<b>1. Information Review; Participation in the Environmental Assessment and other regulatory processes applicable to the Project</b>				
On-going Consultations with BC Hydro	<ul style="list-style-type: none"> <li>Ongoing meetings with BC Hydro/BCTC throughout this process to carry out the Purpose of this Agreement as defined in Section 2, including:                             <ul style="list-style-type: none"> <li>a) discussing the Project, and providing feedback on Aboriginal interests and potential Project impacts</li> <li>b) discussing and involvement in , archaeological and environmental studies</li> </ul> </li> </ul>	[To be provided by FN]		Refer to Schedule B
<b>2. Community Meetings</b>				
Community Meetings with or without BC Hydro/BCTC participation, including Project open houses	<ul style="list-style-type: none"> <li>Undertake community meetings as deemed appropriate by the FN and agreed to by BC Hydro. Provide an opportunity for BC Hydro/BCTC to meet with the community</li> </ul>	BC Hydro to host and pay for events		Subject to invoicing to a maximum of \$5000 per meeting.
<b>3. Environmental Field Work</b>				
Participation in environmental fieldwork	<ul style="list-style-type: none"> <li>Fieldwork required by Golder &amp; Associates (according to the approved service agreement) to meet the requirements of the BC Environmental Assessment process</li> </ul>	Specific rates agreed to prior to commencing work	None	Subject to invoices
<b>4. Traditional Use Study (At BC Hydro's discretion in consultation with the FN)</b>				
Traditional Use Study	<ul style="list-style-type: none"> <li>Complete Traditional Use Study as per deliverables outlined in Appendix C. Final report is to be completed by no later than March 1, 2008</li> </ul>	[To be provided by FN]	40% of negotiated budget	40% of the negotiated budget upon completion and receipt of first draft. 20% of the negotiated budget upon completion and receipt of completed report.
<b>Total</b>				

## APPENDIX B

### Payment Schedule and Guidelines

#### Payment Schedule:

1. The «Band» will provide BC Hydro with a monthly invoice showing expenditure and costs relating to this Agreement.
2. BC Hydro will make payments within 45 days of receipt of an invoice from the «Band».
3. BC Hydro will pay for receipted expenses of travel, accommodation and food, for a maximum of 3 individuals (unless otherwise agreed to in advance by BC Hydro) per meeting; and
4. If vehicle travel is used then BC Hydro rates of \$0.50 per km will be reimbursed.

## APPENDIX C

### **Traditional Use Study – Terms of Reference**

**If a Traditional Use Study is undertaken, an agreed to Terms of Reference and report outline will be provided as Appendix C to this Agreement**

APPENDIX D

**Map of «Band» Traditional Territory**

## APPENDIX E

### Letter to Regulatory Agencies

In accordance with Section 6.1, the «Band» will provide the following letter on «Band» letterhead:

[Date]  
[Addressee]

Re: BC Hydro and «Band» Capacity Funding Agreement

Please accept this letter as confirmation that BC Hydro and the «Band» entered into a Capacity Funding Agreement for the Interior to Lower Mainland Transmission Project (the "Project") on [DATE].

The purposes of this Agreement are to establish a process to: ensure that the «Band» is fully informed about the Project, provide the «Band» with the opportunity to identify to BC Hydro and applicable regulatory bodies potential impacts of the Project on «Band» Aboriginal Title and Rights, identify strategies to avoid, mitigate, manage and/or otherwise accommodate potential adverse impacts on the «Band», assist the «Band» in fully participating in all regulatory process relating to the Project within regulatory and Project timelines, and support the negotiation of any subsequent agreements between the Parties.

Sincerely,

«Band»