

THIS AGREEMENT made \_\_\_\_ day of \_\_\_\_\_, 2015

## REVENUE SHARING AGREEMENT

### BETWEEN:

HER MAJESTY IN RIGHT OF THE PROVINCE OF BRITISH COLUMBIA  
as represented by the Minister of Aboriginal Relations and Reconciliation

(the "Province")

### AND:

POPKUM INDIAN BAND, as represented by Chief and Council,

(the "Popkum Indian Band")

(Collectively the "Parties", Individually "Party")

### RECITALS:

- A. The Popkum Indian Band has Aboriginal Interests within its Traditional Territory.
- B. The Province supports the development of clean energy and the sharing with first nations of revenue from clean energy projects, and respects the importance of government to government relationships as contemplated in the New Relationship and the principles of the Transformative Change Accord.
- C. Part 6 of the *Clean Energy Act* enabled the creation of a fund known as the First Nations Clean Energy Business Fund which allows for the sharing of specified land revenues and water rentals with first nations.
- D. The Popkum Indian Band is a band as defined by the *Indian Act*.

### NOW, THEREFORE, THE PARTIES AGREE AS FOLLOWS:

#### 1.0 DEFINITIONS

##### 1.1 In this Agreement:

"Agreement" means this Revenue Sharing Agreement, including its Schedules;

"Aboriginal Interests" means

- (a) asserted aboriginal rights including Aboriginal title; or

(b) determined aboriginal rights including aboriginal title, which are recognized and affirmed under section 35(1) of the *Constitution Act, 1982*;

“Available Revenue” means the Project Revenue multiplied by the percentage prescribed for the purposes of section 20(4)(b) of the *Clean Energy Act* (50% as of the effective date of this agreement) and the percentage prescribed for the purposes of section 20(5)(a) of the Act (75% as of the effective date of this agreement), as those percentages are amended from time to time;

“Designated Percentage” means 4.97 percent or such other amount specified by the Province in accordance with section 9.2;

“Fiscal Year” means April 1 of a calendar year to March 31 of the following calendar year;

“Lifetime” in relation to the Local Project, means the period during which the Local Project continues as a power project for the purposes of section 20 of the *Clean Energy Act*;

“Local Project” means the Power Project described in Schedule 1;

“Overpayment” means both an amount paid mistakenly by the Province under this Agreement that is not due under section 3.1, and if the Province refunds Project Revenue under section 16 of the *Financial Administration Act*, means a percentage of the refunded amount equal to the product of multiplying the Designated Percentage, the percentage prescribed for the purposes of section 20(4)(b) of the *Clean Energy Act* and the percentage prescribed for the purposes of section 20(5)(a) of the Act;

“Prescribed Land and Water Revenues” means revenue prescribed for the purposes of section 20(4)(b) of the *Clean Energy Act*, which the Province derives from Power Projects, but is subject to any changes to the revenue prescribed for those purposes made during the Term of this Agreement;

“Power Project” means a power project as defined by section 20(1) of the *Clean Energy Act*;

“Project Revenue” means Prescribed Land and Water Revenues received by the Province in a Fiscal Year during the Term that are derived from the Local Power Project;

“Project Tenure” means a tenure for the Local Project, the revenue from which is prescribed for the purposes of section 20(4)(b) of the *Clean Energy Act*;

“Project Works” means works authorized by a Project Tenures or water licence for the Local Project, the revenue from which is prescribed for the purposes of section 20(4)(b)

“Sharing First Nation” means a First Nation, other than the Popkum Indian Band, that has asserted Aboriginal Interests on the land where the Local Project is located in whole or in part;

“Term” means the term as defined by section 8.1;

“Traditional Territory” means the traditional territory claimed by the Popkum Indian Band located within British Columbia as shown on the map attached at Schedule 2; and

“Treasury Board” means Treasury Board as defined by the *Financial Administration Act*.

## **2.0 PURPOSE**

2.1 The purpose of this Agreement is to share Project Revenue received by the Province with the Popkum Indian Band.

## **3.0 PAYMENT**

3.1 The Province will, within the later of 150 days of the end of a Fiscal Year or the execution of this Agreement, pay to the Popkum Indian Band a share of Available Revenue for that year equal to the product of multiplying Available Revenue by the Designated Percentage.

3.2 If at any time the Province makes an Overpayment, the Province may deduct the Overpayment from amounts payable under section 3.1.

3.3 The Popkum Indian Band will establish and maintain throughout the Term a bank account in the name of the Popkum Indian Band at a Canadian financial institution into which direct deposits may be made by British Columbia for the purpose of receiving monies payable by British Columbia pursuant to this Agreement. The Popkum Indian Band will provide such address and account information respecting this account to enable British Columbia to make direct deposits.

3.4 If the Local Project is located on land that is not subject to assertions of Aboriginal Interests of a First Nation other than the Popkum Indian Band, then 100% of the Available Revenue will be shared with the Popkum Indian Band.

3.5 Any payment made by the Province to the Popkum Indian Band under this Agreement:

- (a) does not abrogate any legal consultation and/or accommodation obligations of the Province which may apply and may result in further measures being implemented, where appropriate, in addition to any revenue sharing payments made under this Agreement;
- (b) shall not be interpreted or relied upon as an admission or acknowledgement by the Popkum Indian Band of Provincial jurisdiction over, or ownership of, lands and resources within the Popkum Indian Band’s Territory.

3.6 In each Fiscal Year that this Agreement is in effect, and subsequent to the release by the Minister of Finance of the previous Fiscal Year’s public account of British Columbia, a summary document will be prepared and made available to the Popkum Indian Band, a recipient of the Project Revenue, for that Fiscal Year, as follows:

- a) Project Revenue from tenures granted under

- (b) a First Nation other than a Sharing First Nation that is receiving a share of revenue from the Local Project, asserts Aboriginal Interests on the land on which the Local Project is located in whole or part;

the Province may, at its sole discretion, after consultation with the Popkum Indian Band and six months written notice to the Popkum Indian Band, change the Designated Percentage.

- 9.3 For the purposes of section 9.2, consultation with the Popkum Indian Band shall refer to good faith discussions between the Popkum Indian Band, the Sharing First Nation(s) and the Province, regarding the factors to be considered in setting the Designated Percentage and sharing information related to those factors.
- 9.4 The Designated Percentage together with the percentage of Available Revenue received by other Indian Bands or aboriginal governing bodies with whom the Province has entered into a revenue sharing agreement applicable to the Local Project must equal one hundred percent.

#### **10.0 APPROPRIATION**

- 10.1 Notwithstanding any other provision of this Agreement, the payment of money by the Province to the Popkum Indian Band pursuant to this Agreement is subject to:

- (a) there being sufficient monies available in an appropriation, as defined in the *Financial Administration Act*, in any fiscal year or part thereof when any payment of money by the Province to the Popkum Indian Band falls due pursuant to this Agreement, to make that payment;
- (b) the payment being in accordance with an approved Treasury Board spending plan for the First Nations Clean Energy Business Fund special account; and
- (c) Treasury Board not having controlled or limited expenditure, pursuant to the *Financial Administration Act*, under any appropriation referred to in the preceding paragraph.

#### **11.0 DISPUTE RESOLUTION**

- 11.1 If a dispute arises between the Popkum Indian Band and the Province regarding any aspect of this Agreement, the individuals identified under section 13.3 will meet as soon as is practicable to resolve the dispute.
- 11.2 If the Parties are unable to resolve differences under section 11.1, the issue will be raised to, for the Province, the Assistant Deputy Minister responsible for the First Nations Clean Energy Business Fund, and for the Popkum Indian Band, Band Council. The Assistant Deputy Minister may authorize a special designate to act in his place. The Assistant Deputy Minister or his designate and Band Council will meet as soon as is practicable to resolve the dispute.

- 12.9 Unless otherwise agreed by the Parties, this Agreement may not be assigned, either in whole or in part, by either Party.
- 12.10 *Schedule 1, Clean Energy Project Description, and Schedule 2, Map of the Popkum Indian Band's Traditional Territory* is attached and forms part of this Agreement.
- 12.11 This Agreement may be entered into by each Party signing a separate copy of the Agreement (including a photocopy or facsimile copy) and delivering it to the other Party by facsimile or other electronic means of transmission.
- 12.12 This Agreement is without prejudice to the Popkum Indian Band's Aboriginal Interests. Nothing in this Agreement is intended to create, define, diminish, abrogate or extinguish the Popkum Indian Band's Aboriginal rights, including Aboriginal title.
- 12.13 This Agreement will not limit the positions that a Party may take in future negotiations or court actions.
- 12.14 This Agreement and any decisions made during the term of this Agreement do not change or affect the positions either Party has, or may have, regarding their respective jurisdictions and authorities.
- 12.15 This Agreement does not exclude the Popkum Indian Band from accessing clean energy economic opportunities and benefits, which may be available to the Popkum Indian Band, other than those expressly set out in this Agreement.
- 12.16 The Parties acknowledge and agree that the geographic extent of the Popkum Indian Band's claimed traditional territory and the exercise of its Aboriginal Interests thereon is not reduced to, or limited or defined by, the consultative area as shown on the map attached at Schedule B.

### **13.0 NOTICE**

- 13.1 Any notice or other communication that is required to be given or that a Party wishes to give to the other Party with respect to this Agreement will be in writing. It will be effectively given:
- (a) by personal delivery to the address of the Party set out in section 13.3;
  - (b) by pre-paid registered mail to the address of the Party set out in section 13.3; or
  - (c) by facsimile, to the facsimile number of the Party set out in section 13.3.
- 13.2 Any notice or communication given in accordance with section 13.1 will be deemed to have been given on the date it is actually received, if received by 4:00 pm. If received after 4:00 pm, it will be deemed to have been received on the next business day.
- 13.3 A notice or communication must be delivered, mailed or sent by facsimile to the Popkum Indian Band at the address below:

**The Province**

Attention: Michael Matsubuchi, Director, Fiscal Arrangements and Climate Change  
Ministry of Aboriginal Relations and Reconciliation

PO Box 9100

Stn Prov Govt

Victoria, BC V8W 9B1

Fax Number: (250) 356-5312

**The Popkum Indian Band**

Attention: Chief James Murphy

Popkum Indian Band

54951 Jelseith Rd.

Popkum, BC VOX 1X1

Fax Number: (604) 824-5326


- 13.4 The address for delivery of notice to either Party may be changed by notice as set out in section 13.3.

THIS AGREEMENT HAS BEEN EXECUTED as of the day and year first above written.

EXECUTED in the presence of:

) **HER MAJESTY THE QUEEN IN RIGHT OF**  
) **THE PROVINCE OF BRITISH COLUMBIA, as**  
) **represented by the Minister of**  
) **Aboriginal Relations**  
) **and Reconciliation**

\_\_\_\_\_  
As to the signature of Honourable John  
Rustad, Minister

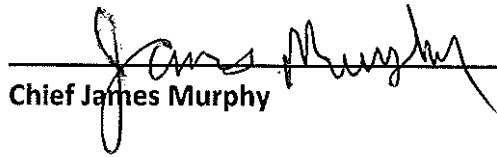
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) Honourable John Rustad, Minister  
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EXECUTED in the presence of:

Popkum Indian Band



As to the signature of  
Chief James Murphy  
Popkum Indian Band

  
Chief James Murphy

*January 22, 2015*  


## **Schedule: 1 – Clean Energy Project Description**

### **The Tretheway Creek Run-of-River Power Project**

#### **Water License:**

C129706

C129606

#### **Land Tenure:**

2409033

2408806

2410041

#### **Project Overview:**

The 21 MW run-of-river project is located 50km north of Harrison Hot Springs and will produce an estimated annual energy output of 81 GWh. The project will consist of the following: a single powerhouse, an 8km 138 kV transmission line, 4.5kms of penstock and an intake located 500m upstream. Commercial operation date for the project is expected to commence in late 2015.



**Schedule 2:**  
**Map of Popkum Indian Band's Traditional Territory**

Date: November 1, 2013

