### Siska Band Interim Forest and Range Agreement (the "Agreement")

### Between:

### Siska Band

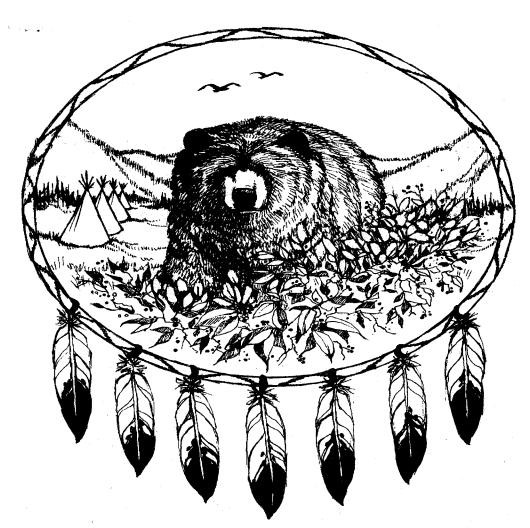
As represented by Chief Fred Sampson, Councillor Betsy Munro and Councillor Ernest Michell

### And

## Her Majesty the Queen in Right of the Province of British Columbia

As represented by the Minister of Forests (the "Government of British Columbia")

(collectively the Parties)



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### Background:

- A. The Siska Band has Aboriginal Interests within the Agreement Area.
- B. The Siska Band asserts that it has a relationship to the land and resources that is important to the Niha7kapmx way of life and the maintenance of its community, governance and economy.
- C. The Siska Band is presently involved in carrying out activities in respect to the harvest and use of non-timber forest products.
- D. The Siska Band is interested in furthering its harvest and management of non-timber forest products within the Agreement Area.
- E. The Siska Band asserts that references in this Agreement to Crown Lands are without prejudice to the Siska Aboriginal title claim over those lands.
- F. The Parties wish to enter into an interim measures agreement in relation to forest and/or range resource development activities and related economic benefits arising from this development within the Agreement Area.
- G. The Government of British Columbia intends to fulfil any responsibility it has to consult and to seek workable accommodation with the Siska Band on forest and/or range resource development activities proposed within the Agreement Area that may lead to the infringement of the Siska Band's Aboriginal Interests.
- H. Siska Band agrees to participate in any consultation initiated by the Government of British Columbia or a Licensee, in relation to forest and/or range resource development activities proposed within the Agreement Area, that may lead to an infringement of Siska Band's Aboriginal Interests.
- I. The Parties have an interest in seeking workable interim accommodation of Siska Band's Aboriginal Interests where forest and/or range resource development activities are proposed within the Agreement Area that may lead to the infringement of Siska Band's Aboriginal Interests.
- J. The Government of British Columbia and the Siska Band wish to resolve issues relating to forest and/or range resource development

activities on a government to government basis where possible through negotiation as opposed to litigation.

Therefore the Parties agree as follows:

### 1.0 Definitions

For the purposes of this Agreement, the following definitions apply:

- 1.1 "Aboriginal Interests" means asserted and/or proven aboriginal rights and/or aboriginal title of the Siska Band.
- 1.2 "Administrative Decision" means one or more of the following decisions made by a person under forestry legislation:
  - a) the decision setting or varying the Allowable Annual Cut (AAC) for a Timber Supply Area or a Forest Tenure;
  - b) the issuance, consolidation, subdivision or amendment of a Forest Tenure or a Range Tenure;
  - c) the adjustment of Animal Unit Month to a Range Tenure;
  - d) the replacement or extension of a Forest Tenure or a Range Tenure;
  - e) the disposition of volumes of timber arising from undercut decisions on a Forest Tenure;
  - f) the conversion of a Timber Sale Licence to another form of Forest Tenure;
  - g) the issuance of a Special Use Permit;
  - h) the reallocation of harvesting rights as a result of the implementation of the Forestry Revitalization Act;
  - i) the designation of mountain pine beetle salvage areas; and
  - j) the establishment of a interpretative forest site, recreation site and/or recreation trail.
- 1.3 "Agreement Area" means the area in which the Siska Band has Aboriginal interests as shown on bold black on the map attached in Appendix A.
- 1.4 "Allowable Annual Cut" (AAC) means the allowable rate of timber harvest from a specified area of land. The Chief Forester sets the AAC for timber supply areas and tree farm licences in accordance with section 8 of the Forest Act. The Regional Manager or District Manager may set the AAC for forest tenures specified in section 8 of the Forest Act.
- 1.5 "Forest Tenure" means an agreement granting rights to harvest Crown timber as defined in the *Forest Act*.

- 1.6 "Licensee" means a holder of a Forest Tenure or a Range Tenure.
- 1.7 "Operational Decision" means a decision that is made by a person with respect to the statutory approval of a Forest Development Plan, a Forest Stewardship Plan, a Woodlot Licence Plan, a Range Use Plan or a Range Stewardship Plan that has an effect in the Agreement Area.
- 1.8 "Operational Plan" means a Forest Development Plan, Forest Stewardship Plan, a Woodlot Licence Plan, a Range Use Plan, or a Range Stewardship Plan that has an effect in the Agreement Area.
- 1.9 "Range Tenure" means an agreement granting rights over Crown range as defined in the *Range Act*.
- 1.10 "Response Period" means a period of up to 60 days from initiation of the processes set out in Sections 5.0 and 6.0 of this Agreement, where the initiation date is the date on which the Siska Band is notified of an Administrative Decision or Timber Supply Review process, or in the case of Operational Plan reviews, the date on which the Siska Band receives the plan to be reviewed. Where an emergency operation arises and/or expedited salvage has to occur, the Response Period will be shortened accordingly, but will not be less than the time period for advertising Operational Plans for those operations.

### 2.0 Purpose

The purposes of this Agreement are to:

- 2.1 Increase the Siska Band's opportunity for participation in the forest sector.
- 2.2 Provide economic benefits to the Siska Band through a forest tenure opportunity and the sharing of revenues received by the Government of British Columbia from forest resource development activities.
- 2.3 Address consultation and to provide an interim workable accommodation as set out in this Agreement, with regard to any

potential infringements of the Siska Band's Aboriginal Interests that result from Administrative Decisions and/or Operational Decisions relating to forest and/or range resource development activities within the Agreement Area, during the term of this Agreement.

2.4 Provide a period of stability to forest and/or range resource development activities on Crown lands within the Agreement Area during the term of this Agreement, while longer-term interests are addressed through other agreements or processes.

### 3.0 Non-timber Forest Products

Upon signing this agreement the Parties agree to explore opportunities to undertake a pilot project relating to the management and stewardship of non-timber forest products within the Agreement Area. The Parties may enter into separate agreements specific to opportunities for stewardship of non-timber forest products.

### 4.0 Economic Benefits to the Siska Band

During the term of this Agreement, the Government of British Columbia will adopt the consultation processes set out in Sections 5.0 and 6.0 of this Agreement and will provide one or more of the following economic benefits to the Siska Band to address consultation and to provide an interim workable accommodation, as set out in this Agreement, in respect of any potential infringements of the Siska Band's Aboriginal Interests that result from Administrative Decisions and/or Operational Decisions relating to forest and/or range resource development activities within the Agreement Area.

### 4.1 Forest Tenure

4.1.1 After the execution of this Agreement by the Parties, and after the Minister has determined that sufficient volume of timber is available for disposition to the Siska Band as a result of the implementation of the Forestry Revitalization Act, the Minister will invite the Siska Band to apply under section 47.3 of the Forest Act for a non-replaceable forest licence (the "licence") for up to 15,000 cubic meters annually in the Lillooet, Fraser and/or Merritt Timber Supply Areas. The invitation will invite an application from the Siska Band or such legal entity as the Siska Band has validly appointed as its representative to hold the license.

- 4.1.2 For greater certainty, the maximum volume that may be available under the licence referred to in Section 4.1.1 will be up to 75,000 cubic meters over 5 years.
- 4.1.3 If the intended holder of the licence(s) is a legal entity other than the Siska Band, the applicant must include supporting documentation stating that the intended holder has been validly appointed by the Siska Band as its representative and that the Siska Band holds the controlling interest in that legal entity.
- 4.1.4 An invitation to apply for a licence (an"invitation") and any licence entered into as a result of the invitation to apply under this Agreement will be subject to the policies, regulations and statutes of British Columbia as amended from time to time.
- 4.1.5 An invitation will be subject to a condition that prior to Siska Band making an application for the licence, the Siska Band will contact the Ministry of Forests to discuss and provide input to assist the Ministry of Forests in identifying operating areas for the licence. If possible, the operating area will be within the Agreement Area.
- 4.1.6 A licence entered into as a result of an invitation to apply under Section 4.1.1 of this Agreement will:
  - (a) be for a term of no longer than 5 years, as determined by the Minister;
  - (b) contain other terms and conditions required by law, or required by the Regional Manager, including the condition that the Siska Band must comply with this Agreement; and,
  - (c) include a term that the Siska Band may not dispose of the licence except in accordance with the *Forest Act*.
- 4.1.7 If the term of the licence entered into as a result of an invitation to apply under this Agreement exceeds the term of this Agreement, then that licence may be referenced in and considered to be an economic benefit that addresses consultation and provides an interim

and partial workable accommodation in respect of any potential infringement of the Siska Band's Aboriginal Interests, in any subsequent Forest and Range Agreement between the Siska Band and the Government of British Columbia, for the purposes described in Section 4.0.

### 4.1.8 Subject to:

- (a) the Government of British Columbia and the Siska Band entering into another interim measures agreement providing for an invitation to apply for a licence; and,
- (b) the Minister determining that there is sufficient volume of timber available for disposition to the Siska Band,

the Minister may invite the Siska Band to apply for a subsequent licence under the *Forest Act* for a term that would commence after the expiry of this Agreement.

### 4.2 Revenue Sharing

- 4.2.1 During the term of this Agreement, the Government of British Columbia will pay to the Siska Band an amount of \$142.715 annually to implement this Agreement.
- 4.2.2 The funding commitment set out in Section 4.2.1 is subject to the availability of annual appropriations for that purpose by the Government of British Columbia.
- 4.2.3 For the purposes of determining amounts for partial years, one-fourth (i.e. ¼) of the annual amount will be used for each fiscal quarter or part thereof that the Agreement is in effect. Payments will be made quarterly.
- 4.2.4 Upon signing of this Agreement, the Siska Band will be paid the full revenues for the quarter in which the Agreement is signed with subsequent payments being made at the end of each quarter.

- 4.2.5 The Siska Band will maintain financial records and prepare financial statements in accordance with generally accepted accounting principles for each year of this Agreement.
- 4.2.6 Upon request, the Siska Band will provide an audit extract of the revenue sharing expenditures to the Government of British Columbia.
- 4.2.7 The revenue sharing set out in this Agreement reflects an amount that the Government of British Columbia is willing to pay, subject to available appropriations, as an interim measure and the Siska Band has agreed to accept as an interim measure for the term of this Agreement.

### 5.0 Consultation and Accommodation Regarding Operational Plans

- 5.1 The Government of British Columbia agrees to consult, as set out in this section, with the Siska Band in a timely manner on Operational Plans that may potentially infringe the Siska Band's Aboriginal Interests within the Agreement Area, except for any economic component of those interests that the Parties agree are addressed by the economic benefits provided for under Section 4.0 of this Agreement.
- 5.2 The Siska Band agrees to fully participate, as set out in this section, in the review of all Operational Plans dealing with forest development within the Agreement Area provided to them by the Government of British Columbia, and by Licensees.
- In reviewing and responding to an Operational Plan submitted to them, the Siska Band will, within the Response Period, provide the party that supplied the plan to them with all reasonably available information that will identify any potential impacts to their Aboriginal Interests that may occur as a result of proposed forest and/or range resource development activities within the Agreement Area, other than the economic component of those Interests that the Parties agree are addressed by the economic benefits provided for under Section 4.0. As part of its response, the Siska Band may propose measures that could avoid or mitigate potential impacts to their Aboriginal Interests as a result of the proposed development activities.

- 5.4 Upon receiving the response from the Siska Band as specified in Section 5.3, the Government of British Columbia and/or the Licensee will discuss and attempt to resolve with the Siska Band any site specific operational impacts on the Band's Aboriginal Interests that may occur as a result of proposed forest and/or range resource development activities within the Agreement Area, other than the economic component of those Aboriginal Interests that the Parties agree are addressed by the economic benefits provided for under Section 4.0.
- 5.5 If no response is received from the Siska Band within the Response Period, or such longer period of time that the Parties may have agreed to, then the Government of British Columbia may determine that the Siska Band does not intend to respond or participate in the consultation process in respect of the Operational Plan and that a decision on the Operational Plan may proceed.
- 5.6 In making a final decision on an Operational Plan, the Government of British Columbia will fully consider information it receives from the Siska Band, whether received directly or through a Licensee, and will consider whether concerns or proposed measures identified by the Siska Band have been addressed.
- 5.7 The Government of British Columbia will provide the Siska Band with a copy of its final decision on an operational plan within a reasonable time frame of the decision being made, to inform the Siska Band of how their concerns were considered and addressed.

# 6.0 Consultation and Accommodation Respecting Administrative Decisions

6.1 The Government of British Columbia will provide to the Siska Band on an annual basis a list of all proposed Administrative Decisions anticipated within the year that will have an effect in the Agreement Area, and either upon the request of the Siska Band or when the Government of British Columbia becomes aware of other proposed Administrative Decisions, will provide to the Siska Band an updated list.

- The Government of British Columbia will meet with the Siska Band at mutually agreed times throughout the year to provide an opportunity for the Siska Band to make known to representatives of the Government of British Columbia their concerns and comments relative to the effect of the Administrative Decision(s) on their Aboriginal Interests within the Agreement Area.
- 6.3 The Government of British Columbia will include the Siska Band in public Timber Supply Review processes that will lead to AAC determinations made pursuant to Section 8 of the *Forest Act* for the Merritt and/or Lillooet Timber Supply Area.
- 6.4 The Siska Band agrees to fully participate, within the Response Period, in public Timber Supply Review processes by providing all reasonably available information about their Aboriginal Interests within the Agreement Area potentially affected by AAC determinations to be made pursuant to Section 8 of the Forest Act.
- 6.5 The Parties acknowledge that the public Timber Supply Review processes will be consistent with approved land use plans when higher-level objectives have been established.
- 6.6 If after considering the concerns and comments of the Siska Band, the statutory decision maker is of the opinion that an Administrative Decision creates a potential infringement of the Siska Band's Aboriginal Interests that is not adequately addressed by the economic benefits provided by the Government of British Columbia in Section 4.0, the statutory decision maker will seek to address the concerns and comments in the Administrative Decision or through the process in Section 5.0 of this Agreement.
- 6.7 The Government of British Columbia will provide a response to the Siska Band as to how their concerns raised in Section 6.2 have been addressed.

### 7.0 Fulfilment of Government Duty

- 7.1 During the term of this agreement, and subject to the terms of this agreement being met by the Government of British Columbia, the Siska Band agrees that in consideration of the economic benefits provided by the Government of British Columbia in Section 4.0 and adherence to the consultation processes in Sections 5.0 and 6.0 of this Agreement, the Government of British Columbia has fulfilled its duties to consult and to seek an interim workable accommodation with respect to the economic component of potential infringements of the Siska Band's Aboriginal Interests or proven Aboriginal Rights.
  - a) in the context of Operational Decisions that the Government of British Columbia will make and any Forest or Range practices that may be carried out under an Operational Plan in the Agreement Area; and
  - b) resulting from Administrative Decisions made by statutory decision makers from time to time during the term of this Agreement.
- 7.2 The Siska Band further agrees that, in consideration of Sections 6.1 to 6.7 of this Agreement, the Government of British Columbia has, for the purposes of this Agreement, developed an adequate consultation and interim workable accommodation process with respect to potential infringements of their Aboriginal Interests resulting from Administrative Decisions made by statutory decision makers from time to time during the term of this Agreement that may go beyond the economic component of the Siska Band's Aboriginal Interests.

### 8.0 Stability for Land and Resource Use

The Siska Band will respond as soon as possible to any discussions initiated by the Government of British Columbia and will work co-operatively to assist in resolving any issues that may arise where acts of intentional interference by Siska Band members with provincially authorized activities related to forest and/or range resource development activities including timber harvesting or other forestry economic activities occur.

### 9.0 Dispute Resolution

- 9.1 If a dispute arises between the Government of British Columbia and the Siska Band regarding the interpretation of a provision of this Agreement, the Parties or their duly appointed representatives will meet as soon as is practicable to attempt to resolve the dispute.
- 9.2 If the Parties are unable to resolve differences at the appropriate level, the interpretation issue will be raised to more senior levels of the Government of British Columbia and the Siska Band.
- 9.3 If the interpretation dispute cannot be resolved by the Parties directly, they may appoint an independent and mutually agreeable mediator to assist the Parties to resolve the dispute within 60 days, or such period as agreed upon, or the Parties may choose other appropriate approaches to assist in reaching resolution of the interpretation issue.

### 10.0 <u>Term</u>

- 10.1 This Agreement will take effect on the date on which the last Party has executed it.
- 10.2 This Agreement will terminate on the occurrence of the earliest of any of the following events:
  - a) five years from the date this Agreement is executed; or,
  - b) the coming into effect of a treaty between the Parties; or,
  - c) the mutual agreement of the Parties; or,
  - d) 90 days following receipt by either Party of written notice of withdrawal from this Agreement by the other Party; or
  - e) the date on which the Government of British Columbia cancels the economic benefit(s) under this Agreement pursuant to Section 11.0;
- 10.3 If notice to terminate this Agreement is provided by either Party pursuant to Section 10.2, the Government of British Columbia agrees that the Ministry of Forests will not seek to accelerate decisions that are contemplated by the terms of this Agreement solely for the purpose of trying to ensure that such decisions are made before the termination of this Agreement, but that the

Minister may cancel the benefits under Section 4.0 of this agreement once the Agreement terminates.

### 11.0 Suspension or Cancellation of Economic Benefits by the Minister

- 11.1 Without limiting the actions that may be taken by the Minister of Forests or by the Government of British Columbia, the Minister or a person authorized by the Minister may suspend or cancel revenue sharing payments and the licence(s) entered into as a result of the invitation under this Agreement, if the Minister or a person authorized by the Minister determines that Siska Band is not in compliance with this Agreement.
- 11.2 Prior to taking any action referred to in Section 11.1, the Government of British Columbia will provide notice to Siska Band of any alleged contravention of this Agreement that may lead the Siska Band being determined to not be in compliance with this Agreement.
- 11.3 Upon receiving written notice under Section 11.2 the Siska Band will make all reasonable efforts to cure the alleged contravention within 20 days after receipt of this notice.
- 11.4 If, during the term of this Agreement, the Siska Band challenges or supports a challenge to, an Administrative Decision and/or Operational Decision or an Operational Plan or activities carried out pursuant to those decisions/plans, by way of legal proceedings or otherwise, on the basis that the economic benefits set out in Section 4.0, and the consultation processes set out in Sections 5.0 and 6.0 of this Agreement are not adequate or sufficient to:
  - a) provide adequate consultation, to substantially address the Siska Band's concerns and to provide an interim workable accommodation in respect of any potential infringements of the Siska Band's Aboriginal Interests with regard to Administrative Decisions relating to forest and/or range resource development activities within the Agreement Area, or
  - b) substantially address the economic component of the Siska Band's Aboriginal Interests with regard to Operational Decisions relating to forest and/or range resource development activities within the Agreement Area,

then, without limiting any other remedies that may be available to the Government of British Columbia, the Government of British Columbia may suspend or cancel the economic benefits set out in Section 4.0.

11.5 If the Minister or a person authorized by the Minister cancels any economic benefits as a result of this Agreement, then this Agreement may be terminated.

### 12.0 Renewal of the Agreement

- 12.1 Prior to this Agreement terminating in accordance with Section 10.2, if the terms and conditions of this Agreement are being met, the Government of British Columbia and the Siska Band will seek the necessary authorities and approvals to renew this Agreement.
- 12.2 Any subsequent forestry agreement between the Government of British Columbia and the Siska Band may provide for an opportunity to acquire a licence, and/or other economic benefits, as well as other terms and conditions that are agreed to by the Parties.

### 13.0 Amendment of Agreement

- 13.1 Any alteration or amendment to the terms and conditions of the Agreement must be in writing and duly executed by the Parties.
- 13.2 Either Party may request the participation of the other Party to review the effectiveness of this Agreement annually and consider amendments to this Agreement.

### 14.0 Entire Agreement

This Agreement and any amendment to it constitute the entire Agreement between the Parties with respect to the subject matter of this Agreement.

### 15.0 **Notice**

15.1 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 and will be effective if delivered, sent by registered mail, or transmitted by facsimile (with receipt acknowledged) to the address of the other Party as set out below:

### **British Columbia**

Deputy Minister
Ministry of Forests
P.O. Box 9525 STN PROV GOVT
Victoria B.C. V8W 9C3
Telephone (250) 387-3656
Facsimile (250) 953-3687

#### Siska Band

Chief and Council Siska Indian Band PO Box 159, Trans Canada Highway Lytton, BC V0K 1Z0 Telephone (250)455-2219 Facsimile (250)445-2539

- 15.2 Any notice or other communications will be deemed to have been given on the date it is actually received, if received before 4:00 p.m. If received after 4:00 p.m., it will be deemed to have been received on the next business day.
- 15.3 The address of either Party may be changed by notice in the manner set out in this section of the Agreement.

### 16.0 Miscellaneous

16.1 This agreement does not exclude the Siska Band from accessing forestry economic opportunities and benefits, which may be available from time to time, other than those expressly set out in this Agreement. This Agreement will not affect current forestry business arrangements the Siska Band may have with other parties.

- 16.2 Nothing in this Agreement shall be interpreted in a manner that requires the Government of British Columbia to act in a manner inconsistent with provincial or federal law, or that fetters the statutory discretion of any government decision-maker.
- 16.3 This Agreement is not a treaty of land claims agreement within the meaning of section 25 and 35 of the Constitution Act, 1982 and does not recognise, define, amend, affirm or deny the existence of aboriginal rights, or limit any priorities afforded to aboriginal rights, including aboriginal title.
- 16.4 Subject to Section 11.4, this Agreement will not limit the positions that a Party may take in future negotiations or court actions.
- 16.5 This Agreement shall not be interpreted as addressing any potential infringements other than potential infringements that may result from decisions contemplated by this Agreement during the term of this Agreement. Nothing in this Agreement shall be interpreted to authorize any infringement that may occur following the termination of this Agreement, even if that infringement is caused by a decision that was made during the term of this Agreement.
- 16.6 This Agreement does not address or affect any claims by the Siska Band regarding infringement of its Aboriginal Interests arising from operational or administrative decisions made previous to the signing of this Agreement.
- 16.7 This Agreement and any decisions and or licenses issued during the term of this Agreement do not change or affect the positions either Party has, or may have, regarding jurisdiction and authorities.
- 16.8 Any reference to a statute in this Agreement includes all regulations made under that statute and any amendments or replacement of that statute and its regulations.
- 16.9 There will be no presumption that any ambiguity in any of the terms of this Agreement should be interpreted in favour of either Party.
- 16.10 The applicable laws of British Columbia and Canada shall govern this Agreement.

16.11 This Agreement may be entered into by each Party signing a separate copy of this Agreement, including a photocopy or faxed copy, and delivering it to the other Party by fax. Each facsimile will be deemed to be an original for all purposes and all counterparts taken together will be deemed to constitute one document.

Signed on behalf of the Siska Band this <u>/b</u> day of <u>DEC</u> , 2004
Chief Fred Sampson
Councillor Betsy Munro
Emissiphell Councillor Ernest Michell
Witness as to all signatures
Darwin Hama
Signed on behalf of the Government of British Columbia this 31 day of March, 2004.5
Michael de Jong Dep. Minister of Forests
Minister of Forests
Audrea G. de Lestard Witness

### APPENDIX A SISKA BAND AGREEMENT AREA

This map is for the purposes of this Agreement only and may be amended by agreement of the Parties to address implementation of the agreement as more information is obtained. This map is not intended to define, limit or interpret the aboriginal rights and title of any First Nation.

