

## **ECONOMIC AND COMMUNITY DEVELOPMENT AGREEMENT**

This Agreement is dated for reference MARCH 28<sup>th</sup>, 2013

### **BETWEEN:**

**Lower Similkameen Indian Band**, on behalf of itself and its Members, as represented by the Chief and Council

and

**Upper Similkameen Indian Band**, on behalf of itself and its Members, as represented by the Chief and Council

(collectively referred to as the "Participating Bands")

### **AND:**

**Her Majesty the Queen in right of the Province of British Columbia**, as represented by the Minister of Aboriginal Relations and Reconciliation

("British Columbia")

(collectively referred to as the "Parties" and individually referred to as a "Party")

### **WHEREAS:**

- A. The Parties have a shared commitment to strengthening their government-to-government relationship consistent with the New Relationship vision and the socio-economic goals of the Transformative Change Accord.
- B. The Parties have a shared commitment to developing an effective long-term working relationship that includes sharing mineral tax revenues from the Project.
- C. British Columbia is interested in facilitating and developing a thriving, competitive, safe and environmentally responsible mineral resource sector and increasing contributions to the local and provincial economies for the benefit of all British Columbians including the Smilqmix peoples.

- D. Smilqmix affirm that they have responsibilities to the tmixw and tmxulaxw and a relationship to the tmxulaxw that is important to their being and assert the right to govern and utilise mineral tax revenue to stimulate its economy.
- E. Smilqmix have Aboriginal Interests within the Smilqmix Territory.
- F. The Parties have differing views with regard to sovereignty, title, ownership and jurisdiction over the Similkameen watershed as set out below:

<p>Smilqmix assert that:</p> <p>Akl7sxwusm is within the nmөлqitkw and a part of Smilqmix territory. Elements including waters, air, tmixw and tmxulaxw are provided by Kwuləncutn and responsibilities toward it given contest through the Captikwl.</p> <p>The Smilqmix further assert that its sovereignty, jurisdiction, right and title to place and its responsibilities to the lands are founded in equality, harmony, reciprocity, sustainability and ongoing use, minimal harm, reparation, restoration, revitalization and nha?nwixw?ntət.</p>	<p>British Columbia asserts that:</p> <p>The Similkameen watershed and its tributary flows of water is Crown land, subject to certain private rights or interests, and subject to the sovereignty of her Majesty the Queen and the legislative jurisdiction of the Parliament of Canada and the Legislature of the Province of British Columbia.</p>
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- G. Notwithstanding and without prejudice to the aforesaid divergence of viewpoints, the Parties are committed to working in a collaborative and respectful way, mindful of the varying ideologies of economic development and environmental sustainability.

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

**1 Definitions**

In this Agreement:

“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;

“Agreement” means this Economic and Community Development Agreement;

“Akl7sxxwsm” means the place of the soapberries in the Okanagan language;

“BC Fiscal Year” means a period beginning on April 1 of a calendar year and ending on March 31 of the next calendar year;

“Dispute” means any disagreement:

(a) which relates to the interpretation of this Agreement; and

(b) about which written notice of a dispute is given in accordance with sections 15.3 and 16.1;

“Captikwl” means Smilqmix stories in the Okanagan language;

“Consultation Process” means the consultation process for Government Actions as set out in Appendix D;

“Current BC Fiscal Year” means the BC Fiscal Year for which a Project Payment is being calculated under this Agreement;

“Current Revenue” means in respect of a Mine Fiscal Year, the Net Mineral Tax Revenue for the Mine Fiscal Year received by British Columbia or paid to a Proponent in the Current BC Fiscal Year;

“Enowkinwixw” means the conflict resolution process described in Appendix E;

“Effective Date” means the last date on which this Agreement is fully executed by the Parties;

“Government Actions” means all processes, decisions, authorizations, permits, licences, approvals, Crown land dispositions, agreements and other actions whatsoever entered into or otherwise taken by a Provincial Agency in relation to the Project;

“Kwuləncutn” means the creator in the Okanagan language;

“Lower Similkameen Indian Band Territory” means the traditional territory asserted by the Lower Similkameen Indian Band located within British Columbia as identified in Appendix A;

“Mediation” has the meaning set out in section 15.8;

"Member" means an individual who is a member of the Upper Similkameen or Lower Similkameen Indian Bands as shown in its respective band list, as that term is defined under the *Indian Act*;

"Mine Fiscal Year" means a fiscal year of the mine as defined in the *Mineral Tax Act*;

"*Mineral Tax Act*" means the *Mineral Tax Act*, R.S.B.C. 1996, c. 291, as amended from time to time, and legislation in addition to or in substitution therefore which assesses a tax in favour of British Columbia similar to the tax presently assessed under the *Mineral Tax Act*;

"Net Mineral Tax Revenue" means the total amount of tax, penalty and interest paid by a Proponent under the *Mineral Tax Act* in respect of the Project, less the total amount of tax, penalty and interest refunded and interest paid to the Proponent under the *Mineral Tax Act* in respect of the Project, but does not include a Post-Closure Reclamation Amount;

"nha?nwix<sup>w</sup>ntət" means respect for each other (literal translations with respect to human relationships) in the Okanagan language;

"nməlqitk<sup>w</sup>" means Similkameen River (includes drainage tributaries) in the Okanagan language;

"Operator" has the same meaning as in the *Mineral Tax Act*;

"Outstanding Overpayments" or "OsOp" means the total of:

- (a) any Overpayment remaining as a result of the Project Payment for the BC Fiscal Year immediately before the Current BC Fiscal Year being a negative amount; and
- (b) all other Overpayments that have not been included in the calculation of a previous Project Payment;

"Outstanding Underpayments" or "OsUp" means the total of all Underpayments that have not been included in the calculation of a previous Project Payment;

"Overpayment" means an amount paid by British Columbia under this Agreement that exceeds the amount the Participating Bands were entitled to receive, including a negative Payment amount (which may occur if a Proponent has paid more tax than required in a previous BC Fiscal Year);

"Partial Project Payment" means a payment made to a Participating Band of fifty percent (50%) of the Project Payment amount calculated under subsection 3.2(a);

"Participating Bands" means, collectively, the Smilqmix bands that are signatories to this Agreement, and "Participating Band" means any one of them as the context requires;

"Payment Accounts" means the two separate accounts established in accordance with subsection 3.5(a) for the purposes of receiving the Project Payments, and "Payment Account" means any one of these accounts;

"Payment Statement" means the financial statement containing the tax information that British Columbia will provide to the Participating Bands under subsection 3.1(a);

"Post-Closure Reclamation Amount" means an amount paid by a Proponent or refunded to a Proponent in respect of a reclamation tax credit for a Mine Fiscal Year commencing after production at the Project has ceased;

"Project" means, unless otherwise agreed in writing by the Parties:

(a) the Copper Mountain Mine project, which is located in the area depicted as "Mine Area" on the map attached as Appendix C, which is subject to M- 29 *Mines Act* permit issued on April 1, 2010, and which includes its associated infrastructure, existing access roads, existing power facilities and other existing physical facilities;

(b) any changes, modifications or expansions to the Copper Mountain Mine project and any of the elements described in subsection (a) which are situated within the area depicted as "Mine Area" on the map attached as Appendix C; and

(c) all matters relating to the exploration, planning, permitting, construction, maintenance, repair, operation and reclamation of the Copper Mountain Mine project and the elements described in subsections (a) and (b);

"Project Payments" means the payments to be made by British Columbia to the Participating Bands pursuant to section 3; and "Project Payment" means any one such payment;

"Proponent" means an Operator who from time to time is responsible for the Project and for paying *Mineral Tax Act* tax payments to British Columbia in relation to the Project;

"Provincial Agency" means British Columbia including:

(a) any minister, public official, employee, or person acting on behalf of, or as an agent of British Columbia,

(b) any government corporation;

"Smilqmix" means the following "bands" recognized as such under the *Indian Act*, R.S.C. 1985, c. I-5: the Upper Similkameen Indian Band and Lower Similkameen Indian Band;

"Smilqmix Territory" means the combined Lower Similkameen Indian Band Territory and Upper Similkameen Indian Band Territory;

"Underpayment" means an amount the Participating Bands were entitled to receive under this Agreement in respect of Net Mineral Tax Revenue in a BC Fiscal Year, but did not receive as part of the Project Payment for that BC Fiscal Year.

"Upper Similkameen Indian Band Territory" means the traditional territory asserted by the Upper Similkameen Indian Band located within British Columbia as identified in Appendix B;

"Term" has the meaning given to that term in section 10.1;

"tmixw" means all things that contribute to our lives in the Okanagan language; and

"tmxulaxw" means land in the Okanagan language.

## **2 Purposes**

**2.1** The purposes of this Agreement are to:

- (a) confirm how the Parties will meet their respective consultation obligations, including any obligation of British Columbia to accommodate the Participating Bands in relation to potential adverse impacts of the Project on their Aboriginal Interests;
- (b) provide Project Payments so that the Participating Bands may pursue activities that will enhance the social, economic and cultural well being of their Members, and as a component of any obligation of British Columbia to accommodate the Participating Bands; and
- (c) to build and further define a relationship between the Parties that respects each other's governments and creates a fair and equitable share in mining resource revenues.

## **2.2 Recognition**

- (a) The Project is located within the Smilqmix Territory.
- (b) The Parties acknowledge that this Agreement does not replace or diminish any agreement between the Proponent and the Participating Bands.

## **3 Provincial Payments**

### 3.1 Project Payments

- (a) The total amount the Participating Bands are entitled to receive for the Project each Mine Fiscal Year under this Agreement will be thirty-five percent (35 %) of Net Mineral Tax Revenue.

### 3.2 Calculation and Timing

- (a) Project Payments will be calculated for each BC Fiscal Year in accordance with the following formula:

Project Payment = 35% x Current Revenue + Outstanding Underpayments – Outstanding Overpayments

- (b) Subject to compliance by the Participating Bands with the provisions of sections 3.5 and 4 and provided notice is not given under subsection 7.1(b), when the Project Payment for a BC Fiscal Year is a positive amount, British Columbia will pay that amount to the Participating Bands within one hundred and fifty (150) days after the end of the BC Fiscal Year for which the Project Payment is calculated.

### 3.3 Payment Statements

- (a) Subject to British Columbia obtaining the written consent of the Proponent to share the information described in this subsection and other information which may be confidential under the *Mineral Tax Act*, British Columbia will, within ninety (90) days after the end of each BC Fiscal Year, provide to Upper Similkameen Indian Band and Lower Similkameen Indian Band a statement containing the following information:
- i. the Current Revenue;
  - ii. the amount of any Outstanding Overpayment or Outstanding Underpayment included in the Project Payment for the BC Fiscal Year; and
  - iii. the Project Payment amount.

### 3.4 Other Payment Provisions

- (a) British Columbia will notify the Participating Bands of any significant changes made to the *Mineral Tax Act* tax regime.
- (b) If during the Term, British Columbia makes changes to the *Mineral Tax Act* tax regime that significantly reduces the Project Payment the Participating Bands were otherwise entitled to receive under this Agreement in the previous BC Fiscal Year and subject to the Parties obtaining applicable negotiation mandates, the Parties will negotiate and

attempt to reach agreement upon alternative mine revenue sharing opportunities.

- (c) The Parties acknowledge that *Mineral Tax Act* revenues fluctuate and Project Payments from British Columbia will vary over time.

### 3.5 Delivery of Payments

- (a) Each Participating Band or other entity designated by a Participating Band under subsection 3.5(h), will establish and maintain in its own name a Payment Account at a Canadian financial institution requiring two signatures, one of which must be the Chief of the Participating Band, for the purpose of receiving Project Payments and into which direct deposits can be made by British Columbia and will provide British Columbia the address and account information to enable British Columbia to make Project Payments.
- (b) British Columbia will make Project Payments to the Participating Bands by depositing two separate equal payments into the Payment Accounts established under subsection 3.5(a).
- (c) Prior to British Columbia making any Project Payments, the Participating Bands must:
  - i. be in compliance with their obligations under subsection 3.5(a), or
  - ii. provide the confirmation required under subsection 3.5(i) if other entities are designated under subsection 3.5(h).
- (e) The Payment Accounts will be used for the sole purpose of receiving Project Payments under this Agreement to pursue the payment objective set out in subsection 3.6 (a).
- (f) The Participating Bands, or other entities as designated under subsection 3.5(h), will maintain the Payment Accounts for as long as there is money in it to be disbursed.
- (g) The Participating Bands warrant and agree that they:
  - i. adhere to and will continue to adhere to Generally Accepted Accounting Principles, and
  - ii. are and will continue to have the Payment Accounts audited annually in accordance with Public Sector Accounting Standards.
- (h) The Participating Bands may each designate another entity to receive that Participating Band's payments under subsection 3.5(b) and, if such a designation is made, they will notify British Columbia.

- (i) The Participating Bands will each ensure and provide confirmation to British Columbia that any entities designated under subsection 3.5(h):
  - i. possess the legal capacity to accept Project Payments,
  - ii. will fulfill the payment objectives set out in subsection 3.6(a),
  - iii. will adhere to Generally Accepted Accounting Principles, and
  - iv. will be audited annually in accordance with Public Sector Accounting Standards.

### **3.6 Use of Project Payments**

- (a) The Participating Bands will use the Project Payments for priorities that the communities and councils designate, consistent with the objective of enhancing the socio-economic well-being of their Members. For example, including but not limited to initiatives related to education, culture, housing, infrastructure, health, economic development and governance capacity.
- (b) For greater clarity, the Participating Bands may use all, or a portion of, Project Payments received in any given year to pursue initiatives in that year, or may hold such payments for initiatives in future years.
- (c) Whether or not the Term has ended, the Participating Bands covenant that they will continue to use the monies received under this Agreement for the objective set out in subsection 3.6(a).

### **3.7 Confidential Information**

- (a) The Participating Bands will keep confidential information that British Columbia marks as "confidential", including Payment Statements and any information that relates to tax payments under the *Mineral Tax Act*, and will not disclose such information to any other person, unless compelled to do otherwise by law.
- (b) Notwithstanding subsection 3.7(a), the Participating Bands may disclose confidential information to their advisors, including legal, financial, tax and other professional advisors, provided that those advisors agree in writing to keep the information confidential.
- (c) Notwithstanding any other provision of this Agreement, British Columbia's obligation to provide a Payment Statement and other information that is confidential under the *Mineral Tax Act* is subject to British Columbia obtaining written consent to sharing such information from the Operator for sharing such information.

- (d) Notwithstanding any other provision of this Agreement, the Participating Bands will have the right to disclose the amount of a Project Payment to their Members each year.
- (e) The Participating Bands acknowledge that British Columbia has informed them of the confidentiality requirements under the *Mineral Tax Act*.

### **3.8 Appropriation**

Notwithstanding any other provision of this Agreement, the Project Payments to be provided by British Columbia to the Participating Bands are subject to:

- (a) there being sufficient monies available in an appropriation, as defined in the *Financial Administration Act*, to enable British Columbia in any Fiscal Year or part thereof when such payment is required, to make such payment; and
- (b) Treasury Board, as defined in the *Financial Administration Act*, not having controlled or limited expenditure under any appropriation necessary in order to make such payment.

### **3.9 Payment Disputes**

If one or both Participating Bands disagree with the amount of a Project Payment either Participating Band may give notice to British Columbia and upon such notice:

- (a) British Columbia and the Participating Band or Bands that disagree with the amount will meet as soon as practicable to exchange the necessary information and discuss the matter of concern;
- (b) subject to subsection 3.7(c), if the Parties still disagree the Parties may agree to submit any reasonable disagreement about the Project Payment calculation to an independent and impartial body or individual acceptable to the Parties to provide an independent non-binding opinion; and
- (c) after which British Columbia will review the matter and take any remedial action required.

## **4 Community Priorities, Annual Reports and Records**

The Participating Bands covenant and agree as follows:

- (a) Within one year of the Effective Date of this Agreement, each Participating Band will prepare a Statement of Community Priorities that identifies community priorities and outlines goals and specific outcomes that they intend to fund to help achieve the objective set out in subsection 3.6(a) over the next three (3) years.

- (b) Within ninety (90) days of the end of each BC Fiscal Year, each Participating Band will update the Statement of Community Priorities identified in subsection 4(a), taking into account the Project Payment for that fiscal year, the updates will include a section on how the funds have helped the Participating Band achieve their community priorities.
- (c) Each Participating Band will maintain financial records with respect to Project Payments in accordance with Generally Accepted Accounting Principles and Public Sector Accounting Standards.
- (d) Within ninety (90) days of the end of each BC Fiscal Year, each Participating Band, or their designate(s) will provide British Columbia an annual report containing the following information:
  - i. the community priorities for the previous BC fiscal year that were funded from the Payment Accounts, and
  - ii. expenditures made in the previous BC fiscal year that were funded from the Payment Account, and
  - iii. how those expenditures contribute to the achievement of the Statement of Community Priorities set out in subsection 4(a).
- (e) Each Participating Band will publish the documents referred to in subsections 4(a) and (b) on the internet or in another manner that can reasonably be expected to bring the information to the attention of its Members.
- (f) Upon request by British Columbia, the Participating Bands will provide audited financial statements with respect to the expenditure of funds from the Payment Accounts.
- (g) Notwithstanding the termination or expiry of this Agreement:
  - i. the Participating Bands will continue to comply with section 4 until twelve (12) months after the Participating Bands receive the last Project Payment; and
  - ii. if there are funds remaining in either Payment Account after the expiry of the twelve month period:
    - 1. British Columbia may require compliance with the reporting requirements set out in section 4 for a period of up to ten (10) additional years; and

2. British Columbia may, at its discretion, release the Participating Bands from further reporting at any time after the last Project Payment is received.

## 5 Consultation Process

- (a) Subject to subsection 5(d), British Columbia will consult with the Participating Bands regarding Government Actions proposed after the Effective Date which may adversely impact the Participating Bands' Aboriginal Interests and the Participating Bands will participate in accordance with the Consultation Process set out in Appendix D.
- (b) The Parties acknowledge their commitment to continued engagement on the existing permits related to the Project through existing forums such as the M-29 permit advisory committee.
- (c) The Parties will review the adequacy of the Consultation Process on an annual basis, unless otherwise agreed, and may agree to amend Appendix D.
- (d) The Environmental Assessment Office has a consultation process that is outside of this Agreement and this Agreement does not create, alter or diminish the process of consultation utilized by the Environmental Assessment Office in relation to Government Actions pursuant to the *Environmental Assessment Act* proposed after the Effective Date.

## 6 Certainty

### 6.1 Releases and Acknowledgements

The Participating Bands, on their own behalf and on behalf of their Members with respect to Government Actions before the Effective Date:

- (a) agree that British Columbia, including each Provincial Agency, has and will be deemed to have fulfilled any legal obligations to consult and accommodate the Participating Bands;
- (b) release and forever discharges British Columbia, including each Provincial Agency, from all actions, causes of action, claims, proceedings, debts, duties, demands, interest, fines, costs, expenses and compensation of whatsoever amount and kind relating to any legal obligation to consult and accommodate; and
- (c) agrees that the Project Payments made under section 3 of this Agreement constitutes a component of any accommodation that may be required for

any potential adverse impacts on the Participating Bands' Aboriginal Interests.

## **6.2 Further Assurances**

The Participating Bands covenant and agree:

- (a) not to bring or continue any action or other proceeding against British Columbia, in its own name or by representative action, which is inconsistent with the releases set out in sections 6.1 and 7.1 and the agreements set out in this section 6.2, nor will it participate in any such action or proceeding initiated by or in the name of the Lower Similkameen Indian Band or Upper Similkameen Indian Band;
- (b) agree not to challenge or impede the right of British Columbia or the Proponent, or any of their respective employees, contractors, agents, representatives or invitees, to gain access to the Project, including any facilities associated with the Project whether located in the Smilqmix Territory or elsewhere, and to carry out any activities associated with the development and operations of the Project;
- (c) it will not engage in, and will take all reasonable action to discourage any Members from engaging in, any action that might challenge or impede, directly or indirectly, the right of British Columbia or a Proponent to gain access to the Project and to carry out any activities associated with the development and operations of the Project; and
- (d) to take all reasonable actions to facilitate the resolution of any action that might be taken by the Participating Bands or any Member that is inconsistent with the obligations of the Participating Bands in this Agreement.

## **6.3 Acknowledgements by British Columbia**

British Columbia agrees:

- (e) this Agreement does not prohibit the Participating Bands from participating in government programs for which they may be eligible;
- (f) this Agreement does not prohibit the Participating Bands from entering into agreements with third parties, including agreements with the Proponent; and
- (g) the funds received under this Agreement are not, and are not intended to be, considered as own source revenue for any purpose related to federal funding arrangements, either in a treaty or non-treaty agreements.

## 7 Annual Release, Acknowledgement and Agreements

### 7.1 Annual Release

- (a) Upon the acceptance of a Project Payment under subsection 3.2(b), the Participating Bands, on their own behalf and on behalf of their Members will be deemed to have released and forever discharged British Columbia, including each Provincial Agency, from all actions, causes of action, claims, proceedings, debts, duties, demands, interest, fines, costs, expenses and compensation of whatsoever amount and kind that arose during the BC Fiscal Year to which that Project Payment applies, in relation to:
- i. any legal obligation to consult and accommodate the Participating Bands for Government Actions; and
  - ii. any demands or claims for capacity funding, revenue generation, revenue-sharing and economic benefits, third party studies or payments or disbursements of any kind related to Government Actions.
- (b) Within one hundred and four (104) days after the end of each BC Fiscal Year, the Participating Bands acting together may provide written notice to British Columbia that a Project Payment will not be accepted in accordance with section 7.1(a).
- (c) Where the Participating Bands provide notice under subsection 7.1(b):
- i. representatives of the Parties will meet within thirty (30) days to attempt to resolve the matter of concern and will use the Enowkinwixw process as set out in Appendix E to assist in resolving the matter, unless otherwise agreed by the Parties;
  - ii. British Columbia may suspend further Project Payments; and
  - iii. if notice under subsection 7.1(b) is not withdrawn within sixty (60) days, British Columbia or the Participating Bands acting together may terminate this Agreement by giving the other Party thirty (30) days advance written notice of the intent to terminate the Agreement and section 7.3 will apply to determine the Parties' further rights and obligations under this Agreement, including their rights and obligations in respect of payments suspended under subsection 7.1(c).

- (d) Termination under subsection 7.1(c) is in addition to the Parties' rights of termination set out in section 11.
- (e) Where Project Payments are suspended under subsection 7.1(c) and the notice is withdrawn, British Columbia will make any Project Payments it would otherwise have been required to make within sixty (60) days after the day the notice is withdrawn.

## **7.2 Continuing Obligations**

The Parties acknowledge and agree that sections 3.7, 6.1, 7.1(a), 7.3(d) and 12.3 survive the termination of this Agreement.

## **7.3 Rule for End of Term**

- (a) If the Term ends otherwise than on the last day of a Mine Fiscal Year:
  - i. no payment will be payable to the Participating Bands under this Agreement in relation to that portion of the Mine Fiscal Year after the date on which the Term ends or in relation to any subsequent Mine Fiscal Year; and
  - ii. subject to paragraph (i) above, the obligations of British Columbia set out in sections 3.1 through 3.3 will continue, but only to the extent that tax, penalty or interest is received from, or refunded or paid to, the Proponent by British Columbia in relation to Mine Fiscal Years ending between the Effective Date of the Agreement and the date the Term ends.
- (b) If the Term ends otherwise than on the last day of a BC Fiscal Year, the Project Payment for that BC Fiscal Year will be prorated to the end of the Term based on the number of days in the BC Fiscal Year occurring before the end of the Term as a portion of the total days in the BC Fiscal Year, and for greater certainty, will not include payment for any portion of the BC Fiscal Year after the date of the end of the Term or in relation to any subsequent BC Fiscal Year.
- (c) Notwithstanding subsections (a) and (b) above, unless the Participating Bands provide the covenants, agreements and releases described in subsection (d) below, upon termination of this Agreement:
  - i. the obligations of British Columbia set out in sections 3.1 through 3.3 will continue, but only to the extent that tax, penalty or interest is received from, or refunded or paid to, the Proponent by British

Columbia in BC Fiscal Years ending between the Effective Date of the Agreement and the termination date;

- ii. British Columbia is fully released and discharged from all of its obligations in respect of any Project Payments suspended under subsection 7.1 (c) or subsection 12.1; and
  - iii. subject to section 7.2, the Parties are fully released and discharged from the further performance of their respective obligations under this Agreement.
- (d) If within thirty (30) days after notice of termination under subsection 7.1(c) or within one hundred and twenty (120) days after notice of termination under section 11.2, the Participating Bands, on their own behalf and on behalf of their Members:
- i. covenant and agree that British Columbia has complied with section 5 and has fulfilled any and all legal obligations to consult and accommodate the Participating Bands in relation to the Government Actions taken up to and including the termination date; and
  - ii. release and forever discharges British Columbia from all actions, causes of action, claims, proceedings, debts, duties, demands, interest, fines, costs, expenses and compensation of whatsoever amount and kind which it ever may have had, has or may ever have against British Columbia with respect to any and all legal obligation to consult and accommodate or to provide capacity funding, revenue generation, revenue-sharing and economic benefits, third party studies or payments or disbursements of any kind related to the Government Actions taken up to and including the termination date,
- then subsection (a) will apply and British Columbia will:
- iii. within sixty (60) days after the last date on which a Participating Band provides British Columbia with the covenant, agreement and release described above, make any suspended Project Payment; and
  - iv. within the one hundred and fifty (150) days after the end of the BC Fiscal Year in which the termination occurs, provide a Project Payment for that BC Fiscal Year prorated to the termination date in accordance with subsection (b).

No Participating Band may assign, either directly or indirectly, this Agreement or any right under this Agreement without the prior written consent of British Columbia.

## **9 Amendment of Agreement**

- (a) Any alteration or amendment to the terms and conditions of the Agreement must be in writing and duly executed by the Parties.
- (b) Either Party may provide written notice requesting the Parties meet to review the effectiveness of this Agreement. The Parties will meet within 30 days from the date the written notice is received and may agree to amend this Agreement.

## **10 Term**

**10.1** The Term of this Agreement will commence on the Effective Date and will continue for as long as tax, interest and penalties payable by a Proponent are subject to reassessment under applicable legislation, unless this Agreement:

- (a) terminates at the end of the one hundred and twenty (120) day period referred to in section 11.1; or
- (b) terminates at the end of the thirty (30) day period referred to in section 7.1 (c)(iii).

## **11 Termination**

**11.1** Either Party may terminate this Agreement prior to the end of the Term on the grounds set out in sections 11.2 or 11.3 by giving the other Party one hundred and twenty (120) days advance written notice of the intent to terminate the Agreement and the reasons for terminating the Agreement. During the one hundred and twenty (120) day period, representatives of the Parties will meet in order to discuss the circumstances which gave rise to the written notice and in order to determine whether there is a basis for rescinding the notice.

**11.2** The Participating Bands acting together will have the right to terminate this Agreement in accordance with section 11.1 if:

- (a) British Columbia fails to make a payment to the Participating Bands as contemplated by section 3.1, other than a failure to pay as a result of a dispute concerning the proper amount of payment; or
- (b) British Columbia does not make a Project Payment as a result of the provisions of section 3.6;
- (c) any representation or warranty made by British Columbia in this

Agreement is untrue or incorrect; or

- (d) British Columbia is not in material compliance with its obligations under this Agreement.

**11.3** British Columbia will have the right to terminate this Agreement in accordance with section 11.1 if:

- (a) a Participating Band is not in material compliance with their obligations under this Agreement;
- (b) any representation or warranty made by a Participating Band in this Agreement is untrue or incorrect; or
- (c) a Participating Band, in its own name or in the name of its chief acting on behalf of the band or its Members, commences any legal proceeding against British Columbia, or activates a proceeding in abeyance contrary to section 6.1, 6.2, or 7.1.

**11.4** If British Columbia provides notice of the intent to terminate the Agreement under section 11.1 and the reasons for terminating the agreement relate to the failure of one Participating Band to comply with its obligations under this Agreement, British Columbia and the other Participating Band will attempt to seek mandates to negotiate an alternative revenue sharing agreement between British Columbia and that Participating Band.

## **12 Suspension of Payments**

**12.1** Subject to section 12.3, if one or more Participating Bands are in material breach of their obligations under sections 3.5, 3.6, 4, and 8 of this Agreement, or any representation or warranty made by a Participating Band in this Agreement is untrue or incorrect in any material respect, British Columbia may suspend making further Project Payments until the material breach has been remedied or the representation or warranty required by this Agreement has been made true and correct in all material respects.

**12.2** Where Project Payments are suspended under section 12.1, British Columbia:

- (a) will provide notice to the Participating Bands of the specific material breach or untrue or incorrect representation or warranty relied on;
- (b) will have representatives meet with representatives of the Participating Bands to attempt to resolve the matter of concern as soon as practicable within thirty (30) days; and
- (c) may provide notice to terminate in accordance with section 11.1.

**12.3** Where the British Columbia suspends making further Project Payments under section 12.1 as a result of a material breach or untrue or incorrect representation or warranty by one Participating Band, British Columbia will provide a Partial Project Payment to the other Participating Band if that Participating Band on its own behalf and on behalf of its Members:

- (a) covenants and agrees that British Columbia has complied with section 5 and has fulfilled any and all legal obligations to consult and accommodate the Participating Band in relation to the Government Actions taken during the BC Fiscal Year; and
- (b) releases and forever discharges British Columbia from all action, causes of action, claims, proceedings, debts, duties, demands, interest, fines, costs, expenses and compensation of whatsoever amount and kind which it ever may have had, has or may ever have against British Columbia with respect to any and all legal obligation to consult and accommodate or to provide capacity funding, revenue generation, revenue sharing and economic benefits, third party studies or payments or disbursements of any kind related to the Government Actions taken during the BC Fiscal Year.

**12.4** Where Project Payments for the Project are suspended under section 12.1 and the material breach is remedied or the representation or warranty required by this Agreement is made true and correct in all material respects prior to the giving of a notice to terminate under section 11.1, British Columbia will make any Project Payments it would otherwise have been required to make with respect to the Project within sixty (60) days of the day the material breach is remedied or the representation or warranty is made true and correct in all material respects.

**12.5** Where Project Payments are suspended under section 12.1 and British Columbia terminates this Agreement in accordance with section 11.1 prior to the material breach being remedied or the representation or warranty required by this Agreement being made true and correct in all material respects, section 7.3 will apply to determine the Parties' further rights and obligations under this Agreement, including their rights and obligations in respect of payments suspended under section 12.1.

## **13 Representations and Warranties**

### **13.1 Representations by the Participating Bands**

The Participating Bands represent and warrant to British Columbia, on which British Columbia has relied in entering into this Agreement, the following:

- (a) each band's band councils are duly constituted band councils under the *Indian Act*;
- (b) they have the legal power, capacity and authority to enter into this Agreement on their own behalf and on behalf of their Members;
- (c) they have taken all necessary actions and obtained all necessary approvals to enter into this Agreement for and on behalf of their Members;
- (d) they have obtained or had the opportunity to obtain the advice of their own financial, legal, tax and other professional advisors with respect to this Agreement; and
- (e) they enter into this Agreement for, and on behalf of, all of their Members, and that the Agreement is a valid and binding obligation of the Participating Band and its Members.

### **13.2 British Columbia Representations**

British Columbia represents and warrants to the Participating Bands, on which each Participating Band has relied in entering into this Agreement, the following:

- (a) it has the authority to enter into this Agreement;
- (b) it has taken all necessary actions and obtained all necessary approvals to enter into this Agreement;
- (c) it has the legal power, capacity and authority to carry out its obligations in accordance with the terms of this Agreement; and
- (d) this Agreement is a valid and binding obligation of British Columbia.

### **14 Enowkinwixw Conflict Resolution Process**

- 14.1** The Parties may agree, on a case by case basis, to utilize the Enowkinwixw conflict resolution process, as set out in Appendix E, as a first step to explore and potentially resolve any disagreements arising from the implementation of this Agreement.

### **15 Dispute Resolution**

- 15.1** The Parties will endeavor to resolve any Disputes in a co-operative, effective and timely manner.

- 15.2** Section 15 does not apply to Government Actions, consultation under section 5 and Appendix D, payment disputes under section 3.9 or to termination of this Agreement pursuant to section 11.
- 15.3** Either Party may give written notice of a Dispute to the other Party, addressed and delivered to the Chief(s) of the Participating Bands and to British Columbia in accordance with section 16.
- 15.4** Written notice under 15.3 must include a summary of the particulars of the dispute.
- 15.5** Within ten (10) working days of giving notice under section 15.3, the Parties will meet and will attempt to resolve the Dispute through unassisted collaborative negotiation and may use the Enowkinwixw process, as set out in Appendix E.
- 15.6** The Parties may agree to vary a procedural requirement contained in this section 15 as it applies to a particular Dispute.
- 15.7** No Party may commence a court proceeding concerning a Dispute without first proceeding to Mediation as provided for in section 15.8, except:
- (a) to prevent the loss of a right of action due to the expiration of a limitation period;
  - (b) to obtain interlocutory or interim relief; or
  - (c) if the matter is considered by the Party to be of an urgent nature.
- 15.8** If the Parties are unable to resolve a Dispute through informal collaborative negotiations such as the process referred in section 15.5 or another mutually determined informal process and a Party wishes to invoke this section 15.8, that Party will deliver a written notice ("Notice to Mediate") to the other Party, requiring commencement of mediation. The following will apply to Mediation pursuant to this section 15.8:
- (a) Upon receiving a Notice to Mediate, the Parties will participate in the Mediation.
  - (b) The Mediation will be conducted by one mediator appointed by agreement of the Parties. If there is no such agreement within thirty (30) days after delivery of the Notice to Mediate, a mediator will be appointed by the British Columbia Mediator Roster Society using the Society's mediation rules.
  - (c) The Mediation will be conducted in the manner that the mediator considers necessary and appropriate to assist the Parties to resolve the Dispute in a fair, efficient and cost-effective manner.

- (d) The Mediation is terminated on the earliest of:
  - i. the expiration of thirty (30) days after the appointment of the mediator or any longer period agreed to by the Parties;
  - ii. the withdrawal from the mediation of a Party by notice in writing to the mediator, provided that no such Party may withdraw until after the first meeting with the mediator;
  - iii. the date on which the Parties agree in writing to terminate the mediation; or
  - iv. the date on which the Parties sign a written agreement resolving the Dispute.
  
- (e) The Parties will:
  - i. at the request of the other Party, provide timely disclosure of sufficient information and documents to enable a full examination of the subject matter being negotiated, with the exception of privileged documents and subject to applicable information and privacy legislation and other laws imposing confidentiality requirements;
  - ii. make every reasonable effort to appoint negotiating representatives with sufficient authority to reach an agreement, or with ready access to such authority; and
  - iii. negotiate in good faith.
  
- (f) The mediation process and all its related proceedings will be and will remain confidential, unless the Parties agree otherwise.
  
- (g) A Party may withdraw from mediation by providing written notice of its intent to the mediator.
  
- (h) The mediation will not restrict in any way the positions that each of the Parties may take in any dispute, arbitration or court proceeding.
  
- (i) The mediator will not issue a report or make any recommendations unless requested to do so in writing by the Parties.
  
- (j) Any agreement reached through mediation will be recorded in writing, signed by authorized representatives of the Parties and delivered to the Parties.

- (k) The Parties will each bear the costs of their own participation, representation and appointments in the mediation. The Parties will share equally all common costs of the mediation, including fees of the mediator, costs of meeting rooms, actual and reasonable disbursements incurred by the mediator, and fees of the British Columbia Mediator Roster Society.
- 15.9** If the Parties are unable to resolve a Dispute through Mediation in accordance with section 15.8 and after termination of the Mediation under subsection 15.8(d), then, with written agreement of all the Parties (the "Arbitration Agreement"), the dispute will be referred to and resolved by Arbitration.
- 15.10** Subject to section 15.13, if the Parties do not agree to arbitration then either Party may seek resolution of the Dispute in court.
- 15.11** The following will apply to Arbitration:
- (a) Unless the Parties otherwise agree, the arbitration will be conducted by an arbitrator appointed by agreement of the Parties. If there is no such agreement within 30 days after signing the Arbitration Agreement, the arbitrator will be appointed by the British Columbia International Commercial Arbitration Centre, or any other independent and impartial body or individual acceptable to the Parties.
  - (b) The Arbitration process and all its related proceedings will be and will remain confidential, unless the Parties agree otherwise.
  - (c) Subject to the exceptions in applicable Arbitration legislation, the decision of the arbitrator is final and binding on the Parties for the term of this Agreement.
  - (d) Except as otherwise ordered by the arbitrator,
    - i. The Parties each bear the costs of their own participation, representation and appointments in the Arbitration, and
    - ii. The Parties will share equally all common costs of the arbitration, including fees of the arbitrator, costs of hearing and meeting rooms, actual and reasonable disbursements incurred by the arbitrator.
- 15.12** In addition to Mediation and Arbitration the Parties may agree to other approaches to assist in reaching resolution of the Dispute.
- 15.13** Nothing in this section 15 creates a cause of action where none otherwise exists.
- 15.14** This Agreement is not a "commercial agreement" within the meaning of the *Commercial Arbitration Act*.

## **16 Notice and Delivery**

**16.1** Where in this Agreement any notice or other communication is required to be given by any of the Parties, it will be made in writing. It will be effectively given:

- (a) by personal delivery to the address of the Party set out below, on the date of delivery;
- (b) by pre-paid registered mail to the address of the Party mentioned in this Agreement, on the date the registered mail is delivered; or
- (c) by facsimile, to the facsimile number of the Party set out in this Agreement, on the date the facsimile is received.

**16.2** The address and facsimile numbers of the Parties are:

- (a) Upper Similkameen Indian Band:  
PO Box 220  
Hedley BC  
V0X 1K0
- (b) Lower Similkameen Indian Band:  
PO Box 100  
Keremeos BC  
V0X 1N0
- (c) British Columbia:  
Ministry of Aboriginal Relations and Reconciliation  
2957 Jutland Road  
Victoria, BC V8T 5J9  
Fax: (250) 387-6073  
Attention: Assistant Deputy Minister, Strategic Initiatives Division

**16.3** Any Party may at any time give notice to the other Party of any change of address or facsimile number in accordance with section 16.1.

## **17 General Provisions**

**17.1** This Agreement is not a treaty or land claims agreement within the meaning of sections 25 and 35 of the *Constitution Act, 1982*.

**17.2** This Agreement does not create, expand, amend, define, affirm, recognize, limit, deny, abrogate, extinguish, replace or derogate from any Aboriginal Interests.

- 17.3 Nothing in this Agreement limits or is to be construed or interpreted as limiting or diminishing the consideration, determination or implementation of non-monetary forms of accommodation to address potential impacts of Government Actions on the Aboriginal Interests of the Participating Bands.
- 17.4 Nothing in this Agreement addresses or is to be construed or interpreted as addressing compensation for alleged past or future infringements of the Aboriginal Interests of the Participating Bands that are not related to the Project, including historical mining operations in the Mine Area.
- 17.5 Nothing in this Agreement is to be construed as an acceptance by a Party of the position of the other Party regarding its jurisdiction, responsibilities and decision-making authority.
- 17.6 Nothing in this Agreement affects British Columbia's responsibility to respond any environmental emergencies resulting from the Project.
- 17.8 Nothing in this agreement is to be construed or interpreted in a manner that would limit a claim arising from an extraordinary, unforeseen environmental emergency related to the Project that has a significant adverse effect on the Participating Band's Aboriginal Interests.
- 17.9 Nothing in this Agreement prohibits the Participating Bands from participating in government programs.
- 17.10 Nothing in this Agreement is to be construed or interpreted in a manner that would affect or unlawfully interfere with any legislative authority of British Columbia or fetter the discretion of any decision-making authority.
- 17.11 No partnership, joint venture, agency, fiduciary or employment relationship will be deemed to be created by this Agreement or by any actions of the Parties under this Agreement.
- 17.12 Except as expressly contemplated herein, this Agreement does not limit the position either Party may take in any legal or administrative proceedings or in any discussions or negotiations between the Parties.
- 17.13 Nothing in this Agreement is to be construed as an acceptance of or admission by a Party of the position of the other Party or as an admission of liability and without limiting the foregoing, this Agreement is not to be construed as an admission of:
- (a) the validity of, or any fact or liability in relation to any claims for compensation for alleged past or future infringements of Aboriginal Interests of any kind whatsoever or whensoever arising in relation to such assertions; or

- (b) an obligation to provide financial or economic benefits or compensation, including those provided in this Agreement, as part of British Columbia's obligation to consult and, as appropriate, accommodate in relation to the Project.
- 17.14** This Agreement does not constitute an admission that the Project, including any Government Action associated with the Project, has resulted or will result in any unjustified infringement of any Aboriginal Interests.
- 17.15** This Agreement is to be governed by and is to be interpreted and construed in accordance with the laws applicable in British Columbia.
- 17.16** There will be no presumption that any ambiguity in any of the terms of this Agreement should be interpreted in favour of either Party.
- 17.17** This Agreement and any amendment to it constitute the entire Agreement between the Parties with respect to the subject matter of this Agreement, unless otherwise agreed in writing by the Parties.
- 17.18** If any part of this Agreement is void or unenforceable at law:
- a) that part will be severed from this Agreement and the rest of the Agreement will remain in effect and fully enforceable; and
  - b) the Parties will negotiate and attempt to reach agreement, on a replacement for the severed part with a view to achieving the intent of the Parties as expressed in this Agreement.
- 17.19** In this Agreement:
- a) "including" means "including, but not limited to" and "includes" means "includes, but not limited to";
  - b) words in the singular include the plural, and words in the plural include the singular unless the context or any specific definition otherwise requires;
  - c) the recitals and headings are for convenience only and do not form a part of this Agreement and in no way define, limit, enlarge the scope or meaning any of provision of this Agreement;
  - d) a reference to a statute includes every amendment to it, every regulation made under it, every amendment made to a regulation made under it and any law enacted in substitution for or in replacement of it;
  - e) The following are the Appendices to this Agreement and form part of this Agreement:  
  
Appendix A: Lower Similkameen Indian Band Territory

- Appendix B: Upper Similkameen Indian Band Territory
- Appendix C: Mine Area
- Appendix D: Consultation and Accommodation Process
- Appendix E: Enowkinwixw Conflict Resolution Process

- 17.20 No term, condition, covenant or other provision of this Agreement will be considered to have been waived by the Parties unless such waiver is expressed in writing by the Parties.
- 17.21 This Agreement may be executed by the Parties in counterparts and by facsimile or scanned copy.

IN WITNESS WHEREOF the Parties have executed this Agreement as set out below:

SIGNED in the presence of

Charlene Allison

this 25 day of March

2013 at Hedley B.C. :

**Upper Similkameen Indian Band, as represented by the Chief**

Charlene Allison  
Signature of witness

Charlotte Mitchell  
Chief Charlotte Mitchell

SIGNED in the presence of

KAREN TERBASKET

this 25<sup>th</sup> day of MARCH

2013 at HEDLEY BC. :

**Lower Similkameen Indian Band, as represented by the Chief**

Karen Terbasket  
Signature of witness

Robert Edward  
Chief Robert Edward

SIGNED in the presence of

\_\_\_\_\_

**Signed on behalf of Her Majesty the Queen In Right of the Province of British Columbia by as represented by**

this 28<sup>th</sup> day of March,

2013 at VICTORIA, BC :

the Minister of Aboriginal Relations and  
Reconciliation

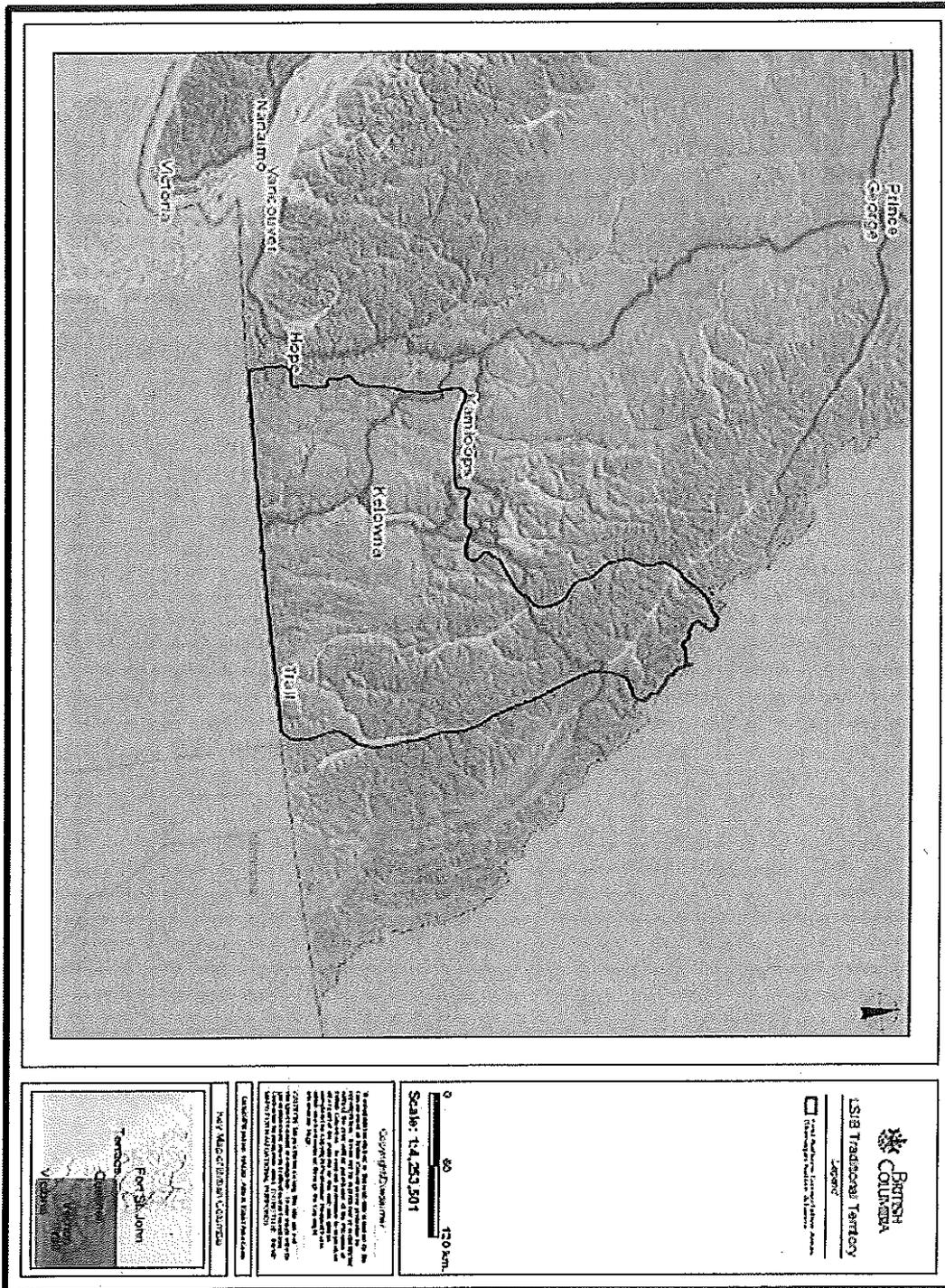
Phil L. Dawson

Signature of witness

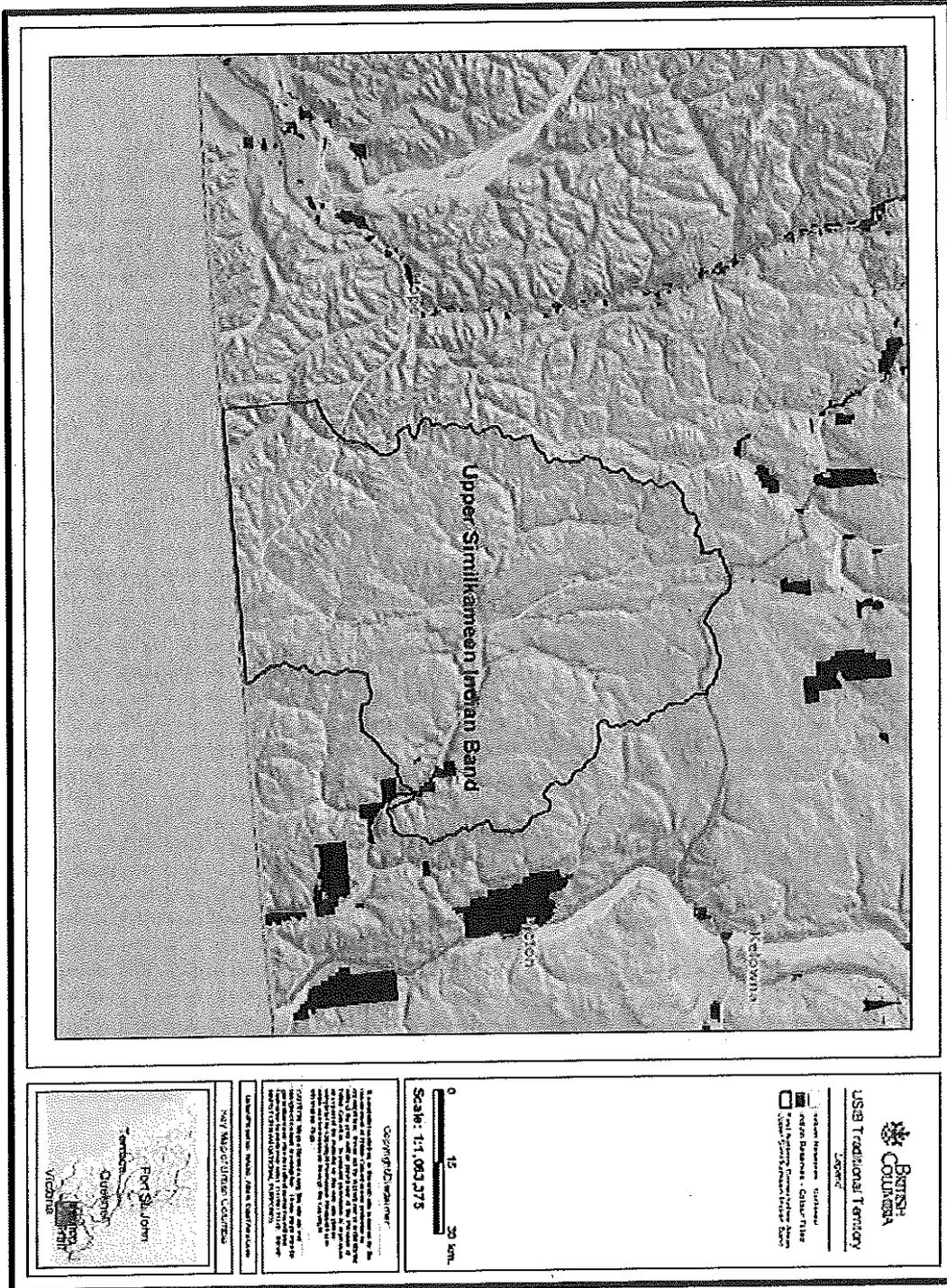
Iga Chong

Honourable Minister Iga Chong

# Appendix A: Lower Similkameen Indian Band Territory



# Appendix B: Upper Similkameen Indian Band Territory



## Appendix C: Mine Area



## Appendix D: Consultation Process

The Consultation Process is intended to achieve a better understanding of the Parties' respective interests and to create a predictable framework which establishes timelines and procedures for proposed Government Actions after the Effective Date.

## 1. General Provisions

- a) The Parties agree that the Consultation Process requires open and transparent sharing of information and any M-29 Permit Advisory Committee recommendations.
- b) The Parties acknowledge that the M-29 Permit Advisory Committee acquires and considers technical information and may develop recommendations for the continual improvement of the Project's environmental and permit performance.
- c) The Parties acknowledge that, prior to the triggering of the Consultation Process, engagement may occur between the Parties and the Proponent.
- d) The Parties agree that engagement in the Consultation Process requires coordination and collaboration of Provincial Agencies and information.
- e) The Parties acknowledge that Lower Similkameen Indian Band ("LSIB") has its own referral and consultation policy that guides LSIB's participation in the Consultation Process. British Columbia and Upper Similkameen Indian Band are not bound by LSIB's policies and the Consultation Process will govern the consultation procedure for proposed Government Actions.
- f) Any reference to days in this Appendix refers to calendar days.
- g) All correspondence related to fulfilling the Consultation Process must be sent directly to the Chief and Council of the Participating Bands, and where appropriate with copies to other contacts identified by the Participating Bands.
- h) The Consultation Process consists of the following components:
  - i. Mine Lease Map (Attached Appendix C) referred to in this Appendix as the Consultation Area Map consisting of:
    - a. Consultation Area 1 represents that portion of the Mine Area where advance operational mining activity occurs as of the Effective Date;
    - b. Consultation Area 2 represents that portion of the Mine Area that is outside of Consultation Area 1; and
    - c. The Parties will review the Consultation Area Map periodically and may agree to amend it.
  - ii. Impact Assessment /Consultation Matrix (Table 1).

iii. Information Requirements for Consultation Levels (Table 2).

- i) The Parties agree that one year after the Effective Date and annually thereafter unless otherwise agreed to by the Parties, the Parties will jointly evaluate and make any agreed upon amendments required to improve the Consultation Process.
- j) The Parties agree the Consultation Process may require discussions regarding cumulative effects. If there are strategic discussions or provincial processes in place to address cumulative effects, British Columbia will seek available opportunities to involve the Participating Bands. The Parties may discuss the application of any tools or information regarding cumulative effects generated from such strategic or provincial processes in relation to the Consultation Process under this Agreement.

**2. Determining Consultation Levels**

- a) Upon receipt of an application for a Government Action, British Columbia will determine the level of consultation by referring to Table 1.
- b) The Parties agree that certain decisions made by the Chief Inspector of Mines may require advanced strategic engagement. In that event, the Parties will collaboratively develop, in coordination with the Permit M-29 Implementation Board and the Mine Development Review Committee, an approach and work plan to engage the Parties in mine plan reviews, major mine amendments, mine closure and reclamation plans.

<b>Table 1: Impact Assessment/Consultation Matrix</b>			
<b>Consultation Level</b>	<b>Potential impact of the proposed Government Actions</b>	<b>Examples of activities in Consultation Area 1 corresponding to potential impacts</b>	<b>Examples of activities in Consultation Area 2 corresponding to potential impacts</b>
<b>Available upon Request</b>	No new impact	<ul style="list-style-type: none"> <li>• drilling</li> <li>• trenching</li> <li>• road maintenance</li> <li>• access development</li> </ul>	<ul style="list-style-type: none"> <li>• maintenance of existing infrastructure</li> </ul>
<b>Notification</b>	<ul style="list-style-type: none"> <li>• will not change or restrict existing Smilqmix land use or access</li> <li>• short time</li> </ul>	<ul style="list-style-type: none"> <li>• drilling with blasting</li> </ul>	<ul style="list-style-type: none"> <li>• drilling from existing pads, roads or trails,</li> <li>• &lt;1km new access or access modifications such</li> </ul>

	frame (3 – 6 months)		<p>as route or dimension changes</p> <ul style="list-style-type: none"> <li>trenching in areas previously trenched</li> <li>trenching in areas previously disturbed by mining activity (NOT merely previously clear cut areas)</li> </ul>
<b>Normal</b>	<ul style="list-style-type: none"> <li>longer term (activity taking place for 1-2 years)</li> <li>may restrict other use or limit access</li> <li>may include water permitting</li> <li>may include the use of biological agents</li> <li>larger development activity</li> </ul>	<ul style="list-style-type: none"> <li>pit production changes</li> <li>plant upgrade</li> </ul>	<ul style="list-style-type: none"> <li>close space or infill drilling</li> <li>up to 5km new access development</li> <li>up to 40 new drill pads</li> <li>1ha-3ha new trench area</li> <li>Multi-year mineral explorations permitting</li> </ul>
<b>Deep</b>	<ul style="list-style-type: none"> <li>long term – results in permanent alterations to the land</li> <li>high increase of public access</li> <li>removal of non-renewable resource from mine site</li> <li>high degree of site and soil disturbance</li> <li>larger geographic</li> </ul>	<ul style="list-style-type: none"> <li>major amendment triggering a Mine Development Review Committee</li> <li>potential linkage to environmental assessment permit conditions relating to: tailings impoundment or treatment</li> <li>waste or emissions permitting</li> </ul>	<ul style="list-style-type: none"> <li>large scale drilling program with &gt;40 new drill pads</li> <li>bulk sampling</li> <li>pilot plant</li> <li>more than 5 km new access development</li> </ul>

	area <ul style="list-style-type: none"> <li>• may include water permitting</li> </ul>		
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**3. Provide Information**

a) British Columbia will, once it has determined the Consultation Level for an application, provide the information required to initiate consultation at that Consultation Level as set out in Table 2.

<b>Available Upon Request</b>	<ul style="list-style-type: none"> <li>• location of decisions within the Consultation Area Map; and</li> <li>• sufficient description of projected Government Actions for discussion and information purposes.</li> </ul>
<b>Notification</b>	<ul style="list-style-type: none"> <li>• a description of the proposed Government Actions and any authorizations required;</li> <li>• descriptors and location of the proposed Government Action within the Consultation Area Map;</li> <li>• explanatory note by British Columbia as to why the Notification Consultation Level is assessed as appropriate; and</li> <li>• British Columbia contact information and summary of the time frames and steps established in this Consultation Process.</li> </ul>
<b>Normal</b>	<ul style="list-style-type: none"> <li>• description of proposed Government Action(s) and authorizations required;</li> <li>• best available descriptors and location within the Consultation Area Map;</li> <li>• any further materials provided to British Columbia with the application;</li> <li>• reference to any known supportive studies or recommendations by the M-29 Permit Advisory Committee; and</li> <li>• Provincial contact information and summary of the time frames established for this Consultation Process.</li> </ul>
<b>Deep</b>	<ul style="list-style-type: none"> <li>• relevant information and descriptors to understand the scope and nature of the proposed Government Action;</li> <li>• information to support discussion of any known potential impacts on, and potential measures to accommodate Smilqmix Aboriginal Interests;</li> </ul>

	<ul style="list-style-type: none"> <li>• best available descriptors and location within the Consultation Area Map;</li> <li>• reference to any known supportive studies or recommendations by the M-29 Permit Advisory Committee;</li> <li>• available mapping including any digital survey plans and GIS compatible digital files; and</li> <li>• Provincial contact information the work plan referenced in section 4(d)(4).</li> </ul>
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- b) When gaps in the available information impede the fulfillment of work under a Consultation Level, the Parties will collaboratively seek a clear understanding of the information gaps and discuss strategies to fill those gaps with other available information as appropriate and if the Parties agree it is required, extend the consultation process time frame for an additional 30 days to allow for further information sharing.

#### 4. Consultation Process

##### a) Available Upon Request:

- i. British Columbia will meet with the Participating Bands at the beginning of each calendar year and the middle of each calendar year to outline and review the Government Actions that are projected for that year at this Consultation Level.
- ii. At the first meeting British Columbia will identify those Government Actions it has determined to be at a Consultation Level of Available Upon Request.
- iii. The Parties may agree to adjust the Consultation Level for one or more proposed Government Actions to a higher Consultation Level.
- iv. British Columbia will provide on an annual basis a summary of all Government Actions determined to be at Consultation Level Available Upon Request that were made in the preceding year.

##### b) Notification:

- i. British Columbia will, by letter or electronic mail, provide the Participating Bands with the information set out in Table 2 required for Consultation Level Notification.
- ii. Within 20 days after receipt of a notification under paragraph (i), the Participating Bands will respond to British Columbia by letter or electronic mail indicating either the proposed Government Action raises no concerns

for the Participating Bands, or the Participating Bands intend to submit comments.

- iii. If the Participating Bands indicate that the proposed Government Action raises no concerns or do not respond, British Columbia will forward the proposed Government Action to the decision maker for consideration.
- iv. If, in accordance with paragraph (ii), the Participating Bands indicate they intend to submit comments, the comments must be provided within 30 days after receipt of the notification under paragraph (i) and articulate the nature and scope of the Participating Bands' Aboriginal Interests and indicate how the proposed Government Action is anticipated to impact those interests.
- v. If the Parties agree that Consultation Level Notification is inadequate to address the substance of the comments provided by the Participating Bands then the Consultation Level will be elevated to Normal.
- vi. If the Consultation Level is increased to Normal under paragraph (v), there will be a further 30 day period from receipt of the comments provided under paragraph (iv) for the Parties to engage in active discussions, involving staff and managers from provincial agencies and other participants, including the proponent, as mutually agreed upon, regarding the nature of the potential impacts of the proposed Government Action and potential accommodation measures, after which the comments provided by the Participating Bands and proposed accommodation measures will be forwarded to the decision maker for consideration.

**c) Normal:**

- i. British Columbia will, by letter or electronic mail, provide the Participating Bands with information set out in Table 2 required for Consultation Level Normal.
- ii. Within 20 days after receipt of a consultation letter under paragraph (i), the Participating Bands will respond to British Columbia by letter or electronic mail to indicate either that the proposed Government Action raises no concerns for the Participating Bands, or that the Participating Bands intend to submit comments.
- iii. If no response is received within 20 days after receipt of the letter under paragraph (i), British Columbia will send an e-mail to the Participating Bands seeking a response. If no response is received within 10 days after the e-mail is sent, British Columbia will forward the proposed Government Action to the decision maker for consideration and inform the decision maker that no Participating Bands have responded to the information

provided.

- iv. If, in accordance with paragraph (ii) the Participating Bands indicate they intend to submit comments, the comments must be provided within 30 days after receipt of the letter provided under paragraph (i) and articulate the nature and scope of the Participating Bands' Aboriginal Interests and indicate how the proposed Government Action is anticipated to impact those interests.
- v. If the Parties agree that Consultation Level Normal is inadequate to address the substance of the comments provided by the Participating Bands then the Consultation Level will be elevated to Deep.
- vi. There will be a further 20 day period from the receipt of comments provided under paragraph (iv), or such further period as the Parties may agree, for the Parties to engage in active discussions, involving staff and managers from provincial agencies and other participants, including the proponent, as mutually agreed upon, regarding the nature of the potential impacts of the proposed Government Action and potential accommodation measures, after which the comments provided by the Participating Bands and proposed accommodation measures will be forwarded to the decision maker for consideration.
- vii. If a Government Action is approved, a rationale for the approval will be provided to the Participating Bands upon request.

**d) Deep:**

- i. British Columbia will, within 30 days after receipt of the application requesting a Government Action, contact the Participating Bands to arrange an initial meeting, which may include remote participation, to discuss the nature and scope of the proposed Government Action.
- ii. The Participating Bands will make reasonable efforts to meet with British Columbia collectively rather than separately.
- iii. In advance of the initial meeting between the Parties British Columbia will, by letter, provide the Participating Bands with the information set out in Table 2 for Consultation Level Deep.
- iv. British Columbia will propose a work plan, including timelines and topic areas, in advance of the first meeting between the Parties which will be considered and revised as agreed at that meeting.
- v. The Parties will establish timelines and engage as necessary in order to fully explore and articulate the nature and scope of the Participating

Bands' Aboriginal Interests and indicate how the proposed Government Action is anticipated to impact those interests;

- vi. Where the Parties agree, they will seek to arrange meetings with the Operator in conjunction with the M-29 Permit Advisory Committee meetings.
  - vii. Within 90 days after the Parties' initial meeting, or such other period as the Parties may agree, British Columbia will forward the comments provided by the Participating Bands and proposed accommodation measures to the decision maker for consideration.
  - viii. British Columbia will provide the Participating Bands with the final decision and the decision maker's rationale for that decision.
5. For the purposes subsections 4(b)(v), and 4(c)(v) of this Appendix, factors that support increasing the Consultation Level include potential impacts to sensitive traditional use sites, culturally important archaeological sites, and sacred sites.
  6. If the Parties are unable to agree on the appropriate Consultation Level in regard to a proposed Government Action(s), their respective views regarding that matter may be included in the comments to be provided to the decision maker under subsections 4(b)(vi) or 4(c)(vi) and as the decision maker determines relevant, he or she may address the appropriateness of the Consultation Level in the rationale for the decision.

## **Appendix E: Enowkinwixw Conflict Resolution Process**

Enowkinwixw is a 2 day, traditional and ceremonial conflict resolution process.

The intent of Enowkinwixw is to resolve disputes or conflict in a collaborative and respectful manner, by embracing multiple perspectives, drawing on collective knowledge and wisdom held across a community, within different personalities and skill sets.

This methodology is passed on from a time before humans, and draws inspiration from the Okanagan Four Food Chiefs story (or 'how food was given') and the multiple layers of meaning and teaching embodied in this creation story of the Okanagan People. It is a collective process of community/organizational dialogue and decision making that builds in multiple perspectives. The process includes clear protocols and structured steps. Any outcomes or decisions will be mutually developed and must be agreed to by all of the parties involved.

### **Purpose:**

- Find Common Ground
- Seek Clarification
- Develop Vision
- Outline Strategy
- Implement Strategy

### **Process:**

- Step 1: Prayer/Opening
- Step 2: Introductions and Overview of Process
- Step 3: Clarification of what each individual is there to achieve
- Group Breakouts
  - a) Participants are divided into 4 groups. Each group will evaluate the conflict or issue from the perspective of the respective values as listed below:
    - i. Skemxist (Black Bear) – stability, tradition, history
    - ii. Siya (Saskatoon Berry) – vision, innovation
    - iii. Spitlem (Bitterroot) – relationships, interconnections
    - iv. Ntyxtix (Salmon) – change, action, movement
- Step 4: Clarification of the Problem/Question to be addressed
- Step 5: Identification of possibly outcomes and solutions
- Step 6: Identification of priority strategies
- Step 7: Identification of Workplan/Responsibilities/Timelines
- Step 8: Closing Commitments
- Step 9: Closing

### **Process Protocols:**

- Please give each person an opportunity to speak
- Please do not interrupt a person speaking

- Please listen to the person speaking
- Please do not debate, disagree with or put-down anyone's views
- Please stay on the topic being discussed
- Please be brief to allow others the opportunity to give their views
- Please do not repeat points already made
- Please do not use profane, sexist or racist language
- Please turn off cell phone until breaks
- Please do not leave the discussion until scheduled breaks



# Upper Similkameen Indian Band

## BAND COUNCIL RESOLUTION

CHRONOLOGICAL NUMBER: 2012/2013:20  
THE CHIEF AND COUNCIL OF THE UPPER SIMILKAMEEN INDIAN BAND  
AT HEDLEY, BRITISH COLUMBIA

DATED THIS 19<sup>th</sup> DAY OF MARCH 2013

### **DO HEREBY RESOLVE:**

WHEREAS the Upper Similkameen Indian Band has completed discussion and review of the "Copper Mountain Economic and Community Development Agreement" dated March 18, 2013 Final Draft, as represented by the Minister of Aboriginal Relations and Reconciliation;

WHEREAS at a duly convened meeting of the Chief and Council of the Upper Similkameen Indian Band on March 19, 2013, the "Economic and Community Development Agreement" was formally adopted; and execution of an Upper Similkameen Indian Band Band Council Resolution is required;

THEREFORE be it resolved that the Upper Similkameen Indian convened a Chief and Council meeting on March 19, 2013 to execute a Band Council Resolution endorsing and adopting the Copper Mountain economic and Community Development Agreement between the Upper Similkameen Indian Band and the Minister of Aboriginal Relations and Reconciliation.

  
Charlotte Mitchell, Chief

  
Nancy Allison, Councillor

  
Charlene Allison, Councillor

A Quorum of the Upper Similkameen Indian Band Council  
Consists of Two (2) Council Members

BOX 220, HEDLEY, B.C. V0X 1K0 PHONE: (250) 292-8733 FAX: (250) 292-8753



BAND COUNCIL RESOLUTION

Chronological no.
2012/2013 - 47
File reference no.

NOTE: The words "from our Band Funds" "capital" or "revenue", whichever is the case, must appear in all resolutions requesting expenditures from Band Funds.

The Council of the

LOWER SIMILKAMEEN INDIAN BAND

Cash free balance
Capital account
\$
Revenue account
\$

Date of duly convened meeting	D-J	M	Y-A	Province
	19	03	2013	BRITISH COLUMBIA

THE CHIEF AND COUNCIL OF THE LOWER SIMILKAMEEN INDIAN BAND DO HEREBY RESOLVE THAT:

WHEREAS:

1. The Smilqmix have Aboriginal rights and title within the Smilqmix territory.
2. Lower Similkameen Indian Band ("LSIB") and Upper Similkameen Indian Band have negotiated a Economic and Community Development Agreement (the "Agreement") with the Province to provide for revenue-sharing of mineral tax from the Copper Mountain Mine and to set out a consultation process for government actions related to the Copper Mountain Mine.
3. LSIB will continue its attempts to complete an acceptable participation agreement with the Proponent of Copper Mountain Mine and will continue to engage with the Province on issues related to the Copper Mountain Mine.
4. Chief and Council have determined that, given the economic benefits under the Agreement, it is in the best interests of LSIB and its members to enter into the Agreement.

THEREFORE BE IT RESOLVED THAT

1. Lower Similkameen Indian Band authorizes and approves the Agreement, substantially in the form attached as Schedule A,
2. The Chief is authorized to enter into the Agreement on behalf of Lower Similkameen Indian Band Council and Community.

Quorum THREE (3)

*[Signature]*

ROBERT EDWARD  
Chief

*[Signature]*  
TERRY TERBASKET  
Councillor

*[Signature]*  
LAUREN TERBASKET  
Councillor

*[Signature]*  
LYLE TERBASKET  
Councillor

FOR DEPARTMENTAL USE ONLY					
Expenditure	Authority (Indian Act Section)	Source of funds <input type="checkbox"/> Capital <input type="checkbox"/> Revenue	Expenditure	Authority (Indian Act Section)	Source of funds <input type="checkbox"/> Capital <input type="checkbox"/> Revenue
Recommending officer			Recommending officer		
Signature _____ Date _____			Signature _____ Date _____		
Approving officer			Approving officer		
Signature _____ Date _____			Signature _____ Date _____		