THIS AGREEMENT made 6 day of March, 2014

REVENUE SHARING AGREEMENT

BETWEEN:

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

(the "**Province**")

AND:

SHACKAN INDIAN BAND, as represented by Chief and Council,

(the "**Shackan Indian Band**")

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

RECITALS:

A. The Shackan Indian Band has Aboriginal Interests within its Traditional Territory.

B. The Province supports the development of clean energy and the sharing with first nations of revenue from clean energy projects, and respects the importance of government to government relationships as contemplated in the New Relationship and the principles of the Transformative Change Accord.

C. Part 6 of the *Clean Energy Act* enabled the creation of a fund known as the First Nations Clean Energy Business Fund which allows for the sharing of specified land revenues and water rentals with first nations.

D. The Shackan Indian Band is a band as defined by the *Indian Act*.

NOW, THEREFORE, THE PARTIES AGREE AS FOLLOWS:

1.0 DEFINITIONS

1.1 In this Agreement:

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

"Aboriginal Interests" means

(a) asserted aboriginal rights including Aboriginal title; or

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

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

"Designated Percentage" means 11 percent or such other amount specified by the Province in accordance with section 9.2;

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

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

"Local Project" means the project described in Schedule 1;

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

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

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

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

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

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

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

"Term" means the term as defined by section 8.1;

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

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

2.0 PURPOSE

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

3.0 PAYMENT

3.1 The Province will, within the later of 120 days of the end of a Fiscal Year or the execution of this Agreement, pay to the Shackan Indian Band a share of Available Revenue for that year equal to the product of multiplying Available Revenue by the Designated Percentage.

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

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

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

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

(a) does not abrogate any legal consultation and/or accommodation obligations of the Province which may apply and may result in further measures being implemented, where appropriate, in addition to any revenue sharing payments made under this Agreement;

(b) shall not be interpreted or relied upon as an admission or acknowledgement by the Shackan Indian Band of Provincial jurisdiction over, or ownership of, lands and resources within the Shackan Indian Band's Territory.

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

a) Project Revenue from tenures granted under

i) sections 11 or 14 of the *Land Act*, or

ii) section 9 of the *Ministry of Lands, Parks and Housing Act*; and

b) Project Revenue from water rentals under Parts 2 and 3 of Schedule A of the *Water Regulation*; and

c) if there are any changes to the Prescribed Land and Water Revenue, an accounting for those changes to Project Revenue;

d) any deductions made under section 3.2 or adjustments for amounts owing that were not paid.

4.0 THE SHACKAN INDIAN BAND'S REPRESENTATIONS AND WARRANTIES

4.1 The Shackan Indian Band represents and warrants to the Province, with the intent and understanding that the Province will rely thereon in entering into this Agreement, that:

(a) it has the legal power, right, capacity and authority to accept, execute and deliver this Agreement and to carry out its obligations under this Agreement;

(b) this Agreement is binding upon, and enforceable against, the Shackan Indian Band in accordance with its terms;

(c) the undersigned representative of the Shackan Indian Band is duly authorized to enter into this Agreement;

(d) it has 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

(f) it is an Indian Band under the *Indian Act* and entering into this Agreement has been approved by a majority of the councilors of the Shackan Indian Band present at a duly convened meeting of the Shackan Indian Band's Band Council.

5.0 PROVINICAL REPRESENTATIONS AND WARRANTIES

5.1 The Province represents and warrants to the Shackan Indian Band that is has the legal authority to enter into this Agreement and carry out its obligations in accordance with it.

6.0 RELATIONSHIP

6.1 No partnership, joint venture, agency, fiduciary or employment relationship is created by this Agreement or by any actions of the Parties under this Agreement.

7.0 INDEMNITY

7.1 The Shackan Indian Band will indemnify and save harmless the Province and Provincial Officials, from and against any and all losses, claims, damages, actions, causes of action, cost and expenses that the Province may sustain, incur, suffer or be put to by reason of any act or omission of the Shackan Indian Band or by any servant, employee, or agent of the Shackan Indian Band in relation to the performance or non-performance of the Shackan Indian Band's obligations under this Agreement or breaches of the Warranties and Representations of the Shackan Indian Band under Article 4. This term will survive the expiry or termination of this Agreement.

8.0 TERM AND TERMINATION

8.1 This Agreement takes effect on April 1, 2012, and continues for the Lifetime of the Local Project unless terminated under section 8.2.

8.2 The Province may terminate this Agreement:

(a) immediately by written notice to the Shackan Indian Band, if:

(i) any representation or warranty made by the Shackan Indian Band in this Agreement is untrue or incorrect;

(ii) the Local Project is no longer located wholly or partially on land that is subject to Aboriginal Interests of the Shackan Indian Band; or

(b) on six months written notice to the Shackan Indian Band if,

(i) an amendment or repeal of the *First Nations Clean Energy Business Fund Regulation* or section 20 of the *Clean Energy Act* comes into force,

(ii) the Province provides notice of its intention to terminate within 90 days of coming into force of that amendment or repeal, and

(iii) the Province provides the Shackan Indian Band with an opportunity to consult regarding termination prior to providing notice of termination.

9.0 AMENDMENTS & CHANGES TO DESIGNATED PERCENTAGE

9.1 Any amendments to this Agreement must be in writing and executed by the Parties.

9.2 Subject to section 9.4, if in the sole opinion of the Province, acting reasonably,:

(a) there is a change in either

(i) the areas covered by Project Tenures, including by means of amendment to the tenures, issuance of new Project Tenures, or expiry or termination of Project Tenures,

(ii) the location of Project Works; or

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

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

9.3 For the purposes of section 9.2, consultation with the Shackan Indian Band shall refer to good faith discussions between the Shackan Indian Band, the Sharing First Nation(s) and the Province, regarding the factors to be considered in setting the Designated Percentage and sharing information related to those factors.

9.4 The Designated Percentage together with the percentage of Available Revenue received by other Indian Bands or aboriginal governing bodies with whom the Province has entered into a revenue sharing agreement applicable to the Local Project must equal one hundred percent.

10.0 APPROPRIATION

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

(a) there being sufficient monies available in an appropriation, as defined in the *Financial Administration Act*, in any fiscal year or part thereof when any payment of money by the Province to the Shackan Indian Band falls due pursuant to this Agreement, to make that payment;

(b) the payment being in accordance with an approved Treasury Board spending plan for the First Nations Clean Energy Business Fund special account; and

(c) Treasury Board not having controlled or limited expenditure, pursuant to the *Financial Administration Act*, under any appropriation referred to in the preceding paragraph.

11.0 DISPUTE RESOLUTION

11.1 If a dispute arises between the Shackan Indian Band and the Province regarding any aspect of this Agreement, the individuals identified under section 13.3 will meet as soon as is practicable to resolve the dispute.

11.2 If the Parties are unable to resolve differences under section 11.1, the issue will be raised to, for the Province, the Assistant Deputy Minister responsible for the First Nations Clean Energy Business Fund, and for the Shackan Indian Band, Band Council. The Assistant Deputy Minister may authorize a special designate to act in his place. The Assistant Deputy Minister or his designate and Band Council will meet as soon as is practicable to resolve the dispute.

12.0 GENERAL PROVISIONS

12.1 In this Agreement:

(a) all headings are for convenience only and do not form part of this Agreement and are not intended to interpret, define, limit, enlarge, modify or explain the scope, extent or intent of this Agreement or any of its provisions;

(b) words in the singular include the plural and words in the plural include the singular unless the context or a specific definition otherwise requires;

(c) the use of the word "including" is to be read as not limiting the generality of the preceding term or phrase;

(d) all references to a designated "section", "subsection" or other subdivision or to a Schedule are to the designated section, subsection or subdivision of, or Schedule to, this Agreement;

(e) any reference to a corporate entity or an Indian Band includes and is also a reference to any entity that was a predecessor to, or that is a successor to, such entity or band; and

(f) any reference made to a statute includes all regulations made under that statute and any amendments or replacements for that statute or regulations made under that statute.

12.2 This Agreement shall be governed by the applicable laws of British Columbia and Canada.

12.3 This Agreement and any amendments to it, made in accordance with section 9.1, constitute the entire agreement between the Parties with respect to the subject matter of the Agreement, unless otherwise agreed in writing by the Parties.

12.4 There will be no presumption that any ambiguity in any of the terms of this Agreement should be interpreted in favour of either Party.

12.5 If any part of this Agreement is void or unenforceable at law, it shall be severed from this Agreement and the rest of the Agreement shall remain in effect and fully enforceable.

12.6 No term, condition, covenant or other provision of this Agreement and no breach by one Party of any term or condition of this Agreement may be waived unless such waiver is in writing and signed by the other Party.

12.7 Time is of the essence.

12.8 This Agreement will ensure to the benefit of and be binding upon the Parties and their respective permitted assigns.

12.9 Unless otherwise agreed by the Parties, this Agreement may not be assigned, either in whole or in part, by either Party.

12.10 *Schedule 1, Clean Energy Project Description*, and *Schedule 2, Map of the Shackan Indian Band's Traditional Territory* is attached and forms part of this Agreement.

12.11 This Agreement may be entered into by each Party signing a separate copy of the Agreement (including a photocopy or facsimile copy) and delivering it to the other Party by facsimile or other electronic means of transmission.

12.12 This Agreement is without prejudice to the Shackan Indian Band's Aboriginal Interests. Nothing in this Agreement is intended to create, define, diminish, abrogate or extinguish the Shackan Indian Band's Aboriginal rights, including Aboriginal title.

12.13 This Agreement will not limit the positions that a Party may take in future negotiations or court actions.

12.14 This Agreement and any decisions made during the term of this Agreement do not change or affect the positions either Party has, or may have, regarding their respective jurisdictions and authorities.

12.15 This Agreement does not exclude the Shackan Indian Band from accessing clean energy economic opportunities and benefits, which may be available to the Shackan Indian Band, other than those expressly set out in this Agreement.

12.16 The Parties acknowledge and agree that the geographic extent of the Shackan Indian Band's claimed traditional territory and the exercise of its Aboriginal Interests thereon is not reduced to, or limited or defined by, the consultative area as shown on the map attached at Schedule B.

13.0 NOTICE

13.1 Any notice or other communication that is required to be given or that a Party wishes to give to the other Party with respect to this Agreement will be in writing. It will be effectively given:

(a) by personal delivery to the address of the Party set out in section 13.3;
(b) by pre-paid registered mail to the address of the Party set out in section 13.3; or
(c) by facsimile, to the facsimile number of the Party set out in section 13.3.

13.2 Any notice or communication given in accordance with section 13.1 will be deemed to have been given on the date it is actually received, if received by 4:00 pm. If received after 4:00 pm, it will be deemed to have been received on the next business day.

13.3 A notice or communication must be delivered, mailed or sent by facsimile to the Shackan Indian Band at the address below:

The Province
Attention: Director, Fiscal Arrangements and Climate Change
Ministry of Aboriginal Relations and Reconciliation
PO Box 9100
Stn Prov Govt
Victoria, BC V8W 9B1
Fax Number: (250) 356-5312

The Shackan Indian Band
Attention: Chief Percy Joe
Shackan Indian Band
2160 Settler's Road
Merritt, BC V1K 1M9
Fax Number: (250) 378-5219

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

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

EXECUTED in the presence of:	)	**HER MAJESTY THE QUEEN IN RIGHT OF THE PROVINCE OF BRITISH COLUMBIA, as represented by the Minister of Aboriginal Relations and Reconciliation**
As to the signature of Honourable John Rustad, Minister	)	Honourable John Rustad, Minister

EXECUTED in the presence of:	)	**Chief Percy Joe**
	)	**Shackan Indian Band**
	)	
	)	
	)	
	)	
_____	)	_____
As to the signature of	)	
Chief Percy Joe	)	
Shackan Indian Band		

Schedule: 1 – Clean Energy Project Description

The Kwoiek Creek Hydroelectric Project

(Kwoiek Creek)

Revenue Sharing Opportunity:

- Water Licence #: C126461
- Land Tenure #: 3411656
- Land Tenure #: 3412117
- Land Tenure #: 3412142
- Land Tenure #: 3411604
- Land Tenure #: 3412127
- Land Tenure #: 3412126
- Land Tenure #: 3412124

Project Overview:

The Kwoiek Creek Hydroelectric Project is a 49.9 MW, run-of-river project located on the lower reaches of Kwoiek Creek, a tributary to the Fraser River, approximately 14 km south of Lytton, British Columbia. The Project will include a water diversion and intake facilities, a buried penstock and a powerhouse. The Project will also include an approximately 80 km long, 138-kV transmission line to transmit electricity generated by the Project to the BC Hydro substation at Highland Valley.

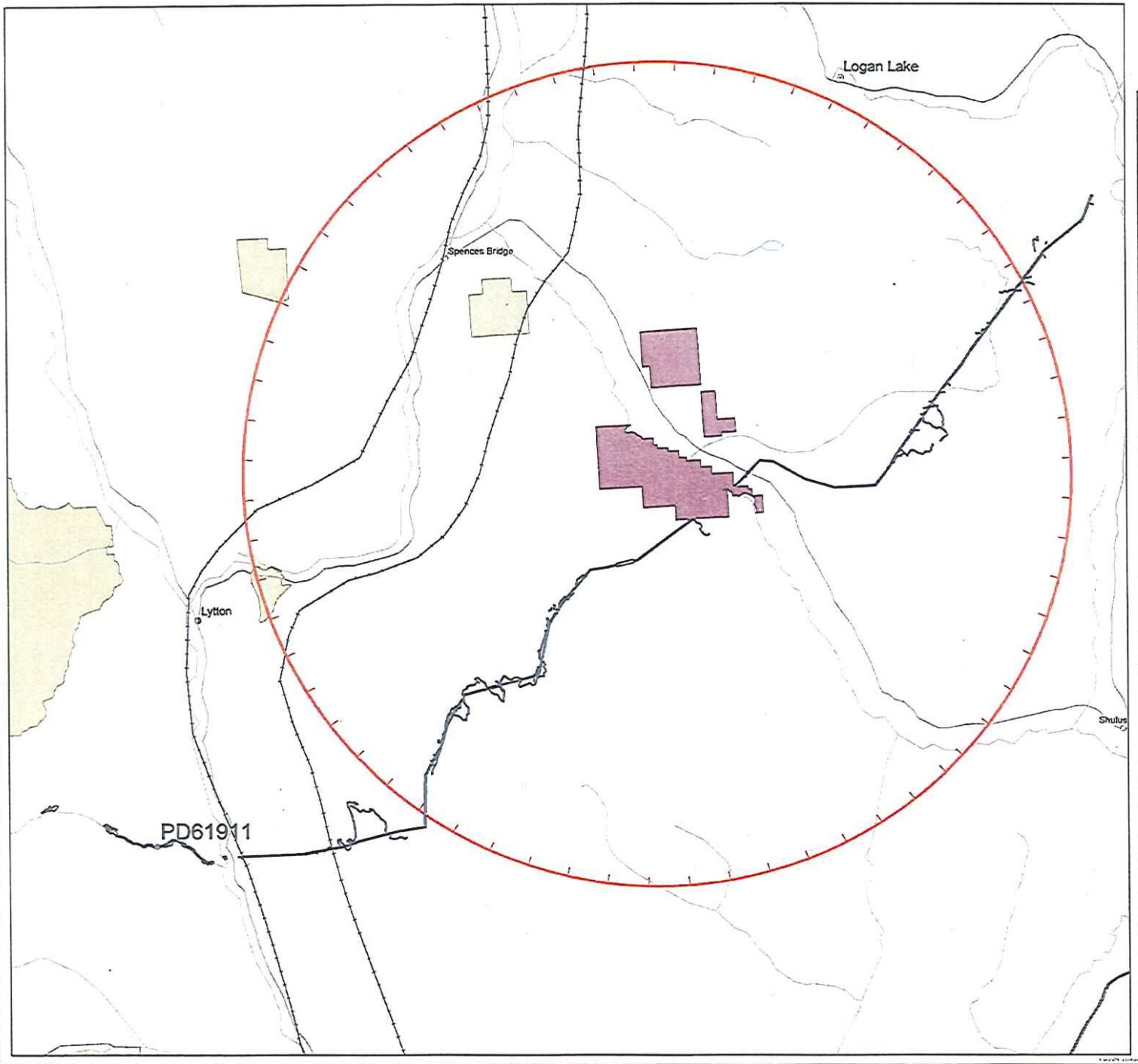
Schedule 2:
Map of Shackan Indian Band's Traditional Territory

Confidential
For consultation purposes only. Do not distribute.

Date: April 24, 2013

Shackan Indian Band Consultative Area

Kwoiek Creek Independent Power Project



Shackan Indian Band Consultative Area

Point of Diversion

Conditional Water Licence # C126461

1:150,000

0 2.5 5 7.5 10

kilometers

Ratio scale correct at 22"x17" page size.

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Projection/Datum: BC Albers Equal Area Conic/NAD 83

Datestamp: April 24, 2013 00:57

BRITISH COLUMBIA

Ministry of Aboriginal Relations and Reconciliation