Upper Similkameen Indian Band
Forest & Range
Consultation and Revenue Sharing Agreement (FCRSA)
(the "Agreement")

Between:
Upper Similkameen Indian Band

As Represented by
Chief and Council
(Upper Similkameen Indian Band)

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 the "Parties")

WHEREAS:

A. Upper Similkameen Indian Band has Aboriginal Interests within the Territory.

B. The Parties wish to set out a process for consultation regarding forest and range resource development on Crown lands within the Territory.

C. The Parties intend this Agreement to assist in achieving stability and greater certainty for forest and range resource development on Crown lands within the Territory and to assist Upper Similkameen Indian Band in its pursuit of activities to enhance the well being of its Members.

THEREFORE THE PARTIES AGREE AS FOLLOWS:

ARTICLE 1 - INTERPRETATION

1.1 Definitions. For the purposes of this Agreement, the following definitions apply:

"**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;*

"**Administrative and/or Operational Decision**" means a decision made by the Minister or a Delegated Decision Maker related to forest and range resources under provincial legislation that is included in the First Annual List and/or Annual List as defined and set out in Appendix B;

"**Band Council Resolution**" means a resolution of Upper Similkameen Indian Band having the form of Appendix D;

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

"**Delegated Decision Maker**" and "**DDM**" means a person with authority to make statutory decisions with respect to forest and range resources under provincial legislation as amended from time to time;

"**Designate**" means the entity described in section 4.2;

"**Effective Date**" means the last date on which this Agreement has been fully executed by the Parties;

"**Forest Revenue Sharing Area**" means for the purposes this Agreement, the area which the Parties agree is used to calculate revenue sharing as per Appendix C of this Agreement. The Forest Revenue Sharing Area Map is shown as Map 2 in Appendix A of this Agreement.

"**First Fiscal Year of the Term**" means the BC Fiscal Year in which the Effective Date falls;

"**Forest Tenure Opportunity Agreement**" means an agreement signed between the Minister and a First Nation that provides for the Minister to direct award forest tenure under the *Forest Act;*

"**Licensee**" means a holder of a forest tenure or a range tenure;

"**Matrix**" means the table set out as a part of section 1.10 of Appendix B;

"**Minister**" means the Minister of Forests, Lands and Natural Resource Operations having the responsibility, from time to time, for the exercise of powers in respect of forests and range matters;

"**Operational Plan**" means a Forest Stewardship Plan, Woodlot Licence Plan, a Range Use Plan, or Range Stewardship Plan, as those terms are defined in provincial forest and range legislation;

"**Payment Account**" means the account described in subsection 4.4(a);

"**RA**" means a reconciliation agreement between British Columbia and Upper Similkameen Indian Band that creates a foundation for the reconciliation of

aboriginal rights and/or aboriginal title with Crown sovereignty but is not a treaty in the meaning of section 35(1) of the *Constitution Act, 1982*;

"**Revenue Sharing Contribution**" means each payment to be made by British Columbia to Upper Similkameen Indian Band under Article 3 of this Agreement;

"**SEA**" means a strategic engagement agreement between British Columbia and Upper Similkameen Indian Band that includes agreement on a consultation process between Upper Similkameen Indian Band and British Columbia in relation to the potential adverse impacts of proposed provincial land and natural resource decisions on Upper Similkameen Indian Band's Aboriginal Interests;

"**Term**" means the term of this Agreement set out in section 14.1;

"**Timber Harvesting Land Base**" means the portion of the total land area of a management unit considered by Ministry of Forest, Lands and Natural Resource Operations to contribute to, and be available for, long-term timber supply;

"**Territory**" means the Territory claimed by Upper Similkameen Indian Band located within British Columbia as identified by Upper Similkameen Indian Band and shown on the Map 1 attached in Appendix A.

1.2 Interpretation. For purposes of this Agreement:

(a) "includes" and "including" are not intended to be limiting;

(b) the recitals and headings are inserted for convenience of reference only, do not form part of this Agreement and are not intended to define, enlarge or restrict the scope or meaning of this Agreement or any provision of it;

(c) any reference to a statute in this Agreement includes all regulations made under that statute and any amendments or replacement of that statute or its regulations;

(d) unless the context otherwise requires, words expressed in the singular include the plural and *vice versa*;

(e) any reference to a corporate entity includes any predecessor or successor to such entity; and

(f) there will be no presumption that doubtful expressions, terms or provisions in this Agreement are to be resolved in favour of any Party.

1.3 Appendices. The following Appendices and Schedule are attached to and form part of this Agreement:

Appendix A - Map of Territory (Map 1) and Forest Revenue Sharing Area (Map2);

Appendix B - Consultation Process

B - Schedule 1 – List of Decisions;

Appendix C - Revenue Sharing Contribution Methodology;

Appendix D - Band Council Resolution Appointing Delegate;

Appendix E - Statement of Community Priorities Format; and,

Appendix F- Annual Report.

ARTICLE 2 - PURPOSE AND OBJECTIVES

2.1 Purpose and objectives. The purposes and objectives of this Agreement are:

(a) to establish a consultation process through which the Parties will meet their respective consultation obligations in relation to potential adverse impacts of proposed forest and range resource development activities, including Administrative and/or Operational Decisions or Operational Plans, on Upper Similkameen Indian Band's Aboriginal Interests;

(b) to provide a Revenue Sharing Contribution to support the capacity of the First Nation to participate in the consultation process herein, as an accommodation for any adverse impacts to Upper Similkameen Indian Band's Aboriginal Interests resulting from forest and range resource development within the Territory so that Upper Similkameen Indian Band may pursue activities that will enhance the social, economic and cultural well being of its members; and

(c) to assist in achieving stability and greater certainty for forest and range resource development on Crown lands within the Territory.

ARTICLE 3 - REVENUE SHARING CONTRIBUTIONS

3.1 Calculation and timing of payments. Subject to section 4.5 and Articles 5 and 13, during the Term, British Columbia will:

(a) make annual Revenue Sharing Contributions, calculated in accordance with Appendix C, to Upper Similkameen Indian Band (or its Designate under section 4.2, as the case may be); and

(b) pay the annual Revenue Sharing Contribution in two equal instalments, the first to be made on or before September 30th and the second to be made on or before March 31st.

3.2 First Fiscal Year. Notwithstanding section 3.1, for the First Fiscal Year of the Term, the Revenue Sharing Contribution for the Period between March 1, 2016 and March 31, 2016 is deemed to be $ 18,680 the first instalment of which will be paid on or before March 31, 2016.

3.3 **Prorated amounts.** For the purposes of determining the amount of the Revenue Sharing Contribution for partial BC Fiscal Years, the amount will be prorated to the month in which the Agreement is signed by Upper Similkameen Indian Band.

3.4 **Subsequent BC Fiscal Year amounts.** Before November 30th of each year during the Term, British Columbia will provide written notice to Upper Similkameen Indian Band of the amount of the Revenue Sharing Contribution for the following BC Fiscal Year and the summary document(s) and calculations identified in Appendix C.

3.5. **Amount agreed to**. Upper Similkameen Indian Band agrees that the amount set out in the notice provided under section 3.4 will be the amount of the Revenue Sharing Contribution payable under this Agreement for that following BC Fiscal Year.

ARTICLE 4 - DELIVERY OF PAYMENTS

4.1 **Recipient entity.** Unless Upper Similkameen Indian Band notifies British Columbia that it has made an election under to section 4.2, Revenue Sharing Contributions will be paid to Upper Similkameen Indian Band.

4.2 **Election of Designate.** Upper Similkameen Indian Band may elect to have a Designate receive Revenue Sharing Contributions provided that the Designate:

(a) is a registered corporation or society with the legal authority and capacity to receive the funds for the purposes described in section 2.1; and

(b) is duly appointed to receive the Revenue Sharing Contribution on behalf of Upper Similkameen Indian Band and such appointment is confirmed by a Band Council Resolution of Upper Similkameen Indian Band.

4.3 **Obligations continue.** The election of a Designate under section 4.2 does not relieve Upper Similkameen Indian Band of its obligations under this Agreement.

4.4 **Payment Account.** Upper Similkameen Indian Band or its Designate will:

(a) establish and, throughout the Term, maintain an account in the name of Upper Similkameen Indian Band (or its Designate, as the case may be) at a Canadian financial institution into which direct deposits can be made by British Columbia for the purpose of receiving monies payable by British Columbia pursuant to this Agreement (the "Payment Account"); and

(b) provide to British Columbia sufficient address and account information respecting the Payment Account to enable British Columbia to make direct deposit payments to the Payment Account.

4.5 Requirement to make a payment. British Columbia may withhold a Revenue Sharing Contribution it would otherwise be required to make until Upper Similkameen Indian Band (or its Designate, as the case may be) has met the requirements set out in section 4.4.

ARTICLE 5 - CONDITIONS OF PAYMENT

5.1 Reporting and compliance requirements. For each BC Fiscal Year following the First Fiscal Year of the Term, the requirement to make a Revenue Sharing Contribution is subject to:

(a) Upper Similkameen Indian Band having published all of the necessary statements and reports before the applicable dates as set out in Article 8 of this Agreement;

(b) Upper Similkameen Indian Band being in all other respects in compliance with the terms of this Agreement; and

(c) Revenue Sharing Contributions not having been suspended under Article 13 of this Agreement.

5.2. Appropriation. Notwithstanding any other provisions of this Agreement, the payment of money by British Columbia to Upper Similkameen 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*, to enable British Columbia in any BC Fiscal Year or part thereof when any such payment may be required, to make that payment; and

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

ARTICLE 6 - CONSULTATION

6.1 Satisfaction of consultation obligations. The Parties agree that subject to 6.3, the process set out in Appendix B of this Agreement will be the means by which they will fulfill their obligations to consult on proposed Operational Plans or proposed Administrative and/or Operational Decisions and, where appropriate, the means by which British Columbia will identify potential measures to accommodate any potential adverse impacts on the Upper Similkameen Indian Band's Aboriginal Interests resulting from Operational Plans or Administrative and/or Operational Decisions.

6.2 Map may be shared. British Columbia may share the map attached as Appendix A with other provincial agencies or with a Licensee responsible for information

sharing associated with Operational Plans or Administrative and/or Operational Decisions.

6.3 SEA or RA applies. The Parties agree that notwithstanding 6.1:

(a) if before the Effective Date Upper Similkameen Indian Band enters into a SEA, or RA that includes a consultation process which addresses forest and range management and decision making, the consultation process set out in the SEA or RA will continue after the Effective Date;

(b) if after the Effective Date Upper Similkameen Indian Band enters into a SEA, or RA that includes a consultation process which addresses forest and range management and decision making, the consultation process set out in the SEA or RA will supersede and replace the consultation process set out in this Agreement for the term of the SEA or RA; and

(b) if the SEA or RA referred to in (a) or (b) comes to the end of its term or is terminated prior to the end of the Term, the consultation process set out in Appendix B of this Agreement will apply for the remainder of the Term.

6.4 Capacity funding. The Parties acknowledge and agree that to assist Upper Similkameen Indian Band to engage in consultation under this Agreement and in consultation under any SEA or RA that addresses but does not provide capacity funding for forest and range related consultation, Upper Similkameen Indian Band will, under 1.4 of Appendix C, receive capacity funding of no less than $35,000 per annum.

ARTICLE 7 - ACKNOWLEDGMENTS AND COVENANTS

7.1 Revenue Sharing Contributions will vary. Upper Similkameen Indian Band acknowledges that forest revenues received by British Columbia fluctuate and that the Revenue Sharing Contributions under this Agreement will vary over time.

7.2 Revenue Sharing Contributions are an accommodation. Without pre-determining their sufficiency, Upper Similkameen Indian Band agrees that the Revenue Sharing Contributions made under this Agreement constitute an accommodation for any potential adverse impacts of Administrative and/or Operational Decisions, and any forest or range development practices that may be carried out under an Operational Plans, on Upper Similkameen Indian Band's Aboriginal Interests.

7.3 Where consultation process followed. Upper Similkameen Indian Band agrees that if the consultation process set out in this Agreement is followed, British Columbia has adequately consulted and has provided an accommodation with respect to potential adverse impacts of Administrative and/or Operational Decisions, and any forest or range development practices that may be carried out under an Operational Plan, on Upper Similkameen Indian Band's Aboriginal Interests.

ARTICLE 8 - COMMUNITY PRIORITIES, ANNUAL REPORTS and RECORDS

8.1 Statement of Community Priorities. Upper Similkameen Indian Band covenants and agrees that it will:

(a) within 60 days of the Effective Date, based on the First Fiscal Year Revenue Sharing Contribution, prepare a statement of community priorities for the Term substantially in the form set out in Appendix E that outlines activities it intends to fund to help achieve the socio-economic objectives referred to in section 2.1(b); and

(b) before the end of each BC Fiscal Year, consider whether the statement of community priorities identified in subsection (a) should be revised based on the updated Revenue Sharing Contribution for subsequent BC Fiscal Years agreed to under section 3.5.

8.2. Annual Report. Within 90 days of the end of each BC Fiscal Year, Upper Similkameen Indian Band will prepare an annual report, substantially in the form set out in Appendix F, identifying all expenditures made from the Payment Account since the date of the last such report or in the case of the first such report, since the Effective Date of this Agreement, and confirming that, aside from reasonable administrative expenses, all such expenditures were made in furtherance of the purposes and objectives referred to in section 2.1.

8.3. Publication. The statement of community priorities and annual report referred to in sections 8.1 and 8.2 will be made public by Upper Similkameen Indian Band in a manner that can reasonably be expected to bring the information to the attention of its communities within 90 days of the end of each BC Fiscal Year.

8.4. Audit. British Columbia may, at its sole discretion and at the sole expense of Upper Similkameen Indian Band, require an audit of the expenditures made from the Payment Account to determine that all such expenditures were made in furtherance of the purposes and objectives referred to in section 2.1.

8.5. Delivery of Report. The annual report referred to in section 8.2 will be provided to British Columbia within 120 days of the end of each BC Fiscal Year.

8.6. Continuing Obligations. Notwithstanding the termination or expiry of this Agreement, the provisions of this Article 8 will continue to apply for 120 days after First Nation receives the final Revenue Sharing Contribution from British Columbia.

ARTICLE 9 - SECURITY DEPOSITS

9.1 Silviculture Deposit. In consideration of Upper Similkameen Indian Band entering into this Agreement, British Columbia may choose not to require a silviculture deposit pertaining to a licence entered into as a result of a direct award tenure agreement entered into between Upper Similkameen Indian Band, or a legal entity controlled by the Upper Similkameen Indian Band, and British Columbia.

ARTICLE 10 – SET OFF

10.1 Set off. In addition to any other right under this Agreement, British Columbia may set off against any payment that Upper Similkameen Indian Band is entitled to receive under this Agreement, any unfulfilled financial obligations of Upper Similkameen Indian Band to British Columbia arising from a licence entered into as a result of a direct award tenure agreement between Upper Similkameen Indian Band, or a legal entity controlled by the Upper Similkameen Indian Band, and British Columbia.

10.2 Notice. British Columbia will notify Upper Similkameen Indian Band of the amount of the unfulfilled financial obligation before it exercises its right of set off under section 10.1.

ARTICLE 11 - ASSISTANCE

11.1 Non-interference. Upper Similkameen Indian Band agrees it will not support or participate in any acts that frustrate, delay, stop or otherwise physically impede or interfere with provincially authorized forest activities.

11.2 Cooperation and Support. First Nation will promptly work with British Columbia in seeking to resolve any action that might be taken by a member of Lower Similkameen Indian Band that is inconsistent with this Agreement.

ARTICLE 12 - DISPUTE RESOLUTION

12.1 Dispute Resolution Process. If a dispute arises between British Columbia and Upper Similkameen Indian Band regarding the interpretation of a provision of this Agreement:

(a) duly appointed representatives of the Parties will meet as soon as is practicable to attempt to resolve the dispute;

(b) if the Parties' representatives are unable to resolve the dispute, the issue will be referred to more senior representatives of British Columbia and Upper Similkameen Indian Band; and

(c) if the dispute cannot be resolved by the Parties directly under subsections (a) or (b), the Parties may agree to other appropriate approaches to assist in reaching resolution of the issue.

ARTICLE 13 - SUSPENSION and TERMINATION

13.1 Suspension of Revenue Sharing Contributions. In addition to any other right under this Agreement, British Columbia may suspend further Revenue Sharing Contributions under this Agreement where Upper Similkameen Indian Band:

(a) is in material breach of its obligations under Articles 6, 8 or 11 or Appendix B of this Agreement; or

(b) has outstanding unfulfilled financial obligations to British Columbia arising from a licence issued further to an agreement between Upper Similkameen Indian Band and British Columbia.

13.2 Notice of Suspension. Where Revenue Sharing Contributions are suspended under section 13.1, British Columbia will provide notice to Upper Similkameen Indian Band of the reason for the suspension, including the specific material breach or the outstanding unfulfilled financial obligation on which it relies and the Parties will meet to attempt to resolve the issue giving rise to the suspension.

13.3 Termination following suspension. If the issue giving rise to the suspension of Revenue Sharing Contributions is not resolved within 60 days after notice is provided under section 13.2, British Columbia may terminate the Agreement at any time by written notice.

13.4 Proceedings inconsistent with acknowledgments. Notwithstanding any other provision of this Agreement, British Columbia may suspend Revenue Sharing Contributions and may terminate this Agreement at any time by written notice where Upper Similkameen Indian Band challenges or supports a challenge to an Administrative and/or Operational Decision, an Operational Plan or activities carried out pursuant to those decisions or plans, by way of legal proceedings or otherwise, on the basis that:

(a) contrary to section 7.2, a Revenue Sharing Contribution provided for under this Agreement does not constitute an accommodation for adverse impacts of such decisions, plans or activities on Upper Similkameen Indian Band's Aboriginal Interests; or

(b) contrary to section 7.3, by British Columbia or a Licensee following the consultation process described in Appendix B, British Columbia has not adequately consulted with First Nation regarding the potential adverse impacts of such decisions, plans or activities on Upper Similkameen Indian Band's Aboriginal Interests.

13.5 Termination by Either Party. This Agreement may be terminated by either Party on ninety (90) days written notice or on a date mutually agreed on by the Parties.

13.6 Meet to attempt to resolve issue. If a Party gives written notice under section 13.5, the Parties will, prior to the end of the notice period, meet and attempt to resolve any issue that may have given rise to the termination notice.

13.7 Effect of Termination. Where this Agreement is terminated under this Article 13, the Revenue Sharing Contribution for the BC Fiscal Year in which termination becomes effective will be prorated to the termination date.

ARTICLE 14 - TERM

14.1 Term. The term of this Agreement will be three (3) years commencing on the Effective Date unless it is extended under section 14.2 or terminated under Article 13.

14.2 Extension of the Term. At least two months prior to the third anniversary of the Effective Date, the Parties will evaluate the effectiveness of this Agreement and decide whether to extend the Term.

14.3 Terms of the Extension. Where the Parties agree to extend the Term they will negotiate and attempt to reach agreement on the terms of the extension.

14.4 Evaluation. Either Party may, on an annual basis, request the participation of the other Party to review the effectiveness of this Agreement and to consider potential amendments to it.

ARTICLE 15 – REPRESENTATIONS and WARRANTIES

15.1 Legal power, capacity and authority. The Upper Similkameen Indian Band represents and warrants to the Province, with the intent and understanding that they will be relied on by the Province in entering into this Agreement, that it enters into this Agreement for, and on behalf of itself and its members and that as represented by its Chief and Council, it has the legal power, capacity and authority to enter into and to carry out its obligations under this Agreement.

ARTICLE 16 - NOTICE and DELIVERY

16.1 Delivery of Notices. Any notice, document, statement or report contemplated under this Agreement must be in writing and will be deemed validly given to and received by a Party, if delivered personally, on the date of delivery, or, if delivered

by mail, email or facsimile copier, when received by the Parties at the addresses as follows:

if to British Columbia:

Deputy Minister
Ministry of Aboriginal Relations and Reconciliation
P.O. Box 9100 STN PROV GOVT
Victoria B.C. V8W 9B1
Telephone: (250) 356-1394
Fax: (250) 387-6594

and if to the Upper Similkameen Indian Band:

Chief Richard Holmes and Council
Upper Similkameen Indian Band
PO Box 220
Hedly, BC, VOX 1K0
Telephone: 250-292-8733
Fax: 250-292-8753

16.2 Change of Address. Either Party may, from time to time, give notice to the other Party of a change of address or facsimile number and after the giving of such notice, the address or facsimile number specified in the notice will, for purposes of section 16.1, supersede any previous address or facsimile number for the Party giving such notice.

ARTICLE 17 - GENERAL PROVISIONS

17.1 Governing law. This Agreement will be governed by and construed in accordance with the laws of British Columbia.

17.2 Not a Treaty. This Agreement does not:

(a) constitute a treaty or a lands claims agreement within the meaning of sections 25 or 35 of the *Constitution Act, 1982* (Canada); or

(b) affirm, recognize, abrogate or derogate from any Upper Similkameen Indian Band's Aboriginal Interests.

17.3 No Admissions. Nothing in this Agreement will be construed as:

(a) an admission of the validity of, or any fact or liability in relation to, any claims relating to alleged past or future infringements of Upper Similkameen Indian Band's Aboriginal Interests;

(b) an admission or acknowledgement of any obligation to provide any financial, economic or other compensation, including those in this Agreement, as part of British Columbia's obligation to consult and, as appropriate, accommodate; or

(c) in any way limiting the position the Parties may take in any proceedings or in any discussions or negotiations between the Parties, except as expressly contemplated in this Agreement.

17.4 No Fettering. Nothing in this Agreement is to be construed as interfering with, or fettering in any manner, the exercise by British Columbia or its agencies of any statutory, prerogative, executive or legislative power or duty.

17.5 No Implied Waiver. Any waiver of any term or breach of this Agreement is effective only if it is in writing and signed by the waiving Party and is not a waiver of any other term or breach.

17.6 Assignment. Upper Similkameen Indian Band must not assign, either directly or indirectly, this Agreement or any right of First Nation under this Agreement without the prior written consent of British Columbia.

17.7 Emergencies. Nothing in this Agreement affects the ability of either Party to respond to any emergency circumstances.

17.8 Acknowledgment. The Parties acknowledge and enter into this Agreement on the basis that Upper Similkameen Indian Band has Aboriginal Interests within the Territory but that the specific nature, scope or geographic extent of those Aboriginal Interests has yet to be determined. The Parties intend that broader processes that may be engaged in to bring about reconciliation may lead to a common understanding of the nature, scope and geographic extent of First Nation Aboriginal Interests.

17.9 Third Parties. This Agreement is not intended to limit any obligation of forest or range licensees or other third parties to Upper Similkameen Indian Band.

17.10 Other Economic Opportunities and Benefits. This Agreement does not preclude Upper Similkameen Indian Band from accessing forestry economic opportunities and benefits, which may be available to it, other than those expressly set out in this Agreement.

17.11 Validity of Agreement. If any provision of this Agreement or the application of it to any person or circumstance is invalid or unenforceable to any extent, the remainder of this Agreement and the application of it to any person or circumstance will not be affected or impaired and will be valid and enforceable to the extent permitted by law.

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

17.13 Further Acts and Assurances. Each Party must perform the acts, execute and deliver the writings, and give the assurances as may be reasonably necessary to give full effect to this Agreement.

17.14 Execution in Counterpart. This Agreement may be entered into by a separate copy of this Agreement being executed by each Party and that executed copy being delivered to the other Party by a method provided for in Article 16 or any other method agreed to by the Parties.

17.15 Amendment in Writing. No amendment to this Agreement is effective unless it is agreed to in writing and signed by the Parties.

Signed on behalf of:

Upper Similkameen Indian Band

Chief Richard Holmes — **Date** MAR-23-2016

Councillor — Councillor CARMELETTA HOLMES

Councillor — Councillor SALLY HOLMES

Witness of Upper Similkameen Indian Band signatures

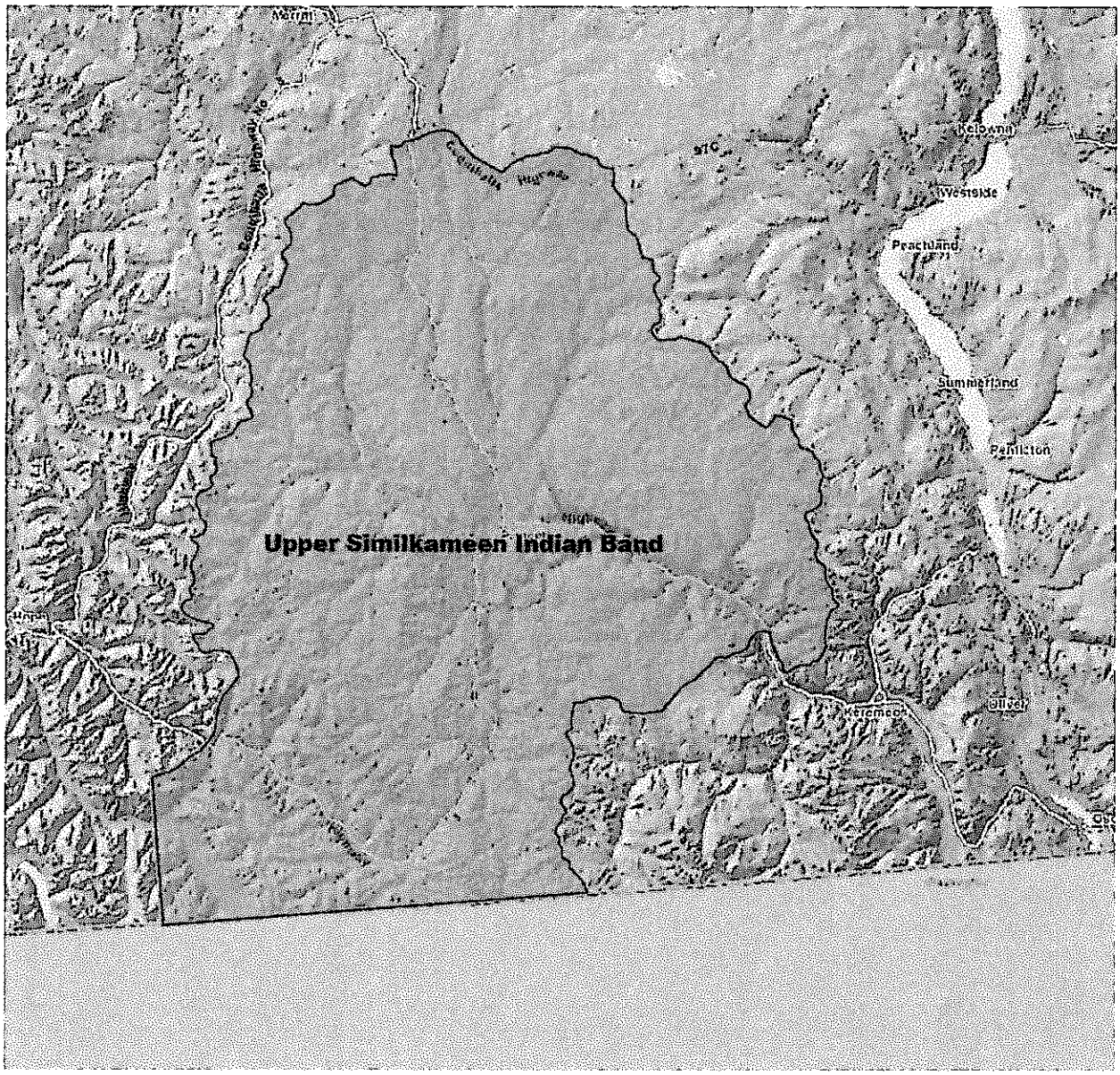
Signed on behalf of:

Government of British Columbia

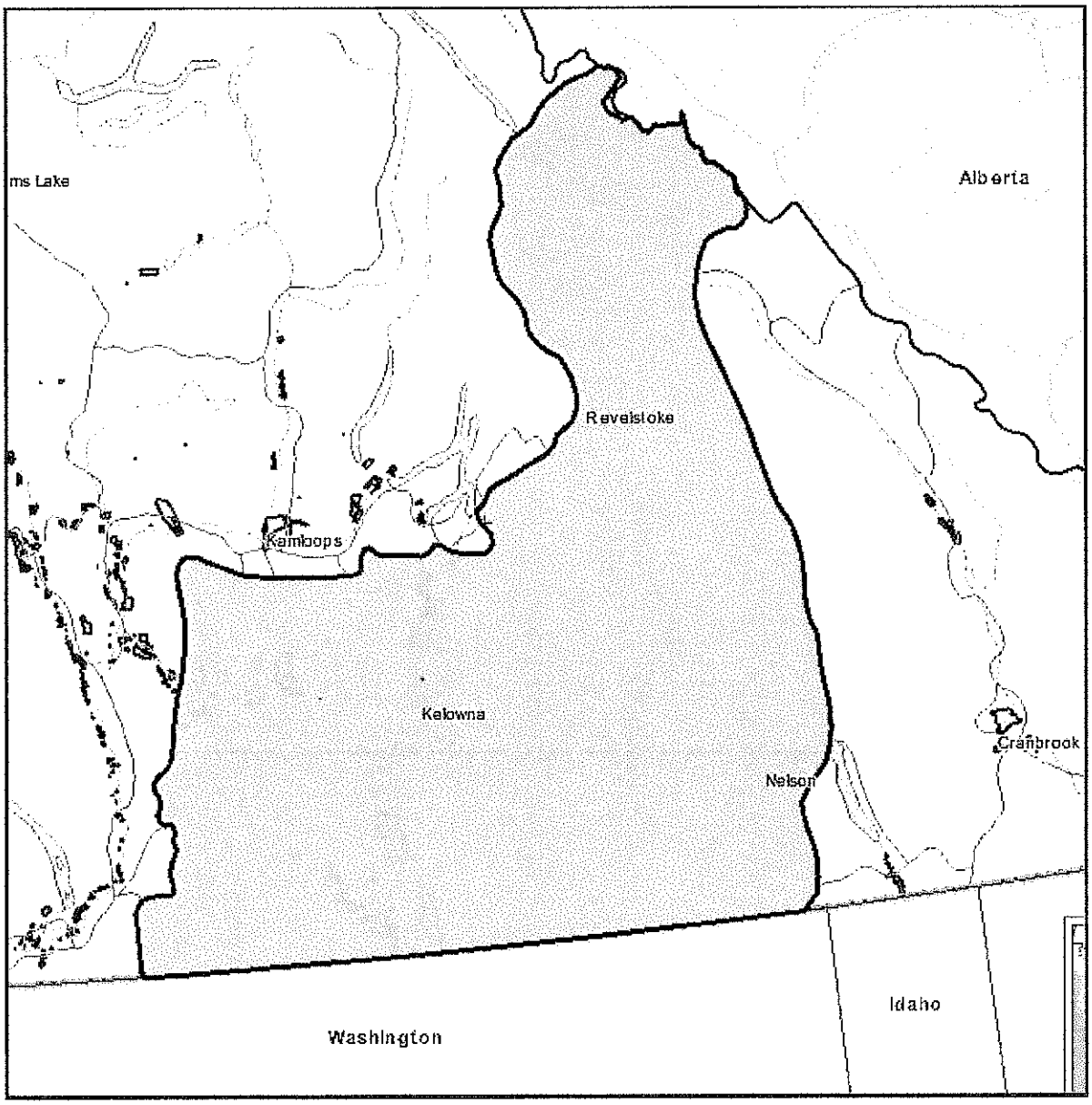
Minister of Aboriginal Relations and Reconciliation — **Date** May 2, 2016

Witness of Minister signature (Edward Sem)

APPENDIX A (Map 1 of 2)
Map of Upper Similkameen Indian Band Territory



APPENDIX A (Map 2 of 2)
Forest Revenue Sharing Area



APPENDIX B

Consultation Process for Administrative and/or Operational and Operational Plans within First Nation Territory

1.1 British Columbia will consult with Upper Similkameen Indian Band on proposed Administrative and/or Operational Decisions and Operational Plans that may potentially adversely impact Upper Similkameen Indian Band's Aboriginal Interests within the Territory, in accordance with this Appendix B.

1.2 Upper Similkameen Indian Band will participate in information sharing (with the exception of sensitive or confidential information) and/or consultation with British Columbia, Licensees or proponents regarding proposed Administrative and/or Operational Decisions or Operational Plans within the Territory in accordance with this Appendix B.

1.3 In order to facilitate consultation, the Parties will use the Matrix set out in section 1.10 of this Appendix to determine which proposed Administrative and/or Operational Decisions and Operational Plans will require consultation, as well as the appropriate level of consultation for those decisions and plans.

1.4 The level of consultation required for the types of Administrative and/or Operational Decisions and Operational Plans listed in Schedule 1 (the "List of Decisions") will be the level indicated in the column of Schedule 1 headed "Consultation Level", unless the Parties agree to a different consultation level under section 1.11 of this Appendix.

1.5 If on or before January 31st a Party requests that the List of Decisions or the consultation level for a type of decision or plan set out in it be revised for a subsequent BC Fiscal Year, the Parties will discuss that request and if the Parties agree to a revision, update the List of Decisions on or before March 31st of the current fiscal year.

1.6 If British Columbia becomes aware of proposed Administrative and/or Operational Decisions or Operational Plans not contained in the List of Decisions that will have effect within the Territory of Upper Similkameen Indian Band during the current fiscal year, British Columbia will notify the Upper Similkameen Indian Band of those decisions or plans and the Parties will, with reference to the criteria set out in the Matrix, seek to agree on the consultation levels that will be applicable to those decisions or plans.

1.7 If the Parties cannot agree upon which consultation level in section 1.10 of this Appendix should apply to a particular or any Operational or Administrative Decision or Operational Plan, then British Columbia will consult with Upper Similkameen Indian Band on the basis of British Columbia's consultation procedures in effect at the time as well as the applicable case law respecting consultation obligations.

1.8 In reviewing and responding to a proposed Administrative and/or Operational Decision or Operational Plan submitted to them, Upper Similkameen Indian Band will, unless otherwise agreed by the Parties, provide the party (i.e. British

Columbia, Licensee or proponent) that supplied the proposed decision or plan to them, with all reasonably available information (with the exception of sensitive or confidential cultural information) that will identify any potential adverse impacts to their Aboriginal Interests that may occur as a result of the proposed Administrative and/or Operational Decision or Operational Plan within the Territory or forest or range resource development practices that may be carried out pursuant to that decision or plan.

1.9 If a proposed Administrative and/or Operational Decision or Operational Plan is submitted to Upper Similkameen Indian Band and no response is received within the consultation period set out in section 1.10 of this Appendix for the consultation level applicable to the proposed Administrative and/or Operational Decision or Operational Plan, then British Columbia may proceed to make a decision regarding the decision or plan.

1.10 The Parties agree that:

(a) as set out in the table below (the "Matrix") there will be six (6) potential levels of consultation for a proposed Administrative and/or Operational Decision or Operational Plan;

(b) subject to the List of Decisions, the appropriate consultation level for a proposed Administrative and/or Operational Decision or Operational Plan will be determined by reference to the criteria set out in the Matrix; and

(c) the consultation period applicable to a consultation level is the period referred to in the Matrix, the List of Decisions or as otherwise agreed to by the Parties, whichever period is the longest.

Level	Description	Intent
1. Information Sharing: prior to formal consultation process	Referral to Upper Similkameen Indian Band during planning to provide opportunity to incorporate Aboriginal Interests prior to submitting plan/request to Decision Maker.	Proponent or Licensee engages directly with Upper Similkameen Indian Band, and provides summary of communications to British Columbia.
2. Available on Request	Type of notification whereby British Columbia informs Upper Similkameen Indian Band they will not be sending out information.	British Columbia notifies on an annual basis which decision(s) fall in this category. Upper Similkameen Indian Band can request more detail if they wish.
3. Notification	Notify in writing Upper Similkameen Indian Band about an upcoming decision and provide overview information. Would be an opportunity for comment.	British Columbia provides Upper Similkameen Indian Band base level information and a short reasonable time (21-30 calendar day consultation period determined

Level	Description	Intent
		by the Parties) to comment. Limited follow-up.
4. Expedited Consultation Process	Where there is an imminent threat to a resource value (e.g. mountain pine beetle spread control) an expedited consultation process is undertaken.	Intense but short timeline (about 10 calendar days). A justification for shortening the period would be given by describing the imminent threat. May require a meeting.
5. Normal Consultation	Follow on "normal" track for consultation guided by up-to-date consultation policy. Meetings to resolve issues where possible and make decision in a timely manner.	Intent to follow this course in most circumstances. Usually a 30 – 60 calendar day consultation period. May involve meaningful discussion of accommodation options where appropriate. British Columbia will notify Upper Similkameen Indian Band of the final decision where requested by the Upper Similkameen Indian Band.
6. Deep Consultation	Use reasonable effort to inform in an accessible manner and to engage in full discussions around the proposed decision. Make reasonable efforts to accommodate where necessary. Preliminary assessments may indicate a significant Aboriginal Interest and a significant impact to that interest.	Would involve meaningful discussion of suitable accommodation options and interim solutions where appropriate. May require extended timelines. British Columbia will provide the Upper Similkameen Indian Band with the final decision and rational in writing.

1.10 The Parties may agree to increase or decrease the consultation level for a specific proposed Administrative and/or Operational Decision or Operational Plan where detailed Aboriginal Interest information is provided that indicates a different consultation level is appropriate.

1.11 Unless requested by the Upper Similkameen Indian Band, the Province is not obligated to inform the Upper Similkameen Indian Band of the Delegated Decision Maker's decision where the consultation level in respect of the proposed decision was level three (3) or lower.

Schedule 1 – List of Decisions

APPENDIX C

Revenue Sharing Contribution Methodology

Traditional Territory Forest Revenue Sharing Component

1.0 In each BC Fiscal Year that this Agreement is in effect, and subsequent to the release by the Minister of Finance of the previous BC Fiscal Year's public accounts, a summary document will be prepared of the DCK, DCS, DKA, DOS, and DSE District forest revenue, defined as the total of stumpage, waste and annual rent payments received by the Crown for the previous 2 BC Fiscal Years. An average amount over 2 years will be calculated for the DCK, DCS, DKA, DOS, and DSE Forest District.

1.1 For the purposes of the summary document in section 1.0 of this Appendix, the stumpage payments from Upper Similkameen Indian Band's Forest License (if applicable) will not be included in the calculations of forest revenue.

1.2 The amount of the forest revenue attributed to the Upper Similkameen Indian Band's Territory will be calculated by determining the percent of Upper Similkameen Indian Band's Territory that falls within the Timber Harvesting Land Base in the DCK, DCS, DKA, DOS, and DSE Forest District, applied against the forest revenue described in section 1.0 of this Appendix. This calculation will prorate for overlapping territories of other First Nations.

1.3 The Traditional Territory Forest Revenue Sharing Component will be calculated by multiplying 3 percent of the forest revenue attributed to the Upper Similkameen Indian Band as described in section 1.2 of this Appendix.

1.4 If Upper Similkameen Indian Band is not receiving capacity funding for forestry consultation through a SEA or RA, then it will receive $35,000 or the amount calculated in accordance with section 1.3, whichever is greater, which may be used by Upper Similkameen Indian Band as capacity funding to participate in the consultation process in accordance with section 6.0 of this Agreement.

1.5 For each BC Fiscal Year that this Agreement is in effect, the calculations outlined in sections 1.0 to 1.4 of this Appendix will be performed.

Direct Award Tenure Forest Revenue Sharing Component

2.0 Subsequent to the release by the Minister of Finance of the previous BC Fiscal Year's public accounts, a summary document will be prepared of Upper Similkameen Indian Band's Forest License (if applicable) forest revenue, defined as the total of stumpage payments received by the Crown for the previous BC Fiscal Year.

2.1 The Direct Award Forest Tenure Revenue Sharing Component will be calculated by multiplying 35 percent of the forest revenue as described in section 2.0 of this Appendix.

2.2 For each Fiscal Year that this Agreement is in effect, the calculations outlined in sections 2.0 and 2.1 of this Appendix will be performed.

Forest Revenue Sharing Transition

3.0 The Parties agree that a transition to revenue sharing based entirely on Forest Revenue will be phased in over the Term.

3.1 For each BC Fiscal Year that this Agreement is in effect, a portion of the Revenue Sharing Contribution is calculated by adding the total of the Traditional Territory Forest Revenue Sharing Component to the Direct Award Tenure Forest Revenue Sharing Component for that BC Fiscal Year.

3.2 For each BC Fiscal Year that this Agreement is in effect, the remaining portion of the Revenue Sharing Contribution is calculated by determining the value of the payments that were made by British Columbia to Upper Similkameen Indian Band in any given full year under the Upper Similkameen Indian Band *Forest and Range Agreement* ("the Annual Amount") and applying the following percentages to that Annual Amount:

3.2.1 2015/16 BC Fiscal Year: 40 percent;

3.2.2 2016/17 BC Fiscal Year: 40 percent; and

3.2.3 2017/18 BC Fiscal Year: 40 percent.

3.3 Notwithstanding section 3.2 of this Appendix, if the Revenue Sharing Transition Calculation for BC Fiscal years 2014/15 and 2015/16 under section 3.1 provides:

(a) an amount calculated under sections 1.3 and 2.1 of this Appendix that is equal to or greater than the annual payments received under the *Upper Similkameen Indian Band Forest and Range Agreement*, then Upper Similkameen Indian Band will receive the annual payments described by the Revenue Sharing Transition Calculation in section 3.1 for BC Fiscal Years 2014/15 and 2015/16; and

(b) an amount calculated under the Revenue Sharing Transition Calculations in sections 3.1 and 3.2 of this Appendix that is greater than the annual payments received under the *Upper Similkameen Indian Band Forest and Range Opportunity Agreement*, then Upper Similkameen Indian Band will receive an annual payment for BC fiscal Years 2014/15 and 2015/16 that is equal to the annual payment received under the *Upper Similkameen Indian Band Forest and Range Agreement.*

APPENDIX D

Band Council Resolution Appointing
the
Recipient Entity for this Agreement ("Designate")

APPENDIX E

Upper Similkameen Indian Band Statement of Community Priorities

(Example only)

Socio-economic Priority	Annual Amount			Specific Outcomes	Measurement Criteria
	2015/2016	2016/2017	2017/2018		
	$224,160	$299,139			

2015/2016 Revenue Sharing Contribution $ $224,160

2016/2017 Revenue Sharing Contribution $ 299,139

2017/2018 Revenue Sharing Contribution $To Be Determined

APPENDIX F

Upper Similkameen Indian Band Statement of Community Priorities

Annual Report

(Example only)

Socio-economic Priority	2014/2015 Planned Expenditures	2014/2015 Actual Expenditures	Outcomes Achieved	Variance Explanation

Confirmation

In accordance with section 8.2 of the Agreement, First Nation confirms that aside from reasonable administrative expenses, all actual expenditures were made for the purpose of furthering the purposes and objectives set out in section 2.1 of the Agreement.
Signed this _____ day of _____:

_____
(Signature)

_____
(Name) On behalf of (First Nation)