

**Nadleh Whut'en Band  
Forest and Range Agreement  
(the "Agreement")**

**Between**

**Nadleh Whut'en Band**  
as represented by Chief Larry Nooski and Council  
(the "Nadleh Whut'en Band")

**and**

**Her Majesty the Queen in Right of the Province of British Columbia**  
as represented by the Minister of Forests  
(the "Government of British Columbia")

(collectively the "Parties")

**Whereas:**

- The Nadleh Whut'en Band has Aboriginal Interests within its Traditional Territory.
- The Parties wish to enter into an interim measures agreement in relation to forest and/or range resource development activities and related economic benefits arising from this development within the Traditional Territory.
- The Government of British Columbia intends to fulfil any responsibility it has to consult and to seek workable accommodation with the Nadleh Whut'en Band on forest and/or range resource development activities proposed within the Traditional Territory that may lead to the infringement of the Nadleh Whut'en Band's Aboriginal Interests.
- Nadleh Whut'en Band has a responsibility to participate in any consultation initiated by the Government of British Columbia, in relation to forest and/or range resource development activities proposed within the Traditional Territory, that may lead to an infringement of Nadleh Whut'en Band's Aboriginal Interests.
- The Parties have an interest in seeking workable interim accommodation of Nadleh Whut'en Band's Aboriginal Interests where forest and/or range resource development activities are proposed within the Traditional Territory that may lead to the infringement of Nadleh Whut'en Band's Aboriginal Interests.
- The Government of British Columbia and the Nadleh Whut'en Band wish to resolve issues relating to forest and/or range resource development activities where possible through negotiation as opposed to litigation.

Therefore the Parties agree as follows:

1.0 **Definitions**

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

- 1.1 "Aboriginal Interests" means asserted and/or proven aboriginal rights and/or aboriginal title.
- 1.2 "Allowable Annual Cut" (AAC) means the allowable rate of timber harvest from a specified area of land. The Chief Forester sets the AAC for timber supply areas and tree farm licences in accordance with Section 8 of the *Forest Act*.
- 1.3 "Administrative Decision" means one or more of the following decisions made by a person under forestry legislation:
- the decision setting or varying the Allowable Annual Cut (AAC) for a Timber Supply Area or a Forest Tenure;
  - the issuance, consolidation, subdivision, amendment, or adjustment of boundary change of a Forest Tenure as defined as a major licence under the *Forest Act* and including woodlot licence, and community forest agreement and Range Tenure where such changes may have an impact on Aboriginal Interests;
  - the adjustment of Animal Unit Month to a Range Tenure;
  - the replacement or extension of a Forest Tenure or a Range Tenure;
  - the disposition of volumes of timber arising from undercut decisions on a Forest Tenure;
  - the conversion of a timber sale licence to another form of Forest Tenure;
  - the issuance of a Special Use Permit;
  - the establishment of a interpretative forest site, recreation site and/or recreation trail; and
  - reallocating harvesting rights as a result of the implementation of the *Forestry Revitalization Act*;
  - decision regarding a tree farm licence management plan, community forest management plan and/or woodlot licence management plan;
  - deletion of land from provincial forest; and
  - transfer of cuts between TSA's.
- 1.4 "Consult" means the processes as set out in Section 4 and 5 of this Agreement.
- 1.5 "Forest Tenure" means an agreement granting rights to harvest Crown timber as defined in the *Forest Act*.
- 1.6 "Licensee" means a holder of a Forest Tenure or a Range Tenure.
- 1.7 "Operational Decision" means a decision that is made by a person with respect to the statutory approval of a forest development plan, a forest stewardship plan, a woodlot licence plan, a range use plan or a range stewardship plan that has an effect in the Traditional Territory.
- 1.8 "Operational Plan" means a forest development plan, forest stewardship plan, a woodlot licence plan, a range use plan, or a range stewardship plan that has an effect in the Traditional Territory.
- 1.9 "Range Tenure" means an agreement granting rights over Crown range as defined in the *Range Act*.
- 1.10 "Response Period" means a period of up to 60 days from initiation of the processes set out in Sections 4 and 5 of this Agreement, where the initiation date is the date on which Nadleh Whut'en Band is notified of an Administrative Decision or Timber Supply Review process, or in the case of Operation Plan reviews, the date on which

Nadleh Whut'en Band receives the plan to be reviewed. Where an emergency operation arises and/or expedited salvage has to occur, the Response Period will be shortened accordingly, but will not be less than the time period for advertising Operational Plans for those operations.

- 1.11 "Traditional Territory" means the Nadleh Whut'en Band's asserted traditional territory as shown on bold black on the map attached in Appendix A.

## 2.0 **Purpose**

The purposes of this Agreement are to:

- 2.1 Increase the Nadleh Whut'en Band's opportunity for participation in the forest sector.
- 2.2 Provide economic benefits to the Nadleh Whut'en Band through a forest tenure opportunity and/or the sharing of revenues received by the Government of British Columbia from forest resource development activities.
- 2.3 Address consultation and to provide an interim workable accommodation as set out in this Agreement, with regard to any infringements of Nadleh Whut'en Band's Aboriginal Interests that result from Administrative Decisions and/or Operational Decisions relating to forest and/or range resource development activities within the Traditional Territory, during the term of this Agreement.
- 2.4 Provide a period of stability to forest and/or range resource development activities on Crown lands within the Traditional Territory during the term of this Agreement, while longer-term interests are addressed through other agreements or processes.

## 3.0 **Economic Benefits to Nadleh Whut'en Band**

During the term of this Agreement, the Government of British Columbia will adopt the consultation processes set out in Sections 4.0 and 5.0 of this Agreement and will provide one or more of the following economic benefits to Nadleh Whut'en Band to address consultation and to provide an interim workable accommodation, as set out in this Agreement, in respect of any infringements of Nadleh Whut'en Band's Aboriginal Interests that result from Administrative Decisions and/or Operational Decisions relating to forest and/or range resource development activities within the Traditional Territory.

### 3.1 **Forest Tenure**

- 3.1.1 The Minister of Forests invited the Nadleh Whut'en Band to apply for a forest licence of up to 150 000m<sup>3</sup> annually for a period of 5 years on March 20, 2004. That invitation resulted in the Nadleh Whut'en Band entering into Forest Licence A75068 within the Prince George TSA.
- 3.1.2 For greater certainty, the maximum volume that may be available under the licence referred to in Section 3.1 will be up to 750 000m<sup>3</sup> cubic meters over a period of five years.
- 3.1.3 An invitation to apply for a licence (an "invitation") and any licence entered into as a result of the invitation to apply under this Agreement will be subject to the policies, regulations and statutes of British Columbia as amended from time to time.

- 3.1.4 An invitation will be subject to a condition that prior to Nadleh Whut'en Band making an application for the licence, the Ministry of Forests will identify potential operating areas for the licence, and the Parties will work together to identify the operating area for the licence from the potential areas identified. The operating area will be within the Traditional Territory.
- 3.1.5 A licence entered into as a result of an invitation to apply under Section 3.1 of this Agreement will:
- 3.1.5.1 be for a term of no longer than five years, as determined by the Minister;
  - 3.1.5.2 contain other terms and conditions required by law, including the condition that Nadleh Whut'en Band must comply with this Agreement;
  - 3.1.5.3 include other terms and conditions as may be required by the regional manager including a term that Nadleh Whut'en Band may not divide, subdivide, transfer, or otherwise dispose of the licence or an interest in the licence; and
  - 3.1.5.4 will be subject to any Annual Allowable Cut adjustments in the Prince George Timber Supply Area that result from the implementation of land use planning decision.
- 3.1.6 If the term of the licence entered into as a result of an invitation to apply under this Agreement exceeds the term of this Agreement, then that licence may be referenced in and considered to be an economic benefit that addresses consultation and provides an interim workable accommodation in respect of any infringement of Nadleh Whut'en Band's Aboriginal Interests, in any subsequent Forest and Range Agreement between Nadleh Whut'en Band and the Government of British Columbia, for the purposes described in Section 3.0.
- 3.1.7 Subject to:
- 3.1.7.1 the Government of British Columbia and Nadleh Whut'en Band entering into another interim measures agreement providing for an invitation to apply for a licence; and,
  - 3.1.7.2 the Minister determining that there is sufficient volume of timber available for disposition to Nadleh Whut'en Band,
- the Minister may invite Nadleh Whut'en Band to apply for a subsequent licence under the *Forest Act* for a term that would commence after the expiry of this Agreement.

## 3.2 Revenue Sharing

- 3.2.1 During the term of this Agreement, the Government of British Columbia will pay to Nadleh Whut'en Band approximately \$193 977 annually for purposes described in Section 3.0.

- 3.2.2 The funding commitment set out in Section 3.2.1 is subject to the availability of annual appropriations for that purpose by the Government of British Columbia.
- 3.2.3 For the purposes of determining amounts for partial years, one-fourth (i.e.  $\frac{1}{4}$ ) of the annual amount will be used for each fiscal quarter or part thereof that the Agreement is in effect. Payments will be made quarterly.
- 3.2.4 Upon signing of this Agreement, the Nadleh Whut'en Band will be paid the full revenues for the quarter in which the Agreement is signed with subsequent payments being made at the end of each quarter.
- 3.2.5 Nadleh Whut'en Band will maintain financial records and prepare financial statements in accordance with generally accepted accounting principles for each year of this Agreement.
- 3.2.6 Upon request, Nadleh Whut'en Band will conduct an audit of the revenue sharing expenditures and will provide a copy of the audit to the Government of British Columbia.

#### **4.0 Consultation and Accommodation Regarding Operational Plans**

- 4.1 The Government of British Columbia agrees to consult with Nadleh Whut'en Band on Operational Plans that may potentially infringe Nadleh Whut'en Band's Aboriginal Interests within the Traditional Territory, except for any economic component of those interests that the Parties agree are addressed by the economic benefits provided for under Section 3.0 of this Agreement.
- 4.2 During the term of this Agreement, Nadleh Whut'en Band agrees that the Government of British Columbia has fulfilled its duties to consult and to seek interim workable accommodation with respect to the economic component of potential infringements of Nadleh Whut'en Band's Aboriginal Interests in the context of Operational Decisions that the Government of British Columbia will make and any forest practices or range practices that may be carried out under an Operational Plan in the Traditional Territory.
- 4.3 Nadleh Whut'en Band agrees to fully participate, as set out in this section, in the review of all Operational Plans dealing with forest development within the Traditional Territory provided to them by the Government of British Columbia, and by Licensees.
- 4.4 In reviewing and responding to an Operational Plan submitted to them, Nadleh Whut'en Band will, within the Response Period, provide the Party that supplied the plan to them with all reasonably available information that will identify any potential impacts to their Aboriginal Interests that may occur as a result of proposed forest and/or range resource development activities within the Traditional Territory, other than the economic component of those Interests that the Parties agree are addressed by the economic benefits provided for under Section 3.0.
- 4.5 Upon receiving the response from Nadleh Whut'en Band as specified in Section 4.4, the Government of British Columbia and/or the Licensee will discuss and attempt to resolve with Nadleh Whut'en Band any site specific operational impacts on Nadleh Whut'en Band's Aboriginal Interests that may occur as a result of proposed forest and/or range resource development activities within the Traditional Territory, other than the economic component of those Aboriginal Interests that the Parties agree are addressed by the economic benefits provided for under Section 3.0.

- 4.6 If no response is received from Nadleh Whut'en Band within the Response Period, then the Government of British Columbia may assume that Nadleh Whut'en Band does not intend to respond or participate in the consultation process in respect of the Operational Plan and that a decision on the Operational Plan may proceed.
- 4.7 In making a final decision on an Operational Plan, the Government of British Columbia will fully consider information it receives from Nadleh Whut'en Band, whether received directly or through a Licensee, and will consider whether concerns identified by Nadleh Whut'en Band have been addressed.

5.0 **Consultation and Accommodation Respecting Administrative Decisions**

- 5.1 The Government of British Columbia will provide to Nadleh Whut'en Band on an annual basis a list of all proposed Administrative Decisions anticipated within the year that will have an effect in the Traditional Territory, and either upon the request of Nadleh Whut'en Band or when the Government of British Columbia becomes aware of other proposed Administrative Decisions, will provide to Nadleh Whut'en Band an updated list.
- 5.2 The Government of British Columbia will meet with Nadleh Whut'en Band at mutually agreed times throughout the year to provide an opportunity for Nadleh Whut'en Band to make known to representatives of the Government of British Columbia their concerns and comments relative to the effect of the Administrative Decision(s) on their Aboriginal Interests within the Traditional Territory.
- 5.3 The Government of British Columbia will include Nadleh Whut'en Band in public Timber Supply Review processes that will lead to AAC determinations made pursuant to Section 8 of the *Forest Act* for the Prince George Timber Supply Area.
- 5.4 Nadleh Whut'en Band agrees to fully participate, within the Response Period, in public Timber Supply Review processes by providing all reasonably available information about their Aboriginal Interests within the Traditional Territory potentially affected by AAC determinations to be made pursuant to Section 8 of the *Forest Act*.
- 5.5 The Parties acknowledge that the public Timber Supply Review processes will be consistent with approved land use plans when higher-level objectives have been established.
- 5.6 If after considering the concerns and comments of Nadleh Whut'en Band, the statutory decision maker is of the opinion that an Administrative Decision creates a potential infringement of Nadleh Whut'en Band's Aboriginal Interests that is not adequately addressed by the economic benefits provided by the Government of British Columbia in Section 3.0, the statutory decision maker will seek to address the concerns and comments in the Administrative Decision or through the process in Section 4.0 of this Agreement.
- 5.7 The Government of British Columbia will provide a response to Nadleh Whut'en Band as to how their concerns raised in Section 5.2 have been addressed.
- 5.8 Nadleh Whut'en Band agrees that in consideration of the economic benefits provided by the Government of British Columbia in Section 3.0 and adherence to the consultation processes in Sections 4.0 and 5.0 of this Agreement, the Government of British Columbia has fulfilled its duties to consult and to seek an interim workable accommodation with respect to the economic component of potential infringements of Nadleh Whut'en Band's Aboriginal Interests resulting from Administrative Decisions

made by statutory decision makers from time to time during the term of this Agreement.

- 5.9 Nadleh Whut'en Band further agrees that, in consideration of Sections 5.1 to 5.7 of this Agreement, the Government of British Columbia has, for the purposes of this Agreement, developed an adequate consultation and interim workable accommodation process with respect to potential infringements of their Aboriginal Interests resulting from Administrative Decisions made by statutory decision makers from time to time during the term of this Agreement that may go beyond the economic component of Nadleh Whut'en Band's Aboriginal Interests .

#### 6.0 **Stability for Land and Resource Use**

- 6.1 Nadleh Whut'en Band will respond immediately to any discussions initiated by the Government of British Columbia and will work co-operatively to assist in resolving any issues that may arise where acts of intentional interference by Nadleh Whut'en Band first nation members with provincially authorized activities related to forest and/or range resource development activities including timber harvesting or other forestry economic activities occur.

#### 7.0 **Dispute Resolution**

- 5.1 If a dispute arises between the Government of British Columbia and Nadleh Whut'en Band regarding the interpretation of a provision of this Agreement, the Parties or their duly appointed representatives will meet as soon as is practicable to attempt to resolve the dispute.
- 5.2 If the Parties are unable to resolve differences at the appropriate level, the interpretation issue will be raised to more senior levels of the Government of British Columbia and Nadleh Whut'en Band.
- 5.3 The Parties may choose other appropriate approaches to assist in reaching resolution of the interpretation issue.

#### 8.0 **Term**

- 8.1 This Agreement will take effect on the date on which the last Party has executed it.
- 8.2 This Agreement will terminate on the occurrence of the earliest of any of the following events:
- 8.2.1 five years from the date this Agreement is executed; or,
  - 8.2.2 the coming into effect of a treaty between the Parties; or,
  - 8.2.3 the mutual agreement of the Parties; or,
  - 8.2.4 the date on which the Government of British Columbia cancels the economic benefit(s) under this Agreement pursuant to Section 9.0.
- 8.3 If this Agreement is terminated in accordance with Section 8.2, then the Minister may terminate the economic benefits under this Agreement.

#### 9.0 **Suspension or Cancellation of Economic Benefits by the Minister**

- 9.1 Without limiting the actions that may be taken by the Minister of Forests or by the Government of British Columbia, the Minister or a person authorized by the Minister may suspend or cancel revenue sharing payments and the licence(s) entered into as

a result of the invitation under this Agreement, if the Minister or a person authorized by the Minister determines that Nadleh Whut'en Band is not in compliance with this Agreement.

- 9.2 Prior to taking any action referred to in Section 9.1, the Government of British Columbia will provide notice to Nadleh Whut'en Band of any alleged contravention of this Agreement that may lead Nadleh Whut'en Band being determined to not be in compliance with this Agreement.
- 9.3 If, during the term of this Agreement, Nadleh Whut'en Band challenges or supports a challenge to, an Administrative Decision and/or Operational Decision or an Operational Plan or activities carried out pursuant to those decisions/plans, by way of legal proceedings or otherwise, on the basis that the economic benefits set out in Section 3.0, and the consultation processes set out in Sections 4.0 and 5.0 of this Agreement are not adequate or sufficient to:
- 9.3.1 provide adequate consultation, to substantially address Nadleh Whut'en Band's concerns and to provide an interim workable accommodation in respect of any potential infringements of Nadleh Whut'en Band's Aboriginal Interests with regard to Administrative Decisions relating to forest and/or range resource development activities within the Traditional Territory, or
- 9.3.2 substantially address the economic component of Nadleh Whut'en Band's Aboriginal Interests with regard to Operational Decisions relating to forest and/or range resource development activities within the Traditional Territory,
- then, without limiting any other remedies that may be available to the Government of British Columbia, the Government of British Columbia may suspend or cancel the economic benefits set out in Section 3.0.
- 9.4 If the Minister or a person authorized by the Minister cancels any economic benefits as a result of this Agreement, then this Agreement may be terminated.

#### **10.0 Renewal of the Agreement**

- 10.1 Prior to this Agreement terminating in accordance with Section 8.2, and subject to Section 10.3, if the terms and conditions of this Agreement are being met, the Government of British Columbia and Nadleh Whut'en Band will seek the necessary authorities and approvals to renew this Agreement.
- 10.2 Any subsequent forestry agreement between the Government of British Columbia and Nadleh Whut'en Band may provide for an opportunity to acquire a licence, and/or other economic benefits, as well as other terms and conditions that are agreed to by the Parties.
- 10.3 The revenue sharing set out in this Agreement reflects an amount that the Government of British Columbia is willing to pay, subject to available appropriations, as an interim measure and Nadleh Whut'en Band has agreed to accept as an interim measure for the term of this Agreement.

#### **11.0 Amendment of Agreement**

- 11.1 Any alteration or amendment to the terms and conditions of the Agreement must be in writing and duly executed by the Parties.



- 11.2 Either Party may request the participation of the other Party to review the effectiveness of this Agreement annually and consider amendments to this Agreement.
- 11.3 If, during the term of this Agreement, the Government of British Columbia amends its policy on forest and range consultation and accommodation as a result of recommendations from the "New Relationship" discussions taking place among the Government of British Columbia, the First Nations Summit, the Union of B.C. Indian Chiefs and the Assembly of First Nations, and where those amendments result in a change of economic accommodation for First Nations provided under that policy relating to forest development activities, then the Parties will amend this Agreement to give effect to those amendments to the forest and range policy. Any amendment to this Agreement under this section will not be applied retroactively.

12.0 **Entire Agreement**

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

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 and will be effective if delivered, sent by registered mail, or transmitted by facsimile to the address of the other Party as in this section of the Agreement.
- 13.2 Any notice or other communications will be deemed to have been given on the date it is actually received, if received before 4:00 p.m. If received after 4:00 p.m., it will be deemed to have been received on the next business day.
- 13.3 The address of either Party may be changed by notice in the manner set out in this section of the Agreement.

**British Columbia**

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

**NADLEH WHUT'EN BAND**

Chief and Council  
Nadleh Whut'en Band  
Box 36  
Fort Fraser BC V0J 1S0  
Telephone: (250) 690-7211  
Facsimile: (250) 690-7316

#### 14.0 **Miscellaneous**


- 14.1 Nothing in this Agreement shall be interpreted in a manner that requires the Government of British Columbia to act in a manner inconsistent with provincial or federal law, or that fetters the statutory discretion of any government decision-maker.
- 14.2 This Agreement is not a treaty or a lands claims agreement within the meaning of section 25 and 35 of the Constitution Act, 1982 and does not recognise, define, amend, affirm, deny or limit any priorities afforded to aboriginal rights, including aboriginal title, or treaty rights, other than as provided in this Agreement.
- 14.3 Subject to Section 9.3, this Agreement will not limit the positions that a Party may take in future negotiations or court actions.
- 14.4 This Agreement shall not be interpreted as addressing any potential infringements other than potential infringements that may result from decisions contemplated by this Agreement during the term of this Agreement. Nothing in this Agreement shall be interpreted to authorize any infringement that may occur following the termination of this Agreement.
- 14.5 Any reference to a statute in this Agreement includes all regulations made under that statute and any amendments or replacement of that statute and its regulations.
- 14.6 There will be no presumption that any ambiguity in any of the terms of this Agreement should be interpreted in favour of either Party.
- 14.7 The applicable laws of British Columbia and Canada shall govern this Agreement.

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

Signed on behalf of:

**NADLEH WHUT'EN BAND**

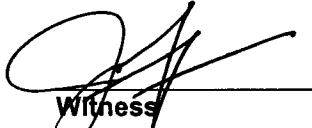
Date: Sept 12, 2005

  
\_\_\_\_\_  
Chief Larry Nooski

  
\_\_\_\_\_  
Witness


  
\_\_\_\_\_  
Councillor George George Sr.

Date: Sept 12, 2005

  
\_\_\_\_\_  
Witness

  
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Councillor Lucille George

Date: Sept 12, 2005

  
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Witness

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Councillor Sue Stirling Ketloe

Date: \_\_\_\_\_


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Witness

Signed on behalf of:

**Government of British Columbia**

**OCT 03 2005**

Date: \_\_\_\_\_

  
\_\_\_\_\_  
Rich Coleman

Minister of Forests and Range

  
\_\_\_\_\_  
Witness

**APPENDIX A**  
**NADLEH WHUT'EN BAND FIRST NATION TRADITIONAL TERRITORY**

# Appendix A

## NADLEH WHUT'EN BAND TRADITIONAL TERRITORY

