

Forest Tenure Opportunity Agreement
(the "Agreement")

Between:

Malahat First Nation

As represented by
Chief and Council

Sykes
July 16, 2013

and

Her Majesty the Queen in Right of the Province of British Columbia
as represented by the Minister of Forests, Lands, and Natural Resource Operations
("British Columbia")

(collectively the "Parties")

WHEREAS:

- A. In 2005, British Columbia and the First Nations Leadership Council, representing the Assembly of First Nations-BC Region, First Nations Summit, and the Union of BC Indian Chiefs entered into a New Relationship and signed the Transformative Change Accord, the purposes of which is to implement a government-to-government relationship based on an effective working partnership, enhanced collaboration, mutual respect and recognition and accommodation of Aboriginal title and rights and achieve the mutual goals of closing the social and economic gap between First Nations and other British Columbians.
- B. In the spirit of the New Relationship and the Transformative Change Accord, British Columbia and Malahat First Nation have undertaken a shared commitment to strengthening relationships on a government-to-government basis, and on focusing efforts to close the socio-economic gaps between Aboriginal and non-Aboriginal people.
- C. This Agreement, and the benefits flowing from it, will assist Malahat First Nation in achieving progress towards the goals referred to in the previous recitals, and in particular help to address the conditions that contribute to poverty among Aboriginal people and to ensure that they can more fully benefit from and contribute to British Columbia's prosperity.
- D. British Columbia recognizes that Malahat First Nation has a unique history and its own culture and traditions that help to define it, and that these characteristics, along with its relationship with British Columbia, form an important context for the cooperative efforts needed to improve Malahat First Nation community's well-being.
- E. British Columbia intends to seek to avoid unjustifiable infringement on Douglas Treaty rights with respect to impacts on the Malahat First Nation's

Douglas Treaty rights arising from forest resource development activities proposed within the Malahat First Nation's Traditional Territory.

- F. This Agreement is intended to assist in achieving stability and greater certainty for forest resource development on Crown lands within the Traditional Territory of Malahat First Nation which will enhance the ability of the forest industry to exercise timber harvesting in a timely, economic, and environmentally sustainable manner while longer term interests of Malahat First Nation are addressed through other agreements or processes.

THEREFORE THE PARTIES AGREE AS FOLLOWS:

1. Definitions

- 1.1. "Douglas Treaty rights" means treaty rights of the Malahat First Nation to hunt over unoccupied lands and carry on fisheries as formerly, which are recognized and affirmed by section 35(1) of the *Constitution Act, 1982*.
- 1.2. "Effective Date" means the date on which this Agreement has been ratified and signed by each of the Parties.
- 1.3. "Forest Tenure" means an agreement granting rights to harvest Crown timber as defined in section 12(1) of the *Forest Act*.
- 1.4. "Licence" means a Woodlot Licence as defined in the *Forest Act*.
- 1.5. "Licensee" means a holder of a Woodlot Licence.
- 1.6. "Representative" carries the same meaning as is given in the *Forest Act*.
- 1.7. "Traditional Territory" means "Malahat First Nation's claimed or asserted Traditional Territory as shown on bold black on the map attached in Appendix A.

2. Purpose and Objectives

The purposes and objectives of this Agreement are to:

- 2.1. Provide an opportunity for Malahat First Nation to identify and pursue socio-economic objectives in its community and, in connection with those objectives, to assist Malahat First Nation in achieving progress towards closing socio-economic gaps between the members of Malahat First Nation and non-Aboriginal people in British Columbia.
- 2.2. Promote and increase Malahat First Nation's participation in the forest sector by offering an area based forest tenure opportunity.
- 2.3. Provide an accommodation in respect of potential impacts of forestry decisions and operations within the Traditional Territory on Malahat First Nations Douglas Treaty rights..

- 2.4. The forest tenure offered is considered to be the forest tenure opportunity in support of concluding treaties or other land claim processes.

3. Forest Tenure Opportunity

- 3.1. After the execution of this Agreement by the Parties, the Minister will invite Malahat First Nation, or its Representative, to apply for a Woodlot Licence (the "Licence").
- 3.2. The appointment of a Representative for the purpose of holding the Licences must be made in accordance with the *Forest Act*.
- 3.3. The proposed Licence boundary will be approximately 571 hectares in size and is identified on the map attached to this Agreement as Appendix C..
- 3.4. The Licence under Section 3.1 will be subject to the approval of the District Manager upon the submission and approval of a Management Plan.
- 3.5. The Licence under section 3.1 of this Agreement will:
- 3.5.1. be for a term of **20** years;
 - 3.5.2. be eligible for replacement provisions as defined within the *Forest Act*;
 - 3.5.3. include other terms and conditions required by law including the condition that Malahat First Nation must comply with this Agreement; and,
 - 3.5.4. include other terms and conditions as may be required by the District Manager.
- 3.6. Notwithstanding any other provision of this Agreement, British Columbia neither makes nor offers any guarantee of the financial viability of any operations under the Licence referred to in section 3.1.
- 3.7. During the term of this Agreement and notwithstanding section 3.6, Malahat First Nation agrees that British Columbia has provided to Malahat First Nation an accommodation in respect of potential impacts of forestry decisions and operations within the Traditional Territory on Malahat First Nations Douglas Treaty rights, in the form of the Licence provided for under this Agreement.
- 3.8. If the Licence entered into under this Agreement remains in effect beyond the term of this Agreement, the Licence will continue to be considered by the Parties to be an accommodation as contemplated in sections 2.3 and 3.7 until the Licence expires or is terminated.
- 3.9. Any Licence entered into under this Agreement can only be transferred in accordance with the *Forest Act*.

4. Harvest rights within the FNWL may be shared

- 4.1. Subject to 4.2 and 4.3, Malahat First Nation, or its representative, will have exclusive rights to harvest timber in the Licence referred to in section 3.1 of this Agreement.
- 4.2. Malahat First Nation or its Representative may agree to the licence allowing for non exclusive harvesting rights.
- 4.3. Malahat First Nation or its Representative, with the consent of the District Manager or Regional Executive Director, agrees to allow the District Manager to issue Free Use Permits to a First Nations person for traditional use, cultural use or as part of a treaty agreement in accordance with the *Forest Act*.

5. Reporting of Tenure Information

- 5.1. British Columbia, in its commitment to the goals of the Transformative Change Accord, may require certain information from Malahat First Nation on what measurable benefits the Malahat First Nation community has been able to achieve as a result of this Agreement.
- 5.2. Malahat First Nation agrees to cooperate with British Columbia in providing the information in a format acceptable to both Parties and in a manner that maintains the confidentiality of that information in accordance with applicable statutory requirements.

6. Malahat First Nation Traditional Territory

- 6.1. British Columbia will use the map of Malahat First Nation's Traditional Territory used in the "*Malahat First Nation's Forest Consultation and Revenue Sharing Agreement*", which map will be set out in this Agreement as Appendix A.

7. Economic and Operational Stability within Malahat First Nation Traditional Territory

- 7.1. Malahat First Nation will respond immediately to any discussions sought by British Columbia in relation to any acts of intentional interference by members of Malahat First Nation with provincially authorized forest activities and will work co-operatively with British Columbia to assist in resolving any such matters.

8. Term and Termination

- 8.1. The term of this Agreement is **20** years.

- 8.2. This Agreement will take effect on the date on which the last Party has executed it.
- 8.3. This Agreement will terminate on the occurrence of the earliest of any of the following events:
 - 8.3.1. expiry of its term;
 - 8.3.2. 90 days notice by either Party to the other Party; or
 - 8.3.3. mutual agreement of the Parties.
- 8.4. This Agreement may be terminated by British Columbia if the Licence issued pursuant to section 3.1 is cancelled, surrendered or otherwise terminated under the Forest Act.
- 8.5. Prior to the expiry of the 90 days when 90 day notice of termination has been given under section 8.3.2, the Parties agree to meet and endeavour to resolve the issue that has given rise to the 90 day notice of termination.
- 8.6. If the Licence entered into under this Agreement, is replaced, the term of this Agreement will be deemed to be amended so as to extend the term to be the same as the replaced Licence.

9. Dispute Resolution

- 9.1. If a dispute arises between British Columbia and Malahat First Nation regarding the interpretation of a provision of this Agreement, the Parties or Representatives will meet as soon as is practicable to attempt to resolve the interpretation dispute.
- 9.2. If the Parties are unable to resolve differences at the appropriate level, the interpretation issue will be raised to more senior levels of British Columbia and Malahat First Nation.
- 9.3. If the interpretation dispute cannot be resolved by the Parties directly, the Parties may choose other appropriate approaches to assist in reaching resolution of the interpretation dispute.

10. Amendment of Agreement

- 10.1. Any alteration or amendment to the terms and conditions of the Agreement must be in writing and duly executed by the Parties.
- 10.2. 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. Suspension or Cancellation by the Minister

- 11.1. Without limiting the actions that may be taken by the Minister or by British Columbia, the Minister or a person authorized by the Minister may suspend or cancel the Licence issued under this

Agreement, if the Minister or a person authorized by the Minister determines that Malahat First Nation is not in compliance with this Agreement.

- 11.2. If this Agreement is terminated in accordance with section 8.3.2 or 8.3.3, the Minister may cancel the Licence issued pursuant to this Agreement.
- 11.3. Prior to contemplating any action referred to in sections 11.1 or 11.2, British Columbia will provide notice to Malahat First Nation of any alleged contravention of this Agreement that may lead to Malahat First Nation not being in compliance with this Agreement.

12. Entire Agreement

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

13. 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 set out 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. on that 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	Malahat First Nation
Deputy Minister	Chief Councillor
Ministry of Forests, Lands, and Natural Resource Operations	Malahat First Nation
P.O. Box 9525 STN PROV GOVT	110 Thunder Road
Victoria B.C. V8W 9C3	Mill Bay, BC V0R 2P0
Telephone: (250) 356-5012	Telephone: 250-743-3231
Facsimile: (250) 953-3687	Facsimile:250-743-3251

- 13.4. 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 facsimile. Each facsimile will be deemed to be an original for all purposes and all counterparts taken together will be deemed to constitute one document.
- 13.5. British Columbia is not in breach of any duty merely as a result of any contraventions by Malahat First Nation's Representative in respect of any licences issued under this Agreement.

14. Miscellaneous

- 14.1. This Agreement is to be interpreted in a manner consistent with provincial, federal and constitutional law.
- 14.2. Except as set out in this Agreement, this Agreement will not limit the positions that a Party may take in future negotiations or court actions.
- 14.3. This Agreement does not exclude Malahat First Nation from accessing forestry economic opportunities and benefits, which may be available to them, other than those expressly set out in this Agreement.
- 14.4. This Agreement is not a treaty or a lands claims agreement within the meaning of sections 25 and 35 of the Constitution Act, 1982 and does not define or amend treaty rights, or limit any priorities afforded to treaty rights.
- 14.5. References in this Agreement to Crown lands are without prejudice to the Malahat First Nation's Douglas Treaty rights over those lands.
- 14.6. 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 jurisdiction and authorities.
- 14.7. 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.
- 14.8. This Agreement does not address or prejudice conflicting interests or competing claims between First Nations.
- 14.9. There will be no presumption that any ambiguity in any of the terms of this Agreement should be interpreted in favour of either Party.
- 14.10. The laws of British Columbia will govern this Agreement.
- 14.11. This Agreement is not intended to limit any obligation of forest Licensees or other third parties to Malahat First Nation.

14.12. The appendices to this Agreement form part of the Agreement.

Signed on behalf of:

Malahat First Nation

Chief David King

Date: January 16, 2013

Councillor _____

Councillor _____

Councillor Russell King

Councillor Debra O'Carroll

Councillor _____

Councillor _____

Councillor _____

Witness of Malahat First Nation
signatures

Signed on behalf of:

British Columbia

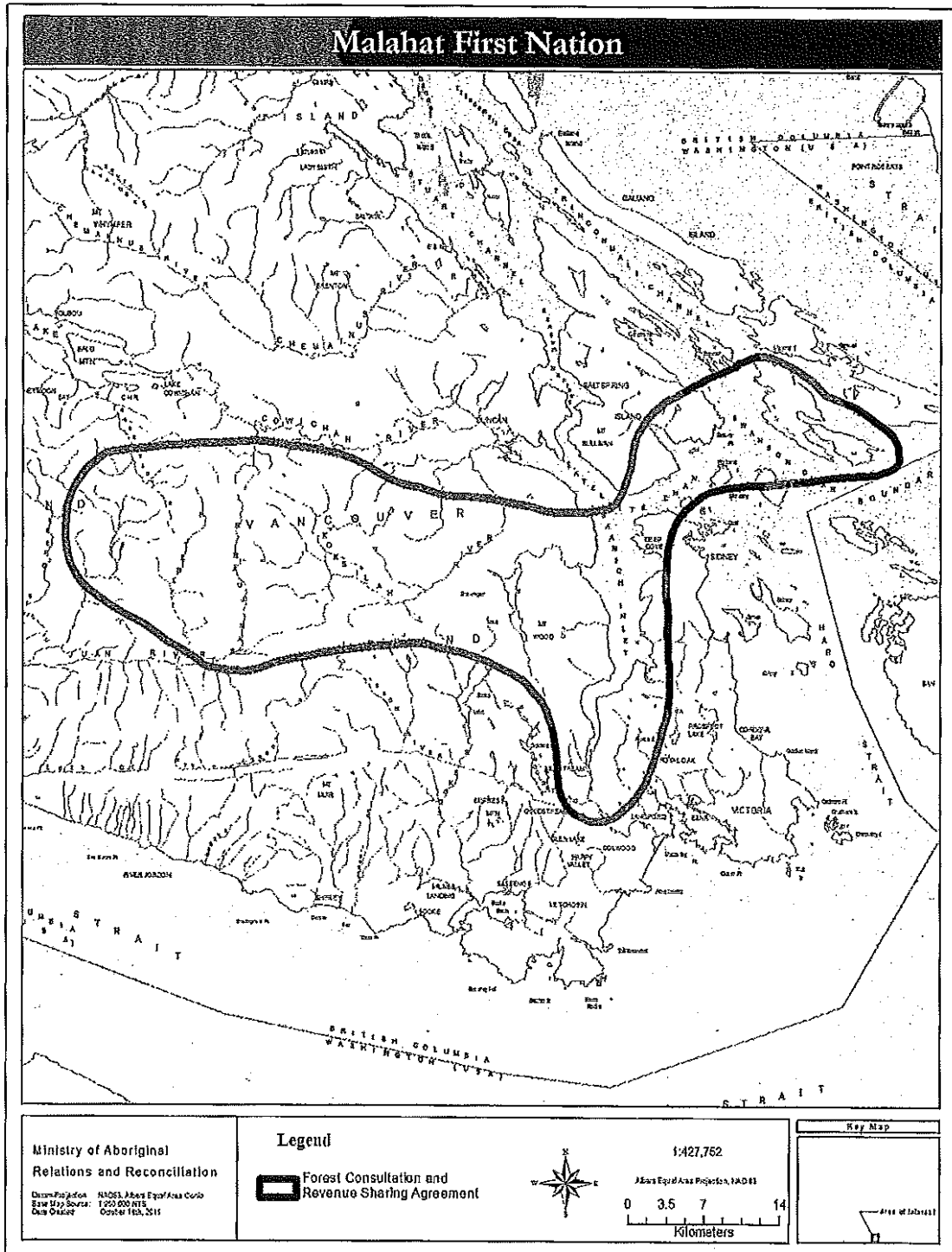
Date: Feb 27 2013

Steve Thomson
Steve Thomson
Minister of Forests, Lands, and Natural
Resource Operations

[Signature]
Witness of Minister signature

APPENDIX A

Map of Malahat First Nation Traditional Territory



APPENDIX B – Proposed Woodlot Licence Boundary

