

**Silver Star Park Tree Removal Agreement
(the "Agreement")**

**Between:
Okanagan Indian 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:

- At this time the Government of British Columbia is responding specifically to an economic interest expressed by Okanagan Indian Band by providing access to bark beetle damaged timber and rehabilitation for economic purposes as part of the of Silver Star Provincial Park Fire Hazard Reduction Process. The Okanagan Indian Band has expressed broader interests in the Silver Star Park area (map attached in Appendix B) – this agreement is not intended to address these broader interests.
- The Okanagan Indian Band have aboriginal interests within the interest area (map attached in Appendix A).
- This Agreement solely applies specifically to Okanagan Indian Band's asserted economic interest in participating in tree removal and rehabilitation operations under the Silver Star Provincial Park Fire Hazard Reduction Process within Silver Star Provincial Park in the asserted territory of Okanagan Nation outlined in Appendix A, and only for the period of this Agreement.
- The Ministry of Water, Land and Air Protection is responsible, under the *Park Act*, for the administration of Silver Star Provincial Park and the Ministry of Forests is responsible, under the *Forest Act*, for

the administration of any timber removed from the Park. The two agencies are working cooperatively, and in conjunction with the Okanagan Indian Band to address the increasing fire hazard in the Park due to the bark beetle infestation.

- The Ministry of Forests intends to issue forest tenures to remove beetle infested timber from Silver Star Provincial Park.

- This Agreement is approved by the ~~Ministry of Forests~~
~~Silver Star Provincial Park Fire Hazard Reduction Process~~

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 aboriginal rights and/or aboriginal title.
- 1.2 "Forest Tenure" means an agreement issued under the *Forest Act*.

2.0 Purpose:

2.1 The purposes of this Agreement are to:

- (a) Respond to Okanagan Indian Band's economic interest for access to forest tenures created as part of Silver Star Provincial Park Fire Hazard Reduction Process.
- (b) Ensure that measures are taken to reduce the fire hazard in Silver Star Provincial Park for the protection of resources within and adjacent to the Park.
- (c) To confirm that the Okanagan Indian Band will participate in the development and implementation of the of Silver Star Provincial Park Fire Hazard Reduction Process.

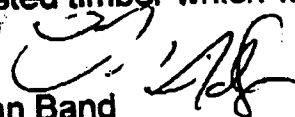
- (d) Agree to make every effort to jointly create and implement a meaningful and appropriate consultation process by which the Ministry of Forests will consult with the Okanagan Indian Band regarding their aboriginal interests on all tree removal and rehabilitation activities within Silver Star Provincial Park that the Ministry of Forests is responsible for.

3.0 Invitation to apply for a licence(s)

- 3.1 ~~After the execution of this Agreement by the parties, and the application and receipt by the Okanagan Indian Band, or its legal representative to the Regional Manager of Water Land and Air Protection for a Park Use Permit, the Minister may invite an application for one or more non-replaceable licence(s) (the "licence(s)")~~ under the Forest Act for volumes specified in section 4(b), within Silver Star Provincial Park - in an area agreed to by the District Manager. If the intended holder of the licence(s) is legal entity other than the Okanagan Indian Band, this Agreement must include supporting documentation as specified in Appendix C stating that the intended holder has been appointed by the Okanagan Indian Band as its representative and that the Okanagan Indian Band holds the controlling interest in the legal entity. The Okanagan Indian Band will copy this application to the Regional Manager of the Southern Interior Forest Region.
- 3.2 An invitation to apply for a licence(s) 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.
- 3.3 An invitation to apply under this Agreement will contain terms and conditions required by the Minister and the Regional Manager.
- 3.4 A licence entered into as a result of an invitation to apply under this Agreement.

- (a) will be for a term of ~~no longer than 3 years~~, as determined by the Minister, unless otherwise extended by mutual agreement;
- (b) ~~will only apply to beetle infested timber and timber required to be felled to access the beetle infested timber;~~
- (c) Will include requirements to rehabilitate areas of tree removal after operations are complete;
- (d) will not be transferable or divisible without the consent of the Minister;
- (e) will not be replaceable;
- (f) will not guarantee timber rights to a particular species or grade of timber;
- (g) will contain other terms and conditions required by law, including the condition that the Okanagan Indian Band, or its legal entity, must comply with this Agreement;
- (h) will include other terms and conditions as may be required by the Regional Manager.

4.0 Requests for a Tree Removal Tenure

- (a) ~~Upon signing this Agreement and receipt of a Park Use Permit from the Regional Manager of Water Land and Air Protection, and an invitation from the Minister of Forests, the Okanagan Indian Band, or its legal entity, will make a request for tenure to the Minister who will make a determination and may then make an invitation for tenure in accordance with the *Forest Act*,~~
- (b) The anticipated volume of beetle infested timber which will be eligible for invitation is ~~45,000 m³~~ 
- (c) Subject to 2.1 (d) the Okanagan Indian Band acknowledges that the Ministry of Forests may also award tenures to other licensees as part of the of Silver Star Provincial Park Fire Hazard Reduction Process. In the

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absence of a process under 2.1 (d), the Ministry of Forests will provide all available information regarding a proposed operation and provide a 60 day period for review and discussion.

- (d) The award of any tenure within Silver Star Provincial Park to another First Nation by the Minister of Forests does not constitute an admission by the Okanagan Indian Band or the Okanagan Nation/ tribal Council of the existence of an aboriginal title or right interest by any other First Nation.

5.0 Dispute Resolution

- 5.1 In the event of a dispute arising under this Agreement, or related to tree removal operations in Silver Star Provincial Park within the term of this Agreement, the Parties will endeavour to define the dispute and resolve it within fifteen (15) working days.
- 5.2 If the dispute cannot be resolved by the Parties directly, they may appoint an independent and mutually agreeable mediator to resolve the dispute within 30 days, or such period as may be otherwise agreed upon.
- 5.3 Nothing in Section 5 will prevent either party from resorting to legal remedies at any time to resolve disputes. However the parties agree the preference is to complete section 5.1 and section 5.2 before resorting to other remedies.
- 5.4 The cost of mediation will be equally shared by both parties.

6.0 Amendment

Any alteration or amendment to the terms and conditions of this Agreement must be in writing and duly executed by both parties.

7.0 Entire Agreement

This Agreement and any amendments to it constitute the entire agreement between the parties with respect to the subject matter of this Agreement.

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8.0 Term

This Agreement will take effect on the date that it has been executed by the Parties.

This Agreement will terminate on the occurrence of the earliest of the following events:

- (a) ~~Three~~(3) years from date of signing; or
- (b) The date on which this Agreement is superceded by a broader agreement addressing the reconciliation of Okanagan Indian Band and/or Okanagan Nation interests regarding Park management and/or other Crown authorized land or resource activity; or
- (c) Written notice of withdrawal to the Agreement by either Party which will take effect 90 days following the receipt of the notice by the other Party; or
- (d) The mutual agreement of both Parties to a particular termination date.

9.0 Suspension or Cancellation of Licence

Without limiting the actions that may be taken by the Minister or by the Government of British Columbia, and in accordance with Sections 76 and 77 of the Forest Act, the Regional Manager or District Manager may suspend or cancel the licence entered into as a result of the invitation to apply under this Agreement if it is determined that the Okanagan Indian Band, or its legal entity, is not in compliance with this Agreement or if this Agreement is terminated under section 8.0. The Minister will provide Okanagan Indian Band, or its legal entity, thirty (30) days prior written notice of the intent to cancel. The notice will include a description of the perceived breach and a proposed remedy.

10.0 Notice

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 paragraph of the Agreement.

British Columbia

**Deputy Minister
Ministry of Forests
P.O. Box 9525 STN PROV
GOVT
Victoria B.C. V8W 9C3
Facsimile (250) 387-7065**

Okanagan Indian Band

**Chief Lyle Brewer
S-8, C-20, RR#7
Vernon, B.C. V1T 7Z3**

Facsimile (250) 542-4990

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.

11.0 Counterpart

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.

12.0 Miscellaneous

12.1 Nothing in this Agreement shall be interpreted in a manner that requires the Government of British Columbia to act in a manner

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inconsistent with provincial or federal law, or that fetters the statutory discretion of any government decision-maker.

- 12.2 This Agreement is not a treaty or a land claim agreement within the meaning of section 25 and 35 of the *Constitution Act*, 1982 and does not recognise, affirm, limit, or deny the existence of aboriginal rights including aboriginal title, or treaty rights.
- 12.3 This agreement will not limit the ability of the Okanagan Indian Band to enter into a future agreement with the Government of British Columbia.
- 12.4 This Agreement will not limit the positions that the parties may take in future negotiations or court actions, other than with respect to the matters addressed in this Agreement.
- 12.5 Any reference to a statute in this Agreement includes all regulations made under that statute and any amendments or replacement of that statute.
- 12.6 There will be no presumption that any ambiguity in any of the terms of this Agreement should be interpreted in favour of any party.
- 12.7 After the completion of obligations pursuant to each licence issued under this Agreement, or at any other time agreed to by the parties, a review involving both parties to this agreement will be held to determine the level of economic opportunities that have been available to each First Nation involved in tree removal and rehabilitation activities under the Silver Star Provincial Park Fire Hazard Reduction Process. This information may be used in the allocation of further opportunities under that process.
- 12.8 This Agreement shall be governed by the applicable laws of British Columbia and Canada.
- 12.9 The parties will make every effort to develop and conduct joint media communications if statements are to be made to the media concerning the Agreement of the licences that result from it.

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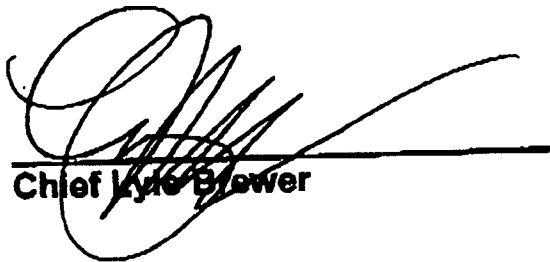
13.0 WITHOUT PREJUDICE

Nothing in the agreement is intended to define, create, limit, deny the existence of or cause the extinguishment of aboriginal title or any right of the Okanagan Indian Band, and of the Okanagan Nation

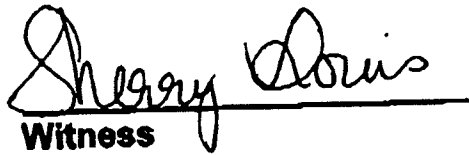
This agreement is dated for reference January 29, 2004

Signed on behalf of
Okanagan Indian Band

Date: Feb 20, 2004



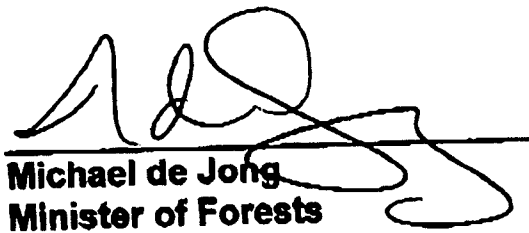
Chief Kyle Brower



Witness

Signed on behalf of:
Government of British Columbia

Date: March 30, 2004



Michael de Jong
Minister of Forests

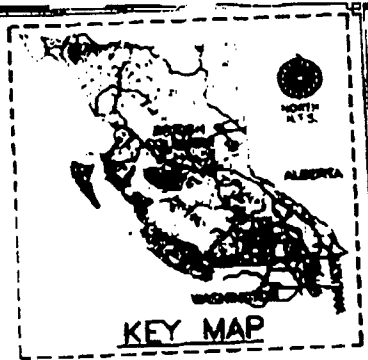
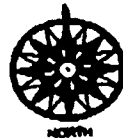
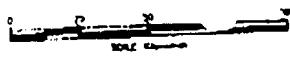


Witness

APPENDIX "A"

The Asserted Traditional Territory of the Okanagan Nation

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- LEGEND:**
- LAKES/RIVERS
 - HIGHWAYS
 - RAILWAYS
 - MUNICIPALITIES
 - RESERVE BOUNDARIES

**OKANAGAN NATION
TERRITORY**
(compiled: August 12, 1998)



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APPENDIX "B"
Silver Star Provincial Park

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APPENDIX "C"
**Description and Documentation pertaining to the Intended Holder
of the Forestry Licences to Cut (FLTC)**

Please complete part A or B, whichever is appropriate, and attach appropriate documentation:

A) Applicant for the FLTC

OKANAGAN INDIAN BAND

B) Full legal name, or corporate description of the legal entity, authorized to represent the Applicant of the FLTC :

OKANAGAN BAND DEVELOPMENT CORPORATION

- (i) Copy attached of legal instrument (letter) authorizing that the legal entity to be their representative;
- (ii) Copy attached of the ownership structure of the legal entity (the intended holder of the licence); and,
- (iii) Copy of verification that the applicant has the controlling interest in that legal entity.

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