

**Lheidli T'enneh First Nation
Interim Agreement on Forest & Range Opportunities
(the "Agreement")**

**Between:
The Lheidli T'enneh First Nation**

As represented by
Chief and Council
(the "Lheidli T'enneh First Nation")

And

**Her Majesty the Queen in Right of the Province of British Columbia
As represented by the Minister of Forests and Range
("British Columbia")**

(collectively the "Parties")

WHEREAS:

- A. British Columbia and First Nations Leadership Council, representing the Assembly of First Nations-BC Region, First Nations Summit, and Union of BC Indian Chiefs ("Leadership Council") have entered into a New Relationship in which they are committed to reconciliation of Aboriginal and Crown titles and jurisdiction, and have agreed to implement a government-to-government relationship based on respect, recognition and accommodation of Aboriginal title and rights.
- B. This Agreement is in the spirit and vision of the "New Relationship".
- C. Work is underway regarding the implementation of the New Relationship and that this Agreement may need to be amended in the future to reflect the outcomes of that work.
- D. The Lheidli T'enneh First Nation has a relationship to the land that is important to its culture and the maintenance of its community, governance and economy.
- E. The Lheidli T'enneh First Nation has Aboriginal Interests within its Traditional Territory.

- F. The Parties wish to enter into an interim measures agreement in relation to forest and/or range resource development within the Traditional Territory.
- G. References in this Agreement to Crown Lands are without prejudice to the Lheidli T'enneh First Nation's Aboriginal title and/or rights claims over those lands.
- H. British Columbia intends to consult and to seek an Interim Accommodation with the Lheidli T'enneh First Nation on forest and/or range resource development activities proposed within the Lheidli T'enneh First Nation Traditional Territory that may lead to the infringement of the Lheidli T'enneh First Nation's Aboriginal Interests.
- I. The Lheidli T'enneh First Nation intends to participate in any consultation with British Columbia or a Licensee, in relation to forest and/or range resource development activities proposed within the Lheidli T'enneh First Nation's Traditional Territory, that may lead to an infringement of the Lheidli T'enneh First Nation's Aboriginal Interests.
- J. British Columbia and the Lheidli T'enneh First Nation wish to resolve issues relating to forest and/or range resource development where possible through negotiation as opposed to litigation.
- K. The Parties entered into *The Interim Measures Agreement (IMA)* on March 3, 2003 and the Parties have agreed to enter into this Agreement which serves to terminate the IMA by agreement of the Parties, with the intention that this Agreement replaces the IMA.

THEREFORE THE PARTIES AGREE AS FOLLOWS:

1.0 Definitions

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

- 1.1 "Operational Decision" means a decision that is made by a person with respect to the statutory approval of an Operational Plan that has potential effect in the Lheidli T'enneh First Nation's Traditional Territory.
- 1.2 "Operational Plan" means a Forest Development Plan, Forest Stewardship Plan, Woodlot Licence Plan, a Range Use Plan, or Range Stewardship Plan that has a potential effect in the Lheidli T'enneh First Nation's Traditional Territory.

- 1.3 "Aboriginal Interests" means aboriginal rights and/or aboriginal title.
- 1.4 "Administrative Decision" means one or more of the following decisions made by a person under forestry legislation.
- The making, varying, or postponing of Allowable Annual Cut determinations (AAC) for a Timber Supply Area or a Forest Tenure
 - The issuance, consolidation, subdivision, amendment or boundary adjustment of a Forest Tenure or a Range Tenure;
 - The adjustment of Animal Unit Months in a Range Tenure;
 - The extension of the term of, or replacement of a Forest and/or Range Tenure;
 - The disposition of volumes of timber arising from undercut decisions on a Forest Tenure;
 - The conversion of a Forest Tenure to a different form of Forest Tenure;
 - The reallocation of harvesting rights as a result of the implementation of the *Forestry Revitalization Act*.;
 - The issuance of a Special Use Permit;
 - The decision regarding approval or extension of a Tree Farm Licence Management Plan, Community Forest Management Plan and/or Woodlot Licence Management Plan;
 - The deletion or addition of provincial forest;
 - The transfer of AAC between Timber Supply Areas;
 - The removal of private land from a Woodlot Licence or a Tree Farm Licence; and
 - The establishment of an interpretive forest site, recreation site, and recreation trail.
- 1.5 "Forest Tenure" means an agreement granting rights to harvest Crown timber as defined in the *Forest Act*.
- 1.6 "Range Tenure" means an agreement granting rights over Crown range as defined in the *Range Act*.
- 1.7 "Traditional Territory" means the Lheidli T'enneh First Nation's Traditional Territory as shown on bold black on the map attached in Appendix A.
- 1.8 "Licensee" means a holder of a Forest Tenure or a Range Tenure.
- 1.9 "Interim Accommodation" means an accommodation provided in this Agreement, of the potential infringements of the economic component of the Lheidli T'enneh First Nation's Aboriginal Interests arising from or as a result of forest and range development, prior to

the full reconciliation of these Interests. The revenue component reflects the present budget limitations of the Minister of Forests and Range. It is acknowledged that other accommodations, including economic accommodations, may be jointly developed by the Parties during the term of this Agreement.

2.0 Purpose and Objectives

The purposes and objectives of this Agreement are to:

- 2.1 Create viable economic opportunities and to assist in the improvement of social conditions of the Lheidli T'enneh First Nation through economic diversification.
- 2.2 Provide interim payment and other economic benefits to the Lheidli T'enneh First Nation through a forest tenure opportunity and/or economic benefits related to forestry received by British Columbia from forest resource development.
- 2.3 Address consultation and provide Interim Accommodation, as set out in this Agreement.
- 2.4 Provide a period of stability to forest and/or range resource development on Crown lands within the Traditional Territory of the Lheidli T'enneh First Nation during the term of this Agreement, while longer term interests are addressed through other agreements or processes.

3.0 Economic Benefits to the Lheidli T'enneh First Nation

During the term of this Agreement, British Columbia will provide one or more of the following economic benefits to the Lheidli T'enneh First Nation:

3.1 Forest Tenure

- 3.1.1 For the purposes of the provisions of section 3.1, Licence includes a non-replaceable Forest Licence.

- 3.1.2 After the execution of this Agreement by the Parties, the Minister of Forests and Range will invite the Lheidli T'enneh First Nation, or such legal entity as the Lheidli T'enneh First Nation has appointed as its representative to hold the licence to apply under the *Forest Act* for a non-replaceable forest licence (the "Licence") on a non-competitive basis for up to 245 000 cubic meters annually in the Prince George Timber Supply Area. It is recognized by the Parties that this opportunity, determined on the basis of temporary mountain pine beetle uplifts, may not be available for the purpose of any subsequent agreements.
- 3.1.3 For greater certainty, the maximum volume that may be available under the Licence referred to in section 3.1 will be up to 1 225 000 cubic meters over five years.
- 3.1.4 The Parties will strive to ensure that the assigned operating area for the Licence in the Lheidli T'enneh Timber Supply Area has a representative timber profile and logging chance relative to other licensees and BC Timber Sales, taking into account the quality of timber, access and commercial viability. Prior to the Lheidli T'enneh First Nation making an application for the Licence, the Parties will work together to identify the location of an operating area for the Licence, which to the extent that it is operationally feasible will be within the Traditional Territory.
- 3.1.5 Licence entered into as a result of an invitation under section 3.1 will be for a term of five years.
- 3.1.6 The Lheidli T'enneh have agreed that should the effective date of a treaty between Lheidli T'enneh, Canada and British Columbia occur during the term of this Agreement the invitation for a replaceable forest licence resulting from the effective date of a treaty would occur in the fifth year of the Licence referred to under section 3.1.2, to accommodate harvesting on the replaceable forest licence immediately following the expiry of the Licence.
- 3.1.7 If the Licence remains in effect beyond the term of this Agreement, the Licence will continue to be considered by the Parties to be Interim Accommodation until the Licence expires or is terminated.

3.1.8 The Minister may invite the Lheidli T'enneh First Nation to apply for a subsequent Licence under the *Forest Act* for a term that would commence after the expiry of this Agreement.

3.2 Interim Payment

3.2.1 During the term of this Agreement, British Columbia will make an interim payment to the Lheidli T'enneh First Nation of approximately \$152, 375 annually.

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 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 Pursuant to section 3.2.1 and upon signing of this Agreement, the Lheidli T'enneh First Nation will be paid the full revenues for the first years (\$152,375). Subsequent payments will be made at the end of each quarter starting with the quarter October 1, 2007 to December 31, 2007.

3.2.5 In addition to section 3.2.1, and in recognition that Lheidli T'enneh First Nation is in advanced Stage 5 Final Treaty Agreement negotiations, British Columbia will pay to Lheidli T'enneh First Nation a one-time payment of \$ 152, 375 upon signing this Agreement.

3.2.6 In the circumstances that the Lheidli T'enneh provides notice under section 6.3.2 to terminate the Agreement, and the termination date is after July 1, 2006 but prior to October 1, 2007, the Lheidli T'enneh agrees to reimburse the Government of British Columbia an amount equivalent to the total of the payment they have received under section 3.2.4 minus the amount calculated under section 3.2.6 for the period of time between July 1, 2006 and the date the Agreement is terminated.

3.2.7 For the purposes of determining the amount that the Lheidli T'enneh will reimburse to the Government of British Columbia under section 3.2.6, the amount will be determined by calculating the number of days between July 1, 2006 and

the termination date, determining the percentage of the fiscal year that those days represent, converting that percentage into a dollar amount and deducting that dollar amount from the payment received by the Lheidli T'enneh under section 3.2.4

3.2.8 British Columbia will not seek to direct or influence the expenditure of the funds provided to the Lheidli T'enneh First Nation.

4.0 Consultation and Accommodation Regarding Operational and Administrative Decisions and Plans

- 4.1 The Lheidli T'enneh First Nation is entitled to full consultation with respect to all potential infringements of their Aboriginal Interests arising from any Operational or Administrative Decisions or Plans affecting the Lheidli T'enneh First Nation's Aboriginal Interests, regardless of benefits provided under this Agreement.
- 4.2 During the term of this Agreement, and subject to the terms and the intent of this Agreement being met and adherence by British Columbia, the Lheidli T'enneh First Nation agrees that British Columbia will have provided an Interim Accommodation with respect to the economic component of potential infringements of the Lheidli T'enneh First Nation's Aboriginal Interests as an interim measure as a result of forest activities occurring within their Traditional Territory.
- 4.3 The interim payment set out in this Agreement reflects an amount that British Columbia, through the Minister of Forests and Range is able to pay as an interim measure, which the Lheidli T'enneh First Nation has agreed to accept.
- 4.4 The Province acknowledges that the timber opportunities and funding provided through this Agreement are an interim accommodation only and that broader processes are underway that will assist in determining the appropriate accommodation in respect of impacts on the Lheidli T'enneh First Nation's Aboriginal Interests as a result of forest activities occurring within their Traditional Territory.
- 4.5 Nothing in this Agreement restricts the ability of Lheidli T'enneh First Nation to seek additional accommodation for impacts on its Aboriginal Interests from forest resource development within its Traditional Territory.

- 4.6 The Parties agree to develop consultation processes to address both Operational and Administrative Decisions and Operational Plans which may affect the Lheidli T'enneh First Nation's Aboriginal Interests within their Traditional Territory.
- 4.7 In developing such consultation processes, the Parties further agree to address consultation on Administrative Decisions, Operational Decisions and Operational Plans through participation of the Lheidli T'enneh First Nation in strategic level planning and policy development processes.
- 4.8 Unless agreed to otherwise, the Parties will use every reasonable effort to agree upon a consultation process within 3 months of signing this Agreement and, in helping to achieve this, will endeavour to develop draft processes to govern consultation under this Agreement within 45 days after signing this Agreement.
- 4.9 Where Lheidli T'enneh First Nation is a member of a larger Tribal Nation, this Agreement does not limit the obligation of British Columbia to fulfil its consultation obligations with the Tribal Nation.

5.0 Dispute Resolution

- 5.1 If a dispute arises between British Columbia and the Lheidli T'enneh First Nation 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 British Columbia and the Lheidli T'enneh First Nation.
- 5.3 If the interpretation dispute cannot be resolved by the Parties directly, they may appoint an independent and mutually agreeable mediator to resolve that dispute within 60 days, or such period as agreed upon, or the Parties may choose other appropriate approaches to assist in reaching resolution of the interpretation issue.

6.0 Term and Termination

- 6.1 The term of this Agreement is five years.

- 6.2 This Agreement will take effect on the date on which the last Party has executed it.
- 6.3 This Agreement, including the interim payment pursuant to section 3.2 will terminate on the occurrence of the earliest of any of the following events:
 - 6.3.1 The expiry of its term;
 - 6.3.2 90 days notice by one Party to the other Party; or
 - 6.3.3 The mutual agreement of the Parties
- 6.4 Neither Party shall terminate this Agreement on the grounds that the other Party has challenged an Administrative or Operational Decision by way of legal proceedings.
- 6.5 Prior to the expiry of the 90 days when 90 day notice of termination has been given under section 6.3.2, the Parties agree to meet and endeavour to resolve the issue that has given rise to the 90 day notice of termination.

7.0 Renewal of the Agreement

- 7.1 Prior to the expiry of the term of this Agreement, if the terms and conditions of this Agreement are being met, British Columbia and the Lheidli T'enneh First Nation will seek the necessary authorities and approvals to enter into negotiations to renew this Agreement, or to conclude a new forestry agreement, consistent with the New Relationship.
- 7.2 Any subsequent forestry agreement between British Columbia and the Lheidli T'enneh First Nation may provide for an opportunity to acquire a licence, other forest tenures, and/or other economic benefits, as well as other terms and conditions that are agreed to by the Parties.

8.0 Amendment of Agreement

- 8.1 Any alteration or amendment to the terms and conditions of the Agreement must be in writing and duly executed by the Parties.
- 8.2 Either Party may request the participation of the other Party to review the effectiveness of this Agreement annually and consider amendments to this Agreement.

- 8.3 The Parties agree that new approaches for consultation and accommodation, including benefit and revenue sharing, will be developed as a priority under the New Relationship by British Columbia and the Leadership Council. The Lheidli T'enneh First Nation may choose to opt into such approaches as they become available, through amendment of this Agreement or other mutually agreeable methods.

9.0 Entire Agreement

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

10.0 Notice

- 10.1 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.
- 10.2 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.

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- 10.2 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.
- 10.3 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 and Range
P.O. Box 9525 STN PROV GOVT
Victoria B.C.
V8W 9C3
Telephone (250) 356-5012
Facsimile (250) 953-3687

Lheidli T'enneh First Nation:

Chief and Council
Lheidli T'enneh First Nation
1041 Whenun Road
Prince George, B.C.
V2K 5X8
Telephone (250) 963-8451
Facsimile: (250) 963-6954

11.0 Miscellaneous

- 11.1** This Agreement shall be interpreted in a manner consistent with provincial, federal and constitutional law.
- 11.2** 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 aboriginal rights, or limit any priorities afforded to aboriginal rights, including aboriginal title.
- 11.3** This Agreement does not address or prejudice conflicting interests or competing claims between First Nations.
- 11.4** This Agreement will not limit the positions that a Party may take in future negotiations or court actions.
- 11.5** The Province acknowledges and enters into this Agreement on the basis that the Lheidli T'enneh First Nation has Aboriginal Interests within their Traditional Territory and further that the specific nature, scope or geographic extent of Aboriginal Interests of the Lheidli T'enneh First Nation have not yet been determined. Broader processes engaged in to bring about reconciliation will result in a common understanding of the nature, scope and geographic extent of Aboriginal Interests or treaty interests of the Lheidli T'enneh First Nation.
- 11.6** Nothing in this Agreement shall be interpreted to authorize any infringement that may occur following the termination of this Agreement, even if that infringement is caused by a decision that was made during the term of this Agreement.
- 11.7** This Agreement does not address or affect any claims by the Lheidli T'enneh First Nation regarding infringement of its Aboriginal Interests arising from past Operational or Administrative Decisions made previous to the signing of this Agreement,
- 11.8** This Agreement and any decisions and or Licenses issued during the term of this Agreement do not change or affect the positions either Party has, or may have, regarding jurisdiction and authorities.
- 11.9** 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.
- 11.10** There will be no presumption that any ambiguity in any of the terms of this Agreement should be interpreted in favour of either Party.

- 11.11 The applicable laws of British Columbia and Canada shall govern this Agreement.
- 11.12 British Columbia encourages Licensees to enter into mutually-beneficial arrangements with the Lheidli T'enneh First Nation.
- 11.13 This Agreement is not intended to limit any obligation of forest Licensees or other third parties to the Lheidli T'enneh First Nation.
- 11.14 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.
- 11.15 This Agreement does not exclude the Lheidli T'enneh First Nation from accessing forestry economic opportunities and benefits, which may be available, other than those expressly set out in this Agreement.

12.0 Giving Effect to the New Relationship

- 12.1 Notwithstanding this agreement, the Parties will, at the request of the Lheidli T'enneh First Nation, enter into discussions, and may negotiate interim agreements in relation to forestry, range and related planning that give effect to the New Relationship, which may include, but are not limited to the following components:
- (a) a process for shared decision making about the land and resources;
 - (b) new mechanisms for land and resource protection;
 - (c) a process for the Lheidli T'enneh First Nation's land use planning at all spatial scales and for reconciliation of Crown and the Lheidli T'enneh First Nation's plans;
 - (d) dispute resolution processes which are mutually determined for resolving conflicts rather than adversarial approaches to resolving conflicts;
 - (e) financial capacity for the Lheidli T'enneh First Nation and resourcing for British Columbia to develop and implement

new frameworks for shared land and resource decision making and other components listed above;

- (f) on a priority basis, interim protection for landscapes, watersheds and/or sites identified by the Lheidli T'enneh First Nation to be reserved from resource development pending the outcome of negotiation of agreements referred to in a-e above; and
- (g) Mountain Pine Beetle infestation in Lheidli T'enneh First Nation's Traditional Territory

12.2 The Parties acknowledge that there are broader processes underway with respect to the New Relationship which will benefit and, at times assist, the Parties in negotiating with respect to the issues set out in section 12.1 .

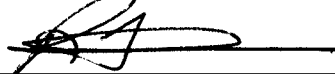
Signed on behalf of:

Lheidli T'enneh First Nation

Date: OCT 18/06



Chief Dominic Frederick

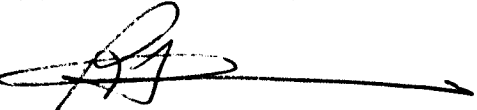


Witness

Signed on behalf of:

Government of British Columbia

Date: OCT 18/06



Rich Coleman
Minister of Forests and Range



Witness

APPENDIX A
Map of Lheidli T'enneh First Nation Traditional Territory

Appendix A
LHEIDLI TENNEH TRADITIONAL TERRITORY

