

TLA'AMIN NATION

**REASONABLE OPPORTUNITY
AGREEMENT**

**Tla'amin Nation
British Columbia**

TLA'AMIN REASONABLE OPPORTUNITY AGREEMENT

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THIS AGREEMENT made APR - 5 2016

BETWEEN:

HER MAJESTY THE QUEEN IN RIGHT OF THE PROVINCE OF BRITISH COLUMBIA, as represented by the Minister of Aboriginal Relations and Reconciliation

("British Columbia")

AND:

TLA'AMIN NATION, as represented by the Tla'amin Government

("Tla'amin Nation")

WHEREAS:

- A. Since time immemorial, the Tla'amin Nation has occupied its traditional territory and harvested the resources of the air, land and waters in accordance with Tla'amin *Ta'ow*;
- B. Tla'amin *Ta'ow* requires Tla'amin Nation to be stewards of their lands and resources and to ensure responsible, sustainable stewardship of lands, waters, air and other resources;
- C. Tla'amin *Ta'ow* includes the principle of *Tlo metsxw otl ma tuxw* which includes the concepts of only taking enough for current needs and always leaving enough for others and for future generations;
- D. Tla'amin Nation, Canada and British Columbia have entered into the Tla'amin Final Agreement;
- E. The Tla'amin Final Agreement provides that British Columbia may authorize the use or disposition of provincial Crown land provided that those authorized uses or dispositions do not deny the Tla'amin Nation the reasonable opportunity to harvest Fish and Aquatic Plants, Wildlife and Migratory Birds and to gather Plants within the areas identified in the Tla'amin Final Agreement;
- F. British Columbia and the Tla'amin Nation wish to ensure that the Tla'amin Nation continues to have a reasonable opportunity to exercise their right to harvest Fish and Aquatic Plants, Wildlife and Migratory Birds and to gather Plants within the areas identified in and as provided for by the Tla'amin Final Agreement;
- G. The Tla'amin Final Agreement provides that British Columbia and the Tla'amin Nation will, as required, negotiate and attempt to reach agreement on a process to evaluate the impact of authorized uses or dispositions of provincial Crown land on the Tla'amin

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Nation's reasonable opportunity to harvest Fish and Aquatic Plants, Wildlife and Migratory Birds and to gather Plants within the areas identified in the Tla'amin Final Agreement; and

- H. The Parties recognize that the management of Fish and Aquatic Plants, Wildlife, Migratory Birds and Plants is regional in nature, and understand that it may be necessary to work collaboratively with other First Nations and resource users within the same geographic region having regard to the Tla'amin Nation's right to harvest Fish and Aquatic Plants, Wildlife and Migratory Birds and to gather Plants under the Tla'amin Final Agreement.

NOW THEREFORE the Parties agree as follows:

1.0 DEFINITIONS AND INTERPRETATION

- 1.1 Words and expressions not defined in this Agreement but defined in the Tla'amin Final Agreement have the meanings ascribed to them in the Tla'amin Final Agreement.

- 1.2 In this Agreement:

"Agreement" means this reasonable opportunity agreement;

"Crown" means, for the purposes of this Agreement, Her Majesty the Queen in right of British Columbia;

"Parties" means, for the purposes of this Agreement, British Columbia and the Tla'amin Nation;

"Tla'amin Final Agreement" means the Tla'amin Final Agreement ratified by Tla'amin Nation, Canada and British Columbia, and includes any amendments from time to time;

"Tla'amin Fishing Area" means the "Tla'amin Fishing Area" defined in the Tla'amin Final Agreement and identified for illustrative purposes in Part 2 of Appendix N-1 and Part 2 of Appendix N-2 of the Tla'amin Final Agreement, and attached for reference as Schedule A to this Agreement;

"Tla'amin Plant Gathering Area" means the area set out in Appendix T of the Tla'amin Final Agreement, and attached for reference as Schedule B to this Agreement; and

"Wildlife and Migratory Birds Harvest Area" means the area identified as the "Wildlife and Migratory Birds Harvest Area" in Appendix P of the Tla'amin Final Agreement, and attached for reference as Schedule C to this Agreement, but does not include lands that are owned by Canada or lands that are administered or occupied by the Minister of National Defence, or areas temporarily being used for military training from the time that notice has been given to the Tla'amin Nation until the temporary use is completed.

- 1.3 There will be no presumption that doubtful expressions, terms or provisions of this

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Agreement are to be resolved in favour of either Party.

- 1.4 The interpretive conventions set out in paragraph 84 of the General Provisions Chapter of the Tla'amin Final Agreement will apply to this Agreement.

2.0 OBJECTIVES OF THIS AGREEMENT

- 2.1 The objectives of this Agreement are:

- a. to develop a collaborative process to evaluate and address, as required, the impact of authorized uses and dispositions of provincial Crown lands on the Tla'amin Nation's reasonable opportunity to exercise its rights under the Tla'amin Final Agreement to:
 - i. harvest Fish and Aquatic Plants within the Tla'amin Fishing Area;
 - ii. harvest Wildlife and Migratory Birds within the Wildlife and Migratory Birds Harvest Area; and
 - iii. gather Plants within the Tla'amin Plant Gathering Area; and
- b. to ensure that the process is flexible enough to address resource management concerns on a regional basis and to allow for the inclusion of other First Nations and resource users.

- 2.2 The Parties agree that the processes set out in this Agreement are the processes for the purpose of paragraph 13 of the Fisheries Chapter, paragraph 40 of the Wildlife Chapter, paragraph 35 of the Migratory Birds Chapter, and paragraph 34 of the Tla'amin Role Outside Tla'amin Lands Chapter of the Tla'amin Final Agreement.

3.0 GEOGRAPHIC AREAS SUBJECT TO THIS AGREEMENT

- 3.1 The geographic area subject to this Agreement will be the Tla'amin Fishing Area, the Wildlife and Migratory Birds Harvest Area and the Tla'amin Plant Gathering Area.
- 3.2 As part of the process envisioned in 2.1.a, the Parties may agree to consider specific geographic areas only, or remove geographic areas from consideration, for specific lengths of time.
- 3.3 As part of a broader discussion, the Parties may agree to consider impacts on a regional basis.
- 3.4 Any agreement under 3.2 or 3.3 will be in writing.

4.0 USE OF EXISTING LAND AND RESOURCE MANAGEMENT PROCESSES

- 4.1 For the purposes of evaluating the impact of authorized uses or dispositions of provincial Crown land on the Tla'amin Nation's reasonable opportunity to harvest Fish

and Aquatic Plants, Wildlife and Migratory Birds and to gather Plants within the areas identified in the Tla'amin Final Agreement, the Parties will, as appropriate, work with and consider information received through one or more of the following processes that may exist:

- a. the Joint Fisheries Committee;
- b. any provincial planning processes;
- c. any provincial land use planning processes;
- d. any environmental assessment processes;
- e. strategic engagement agreements or other similar agreements and processes; and
- f. other committees or processes as appropriate.

5.0 PROCESS FOR ASSESSING AND ADDRESSING IMPACTS

5.1 Either Party may notify the other Party if at any time:

- a. they have concerns about the Tla'amin Nation's reasonable opportunity to:
 - i. harvest Fish and Aquatic Plants within the Tla'amin Fishing Area;
 - ii. harvest Wildlife or Migratory Birds within the Wildlife and Migratory Birds Harvest Area; or
 - iii. gather Plants within the Tla'amin Plant Gathering Area; and
- b. those concerns have not been or could not be dealt with by one or more of the processes referred to in 4.1.

5.2 Upon receipt of notice under 5.1, the Parties will meet as soon as practicable to discuss the concern, assess it, and determine how to address it if necessary.

5.3 For the purposes of 5.2, the Parties will assess, with respect to each Tla'amin Nation right to harvest or gather in the areas identified in the Tla'amin Final Agreement:

- a. areas where the right may be exercised including preferred areas, traditional areas and areas in close proximity to Tla'amin Nation village sites;
- b. the over-all availability of Fish and Aquatic Plants, Wildlife, Migratory Birds and Plants within the applicable harvest or gathering areas referred to in 2.1(a);
- c. the ability to access geographic areas where the right may be exercised;

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- d. which authorized uses or dispositions of provincial Crown lands will be subject to evaluation; and
- e. other factors agreed to in writing by the Parties.

5.4 The Parties will work together to determine and implement any actions, including:

- a. monitoring;
- b. research;
- c. studies or assessments;
- d. sharing of databases and providing readily available information; and
- e. other initiatives that the Parties determine as necessary to monitor and evaluate the impacts and potential impacts on the Tla'amin Nation's harvesting and gathering rights.

6.0 MAJOR DISPOSITIONS

6.1 In addition to the processes referred to in 4.1 and 5.1, British Columbia will Consult with the Tla'amin Nation regarding the potential impact of proposed dispositions of provincial Crown lands on the Tla'amin Nation's right to harvest Fish and Aquatic Plants, Wildlife and Migratory Birds and to gather Plants where the proposed disposition is:

- a. within a specified area of the Tla'amin Fishing Area, the Wildlife and Migratory Birds Harvest Area or the Tla'amin Plant Gathering Area agreed to by the Parties in writing; or
- b. greater than 100 hectares.

7.0 ANNUAL REVIEW PROCESS

7.1 The Parties will meet once each calendar year to exchange information regarding proposed or planned uses or dispositions of provincial Crown land that may affect the Tla'amin Nation's right to harvest Fish and Aquatic Plants, Wildlife and Migratory Birds and to gather Plants under the Tla'amin Final Agreement.

7.2 The Parties may agree in writing to meet less frequently than the period set out in 7.1.

8.0 PROVINCIAL LINE AGENCIES

8.1 British Columbia will be responsible for ensuring the coordination and participation of any provincial line agencies whose participation is necessary to carry out this Agreement.

9.0 RESOURCING

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- 9.1 Each Party will fund their own participation in the process established under this Agreement.
- 9.2 The Parties may seek funding, from time to time, to support studies, monitoring, projects, or other initiatives that the Parties agree are necessary to meet process objectives.

10.0 TERM AND TERMINATION

- 10.1 This Agreement will take effect upon the latter of:
 - a. the Effective Date; or
 - b. the date that it is signed by the authorized signatories of the Parties.
- 10.2 This Agreement will remain in effect until it is terminated by:
 - a. mutual agreement of the Parties; or
 - b. one calendar year after the date which a Party notifies the other it wants this Agreement to terminate.

At least six months prior to the date that this Agreement is to terminate in accordance with a notice provided under (b) the Parties will negotiate and attempt to reach agreement on a new reasonable opportunity agreement.

11.0 AMENDMENT

- 11.1 The Parties agree to review this Agreement and its effectiveness from time to time as may be requested by either Party.
- 11.2 Any amendments to this Agreement will require the written consent of both Parties, and will take effect on the date designated in the amendment.

12.0 DISPUTE RESOLUTION

- 12.1 Where a dispute arises between the Parties regarding the interpretation of this Agreement, or any aspect of the process developed by the Parties, the Parties or their duly appointed representatives will meet as soon as is practicable to attempt to resolve the dispute.
- 12.2 Where a dispute is not resolved under paragraph 13.1, either Party may refer the matter to Stage Two under the Dispute Resolution Chapter in the Tla'amin Final Agreement.
- 12.3 Either Party may share with a person, who plans to or has made an application to British Columbia for an authorized use or disposition of provincial Crown land, information that has been provided by the other Party in the context of dispute resolution or otherwise

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under this Agreement, unless it is information to which paragraphs 66 – 70 of the General Provisions Chapter of the Tla'amin Final Agreement apply.

13.0 NO IMPLIED WAIVER

13.1 Any waiver of:

- a. a provision of this Agreement;
- b. the performance by a Party of an obligation under this Agreement; or
- c. a default by a Party of an obligation under this Agreement,

will be in writing and signed by the Party or Parties giving the waiver and will not be a waiver of any other provision, obligation or subsequent default.

14.0 SEVERABILITY

- 14.1 If any part of this Agreement is declared or held invalid for any reason, the invalidity of that part will not affect the validity of the remainder which will continue in full force and effect and be construed as if this Agreement had been executed without the invalid part.

15.0 NOT A TREATY OR LAND CLAIMS AGREEMENT

15.1 This Agreement:

- a. is not part of the Tla'amin Final Agreement; and
- b. is not a treaty or a land claims agreement, and does not recognize or affirm aboriginal or treaty rights, within the meaning of sections 25 and 35 of the *Constitution Act, 1982*.

16.0 ASSIGNMENT AND ENUREMENT

- 16.1 Unless otherwise agreed to by the Parties, this Agreement may not be assigned, either in whole or in part, by any Party.
- 16.2 This Agreement will enure to the benefit of and be binding upon the Parties and their respective permitted assigns.

17.0 NOTICES

- 17.1 The notice provisions set out in the Tla'amin Final Agreement apply to this Agreement.
- 17.2 If no other address for delivery of a particular communication has been provided by a Party, a communication will be delivered, transmitted to the fax number or mailed to the address, of the intended recipient as set out below:

For: **Tla'amin Nation**
Attention: Chief Administrative Officer
RR #2
Sliammon Road
Powell River, British Columbia V8A 4Z3
Fax: (604) 483-9769


18.1 This Agreement may be executed in counterparts and by facsimile. Each signature shall be deemed to be an original signature and all executed documents together shall constitute one and the same document.

EXECUTED in the presence of:

Y. (Edward Sem)
As to the authorized signatory for the
Minister of Aboriginal Relations and
Reconciliation

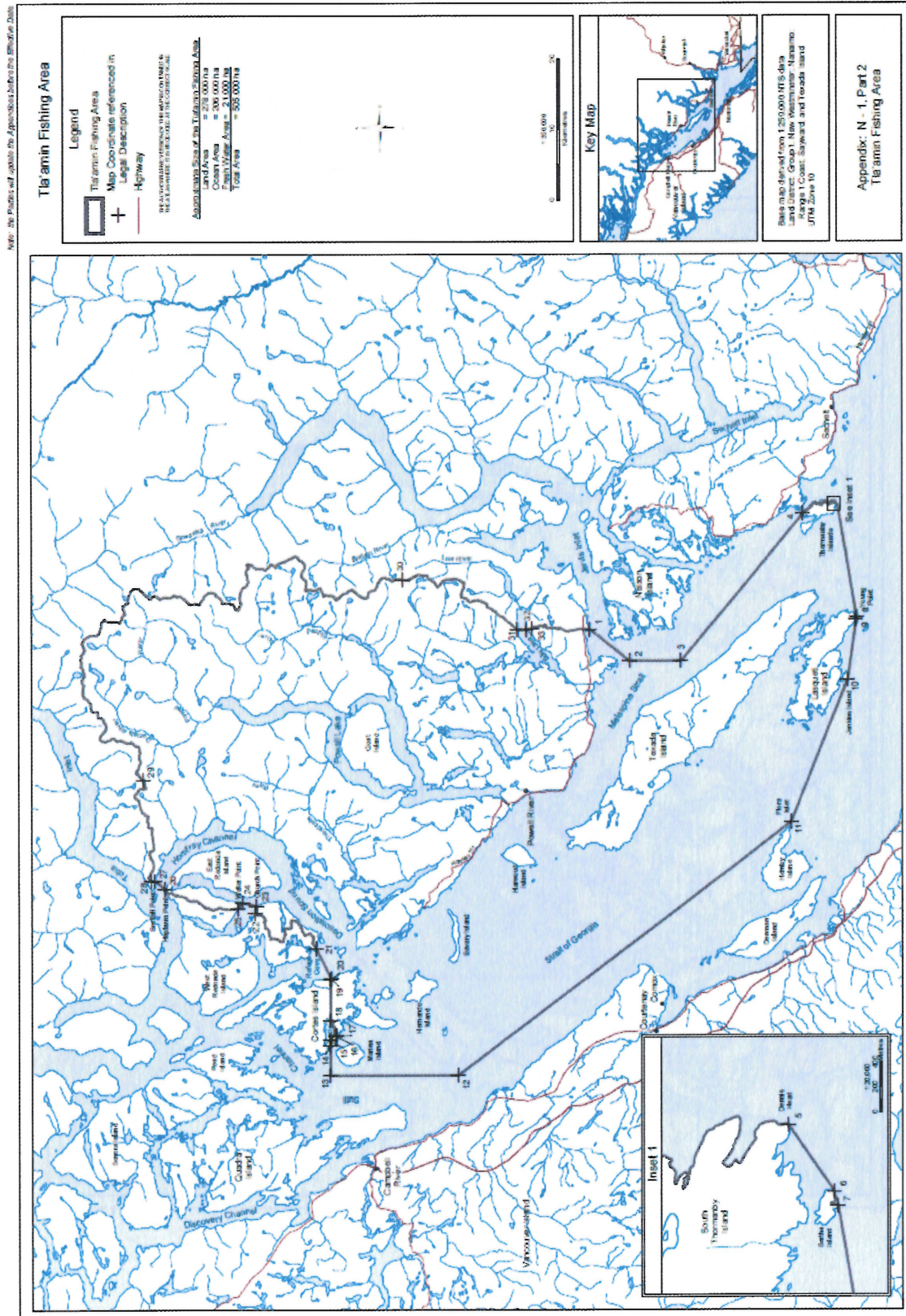
Per: John Rush duly authorized signatory

) TLA'AMIN NATION
) as represented by the Tla'amin Government
) or duly authorized signatory

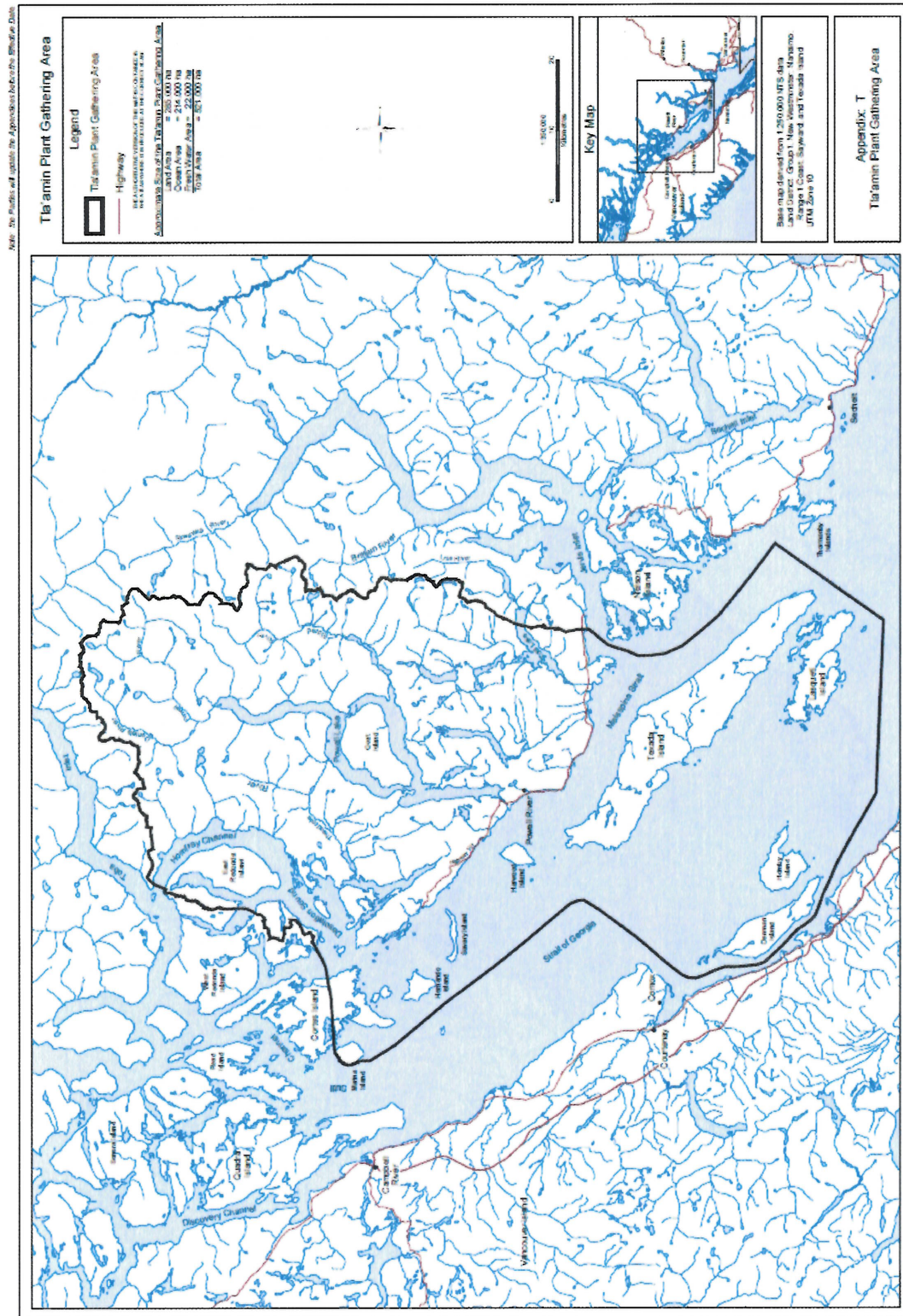

As to the authorized signatory for Tla'amin Nation

Per: 
duly authorized signatory

Schedule A – Tla'amin Fishing Area



Schedule B – Tla'amin Plant Gathering Area



Schedule C – Wildlife and Migratory Birds Harvest Area

