

**Tlowitsis Tribe Forest Agreement  
(the "Agreement")**

**Between:  
Tlowitsis Tribe**

As represented by  
Chief John M. Smith and Council  
(the "Tlowitsis ")

**And**

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

(collectively the "Parties")

**Whereas:**

- The Tlowitsis Tribe has Aboriginal Interests within its Traditional Territory.
- The Parties wish to enter into an interim measures agreement in relation to forest resource development activities and related economic benefits arising from this development within the Tlowitsis Tribe Traditional Territory.
- The Government of British Columbia intends to fulfil any responsibility it has to consult and to seek workable accommodation with the Tlowitsis Tribe on forest resource development activities proposed within the Traditional Territory that may lead to the infringement of the Tlowitsis Tribe's Aboriginal Interests.
- Tlowitsis Tribe agrees to participate in any consultation initiated by the Government of British Columbia or a Licensee, in relation to forest resource development activities proposed within the Traditional Territory that may lead to an infringement of Tlowitsis Tribe's Aboriginal Interests.
- The Parties have an interest in seeking workable interim accommodation of Tlowitsis Tribe's Aboriginal Interests where forest resource



development activities are proposed within the Traditional Territory that may lead to the infringement of Tlowitsis Tribe's Aboriginal Interests.

- The Government of British Columbia and the Tlowitsis Tribe wish to resolve issues relating to forest 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 boundary adjustment of a Forest Tenure where these events may have an impact on Aboriginal Interests;
  - the replacement or extension adjustment of a Forest Tenure;
  - the disposition of volumes of timber arising from undercut decisions on a Forest Tenure
  - the issuance of a special use permit;
  - the reallocation of harvesting rights as a result of the implementation of the *Forestry Revitalization Act*;
  - the decision regarding a tree farm licence management plan, community forest management plan and/or woodlot licence management plan;
  - the establishment of an interpretative forest site, recreation site and/or recreation trail;
  - the deletion of land from provincial forest; and
  - the transfer of AAC between TSAs.
- 1.4 "Forest Tenure" means an agreement granting rights to harvest Crown timber as defined in the *Forest Act*.



- 1.5 "Licensee" means a holder of a Forest Tenure or a Range Tenure.
- 1.6 "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, or a Woodlot Licence Plan, that has an effect in the Traditional Territory.
- 1.7 "Operational Plan" means a Forest Development Plan, Forest Stewardship Plan, or a Woodlot Licence Plan that has an effect in the Traditional Territory.
- 1.8 "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 Tlowitsis Tribe is notified of an Administrative Decision or Timber Supply Review process, or in the case of Operational Plan reviews, the date on which Tlowitsis Tribe 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.
- 1.9 "Traditional Territory" means the Tlowitsis Tribe'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 Tlowitsis Tribe's opportunity for participation in the forest sector.
- 2.2 Provide economic benefits to the Tlowitsis Tribe through forest tenure opportunities 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 interim workable accommodation as set out in this Agreement, with regard to any infringements of Tlowitsis Tribe's Aboriginal Interests that result from Administrative Decisions and/or Operational Decisions relating to forest resource development activities within the Traditional Territory, during the term of this Agreement.



- 2.4 Provide a period of stability to forest 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 Tlowitsis Tribe**

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 the Tlowitsis Tribe to address consultation and to provide interim workable accommodation, as set out in this Agreement, in respect of any infringements of Tlowitsis Tribe's Aboriginal Interests that result from Administrative Decisions and/or Operational Decisions relating to forest resource development activities within the Traditional Territory.

#### **3.1 Forest Tenure**

- 3.1.1 After the execution of this Agreement by the Parties, and after the Minister has determined that sufficient volume of timber is available for disposition to Tlowitsis Tribe as a result of the implementation of the *Forestry Revitalization Act*, the Minister will invite Tlowitsis Tribe to apply under section 47.3 of the *Forest Act* for a non-replaceable forest licence for up to 10,255 cubic metres annually in Tree Farm Licence 39 Block 2.
- 3.1.2 For greater certainty, the maximum volume that may be available under the licence referenced in 3.1.1 is up to 51,275 cubic meters over 5 years.
- 3.1.3 Any invitations to apply for a licence (an "invitation") and any licence entered into as a result of the invitations 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 Any invitations will be subject to a condition that prior to Tlowitsis Tribe making an application for the licence, the Tlowitsis Tribe will contact Ministry of Forests and Range to discuss and provide input to assist the Ministry of Forests and Range in identifying the operating area for the licences. If possible, the operating area will be within the Traditional Territory.



- 3.1.5 Any licences entered into as a result of any invitations to apply under Section 3.1 of this Agreement will:
- 3.1.5.1 be for a term of no longer than 5 years, as determined by the Minister;
  - 3.1.5.2 contain other terms and conditions required by law, including the condition that Tlowitsis Tribe must comply with this Agreement;
  - 3.1.5.3 include a clause that the licensee may not dispose of the licence or an interest in the licence except in accordance with Section 54(4) of the *Forest Act*; and,
  - 3.1.5.4 include other terms and conditions as may be required by the Regional Manager.

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 Tlowitsis Tribe's Aboriginal Interests, in any subsequent Forest Agreement between Tlowitsis Tribe 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 Tlowitsis Tribe 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 the Tlowitsis Tribe,

the Minister may invite Tlowitsis Tribe 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 the Tlowitsis Tribe approximately \$170,920 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 Upon signing of this Agreement, the Tlowitsis Tribe will be paid the full revenues for one year (\$170,920). Subsequent payments will be made at the end of each quarter starting at October 1, 2006.
- 3.2.4 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. Subject to 3.2.3, payments will be made quarterly.
- 3.2.5 Tlowitsis Tribe 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, Tlowitsis Tribe 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 Tlowitsis Tribe on Operational Plans that may potentially infringe Tlowitsis Tribe'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, Tlowitsis Tribe agrees that 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 Tlowitsis Tribe's Aboriginal Interests in the context of Operational Decisions that the Government of British Columbia will make and any forest practices that may be carried out under an Operational Plan in the Traditional Territory.



- 4.3 Tlowitsis Tribe 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. In reviewing and responding to an Operational Plan submitted to them, Tlowitsis Tribe 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 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.
- 4.4 Upon receiving the response from Tlowitsis Tribe as specified in Section 4.3, the Government of British Columbia and/or the Licensee will discuss and attempt to resolve with Tlowitsis Tribe any site specific operational impacts on Tlowitsis Tribe's Aboriginal Interests that may occur as a result of proposed forest 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.
- 4.5 If no response is received from Tlowitsis Tribe within the Response Period, then the Government of British Columbia may conclude that Tlowitsis Tribe 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.
- 4.6 In making a final decision on an Operational Plan, the Government of British Columbia will fully consider information it receives from Tlowitsis Tribe, whether received directly or through a Licensee, and will consider whether concerns identified by Tlowitsis Tribe have been addressed.

## **5.0 Consultation and Accommodation Respecting Administrative Decisions**

- 5.1 The Government of British Columbia will provide to Tlowitsis Tribe 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 Tlowitsis Tribe or when the Government of British Columbia becomes aware of other proposed Administrative Decisions, will provide to Tlowitsis Tribe an updated list.



- 5.2 The Government of British Columbia will meet with Tlowitsis Tribe at mutually agreed times throughout the year to provide an opportunity for Tlowitsis Tribe 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 Tlowitsis Tribe in public Timber Supply Review processes that will lead to AAC determinations made pursuant to Section 8 of the *Forest Act* for the Strathcona and Kingcome Timber Supply Areas and Tree Farm Licences 25, 39, and 47.
- 5.4 Tlowitsis Tribe 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 Tlowitsis Tribe, the statutory decision maker is of the opinion that an Administrative Decision creates a potential infringement of Tlowitsis Tribe'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 5.0 of this Agreement.
- 5.7 The Government of British Columbia will provide a response to Tlowitsis Tribe as to how their concerns raised in Section 5.2 have been addressed.
- 5.8 Tlowitsis Tribe 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 Tlowitsis Tribe's Aboriginal Interests resulting from Administrative Decisions made by statutory decision makers from time to time during the term of this Agreement.





- 5.9 Tlowitsis Tribe 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 Tlowitsis Tribe's Aboriginal Interests .

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

- 6.1 Tlowitsis Tribe will respond as soon as practicable 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 Tlowitsis Tribe members with provincially authorized activities related to forest resource development activities including timber harvesting or other forestry economic activities occur.

## **7.0 Dispute Resolution**

- 7.1 If a dispute arises between the Government of British Columbia and Tlowitsis Tribe 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.
- 7.2 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 Tlowitsis Tribe.
- 7.3 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;
  - 8.2.4 upon written notice of withdrawal from this Agreement by either Party, which will take effect 90 days following receipt of the notice by the other Party,
  - 8.2.5 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 and Range 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 Tlowitsis Tribe 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 Tlowitsis Tribe of any alleged contravention of this Agreement that may lead Tlowitsis Tribe being determined to not be in compliance with this Agreement.

A handwritten signature in black ink, located in the bottom right corner of the page. The signature is stylized and appears to be a first name followed by a last name, though the specific characters are not legible.

9.3 If, during the term of this Agreement, Tlowitsis Tribe 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 Tlowitsis Tribe's concerns and to provide an interim workable accommodation in respect of any potential infringements of Tlowitsis Tribe's Aboriginal Interests with regard to Administrative Decisions relating to forest resource development activities within the Traditional Territory, or

9.3.2 substantially address the economic component of Tlowitsis Tribe's Aboriginal Interests with regard to Operational Decisions relating to forest 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 Tlowitsis Tribe will seek the necessary authorities and approvals to renew this Agreement.

10.2 Any subsequent forestry agreement between the Government of British Columbia and Tlowitsis Tribe 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 the Tlowitsis Tribe 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.

#### **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 and Range  
P.O. Box 9525 STN PROV GOVT  
Victoria B.C. V8W 9C3  
Telephone (250) 387-3656  
Facsimile (250) 953-3687

## **Tlowitsis Tribe**

Chief John M. Smith  
Tlowitsis Tribe  
106 – 1434 Island Hwy  
141 Beach Street,  
Campbell River, B.C.  
V9W 8C9

Telephone: (250) 830-1708  
Facsimile: (250) 830-1709  
Email- Tlowi@island.net

### **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 This Agreement does not address or affect any claims by the Tlowitsis Tribe arising from past interference with its Aboriginal Interests or any future treaty settlement related to an aboriginal right and title claim.
- 14.6 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.
- 14.7 There will be no presumption that any ambiguity in any of the terms of this Agreement should be interpreted in favour of either Party.
- 14.8 The applicable laws of British Columbia and Canada shall govern this Agreement.
- 14.9 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:

Tlowitsis Tribe


November 16, 2005

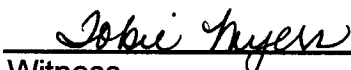
  
Chief John M. Smith

  
Witness *Ken Smith c.v.*

Signed on behalf of:

Government of British Columbia Date: Dec 7/05

  
Rich Coleman  
Minister of Forests and Range

  
Witness



## Appendix 'A'

