

**First Nations Wildfires 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:**

- The Okanagan Indian Band have aboriginal interests within the interest area map attached in Appendix A.
- This Agreement applies specifically to Okanagan Indian Band's asserted economic interest solely within the wildfire areas outlined in Appendix B, and only for the period of this Agreement.
- The Okanagan Timber Supply Area (TSA) Fire Timber Recovery Process (TRP) will manage the salvage of fire-killed timber in the Okanagan Mountain Park Fire, (fire number K50628) and the Cedar Hill Fire (fire number K40300), as depicted on the maps attached in Appendix B.
- This Agreement and the purposes outlined herein covers only the lands identified as part of the Okanagan TSA Fire Timber Recovery Process, specifically those lands contained within the Okanagan Mountain Park Fire and the Cedar Hill Fire.
- The Government of British Columbia is responding specifically to an economic interest expressed by Okanagan Indian Band by providing access to wildfire damaged timber and silviculture for economic purposes as part of the fire TRP in the Okanagan TSA.

- The Okanagan Indian Band is prepared to review the Forest/Range Agreement information (i.e. Forest Revitalization Plan).

**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 but not yet proven aboriginal rights and/or aboriginal title.
- 1.2 "Forest Tenure" means an agreement issued under the *Forest Act*.
- 1.3 "Operational Plan" means a Forest Development Plan, Forest Stewardship Plan, Tree Farm Licence Management Plan and Range Use Plan as defined in provincial legislation respecting forest or range practices and includes forest or range development activities that are carried out pursuant to those Plans.

## **2.0 Purpose:**

### **2.1 The purposes of this Agreement are to:**

- (a) Respond to Okanagan Indian Band's economic interest for access to tenures and silviculture contracts created as part of the fire TRP in the Okanagan TSA.
- (b) Agree to jointly create an expedited consultation process by which the Ministry of Forests will consult with the Okanagan Indian Band regarding their aboriginal interests on the harvesting and rehabilitation activities within the wildfire areas in a manner that will allow for the timely removal of timber and rehabilitation of wildfire areas.
- (c) To confirm that the Okanagan Indian Band will participate in the development and implementation of the fire TRP for the Okanagan TSA.

### **3.0 Invitation to apply for a licence(s)**

3.1 After the execution of this Agreement by the parties, the Minister or Regional Manager will invite an application for one or more non-replaceable licence(s) (the "license(s)") under the Forest Act (either non-replaceable forest licence or timber sale licence) for volumes specified, and not to exceed the volume(s) specified in section 4(b), within the Okanagan TSA - in an area agreed to by the District Manager. The Okanagan Indian Band will copy this application to the Regional Manager of the Southern Interior Forest Region who will advise the Minister in the determination.

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, and, more specifically:

3.2.1 this Agreement will be in accordance with Section 71 of the *Forest Practices Code of BC Act*, which provides an option to transfer the silviculture liability away from the license. There is also an option for the district manager to direct award up to \$50,000 of silviculture work on each of the two Fires covered by this Agreement to the Okanagan Indian Band per year of this Agreement.

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;
- (b) will only apply to fire-damaged timber and associated fireguard timber;
- (c) will not be transferable or divisible without the consent of the Minister;
- (d) will not be replaceable;

- (e) will not guarantee timber rights to a particular species or grade of timber;
- (f) will contain other terms and conditions required by law, including the condition that the Okanagan Indian Band must comply with this Agreement;
- (g) will include other terms and conditions as may be required by the regional manager.

#### **4.0 Requests for Wood for Economic Purposes**

- (a) Upon signing this Agreement the Okanagan Indian Band 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 total volume of fire salvage timber which will be eligible for invitation is outlined below by fire name:

Okanagan Mountain Park Fire: up to 75,000 cubic metres

Cedar Hill Fire: up to 25,000 cubic metres

- (c) The Okanagan Indian Band acknowledges that the Ministry of Forests will also be awarding additional wildfire salvage tenures to other licensees (other than First Nations) as part of the fire TRP.

#### **5.0 Dispute Resolution**

- 5.1 In the event of a dispute arising under 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 60 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.

## **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 interests with forest development 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.

## **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 is not in compliance with this Agreement or if this Agreement is terminated under section 8.0. The Minister will provide Okanagan Indian Band 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  
R.R. #7 S8 C20  
Vernon, British Columbia  
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.

This agreement is subject to final ratification by the Council for the Okanagan Indian Band.

## **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 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.
- 12.4 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.

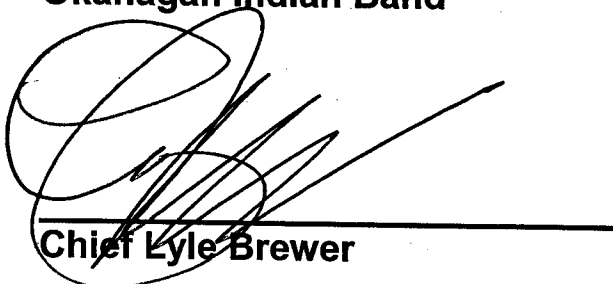
- 12.7 This Agreement shall be governed by the applicable laws of British Columbia and Canada.
- 12.8 Either Party will provide the other Party at least 24 hours notice prior to conducting media communications related to the agreement or licences which result from it. Efforts will be made by both Parties to conduct joint media communications.

### 13.0 WITHOUT PREJUDICE

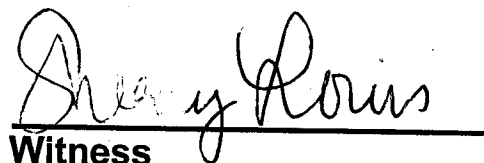
Nothing in the agreement is intended to define, create, limit, deny the existence of or cause the extinguishment of aboriginal title or any right of the Okanagan Indian Band or any member band of the Okanagan Nation, or of the Okanagan Nation.

This agreement is dated for reference November 21, 2003


Signed on behalf of  
**Okanagan Indian Band**

  
\_\_\_\_\_  
**Chief Lyle Brewer**

Date: 21 Nov, 2003

  
\_\_\_\_\_  
**Witness**

Signed on behalf of:  
**Government of British Columbia**

  
\_\_\_\_\_  
**Michael de Jong**  
**Minister of Forests**

Date: Dec. 4, 2003

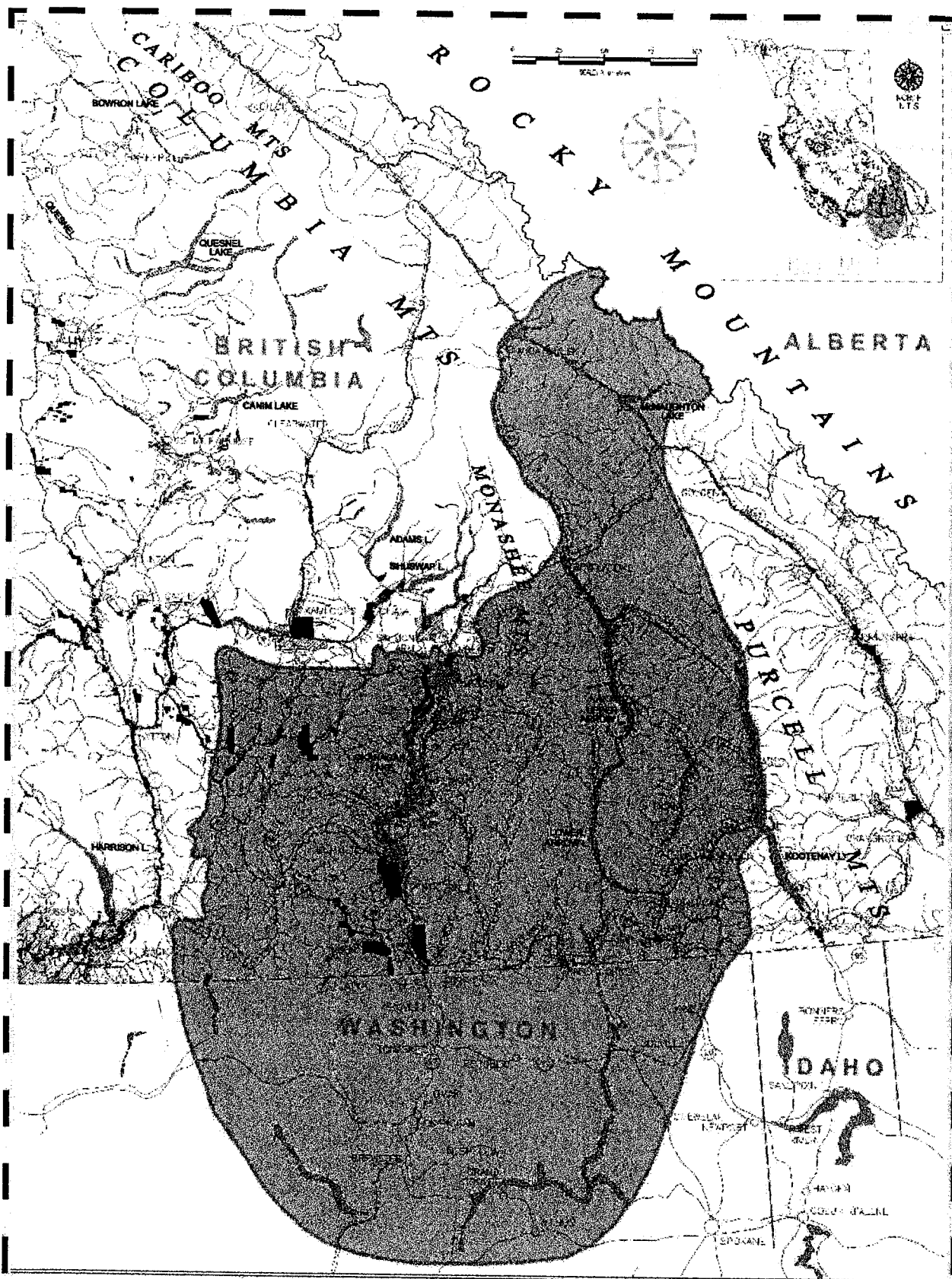
  
\_\_\_\_\_  
**Witness**

21 November 2003



## **APPENDIX "A"**

### **The Asserted Traditional Territory of the Okanagan Nation**



# **OKANAGAN NATION TERRITORY**

(compiled: August 12, 1998)



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**APPENDIX "B"**  
**Okanagan Timber Supply Area (TSA)**  
**Fire Timber Recovery Plan (TRP)**  
**Wildfire Areas**