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**KA:'YU:'K'T'H'/CHE:K'TLES7ET'H'
FIRST NATIONS
POWER RIVER WATERSHED PROTECTED
AREA MONUMENTAL CEDAR AND CYPRESS
HARVEST AGREEMENT**

**British Columbia
Ka:'yu:'k't'h'/Che:k'tles7et'h' First Nations**

**KA:'YU:'K'T'H'/CHE:K'TLES7ET'H' FIRST NATIONS
POWER RIVER WATERSHED PROTECTED AREA
MONUMENTAL CEDAR AND CYPRESS HARVEST AGREEMENT**

THIS AGREEMENT dated **APR 01 2011**

BETWEEN:

**HER MAJESTY THE QUEEN IN RIGHT OF THE
PROVINCE OF BRITISH COLUMBIA,
as represented by the Minister of Environment**

("British Columbia")

AND:

**KA:'YU:'K'T'H'/CHE:K'TLES7ET'H' FIRST NATIONS
as represented by the Ka:'yu:'k't'h'/Che:k'tles7et'h' Government**

("Ka:'yu:'k't'h'/Che:k'tles7et'h' First Nations")
(collectively the "Parties")

WHEREAS:

- A. The Parties and Canada have entered into the Final Agreement;
- B. Chapter 21 Culture and Heritage of the Final Agreement provides that British Columbia and Ka:'yu:'k't'h'/Che:k'tles7et'h' Nation will enter into an Agreement that will provide the Ka:'yu:'k't'h'/Che:k'tles7et'h' First Nations with the ability to harvest Monumental Cedar and Cypress on provincial Crown land within its Maa-nulth First Nations Area for Cultural Purposes.
- C. The Final Agreement also provides that British Columbia and Ka:'yu:'k't'h'/Che:k'tles7et'h' First Nations will enter into an Agreement that will provide Ka:'yu:'k't'h'/Che:k'tles7et'h' First Nations with the ability to harvest, each year, an Allocation of up to two Monumental Cedar and Cypress for Cultural Purposes from the Power River Watershed Protected Area.

NOW THEREFORE the Parties agree as follows:

1.0 DEFINITIONS:

1.1 In this Agreement:

"Agreement" means this Power River Watershed Protected Area Monumental Cedar and Cypress Harvest Agreement.

"Allocation" means the total annual harvest quantity or quota of Monumental Cedar and

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Cypress set out in the Harvest Agreement.

“**Cedar Harvest Plan**” means a plan to harvest Monumental Cedar and Cypress, developed in accordance with the Harvest Agreement.

“**Cultural Purposes**” means the use of Monumental Cedar and Cypress for a purpose that:

- a. was integral to the culture of Ka:’yu:’k’t’h’/Che:k’tles7et’h’ First Nations prior to contact;
- b. is primarily for totem poles, dugout canoes, or large beams or poles to build longhouses, community halls or other similar community structures; and
- c. is not carried out for profit, commercial purpose, trade and barter, individual or community commercial gain, residential building construction, structures associated with a residential building, or for providing firewood for individual needs.

“**Effective Date**” means the date upon which this Agreement and the Final Agreement takes effect.

“**Federal Law**” means federal statutes, regulations, ordinances, Orders-in-Council and the common law.

“**Final Agreement**” means the Maa-nulth First Nations Final Agreement ratified by each Maa-nulth First Nation, British Columbia and Her Majesty in Right of Canada, as amended from time to time in accordance with its provisions.

“**Harvest Agreement**” means the agreement signed on behalf of Ka:’yu:’k’t’h’/Che:k’tles7et’h’ First Nations and Her Majesty in Right of British Columbia as represented by the Minister of Forests, Lands and Natural Resource Operations on the same date as the agreement, as amended or replaced from time to time.

“**Maa-nulth First Nation Area**” means the area of land described in Appendix A-2 of the Final Agreement in respect of Ka:’yu:’k’t’h’/Che:k’tles7et’h’ First Nations.

“**Maa-nulth First Nation Lands**” means the lands described in Appendix B-2 of the Final Agreement.

“**Minister**” means the Minister responsible for the *Park Act*, R.S.B.C. 1996, c. 344 and *Protected Areas of British Columbia Act*, R.S.B.C. 1996, c. 17, and any person with authority to act in respect of the matter in question.

“**Monumental Cedar and Cypress**” means a *Thuja plicata* (western red cedar) or a *Chamaecyparis nootkatensis* (yellow cedar) that is:

- a. 250 years or older; and

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b. at least 100 centimetres diameter at 1.3 metres above germination point.

“Monumental Cedar and Cypress Plan” means a plan developed by Ka:’yu:’k’t’h’/Che:k’tles7et’h’ First Nations and British Columbia in accordance with 3.0.

“Power River Watershed Protected Area” means the area described as “Subject Lands” in Appendix V of the Final Agreement.

“Provincial Crown Land” means land, whether or not it is covered by water, or an interest in land, vested in the provincial government and to which the *Forest Act*, R.S.B.C. 1996, c. 157 applies, but does not include any area established as a park, ecological reserve, conservancy or protected area under Provincial Law.

“Provincial Law” means provincial statutes, regulations, ordinances, Orders in Council, by-laws and the common law.

1.2 Words and expressions not defined in this Agreement but defined in the Final Agreement have the meaning ascribed to them in the Final Agreement.

2.0 POWER RIVER WATERSHED PROTECTED AREA

2.1 Pursuant to the Final Agreement, the Power River Watershed Protected Area will be established as a protected area and will not have any road access.

2.2 Pursuant to the Final Agreement, British Columbia will bear no responsibility for the transport of the felled trees from the Power River Watershed Protected Area.

3.0 MONUMENTAL CEDAR AND CYPRESS PLAN

3.1 Prior to the harvest of any Monumental Cedar and Cypress in Power River Watershed Protected Area, Ka:’yu:’k’t’h’/Che:k’tles7et’h’ First Nations and British Columbia will develop a Monumental Cedar and Cypress Plan for the harvest of Monumental Cedar and Cypress for Cultural Purposes from the Power River Watershed Protected Area consistent with this Agreement.

3.2 The Monumental Cedar and Cypress Plan will be submitted by Ka:’yu:’k’t’h’/Che:k’tles7et’h’ First Nations and British Columbia to the Minister for approval.

3.3 The Minister will provide written reasons to Ka:’yu:’k’t’h’/Che:k’tles7et’h’ First Nations for any significant changes between the proposed Monumental Cedar and Cypress Plan and the approved plan.

3.4 The Monumental Cedar and Cypress Plan will be reviewed and amendments considered at such times as proposed by either Ka:’yu:’k’t’h’/Che:k’tles7et’h’ First Nations or British Columbia and the other Party will not unreasonably withhold consent to the review.

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3.5 If British Columbia and Ka:'yu:'k't'h'/Che:k'tles7et'h' First Nations agree, the Monumental Cedar and Cypress Plan may be combined and included with the Cedar Harvest Plan.

4.0 HARVEST

4.1. Any harvest by Ka:'yu:'k't'h'/Che:k'tles7et'h' First Nations of Monumental Cedar and Cypress from the Power River Watershed Protected Area must occur in accordance with:

- a. the Monumental Cedar and Cypress Plan approved by the Minister in accordance with 3.2;
- b. a park use permit issued pursuant to section 9 of the *Park Act*, R.S.B.C. 1996, c. 344;
- c. the Harvest Agreement;
- d. the Cedar Harvest Plan; and
- e. this Agreement.

4.2. For greater certainty, the trees harvested from the Power River Watershed are included in Ka:'yu:'k't'h'/Che:k'tles7et'h' First Nations' Allocation.

4.3. Pursuant to the Harvest Agreement, in each year, prior to harvesting from the Power River Watershed Protected Area, Ka:'yu:'k't'h'/Che:k'tles7et'h' First Nations must make reasonable efforts to harvest Monumental Cedar and Cypress from the following sources, in the following order:

- a. the Maa-nulth First Nation Lands and any other lawfully available sources, including tenures, available to the Ka:'yu:'k't'h'/Che:k'tles7et'h' First Nations; and
- b. provincial Crown land, excluding the Power River Watershed Protected Area or any area established as a park, ecological reserve, conservancy or protected area under Provincial Law.

Alternatively, Ka:'yu:'k't'h'/Che:k'tles7et'h' First Nations must provide written reasons to the Minister why Monumental Cedar and Cypress are not suitable and adequate for harvest for Cultural Purposes in the Maa-nulth First Nation Lands, prior to harvesting up to two Monumental Cedar and Cypress from the Power River Watershed Protected Area.

4.4. The Minister may issue to Ka:'yu:'k't'h'/Che:k'tles7et'h' First Nations a park use permit authorizing the harvest of up to two Monumental Cedar and Cypress each calendar year from the Power River Watershed Protected Area, and may impose the following conditions:

- a. the term of the permit must not exceed ten years;
- b. the Ka:'yu:'k't'h'/Che:k'tles7et'h' First Nations may harvest up to two Monumental

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Cedar and Cypress for a Cultural Purpose from the Power River Watershed Protected Area; and

- c. any other terms and conditions consistent with the Monumental Cedar and Cypress Plan or Provincial Law as determined to be necessary by the Minister.
- 4.5. Ka:'yu:'k't'h'/Che:k'tles7et'h' First Nations is not required to pay stumpage to British Columbia for any Monumental Cedar and Cypress harvested for Cultural Purposes in accordance with this Agreement.

5.0 NATURE OF AGREEMENT

- 5.1. This Agreement:
- a. is not part of the 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*.
- 5.2. British Columbia is not required to incur any financial obligation(s) with respect to the harvest of Monumental Cedar and Cypress from the Power River Watershed Protected Area by Ka:'yu:'k't'h'/Che:k'tles7et'h' First Nations.
- 5.3. Each Party is responsible for their own costs in participating in this Agreement.
- 5.4. British Columbia is not responsible for the reforestation of the Power River Watershed Protected Area after Monumental Cedar and Cypress have been harvested from that land in accordance with this Agreement except as required under Provincial Law.
- 5.5. Nothing in this Agreement shall create an obligation on behalf of British Columbia to manage, maintain or protect Monumental Cedar and Cypress in the Power River Watershed Protected Area beyond any obligation that may be provided for in Provincial Law.
- 5.6. Ka:'yu:'k't'h'/Che:k'tles7et'h' First Nations will indemnify and save harmless British Columbia from any and all damages that British Columbia may suffer or incur in connection, directly or indirectly with, or as a result of any suit, action, cause of action, claim, proceeding or demand arising from or in any way related to the harvesting activities of the Ka:'yu:'k't'h'/Che:k'tles7et'h' First Nations or its agents pursuant to this Agreement.
- 5.7. British Columbia is not liable to the Ka:'yu:'k't'h'/Che:k'tles7et'h' First Nations for injuries, losses, expenses or costs incurred or suffered by the Ka:'yu:'k't'h'/Che:k'tles7et'h' First Nations as a result, directly or indirectly, of an act or omission of a person who is not a party to this Agreement.

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6.0 TERM OF THIS AGREEMENT

6.1 Notwithstanding the date which it is signed by the Parties, this Agreement takes effect on the Effective Date.

7.0 AMENDMENT

7.1. The Parties will review this Agreement no later than five years after the Effective Date, and may amend this Agreement if both Parties agree.

7.2. In addition to the review under 7.1, either Party may at any time request the other Party to review this Agreement and to consider amendments to the Agreement, and the other Party will not unreasonably withhold consent to the review.

7.3. Any amendment to this Agreement must be in writing and executed by both Parties.

8.0 NO IMPLIED WAIVER

8.1. No term or condition of this Agreement, or performance by a Party of a covenant under this Agreement, will be deemed to have been waived unless the waiver is in writing and signed by the Party giving the waiver.

8.2. No written waiver of a term or condition of this Agreement, of performance by a Party of a covenant under this Agreement, or a default by a Party of a covenant under this Agreement, will be deemed to be a waiver of any other covenant, term or condition, or of any subsequent default.

9.0 FURTHER ASSURANCES

9.1. The Parties will execute any other documents and do any other things that may be reasonably necessary to carry out the intent of this Agreement.

10.0 ENTIRE AGREEMENT

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

11.0 INTERPRETATION

11.1. In this Agreement:

- a. headings are for convenience only, do not form part of this Agreement and in no way

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define, limit, alter or enlarge the scope or meaning of any provision of this Agreement;

- b. a reference to a statute includes every amendment to it, every regulation made under it, and any law enacted in substitution for it or in replacement of it; and
- c. unless it is otherwise clear from the context, the use of the singular includes the plural, and the use of the plural includes the singular.

11.2. This Agreement will be governed by and construed and interpreted in accordance with Provincial Law and Federal Law.

11.3. There will be no presumption that any ambiguity in any of the terms of this Agreement should be interpreted in favour of either Party.

12.0 DISPUTE RESOLUTION

12.1. If a dispute arises between the Parties regarding the interpretation of a provision of this Agreement, the duly appointed representatives of the Parties will meet as soon as is practicable to attempt to resolve the dispute.

12.2. If the duly appointed representatives of the Parties who meet in accordance with 12.1 are unable to resolve a dispute regarding the interpretation of a provision of this Agreement pursuant to 12.1, the dispute will be raised to more senior levels of British Columbia and Ka:'yu:'k't'h'/Che:k'tles7et'h' First Nations.

12.3. If a dispute cannot be resolved by the Parties pursuant to 12.1 and 12.2, the Parties:

- a. may appoint a mutually acceptable mediator to attempt to resolve the dispute;
- b. will, unless otherwise agreed, equally share the costs of the mediator they appoint under 12.3. a.; and
- c. will each bear the costs of their own participation in any mediated process.

12.4. In addition to a mediated process as set out in 12.3, the Parties may use other appropriate approaches to attempt to resolve any disputes which may arise regarding the interpretation of this Agreement.

13.0 ENUREMENT

13.1. This Agreement will enure to the benefit of and be binding upon the Parties and their respective successors.

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14.0 NO ASSIGNMENT

14.1. This Agreement may not be assigned, either in whole or in part, by any Party.

15.0 NOTICES

15.1. A notice, document, request, approval, application, authorization, consent or other communication (each a "communication") required or permitted to be given or made under this Agreement must be in writing and may be given or made in the following ways:

- a. delivered personally or by courier;
- b. transmitted by fax; or
- c. mailed by prepaid registered post.

15.2. A communication will be considered to have been given or made:

- a. if delivered personally or by courier, at the start of business on the next business day after the business day on which it was received by the addressee or a responsible representation of the addressee;
- b. if transmitted by fax and the sender receives confirmation of the transmission, at the start of business on the business day next following the day on which it was transmitted; or
- c. if mailed by prepaid registered post in Canada, when the postal receipt is acknowledged by the addressee.

15.3. A communication must be delivered, transmitted to the facsimile number or mailed to the address of the intended recipient set out below:

British Columbia
Deputy Minister
Ministry of Environment
P.O. Box 9339 Stn Prov Govt
Victoria British Columbia V8W 9M1
Facsimile (250) 387-5669

Ka:'yu:'k't'h'/Che:k'tles7et'h' First Nations
Legislative Chief
General Delivery
Kyuquot, British Columbia V0P 1J0
Facsimile (250) 332-5210

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16.0 EXECUTION IN COUNTERPARTS

16.1 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.

THIS AGREEMENT HAS BEEN EXECUTED AND DELIVERED as of the day and year first above written.

EXECUTED in the presence of

) HER MAJESTY THE QUEEN IN
) RIGHT OF THE PROVINCE OF
) BRITISH COLUMBIA as represented
) by the Minister of Environment



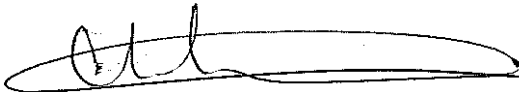


As to the signature of the Minister of Environment

Per: Minister of Environment

EXECUTED in the presence of:

) KA:'YU:'K'T'H'/CHE:K'TLES7ET'
) H' FIRST NATIONS as represented
) by the Ka:'yu:'k't'h'/Che:k'tles7et'h'
) First Nations Government





As to the authorized signatory for
Ka:'yu:'k't'h'/Che:k'tles7et'h' First
Nations Government

Per: Therese Smith, Legislative Chief