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**TOQUAHT NATION  
REAL PROPERTY TAX CO-ORDINATION  
AGREEMENT**

**British Columbia  
Toquaht Nation**

**TOQUAHT NATION  
REAL PROPERTY TAX CO-ORDINATION 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 Aboriginal Relations and Reconciliation**

("British Columbia")

**AND**

**TOQUAHT NATION,  
as represented by Toquaht Nation Government**

("Toquaht Nation")

(collectively the "Parties")

**WHEREAS:**

1. The Parties and Canada have entered into the Maa-nulth First Nations Final Agreement;
2. Chapter 19 Taxation of the Maa-nulth First Nations Final Agreement provides that each Maa-nulth First Nation Government may make laws in respect of direct taxation of Maa-nulth First Nation Citizens of the applicable Maa-nulth First Nation within the Maa-nulth First Nation Lands of that Maa-nulth First Nation in order to raise revenue for that Maa-nulth First Nation Government's purposes; and
3. Chapter 19 Taxation of the Maa-nulth First Nations Final Agreement provides that:
  - (a) the Parties may enter into agreements in relation to tax co-ordination and the imposition of tax on persons other than the Maa-nulth First Nation Citizens of the applicable Maa-nulth First Nation, within Maa-nulth First Nation Lands of the applicable Maa-nulth First Nation; and
  - (b) a Maa-nulth First Nation Government may make laws in respect of the implementation of such an agreement.

NOW THEREFORE in consideration of the premises and the covenants and agreements set out below, the Parties agree as follows:

**1.0 DEFINITIONS**

1.1 Words and expressions not defined in this Agreement but defined in the Maa-nulth First Nations Final Agreement have the meanings ascribed to them in the Maa-nulth First Nations Final Agreement.

1.2 In this Agreement:

**“Agreement”** means this Real Property Tax Coordination Agreement;

**“Non-Member”** means an individual who has reached the age of majority, is not a Maa-nulth First Nation Citizen of Toquaht Nation and is either:

(a) a Registered Owner of Real Property on Maa-nulth First Nation Lands of Toquaht Nation and not ordinarily resident on Maa-nulth First Nation Lands of Toquaht Nation; or

(b) ordinarily resident on Maa-nulth First Nation Lands of Toquaht Nation;

**“Provincial Taxing Authority”** means any local or provincial public authority that is authorized under an enactment of British Columbia either to impose real property taxes or to receive revenue from real property taxes imposed or collected for it by the Surveyor of Taxes, on Maa-nulth First Nation Lands of Toquaht Nation;

**“Registered Owner of Real Property”** means:

(a) the owner of a registered estate in fee simple of the property, unless another person holds an interest in the property referred to in subparagraphs (b) to (d);

(b) the holder of the last registered agreement for sale, unless another person holds an interest in the property referred to in subparagraphs (c) or (d);

(c) the tenant for life under a registered life interest in the property, unless another person holds an interest in the property referred to in subparagraph (d); or

(d) the holder of a registered lease of the property for a term of at least 99 years;

**“Toquaht Nation Government”** means the Maa-nulth First Nation Government of Toquaht Nation as contemplated by the Maa-nulth First Nations Final Agreement; and

**“Toquaht Nation Real Property Taxation Law”** means a law made by Toquaht Nation Government imposing real property taxation on owners or occupiers of Maa-nulth First Nation Lands of Toquaht Nation pursuant to the Toquaht Nation Government’s authority under the Maa-nulth First Nations Final Agreement or this Agreement.

1.3 Where this Agreement requires the application of any provision of any provincial statute or regulation, that provision shall be applied with such modifications as are reasonably necessary in the circumstances.

**2.0 COVENANTS BY BRITISH COLUMBIA AND TOQUAHT NATION**

2.1 If a Maa-nulth First Nation Citizen of Toquaht Nation is liable to real property taxation under Toquaht Nation Real Property Taxation Laws, that Maa-nulth First Nation Citizen will not be liable to real property taxation under the *School Act* or the *Taxation (Rural Area) Act* in respect of Maa-nulth First Nation Lands of Toquaht Nation if the Toquaht Nation Real Property Taxation Laws:

- (a) provide that the *Assessment Act* and the *Assessment Authority Act* apply in respect of the assessment of property for purposes of real property taxation under the Toquaht Nation Real Property Taxation Laws;
- (b) provide for the British Columbia Assessment Authority to assess the Maa-nulth First Nation Lands of Toquaht Nation subject to the Toquaht Nation Real Property Taxation Laws in accordance with the *Assessment Act* and regulations made under it and with the policies of the British Columbia Assessment Authority;
- (c) for each property class within the meaning of the *Assessment Act*, establish a rate or rates of tax on the same basis as the rate or rates a municipality is authorized to establish under Part 7 of the *Community Charter*;
- (d) exempt the same property as is exempt from taxation under Division 6 (Statutory Exemptions) of Part 7 of the *Community Charter*, with the same requirements, restrictions and obligations as are contained in the provisions in that Division;
- (e) establish in each year a tax rate on assessable and taxable property on Maa-nulth First Nation Lands of Toquaht Nation that is not less than the tax rate set for property in each property class under the *Assessment Act* for property in those classes in that year for tax imposed under the *School Act* applicable to School District No. 70 (Port Alberni); and
- (f) if there is a maximum municipal tax rate established under Provincial Law for any property class under the *Assessment Act*, establish in each year a tax rate for property on Maa-nulth First Nation Lands of Toquaht Nation in that property class that is not greater than the tax rate determined in accordance with the following formula:

$$A = B + C + D$$

Where

A = the maximum tax rate under a Toquaht Nation Real Property Taxation Law permitted in that year on Maa-nulth First Nation Lands of Toquaht Nation for that property class;

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B = the rate set for that property class for tax under the *School Act* applicable to School District No. 70 (Port Alberni);

C = the rate required to collect the amount to meet Toquaht Nation Government's obligation under paragraph 2.4 for that property class; and

D = the maximum municipal tax rate established for that property class.

- 2.2 The Toquaht Nation Real Property Taxation Laws may exempt from taxation the property enumerated in Division 7 (Permissive Exemptions) of Part 7 of the *Community Charter* but only with the same requirements, restrictions and obligations as are contained in the provisions in that Division.
- 2.3 Toquaht Nation will not exempt any property from taxation except as provided in paragraphs 2.1 and 2.2.
- 2.4 Toquaht Nation will pay any requisition from a Provincial Taxing Authority having taxing powers in respect of land or improvements located on Toquaht Nation lands under laws of general application and consistent with the provisions of Chapter 14 Regional Government of the Maa-nulth First Nations Final Agreement.
- 2.5 The Toquaht Nation Government may make real property taxation laws in respect of persons, other than Maa-nulth First Nation Citizens of Toquaht Nation, on Maa-nulth First Nation Lands of Toquaht Nation in order to raise revenue for Toquaht Nation purposes if those laws:
- (a) comply with each of the provisions referred to in paragraphs 2.1 and 2.2;
  - (b) subject to paragraph 8.1, do not have the effect of discriminating, on the basis of Maa-nulth First Nation citizenship between Maa-nulth First Nation Citizens of Toquaht Nation and other persons in the imposition, administration and enforcement of the Toquaht Nation Real Property Taxation Laws; and
  - (c) provide Non-Members with representation in accordance with the requirements for representation under this Agreement.
- 2.6 If a person, other than a Maa-nulth First Nation Citizen of Toquaht Nation, is liable to real property taxation under Toquaht Nation Real Property Taxation Laws, that person will not be liable to real property taxation under the *School Act* or the *Taxation (Rural Area) Act* in respect of Maa-nulth First Nation Lands of Toquaht Nation.
- 2.7 British Columbia will provide to Toquaht Nation the rates set under 119(3) of the *School Act* for School District 70 (Port Alberni) on or before the date British Columbia is required under that Act to send a notice of the rates to the collector in each municipality.
- 2.8 The Toquaht Nation Government will establish a Maa-nulth First Nation Public

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Institution in accordance with this Agreement and the Maa-nulth First Nations Final Agreement (the "Toquaht Nation Taxation Authority").

- 2.9 Toquaht Nation and the Toquaht Nation Government will act through the Toquaht Nation Taxation Authority in exercising any authority under this Agreement, including the authority to make laws, in respect of taxation matters that directly and significantly affect Non-Members including the rate of tax, tax exemptions and the expenditure of tax revenues.
- 2.10 Any authority of Toquaht Nation or the Toquaht Nation Government under this Agreement, including the authority to make laws, may be delegated by a Toquaht Nation Real Property Taxation Law to a Toquaht Nation Public Institution if the delegation and exercise of the delegated authority is in accordance with the Maa-nulth First Nations Final Agreement and this Agreement.
- 2.11 The Toquaht Nation Taxation Authority will provide Non-Members, or their representatives, with the ability to participate in discussions and vote on taxation decisions of the Toquaht Nation Taxation Authority that directly and significantly affect Non-Members, including the rate of tax, tax exemptions and the expenditure of tax revenues, in accordance with sections 13.6.4, 13.6.5 and 13.6.6 of the Maa-nulth First Nations Final Agreement.
- 2.12 The limitation on fines in clause 13.31.2 of Chapter 13 Governance of the Maa-nulth First Nations Final Agreement does not apply to a penalty imposed in accordance with the *Treaty First Nation Taxation Act* and this Agreement.
- 2.13 If all or part of the property taxes remain unpaid after the date the property taxes are due to be paid, Toquaht Nation will add to the unpaid property taxes for the lands and improvements for the current year a penalty equal to the amount of penalty a municipality must apply under the *Community Charter* on the portion that remains unpaid.

### **3.0 UNIFORMITY OF TOQUAHT NATION REAL PROPERTY TAXATION LAWS**

- 3.1 Where, in the opinion of the Minister of Community, Sport and Cultural Development of British Columbia, the Toquaht Nation Real Property Taxation Laws do not comply with the terms of this Agreement, including that they:
  - (a) are not sufficiently uniform as required in paragraphs 2.1 to 2.7;
  - (b) subject to paragraph 8.1, have the effect of discriminating, on the basis of Maa-nulth First Nation citizenship, between Maa-nulth First Nation Citizens of the Toquaht Nation and other persons in the imposition, administration and enforcement of the Toquaht Nation Real Property Taxation Laws; or
  - (c) do not provide Non-Members with representation in accordance with the requirements for representation under paragraph 2.11,

the Minister shall give notice of his or her opinion to the Toquaht Nation Government and shall specify the amendments and alterations to the Toquaht Nation Real Property Taxation Laws that the Minister considers necessary.

- 3.2 If Toquaht Nation disagrees with the opinion of the Minister or with the amendments and alterations that the Minister considers necessary, Toquaht Nation may refer the matter to the dispute resolution process under paragraphs 10.1 to 10.8.
- 3.3 Where the disagreement is not resolved under the dispute resolution provisions and Toquaht Nation fails to correct the matter specified in the notice to the satisfaction of the Minister, the Minister may give a notice to terminate this Agreement.

#### **4.0 NOTICE OF AMENDMENTS OR CONTEMPLATED AMENDMENTS**

- 4.1 Subject to parliamentary convention, British Columbia will make reasonable efforts to give Toquaht Nation notice of any amendments or contemplated amendments to legislation which would affect the obligations of Toquaht Nation under this Agreement.
- 4.2 British Columbia is not obligated to consult or advise Toquaht Nation of any of those amendments or contemplated amendments referred to in paragraph 4.1.

#### **5.0 RIGHT OF AMENDMENT**

- 5.1 Nothing in this Agreement shall limit or restrict, or be construed as limiting or restricting, British Columbia's right to amend, alter or vary, in such manner as British Columbia may determine, the *Community Charter* or any other legislation.

#### **6.0 PROVISION OF TOQUAHT NATION REAL PROPERTY TAXATION LAWS**

- 6.1 Toquaht Nation will provide to British Columbia a copy of any Toquaht Nation Real Property Taxation Law and any amendments within 60 days after the law or amendment is enacted.

#### **7.0 HOME OWNER GRANT**

- 7.1 No person is entitled to a grant under the *Home Owner Grant Act* in respect of property subject to tax under Toquaht Nation Real Property Taxation Laws.

#### **8.0 TRANSITIONAL PROVISIONS**

- 8.1 While the exemption under 19.5.2 of Chapter 19 Taxation of the Maa-nulth First Nations Final Agreement in respect of taxation of real property is in effect:
- (a) paragraph 2.5(b) will not apply;

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- (b) for each year, in respect of each property class under the *Assessment Act*, the rate of tax cannot exceed the aggregate of:
  - (i) the rate set for that property class for tax under the *School Act* applicable to School District No. 70 (Port Alberni),
  - (ii) the rate required to collect the amount to meet Toquaht Nation's obligations under paragraph 2.4 for that property class, and
  - (iii) the rate established by the District of Ucluelet under section 197(1)(a) of the *Community Charter* for that class; and
- (c) Toquaht Nation Government will provide in each year to each Non-Member who is subject to tax in respect of a property under a Toquaht Nation Real Property Taxation Law, a grant equal to the grant the Non-Member would have been eligible for under the *Home Owner Grant Act* if the Non-Member had been taxable under the *School Act* for that year in respect of that property.

### **9.0 LEGISLATION**

- 9.1 British Columbia will recommend to the Legislature that the provisions of this Agreement be given effect under provincial legislation.

### **10.0 DISPUTE RESOLUTION**

- 10.1 The Parties desire and expect that most disagreements will be resolved by informal discussion without the necessity of invoking a dispute resolution mechanism and will act in good faith in attempting to reach a resolution.
- 10.2 If a dispute between the Parties arising under this Agreement is not resolved by informal discussion, the Parties will use the procedures set out in paragraphs 10.3 to 10.6 before pursuing any other remedy.
- 10.3 Within 30 days of a Party receiving notice from the other that it is invoking this dispute resolution process, the Parties will meet and attempt to settle the dispute.
- 10.4 If, within 60 days after the first meeting referred to in paragraph 10.3, the Parties fail to resolve the dispute, they will submit the dispute to mediation and equally bear the cost of mediation.
- 10.5 The Parties will jointly select a mediator but if, after 30 days, they are unable to agree on the choice of mediator, they will submit the matter of choosing a mediator to a judge of the Supreme Court of British Columbia who will be asked to choose a mediator.
- 10.6 The Parties will participate in the mediation process for a period of 60 days.



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- 10.7 The Parties may agree to time periods other than those referred to in paragraphs 10.3 to 10.6
- 10.8 The Parties may agree to use any of the provisions of Chapter 25 Dispute Resolution of the Maa-nulth First Nations Final Agreement.

**11.0 TERM OF THIS AGREEMENT**

11.1 The term of this Agreement:

- (a) begins on the Effective Date or such other date as agreed to by the Parties; and
- (b) terminates on a date agreed to by the Parties or, if there is no such agreement, on December 31 of the year following the year in which the notice to terminate is given by either party.

11.2 At the request of Toquaht Nation, British Columbia and Toquaht Nation will negotiate and attempt to reach agreement respecting the ability of Toquaht Nation to use revenues raised pursuant to paragraph 2.5 of this Agreement as security for incurring liability by borrowing for any purpose of a capital nature.

11.3 Any agreement under section 11.2 may include provisions for:

- (a) the approval of the majority of persons who are subject to Toquaht Nation Real Property Taxation Law or an alternate test as agreed by the Parties;
- (b) the purpose of borrowing;
- (c) the term of the liability;
- (d) the level of debt;
- (e) the extent to which the Toquaht Nation Real Property Taxation Law pursuant to paragraph 2.5 may continue in effect after the termination of this Agreement in order to service the debt;
- (f) prescribing limits on tax rates for all persons on Toquaht Nation Lands for the provincial taxes referred to in paragraph 2.6 during the term of the liability, taking into account the total property taxes paid during and after the end of this Agreement and the level of taxation required to service the debt; and
- (g) the extent to which other matters referred to in this Agreement may need to be considered in order to service the debt if this Agreement is terminated before the debt is repaid.

11.4 The termination of this Agreement shall not affect the rights, obligations or liabilities that

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British Columbia, Toquaht Nation, Maa-nulth First Nation Citizens of Toquaht Nation or other persons each had before the termination of the Agreement.

**12.0 AMENDMENT AND REVIEW**

- 12.1 Any amendment to this Agreement must be in writing and executed by both Parties.
- 12.2 The Parties will review this Agreement no later than 11 years after the Effective Date, and may amend this Agreement if each Party agrees.
- 12.3 In addition to the review under paragraph 12.2, 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.
- 12.4 Nothing in paragraphs 12.2 and 12.3 requires either Party to agree to amend this Agreement.

**13.0 NO IMPLIED WAIVER**

- 13.1 No term or condition of this Agreement, or performance by a Party of an obligation under this Agreement, will be deemed to have been waived unless the waiver is in writing and signed by the Party giving the waiver.
- 13.2 No written waiver of a term or condition of this Agreement, of performance by a Party of an obligation under this Agreement, or of default by a Party of an obligation under this Agreement, will be deemed to be a waiver of any other obligation, term or condition, or of any subsequent default.

**14.0 NOT A TREATY OR LAND CLAIMS AGREEMENT**

- 14.1 This Agreement is not a treaty or a lands 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*.

**15.0 FURTHER ASSURANCES**

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

**16.0 INTERPRETATION**

- 16.1 In this Agreement:
  - (a) headings are for convenience only, do not form part of this Agreement and in no

way 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.

**17.0 GOVERNING LAW**

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

**18.0 TIME OF THE ESSENCE**

18.1 Time is of the essence in this Agreement.

**19.0 ENUREMENT**

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

**20.0 NO ASSIGNMENT**

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

**21.0 NOTICES**

21.1 A notice, document, request, approval, 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 facsimile transmission; or
- (c) mailed by post in Canada in any form which requires a receipt.

21.2 A communication will be considered to have been given or made, and received:

- (a) if delivered personally or by courier, at 9:00 a.m. on the business day after the day on which it was received by the addressee or a responsible representative of the

addressee;

- (b) if sent by facsimile transmission and if the sender receives confirmation of the transmission, at 9:00 a.m. on the next business day after the day on which it was transmitted; or
- (c) if mailed in Canada in any form which requires a receipt, when the postal receipt records that it was received.

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

<b>For:</b>	<b>British Columbia</b>
Attention:	Minister of Community, Sport and Cultural Development
Personal or courier delivery:	Parliament Buildings Victoria, British Columbia
Facsimile transmission:	(250) 387-4312
Postal delivery:	PO Box 9056 STN PROV GOVT Victoria, British Columbia V8W 9E2

<b>For:</b>	<b>Toquaht Nation</b>
Attention:	Tyee Ha'wilt
Facsimile transmission:	(250) 726-4403
Postal delivery:	Box 759 Ucluelet, British Columbia V0R 3A0

A Party may change its address or facsimile number by giving notice of the change to the other Party in the manner set out above.

## **22.0 EXECUTION IN COUNTERPARTS**

22.1 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.


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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 Aboriginal Relations**  
) **and Reconciliation or duly authorized**  
) **signatory**


  
\_\_\_\_\_  
As to the authorized signatory for the  
Minister of Aboriginal Relations and  
Reconciliation

)   
) \_\_\_\_\_  
) Per: duly authorized signatory

EXECUTED in the presence of:

) **TOQUAHT NATION** as represented by  
) **the Toquaht Nation Government**

  
\_\_\_\_\_  
As to the authorized signatory for  
Toquaht Nation Government

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) Per: Anne Mack, Tyee Ha'wilt

