

"WITHOUT PREJUDICE"

BETWEEN:

HER MAJESTY THE QUEEN IN RIGHT OF BRITISH COLUMBIA
as represented by the Ministry of Forests

AND:

WESTBANK FIRST NATION ("WFN")
as represented by its Chief and Council

(collectively called the "PARTIES")

OKANAGAN MOUNTAIN PARK FIRE SALVAGE
AGREEMENT

1) Purpose:

- To address the salvage of fire damaged timber from the Okanagan Mountain Park Fire (known as Fire K50628) by the WFN.
- To provide economic participation in the forest industry to WFN.

2) Interpretation:

- Nothing in this Agreement is intended to affect the existence or scope of any aboriginal rights, or to prevent the exercise of any aboriginal rights, either during the currency of the agreement or otherwise.
- Nothing in this Agreement or any record created pursuant to it is intended to create, recognize, limit or deny any aboriginal rights, or the legal relationship between the Parties with respect to such rights, or alter or affect the legal status of lands or resources within the Province or existing authorities of British Columbia.

- This Agreement is not a treaty or a land claims agreement within the meaning of Section 25 and 35 of the *Constitution Act*.
- This Agreement and any record created pursuant to it is without prejudice to any position any Party may take with respect to future negotiations, agreements, or treaties, or to any legal position that have been or may be taken by any Party in any court proceeding, process or otherwise, and nothing in this Agreement shall be construed as an admission of fact or liability in any such proceeding or process.

3) Licence(s):

- Tenure in the form of one or more direct award non-replaceable licences will be offered to WFN or Heartland Economics Ltd. as a representative of WFN.
- This licence(s) will be for the salvage of fire damaged timber (and possibly including unburned fireguard timber) on the Okanagan Mountain Park Fire and its associated fireguards, and will have a term not exceeding three years

4) Volume:

- The Ministry will invite WFN to apply for one or more tenures for a combined volume up to 100,000 m³.
- The volume in this license(s) will not be attributed to a future Community Forest Licence, or any other future allocation of timber made by the Minister of Forests.

5) Consultation:

- The award of one or more licences for the salvage of fire burned timber in the Okanagan Mountain Park Fire is a workable accommodation of WFN's economic interests that may be impacted by forest management decisions that will allow for

the salvage of all volumes of fire damaged timber and fireguard timber within the boundary of the Okanagan Mountain Park Fire and its associated fireguards.

- The Parties agree to jointly develop an expedited consultation process by which the Ministry of Forests will consult with the WFN on the harvesting and rehabilitation related to the Okanagan Mountain Park Fire in a manner that will allow for the timely removal of timber and rehabilitation of the Okanagan Mountain Park Fire.

6) Award Procedure:

- After the execution of this Agreement by the Parties, the Minister or Regional Manager will invite an application for a non-replaceable licence(s) under the *Forest Act* for salvage of timber either burned or felled, in the Okanagan Mountain Park Fire and its associated fireguards, within the Okanagan Timber Supply Area, in an area agreed to by the District Manager. The application(s) will invite the intended holder of the licence or appointed legal entities to act as their representative. Supporting documentation is specified within Appendix A of this Agreement.
- An invitation to apply under this Agreement will contain terms and conditions required by the Minister and the Regional Manager.

7) Licence Requirements:

- The District Manager will endeavour to inform the WFN of operational planning requirements and potential costs prior to the award of the licence(s).
- The WFN will meet the terms and conditions of the licence(s) and related legislation including operational planning requirements and stumpage payments.
- Where the licence awarded is a non-replacable forest licence, Westbank may apply to have the silviculture liability transferred to the Province under Section 71 of the *Forest Practices Code of B.C. Act*. If such a transfer is approved, the District Manager will give consideration to direct awarding to Westbank, silviculture contracts on the fire area, up to a maximum of \$50,000 per year.
- A licence entered into as a result of an invitation to apply under this agreement will include terms and conditions as may be required by the Regional Manager.

8) Dispute Resolution

- 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.
- 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.
- Nothing in Section 8 will prevent either party from resorting to legal remedies at any time to resolve disputes. However the parties agree the preference is to complete the first two bullets under section 8.0 before resorting to other remedies.
- The cost of mediation will be equally shared by both parties.

9) Suspension or Cancellation of Licence(s)

- 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 Westbank First Nation is not in compliance with this Agreement or if this Agreement is terminated under section 8.0. The Minister will provide Westbank First Nation 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) 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) November 20, 2006; or
 - (b) The date on which this Agreement is superseded by a broader agreement addressing the reconciliation of WFN interests with forest development and/or other Crown authorized land or resource activity.

11) 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 was executed by the duly authorized representative of Westbank First Nation as of the 19th day of November 2003 and by the duly authorized representative of the Ministry of Forests as of the 2nd day of December 2003.

Westbank First Nation
Per:



Chris Robert Louis
Westbank First Nation

Her Majesty the Queen in right of British Columbia
Per:



Honourable Michael de Jong
Minister of Forests