

TOQUAHT NATION
WILDFIRE SUPPRESSION AGREEMENT

Canada
British Columbia
Toquaht Nation

TOQUAHT NATION WILDFIRE SUPPRESSION AGREEMENT

THIS AGREEMENT made **APR 01 2011**

BETWEEN:

**HER MAJESTY THE QUEEN IN RIGHT OF CANADA, as represented
by the Minister of Indian Affairs and Northern Development and Federal
Interlocutor for Métis and Non-Status Indians**

("Canada")

OF THE FIRST PART

AND:

**HER MAJESTY THE QUEEN IN RIGHT OF THE PROVINCE OF
BRITISH COLUMBIA, as represented by the Minister of Aboriginal
Relations and Reconciliation**

("British Columbia")

OF THE SECOND PART

AND:

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

("Toquaht Nation")

OF THE THIRD PART

(collectively the "Parties")

WHEREAS:

1. Toquaht Nation, Canada and British Columbia have entered into the Maa-nulth First Nations Final Agreement which provides that the Parties will enter into a Wildfire Suppression Agreement which will set out how the costs incurred by British Columbia for Wildfire control on the Maa-nulth First Nation Lands of Toquaht Nation for wildfires that originate on such lands, will be shared by British Columbia, Canada and Toquaht Nation; and
2. The Parties have negotiated this Agreement as a Wildfire Suppression Agreement in accordance with paragraph 9.6.2 of the Maa-nulth First Nations Final 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 wildfire suppression agreement;

“**Billing Year**” means the Fiscal Year for which British Columbia is invoicing Canada or Toquaht Nation;

“**Direct Costs**” means the costs incurred by British Columbia each Fiscal Year for Wildfire suppression for Wildfires originating on the Maa-nulth First Nation Lands of Toquaht Nation which are recoverable under the *Wildfire Act* including the following:

- a. regular and overtime wages, travel, training, accommodation and related costs of direct Wildfire fighting and support, ground and air crews;
- b. costs of contract and casual labour hired for Wildfire suppression and support functions;
- c. all Wildfire suppression and support flying costs;
- d. all costs incurred for the rental and purchase of equipment used for Wildfire control and the related costs of the equipment;
- e. all rehabilitation costs for land damaged by Wildfire control measures; and
- f. all post incident Wildfire investigation;

but does not include any costs associated with fire prevention activities or costs associated with rehabilitation to lands, resources or any other assets damaged by Wildfire;

“**Maa-nulth First Nations Final Agreement**” means the Maa-nulth First Nations Final Agreement ratified by each Maa-nulth First Nation, British Columbia and Canada as amended from time to time;

“**Wildfire**” means a fire responded to by British Columbia;

“**Wildfire Control Costs**” means both Wildfire Preparedness Costs and Direct Costs; and

“**Wildfire Preparedness Costs**” means the annual provincial appropriation for wildfire preparedness including the following:

- a. charges for guaranteed aircraft availability agreements and related costs;
- b. salaries, accommodations, training, travel and related costs of wildfire crews, lookout persons and surface patrol crews;
- c. costs of constructing, maintaining, operating and supplying wildfire centres, air tanker bases, wildfire attack bases and lookouts;
- d. salaries and operating costs for wildfire management analysis and development, wildfire management services, administration services and air operations services costs;
- e. lightning location management systems costs;
- f. operations of automated weather stations;
- g. purchase of wildfire suppression and communications equipment and supplies; and
- h. costs of constructing and maintaining wildfire access roads.

2.0 WILDFIRE CONTROL COSTS

2.1 Subject to paragraphs 2.3 and 2.5, each Billing Year Toquaht Nation will be responsible for Wildfire Control Costs as follows:

- (a) one-third of the sum of Toquaht Nation’s proportionate share of Direct Costs for each Wildfire over the previous five year period (which includes the Billing Year), divided by five. For the purpose of this sub-paragraph, Toquaht Nation’s proportionate share of Direct Costs of a Wildfire is the ratio of the area of the Wildfire within the Maa-nulth First Nation Lands of Toquaht Nation to the total area of that Wildfire; and
- (b) one-third of the Wildfire Preparedness Costs for the Billing Year, multiplied by the ratio of the number of Wildfires originating on the Maa-nulth First Nation Lands of Toquaht Nation over the previous five year period (which includes the Billing Year), to the total number of provincial Wildfires over the same five year period.

2.2 Subject to paragraphs 2.3 and 5.0, Canada and British Columbia will share equally Wildfire Control Costs calculated as follows:

- (a) the sum of Direct Costs over the previous five year period which includes the Billing Year, divided by five;

plus

- (b) Wildfire Preparedness Costs for that Billing Year multiplied by the ratio of the number of Wildfires originating on the Maa-nulth First Nation Lands of Toquaht Nation over the previous five year period (which includes the Billing Year) to the total number of provincial Wildfires over the same five year period;

less

- (c) the amount Toquaht Nation is responsible for under this Agreement as determined in accordance with paragraph 2.1.

2.3 For the purposes of sub-paragraphs 2.1(a), 2.1(b), 2.2(a) and 2.2(b):

- (a) Direct Costs and Wildfire Preparedness Costs in each of the four Fiscal Years before the Effective Date will be deemed to be zero; and
- (b) if the Effective Date is not April 1, then the number of Wildfires and the Direct Costs between Effective Date and the prior April 1 will be deemed to be zero.

2.4 For greater certainty, for the purposes of sub-paragraph 2.2(a), Direct Costs are those associated with the entire spread of Wildfires both on and off the Maa-nulth First Nation Lands of Toquaht Nation.

2.5 Subject to paragraph 6.1, Toquaht Nation's responsibility for its share of Wildfire Control Costs under paragraph 2.1 will not exceed \$10,000 in any Billing Year.

2.6 Nothing in this Agreement affects any obligations that Canada may have pursuant to a cost-sharing arrangement in effect between Canada and British Columbia for Wildfire Control Costs on Former Indian Reserves where those obligations relate to costs that arise prior to the Effective Date.

2.7 Any recovery of Wildfire Control Costs and related amounts, administrative penalties or fines imposed on a third party in relation to a Wildfire originating on the Maa-nulth First Nation Lands of Toquaht Nation, under the *Wildfire Act*, net of costs incurred to recover or collect those control costs, will be shared among the Parties in the same proportion as the Parties' financial obligations for Wildfire Control Costs under this Agreement.

2.8 British Columbia will notify Toquaht Nation and Canada within 30 days of March 31 of every Billing Year of the amount owing for Wildfire Control Costs on the Maa-nulth First Nation Lands of Toquaht Nation for that Billing Year, if any, and Toquaht Nation and Canada will each pay its share of those costs as outlined in this Agreement to British Columbia within 45 days of receiving notice.

2.9 The obligations of Toquaht Nation and Canada under this Agreement are separate.

- 2.10 Any funding required for the purposes of this Agreement is subject to the appropriation of funds:
- (a) in the case of Canada, by Parliament;
 - (b) in the case of British Columbia, by the Legislature of British Columbia; or
 - (c) in the case of Toquaht Nation, by Toquaht Nation Government.

3.0 DISPUTE RESOLUTION

- 3.1 If any issue arises with respect to the interpretation, application or implementation of this Agreement where the Parties cannot reach an acceptable solution, the Parties agree to use the process described in Chapter 25 Dispute Resolution of the Maa-nulth First Nations Final Agreement.

4.0 INFORMATION EXCHANGE

- 4.1 The Parties will share, at no cost to the requesting Party, in a timely manner, information reasonably required for purposes of implementation, monitoring, renewal or amendment of this Agreement.
- 4.2 At the written request of Canada or Toquaht Nation, British Columbia will provide information pertaining to the determination of Wildfire Control Costs incurred and billed to Canada and Toquaht Nation.

5.0 TERM OF THIS AGREEMENT

- 5.1 The obligations between British Columbia and Toquaht Nation will remain in effect on the same terms and conditions until terminated at the written request of Toquaht Nation.
- 5.2 This Agreement, as regards the obligations of Canada, commences on the Effective Date and remains in effect until March 31 of the Billing Year in which the tenth anniversary of the Effective Date occurs.
- 5.3 Not less than 90 days before March 31 of the Billing Year in which the tenth anniversary of the Effective Date occurs, Canada will notify British Columbia and Toquaht Nation whether Canada intends to enter into negotiations with British Columbia and Toquaht Nation respecting Canada's participation in this Agreement following the expiry of the term in paragraph 5.2.
- 5.4 Termination of this Agreement does not affect any rights, obligations or liabilities that British Columbia, Canada, and Toquaht Nation had under this Agreement.

6.0 REVIEW AND AMENDMENT

- 6.1 Not less than 120 days before March 31 of the Billing Year in which every ten year anniversary of the Effective Date occurs, Toquaht Nation and British Columbia will amend this Agreement in accordance with paragraphs 6.2 and 6.3.
- 6.2 On every ten year anniversary of the Effective Date that this Agreement is in effect, the value in paragraph 2.5 will be replaced with the greater of:
- (a) \$10,000; or
 - (b) two multiplied by the average annual Wildfire Control Costs for the preceding 10 year period that would have been billed to Toquaht Nation if paragraph 2.5 had not applied over that preceding 10 year period.
- 6.3 Toquaht Nation and British Columbia will consider the nature and extent of exceptionally large Wildfires that may have originated on the Maa-nulth First Nation Lands of Toquaht Nation over the previous ten years and may exclude such Wildfires from the calculation under paragraph 6.2(b).
- 6.4 Except as otherwise provided in paragraphs 6.5 and 6.6, any amendment to this Agreement must be in writing and executed by the Parties.
- 6.5 Any amendments under paragraphs 2.2 and 2.4 must be in writing and executed by Canada and British Columbia.
- 6.6 Any amendment in accordance with paragraph 6.1 must be in writing and executed by Toquaht Nation and British Columbia.

7.0 NO IMPLIED WAIVER

- 7.1 A provision of this Agreement, or performance by a Party of an obligation under this Agreement, or the default by a Party of an obligation under this Agreement, may not be waived unless the waiver is in writing and signed by the Party giving the waiver.
- 7.2 No written waiver of a provision of this Agreement, the performance by a Party of an obligation under this Agreement, or the default by a Party of an obligation under this Agreement, will be a waiver of any other provision, obligation or subsequent default.

8.0 NOT A TREATY OR LAND CLAIMS AGREEMENT

- 8.1 This Agreement:
- (a) is not part of the Maa-nulth First Nations 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*.

9.0 FURTHER ASSURANCES

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

10.0 INTERPRETATION

10.1 In this Agreement:

- (a) a reference to a statute includes every amendment to it, every regulation made under it, and any law enacted in substitution for, or in replacement of it;
- (b) unless otherwise expressly provided or unless it is otherwise clear from the context, the use of the singular will include the plural, and the use of the plural will include the singular;
- (c) the use of the word “will” denotes an obligation that, unless this Agreement provides to the contrary, must be carried out as soon as practicable after the Effective Date or the event that gives rise to the obligation;
- (d) the use of the word “may” denotes a provision that is permissive;
- (e) unless it is otherwise clear from the context, the use of the word “including” means “including, but not limited to”, and the use of the word “includes” means “includes, but not limited to”;
- (f) unless it is otherwise clear from the context, a reference to a “paragraph” or “sub-paragraph” means a paragraph or sub-paragraph, respectively, of this Agreement;
- (g) headings and subheadings are for convenience only, do not form a part of this Agreement, and in no way define, limit, alter, or enlarge the scope or meaning of any provision of this Agreement; and
- (h) unless it is otherwise clear from the context, “provincial” refers to the province of British Columbia.

10.2 All accounting terms have the meanings assigned to them under generally accepted accounting principles.

11.0 TIME OF THE ESSENCE

11.1 Time is of the essence in this Agreement.

12.0 SEVERABILITY

12.1 If any part of this Agreement is declared or held invalid for any reason, the invalidity of

that part will not affect the validity of the remainder which will continue in full force and effect and be construed as if this Agreement had been executed without the invalid part.

13.0 ASSIGNMENT

13.1 Unless otherwise agreed to by the Parties, this Agreement may not be assigned, either in whole or in part, by any Party.

14.0 NOTICES

14.1 Unless otherwise provided, a communication must be in writing and:

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

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

- (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 representative 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.

14.3 A communication will be delivered, transmitted to the fax number or mailed to the address of the intended recipient as set out below:

For: **British Columbia**
Attention: Minister of Aboriginal Relations and Reconciliation
Parliament Buildings
PO Box 9051 Stn Prov Govt
Victoria, British Columbia V8W 9E2
Fax Number: (250) 953-4856

For: **Toquaht Nation**
Attention: Tyee Ha'wilt
Box 759
Ucluelet, British Columbia V0R 3A0
Fax Number: (250) 726-4403

For: **Canada**
Attention: Director of Funding Services
Indian and Northern Affairs Canada
600-1138 Melville Street
Vancouver, British Columbia V6E 4S3
Fax Number: (604) 775-7149

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

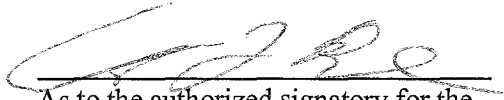
15.0 EXECUTION IN COUNTERPARTS


15.1 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:

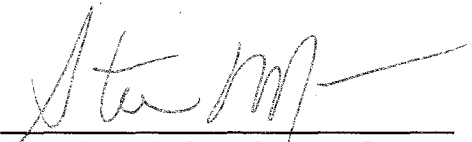
) HER MAJESTY THE QUEEN IN
) RIGHT OF CANADA as represented by
) the Minister of Indian Affairs and
) Northern Development and Federal
) Interlocutor for Métis and Non-Status
) Indians or duly authorized signatory
)
)
)
)

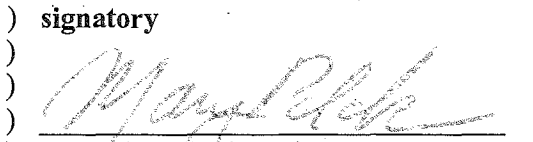

As to the authorized signatory for the
Minister of Indian Affairs and Northern
Development and Federal Interlocutor
for Métis and Non-Status Indians


Per: duly authorized signatory
Hon. John Duncan

Anita Boscariol
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
)
)
)
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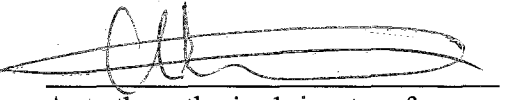

As to the authorized signatory for the
Minister of Aboriginal Relations and
Reconciliation

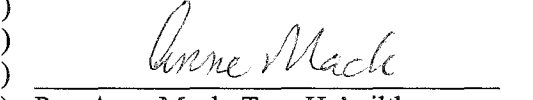

Per: duly authorized signatory
Hon. Mary Polak

Steve Mauro

EXECUTED in the presence of:

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


As to the authorized signatory for
Toquaht Nation Government


Per: Anne Mack, Tyee Ha'wilth