

# DIRECT AWARD FOREST TENURE “A” AGREEMENT

## Forest Tenure Opportunity Agreement

(the “Agreement”)

**Between:**

***Nadleh Whut’en Band***

As represented by  
Chief and Council

**and**

**Her Majesty the Queen in Right of the Province of British Columbia**

as represented by the Minister of Forests and Range  
 (“British Columbia”)

(collectively the “Parties”)

### WHEREAS:

- A. In the spirit of the New Relationship and the Transformative Change Accord, British Columbia, the Government of Canada, and Nadleh Whut’en Band have undertaken a shared commitment to strengthening relationships on a government-to-government basis, and on focusing efforts to close the socio-economic gaps between Aboriginal and non-Aboriginal peoples. This will require strengthened relationships between Nadleh Whut’en Band and British Columbia, based on enhanced collaboration, effective working partnerships and mutual respect and accountability.
- B. This Agreement, and the benefits flowing from it, will assist the Nadleh Whut’en Band in achieving progress towards the goals it shares with British Columbia of closing socio economic gaps between the members of Nadleh Whut’en Band and non-Aboriginal peoples, and, in particular, will assist the Nadleh Whut’en Band in addressing some of the immediate priorities of the community, by increasing Nadleh Whut’en Band’s capacity to participate in the forest sector.
- C. British Columbia recognizes that Nadleh Whut’en Band has a unique history and relationship with the province of British Columbia, and has its own culture and traditions that serve to characterize and define the Nadleh Whut’en Band community. These characteristics form an important context for the cooperative efforts needed to improve the Nadleh Whut’en Band community’s well-being.

### THEREFORE THE PARTIES AGREE AS FOLLOWS:

#### 1. Definitions

- 1.1. “Aboriginal Interests” means aboriginal rights and/or aboriginal title.
- 1.2. “Accommodation” means an accommodation provided in this Agreement, of the potential infringements of the economic

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component of the Nadleh Whut'en Band's Aboriginal Interests arising from, or as a result of, forest development in the Traditional Territory during the term of this Agreement, prior to the full reconciliation of these Interests with Crown sovereignty. “Forest Tenure” means an agreement granting rights to harvest Crown timber as defined in the *Forest Act* as per 12 (1).

- 1.3. “Licensee” means a holder of a Forest Tenure.
- 1.4. “Operating Area” means an area, informally agreed to between licensees who each hold rights to harvest Crown timber within the same Timber Supply Area, and recognizes how each licensee will operate to avoid conflict and meet each other's needs.
- 1.5. “Traditional Territory” means the Nadleh Whut'en Band's claimed Traditional Territory as shown on bold black on the map attached in Appendix A.

### 2. Purpose and Objectives

The purposes and objectives of this Agreement are to:

- 2.1. Promote and increase First Nations capacity and participation in the forest sector by offering a forest tenure opportunity(s).
- 2.2. Provide a period of stability to forest development on Crown lands within the Traditional Territory of the Nadleh Whut'en Band during the term of this Agreement, while longer term interests are addressed through other agreements or processes.
- 2.3. Provide an Accommodation.
- 2.4. Provide an economic opportunity by inviting the Nadleh Whut'en Band to apply for a non-replaceable forest licence to assist the province in the management of mountain pine beetle in the Prince George Timber Supply Area.

### 3. Forest Tenure Opportunity

During the term of this Agreement, British Columbia will provide one or more of the following forest tenure opportunities to the Nadleh Whut'en Band:

- 3.1. After execution of this Agreement, the District Manager or Regional Manager will invite the Nadleh Whut'en Band, or such legal entity as the Nadleh Whut'en Band has appointed as its representative, to apply for a non-replaceable forest license (the “Licence”) on a non-competitive basis for up to 75,000 cubic meters annually in the Prince George Timber Supply Area.

The licence(s) will be comprised of:

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Management Unit	Tenure	Allowable Annual Cut (AAC) (m <sup>3</sup> /yr)	Total Volume in m <sup>3</sup>	Term in years (yrs.)
PG TSA	FL A86573	75,000	375,000	5
Totals		75,000	375,000	n/a

3.2. The operating area for the licence referenced in section 3.1 will be located in the Nadleh Whut'en Bands claimed traditional territory within the Prince George Timber Supply Area and is outlined on the map attached to this Agreement as Appendix A. The licence under section 3.1 of this Agreement will:

- 3.2.1. not be a replaceable licence as defined under the *Forest Act*;
- 3.2.2. include other terms and conditions required by law including the condition that the Nadleh Whut'en Band must comply with this Agreement; and,
- 3.2.3. include other terms and conditions as may be required by the Regional Manager.

3.3. British Columbia makes no guarantee of the financial viability associated with operations under this licence.

### 4. Reporting of Tenure Information

- 4.1. British Columbia, in its commitment to the goals of the Transformative Change Accord, may require certain information from Nadleh Whut'en Band on what measurable benefits the Nadleh Whut'en Band has been able to receive as a result of this Agreement.
- 4.2. The Nadleh Whut'en Band agrees to cooperate with British Columbia in providing the information in a format acceptable to both Parties and in a manner that maintains confidentiality of that information in accordance with statutory requirements.

### 5. Accommodation

Notwithstanding section 3.3:

- 5.1. During the term of this Agreement, and subject to the terms and conditions of this Agreement being met and adherence by British Columbia, the Nadleh Whut'en Band agrees that British Columbia has provided an Accommodation to the Nadleh Whut'en Band in the form of a direct award non replaceable forest tenure(s) associated with this Agreement.

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- 5.2. If the forest tenure entered into under this Agreement remains in effect beyond the term of this Agreement, the forest tenure will continue to be considered by the Parties to be an Accommodation until the tenure expires or is terminated.
- 5.3. The Parties agree that other Accommodation may be jointly developed by the Parties through other agreements during the term of this Agreement.

### 6. Nadleh Whut’en Band Traditional Territory

- 6.1. The Nadleh Whut’en Band agrees to provide British Columbia with a hard copy map of their Traditional Territory and a digital copy of the boundary conforming to current government mapping standards (eg. ESRI Shapefile, personal geodatabase or E00 format).

### 7. Stability within Nadleh Whut’en Band Traditional Territory

- 7.1. Nadleh Whut’en Band will respond immediately to any discussions initiated by British Columbia and will work co-operatively to assist in resolving any issues that may arise where acts of intentional interference by Nadleh Whut’en Band members with provincially authorized activities related to forest development, including timber harvesting or other forestry economic activities, occur.

### 8. Term and Termination

- 8.1. The term of this Agreement is five years.
- 8.2. This Agreement will take effect on the date on which the last Party has executed it.
- 8.3. This Agreement will terminate on the occurrence of the earliest of any of the following events:
  - 8.3.1. expiry of its term;
  - 8.3.2. 90 days notice by either Party to the other Party;
  - 8.3.3. mutual agreement of the Parties; or
  - 8.3.4. if the forest tenure issued under 3.1 is cancelled, surrendered or otherwise terminated under the *Forest Act*.
- 8.4. Prior to the expiry of the 90 days when 90 day notice of termination has been given under section 8.3.2, the Parties agree to meet and endeavour to resolve the issue that has given rise to the 90 day notice of termination.

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### 9. Dispute Resolution

- 9.1. If a dispute arises between British Columbia and the Nadleh Whut'en Band regarding the interpretation of a provision of this Agreement, the Parties or their duly appointed representatives will meet as soon as is practicable to attempt to resolve the dispute.
- 9.2. If the Parties are unable to resolve differences at the appropriate level, the interpretation issue will be raised to more senior levels of British Columbia and the Nadleh Whut'en Band.
- 9.3. If the interpretation dispute cannot be resolved by the Parties directly, the Parties may choose other appropriate approaches to assist in reaching resolution of the interpretation issue.

### 10. Renewal of the Agreement

- 10.1. Prior to the expiry of the term of this Agreement, if the terms and conditions of this Agreement are being met, British Columbia and the Nadleh Whut'en Band will seek the necessary authorities and approvals that, if approved will allow the Parties to enter into negotiations to renew this Agreement, or to conclude a new agreement.

### 11. Amendment of Agreement

- 11.1. Any alteration or amendment to the terms and conditions of the Agreement must be in writing and duly executed by the Parties.
- 11.2. Either Party may request the participation of the other Party to review the effectiveness of this Agreement annually and consider amendments to this Agreement.

### 12. Suspension or Cancellation by the Minister

- 12.1. Without limiting the actions that may be taken by the Minister or by British Columbia, the Minister or a person authorized by the Minister may suspend or cancel the licence(s) entered into as a result of the invitation to apply under this Agreement, if the Minister or a person authorized by the Minister determines that the Nadleh Whut'en Band is not in compliance with this Agreement.
- 12.2. If this Agreement is terminated in accordance with section 8.3.2 or 8.3.3, the Minister may cancel the forest tenure issued under this Agreement.
- 12.3. Prior to contemplating any action referred to in section 12.1 or 12.2, British Columbia will provide notice to the Nadleh Whut'en Band of any alleged contravention of this Agreement that may lead to the Nadleh Whut'en Band not being in compliance with this Agreement.

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### 13. Entire Agreement

- 13.1. This Agreement, and any amendment to it, constitutes the entire Agreement between the Parties with respect to the subject matter of this Agreement.

### 14. Notice

- 14.1. 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 in this section of the Agreement.
- 14.2. 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.
- 14.3. The address of either Party may be changed by notice in the manner set out in this section of the Agreement.

<b>British Columbia</b>	<b>Nadleh Whut'en Band</b>
Deputy Minister	Chief Larry Nooski
Ministry of Forests and Range	Nadleh Whut'en Band
P.O. Box 9525 STN PROV GOVT Victoria B.C. V8W 9C3	P.O. Box 36 Fort Fraser, British Columbia V0J 1N0
Telephone: (250) 356-5012	Telephone: (250) 690-7211
Facsimile: (250) 953-3687	Facsimile: (250) 690-7316

- 14.4. 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 facsimile. Each facsimile will be deemed to be an original for all purposes and all counterparts taken together will be deemed to constitute one document.

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### 15. Miscellaneous

- 15.1. This Agreement shall be interpreted in a manner consistent with provincial, federal and constitutional law.
- 15.2. Except as set out in this Agreement, this Agreement will not limit the positions that a Party may take in future negotiations or court actions.
- 15.3. British Columbia acknowledges and enters into this Agreement on the basis that the Nadleh Whut'en Band has Aboriginal Interests within its Traditional Territory and further that the specific nature, scope or geographic extent of Aboriginal Interests of the Nadleh Whut'en Band have not yet been determined. Broader processes engaged in to bring about reconciliation will result in a common understanding of the nature, scope and geographic extent of Aboriginal Interests or treaty interests of the Nadleh Whut'en Band.
- 15.4. This Agreement does not exclude the Nadleh Whut'en Band from accessing forestry economic opportunities and benefits, which may be available, other than those expressly set out in this Agreement.
- 15.5. This Agreement is not a treaty or a lands claims agreement within the meaning of section 25 and 35 of the *Constitution Act, 1982* and does not define or amend aboriginal rights, or limit any priorities afforded to aboriginal rights, including aboriginal title.
- 15.6. This Agreement and any decisions made during the term of this Agreement do not change or affect the positions either Party has, or may have, regarding jurisdiction and authorities.
- 15.7. Any reference to a statute in this Agreement includes all regulations made under that statute and any amendments or replacement of that statute and its regulations.
- 15.8. This Agreement does not address or prejudice conflicting interests or competing claims between First Nations.
- 15.9. This Agreement is not intended to limit any obligation of forest licensee's or other third parties to the Nadleh Whut'en.
- 15.10. There will be no presumption that any ambiguity in any of the terms of this Agreement should be interpreted in favour of either Party.

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Signed on behalf of:

**Nadleh Whut'en Band**

Chief Larry Nooski

Date:

July 6, 2010

Councillor

*Larry Nooski*

Councillor

*[Signature]*

Councillor

*[Signature]*

Councillor

Councillor

*[Signature]*

Councillor

Councillor

*[Signature]*

*[Signature]*

Witness of Nadleh Whut'en Band signatures

Signed on behalf of:

**British Columbia**

Date:

AUG 26 / 2010

*[Signature]*

Pat Bell

Minister of Forests and Range

Witness of Minister signature

