

Forest Tenure Opportunity Agreement
(the "Agreement")

Between:
Upper Nicola 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 Upper Nicola 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 Upper Nicola 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 Upper Nicola Band in achieving progress towards the goals it shares with British Columbia of closing socio economic gaps between the members of Upper Nicola Band and non-Aboriginal peoples, and, in particular, will assist the Upper Nicola Band in addressing some of the immediate priorities of the community, by increasing Upper Nicola Band's capacity to participate in the forest sector.
- C. British Columbia recognizes that Upper Nicola 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 Upper Nicola Band community. These characteristics form an important context for the cooperative efforts needed to improve the Upper Nicola 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

component of the Upper Nicola 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.

- 1.3. "Forest Tenure" means an agreement granting rights to harvest Crown timber as defined in the *Forest Act* as per 12 (1).
- 1.4. "Licensee" means a holder of a Forest Tenure.
- 1.5. "Licence Area" means an area defined by agreement between the licensee and British Columbia, which grants the rights to apply for cutting authorities to a specific level of harvest of Crown timber as defined in the *Forest Act*
- 1.6. "Traditional Territory" means the Upper Nicola 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 forest tenure opportunities.
- 2.2. Provide a period of stability to forest development on Crown lands within the Traditional Territory of the Upper Nicola Band during the term of this Agreement, while longer term interests are addressed through other agreements or processes.
- 2.3. Provide Accommodation.

3. Forest Tenure Opportunity

During the term of this Agreement, British Columbia will provide the following forest tenure opportunities to the Upper Nicola Band:

- 3.1. After execution of this Agreement, the Regional Manager will invite the Upper Nicola Band, or such legal entity as the Upper Nicola Band has appointed as its representative, to apply for a non-replaceable forest licence on a non-competitive basis for beetle infested or fire damaged volume in the Merritt Timber Supply Area (TSA) for up to 60,000 cubic meters annually for 5 years.

For greater certainty the maximum volume that may be available under the licence referred to in 3.1 will be up to 300,000 cubic meters over 5 years.

- 3.2. The Regional Manager may extend one or more existing licences, authorizing additional volume or allowable annual cut AAC in the amounts identified under section 3.1, to be held by Upper Nicola

Band or Upper Nicola Band's representative if that licence(s) has been previously directly awarded under section 47.3 of the *Forest Act*.

3.3. Prior to submitting an application for the licence referred to in section 3.1, the Upper Nicola Band will meet with British Columbia to discuss the identification of a licence area. The Parties will strive to identify a licence area that is located, to the extent operationally feasible, within Upper Nicola Band's Traditional Territory.

3.4. The licence under section 3.1 of this Agreement will:

3.4.1. not be a replaceable licence as defined under the *Forest Act*;

3.4.2. include other terms and conditions required by law including the condition that the Upper Nicola Band must comply with this Agreement; and,

3.4.3. include other terms and conditions as may be required by the Regional Manager.

3.5. 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 Upper Nicola Band on what measurable benefits the Upper Nicola Band has received as a result of this Agreement.

4.2. The Upper Nicola 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 3.5:

5.1. During the term of this Agreement, the Upper Nicola Band agrees that British Columbia has provided Accommodation to the Upper Nicola Band in the form of a direct award non- replaceable forest tenure(s) associated with this Agreement.

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 Accommodation until the tenure expires or is terminated.

6. Upper Nicola Band Traditional Territory

6.1. The Upper Nicola 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 Upper Nicola Band Traditional Territory

- 7.1. Upper Nicola Band will respond immediately and work co-operatively to assist in resolving any issues that may arise where acts of intentional interference by Upper Nicola 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 5 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.

9. Dispute Resolution

- 9.1. If a dispute arises between British Columbia and the Upper Nicola 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 Upper Nicola 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 Upper Nicola 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 Upper Nicola 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 Upper Nicola Band of any alleged contravention of this Agreement that may lead to the Upper Nicola Band not being in compliance with this Agreement.

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.

British Columbia	Upper Nicola Band
Deputy Minister	Chief Tim Manuel
Ministry of Forests and Range	Upper Nicola Band
P.O. Box 9525 STN PROV GOVT	PO Box 3700 Station Main
Victoria B.C. V8W 9C3	Merritt, B.C. V1K1B8
Telephone: (250) 356-5012	Telephone: (250) 350-3342
Facsimile: (250) 953-3687	Facsimile: (250) 350-3311

- 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.

15. Miscellaneous

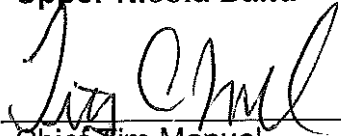
- 15.1. This Agreement shall be interpreted in a manner consistent with provincial, federal and constitutional law.
- 15.2. Except as set out in this Agreement, this Agreement will not limit the positions that a Party may take in future negotiations or court actions.
- 15.3. British Columbia acknowledges and enters into this Agreement on the basis that the Upper Nicola Band has Aboriginal Interests within its Traditional Territory and further that the specific nature, scope or geographic extent of Aboriginal Interests of the Upper Nicola 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 Upper Nicola Band.
- 15.4. This Agreement does not exclude the Upper Nicola 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.

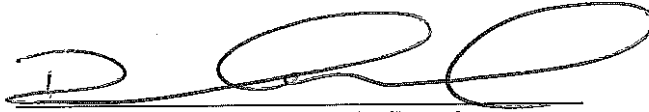
- 15.8. This Agreement does not address or prejudice conflicting interests or competing claims between First Nations.
- 15.9. There will be no presumption that any ambiguity in any of the terms of this Agreement should be interpreted in favour of either Party.

**Signed on behalf of:
Upper Nicola Band**

Date: Nov 16/2010



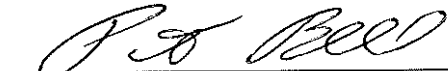
Chief Jim Manuel



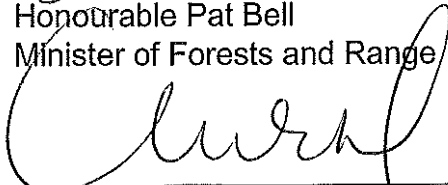
Witness for Upper Nicola Band

**Signed on behalf of:
British Columbia**

Date: Feb 9, 2011



Honourable Pat Bell
Minister of Forests and Range



Witness for Minister signature

APPENDIX A
Map of Upper Nicola Band Claimed Traditional Territory

APPENDIX C – Licence Area/ Operating Area Map