

**TLA'AMIN NATION**

**MONUMENTAL CEDAR AND  
CYPRESS HARVEST AGREEMENT**

**Tla'amin Nation  
British Columbia**

## **TLA'AMIN MONUMENTAL CEDAR AND CYPRESS HARVEST AGREEMENT**

This page, signed in \_\_\_\_\_, British Columbia this \_\_\_ day of \_\_\_\_\_, 20\_\_\_, signifies the intent of the Chief Negotiators for the Tla'amin Nation and British Columbia to recommend that the Tla'amin Monumental Cedar and Cypress Harvest Agreement be signed by the Parties.

### **FOR TLA'AMIN NATION**

\_\_\_\_\_  
Witnessed by:

\_\_\_\_\_  
Chief Negotiator, Tla'amin Nation

### **FOR HER MAJESTY THE QUEEN IN RIGHT OF BRITISH COLUMBIA**

\_\_\_\_\_  
Witnessed by:

\_\_\_\_\_  
Chief Provincial Negotiator

After the Chief Negotiators have signed this page, and before the Tla'amin Monumental Cedar and Cypress Harvest Agreement is signed by the Parties, the Tla'amin Monumental Cedar and Cypress Harvest Agreement may be subject to review and amendment by agreement of the Chief Negotiators.

## TLA'AMIN MONUMENTAL CEDAR AND CYPRESS HARVEST AGREEMENT

THIS AGREEMENT made \_\_\_\_\_, 20\_\_\_\_,

BETWEEN:

**HER MAJESTY THE QUEEN IN RIGHT OF THE PROVINCE OF BRITISH COLUMBIA, as represented by the Minister of Forests and Range**

("British Columbia")

AND:

**TLA'AMIN NATION, as represented by the Tla'amin Government**

("Tla'amin Nation")

WHEREAS:

- A. Tla'amin Nation, Canada and British Columbia have entered into the Tla'amin Final Agreement; and
- B. Paragraph 34 of the Culture and Heritage Chapter of the Tla'amin Final Agreement provides that British Columbia and Tla'amin Nation will enter into an agreement that will provide Tla'amin Nation with the ability to harvest Monumental Cedar and Cypress on provincial Crown lands within the Tla'amin Area for Cultural Purposes.

NOW THEREFORE the Parties agree as follow:

### **1.0 DEFINITIONS AND INTERPRETATION**

1.1 Words and expressions not defined in this Agreement but defined in the Tla'amin Final Agreement have the meanings ascribed to them in the Tla'amin Final Agreement.

1.2 In this Agreement:

**"Agreement"** means this Monumental Cedar and Cypress Harvest Agreement;

**"Allocation"** means the total annual harvest quantity or quota of Monumental Cedar and Cypress set out in 2.1;

**"Cedar Harvest Plan"** means a plan to harvest Monumental Cedar and Cypress developed in accordance with 3.0;

**“Cultural Purposes”** means the use of Monumental Cedar and Cypress for a purpose that:

- a. was integral to the culture of Tla'amin Nation prior to contact;
- b. is primary for totem poles, dugout canoes, or long beams or posts to build longhouses, community halls or other similar community structures; and
- c. is not carried out for profit, commercial purposes, Trade and Barter, individual or community gain, residential building construction, structures associated with a residential building or for providing firewood for individual needs;

**“Minister”** means the Minister responsible for the *Forest Act*, R.S.B.C. 1996, c. 157, and any person with authority to act in respect of the matter in question;

**“Monumental Cedar and Cypress”** means a *Thuja plicata* (western red cedar) or a *Chamaecyparis nootkatensis* (yellow cedar) that is:

- a. approximately 250 years or older; and
- b. at least 100 centimetres diameter at 1.3 meters above germination point;

**“Parties”** means, for the purposes of this Agreement, British Columbia and Tla'amin Nation;

**“Provincial Crown Lands”** means land, whether or not it is covered by water, or an interest in land, vested in the provincial government and to which the *Forest Act*, R.S.B.C. 1996, c. 157 applies. This does not include any area established as a park, ecological reserve, conservancy or protected area under Provincial Law;

**“Tla'amin Final Agreement”** means the Tla'amin Final Agreement signed on behalf of Tla'amin Nation, Canada and British Columbia on \_\_\_\_\_, 20\_\_\_\_, and includes any amendments from time to time; and

**“Tla'amin Lands”** means the lands of Tla'amin Nation described in Appendix C of the Tla'amin Final Agreement.

- 1.3 There will be no presumption that doubtful expressions, terms or provisions of this Agreement are to be resolved in favour of either Party.
- 1.4 The interpretive conventions set out in paragraph 84 of the Tla'amin Final Agreement will apply to this Agreement.

**2.0 ALLOCATION**

- 2.1 Each calendar year, the Tla'amin Nation will have an Allocation of up to 250 m<sup>3</sup> of Monumental Cedar and Cypress to harvest for Cultural Purposes within the Tla'amin Area. The Allocation will be limited by measures necessary for conservation, public health or public safety, or authorized uses and disposition of Provincial Crown Land.
- 2.2 Where the Tla'amin Nation does not harvest its Allocation under in 2.1 in any given calendar year, the un-harvested portion of the Allocation will not be added to the Allocation for subsequent years.
- 2.3 The Tla'amin Nation will harvest its Allocation within the Tla'amin Area, including Tla'amin Lands, Provincial Crown Land, and any other sources available to Tla'amin Nation, including tenures.
- 2.4 The Tla'amin Nation will make reasonable efforts to manage Tla'amin Lands and tenures in order to provide opportunities for an annual harvest of Monumental Cedar and Cypress for Cultural Purposes.
- 2.5 Subject to 3.3, in each year the volume of Monumental Cedar and Cypress that the Tla'amin Nation harvests for Cultural Purposes from Tla'amin Lands and any other sources, including tenures, available to Tla'amin Nation, will be contributed to the Tla'amin Nation's Allocation.
- 2.6 The Tla'amin Nation will only harvest Monumental Cedar and Cypress for Cultural Purposes pursuant to the Cedar Harvest Plan, this Agreement, and the Tla'amin Final Agreement.
- 2.7 For greater certainty, nothing in this Agreement prevents Tla'amin Nation from making an application to British Columbia under existing Provincial Law for the harvest of:
  - a. monumental trees other than Monumental Cedar and Cypress which may be harvested under this Agreement for Cultural Purposes; or
  - b. other trees for community purposes.

**3.0 CEDAR HARVEST PLAN**

- 3.1 Before the Effective Date, Tla'amin Nation and British Columbia will make reasonable efforts to conclude a Cedar Harvest Plan for the harvest by Tla'amin Nation of Monumental Cedar and Cypress for Cultural Purposes within the Tla'amin Area.
- 3.2 The Cedar Harvest Plan will include:
  - a. the criteria to be considered in the determination of the suitability and adequacy of Monumental Cedar and Cypress for harvest;

## TLA'AMIN MONUMENTAL CEDAR AND CYPRESS HARVEST AGREEMENT

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- b. the timber volume proportions of the Allocation and the locations of their respective harvests within the Tla'amin Area including Tla'amin Lands, Provincial Crown Land and other available sources including tenures;
  - c. the methods and timing of the harvesting of the Allocation;
  - d. any limits that may be imposed on harvesting within the Tla'amin Area that result from:
    - i. measures necessary for purposes of conservation, public health or public safety, and
    - ii. other authorized uses or dispositions of Provincial Crown Land that exist at the time;
  - e. the management of Tla'amin Lands and tenures in order to provide opportunities for an annual harvest of Monumental Cedar and Cypress for Cultural Purposes from such lands pursuant to 2.4;
  - f. any provincial legislative, regulatory and management requirements for forest resources, including Monumental Cedar and Cypress on Provincial Crown Land; and
  - g. any other matter British Columbia and Tla'amin Nation consider appropriate in these circumstances.
- 3.3 Where the Tla'amin Nation proposes harvesting all or a portion of its Allocation on Provincial Crown Land, the Tla'amin Nation will provide written reasons to British Columbia why Tla'amin Lands and tenures are not suitable and adequate for the harvest of Monumental Cedar and Cypress for Cultural Purposes.
- 3.4 The Cedar Harvest Plan, or any proposed amendments to a Cedar Harvest Plan, which specifies the proposed use, species, volume and location of Monumental Cedar and Cypress to be harvested from Provincial Crown Land will be submitted by the Tla'amin Nation and British Columbia to the Minister.
- 3.5 In considering the Cedar Harvest Plan under 3.4, the Minister will take into account the following:
- a. measures necessary for conservation, public health or public safety;
  - b. other authorized uses or dispositions of Provincial Crown Land that exist at the time;
  - c. the suitability and adequacy of Monumental Cedar and Cypress on Tla'amin Lands;

## **TLA'AMIN MONUMENTAL CEDAR AND CYPRESS HARVEST AGREEMENT**

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- d. the Tla'amin Nation's reasons pursuant to 3.3, if any;
  - e. the harvest of Monumental Cedar and Cypress by non-Tla'amin Citizens;
  - f. any provincial legislative, regulatory and management requirements for forest resources, including Monumental Cedar and Cypress, on Provincial Crown Land; and
  - g. other relevant statutory considerations.
- 3.6 If the use, species, volume and location of Monumental Cedar and Cypress to be harvested on Provincial Crown Land as proposed in the Cedar Harvest Plan is consistent with the Agreement, the Minister will, subject to the factors referred to in 3.5, approve, or vary and approve, the proposed use, species, volume and location of Monumental Cedar and Cypress that may be harvested from Provincial Crown Land pursuant to 4.0.
- 3.7 The Minister will provide written reasons to the Tla'amin Nation for any significant changes between the proposed use, species, volume and location to be harvested on Provincial Crown Land and the approved use, species, volume and location.
- 3.8 The Cedar Harvest Plan will be reviewed and amendments considered at such times as proposed by either the Tla'amin Nation or British Columbia and the other Party will not unreasonably withhold consent to the review.

### **4.0 HARVEST OF MONUMENTAL CEDAR AND CYPRESS**

- 4.1 The Tla'amin Nation will harvest Monumental Cedar and Cypress for Cultural Purposes on Provincial Crown Land in accordance with:
- a. the Cedar Harvest Plan and this Agreement;
  - b. free use permits pursuant to section 48 of the *Forest Act*, R.S.B.C. 1996, c. 157 and any other applicable permits;
  - c. any provincial land use designations, management plans or objectives; and
  - d. other applicable Provincial Laws.
- 4.2 The Tla'amin Nation will apply to the district manager or authorized forest officer for a permit before harvesting a Monumental Cedar and Cypress for Cultural Purposes on Provincial Crown Land.
- 4.3 An application under 4.2 will include the following information:
- a. proof of endorsement by the Tla'amin Nation;

## TLA'AMIN MONUMENTAL CEDAR AND CYPRESS HARVEST AGREEMENT

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- b. a description of the intended Cultural Purpose in sufficient detail to justify the volume to be used;
- c. the species and volume of Monumental Cedar and Cypress required and how the volume was estimated;
- d. if the application to harvest is for a volume exceeding 50 m<sup>3</sup>, but not exceeding 250 m<sup>3</sup>, a demonstration that the trees are to be used for the construction of a longhouse, community hall or other similar structure;
- e. a description of the proposed harvesting area, if appropriate; and
- f. the desired time period for undertaking the harvest.

4.4 In reviewing an application under 4.3, the district manager or authorized forest officer will consider the following criteria:

- a. consistency with the Cedar Harvest Plan;
- b. consistency with the approved use, species, volume and location to be harvested from Provincial Crown Land pursuant to 3.6;
- c. whether the application is endorsed by the Tla'amin Nation;
- d. if the volume requested exceeds 50 m<sup>3</sup>, but does not exceed 250 m<sup>3</sup>, any demonstration that the trees are to be used for the construction of a longhouse, community hall, or other similar structure; and
- e. that the volume of requested is the minimum necessary to complete the structure.

4.5 Where the criteria set out in 4.4 are met, the district manager or authorized forest officer will issue the permit in a timely manner and may impose the following conditions:

- a. that the term of the permit must not exceed one year;
- b. that the Tla'amin Nation may harvest the Monumental Cedar and Cypress only for the purpose specified;
- c. that the Tla'amin Nation may harvest the specified species, volume and location if applicable; and
- d. any other terms and conditions consistent with the Cedar Harvest Plan or Provincial Law as determined to be necessary by the district manager or authorized forest officer to address such concerns as marking and transport of timber, harvesting and utilization of timber, equipment to be used in harvesting, disposal and slash, riparian areas, waste and silviculture.

## **TLA'AMIN MONUMENTAL CEDAR AND CYPRESS HARVEST AGREEMENT**

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- 4.6 The Tla'amin Nation will not pay stumpage to British Columbia for any Monumental Cedar and Cypress harvested under this Agreement.
- 4.7 For greater certainty, in accordance with Provincial Law, nothing in this Agreement requires Tla'amin Nation to pay stumpage for the harvesting of Monumental Cedar and Cypress for Cultural Purposes.

### **5.0 NATURE OF HARVEST AGREEMENT**

- 5.1 British Columbia will not incur any financial obligation(s) with respect to the harvest of Monumental Cedar and Cypress from Provincial Crown Land by Tla'amin Nation.
- 5.2 Each Party is responsible for their own costs in participating in this Agreement.
- 5.3 British Columbia will not be responsible for the reforestation of any Provincial Crown Land after Monumental Cedar and Cypress have been harvested under this Agreement beyond what may be provided under Provincial Law.
- 5.4 Nothing in this Agreement shall create an obligation on behalf of British Columbia to manage, maintain or protect Monumental Cedar and Cypress in Provincial Crown Land beyond any obligation that may be provided for in Provincial Law.
- 5.5 Tla'amin Nation will indemnify and save harmless British Columbia from any and all damages that British Columbia may suffer or incur in connection, directly or indirectly with, or as a result of any suit, action, cause of action, claim, proceeding or demand arising from or in any way relate to the harvesting activities of Tla'amin Nation or its agents pursuant to this Agreement.
- 5.6 British Columbia is not liable to Tla'amin Nation for injuries, losses, expenses or costs incurred or suffered by Tla'amin Nation as a result, directly or indirectly, or an act or omission of a person who is not a party to this Agreement.
- 5.7 Nothing in this Agreement affects the ability of Tla'amin Nation to participate in, or benefit from, programs or management strategies established by British Columbia for aboriginal people in accordance with criteria established for those programs or management strategies from time to time.

### **6.0 TERM**

- 6.1 This Agreement will take effect on the Effective Date, which is the date the Tla'amin Final Agreement takes effect.

**7.0 DISPUTE RESOLUTION**

- 7.1 Where a dispute arises between British Columbia and Tla'amin Nation 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.
- 7.2 Where the Parties are unable to resolve a dispute regarding the interpretation of a provision this Agreement pursuant to 7.1, the dispute will be raised to more senior levels of British Columbia and Tla'amin Nation.
- 7.3 Where a dispute cannot be resolved by the Parties pursuant to 7.1 and 7.2, the Parties:
- a. may appoint a mutually acceptable mediator to attempt to resolve the dispute;
  - b. will, unless otherwise agreed, equally share the costs of the mediator they appoint under 7.3.a.; and
  - c. will each bear the costs of their own participation in any mediated process.
- 7.4 In addition to a mediated process as set out in 7.3, the Parties may use other appropriate approaches to attempt to resolve any disputes which may arise regarding the interpretation of this Agreement.

**8.0 AMENDMENT**

- 8.1 The Parties will review this Agreement no later than five years after the Effective Date, and may amend this Agreement if both Parties agree.
- 8.2 In addition to the review under 8.1, 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.
- 8.3 Any amendment to this Agreement must be in writing and executed by both Parties.

**9.0 FURTHER ASSURANCES**

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

**10.0 NO IMPLIED WAIVER**

- 10.1 Any waiver of:
- a. a provision of this Agreement;
  - b. the performance by a Party of an obligation under this Agreement; o

c. a default by a Party of an obligation under this Agreement,

will be in writing and signed by the Party or Parties giving the waiver and will not be a waiver of any other provision, obligation or subsequent default.

**11.0 SEVERABILITY**

11.1 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.

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

12.1 This Agreement:

a. is not part of the Tla'amin 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*.

**13.0 ASSIGNMENT and ENUREMENT**

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

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

**14.0 NOTICES**

14.1 The notice provisions set out in the Tla'amin Final Agreement apply to this Agreement.

14.2 If no other address for delivery of a particular communication has been provided by a Party, 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 V8V 9E2  
Fax: (250) 953-4856

