

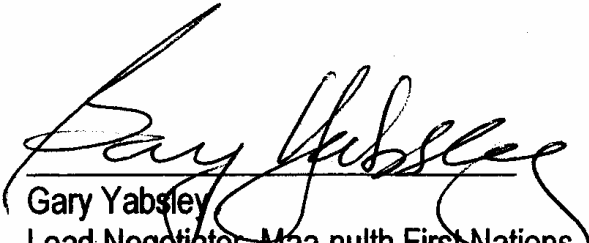
**TOQUAHT NATION
OWN SOURCE REVENUE AGREEMENT**

Canada
British Columbia
Toquaht Nation

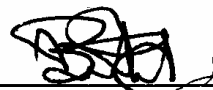
TOQUAHT NATION OWN SOURCE REVENUE AGREEMENT

Initialed in Victoria, British Columbia, this day of December, 2006, by the Chief Negotiators for Canada and British Columbia and the Lead Negotiator for the Maa-nulth First Nations to signify their intent to recommend the Toquaht Nation Own Source Revenue Agreement for ratification.

FOR TOQUAHT NATION:



Gary Yabsley
Lead Negotiator, Maa-nulth First Nations



Witnessed by:
Chief Bert Mack
Toquaht Nation

FOR HER MAJESTY THE QUEEN IN RIGHT OF CANADA



Eric Denhoff
Chief Federal Negotiator

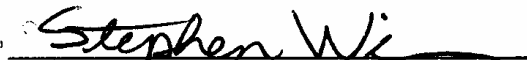


Witnessed by:

FOR HER MAJESTY THE QUEEN IN RIGHT OF BRITISH COLUMBIA



Mark Lofthouse
Chief Provincial Negotiator



Witnessed by:

After this document is initialed and before signing by the Parties, this document may be subject to minor changes by agreement of the Chief Negotiators for Canada and British Columbia and the Lead Negotiator for the Maa-nulth First Nations on behalf of the Parties.

TOQUAHT NATION OWN SOURCE REVENUE AGREEMENT

THIS AGREEMENT made _____.

BETWEEN:

**HER MAJESTY THE QUEEN IN RIGHT OF CANADA, as
represented by the Minister of Indian Affairs and Northern
Development**

(“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

WHEREAS:

- A. Paragraph 18.1.4 of Chapter 18 Fiscal Relations provides that, from time to time, the Parties will negotiate and attempt to reach agreement on Toquaht Nation’s own source revenue contribution to the funding of Agreed-Upon Programs and Services,
- B. The Parties have negotiated this Agreement to set out the amount of own source revenue to be taken into account in determining the funding provided to Toquaht Nation under a Toquaht Nation Fiscal Financing 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 Toquaht Nation Own Source Revenue Agreement made as of [date] among Canada, British Columbia and Toquaht Nation;

“Chapter” means a Chapter of the Maa-nulth First Nations Final Agreement;

“Federally Supported Programs and Services” has the meaning ascribed to it in a Toquaht Nation Fiscal Financing Agreement;

“Fiscal Year” means the period that commences on April 1st of a year and ends on March 31st of the following year;

“Generally Accepted Accounting Principles” means the accounting principles generally accepted in Canada from time to time and, if the CICA Handbook-Accounting published by the Canadian Institute of Chartered Accountants or its successor includes relevant statements of a principle or accounting guideline, that statement will be considered conclusively to be an accounting principle or guideline generally accepted in Canada;

“Implementation Activities” has the meaning ascribed to it in a Toquaht Nation Fiscal Financing Agreement;

“Implementation Committee” means the committee established on the Effective Date and formed according to the provisions in Chapter 27 Implementation;

“Maa-nulth First Nations Final Agreement” means the Maa-nulth First Nations Final Agreement signed on behalf of the Maa-nulth First Nations on _____, British Columbia on _____ and Canada on _____, and includes any amendments from time to time;

“Maa-nulth First Nations Tax Treatment Agreement” means the Maa-nulth First Nations Tax Treatment Agreement signed by the Canada, British Columbia and the Maa-nulth First Nations on _____, as amended or replaced from time to time;

“Maa-nulth Settlement Trust” means “Maa-nulth Settlement Trust” as defined in the Maa-nulth First Nations Tax Treatment Agreement;

“Parties” means the parties to this Agreement and “Party” means any one of them;

“Property Tax” means a real property tax imposed by Toquaht Nation on owners or occupiers of real property within its Maa-nulth First Nation Lands, including any fines, interest or penalties thereon and, for greater certainty, does not include a fee or levy for goods or services if only persons who choose to receive the goods or services are obliged to pay the fee or levy;

“Provincially Supported Programs and Services” has the meaning ascribed to it in a Toquaht Nation Fiscal Financing Agreement;

“Public Services” means services provided to, and activities carried on for the benefit of, the general public, either by governments in Canada or by contractors to governments in Canada, without reasonable expectation of profit to government and which services or activities are not primarily provided to the general public in Canada or carried out for the benefit of the general public in Canada by for-profit entities acting independently of government;

“Review Engagement Report” has the same meaning as in the CICA Handbook-Assurance published by the Canadian Institute of Chartered Accountants or its successor;

“Specific Claims Policy” means the policy set out in Canada’s “Outstanding Business – A Native Claim Policy: Specific Claims (1982)”;

“Specific Claim Settlement” means any sum paid as compensation by Canada to Toquaht Nation, which sum represents the amount negotiated by Canada and Toquaht Nation in accordance with the Specific Claims Policy, as compensation for that claim; and

“Toquaht Nation Fiscal Financing Agreement” means a Toquaht Nation Fiscal Financing Agreement negotiated in accordance with Chapter 18 Fiscal Relations and in effect from time to time during the term of this Agreement.

2.0 GENERAL

2.1 This Agreement is not part of the Maa-nulth First Nations Final Agreement.

2.2 This Agreement is not a treaty or land claim agreement and does not recognize or affirm aboriginal or treaty rights within the meaning of sections 25 and 35 of the *Constitution Act, 1982*.

3.0 TERM

3.1 The term of this Agreement:

- (a) starts on the Effective Date; and
- (b) subject to paragraph 22.2, will end on March 31 of the Fiscal Year in which the twentieth anniversary of the Effective Date occurs.

3.2 If Canada or British Columbia enacts legislation within four years from the Effective Date of the Maa-nulth First Nations Final Agreement giving effect to another land claims agreement in British Columbia that provides in that land claims agreement or in another agreement that is referred to in that land claims agreement own source revenue terms and conditions that are not available under this Agreement, Canada and British Columbia, at the request of Toquaht Nation, will negotiate and attempt to reach agreement on a one-time basis with Toquaht Nation to provide appropriate adjustments to the own source revenue terms and conditions available to Toquaht Nation, taking into account the particular circumstances of the other land claims agreement.

4.0 TOQUAHT FIRST NATION OWN SOURCE REVENUE

4.1 Except as otherwise provided in this Agreement, Toquaht Nation own source revenue capacity for a Fiscal Year is the sum of all revenues received or collected by Toquaht Nation in respect of:

- (a) the total Toquaht Nation own source revenues derived from a Maa-nulth Settlement Trust in respect of the Capital Transfer for the Fiscal Year;
- (b) the total Toquaht Nation own source revenues derived from a Maa-nulth Settlement Trust in respect of resource revenue payments for the Fiscal Year;
- (c) the total Toquaht Nation own source revenues from taxes for the Fiscal Year;
- (d) the total Toquaht Nation own source revenues from business and property for the Fiscal Year;
- (e) the total Toquaht Nation own source revenues from fees and charges for the Fiscal Year; and

- (f) the total Toquaht Nation own source revenues from other revenue sources for the Fiscal Year,

determined in accordance with this Agreement.

- 4.2 The categories in paragraphs 4.1(a) through 4.1(f) are mutually exclusive and, for greater certainty, a revenue allocated to one category can not be allocated to another.

5.0 AMOUNTS NOT INCLUDED

- 5.1 Notwithstanding any other provision of this Agreement, the calculation of own source revenue of Toquaht Nation for a Fiscal Year will not include:
 - (a) amounts received or earned prior to the Effective Date;
 - (b) gifts and donations received by Toquaht Nation from an arms length party, and for which a receipt is issued;
 - (c) payments received under a Toquaht Nation Fiscal Financing Agreement;
 - (d) programs and services funding, not included in a Toquaht Nation Fiscal Financing Agreement, received by Toquaht Nation from Canada or British Columbia, directly or through a third party;
 - (e) proceeds from the sale of its Maa-nulth First Nation Lands, or other lands transferred to Toquaht Nation in fee simple on the Effective Date as part of the Maa-nulth First Nations Final Agreement;
 - (f) proceeds from a claim for loss under a policy of insurance and other amounts received as compensation for specific losses or damages to property or assets, except to the extent included in Toquaht Nation own source revenues under paragraph 9.0;
 - (g) a Specific Claim Settlement;
 - (h) any amount received by Toquaht Nation in that Fiscal Year in accordance with Chapter 17 Resource Revenue Sharing;
 - (i) interest, gains, or other income derived from the investment or reinvestment of funds held in a special purpose fund established with funding received by Toquaht Nation from Canada or British Columbia for a purpose related to the Maa-nulth First Nations Final Agreement and described in Schedule B of this Agreement, provided that the interest,

gains or income is used for a purpose or activity that is intended by the Parties to be funded from that special purpose fund;

- (j) any Capital Transfer payment received by Toquaht Nation in that Fiscal Year in accordance with Chapter 16 Capital Transfer and Negotiation Loan Repayment;
 - (k) subject to paragraph 12.2 and 12.3, proceeds from the issuance of debt;
 - (l) reimbursements of specific expenses incurred by Toquaht Nation for a purpose specified by an arms length party and pursuant to an agreement with that party; and
 - (m) any tax revenues, fees, charges or levies collected by Toquaht Nation Government on behalf of, and remitted to, another taxing authority that is not associated with Toquaht Nation Government.
- 5.2 For greater certainty, each fund described in Schedule B, and referred to in paragraph 5.1(i), is a special purpose fund referred to under paragraph 18.1.5(a)(v) of the Chapter 18 Fiscal Relations.

6.0 CAPITAL TRANSFER REVENUE

- 6.1 Subject to paragraphs 6.2 and 6.3, Toquaht Nation own source revenue derived from the Capital Transfer is the sum of amounts distributed in that Fiscal Year out of a Maa-nulth Settlement Trust in respect of the Capital Transfer of Toquaht Nation, other than amounts distributed to another Maa-nulth Settlement Trust in respect of the Capital Transfer of Toquaht Nation, and includes amounts attributable to interest, gains or other income derived from Capital Transfer payments deposited to that Maa-nulth Settlement Trust by Toquaht Nation.
- 6.2 An amount distributed by a Maa-nulth Settlement Trust in respect of the Capital Transfer of Toquaht Nation will not be included in the calculation set out in paragraph 6.1 if:
- (a) subject to paragraph 6.3, Toquaht Nation elects to exempt the distributed amount; or
 - (b) the distributed amount out of the Maa-nulth Settlement Trust is with respect to a payment or transfer to a Toquaht Nation Citizen.
- 6.3 For the purposes of paragraph 6.2:

- (a) Toquaht Nation will have a total exemption equal to the sum of those Capital Transfer payments deposited to the Maa-nulth Settlement Trust by Toquaht Nation to that point in time; and
- (b) if Toquaht Nation elects to use some portion of the total exemption in respect of a distributed amount, the total exemption in paragraph 6.3(a) available in respect of subsequent distributed amounts will be reduced by the amount so elected.

7.0 RESOURCE REVENUE PAYMENTS REVENUE

7.1 Subject to paragraphs 7.2 and 7.3, Toquaht Nation own source revenue derived from resource revenue payments will be calculated as the sum of amounts distributed in that Fiscal Year out of a Maa-nulth Settlement Trust in respect of resource revenue payments of Toquaht Nation, other than amounts distributed to another Maa-nulth Settlement Trust in respect of resource revenue payments of Toquaht Nation, and includes amounts attributable to interest, gains or other income derived from resource revenue payments deposited to that Maa-nulth Settlement Trust by Toquaht Nation.

7.2 Subject to paragraph 7.3, an amount distributed by the Maa-nulth Settlement Trust in respect of resource revenue payments of Toquaht Nation will not be included in the calculation set out in paragraph 7.1 if Toquaht Nation elects to exempt the distributed amount.

7.3 For the purposes of paragraph 7.2:

- (a) Toquaht Nation will have an exemption equal to the sum of the resource revenue payments deposited to the Maa-nulth Settlement Trust by Toquaht Nation to that point in time; and
- (b) if Toquaht Nation elects to use some portion of the exemption in respect of a distributed amount, the exemption in paragraph 7.3(a) available in respect of subsequent distributed amounts will be reduced by the amount so exempted.

8.0 TAX REVENUE

8.1 Toquaht Nation own source revenue from taxes for a Fiscal Year will be calculated as the sum of:

- (a) taxes received in that Fiscal Year by Toquaht Nation pursuant to an agreement with Canada or British Columbia to share tax room or tax revenues;

- (b) taxes other than the taxes referred to in paragraph 8.1(a) levied and received by Toquaht Nation under any law enacted by Toquaht Nation Government; and
- (c) any fines, interest or penalties levied and received by Toquaht Nation in respect of a tax referred to in this paragraph.

9.0 BUSINESS AND PROPERTY INCOME

9.1 Toquaht Nation own source revenue from business and property for a Fiscal Year will be calculated as:

- (a) the amount, if any, by which the aggregate of:
 - (i) incomes for the Fiscal Year from each business carried on by Toquaht Nation; and
 - (ii) incomes for the Fiscal Year from each property held by Toquaht Nation,exceeds the aggregate of:
 - (iii) losses for the Fiscal Year from each business carried on by Toquaht Nation, other than businesses providing Public Services; and
 - (iv) losses for the Fiscal Year from each property held by Toquaht Nation, other than properties held for the provision of Public Services; and
- (b) subject to paragraphs 6.0, 7.0 and 12.0, the amount of the aggregate of:
 - (i) dividends received from corporations; and
 - (ii) distributions from a partnership or trust that is not a Maa-nulth Settlement Trust, other than a return of capital or repayment of a loan. For the purposes of this paragraph, a return of capital means an amount of capital paid to Toquaht Nation from the partnership or trust that was contributed to the partnership or trust by Toquaht Nation, or by the Toquaht Band prior to the Effective Date, or by a third party where the third party's contribution would have been excluded under paragraph 5.0 if it had been paid directly to Toquaht Nation; and

- (c) the amount by which the aggregate of:
 - (i) net gains realized in the Fiscal Year on the disposition of properties, other than real properties, held on capital account and used or held for the primary purpose of earning income or gains, and real properties held on capital account, other than Toquaht Nation Lands, used or held for any purpose;exceeds the aggregate of:
 - (ii) losses realized in the Fiscal Year on the disposition of properties, other than real properties, held on capital account and used or held for the primary purpose of earning income or gains, and real properties held on capital account, other than Toquaht Nation Lands, used or held for any purpose; and
 - (iii) losses realized in previous Fiscal Years on the disposition of properties, other than real properties, held on capital account and used or held for the primary purpose of earning income or gains, and real properties held on capital account, other than Toquaht Nation Lands, used or held for any purpose, to the extent that such losses have not been applied to reduce net gains in a previous Fiscal Year.

9.2 For the purposes of paragraph 9.1:

- (a) any Toquaht Nation interest in a business carried on or property held in a joint venture is a business carried on or property held by Toquaht Nation to the extent of the interest of Toquaht Nation in the joint venture;
- (b) incomes and losses from businesses include net incomes and losses from adventures in the nature of trade;
- (c) incomes from businesses carried on and properties held are determined as the amount by which the revenues earned in the Fiscal Year exceed the reasonably deductible costs, taking into account reasonable allowances for depreciation and amortization, as determined in accordance with Generally Accepted Accounting Principles;
- (d) for purposes of computing income from a business or property, including a determination of allowances for amortization and depreciation, or for purposes of computing a gain or loss on a disposition of property, Toquaht Nation shall be deemed to have acquired each of its properties owned on the Effective Date at a cost equal to the property's fair market value on that date;

- (e) incomes and losses referred to in paragraph 9.1(a) do not include any amount in respect of incomes or losses of a corporation, trust or partnership, or any dividend received from a corporation or distribution from a trust or partnership;
- (f) subject to paragraph 9.2(d), income and losses referred to in paragraphs 9.1(a)(i) and 9.1(a)(iii) include gains and losses in respect of dispositions of property where such gains and losses would be included in the income of a business under Generally Accepted Accounting Principles;
- (g) incomes and losses referred to in paragraphs 9.1(a)(ii) and 9.1(a)(iv) do not include any gains and losses in respect of dispositions of property;
- (h) gains and losses referred to in paragraph 9.1(c) do not include gains and losses on the disposition of properties included in income and losses from a business under paragraphs 9.1(a)(i) and 9.1(a)(iii); and
- (i) incomes and losses are determined net of associated tax liabilities of Toquaht Nation.

10.0 FEES AND CHARGES

10.1 Toquaht Nation own source revenue from fees and charges for a Fiscal Year shall be calculated to include:

- (a) all fees and charges collected in that Fiscal Year in respect of Federally Supported Programs and Services, Implementation Activities and Provincially Supported Programs and Services; and
- (b) all fees and charges collected in that Fiscal Year in respect of other programs and services, other than user fees constituting a recovery of cost only,

where fees and charges for purposes of this paragraph include fees and charges levied and collected by Toquaht Nation in the Fiscal Year under a law enacted by Toquaht Nation Government in respect of services provided, permits and authorizations and use of property of Toquaht Nation.

11.0 OTHER REVENUE

11.1 Toquaht Nation own source revenue from other sources for a Fiscal Year will be calculated as the sum of all amounts received by Toquaht Nation from a revenue source that is not included under paragraphs 6.0 through 10.0, other than:

- (a) an amount expressly excluded from own source revenues under paragraphs 6.0 through 10.0; or
- (b) an amount recovered as a return of invested capital or in repayment of a loan, except to the extent that the amount represents a gain that is included in own source revenue under paragraph 9.0.

12.0 OTHER RULES

12.1 For purposes of paragraph 9.1(b)(i), where an entity controlled directly or indirectly by Toquaht Nation has provided Public Services, or funded another person to provide those services, to Toquaht Nation Citizens or to residents of its Maa-nulth First Nation Lands, and the source of funds for the provision of the Public Services is profits of the entity, or can reasonably be expected to come from profits of the entity, the amount expended by the entity in the Fiscal Year for the provision of such Public Services will be deemed to have been received by Toquaht Nation in the Fiscal Year as a dividend from a corporation.

12.2 Where an entity controlled directly or indirectly by the Toquaht Nation makes a loan to Toquaht Nation or to an entity that provides Public Services on behalf of Toquaht Nation:

- (a) the amount of such loan, for the purposes of paragraph 9.1(b)(i), will be deemed to have been received by Toquaht Nation as a dividend from a corporation in the Fiscal Year in which the loan is made; and
- (b) any amount paid in repayment of the principal amount of the loan will be deducted in calculating Toquaht Nation own source revenue for the Fiscal Year in which the amount is so paid.

12.3 Notwithstanding paragraph 12.2, a loan referred to in paragraph 12.2 is exempt from inclusion as income for purposes of paragraph 9.1(b)(i) and the subsequent repayment of such loan does not reduce own source revenue under paragraph 12.2(b) where there are *bona fide* repayment terms including:

- (a) interest at market value; and
- (b) repayment of principal within a reasonable period of time given the purpose of the loan,

except that any amount of interest or principal that has not been repaid within the period of the loan will result in the unpaid principal being considered Toquaht Nation own source revenue under paragraph 9.1(b)(i).

13.0 OWN SOURCE REVENUE REPORT

13.1 Within 120 calendar days after the end of each Fiscal Year during the term of this Agreement, Toquaht Nation will:

- (a) produce an own source revenue annual report substantially in the form of Schedule A for that Fiscal Year setting out the own source revenue of Toquaht Nation for that Fiscal Year in respect of each category of revenue or income for which a calculation is required to be made under this Agreement, and
- (b) provide a copy of the own source revenue report to Canada and British Columbia with the consolidated audited financial statements submitted pursuant to the Toquaht Nation Fiscal Financing Agreement each Fiscal Year and covered by the auditor's report or a Review Engagement Report as appropriate.

13.2 At any time within one year after Toquaht Nation provides the own source revenue annual report for a Fiscal Year to Canada and British Columbia under paragraph 13.1, a Party may notify the other Parties that it disagrees with the determination of an amount reported in that report.

13.3 Notwithstanding paragraph 13.2, at any time a Party may notify the other Parties that it disagrees with the determination of an amount included in a Toquaht Nation own source revenue annual report for a Fiscal Year:

- (a) in any case where a change in that amount is required to reflect, and reasonably can be considered to be consequential upon, an assessment or reassessment by a taxing authority; or
- (b) if the person filing the report has made any misrepresentation that is attributable to neglect, carelessness or wilful default, or has committed fraud in filing the report or in supplying information required in connection with the report.

13.4 A notice given by a Party under paragraph 13.2 or 13.3 will:

- (a) identify the relevant Toquaht Nation own source revenue annual report and Fiscal Year;
- (b) set out each determination that the Party disagrees with;
- (c) set out a calculation of each adjustment that the Party proposes be made to an amount included in the report, with detailed reasons; and
- (d) include a proposal for how the adjustment could be made.

13.5 Within 45 days of the date of a notice given by a Party under paragraph 13.2 or 13.3, each of the other Parties may respond in writing to the notice, setting out:

- (a) their acceptance of each proposed adjustment; or
- (b) proposed alternative adjustments with detailed reasons.

13.6 If the Parties fail to resolve a matter, in respect of which a notice is given under paragraph 13.2 or 13.3, by informal discussion within 75 days after the date of that notice, a Party may within 105 days after the date of that notice give another Party a notice of dispute in respect of the matter.

14.0 **FEDERAL OWN SOURCE REVENUE INCLUSION**

14.1 For purposes of determining the amount of Toquaht Nation own source revenue to be taken into account in calculating the federal transfer payments under a Toquaht Nation Fiscal Financing Agreement for a Fiscal Year, the federal own source revenue inclusion amount will be calculated as the greater of:

- (a) 0 (zero), or
- (b) $[\text{OSRF minus BE}] * \text{IR}\%$

Where,

OSRF is that portion of Toquaht Nation own source revenue to be taken into account in calculating the federal own source revenue inclusion amount for the Fiscal Year, determined in accordance with paragraph 14.2.

BE is the basic exemption for the Fiscal Year, determined in accordance with paragraph 14.4.

IR% is the inclusion rate for the Fiscal Year, as set out in Column 3 of Table 1 in paragraph 14.4.

14.2 The portion of Toquaht Nation own source revenue to be taken into account in calculating the federal own source revenue inclusion amount for a Fiscal Year under paragraph 14.1 is the sum of:

- (a) the revenues received by Toquaht Nation for the Fiscal Year resulting from tax room, tax authorities, or transfer of tax revenues, including any fines, interest or penalties thereon, provided under an agreement between Canada and Toquaht Nation to share tax room or tax revenues and

included in Toquaht Nation own source revenue from taxes for the Fiscal Year under paragraph 8.0;

- (b) 50% of Toquaht Nation own source revenue in respect of income derived from resource revenue payments for the Fiscal Year, as determined under paragraph 7.0; and
- (c) a percentage, determined in accordance with paragraph 14.3, of the amount by which Toquaht Nation own source revenue for the Fiscal Year, as determined under paragraph 4.0, exceeds the sum of:
 - (i) the amount determined under paragraph 14.2(a);
 - (ii) Toquaht Nation own source revenue in respect of income derived from resource revenue payments for the Fiscal Year, as determined under paragraph 7.0;
 - (iii) any revenues, except Property Tax revenues, received by Toquaht Nation for the Fiscal Year resulting from tax room, tax authorities, or transfer of tax revenues, including any fines, interest or penalties thereon, provided under an agreement between British Columbia and Toquaht Nation to share tax room or tax revenues and included in Toquaht Nation own source revenue from taxes under paragraph 8.0;
 - (iv) any other provincial transfers not referred to in this paragraph and included in Toquaht Nation own source revenue for the Fiscal Year that were provided directly, or indirectly through third parties, to Toquaht Nation, including any transfer provided under the *New Relationship Trust Act*;
 - (v) Property Taxes paid to Toquaht Nation by Maa-nulth First Nation Citizens of Toquaht Nation in the Fiscal Year, to the extent those Property Taxes do not exceed property tax that would have been paid to British Columbia pursuant to the *School Act*, the *Taxation (Rural Area) Act* or any other Provincial legislation in the absence of an agreement between British Columbia and Toquaht Nation to share property tax room or revenues; and
 - (vi) Property Taxes paid to Toquaht Nation in the Fiscal Year by a person who is not a Toquaht Nation Citizen.

14.3 The percentage to be used for the purposes of paragraph 14.2(c) is determined by the following formula:

$$\text{TFT}/(\text{TPT}+\text{TFT}) * 100$$

where,

TFT is the total transfer payments to be paid by Canada to Toquaht Nation for the Fiscal Year under a Toquaht Nation Fiscal Financing Agreement, as determined before the deduction of any amount on account of the federal own source revenue inclusion amount, and for greater certainty, does not include Time Limited Federal Funding; and

TPT is the total transfer payments to be paid by British Columbia to Toquaht Nation for the Fiscal Year under a Toquaht Nation Fiscal Financing Agreement as determined before the deduction of any amount on account of the provincial own source revenue inclusion amount determined under paragraph 15.1, and for greater certainty, does not include Time Limited Provincial Funding.

- 14.4 The basic exemption for the Fiscal Year is the product of the amount set out for that Fiscal Year in column 2 of Table 1 multiplied by the price adjustment factor for that Fiscal Year as determined under paragraph 14.5.

Table 1: Exemptions and Inclusion Rate

Column 1	Column 2	Column 3
Fiscal Year	Annual exemption (2004Q4\$)	Inclusion Rate (%)
Initial	N/A	0
1	\$112,406 OR PERE Amount	0
2	\$112,728 OR PERE Amount	0
3	\$113,057 OR PERE Amount	0
4	\$113,395 OR PERE Amount	0
5	\$113,742 OR PERE Amount	0
6	\$114,098 OR PERE Amount	3.3
7	\$114,463 OR PERE Amount	6.6
8	\$114,838 OR PERE Amount	10.0
9	\$115,222 OR PERE Amount	13.3
10	\$115,616	16.6
11	\$116,021	20.0
12	\$116,436	23.3
13	\$116,862	26.6
14	\$117,298	30.0
15	\$117,746	33.3
16	\$118,206	36.6
17	\$118,677	40.0
18	\$119,161	43.3

19	\$119,658	46.6
20	\$120,167	50.0

Notes: 1. The PERE Amount set out in Table 1 will be determined by a process to be negotiated among the Parties prior to the Effective Date; the PERE Amount will be one figure which is equivalent to the Pre-Existing OSR of Toquaht Nation. As such, it will not be subject to any adjustment other than for price as set out in paragraph 14.5. If the Annual Exemption dollar amount specified in column 2 of Table 1 exceeds the PERE Amount for any year, then that dollar amount will be used in calculation of the Basic Exemption. In order to have comparable figures, the PERE Amount will need to be discounted back to 2004Q4\$. The Annual Exemption dollar amount in Year 1 was determined by adjusting the agreed-upon Basic Exemption amount for assumed population growth up to an anticipated Effective Date.

2. The references to Fiscal Year XX will be converted to actual years (e.g. 2012/13) once the Effective Date is known, making the application of Annual Exemption and Inclusion Rates more clear.

14.5 For each Fiscal Year the price adjustment factor will be determined in the following manner:

$$\text{Price Adjustment Factor} = \text{FDDIPI}_{LQ} / \text{FDDIPI}_{04Q4}$$

where

FDDIPI_{LQ} is the first published value of FDDIPI for the latest quarter available for the Fiscal Year for which the Basic Exemption is being calculated and for which Statistics Canada has published a FDDIPI; and

FDDIPI_{04Q4} is the latest value of FDDIPI for the fourth quarter of 2004, published by Statistics Canada at the same time as the value used in FDDIPI_{LQ}.

14.6 If Canada intends to propose an own source revenue inclusion rate other than 50% in a subsequent own source revenue agreement, it will provide the Parties with reasonable notice of the proposal and review the proposal with the Parties.

15.0 PROVINCIAL OWN SOURCE REVENUE INCLUSION AMOUNT

15.1 The provincial own source revenue inclusion amount is zero.

16.0 FINANCIAL RECORDS

- 16.1 All accounts and financial statements of Toquaht Nation concerning the own source revenues described in this Agreement will be prepared in accordance with Generally Accepted Accounting Principles.
- 16.2 The financial records of Toquaht Nation for a Fiscal Year will be retained by Toquaht Nation for a minimum of 10 years.
- 16.3 Subject to paragraphs 16.4 and 16.5, Canada or British Columbia may request access to the financial records of Toquaht Nation, and Toquaht Nation will, within 30 days of receipt of such request make the financial records available at Toquaht Nation's principal administration offices.
- 16.4 Canada or British Columbia may request access to the financial records of Toquaht Nation in accordance with paragraph 16.3 for the sole purposes of interpretation, application or implementation of this Agreement and, for greater certainty, any information obtained in accordance with paragraph 16.3 may only be used for those purposes.
- 16.5 Information obtained by Canada or British Columbia during an inspection of the financial records of Toquaht Nation in accordance with paragraph 16.3 is deemed to be information received or obtained in confidence from another government in accordance with paragraph 1.17.1 of the Maa-nulth First Nations Final Agreement.

17.0 INFORMATION EXCHANGE

- 17.1 The Parties will share, at no cost to the Party requesting the information, and in a timely manner, information reasonably required for purposes of implementation, monitoring, and renewal of this Agreement.
- 17.2 The Parties will collect, share and disclose information under this Agreement in a manner that ensures the confidentiality of the information.

18.0 DEFAULT AND REMEDIES

- 18.1 Each of the following is a default under this Agreement:
- (a) a Party fails to comply with a provision of this Agreement; or
 - (b) a Party gives or makes a representation, statement or report, required under this Agreement, that it knows or reasonably ought to know is false in a material way.

18.2 Where there is an alleged default of this Agreement, the Party alleging the default will notify the other Parties of the alleged default and the circumstances giving rise to the alleged default.

18.3 A Party in alleged default that receives a notice of default under paragraph 18.2 will, within 30 days of receipt of the notice, notify the other Parties, of one of the following:

- (a) that it has remedied the default, including a description of the remedial action taken or being taken; or
- (b) that it disagrees that a default has occurred, in which case the issue will be referred to the dispute resolution provision set out in paragraph 19.0.

19.0 **DISPUTE RESOLUTION**

19.1 In the event of a dispute respecting the interpretation, application or implementation of this Agreement, the Parties agree to use the dispute resolution process set out in this Agreement.

19.2 The Parties desire and expect that a dispute arising from this Agreement will be resolved by informal discussion between the disputing Parties.

19.3 If the dispute is not resolved by informal discussion, a Party directly engaged in the dispute may refer the dispute to the Implementation Committee by delivering a written notice to the other Parties providing a concise summary of the matter in dispute.

19.4 If the Implementation Committee fails to resolve the dispute within 45 days of the dispute being referred to it, or a longer period if the Parties agree in writing, the dispute will be dealt with in accordance with Chapter 25 Dispute Resolution, and for greater certainty, the dispute will be considered to be a Disagreement for the purposes of that Chapter.

19.5 The deliberations of the Implementation Committee in paragraph 19.4 will be considered to be “collaborative negotiations” for the purpose of Chapter 25 Dispute Resolution, and will be deemed to fully satisfy the requirements set out in paragraphs 25.5.1 to 25.5.5 of that Chapter.

19.6 Nothing in this Agreement prevents a Party from commencing judicial proceedings at any time to prevent the loss of a right to commence proceedings due to the expiration of a limitation period, or to obtain interlocutory or interim relief that is otherwise available pending resolution of the dispute under this Agreement.

19.7 Disputes arising under this Agreement may not be referred to and finally resolved by arbitration under Chapter 25 Dispute Resolution.

19.8 Where this Agreement provides that the Parties “will negotiate and attempt to reach agreement”, those negotiations will be conducted as set out in Chapter 25 Dispute Resolution, but none of the parties are obliged to proceed to Stage Three of that Chapter.

20.0 **SCHEDULE DESCRIPTION**

20.1 The Toquaht Nation Own Source Revenue Annual Report set out in Schedules A.1 and A.2 is appended to this Agreement but does not form part of this Agreement, and does not alter any of the provisions of this Agreement.

20.2 Schedule B (“Toquaht Nation Special Purpose Funds”) is attached to and forms part of this Agreement.

21.0 **AMENDMENT**

21.1 No provision of this Agreement shall be deemed waived, amended or modified by any Party unless such waiver, amendment or modification is in writing and signed by the Parties.

22.0 **SUBSEQUENT OWN SOURCE REVENUE AGREEMENT**

22.1 Not later than eighteen months before the end of the term of this Agreement, or earlier if the Parties agree, the Parties will begin to negotiate and attempt to reach agreement on the own source revenue contribution of Toquaht Nation to the funding of Agreed-Upon Programs and Services, in accordance with Chapter 18 Fiscal Relations.

22.2 If the Parties do not reach a further own source revenue agreement by the end of the term of this Agreement, this Agreement will continue in effect on the same terms and conditions for the duration of the Toquaht Nation Fiscal Financing Agreement then in effect, including any extension of the term in that Toquaht Nation Fiscal Financing Agreement in accordance with the provisions in that Toquaht Nation Fiscal Financing Agreement.

23.0 **NO IMPLIED WAIVER**

23.1 No term or condition of this Agreement, or performance by a Party of a covenant under this Agreement, will be deemed to have been waived unless the waiver is in writing and signed by the Party or Parties giving the waiver.

23.2 No written waiver of a term or condition of this Agreement, of performance by a Party of a covenant under this Agreement, or of default by a Party of a covenant under this Agreement, will be deemed to be a waiver of any other covenant, term or condition, or of any subsequent default.

24.0 **FURTHER ASSURANCES**

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

25.0 **INTERPRETATION**

25.1 In this Agreement:

- (a) unless it is otherwise clear from the context, “including” means “including, but not limited to”, and “includes” means “includes, but is not limited to”;
- (b) 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;
- (c) a reference to a statute includes every amendment to it, every regulation made under it and any law enacted in substitution for it or in replacement of it;
- (d) unless it is otherwise clear from the context, a reference to a Schedule means a Schedule to this Agreement;
- (e) unless it is otherwise clear from the context, the use of the singular includes the plural, and the use of the plural includes the singular; and
- (f) all accounting terms have the meanings assigned to them under Generally Accepted Accounting Principles.

26.0 **TIME OF THE ESSENCE**

26.1 Time is of the essence in this Agreement.

27.0 SEVERABILITY

27.1 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 portion.

28.0 ENUREMENT

28.1 This Agreement will enure to the benefit of and be binding upon the Parties and their respective permitted assigns.

29.0 ASSIGNMENT

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

30.0 NOTICES

30.1 Unless otherwise agreed, a notice, document, request, approval, authorization, consent or other communication (each a “communication”) required or permitted to be given or made under this Agreement must be in writing and may be given or made in one or more of the following ways:

- (a) delivered personally or by courier;
- (b) transmitted by facsimile transmission; or
- (c) mailed by prepaid registered post in Canada.

30.2 A communication will be considered to have been given or made, 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 sent by facsimile transmission and if the sender receives confirmation of the transmission, at the start of business on the next business day after the business 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.

30.3 A communication must be delivered, transmitted to the facsimile number or mailed to the address of the intended recipient set out below:

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

For: British Columbia
Attention: Minister of Aboriginal Relations and Reconciliation
Room 234, Parliament Buildings
PO Box 9044 Stn Prov Govt
Victoria, British Columbia V8V 9E2
Fax Number: (250) 356-1124

For: Toquaht Nation
Attention: Chief Councillor
Box 759
1316 Pine Street
Ucluelet, British Columbia V0R 3A0
Fax Number: (250) 726-4403

30.4 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.

THIS AGREEMENT HAS BEEN EXECUTED 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 or duly**
) **authorized signatory**

As to the authorized signatory for the
Minister of Indian Affairs and Northern
Development

)
)
)
)

Per: duly authorized signatory

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**

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

)
)
)

Per: duly authorized signatory

EXECUTED in the presence of:

) **TOQUAHT NATION as represented by**
) **Toquaht Nation Government or duly**
) **authorized signatory**

As to the signature of

)
)
)
)

Per: duly authorized signatory

Schedule A

Toquaht Nation Own Source Revenue Annual Report For the year ended March 31, 20XX

Part A1 – Calculation of Revenues

This schedule calculates Toquaht Nation’s total own source revenues. This schedule excludes “amounts not included” per paragraph 5 of this Agreement.

Revenues Wholly For Federal OSR Calculation

	Amount		Reference
Tax Revenues Received Under Tax Administration Agreement (TAA) with Canada			
Personal income tax	1		Para 8.1(a)
Toquaht Nation goods and services tax	2		Para 8.1(a)
Other taxes			
(as identified)	3a		Para 8.1(a)
(as identified)	3b		Para 8.1(a)
Fines, interest, penalties on above taxes	4		Para 8.1(a)
Total Tax Revenues Received Under TAA with Canada	5		Sum lines 1 through 4
Resource Revenue Payment Revenues			
Aggregate distributions on behalf of Toquaht Nation from a settlement trust in respect of RRS in the year	6		Para 7.1
Less amounts elected to be exempt	7	()	Para 7.2
Non-exempt distributions	8		Subtract line 7 from line 6
Less provincial share (50%)	9	()	Multiply line 8 by 50%
Resource Revenue Payment Revenues for Federal Calculations	10		Subtract line 9 from line 8
<i>For Reference Only:</i>			
RRS exemption available, beginning of the year	a		Para 7, also 5.1(h))
RRS payments received into the Settlement Trust in the year on behalf of Toquaht Nation	b		Para 7.3
Less amounts distributed from the Settlement Trust on behalf of Toquaht Nation and elected to be exempt in the year	c	()	Carry forward line 7
RRS exemption available, end of the year	d		Subtract line c from the sum of lines a and b
TOTAL REVENUES WHOLLY FOR FEDERAL OSR CALCULATION	11		Sum lines 5 and 10

Revenues For General OSR Calculation

	Amount	Reference
Toquaht Nation Tax Revenues Received (Other than through TAA with B.C. or Canada)		
Taxes received		
(as identified)	12a	Para 8.1(b)
(as identified)	12b	Para 8.1(b)
Fines, interest, penalties on above taxes	13	Para 8.1(b)
Total Non-TAA Tax Revenues Received	14	Sum lines 12 through 13
Property Tax Revenue		
Total Property Tax collected in current year	15	Para 8.1(a) and 8.1(b)
Less amounts collected on behalf of other taxing authorities	16 ()	Para 14.2(c)(v)
Property Tax collected from vacated provincial tax room	17 ()	Para 14.2(c)(v)
Property Tax in excess of vacated tax room collected from non-Toquaht Nation Citizens	18 ()	Para 14.2(c)(v)
TOTAL Net Property Tax	19	Subtract lines 16 thru 18 from line 15
Capital Transfer Revenue		
Aggregate distributions on behalf of Toquaht Nation from a Settlement Trust in respect of Capital Transfer in the year	20	Para 6.1
Less: amounts elected to be exempt in the year	21 ()	Para 6.2(a)
amounts in respect of transfers to Toquaht Nation Citizens	22 ()	Para 6.2(b)
TOTAL OSR in Respect of Capital Transfer	23	Subtract lines 21 and 22 from line 20

For Reference Only:

Capital Transfer exemption available, beginning of year	e	Para 6.3
Add Capital Transfer payments deposited to the Maa-nulth Settlement Trust	f	Para 6.3(a)
Less amounts elected to be exempt in the year	g ()	Carry forward line 21
Capital Transfer exemption available, end of the year	h	Subtract line f from line e

Business and Property Income

Income from businesses and properties

Business A	24a	Para 9.1(a)(i) and 9.2
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Business B	24b		Para 9.1(a)(i) and 9.2
Property C	24c		Para 9.1(a)(ii) and 9.2
Property D	24d		Para 9.1(a)(ii) and 9.2
Less losses for current Fiscal Year			
Business E	25a	()	Para 9.1(a)(iii) and 9.2
Business F	25b	()	Para 9.1(a)(iii) and 9.2
Property G	25c	()	Para 9.1(a)(iv) and 9.2
Property H	25d	()	Para 9.1(a)(iv) and 9.2
Net Income from businesses and properties	26		Subtract sum of lines 24 from sum of lines 25

<u>Dispositions of capital property</u>			
Gains in the current year	27		Para 9.1(c)(i) and 9.2
Less losses in the current year	28	()	Para 9.1(c)(ii) and 9.2
Unapplied losses from previous years	29	()	Para 9.1(c)(iii) and 9.2
Total net gains from dispositions of capital property	30		Subtract sum of lines 28 and 29 from line 27

For Reference Only:

Unapplied prior year capital losses at beginning of the year	i		
Less amounts applied in the year	j	()	Carry forward line 29
Unapplied capital losses at end of the year	k		Subtract line i from line h

<u>Dividends received from corporations</u>			
(as identified)	31a		Para 9.1(b)(i) and 9.2
(as identified)	31b		Para 9.1(b)(i) and 9.2

<u>Distributions from trusts (less returns of capital/loans)</u>			
(as identified)	32a		Para 9.1(b)(ii) and 9.2
(as identified)	32b		Para 9.1(b)(ii) and 9.2

<u>Distributions from partnerships (less returns of capital/loans)</u>			
(as identified)	33a		Para 9.1(b)(ii) and 9.2
(as identified)	33b		Para 9.1(b)(ii) and 9.2
TOTAL Business and Property Income	34		Sum lines 26, 30, and lines 31 through 33.

Fees and Charges Revenue			
(as identified)	35a		Para 10.1
(as identified)	35b		Para 10.1

TOTAL NET Fees and Charges Revenue	36		Sum lines 35
Other Revenue Sources			
(as identified)	37a		Para 11.1
(as identified)	37b		Para 11.1
TOTAL OSR from Other Revenue Sources	38		Sum lines 37
Less repayment of the principal amount of a previously included loan from a Toquaht-controlled entity	39		Para 12.2(b)
TOTAL REVENUES FOR GENERAL OSR CALCULATION	40		Sum lines 14, 19, 23, 34, 36 and 38, minus line 39

Part A2 - Toquaht Nation OSR Inclusion Federal OSR Inclusion Amount Calculation

This schedule serves as a template for calculating Toquaht Nation's total OSR contribution for a given Fiscal Year per paragraph 14 of this Agreement.

	Amount		Reference
Total revenues wholly for federal OSR calculation	41		Carry forward Schedule A1, line 11
Total revenues for general OSR calculation	42		Carry forward Schedule A1, line 40
Total funding amount for Federally Supported Programs and Services	43		Toquaht Nation Fiscal Financing Agreement, Federally Supported Program And Service Base Funding Amounts, Adjustment Factors And Determination Of Transfer Payment
Total funding amount for Provincially Supported Programs and Services	44		Toquaht Nation Fiscal Financing Agreement, Provincially Supported Program And Service Funding Amounts
Total funding	45		Sum lines 43 and 44
Federal portion of total funding	46	%	Divide line 43 by line 45
Federal share of total revenues for general OSR calculation	47		Multiply line 42 by line 46
TOTAL OSR FOR FEDERAL PURPOSES	48		Sum lines 41 and 47
Basic Exemption for Fiscal Year ___	49	()	Para 14.1
TOTAL OSR NET OF BASIC EXEMPTION	50		Subtract line 49 from line 48
Inclusion Rate for Fiscal Year ___	51	%	Para 14.1
TOTAL OSR INCLUSION*	52		Multiply line 50 by line 51

* For purposes of calculating net fiscal transfer as per the Toquaht Nation Fiscal Financing Agreement, subject to transfer floor.

Schedule B

Toquaht Nation Special Purpose Funds

Implementation Fund

A Toquaht Nation implementation fund, funded solely with funding referred to in paragraph D.2 of Schedule D of the initial Toquaht Nation Fiscal Financing Agreement, or with income or gains derived by that fund, and held for the purpose of conducting activities described in paragraphs D.3 and D.4 of that Schedule.

Resource Development Fund

A Toquaht Nation resource development fund, funded solely with funding referred to in paragraph F.4 of Schedule F of the initial Toquaht Nation Fiscal Financing Agreement, or with income or gains derived by that fund, and held for the purpose of conducting activities described in paragraph E.5 of Schedule E of the initial Toquaht Nation Fiscal Financing Agreement.