

TLA'AMIN NATION

**REAL PROPERTY TAX
CO-ORDINATION AGREEMENT**

**Tla'amin Nation
British Columbia**

TLA'AMIN REAL PROPERTY TAX CO-ORDINATION 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 Real Property Tax Co-ordination 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 Real Property Tax Co-ordination Agreement is signed by the Parties, the Tla'amin Real Property Tax Co-ordination Agreement may be subject to review and amendment by agreement of the Chief Negotiators.

TLA'AMIN REAL PROPERTY TAX CO-ORDINATION AGREEMENT

THIS AGREEMENT made _____, 20____.

BETWEEN:

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

("British Columbia")

AND:

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

("Tla'amin Nation")

(collectively the "Parties")

WHEREAS:

- A. The Parties and Canada have entered into the Tla'amin Final Agreement;
- B. The Taxation Chapter of the Tla'amin Final Agreement provides that Tla'amin Nation may make laws in respect of direct taxation of Tla'amin Citizens within Tla'amin Lands in order to raise revenue for Tla'amin Nation purposes;
- C. In accordance with the *Treaty First Nation Taxation Act*, the Tla'amin Nation may make laws that:
 - a. impose property taxes on Persons who are not Tla'amin Citizens in relation to those Persons' ownership or occupation of land or improvements within Tla'amin Lands, and
 - b. provide exemptions from those property taxes,

to the extent these are authorized by the *Treaty First Nation Taxation Act* or this 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 In this Agreement:

“**Agreement**” means this Tla’amin Real Property Tax Co-ordination Agreement;

“**Assessment Act**” means the *Assessment Act*, R.S.B.C. 1996, c. 20;

“**Assessment Authority Act**” means the *Assessment Authority Act*, R.S.B.C. 1996, c. 21;

“**Community Charter**” means the *Community Charter*, S.B.C. 2003, c. 26;

“**Home Owner Grant Act**” means the *Home Owner Grant Act*, R.S.B.C. 1996, c. 194;

“**Interpretation Act**” means the *Interpretation Act*, R.S.B.C. 1996, c. 238;

“**Minister**” means the Minister having the responsibility, from time to time, for the exercise of powers in respect of the matter in question and includes any Person with authority to act in respect of the matter in question;

“**Non-Member**” means an individual, who has reached the age of majority, is not a Tla’amin Citizen and is either:

- a. a Registered Owner of Real Property on Tla’amin Lands and not ordinarily resident on Tla’amin Lands; or
- b. ordinarily resident on Tla’amin Lands;

“**Person**” means a person as defined under the *Interpretation Act*,

“**Property Taxes**” means taxes imposed on the basis of:

- a. the value of land or improvements or both; or
- b. a single amount for each parcel of land, the taxable area of a parcel of land or the taxable frontage of a parcel of land;

“**Provincial Taxing Authority**” means any local or provincial public authority that is authorized under an enactment of British Columbia either to impose Property Taxes, requisition amounts equivalent to Property Taxes or to receive revenue from Property Taxes imposed or collected for it by the Surveyor of Taxes, on Tla’amin Lands;

“**Registered**” means registered under the *Land Title Act*, R.S.B.C. 1996, c. 250;

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“Registered Owner of Real Property” means whichever of the following is applicable:

- a. the owner of a Registered estate in fee simple of the property, unless another Person holds an interest in the property referred to in subparagraphs (b) to (d);
- b. the holder of the last Registered agreement for sale, unless another Person holds an interest in the property referred to in subparagraphs (c) or (d);
- c. the tenant for life under a Registered life interest in the property, unless another Person holds an interest in the property referred to in subparagraph (d); or
- d. the holder of a Registered lease of the property for a term of at least 99 years;

“School Act” means the *School Act*, R.S.B.C. 1996, c. 412;

“Taxation (Rural Area) Act” means the *Taxation (Rural Area) Act*, R.S.B.C.1996, c. 448;

“Tla'amin Citizen” means an individual who is enrolled in accordance with the Eligibility and Enrolment Chapter of the Tla'amin Final Agreement;

“Tla'amin Final Agreement” means the Tla'amin Final Agreement among the Tla'amin Nation, Her Majesty the Queen in right of Canada and Her Majesty the Queen in right of British Columbia;

“Tla'amin Government” means the government of the Tla'amin Nation referred to in paragraph 2 of the Governance Chapter of the Tla'amin Final Agreement;

“Tla'amin Lands” means lands set out in Appendix C to the Tla'amin Final Agreement, as amended from time to time;

“Tla'amin Property Taxation Law” means a law providing for the imposition of Property Taxes on owners or occupiers of Tla'amin Lands pursuant to the Tla'amin Nation's authority under the Tla'amin Final Agreement, this Agreement and the *Treaty First Nation Taxation Act*;

“Tla'amin Public Institution” means a body, board, commission or any other similar entity established under Tla'amin Law, including a school board or health board;

“Tla'amin Taxation Authority” means the Tla'amin Public Institution established under 2; and

“Treaty First Nation Taxation Act” means the *Treaty First Nation Taxation Act*, S.B.C. 2007, c. 38.

2.0 COVENANTS BY BRITISH COLUMBIA AND THE TLA'AMIN NATION

- 2.1 If a Tla'amin Citizen is liable to Property Taxes under Tla'amin Property Taxation Law, that Tla'amin Citizen will not be liable to property taxation under the *School Act* or the *Taxation (Rural Area) Act* in respect of Tla'amin Lands if Tla'amin Property Taxation Law:
- a. provides that provincial enactments applicable to assessment of lands and improvements, including the *Assessment Act* and the *Assessment Authority Act*, apply in respect of the assessment for Property Taxes under Tla'amin Property Taxation Law;
 - b. provides for Property Taxes on the same basis as a municipality is authorized to establish under Divisions 1 to 8, Part 7 of the *Community Charter*, with the same requirements, restrictions and obligations as are contained in the provisions in those Divisions;
 - c. exempts the same property as is exempt from taxation under Division 6 (Statutory Exemptions) of Part 7 of the *Community Charter*, with the same requirements, restrictions and obligations as are contained in the provisions in that Division;
 - d. establishes in each year a tax rate, on assessable and taxable property on Tla'amin Lands, that is not less than the tax rate set for property in each property class under the *Assessment Act* for property in those classes in that year for tax imposed under the *School Act* applicable to School District No. 47 (Powell River); and
 - e. if a maximum municipal tax rate is established under provincial law for any property class under the *Assessment Act*, establishes in each year a tax rate for property on Tla'amin Lands in that property class that is not greater than the tax rate determined in accordance with the following formula:

$$A = B + C + D$$

Where

A = the maximum tax rate under a Tla'amin Property Taxation Law permitted in that year on Tla'amin Lands for that property class;

B = the rate set for that property class for that year for tax under the *School Act* applicable to School District No. 47 (Powell River);

C = the rate required to collect the amount to meet the Tla'amin Nation's obligation under 2.5 for that year for that property class; and

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D = the maximum municipal tax rate established for that property class.

- 2.2 Tla'amin Property Taxation Law may exempt from taxation the property enumerated in Division 7 (Permissive Exemptions) of Part 7 of the *Community Charter*, but only with the same requirements, restrictions and obligations as are in that Division.
- 2.3 Except as otherwise permitted under an enactment, the Tla'amin Nation agrees not to exempt any property from taxation except as provided in 2.1 and 2.2 and to tax in accordance with this Agreement.
- 2.4 Tla'amin Property Taxation Law will require that for each property on Tla'amin Lands that is subject to Property Taxes an annual tax notice be provided to each Person who is liable to property taxation under Tla'amin Property Taxation Law and to each holder of a Registered charge in relation to the property whose name is included on the assessment roll. The notice will include:
 - a. a property description;
 - b. taxes and fees that are payable in relation to the property;
 - c. when penalties will be imposed; and
 - d. if Tla'amin Property Taxation Law imposes a property tax to raise an amount in a requisition received by Tla'amin Nation from a Provincial Taxing Authority, the amount of the tax and the rate at which the tax is imposed.
- 2.5 The Tla'amin Nation agrees to pay any requisition, from a Provincial Taxing Authority having taxing or requisition powers in respect of land or improvements located on Tla'amin Lands, under laws of general application and consistent with the provisions of the Local and Regional Government Relations Chapter of the Tla'amin Final Agreement.
- 2.6 Tla'amin Nation may make property taxation laws in respect of Persons, other than Tla'amin Citizens, on Tla'amin Lands in order to raise revenue for Tla'amin Nation purposes if those laws:
 - a. comply with each of the provisions referred to in 2.1, 2.2 and 2.4;
 - b. subject to 9.1, do not have the effect of discriminating, on the basis of Tla'amin citizenship, between Tla'amin Citizens and other Persons in the imposition, administration and enforcement of Tla'amin Property Taxation Law; and
 - c. provide Non-Members with representation in accordance with the requirements for representation under this Agreement.

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- 2.7 If a Person, other than a Tla'amin Citizen, is liable to property taxation under Tla'amin Property Taxation Law, that Person will not be liable to property taxation under the *School Act* or the *Taxation (Rural Area) Act* in respect of Tla'amin Lands.
- 2.8 British Columbia will provide to the Tla'amin Nation the rates set under 119(3) of the *School Act* for School District No. 47 (Powell River) on or before the date British Columbia is required under that Act to send a notice of the rates to the collector in each municipality.
- 2.9 Tla'amin Nation will establish a Tla'amin Public Institution in accordance with this Agreement and the Tla'amin Final Agreement hereinafter referred to as the Tla'amin Taxation Authority.
- 2.10 Any authority of the Tla'amin Nation or Tla'amin Government under this Agreement, including the authority to make laws, may be delegated by a Tla'amin Property Taxation Law to the Tla'amin Taxation Authority if the delegation and exercise of the delegated authority is in accordance with the Tla'amin Final Agreement and this Agreement.
- 2.11 The Tla'amin Nation and Tla'amin Government will act through the Tla'amin Taxation Authority in exercising any authority under this Agreement, including the authority to make laws, in respect of property taxation matters that directly and significantly affect Non-Members including the rate of tax, tax exemptions and the expenditure of tax revenues.
- 2.12 The Tla'amin Taxation Authority will provide Non-Members, or their representatives, with the ability to participate in discussions and vote on property taxation decisions of the Tla'amin Taxation Authority that directly and significantly affect Non-Members, including the rate of tax, tax exemptions and the expenditure of tax revenues.
- 2.13 The limitation on fines in clause 148 of Governance Chapter of the Tla'amin Final Agreement does not apply to a penalty imposed in accordance with the *Treaty First Nation Taxation Act* and this Agreement.
- 2.14 If all or part of the Property Taxes remain unpaid after the date the Property Taxes are due to be paid, the Tla'amin Nation will add to the unpaid Property Taxes for the lands and improvements for the current year a penalty equal to the amount of penalty a municipality must apply under the *Community Charter* on the portion that remains unpaid.

3.0 UNIFORMITY OF TLA'AMIN PROPERTY TAXATION LAW

- 3.1 If this Agreement requires the comparison or consistency of Tla'amin Property Taxation Law with any provision of a provincial law, that provision will be considered with such modifications as are reasonably necessary in the Minister's opinion.

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- 3.2 Where, in the opinion of the Minister, Tla'amin Property Taxation Law does not comply with the terms of this Agreement, including that it:
- a. is not sufficiently uniform with provincial law as required in 2.1 to 2.8;
 - b. subject to 9.1, has the effect of discriminating, on the basis of Tla'amin citizenship, between Tla'amin Citizens and other Persons in the imposition, administration and enforcement of Tla'amin Property Taxation Law; or
 - c. does not provide Non-Members with representation in accordance with the requirements for representation under 2.12,

the Minister will give notice of his or her opinion to the Tla'amin Nation and will specify the amendments and alterations to the Tla'amin Property Taxation Law that the Minister considers necessary.

- 3.3 If the Tla'amin Nation disagrees with the opinion of the Minister or with the amendments and alterations that the Minister considers necessary, the Tla'amin Nation may refer the matter to the Dispute Resolution process under 11.1 to 11.8.
- 3.4 Where the disagreement is not resolved under the Dispute Resolution provisions and the Tla'amin Nation fails to correct the matter specified in the notice to the satisfaction of the Minister, the Minister may give a notice to terminate this Agreement.

4.0 AMENDMENTS TO AGREEMENT

- 4.1 The Parties may amend this Agreement through the exchange of letters between the Tla'amin Nation and the Minister, subject to any necessary approvals, authorizations or legislative requirements.

5.0 NOTICE OF AMENDMENTS OR CONTEMPLATED AMENDMENTS

- 5.1 Subject to parliamentary convention, British Columbia will make reasonable efforts to give the Tla'amin Nation notice of any amendments or contemplated amendments to enactments which would affect the obligations of the Tla'amin Nation under this Agreement.
- 5.2 British Columbia is not obligated to consult or advise the Tla'amin Nation of any of those amendments or contemplated amendments.

6.0 RIGHT OF AMENDMENT

- 6.1 Nothing in this Agreement will limit or restrict, or be construed as limiting or restricting, British Columbia's right to amend, alter or vary, in such manner as British Columbia may determine, the *Community Charter* or any other enactment.

7.0 PROVISION OF TLA'AMIN PROPERTY TAXATION LAW

7.1 The Tla'amin Nation will provide to British Columbia a copy of any Tla'amin Property Taxation Law and any amendments within 60 days after the law or amendment is enacted.

8.0 HOME OWNER GRANT

8.1 No Person is entitled to a grant under the *Home Owner Grant Act* in respect of property subject to tax under Tla'amin Property Taxation Law.

9.0 TRANSITIONAL PROVISIONS

9.1 While the exemption under paragraph 17 of the Taxation Chapter of the Tla'amin Final Agreement in respect of taxation of property is in effect:

- a. 2.6(b) will not apply;
- b. for each year, in respect of each property class under the *Assessment Act*, the rate of tax under Tla'amin Property Taxation Law cannot exceed the aggregate of:
 - i. the rate set for that property class for that year for tax under the *School Act* applicable to School District No. 47 (Powell River);
 - ii. the rate required to collect the amount to meet the Tla'amin Nation's obligations under 2.5 for that year for that property class;
 - iii. the rate established by the City of Powell River under section 197(1)(a) of the *Community Charter* for that property class; and
- c. Tla'amin Government will provide in each year to each Non-Member, who is subject to tax in respect of a property under a Tla'amin Property Taxation Law, a grant equal to the grant the Non-Member would have been eligible for under the *Home Owner Grant Act* if the Non-Member had been taxable under the *School Act* for that year in respect of that property.

9.2 Nothing in this Agreement contemplates the termination of the exemption under paragraph 17 of the Taxation Chapter of the Tla'amin Final Agreement in relation to taxation under this Agreement by the Tla'amin Nation.

10.0 IMPLEMENTATION

10.1 British Columbia and the Tla'amin Nation will identify the actions required to give effect to the provisions of this Agreement in an efficient manner, taking into account the effective date of the Tla'amin Final Agreement, the dates provided for in legislation governing assessment and taxation, implementation costs and other matters.

11.0 DISPUTE RESOLUTION

- 11.1 The Parties desire and expect that most disagreements will be resolved by informal discussion without the necessity of invoking a dispute resolution mechanism and will act in good faith in attempting to reach a resolution.
- 11.2 In the event a dispute between the Parties arising under this Agreement is not resolved by informal discussion, they will use the procedures set out in 11.3 to 11.6 before pursuing any other remedy.
- 11.3 Within 30 days of a Party receiving notice from the other that it is invoking this dispute resolution process, they will meet and attempt to settle the dispute.
- 11.4 If, within 60 days after the first meeting referred to in 11.3, the Parties fail to resolve the dispute, they will submit the dispute to mediation and equally bear the cost of mediation.
- 11.5 The Parties will jointly select a mediator but if, after 30 days, they are unable to agree on the choice of mediator, they will submit the matter of choosing a mediator to a judge of the Supreme Court of British Columbia who will be asked to choose a mediator.
- 11.6 The Parties will participate in the mediation process for a period of 60 days.
- 11.7 The Parties may agree to time periods other than those referred to in 11.3 to 11.6.
- 11.8 The Parties may agree to use any of the provisions of the Dispute Resolution Chapter of the Tla'amin Final Agreement.

12.0 TERM OF THIS AGREEMENT

- 12.1 The term of this Agreement:
 - a. begins on the Effective Date or such other date as agreed to by the Parties; and
 - b. terminates on a date agreed to by the Parties or, if there is no such agreement, on December 31 of the year following the year in which the notice to terminate is given by either party.
- 12.2 At the request of the Tla'amin Nation, British Columbia and the Tla'amin Nation will negotiate and attempt to reach agreement respecting the ability of the Tla'amin Nation to use revenues raised pursuant to 2.6 of this Agreement as security for incurring liability by borrowing for any purpose of a capital nature.
- 12.3 Any agreement under 12.2 may include provisions for:
 - a. the approval of the majority of Persons who are subject to Tla'amin Property Taxation Law or an alternate test as agreed by the Parties;

- b. the purpose of borrowing;
- c. the term of the liability;
- d. the level of debt;
- e. the extent to which Tla'amin Property Taxation Law pursuant to 2.6 may continue in effect after the termination of this Agreement in order to service the debt;
- f. limits on tax rates for all Persons on Tla'amin Lands for the provincial taxes referred to in 2.7 during the term of the liability, taking into account the total Property Taxes paid during and after the end of this Agreement and the level of taxation required to service the debt; and
- g. the extent to which other matters referred to in this Agreement may need to be considered in order to service the debt, if this Agreement is terminated before the debt is repaid.

12.4 The termination of this Agreement will not affect the rights, obligations or liabilities that British Columbia, the Tla'amin Nation, Tla'amin Citizens or other Persons each had before the termination of the Agreement.

13.0 AMENDMENT AND REVIEW

13.1 Any amendment to this Agreement must be in writing and executed by both Parties.

13.2 The Parties will review this Agreement no later than 11 years after the Effective Date, and may amend this Agreement if each Party agrees.

13.3 In addition to the review under 13.2, 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.

13.4 Nothing in 13.2 and 13.3 requires either Party to agree to amend this Agreement.

14.0 NO IMPLIED WAIVER

14.1 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 giving the waiver.

14.2 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.

15.0 NOT A TREATY OR LAND CLAIMS AGREEMENT

15.1 This Agreement is not a treaty or a lands 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*.

16.0 FURTHER ASSURANCES

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

17.0 INTERPRETATION

17.1 In this Agreement:

- a. headings are for convenience only, do not form part of this Agreement and in no way define, limit, alter or enlarge the scope or meaning of any provision of this Agreement;
- b. 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; and
- c. 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.

18.0 GOVERNING LAW

18.1 This Agreement will be governed by and construed and interpreted in accordance with the laws of the Province of British Columbia.

19.0 TIME OF THE ESSENCE

19.1 Time is of the essence in this Agreement.

20.0 ENUREMENT

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

21.0 NO ASSIGNMENT

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

22.0 NOTICES

22.1 In 22.2 to 22.7, "Communication" includes a notice, document, request, approval, authorization, confirmation or consent.

22.2 A Communication must be in writing and be:

- a. delivered personally or by courier;
- b. transmitted by fax or email; or
- c. mailed by any method for which confirmation of delivery is provided.

22.3 A Communication is considered to have been given, made, or delivered and received:

- a. if delivered personally or by courier, at the start of business on the next business day after the business day on which it was received by the addressee or a responsible representative of the addressee;
- b. if sent by fax or email and the sender receives confirmation of the transmission, at the start of business on the business day next following the day on which it was transmitted; or
- c. if mailed by any method for which confirmation of delivery is provided, when receipt is acknowledged by the addressee.

22.4 The Parties will provide to each other addresses for delivery of Communications under this Agreement, and will deliver a Communication to the address provided by each Party.

22.5 If no other address for delivery of a particular Communication has been provided by a Party, a Communication will be delivered, mailed to the address, or transmitted to the fax number, of the intended recipient as set out below:

For:	British Columbia
Attention:	Minister of Aboriginal Relations and Reconciliation
Postal delivery:	PO Box 9051 STN PROV GOVT Victoria, British Columbia V8W 9E2
Personal or courier delivery:	Parliament Buildings Victoria, British Columbia
Fax:	(250) 953-4856

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For: **Tla'amin Nation**
Attention: Chief, Tla'amin Nation
RR #2
Sliammon Road
Powell River, British Columbia V8A 4Z3
Fax: (604) 493-9769

22.6 Notwithstanding 13.1, 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 in subsection 22.2.

23.0 EXECUTION IN COUNTERPARTS

23.1 This Agreement may be executed in counterparts and by facsimile. Each signature will be deemed to be an original signature and all executed documents together will constitute one and the same document.

THIS AGREEMENT HAS BEEN EXECUTED AND DELIVERED as of the day and year first above written.

EXECUTED in the presence of:)
) HER MAJESTY THE QUEEN IN RIGHT
) OF THE PROVINCE OF BRITISH
) COLUMBIA
) as represented by the Minister of
) Aboriginal Relations and Reconciliation
) or duly authorized signatory
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_____)
As to the authorized signatory for the) Per: duly authorized signatory
Minister of Aboriginal Relations and)
Reconciliation)

EXECUTED in the presence of:)
) TLA'AMIN NATION
) as represented by the Tla'amin
) Government or duly authorized
) signatory
)
)
)
)
)
)
_____)
As to the authorized signatory for the) Per: duly authorized signatory
Chief of the Tla'amin Nation)