

LETTER OF AGREEMENT

BETWEEN:

**Her Majesty the Queen in the Right of the Province of British Columbia,
as represented by the MINISTER OF TRANSPORTATION
AND INFRASTRUCTURE
447 Columbia Street
Kamloops, BC V2C 2T3
(the "Ministry")**

AND:

**Adams Lake Indian Band, on behalf of Sexqéltkeme Lakes Division (SLD)
Box 588
6453 Hillcrest Road
Chase, BC, V0E 1M0
(the ALIB")**

Re: Archaeological Services for Burial Landform Area

For good and valuable consideration (the receipt and sufficiency of which is hereby acknowledged by the Ministry and the ALIB, each to the other), the Parties agree to the terms set out in this Agreement:

1. The Ministry wishes to enter into agreement with ALIB for the purposes of Administering Archaeological Services for the Burial Landform area located on the Monte Creek to Pritchard Project Phase 2. All site works will be carried out by the Adams Lake Indian Band (ALIB) on behalf of the SLD.

Definitions

2. Throughout this document, terminology is used as follows:
 - a. "Consultant" means the successful Proponent who enters into an agreement to undertake the Archaeological works with ALIB;
 - b. "Ministry" means Ministry of Transportation and Infrastructure (MOTI);
 - c. "Project Manager" means the person identified as such by the Ministry, who is authorized to act on behalf of the Ministry to represent the Ministry in matters related to this contract;
 - d. "Province" means Her Majesty the Queen in Right of the Province of British Columbia and includes the Purchasing Commission and the Ministry;
 - e. "Registered Professional Consulting Archaeologist" means an appropriately qualified professional who is a member in good standing with the British Columbia Association of Professional Archaeologists.

Background:

3. The Ministry and the SLD have been consulting on a regular basis to work towards a common understanding between the four members of the Trans Canada Highway 1 Corridor Liaison Team and have established Terms of Reference for moving towards desired outcomes.
4. The Ministry has retained ALIB, to administer the professional archaeological consulting services within a defined area along Highway 1 East of Kamloops, British Columbia. Works within the area will be carried out by the ALIB on behalf of the SDL. This area is referred to as the Burial Landform Area on the Monte Creek to Pritchard Phase 2 Project. The Ministry is planning upgrades to the Trans Canada Highway that include 4-laning and associated frontage roads and structures.

Scope of Work

5. The scope of work will involve the following:
6. Stage 1: Selection of Test Locations:
 - Divide study area into 10 by 10 meter Control Blocks (CB) and assign each block a reference number.
 - Select sample locations for evaluative excavation units.
7. Stage 2: Evaluative Excavation Units
 - Conduct controlled data recovery via hand excavation of sample evaluative excavation units (individual unit size of 1m x1m x1.2m);
 - a. If fragmentary remains are identified, an additional 4 units will be excavated immediately adjacent to the find. If with the additional 4 units, no intact burial is located, Stage 3 methods will be implemented.
 - b. If an intact burial is identified, implement First Nations-MoTI approved Burial Protocol Schedule C attached (work in CB's not directly adjacent will continue).
8. Stage 3: Archaeological Monitoring (Mechanical Excavation)
 - Conduct controlled excavation of each CB to a depth of 2m in approximately 10 to 20cm levels using a small tracked excavator with a smooth edged clean-up bucket.
 - a. If fragmentary remains are identified, halt machine excavation within the CB and conduct hand excavation within the CB to determine if an intact burial is present. If no evidence of an intact burial is found, resume machine excavation.
 - b. If an intact burial is identified, implement First Nations-MoTI approved Burial Protocol (work in CB's not directly adjacent will continue).

(the "Project Works").

5. Ministry's Obligations

The Ministry will pay the amount of \$248,964.80 to the ALIB for the Project Works based on Schedule A -Payment Schedule. The total amount is based on an estimated 10days work. These anticipated costs were developed on the assumption that the project will proceed consistent with our expectations based on our understanding of the project area, the known archaeological sites, the potential for unrecorded sites, etc. Some of the factors that may affect project timing and cost include greater than anticipated cultural return, adverse weather conditions or First Nation concerns about the project. If such a situation arose you would be advised as soon as possible in order to discuss options.

The Ministry will be responsible for the following:

- Providing any existing site plan and profile information
- Advising on matters regarding standards and policy;
- Provision of contract documents;
- Providing any available pertinent report and inventories that will assist in completion of the assignment;
- Approval of scope, budget or schedule changes as an assignment progresses;
- Determining the acceptability of all proposed sub-consultants assigned work on a project;
- Monitoring the progress of assignments;
- Providing input and feedback as the work progresses (such review does not in any way relieve the Consultant of responsibility for errors or omissions or for the quality or accuracy of work performed);
- Monitoring the Consultant's performance during the course of the assignment as required.

ALIB Obligations

9. The ALIB will comply with and ensure compliance with any and all applicable laws and regulations relating to the substances of this Agreement and all aspects of the Project Works.
10. The ALIB will provide evidence of insurance to the Ministry, by completing and providing a Certificate of Insurance (Ministry form H0111) according to the attached Insurance Specifications, pursuant to Schedule B
11. To ensure the Consultant will retain and organize experienced staff to complete the assignments and provide an assignment supervisor who:
 - i. Is a member in good standing with the British Columbia Association of Consulting Archaeologists;
 - ii. Is qualified to obtain Archaeology Branch Heritage Investigation and Site Alteration Permits within the areas of concern.
 - iii. Will provide retain and maintain proof of insurance from the consultant and provide that evidence of insurance to the Ministry by providing a Certificate of Insurance (Ministry form H-0111) according to the attached Insurance Specifications INS 80.

- iv. Will implement a Quality Management Plan to ensure the delivery of the Consultant's services are error free, timely, cost effective, and meet ministry standards outlined in this document and include a clear process to ensure any quality deficiencies are addressed.
- v. Draft reports will be submitted as 1 hard copy and 1 digital pdf copy within 30 days when requested by the Project Manager. Final reports will be submitted as 3 hard copies (1 unbound and 2 bound), and 1 digital pdf copy within 30 days of completion of the assignment to the Project Manager. All documents submitted to the ministry will be in formats that are compatible with ministry software programs including MS Office 2003 and Adobe Version 7.0.
- vi. ALIB will at all times indemnify and save harmless Her Majesty the Queen in Right of the Province of British Columbia, as represented by the Minister of Transportation and Infrastructure, and the employees, servants, and agents of the Minister from and against all claims, actions, causes of action, demands, losses, damages, costs, liabilities, expenses, fines, fees, penalties, assessments and levies, made against or incurred, suffered or sustained by any of them, at any time or times (whether such interest, fines or costs are court ordered or otherwise and whether before or after the expiration or termination of this Agreement) where the same or any of them are sustained in any way as a result of this Agreement, which indemnity will survive the expiration or sooner termination of this Agreement.
- vii. Will be responsible for the safety of their personnel while performing fieldwork. At a minimum, the following is required:

Implement and maintain an acceptable Base Safety Program for the work activity including participating and incorporating all measures associated with site safety orientation sessions on active construction sites.

Coordinate the work activities of employees that are related to health and safety.

Have a reasonably practical process or system for ensuring compliance with the Worker's Compensation Board (WCB) Occupational Health & Safety Regulation with respect to the workplace.

Wear appropriate safety equipment.

FEES AND PAYMENT

- 12. The Ministry will pay for the Project Works in accordance with the payment provisions set out for Schedules A (Burial Landform Daily Rate):

- a. The invoices should be sent to the following address:

Maurice Lefrancois, Project Manager
Ministry of Transportation and Infrastructure
342-447 Columbia Street
Kamloops, BC, V2C 2T3
Phone: (250)-828-4077
Fax: (250)-828-4229
Email: Maurice.Lefrancois@gov.bc.ca

The invoice(s) should reference agreement number 255LA0077

The invoices shall be forwarded for services, in arrears, on a monthly basis until completion of the works required.

Notwithstanding any other provision of this Agreement, the payment of money by the Ministry to the ALIB pursuant to this Agreement is subject to:

- a. there being sufficient monies available in an appropriation, as defined in the B.C. *Financial Administration Act* (the "FAA"), to enable the Ministry in any fiscal year when any payment of money by the Ministry falls due pursuant to this Agreement, to make that payment; and
- b. Treasury Board, as defined in the FAA, not having controlled or limited, pursuant to the FAA, expenditure under any appropriation referred to in subparagraph (a) of this paragraph.

The ALIB will establish and maintain accurate books of accounts and records, including supporting documents, of all costs incurred and monies paid in connection with the Project Works and of the application of funds contributed by the Ministry, and will permit the Ministry at any time or times during normal business hours to copy or audit, or both, any or all of such books or account and records, including supporting documents.

Provisional Sum Items:

Payment from the Provisional Sum Item will be authorized by the Ministry Representative in a "work order" as required to ensure the appropriate management of any significant archaeological deposits.

TERM

13. The term of this Agreement will commence on the date of execution and delivery of the Agreement and will end when works are completed on the Burial Landform Area unless sooner terminated by the Ministry.

TERMINATION

14. The Ministry may terminate this Agreement:

- a. immediately for the ALIB failure to comply with this Agreement by giving written notice of termination to the ALIB, and
- b. for any other reason by giving at least ten (10) days written notice of termination to the ALIB.

The Parties agree that if the Ministry terminates this Agreement under paragraph (b) above, the Ministry must pay the ALIB the portion of fees and expenses described in Schedule A, which equals the portion of the Project Works that was completed to the Ministry's satisfaction before termination. That payment discharges the Ministry from all liability under this Agreement.

The Parties agree that if the ALIB fails to comply with this Agreement, the Ministry may terminate it and pursue other remedies.

GENERAL

15. The Parties agree that any amendment to the terms and conditions of this Agreement must be in writing and duly executed by both Parties.
16. The Parties agree to negotiate all disputes arising from this Agreement in good faith after receiving written notification of the existence of a dispute from any Party.

17. The ALIB will at all times treat as confidential all documents and other information supplied to or obtained as a result of this Agreement and shall not permit the publication, release or disclosure of the same without the prior written consent of the Ministry. This obligation survives the completion or termination of this Agreement.

18. The Parties agree that the Schedules to this Agreement form part of this Agreement.

19. The Parties agree that this Agreement will be construed in accordance with the laws of the Province of British Columbia. A reference to a statute in this Agreement, whether or not that statute has been defined, means a statute of the Province of British Columbia, unless otherwise stated and includes all amendments to it, the regulations made under it and any enactment passed in substitution therefore or replacement thereof.

20. Time is of the essence in this Letter of Agreement.

The Parties have executed this Letter of Agreement

as of July 6, 20 11

Signed on behalf of Her Majesty the Queen
in the right of the Province of British
Columbia, as represented by the Minister
of Transportation and Infrastructure on

July 6, 20 11

in the presence of:



Signature of Witness

WAYNE MAGER

Name of Witness



Signature of Authorized
Representative of Ministry

Shanna Mason

Printed Name

Executive Director, MoT

Title

Signed by Councillor Clifford Arnouse on behalf of the
ALIB

July 6, 20 11



Signature of Clifford Arnouse
Authorized Representative of ALIB



Signature of Witness

David Nordqvist

Name of Witness

David Nordqvist

Printed Name

Title and Rights

Title

Agreement Identification Number # 255LA0077

Schedule A

Payment

Schedule

Burial Landform Crew Day Rate

S21

S21

Agreement Identification Number # 255LA0077

Schedule B

As per attached INS 80 – Insurance Specifications and H0111 Certificate of Insurance.

SCHEDULE C

**Sexqéltkmc Lakes Division and Ministry of Transportation and Infrastructure
Protocol for Ancestral Remains Finds for Monte Creek to Pritchard Phase 1 & 2 Projects –
DRAFT June 20, 2011**

1. Purpose

The Sexqéltkmc Lakes Division (SLD) and the Ministry of Transportation and Infrastructure (BCMoT) have created this protocol for dealing with any finding of ancestral remains in connection with highway construction projects between Monte Creek to Chase within SLD traditional territory.

This Protocol has been adopted to meet the need of the parties to adequately ensure the necessary level of protection and respect of the SLD heritage and culture while providing the necessary certainty that will allow BCMoT to continue with its highway construction projects.

This Protocol shall apply to all archaeological work to be undertaken by BCMoT and/or its contractors within SLD traditional territory relating to the Monte Creek to Pritchard Phase 1 & 2 highway construction projects. While this Protocol is general in nature, it does define the process to be followed and options that may be pursued. The particular option to be undertaken should intact ancient burial remains be found may vary from project to project. Should it be determined by the BCMoT, acting reasonably and in consultation with the SLD, that mitigation is not feasible in a particular instance, the Protocol defines a process for the safe and respectful relocation of the remains.

Any significant sites found during the archeological investigation and/or during construction, will be dealt with following the *Heritage Conservation Act* of British Columbia (Significant sites are defined in Appendix D and Appendix E of the Archaeological Impact Assessment Guidelines (see attached Schedule A).

The Protocol is subject to the standards as set out in the *Heritage Conservation Act* of British Columbia. The following section outlines procedures that will be followed provided they are not in conflict with legal or professional obligations or duties of a Registered Professional Consulting Archaeologist.

Process and Options

1.1. For Intact Ancient Remains

In a situation where intact ancient remains are discovered during archaeological investigations or monitoring during highway construction:

Step 1: Stop archaeological investigations or highway construction in the immediate vicinity of the remains, including any shovel testing, probing or mechanical drilling or excavation. Archaeological investigations outside of a 25 meter radius of the remains may resume on the project. Highway construction outside of a 50 meter radius of the remains may resume on the project. Archaeological investigations may proceed on other archaeological projects being conducted for BCMoT within SLD traditional territory in accordance with agreements as between SLD and the archaeologist(s).

Exception – If 3 or more distinct intact ancient remains sites are located within a 50 meter radius of one another, the radius for stopping archaeological investigations will be extended to 100 meter radius of the remains.

Step 2: Notify the designate for SLD in person, the RCMP, the Provincial Archaeology Branch, the BC Coroners Service, and the BCMoT representative and the Prime Contractor representative by direct telephone conversation, confidential voicemail or confidential email within the same business day of the discovery. Ensure that the designate for SLD has received the message(s). Do not fax notifications or leave detailed messages with third parties. If the site is deemed forensic, the RCMP will take control of the site.

Step 3: As directed by an SLD designate, within 48 hours of notification, Spiritual Elders and/or other persons designated by SLD in accordance with SLD policies will stabilize and secure the location by:

- Covering exposed remains with a new blanket, with tobacco placed in four corners of the exposed area;
- Securing the blanket to the ground by means which prevents exposure, but without further impacting the exposed remains or potentially buried remains, which could include covering the site area with a tarp/tent;
- Obscuring the covering blanket with soil or other protective barrier to reduce visibility and limit accidental disturbance if the remains are in a highly visible location or in an area which is easy for the public to access; and
- If required, secure the site by way of interim protective measures and/or the provision of security as agreed to by SLD and the archaeologist.

Step 4: Within three days of notification a meeting will be held between the representatives of SLD, the archaeological team and representatives of the BCMoT in order to discuss options related to either the relocation and/or protection of the ancient remains. The preferred option is to have the proposed project structured in a manner which will avoid an adverse impact to the remains, if it is determined to be realistically feasible by both parties acting reasonably.

- (a) In the event of the discovery of the remains during archaeological investigations, BCMoT, acting reasonably, will determine if it is feasible to develop plans for highway construction for avoidance of the remains and, if so, it will develop such plans in conjunction with SLD representatives;
- (b) In the event the discovery of the remains occurs during highway construction, it is acknowledged by the parties to this Protocol that avoidance of the remains will not be feasible. In this situation, relocation and / or First Nation ceremonies will be completed within 7 days of notification.
- (c) In the event of (b) above, or in the event it is determined pursuant to the process set out in (a) above that avoidance of the remains is not feasible, SLD and the BCMoT will examine the types of protection measures which could be utilized to preserve and protect the remains in its current location. The options that will be examined by SLD and the BCMoT will be one or a combination of:
 - i) Removal of remains
 - ii) capping with lightweight or conventional fill material;
 - iii) capping with a pre-cast concrete form;
 - iv) slope stabilization measures, such as a retaining wall;

v) protection barriers, whether they be temporary or permanent

- (d) Should it be determined that site protection measures are necessary and deemed feasible by BC MoT after discussion with SLD, no activity will take place within the established radius buffer zone where the Ancient Remains have been found until such time as agreement between SLD and the BCMoT, with both parties acting reasonably, has been reached as to what site protection measures will be undertaken. The agreement on site protection measures for the remains will be reached by both parties within 7 days of notification.

If avoidance and site protection measures are not feasible and should the BCMoT conclude, acting reasonably and through consultation with SLD as outlined within this protocol, the highway construction project so affected cannot proceed unless the remains are moved to another location outside the project area, SLD and the BCMoT will agree on a process within 7 days of notification noted in Step 4 above for the respectful and safe removal of the remains and their re-interment at a location to be mutually agreed upon by SLD and the BCMoT. The Archeology Branch will also be consulted on the location for re-interment and will provide guidance as necessary.

Step 5: SLD will, within 7 days of notification, undertake cultural ceremonial activities as deemed appropriate by their Elders and SLD designates.

1.2. For Isolated or Fragmentary Ancient Remains Finds

The following process should be followed when isolated or fragmentary ancient remains are found during archaeological work:

Step 1: Collect the remains. Fragmentary or isolated remains represent interments that have been disturbed in modern-day, historic or ancient times. Nevertheless, these remains require respectful handling and transport. When fragmentary or isolated remains are encountered during the fieldwork, they will be recorded, carefully packaged, and transported by the archaeological team to a secure location that is acceptable by all parties, including the Archeology Branch, to await analysis, and/or storage, and/or re-interment.

It is possible that not all remains will be identified during the fieldwork, especially remains which are very small or in a poor state of preservation. In the event that remains are discovered after fieldwork, for example, in column samples or matrix samples, the protocols surrounding notification, packaging and transport remain the same, providing such protocols are feasible taking into account the timing and context of any such finds.

Step 2: Notify appropriate persons and agencies in the event of the discovery of fragmentary remains. This is undertaken as per Step 2 in section 2.1. The archaeologist shall confirm if SLD requires that a spiritual ceremony be undertaken by the spiritual Elders or persons designated by SLD.

Step 3: Proceed with archaeological field work, making any adjustment to methods to address the assessed likelihood of finding additional remains. If this adjustment is additional to or contrary to the methods outlined in the Heritage Conservation Act (HCA) permit under which the archaeological work is being conducted, it will require that the permit be amended, or a new HCA permit be issued prior to works proceeding.

Depending on the type of study in progress at the time of the find, the archaeologist, together with the SLD representative(s), may opt to utilize additional authorized field methods, such as manual excavation, increased testing frequency, raking or screening, subject to review and acceptance by BCMoT.

Step 4: Implement instructions provided by SLD acting reasonably regarding the disposition of the remains.

SLD will provide direction to the archaeologist as to whether the fragmentary remains are to be held to await analysis and/or re-interment. SLD may opt for periodic re-interment of accumulated remains or re-interment at the conclusion of the project and will advise accordingly. The disposition of the remains will need to meet *Heritage Conservation Act* requirements and receive confirmation from the Archaeology Branch.

In such situations, avoidance and site protection measures will not be required. In specific situations where the SLD feel that avoidance and/or site protection measures are required, this must be communicated to BCMoT immediately with a rationale for the special circumstance. If agreed, the process described under section 2.1, Steps 3 – 5, as relevant, will be followed.

3.0 Dispute Resolution

Should MotI and SLD be unable to reach agreement within the time lines identified within this protocol agreement, the matter will be referred to the TCH1 Corridor Improvement Liaison Team for decision.

The TCH1 Corridor Improvement Liaison Team will schedule a meeting for review of disputes within five days of notification from either the SLD designate or the MoTI representative of a dispute.

4.0 Review

A meeting shall be held at the start of all archaeological investigations to ensure the protocol is distributed and understood by all parties.

This Protocol will be periodically reviewed during the period of highway construction and will be amended through the agreement of the Parties, if necessary.

4.0 Dispute Resolution

