

THIS AGREEMENT MADE the 13th day of October, 2005.

BETWEEN

HER MAJESTY THE QUEEN IN RIGHT OF THE
PROVINCE OF BRITISH COLUMBIA, as represented by
THE MINISTRY OF FORESTS AND RANGE, FOREST PROTECTION BRANCH

(the "Province")

AND:

CANADIAN NATIONAL RAILWAY COMPANY

("CN")

FIRE CONTROL AND COST SHARING AGREEMENT

WHEREAS

- A. A safe, economic, and efficient railway network is essential to serve the transportation needs of shippers and to maintain the economic well being and growth of British Columbia.
- B. The prevention, early detection, control and suppression of wildfires is necessary for the safety of the public and the preservation of resources in British Columbia.
- C. The Province and CN share the objective of limiting the risk of wildfires starting on or adjacent to property owned or occupied by CN within British Columbia.
- D. CN has obligations for fire prevention, suppression and reporting under the laws of Canada and British Columbia.
- E. The Province has obligations under the laws of British Columbia to protect Crown land and resources and ensure public safety and has developed infrastructure to prevent, detect, control and extinguish wildfires.
- F. Each party acknowledges the contribution of the other in detecting, preventing, controlling, suppressing and reporting wildfires and wishes to work co-operatively with the other to achieve common goals and objectives.

IN CONSIDERATION OF the mutual promises contained in this Agreement, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged by each of the parties, the parties hereby agree as follows:

1. Definitions and Interpretations

- 1.1 "CN Lands" means those parcels of land owned, leased or occupied by CN that are on or within 300 m of forest or grass land as identified in Schedule A.
- 1.2 "CN Wildfires" means wildfires that:
 - a) originate on or adjacent to CN Lands; and
 - b) were caused by or contributed to by Railway Operations.
- 1.3 "Fine Fuels" means fuels that ignite readily and are consumed rapidly by fire (e.g. cured grass, fallen leaves, needles, small twigs).
- 1.4 "Fire Control" means an action to contain, extinguish or limit the spread of a fire.
- 1.5 "Fire Danger Class" means the Fire Danger Class as determined under the *Wildfire Act*, S.B.C. 2004 c. 31 and the *Wildfire Regulation*, B.C. Reg. 38/2005.
- 1.6 "Hazard Reduction" means maintenance of the Railway Operated Rights-of-Way to diminish the risk of a fire starting and to lessen the potential spread and resistance of fire to control.
- 1.7 "Official" means a person who performs the functions of an official under the *Wildfire Act* and a fire service inspector under the *Rules for the Control and Prevention of Fires on Railway Rights of Way* enacted pursuant to the *Railway Safety Act*, R.S. 1985, c. 32.

- 1.8 "Preparedness Costs" means CN's proportionate share of the Province's annual expenditure that provides for fire prevention, the infrastructure, personnel, equipment and supplies required to maintain a consistent state of readiness to control and suppress wildfires. Commencing April 1, 2007, Preparedness Costs in any Year shall be calculated as follows:

$$\text{Preparedness Costs} = A \times (B \div C)$$

Where:

- A is the Province's budget for the Year for fire prevention, infrastructure, personnel, equipment and supplies required to maintain a consistent state of readiness to control and suppress wildfires;
- B is the average number of CN Wildfires in the previous 10 Years; and
- C is the average number of wildfires in the province of British Columbia in the same previous 10 Years.
- 1.9 "Railway Operated Rights-of-Way" means the railway rights-of-way on CN Lands identified in Schedule A.
- 1.10 "Railway Operations" means:
- a) CN's operation of engines, locomotives and rolling stock on the Railway Operated Rights-of-Way; and
 - b) the repair, construction, reconstruction and maintenance of the railway track and the railway right-of-way on the Railway Operated Rights-of-Way.
- 1.11 "Wildfire Control Costs" means the reasonable and necessary costs incurred by the Province to carry out Wildfire Control Services for CN Wildfires, including a portion of the Province's costs to support and administer Fire Control efforts.

- 1.12 "Wildfire Control Services" means the Province's activities to control, suppress and extinguish CN Wildfires. The provision of Wildfire Control Services is subject to the Province's priorities and procedures and the availability of resources. Wildfire Control Services does not include rehabilitation of land damaged by fire.
- 1.13 "Year" means the twelve-month period commencing April 1 and ending March 31.
- 1.14 "Year Period" means the twelve-month period commencing January 1 and ending December 31.
- 1.15 In this Agreement, the Province includes the Minister, Officials, designates, employees, contractors and agents of the Ministry of Forests and Range for the Province of British Columbia.
- 1.16 In this Agreement, CN includes CN's officers, directors, employees, contractors and agents.
- 1.17 The headings in this Agreement have been inserted for convenience of reference only and shall not affect the interpretation of this Agreement.

2. Fire Prevention and Control Plan

- 2.1 The Province and CN agree to develop a Fire Prevention and Control Plan, as contemplated by section 3 of the *Rules for the Control and Prevention of Fires on Railway Rights of Way*, for the prevention and control of fires on the Railway Operated Rights of Way. The Fire Prevention and Control Plan will provide for the following matters:
- (a) Fire Control action and reporting procedures;
 - (b) determination of fire prevention priorities, coordination of fire detection activities, establishment of guidelines for asset allocation and fire fighting resources and sharing contact information;

- (c) maintenance of locomotives and engines, equipment and rolling stock owned and operated by CN, in a manner that does not produce an ignition source capable of starting a fire on Railway Operated Rights-of-Way;
 - (d) Hazard Reduction of the Railway Operated Rights-of-Way;
 - (e) the provision of Fire Patrols of the Railway Operated Rights-of-Way to provide for early detection of fires; and
 - (f) the repair, construction, reconstruction and maintenance of the railway track and the Railway Operated Rights-of-Way.
- 2.2 CN will provide the Province current maps, digital geographic information, descriptions and other relevant information about CN Lands. CN will inform the Province of any material changes to CN Lands.
- 2.3 CN and the Province will participate in public awareness initiatives for fire prevention.

3. Inspection of CN Lands

- 3.1 An Official may enter on CN Lands at any reasonable time to carry out an inspection under this Agreement, so long as the inspection does not unreasonably interfere with CN's Railway Operations and the Official complies with CN's safety and operating rules while on CN Lands.
- 3.2 If an Official has reasonable grounds to believe that there is anything in or on an engine, locomotive or rolling stock owned or operated by CN that is relevant to a contravention by any person of the *Wildfire Act* or the *Wildfire Regulation*, the Official may request that CN stop the engine, locomotive or rolling stock at an appropriate location or at a designated CN maintenance facility for inspection by a duly qualified person.

3.3 If CN permits a person to operate an engine, locomotive or rolling stock on the Railway Operated Rights-of-Way, and an Official has reasonable grounds to believe that there is anything in or on the engine, locomotive or rolling stock that is relevant to a contravention of the *Wildfire Act* or the *Wildfire Regulation*, CN will cooperate in the Official's investigation of that person's operation on the Railway Operated Rights-of-Way.

3.4 If requested by the Province, CN will afford reasonable transportation to an Official for the fulfillment of that person's duties.

4. Hazard Assessment and Abatement on CN Lands

4.1 CN will maintain Railway Operated Rights-of-Ways to agreed upon standards for the prevention and control of wildfires.

4.2 Subject to any exemption granted by an Official under statute or regulation, and as may be reasonably practicable in the circumstances, CN will maintain Railway Operated Rights-of-Ways so that they are substantially free of Fine Fuels.

4.3 CN will use the most practical and safe method or combination of methods of Hazard Reduction on Railway Operated Rights-of-Way.

4.4 The Province will make reasonable efforts to assist CN with the removal or treatment of Fine Fuels on Railway Operated Rights-of-Way, subject to the availability of resources and the payment by CN for the use of the Province's resources and equipment.

4.5 CN is responsible for complying with all applicable standards for Hazard Reduction on Railway Operated Rights-of-Way.

5. Training of CN Employees and Agents

- 5.1 CN is responsible for training its operating and engineering employees to prevent and control fires.
- 5.2 If requested by CN, the Province will make reasonable efforts to provide fire prevention and control training for CN, subject to the availability of the Province's resources and the payment by CN for the use of the Province's resources and equipment.
- 5.3 CN will use its best efforts to inform and require all persons who enter on CN Lands with CN's permission to comply with the terms of this Agreement.

6. Fire Detection and Reporting

- 6.1 Having regard to the Fire Danger Class, CN shall ensure there are Fire Patrols of the Railway Operated Rights-of-Way at specific intervals to provide for early and effective detection and suppression of fires.
- 6.2 CN's employees and agents shall notify the CN Rail Traffic Control Centre as soon as reasonably practicable of the existence and location of a fire and upon being notified, the CN Rail Traffic Control Centre shall report the fire to the Province.
- 6.3 The Province shall notify the CN Rail Traffic Control Centre as soon as reasonably practicable of the existence and location of a fire on or adjacent to CN Lands.

7. Fire Control

- 7.1 CN's employees, except those operating scheduled trains, shall conduct Fire Control as may be reasonably practicable upon discovery of a fire located on or adjacent to CN Lands
- 7.2 CN will comply with an order made by an Official for the purposes of carrying out Fire Control, subject to the availability of CN's facilities, equipment and employees.

- 7.3 Upon arrival at the site of a fire located on or adjacent to CN Lands, the Province shall assume responsibility for Fire Control.
- 7.4 The Province, upon assuming responsibility for Fire Control for a fire located on or adjacent to CN Lands, shall relieve CN of its Fire Control obligations as soon as reasonably practicable.
- 7.5 CN will provide Fire Control assistance and resources at its expense for CN Wildfires.
- 7.6 If an Official orders CN to provide facilities, equipment or employees for carrying out Fire Control, the Province will compensate CN in accordance with the *Wildfire Act* and the *Wildfire Regulation*.
- 7.7 If the Province causes damage to CN Lands in carrying out Fire Control, the Province will compensate CN in accordance with the *Wildfire Act* and the *Wildfire Regulation*.
- 7.8 The Province shall notify the CN Rail Traffic Control Center as soon as reasonably practicable of its intention to carry out Fire Control on or adjacent to CN Lands.
- 7.9 The Province and CN shall cooperate in the investigation of fires on CN Lands.
- 7.10 The Province shall notify CN as soon as reasonably practicable of an Official's determination that Railway Operations caused or contributed to a wildfire.
- 7.11 The Province shall prepare a schedule of the CN Wildfires occurring in the period from January 1 to October 31 of the current Year, setting out the date, geographic location (latitude and longitude), legal description of point of origin (if available), cause and Wildfire Control Costs (the "Schedule"). The Province shall deliver the Schedule to CN on or before November 1 in each Year and shall advise CN on or before November 30 of any material changes to the Schedule.

8. Cost Sharing

- 8.1 CN will pay the Province an annual fee (the "Cost Sharing Fee") for the provision of Wildfire Control Services.
- 8.2 For the Year commencing April 1, 2006 and each subsequent Year, the Cost Sharing Fee will be calculated as the sum of:
- a) Preparedness Costs; and
 - b) the average of the Wildfire Control Costs for the ten Year Period ending December 31 of the previous year.
- 8.3 Preparedness Costs for the Year commencing April 1, 2006 are \$275,000. Preparedness Costs shall not exceed \$382,500 in any subsequent Year.
- 8.4 The Cost Sharing Fee is due and payable:
- a) for the first Year of this Agreement, on execution of this Agreement; and
 - b) by April 30 of each subsequent Year.
- 8.5 CN will pay the Province a Cost Sharing Fee of \$500,000 for the period April 1, 2005 to March 31, 2006.
- 8.6 The Wildfire Control Costs for each Year Period from January 1, 1995 to December 31, 2004 is deemed to be \$0 for the purpose of calculating the Cost Sharing Fee.
- 8.7 The Province shall advise CN on or before November 30 of the estimated Cost Sharing Fee for the subsequent Year.

8.8 The Province may adjust the Cost Sharing Fee prior to April 1 for:

- a) CN Wildfires occurring between November 1 and December 31 in the current Year Period;
- b) CN Wildfires occurring between January 1 and December 31 for which the Wildfire Control Costs were not quantified on or before November 30; and
- c) CN Wildfires that are referred to a mediator for resolution or submitted for determination by arbitration under the terms of this Agreement.

8.9 In the event of the termination of this Agreement, CN will pay the Province the unpaid balance of Wildfire Control Costs owing to the Province as a result of the ten Year Period averaging under section 8.2. (the "Termination Fee").

8.10 The Termination Fee is due and payable within 90 days of notice given under section 12.1.

9. Dispute Resolution

9.1 Any disagreement or dispute between the parties arising out of or relating to this Agreement shall be:

- (a) referred to a mediator for resolution under *Notice to Mediate (General) Regulation*, B.C. Reg. 4/2001; or
- (b) submitted for determination by arbitration under the *Commercial Arbitration Act*, R.S.B.C. 1996, c. 55 and pursuant to the British Columbia International Commercial Arbitration Centre Rules for Domestic Commercial Arbitrations as they existed on the date of this Agreement, with the following modifications:
 - (i) arbitrations will be carried out by a single arbitrator agreed to by the parties, and if no agreement is reached within ten business days after either party institutes the arbitration process by notice to the other party,

each party will select one arbitrator and a third arbitrator will promptly be agreed to by the selected arbitrators and failing agreement, by a Justice of the Supreme Court of British Columbia,

- (ii) the decision of the sole arbitrator or a majority of the arbitrators, as the case may be, including any decision as to costs, will be final and binding on the parties, but will not be a precedent in any subsequent arbitration.

9.2 Any dispute referred to mediation or arbitration will be dealt with on an expedited basis with both parties using all reasonable efforts to obtain and implement a timely agreement or decision.

10. Books and Records

10.1 The Province shall maintain complete books, accounts and records relating to Wildfire Control Costs and Wildfire Control Services, and CN shall have the right at any time upon giving reasonable notice to audit, review or copy the books, accounts and records maintained by the Province.

11. Annual Review

11.1 CN and the Province will meet annually prior to March 1 to discuss the administration of this Agreement and to exchange information related to the prevention and control of fires.

11.2 The parties agree that during the term of this Agreement, they shall not commence or continue any action, suit, claim or proceeding against the other for costs to control and suppress a fire on or adjacent to CN Lands.

12. Termination

12.1 This Agreement will continue in effect from Year to Year, but either party may terminate the Agreement for any reason by providing written notice to the other not less than ninety (90) days prior to the end of the Year.

12.2 The termination of this Agreement shall:

- a) not affect any provisions of this Agreement that are implied or expressed to operate or have effect after the termination; and
- b) not affect any right or obligation of a party arising under this Agreement before the termination of this Agreement.

13. Amendments/Supplements

13.1 No modification, change or amendment of any of the terms or conditions of this Agreement shall be effective unless it is in writing and signed by the authorized representatives of the Province and CN.

14. General

14.1 Each party shall, at its own expense do, in a timely manner, all further acts and execute and deliver all further documents and assurances as may reasonably be required in order that the terms of this Agreement might be fully performed.

14.2 Nothing in this Agreement prevents a Local Government from making bylaws or entering into Agreements relating to the prevention and control of fires upon or adjacent to the CN Lands.

- 14.3 Any notice of a report of a fire required to be given under part 6 of this Agreement shall be by telephone to the party to which it is to be given as follows:

To the Province:

Fire Reporting Centre

1-800-663-5555 or 5555 by cellular telephone

To CN:

Rail Traffic Control Centre

1-800-465-9239

- 14.4 Any notice, document or communication required or permitted to be given hereunder shall be in writing and will be deemed to have been duly given if delivered by hand or double registered mail to the party to which it is to be given as follows:

To the Province:

Director of Forests Protection
PO Box 9502 Stn., Prov. Govt.
Victoria, British Columbia
V8W 9C1

To CN:

General Manager Operations – B.C.
Western Canada Region
Thornton Operations Building
11717 138th Street
Surrey, B.C. V3R 6T5

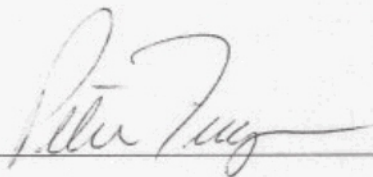
- 14.5 This Agreement shall be construed and enforced in accordance with, and the rights of the parties shall be governed by, the laws of the Province of British Columbia.

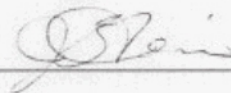
14.6 If any provision of this Agreement is at any time found to be unenforceable or invalid for any reason it will be severable from the remainder of this Agreement and, in its application at that time, this Agreement will be construed as though such provision was not contained herein and the remainder will continue in full force and effect and be construed as if this Agreement had been executed without the unenforceable or invalid provision.

14.7 This Agreement may be executed and delivered in one or more counterparts or facsimile counterparts, all of which together shall be deemed to be one document in writing.

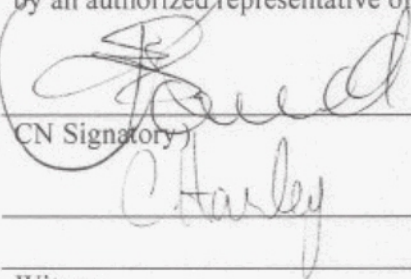
IN WITNESS WHEREOF the parties have executed this Agreement as the day and year first above written.

SIGNED, SEALED AND DELIVERED)
by a duly authorized representative of the)
Ministry of Forests and Range , Forests Protection)
Branch on behalf of Her Majesty the Queen)
in Right of the Province of British Columbia)
in the presence of)





DULY EXECUTED AND DELIVERED
by an authorized representative of CN:



CN Signatory)

C/S

Witness)

SCHEDULE "A"

CN Lands and Railway Operated Rights of Way

SUBDIVISIONS IN THE PROVINCE OF BRITISH COLUMBIA

Subdivision	From	To	Total
Albreda	17.60 Yellowhead	132.30 Blue River	114.70
Ashcroft	0.00 Kamloops	125.50 Boston Bar	125.50
Bulkley	0.00 Smithers	131.90 Terrace	131.90
Chetwynd	462.40 Prince George	658.50 Chetwynd	196.10
Clearwater	0.00 Blue River	139.40 Kamloops	139.40
Dawson Creek	0.00 Chetwynd	60.90 Dawson Creek	69.90
Fort Nelson	728.00 Fort St. John	978.80 Fort Nelson	250.80
Fort St. John	658.50 Chetwynd	728.00 Fort St. John	69.50
Fraser	0.00 McBride	146.10 Prince George	146.10
Grande Prairie	89.10 Hythe	138.90 Dawson Creek	49.80
Kitimat	0.00 Terrace Yard	40.40 Kitimat	40.40
Lillooet	157.60 Lillooet	312.90 Williams Lake	155.30
MacKenzie	0.00 Kennedy	23.50 MacKenzie	23.50
Nechako	00.00 Prince George	115.40 Endako	115.40
Okanagan	0.00 Kamloops	3.50 (Connecting Track)	3.50
Prince George	312.90 Willimas Lake	462.40 Prince George S.	149.50
Rawlison	0.00 Hydro	2.50 Hopewell	2.50
Robson	0.00 Redpass	29.80 Charles	29.80
Skeena	0.00 Terrace	94.60 Prince Rupert	94.60
Squamish	0.00 N. Vancouver	157.60 Lillooet	157.60
Stuart	0.00 Odell	72.70 Fort St. James	72.70
Takla	72.70 Fort St. James	273.30 Minaret	200.60
Telkwa	0.00 Endako	125.30 Smithers	125.30
Tete Jaune	0.00 Taverna	43.40 McBride	43.40
Tumbler	0.00 Wakely	69.60 Teck	69.60
Yale	0.00 Boston Bar	117.70 MacDonald	117.70
Yale	130.40	131.40	1.00
TOTAL			2696.10