

**COST SHARING AGREEMENT FOR MCLEAN MILL NATIONAL HISTORIC SITE**

This Agreement consists of 8 pages and Schedule A.

THIS AGREEMENT made this 23rd day of July, 1996.

BETWEEN:

**HER MAJESTY THE QUEEN, IN RIGHT OF CANADA,**  
represented herein by the Minister of Canadian Heritage

("Her Majesty")

OF THE FIRST PART

AND:

**THE CORPORATION OF THE CITY OF PORT ALBERNI,**  
in the Province of British Columbia,

(the "City")

OF THE SECOND PART,

WHEREAS the *Historic Sites and Monuments Act*, RSC 1985 c.H-6, section 1, empowers the Minister to make agreements for marking or commemorating historic places pursuant to the said Act and for the care and preservation of any places so marked or commemorated;

AND WHEREAS the Minister is authorized by Treasury Board Minute TB 818927 of September 17, 1992 to enter into such agreements that provide for federal government contributions towards the cost of acquisition, restoration, preservation and presentation of sites and structures of national historic and/or architectural significance;

AND WHEREAS the Minister had declared McLean Mill, situated in the Regional District of Alberni-Clayoquot, Province of British Columbia, and known as the McLean Mill National Historic Site, to be of national historic significance;

AND WHEREAS the City has agreed to assume responsibility for the conservation and heritage presentation of McLean Mill to ensure its commemorative integrity;

AND WHEREAS the City has requested the Minister to contribute towards the cost of the conservation and heritage presentation of McLean Mill;

AND WHEREAS the City has agreed to operate, maintain, conserve and present McLean Mill in the same condition as its conserved state, for a period of forty-two (42) years, from the date of execution of this Agreement; and

AND WHEREAS Her Majesty has agreed to contribute a sum not exceeding two million and six hundred thousand dollars (\$2,600,000.00) towards the total cost of the conservation and heritage presentation of the McLean Mill National Historic Site upon the condition that the City shall contribute or expend an equal or greater sum toward the cost of the conservation and heritage presentation work subject to the terms and conditions hereinafter set forth.

NOW THEREFORE THIS AGREEMENT WITNESSETH that in consideration of the premises, mutual covenants and agreements herein contained, the parties covenant and agree as follows:

1. In this Agreement:

- (a) "City" means the Corporation of the City of Port Alberni or any person(s) authorized to act on its behalf;
- (b) "Commemorative Integrity" means the health or wholeness of a national historic site. A national historic site possesses commemorative integrity when (1) the resources that symbolize or represent its importance are not impaired or under threat, (2) when the reasons for the site's national historic significance are effectively communicated to the public, and (3) when the site's heritage values are respected by all whose decisions or actions affect the site;
- (c) "Conservation" means those activities that are aimed at the safeguarding of a cultural resource so as to retain its historic value and extend its physical life. Conservation does not include the construction, repair, or provision of modern services such as visitor use facilities, electricity, heating and sewage nor complete period reconstructions;
- (d) "Heritage Presentation" means those activities, facilities, programs and services, including those related to interpretation and visitor activities, that bring the public into contact, either directly or indirectly, with the national historic site;
- (e) "Level I Resources" means those resources or messages directly related to the reasons for the site having been declared of national significance.
- (f) "Management Plan" means the document approved by the Minister, attached hereto as Schedule "A", which forms part of this Agreement. The Management Plan

provides strategic direction for the management and operation of the site and provides a framework for subsequent business and work planning;

- (g) "McLean Mill" means that site declared by the Minister to be of national historic significance located in the Regional District of Alberni-Clayoquot, Province of British Columbia, known as the McLean Mill National Historic Site;
  - (h) "Minister" means the Minister of Canadian Heritage, or his/her Deputy Minister or the Assistant Deputy Minister of Parks Canada, or any authorized officer appointed by any of them for the purposes of this Agreement.
2. (a) The Management Plan shall be used as a guide for the conservation and heritage presentation work by the City. Specific conservation and/or heritage presentation projects will be reviewed and approved on an annual basis by the Minister and in accordance with the procedures established in the Management Plan.
- (b) Any major deviation from the Management Plan must be agreed to in writing and signed by all parties to this Agreement and shall form part of this Agreement.
- (c) In the event that the City does not undertake the conservation and heritage presentation of McLean Mill as identified in the Management Plan, the Minister may terminate this Agreement and any monies advanced by Her Majesty shall become a debt due and payable to Her Majesty.
3. (a) The City shall furnish the Minister, within 90 days of the execution of this agreement, satisfactory evidence that the City is the owner(s) in fee simple of the McLean Mill site subject to a restrictive covenant and option to purchase in favour of MacMillan Bloedel Ltd. and an exception and reservation in favour of Esquimalt and Nanaimo Railway Company.
- (b) The City shall, to the satisfaction of the Minister and in accordance with the Management Plan and the terms of this Agreement, undertake the conservation and heritage presentation of McLean Mill subject to payment by Her Majesty of the sums set out in section 4 of this Agreement in accordance with the requirements of that section. The conservation work is to be completed within 4 years of the date of execution of this Agreement.
4. (a) Her Majesty shall pay to the City, as a contribution towards the cost of the conservation and heritage presentation work identified under section 3(b), a sum equal to the amount contributed by the City, such sum not to exceed two million and six hundred thousand dollars (\$2,600,000.00) and representing not more than fifty per cent (50%) of the total estimated conservation and heritage presentation costs of McLean Mill, subject to the following conditions:

- (i) Her Majesty's contribution will be applied to heritage conservation and heritage presentation initiatives linked to the first two elements of commemorative integrity and the level one resources at McLean Mill;
  - (ii) The application of Her Majesty's contribution will be prioritized to address threats to the achievement of commemorative integrity; and
  - (iii) The City shall contribute an equal or greater sum to the conservation and heritage presentation work identified under section 3(b).
- (b) Her Majesty shall make payments to the City in amounts not to exceed a total of two million and six hundred thousand dollars (\$2,600,000.00) in the following manner:
- (i) In the fiscal year 1996/97, an amount not to exceed five hundred thousand dollars (\$500,000.00);
  - (ii) In the fiscal year 1997/98, an amount not to exceed one million dollars (\$1,000,000.00);
  - (iii) In the fiscal year 1998/99, an amount not to exceed one million dollars (\$1,000,000.00);
  - (iv) In the fiscal year 1999/2000, an amount not to exceed one hundred thousand dollars (\$100,000.00);

such payments to be based on submission to the Minister by the City of satisfactory proof that expenditures have been incurred and that the conservation and heritage presentation of McLean Mill is progressing in accordance with the Management Plan and the terms of this Agreement.

- (c) The financial records and accounts received by the Minister from the City as proof that expenditures have been incurred for the conservation and heritage presentation work identified in the Management Plan shall be reviewed and approved prior to any contribution being made.
- (d) Any contribution made by Her Majesty shall be made within thirty (30) days after the City has provided the appropriate financial records and accounts. All amounts not disputed shall be paid in full so that any disputed amounts may be negotiated separately.

- (e) Any contribution made by Her Majesty in excess of that required by the City, including any overpayment of non-eligible expenses, shall be reimbursed to Her Majesty by the City. The City hereby acknowledge(s) that any excess contribution aforementioned is a debt due and payable to Her Majesty.
5. It is understood and agreed that the City shall oversee the conservation and heritage presentation work as identified in the Management Plan, and that all contributions made by Her Majesty to the City shall be disbursed exclusively for that work.
6. (a) The City shall ensure that all costs pertaining to the conservation and heritage presentation work are properly incurred and that all invoices in respect thereof are promptly paid.
- (b) The Minister may at any reasonable time and at his/her own expense, for verification or audit purposes, inspect the vouchers and other accounting documents concerning expenses incurred by the City in the performance of this Agreement.
7. The City shall give the Minister the right to review the progress of the work at regular intervals, at the Minister's own expense. The review shall be based upon the Management Plan and the terms of this Agreement. The City shall provide the Minister with full information as to what is being done to execute the work and shall give him/her every possible assistance in conducting a progress review. The Minister shall ensure that the review contributes to and does not impede the progress of the City in completing the work within the time frame set out in section 3(b).
8. Her Majesty shall not deduct from any amount to be paid to the City under this Agreement any costs incurred by Her Majesty in connection with the conservation and heritage presentation work of McLean Mill, unless such deduction has first been agreed to by the City in writing.
9. The City shall not move any of the surviving historic buildings or structures, as identified in the Management Plan, or permit them to be moved from their present location without the prior written consent of the Minister.
10. The City shall not construct, nor permit to be constructed, any new buildings or other structures on the property, nor make any alterations or additions to the existing buildings, if such an intervention will have a negative impact upon the commemorative integrity of the site, as outlined in the Management Plan, without prior written consent of the Minister.
11. The City shall implement normal fire detection, suppression and maintenance practices to reduce the risks of fire at the site.

12. (a) The City shall, during the time that Her Majesty contributes funds to the conservation and heritage presentation work, install or erect, or cause to have installed or erected on the project site, a bilingual sign to the effect that the work is being carried out under a cost-sharing agreement with Her Majesty, The form of the sign shall be by mutual agreement of the parties and Her Majesty shall be shown as "The Government of Canada".
  - (b) The Minister may, install or erect, or cause to have installed or erected, a permanent, visible and prominent bilingual plaque or sign to the Minister's standard design indicating Her Majesty's contribution in the conservation and heritage presentation of the site. The location of the plaque or sign shall be by mutual agreement of the parties.
  - (c) The City shall give the Minister the right to mark the McLean Mill National Historic Site as place of national significance, by means of a permanent bilingual Historic Sites and Monuments Board of Canada plaque or sign. The location of the plaque or sign shall be by mutual agreement of the parties.
  - (d) The City shall ensure that the National Flag of Canada shall be flown at the site in recognition of McLean Mill's national significance.
13. The City shall ensure that the use of the McLean Mill will not prejudice or detract from the site's national historic significance and its commemorative integrity, and that its use will be compatible with the Management Plan.
14. (a) The City covenants and agrees to make every reasonable effort to ensure that all activities on the site will comply with the spirit of federal legislation and policies.
  - (b) The City covenants and agrees to comply with the Canadian Environmental Assessment Act or any successor or similar legislation and regulations made thereunder.
15. (a) The City shall, at its own expense, insure all McLean Mill buildings, structures and associated cultural resources against loss or damage by fire with extended coverage in such amounts as shall, in the opinion of the Minister, represent its full replacement value. Such insurance shall be in effect from the date of execution of this Agreement.
  - (b) In the event that McLean Mill is damaged by fire, the Minister shall elect to assess the impact of said fire upon the commemorative integrity of the site. If the impact of the fire severely compromises the commemorative integrity of the site, the City and the Minister will enter into negotiations to amend the Management Plan and/or the terms of this Agreement.

- (c) If it is determined by the Minister that the impact of the fire does not severely compromise the commemorative integrity of the site, the City shall elect either to repair and restore it fully or to repay the whole or any part of the money received by the City from Her Majesty pursuant to this Agreement, and shall give notice of such election to the Minister within 30 days of the fire. Any obligation of the City under this section is subject to the payment to the City by the insurer of a sufficient insurance proceeds to cover the cost of performing the obligation.
16. The City shall at all times indemnify and save harmless Her Majesty from and against all claims, demands, losses, costs, damages, actions, suits or other proceedings, by whomsoever made, sustained, brought or prosecuted, in any manner based upon, occasioned by, or attributable to, anything done or omitted by the City, its servants or agents in the fulfilment or purported fulfilment of any of the provisions of this Agreement.
17. (a) If the City is at any time in default with respect to any of its obligations hereunder, the Minister may, in writing, notify the City of such default and require the City to remedy such default within a period of ninety (90) days, failing which the Minister may terminate this Agreement forthwith.
- (b) If the Minister terminates this Agreement pursuant to subsection (a), the City shall, upon written request by the Minister, repay to Her Majesty the whole or any part of the monies received by the City from Her Majesty pursuant to this Agreement.
- (c) If Her Majesty is at any time in default with respect to any of its obligations hereunder, the City may, in writing, notify the Minister of such default and require the Minister to remedy such default within a period of ninety (90) days, failing which the City may terminate this Agreement forthwith.
- (d) If the City terminates this Agreement pursuant to subsection (c), the Minister shall, upon written request by the City, repay to the City the whole or any part of the monies expended by the City pursuant to this Agreement.
- (e) Notwithstanding anything in this section, if either party is in default with respect to any of its obligations hereunder and such default is the result of events beyond the control of the defaulting party, the defaulting party shall have a period of ninety (90) days from the date that the events causing the default come under the defaulting party's control to remedy the default.
18. Any claim or dispute arising out of or in connection with this Agreement shall be submitted by the parties to binding arbitration pursuant to the *Commercial Arbitration Act*, RSC 1985 c.17, 2nd Supplement. The party requesting such arbitration shall do so by written notice to the other party. The costs of the arbitration and fees of the arbitrator(s) shall be borne equally by the parties. The arbitration shall take place in Port Alberni,

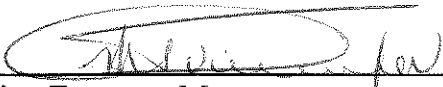
Canada, before a single arbitrator to be chosen jointly by the parties. If the parties cannot agree on the choice of arbitrator within thirty (30) days of written notice to submit to arbitration, then the parties shall each choose an arbitrator who in turn will select a third. The parties may determine the procedure to be followed by the arbitrator(s) in conducting the proceedings, or may request the arbitrator(s) to do so. The arbitrator(s) shall issue a written award within thirty (30) days of completion of the hearing. The award shall be rendered in such form that judgment may be entered thereon in any court having jurisdiction.

19. This Agreement may not be assigned by the City without the prior written approval of the Minister.
20. No member of the House of Commons shall be admitted to any share or part of this Agreement or to any benefit arising therefrom.
21. The parties acknowledge that this Agreement does not constitute an association for the purpose of establishing a partnership or joint venture, and does not create an agency relationship between the Minister and the City.
22. This Agreement inures to the benefit of and is binding upon Her Majesty, Her Heirs and Successors and upon the City, its successors and assigns.

IN WITNESS WHEREOF the Minister of Canadian Heritage, on behalf of HER MAJESTY THE QUEEN IN RIGHT OF CANADA, has hereunto set his/her hand, and the City has caused this Agreement to be executed by its proper officers, duly authorized in that behalf.

SIGNED, SEALED AND DELIVERED )  
 on behalf of the City of Port Alberni in )  
 the presence of )

Jane MacNaughton )  
 Witness (as to both signatures) )

  
 Gillian Trumper, Mayor

Colleen Bawn COLLEEN BAWN )  
 DEPUTY CLERK )  
 for George Wiley, Clerk

SIGNED, SEALED AND DELIVERED )  
 by Minister of Canadian Heritage )  
 on behalf of Her Majesty, in the )  
 presence of )

Bruce Pinnel )  
 Witness )

  
 Minister of Canadian Heritage

per Orest M. Kruhlak, Regional Executive )  
 Director, Pacific and Yukon Region, )  
 Department of Canadian Heritage