

THIS Memorandum of Understanding made and effective as of and from the _____ day of _____, 20__ (the "Effective Date"),

Memorandum of Understanding

between

Hul'qumi'num Treaty Group, representing the collective of Quw'utsun' (Cowichan Tribes), Stsu'minus (Chemainus First Nation), Puneluxutth' (Penelakut Tribe), Leeyqsun (Lyackson First Nation), Xulelthw (Halalt First Nation) and Quw'utsun Xatsa' (Lake Cowichan First Nation);
(the "Treaty Group")

and

The University Victoria, acting on behalf of the Department of Linguistics
(“UVic”)

(collectively referred to herein as the “Parties”)

BACKGROUND

- A. The Hul'qumi'num member communities support and approved their participation in the CURA Language Revitalization in Vancouver Island Salish Communities: a Multimedia Approach project (“CURA”) in principal.
- B. The Parties have entered into a collaborative, community-based research project to work towards the following goals and objectives:
 - a. to create the infrastructure to coordinate the efforts towards language revitalization currently underway or in development by the communities;
 - b. to provide community members with training in the linguistic concepts and methods needed to initiate and implement steps in a revitalization program, including training in language planning and teaching, field methods, and linguistics analysis of sounds, words sentences and meaning;
 - c. to facilitate the learning of Hul'q'umi'num' and thus to produce new, increasingly fluent speakers and instructors;
 - d. to use the experience gained through the CURA to contribute to language revitalization in other communities; and
 - e. to achieve strategic language revitalization goals and objectives complied by the Elders' Language Revitalization Committee as attached as Appendix A through CURA projects and activities.
- C. In support of these practical goals, the Parties will seek to combine traditional and innovative forms of research and courseware.

- D. The Treaty Group wishes to ensure that the Hul'qumi'num peoples' customary stories and related teachings do not become the property of UVic or the CURA supported or affiliated researchers.
- E. The Parties wish to carry out their goals and objectives in the context of the following principles:
- a. respect for all partners involved in the CURA;
 - b. transparency in all dealings with respect to the CURA;
 - c. equal treatment of the two languages, Hul'q'umi'num' and SENĆOTEN, within the CURA grant structure;
 - d. observation of cultural customs and practices, with respect to traditional knowledge. The CURA supported or affiliated researchers should not personally acquire any royalties from publishing materials containing Hul'qumi'num stories, myths, legends, folklore, oral traditions and other traditional knowledge; and
 - e. collaborative decision-making.

THEREFORE, THE PARTIES HAVE THE FOLLOWING UNDERSTANDING:

Process

1. A mutually agreed process to prioritize the specific projects done to reach these goals will be followed. *For any project*, this process shall minimally include:
 - a) development of an academic- and community- informed project research plan (including budget), with explicit reference being made in any such plan as to how the project will meet the broader strategic language revitalization goals (including salvage/documentation, community-programs, production of learning/reference tools, linguistic research, other) and how the research project will meet stated theoretical goals for language revitalization;
 - b) initial review of the research plan by the CURA Steering Committee and CURA Elders Advisory Board (the structures of which having been set out in the original CURA grant proposal);
 - c) review of the research plan by an *ac hoc* HTG-CURA Stakeholders Committee;
 - d) approval of the research plan by the CURA Steering Committee.
2. In consideration of any research plan, the Parties acknowledge that any particular CURA-supported or affiliated research project will not be able to reach all of the strategic language revitalization goals and objectives enumerated in Appendix A, and that there is a need to make informed decisions about the prioritizing of the many projects that could be done to meet these goals and objectives.

Informed Consent

3. Written informed consent of individual community members must be secured before engaging in research and recordings. The written permission of the individual community members to release the information to the Hul'qumi'num Treaty Group will be sought by CURA supported or affiliated researchers, including any restrictions the individual community members might wish to attach to the use of this information. Written informed consent is evidenced by the signature of the individual community member on the CURA "Consent to Participate (Elders)" form attached as Appendix B.

Disposition of Research Materials

4. Originals of all audio/visual recordings (digital and analogue formats) and copies of all notes, transcripts, photos, and other records of the research will be kept by the Hul'qumi'num Treaty Group. Copies of all audio/visual recordings and originals of notes, transcripts, photos and other records will be kept by the CURA supported or affiliated researchers.
5. The Parties will ensure that a *final, permanent* repository for the research materials created by CURA supported or affiliated researchers will be utilized. Additionally, the researcher will make as a condition of the deposition that the repository will provide access to Quw'utsun' (Cowichan Tribes), Stsu'minus (Chemainus First Nation), Puneluxutth' (Penelakut Tribe), Leeyqsun (Lyackson First Nation), Xulelthw (Halalt First Nation) and Quw'utsun Xatsa' (Lake Cowichan First Nation) members and the Hul'qumi'num Treaty Group. Further, that on condition of deposition into the repository, the repository will adhere to any confidentiality or use restrictions made by the individual community members under section three of this Memorandum.

Protection of Customary Intangible Property

6. The Parties agree that CURA supported or affiliated researchers will respect customary Coast Salish family property laws. To facilitate this, the Parties agree that CURA supported or affiliated researchers will endeavour to, where reasonably possible, not record known Coast Salish customary intangible properties such as *si 'win'* (*ritual power words*), or *ts 'uhwten* (*family-owned stories and ritual prerogatives*), or the details of *sniw'* (*private family ritual and technical knowledge*) respecting private and confidential sacred matters. ("Customary Intangible Property")
7. The Parties recognize that the CURA Elders Advisory Board may provide guidance and advice in identifying and delimiting Customary Intangible Property.
 - a) For clarity, the three categories of Customary Intangible Property are explained:

- i. The first category would be *si 'win'* (*ritual power words*) in the Hul'qumi'num language. They are special words in incantations, short songs, or other utterances, which invoke power of ones guardian spirit. This term is closely related to *sniw'*.
- ii. The second category would be *ts'uhwten* in the Hul'qumi'num language. This term does not translate well but is roughly "inherited ritual/ceremonial property". Coast Salish culture has a large complex set of rituals, songs, stories, masks, and masked dances, rattles, powerful dolls, stuffed animal rituals, supernatural fish, designs, symbolic representations and certain funeral rituals which are inheritable and for which there are very well-defined, well-respected criteria for the use, display and performance of.¹
- iii. The third category would be called *sniw'* in the Hul'qumi'num language and roughly translates as 'private advice/knowledge'. This is inherited private knowledge that includes some rituals, spells, and a vast array of traditional knowledge including such things as food processing and highly specialized traditional manufacture (fish weirs and the like). Private knowledge often comes from myth stories, which are owned by families and not widely told outside the property holding group. In these myths, the first ancestors lean some private knowledge through their adventures and the telling of those stories ensures that the descendants learn this private knowledge.²

Publication

8. Subject to the terms of the arrangement set out in this Memorandum of Understanding and Agreement between the Treaty with CURA support or affiliated researchers, the Hul'qumi'num Treaty Group hereby grants the CURA supported and affiliated researcher a licence to publish for scholarly and educational purposes the information collected during the CURA project.
9. CURA supported or affiliated researchers will ensure that two copies of all publications, conference papers and other educational and scholarly materials be deposited with the Hul'qumi'num Treaty Group.

Ownership of Sxwi'em'

¹ B.Thom, "Intangible Property within Coast Salish First Nations Communities, British Columbia" (WIPO North American Workshop on Intellectual Property and Traditional Knowledge, Ottawa, 9 September 2003) [Unpublished].

² *Ibid.*

10. In publications resulting from this collaborative arrangement, no claim of copyright or exclusive rights by CURA supported or affiliated researchers or their publishers will be made on *sxwi'em'* (Hul'qumi'num Mustimuhw legends, myths, and folklore) or Customary Intangible Property that are the acknowledged intellectual property of the Hul'qumi'num community or community members.
11. Any publication done for scholarly and educational purposes will include the following provision: "The text of the stories, myths, legends, and folklore belong to the Hul'qumi'num people and therefore no claim of copyright or exclusive rights is made upon them."

Confidentiality and Royalties

12. The Parties agree that where Customary Intangible Property, referred to above in section six and seven of this Memorandum of Understanding, is shared with the CURA supported or affiliated researchers or mistakenly recorded by them, they will use all reasonable efforts to prevent the publication of or access to the public to this information.
13. The Parties will not acquire any royalties or monies tantamount to royalties for publishing materials that contain Hul'qumi'num stories, myths, legends, folklore, or Customary Intangible Property. This does not constrain the researcher from publishing linguistic analysis.

University of Victoria Intellectual Property Policy

14. The Parties agree, subject to the terms of this Memorandum of Understanding and the Agreement between the Treaty Group and any CURA supported or affiliated researchers, that the University of Victoria Intellectual Property Policy Manual; number 1180 approved November 2000, applies to the activities under this Memorandum.

Dispute Resolution

15. In case of a dispute arising from the implementation of this Memorandum of Understanding, the Parties shall exhaust alternative dispute resolution models such as negotiation and mediation before employing other forms of dispute resolution such as arbitration or adjudication. Parties shall act in good faith to resolve the dispute.
16. In the case of a dispute arising from the proper management of Customary Intangible Property the CURA Elders Advisory Board shall specify the means for settling the dispute such as mediation.

Insurance

17. The parties acknowledge that they have adequate liability insurance applicable to its officers, employees, and agents while acting within the scope of their employment by the parties, and that the consultant has no liability insurance policy as such that can extend protection to any other person. Therefore, each party hereby assumes any risks of personal injury and property damage attributable to the negligent acts or omissions of the party and its officers, employees, and agents.

Notification

18. Any notice of written communication required under this agreement may be given as follows:

Hul'qumi'num Treaty Group
Attention: Senior Negotiations Support, Brian Thom
RR#1 – 12611b Trans Canada Hwy., Ladysmith, BC V9G 1M5
Phone (250) 245-4660; fax (250) 245-4668

University of Victoria, Department of Linguistics
PO Box 1700, Stn CSC., Victoria, BC V8W 2Y2
Phone (250) 472-5444; fax (250) 721-7423

Amendments

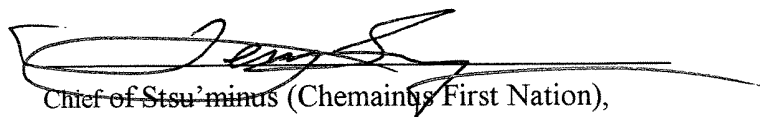
19. Amendments to this Memorandum of Understanding must be in writing and signed by an authorized representative of the Treaty Group and UVic.

Duration of Agreement

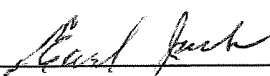
20. The term of this Memorandum of Understanding is from the Effective Date to 31 December 2008 and may be renewed. The Parties will review this agreement annually.
21. The Parties may terminate this Memorandum of Understanding in writing at any time subject to 30 days notice.

SIGNED BY THE PARTIES ON THE DATES SET OUT BELOW

Chief of Quw'utsun' (Cowichan Tribes)

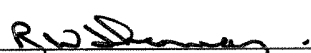


Chief of Stsu'minus (Chemainus First Nation),



Chief of Puneluxutth (Penelakut Tribe)

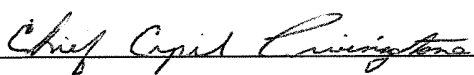
Feb 15 / 05
Date



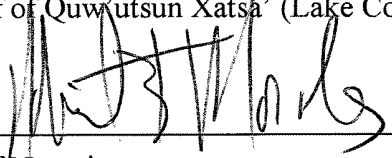
Chief of Leeyqsun (Lyackson First Nation)



Chief of Xulelthw (Halalt First Nation)

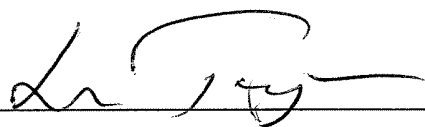


Chief of Quw'utsun Xatsa' (Lake Cowichan First Nation)



Chief Negotiator
Hul'qumi'num Treaty Group

Feb 10 / 05
Date



Martin Taylor, Vice President, Research,
University of Victoria

February 04, 2005
Date