

KTUNAXA/KINBASKET TRIBAL COUNCIL, CANADA, BRITISH COLUMBIA

TREATY FRAMEWORK AGREEMENT

THIS AGREEMENT, DATED THE 26th DAY OF NOVEMBER, 1997.

BETWEEN:

THE KTUNAXA/KINBASKET TRIBAL COUNCIL as represented by its Chief Negotiator ("KKTC").

AND:

HER MAJESTY THE QUEEN IN RIGHT OF CANADA as represented by the Minister of Indian Affairs and Northern Development ("Canada").

AND:

HER MAJESTY THE QUEEN IN RIGHT OF BRITISH COLUMBIA as represented by the Minister of Aboriginal Affairs ("British Columbia").

(collectively the "Parties")

BACKGROUND:

A. The KKTC asserts that it wishes to retain, subject to a Final Agreement, aboriginal rights, title, ownership, jurisdiction and interests with respect to its Traditional Territory. The KKTC further asserts that this framework agreement does not preclude the KKTC from pursuing its aboriginal rights, title, and interests that are outside of the BCTC Process.

B. Canada and British Columbia enter into treaty negotiations as recommended by the Report of the British Columbia Claims Task Force without making any admissions regarding aboriginal rights, or the extent of traditional territories.

C. The KKTC has identified in its statement of intent a territory that extends outside of British Columbia, however, their Traditional Territory for purposes of the BCTC Process is only that portion that lies within British Columbia.

D. The Parties seek to achieve certainty with respect to the future relationship between the Parties, the jurisdiction and authority of their respective governments, and ownership and use of land and resources within the Traditional Territory.

E. The Parties are committed to conducting the negotiations in accordance with a government-to-government relationship within the framework of the Constitution of Canada, under the BCTC Process and within their respective policies as amended from time to time. For greater certainty, the policies of any one Party will not limit or restrict the positions that the other two Parties may bring to the negotiations.

F. Canada will carry out negotiations from the perspective that the inherent right of self-government is an existing aboriginal right within the meaning of section 35 of the *Constitution Act, 1982*. British Columbia will carry out negotiations from the perspective that the Government of British Columbia politically recognizes the inherent right of self-government.

G. The *Constitution Act, 1982* recognizes and affirms the existing aboriginal and treaty rights of the aboriginal peoples of Canada, including rights that now exist by way of land claims agreements or that may be so acquired.

H. While recognizing the need to conduct effective negotiations, the Parties have acknowledged the importance of public access to, and understanding of, the BCTC Process and the need to share information during the negotiations by signing the Openness Protocol dated September 26, 1996.

The Parties agree as follows:

1. DEFINITIONS

1.1 In this Agreement:

"Agreement-in-Principle" means the agreement approved as evidenced by the signatures of the Parties at the end of Stage 4 of the BCTC Process, and comprised of various Sub-Agreements and other provisions as agreed.

"BCTC" means the British Columbia Treaty Commission.

"BCTC Process" means the six stage negotiation process described in the Report of the British Columbia Claims Task Force dated June 28, 1991, and facilitated by the BCTC.

"Chief Negotiator(s)" means the lead negotiator appointed by each of the Parties for the treaty negotiations as contemplated by this Agreement, or his or her designate.

"Final Agreement" means the agreement formally signed and ratified by the Parties at the end of Stage 5 of the BCTC Process.

"Overlap" means a geographic area within the Traditional Territory claimed by a First Nation other than the KKTC.

"Sub-Agreement" means a part or parts of an Agreement-in-Principle detailing the agreement on one or more of the substantive issues negotiated.

"Traditional Territory" , for the purposes of treaty negotiations in the BCTC Process, means the geographic area within British Columbia identified by the KKTC as its traditional territory in the statement of intent accepted by the BCTC.

2. PURPOSE OF THE FRAME WORK AGREEMENT

2.1 The purpose of this Agreement is to guide the conduct of treaty negotiations between the Parties by setting out the timing, process and substantive issues for the negotiation of an Agreement-in-Principle.

3. PARTIES TO THE AGREEMENT-IN-PRINCIPLE

3.1 The only Parties to the negotiations and resulting agreements will be the KKTC, Canada, and British Columbia.

4. SCHEDULING AND TIMING

4.1 The Parties will negotiate in good faith, with the intention of concluding an Agreement-in-Principle addressing the substantive issues listed in section 5 below, within 3 - 6 years from the date of this agreement, in accordance with the workplans developed under section 6.

5. SUBSTANTIVE ISSUES FOR NEGOTIATION

5.1 The following is a list of substantive issues that the Parties intend to address during the negotiation of an Agreement-in-Principle:

5.1.1 land;

5.1.2 water rights and management;

5.1.3 resources and resource management including, but not limited to:

(i) fisheries, and aquatic resources,

(ii) forestry, including flora,

(iii) wildlife,

(iv) non-renewable resources, including sub-surface ownership;

5.1.4 parks and protected areas;

5.1.5 financial component;

5.1.6 KKTC governance including, but not limited to:

(i) nature and structure,

(ii) jurisdiction and authority,

(iii) program standards and authority to deliver services,

(iv) culture and language,

(v) administration of justice;

(vi) social development;

5.1.7 economic development;

5.1.8 environmental management, protection and assessment;

5.1.9 artifacts and heritage resources;

5.1.10 eligibility and enrolment;

5.1.11 fiscal arrangements and taxation;

5.1.12 certainty;

5.1.13 ratification;

5.1.14 amendment procedures;

5.1.15 dispute resolution;

5.1.16 implementation;

5.1.17 intergovernmental relationships;

5.1.18 access;

5.1.19 third party and public interests;

5.1.20 the use and occupation of airspace by the KKTC;

5.1.21 Consistent with section 5.1.6, jurisdiction and authority in the area of social programs, services and healing processes including those having to do with social issues arising from the legacy of the Indian Residential Schools; and

5.1.22 other issues by written agreement of the Chief Negotiators.

5.2 The list of substantive issues in section 5.1 is not intended to be exhaustive, and may be amended by written agreement of the Chief Negotiators to address other issues, including those unique to the KKTC.

5.3 The inclusion of any issue on the list of substantive issues in section 5.1 does not commit any of the Parties to concluding an agreement on that issue and is not intended to predetermine any outcome of these negotiations.

5.4 Although not a substantive issue for negotiation, the Parties agree that the KKTC will have opportunities throughout Agreement-in-Principle negotiations to express their full range of interests and concerns regarding border crossing.

5.5 The Parties may identify issues requiring regional or province-wide negotiations or discussion and may develop appropriate processes for dealing with these issues.

6. NEGOTIATION PROCESS

6.1 Negotiations will take place at a main table (the "Main Table"). The Chief Negotiators will be responsible for the conduct and co-ordination of the negotiations, including:

6.1.1 managing the negotiation process including the development of workplans and the setting of priorities;

6.1.2 negotiating and recommending for approval an Agreement-in-Principle and a Final Agreement;

6.1.3 implementing and managing the Openness Protocol referred to in section 10.1 of this Agreement;

6.1.4 implementing detailed procedures, consistent with this Agreement, to guide the Parties during Agreement-in-Principle negotiations as outlined in the Procedures Agreement dated August 7, 1996;

6.1.5 establishing and providing direction to working groups, side tables and other processes, as agreed; and

6.1.6 implementing dispute resolution mechanisms, as agreed.

6.2 The Parties will record the results of each negotiation of a substantive issue or issues in a Sub-Agreement. The Chief Negotiators will signify their agreement on a substantive issue or issues by initialling a Sub-Agreement.

6.3 Once they have initialled the Sub-Agreements, the Chief Negotiators will negotiate an Agreement-in-Principle by consolidating the Sub-Agreements and adding necessary provisions as agreed.

6.4 The Chief Negotiators will signify their agreement to an Agreement-in-Principle by initialling it, and will recommend the completed Agreement-in-Principle to their respective Parties for approval.

6.5 Prior to the Agreement-in-Principle being signed by the Parties, any Chief Negotiator may request that any initialled Sub-Agreement be reconsidered and amended. Any initialled Sub-Agreement may be amended by agreement in writing of the Chief Negotiators.

6.6 The Parties will approve the Agreement-in-Principle by signing it.

6.7 After the signing of and based on the Agreement-in-Principle, the Parties will negotiate, with the intention of concluding, a Final Agreement on a timely basis.

7. OVERLAPS

7.1 The KKTC will use best efforts to resolve any Overlaps it may have with other First Nations during the Agreement-in-Principle stage of the BCTC Process and will report to the Main Table regularly on the status of its Overlap discussions.

7.2 If the lack of resolution related to Overlaps is found to be interfering with the successful conclusion of negotiations, the KKTC may consider other options to resolve the Overlaps, including seeking assistance from the BCTC.

8. INTERPRETATION

8.1 This Agreement is not legally binding and does not create, recognize, affirm, deny or amend any

legally enforceable rights.

8.2 The treaty negotiations and all related documents, except for a Final Agreement that is in effect, are without prejudice to the positions of the Parties in any proceedings before a court or other forum and the Parties intend that the negotiations and all related documents will not be construed as admissions of fact or liability.

8.3 Neither this Agreement nor any Agreement-in-Principle which may flow from it are intended to constitute a treaty or land claims agreement within the meaning of sections 25 and 35 of the *Constitution Act, 1982*.

8.4 The issue of constitutional protection, as it applies to the various provisions negotiated on each substantive issue, will be addressed prior to conclusion of an Agreement-in-Principle.

8.5 The Final Agreement, once in effect, is intended to be a treaty and is intended to constitute a land claims agreement within the meaning of sections 25 and 35 of the *Constitution Act, 1982*.

9. SUSPENSION OF NEGOTIATIONS

9.1 The Parties are committed to the six stage BCTC Process. Any Party may, however, suspend the negotiations contemplated by this Agreement by providing written notice, which sets out the reasons for suspension and the date of the commencement of the suspension, to the other Parties and to the BCTC.

9.2 Prior to suspending negotiations, and where the Parties agree, all reasonable efforts will be made to enter into appropriate methods of alternative dispute resolution, including referral to the BCTC or an independent dispute resolution body.

10. PUBLIC INFORMATION, OPENNESS AND CONSULTATION

10.1 The Parties recognize the need to provide timely and detailed information to the public on the negotiation process and to consult with those whose interests may be affected by the negotiations. For this purpose, the Chief Negotiators signed the Openness Protocol dated September 26, 1996.

11. INFORMATION SHARING

11.1 The Parties recognize the need to share information between the Parties during the negotiations. For this purpose, the Chief Negotiators agreed to the Information Sharing Protocol dated August 7, 1996.

12. INTERIM MEASURES

12.1 The Parties have accepted all of the recommendations of the British Columbia Claims Task Force

including the following recommendation concerning interim measures:

"16. [The Task Force recommends that] The Parties negotiate interim measure agreements before or during the treaty negotiations when an interest is being affected which could undermine the process."

12.2 At any stage of the negotiations, if the Parties consider that an interest is being affected which could undermine the process of negotiating a treaty, or to protect provisions already agreed upon at the negotiation table, the Parties will attempt to negotiate an effective interim measure that is appropriate to the circumstances and that avoids displacing negotiations towards a treaty.

13. GOVERNMENT PROGRAMS

13.1 During the negotiation process, members of the KKTC, and the KKTC, will continue to have access to the various programs and services of Canada and British Columbia in effect from time to time, including those directed to Aboriginal People and organizations in accordance with the criteria established from time to time for the application of those programs and services.

14. APPROVAL OF THIS AGREEMENT

14.1 The Chief Negotiators, by initialling this Agreement, will signify their intention to recommend it to the Parties for their approval.

14.2 The Parties will signify approval of this Agreement by the signature of their authorized representative.

14.3 The Chief Negotiator for the KKTC is authorized to sign this Agreement on behalf of the KKTC.

14.4 The Minister of Indian Affairs and Northern Development is authorized to sign this Agreement on behalf of Canada.

14.5 The Minister of Aboriginal Affairs is authorized to sign this Agreement on behalf of British Columbia.

15. AMENDMENTS

15.1 Except as provided in subsection 15.2, this Agreement may only be amended by agreement of the Parties in writing.

15.2 The Chief Negotiators may, by agreement in writing, amend the list of substantive issues for negotiation as set out in section 5.1.

Signed on behalf of the
KTUNAXA/KINBASKET TRIBAL COUNCIL
as represented by its Chief Negotiator

Kathryn Teneese

Signed on behalf of
HER MAJESTY THE QUEEN IN RIGHT OF CANADA
as represented by the Minister of Indian Affairs and Northern Development

The Honourable Jane Stewart
Minister of Indian Affairs and Northern Development

Signed on behalf of
HER MAJESTY THE QUEEN IN RIGHT OF BRITISH COLUMBIA
as represented by the Minister of Aboriginal Affairs

The Honourable John Cashore
Minister of Aboriginal Affairs