

**FRAMEWORK AGREEMENT  
TO  
NEGOTIATE A TREATY**

This Agreement is dated July 27, 2007.

**AMONG**

**THE HUPACASATH FIRST NATION** as represented by the Chief Councillor of the Hupacasath First Nation (the "**Hupacasath**")

**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 Relations and Reconciliation ("**British Columbia**")

(collectively the "**Parties**")

**WHEREAS:**

- A. The Hupacasath assert that we are the original governing people, that we have unceded title, rights, ownership, and the right to govern ourselves within our Traditional Territory.
- B. The Hupacasath assert that this Framework Agreement does not preclude the Hupacasath from protecting our asserted aboriginal title, rights and interests outside of the BCTC Process.
- C. Canada, British Columbia and the Hupacasath are committed to negotiating with the intention of concluding a treaty among Canada, British Columbia and the Hupacasath in accordance with the BCTC Process.
- D. The *Constitution Act, 1982* recognizes and affirms existing aboriginal and treaty rights of the aboriginal peoples of Canada, and treaty rights include rights that now exist by way of "land claims agreements" or that may be so acquired.

- E. By negotiating a treaty, the Parties seek to achieve clarity with respect to the future relationship among the Parties, the jurisdiction and authority of their respective governments, and the rights, title and interest to the land and resources within the Traditional Territory.
- F. The Hupacasath has never signed a Treaty or "land claim agreement" with the Crown, in right of Canada or British Columbia.

Therefore, the Parties agree as follows:

## 1. DEFINITIONS

For the purposes of this Agreement:

- 1.1 **"Agreement-in-Principle"** means the agreement approved as evidenced by signature of the Parties at the end of Stage 4 of the BCTC Process, and comprised of various Chapters and other provisions as agreed by the Parties.
- 1.2 **"BCTC Agreement"** means the *British Columbia Treaty Commission Agreement* among the First Nations Summit, Canada and British Columbia dated September 21, 1992.
- 1.3 **"BCTC Process"** means the six-stage negotiation process described in *The Report of the British Columbia Claims Task Force* dated June 28, 1991 and referred to in the BCTC Agreement.
- 1.4 **"Chapter"** means a part or parts of an Agreement-in-Principle or Final Agreement detailing one or more of the substantive issues negotiated.
- 1.5 **"Chief Negotiator"** means a person appointed by a Party as its Chief Negotiator or Senior Negotiator and includes a person designated by a Chief Negotiator or Senior Negotiator to act in place of the Chief Negotiator;
- 1.6 **"Final Agreement"** means the agreement formally ratified and signed by the Parties at the end of Stage 5 of the BCTC Process.
- 1.7 **"Shared Territory"** means a geographic area within the Traditional Territory the use of which may be shared with members of a First Nation other than the Hupacasath or over which another First Nation asserts a claim which circumstance is referred to in the BCTC Agreement as "overlapping territory."

1.8 **"Traditional Territory"** means that geographic area identified by the Hupacasath as its traditional territory on the map attached to the Hupacasath Statement of Intent filed with the British Columbia Treaty Commission.

## 2. **PURPOSE**

2.1 The purpose of this Agreement is to guide the conduct of negotiations among the Parties and to set out the substantive issues for negotiation, process and timing to complete the Agreement-in-Principle Stage of the BCTC Process.

## 3. **SCHEDULING AND TIMING**

3.1 The Parties will negotiate with the intention of concluding an Agreement-in-Principle within 24 months (2 years) of signing this Agreement.

3.2 Any extension of the agreed upon timeframe will not detract from the commitment of the Parties to conclude an Agreement-in-Principle as soon as practicable.

## 4. **PARTIES TO THE AGREEMENT-IN-PRINCIPLE**

4.1 The Parties to an Agreement-in-Principle will be the Hupacasath First Nation, Canada and British Columbia exclusively.

## 5. **SUBSTANTIVE ISSUES FOR NEGOTIATION**

5.1 The following is a list of the substantive issues that the Parties agree to negotiate during the Agreement-in-Principle Stage. The list of substantive issues is not exhaustive and may be amended by agreement in writing of the Chief Negotiators:

5.1.1 Land, including title, law-making authority, selection and access;

5.1.2 Water and water resources;

5.1.3 Forestry and forest resources;

5.1.4 Fisheries and marine resources;

- 5.1.5 Language, heritage and culture;
  - 5.1.6 Mining and subsurface resources;
  - 5.1.7 Wildlife and migratory birds;
  - 5.1.8 Governance;
  - 5.1.9 Financial component including but not limited to, fiscal arrangements and sharing of resource revenues and royalties;
  - 5.1.10 Environmental Management;
  - 5.1.11 General provisions, including, but not limited to, certainty, eligibility and enrolment, ratification, amendment, implementation and dispute resolution; and
  - 5.1.12 The settlement of the Hupacasath First Nation's claims of aboriginal rights and title, including but not limited to the related financial component of the settlement referred to in section 5.1.9 and the related certainty issues referred to in sub-paragraph 5.1.11.
- 5.2 The list of substantive issues in section 5.1 is not intended to be exhaustive, and the Parties acknowledge that, as recommended by the B.C. Claims Task Force Report, each Party is at liberty to introduce any other issue at the negotiations which it considers significant to the new relationship. The introduction of any other issue at the negotiation table after the approval of this Agreement does not commit any of the Parties to negotiate that issue. The Chief Negotiators may agree in writing to add new issues to the list in section 5.1.
- 5.3 The Parties agree that it may be necessary, for the better administration of certain components of the treaties, for the Parties to negotiate linked authorities, responsibilities, obligations, and rights among the First Nations within the Nuu-chah-nulth Tribal Council. These components will be determined and agreed to during stage 4 of the BCTC Process.
- 5.4 The negotiation of a substantive issue in Section 5.1 does not commit any of the Parties to conclude an agreement on that issue, or any component of that issue.

- 5.5 The Chief Negotiators may agree that any substantive issue, or elements of a substantive issue, may be more appropriately dealt with in a different manner or outside the BCTC Process.
- 5.6 The Parties agree to identify which substantive issues, or elements of a substantive issue, may require negotiation on a provincial or regional basis. The Parties further agree that, if required, they will identify a process and the other First Nations for those negotiations.
- 5.7 The issue of constitutional protection, including its application to the various provisions negotiated on each substantive issue, will be addressed by the Parties prior to concluding an Agreement-in-Principle.
- 5.8 The Parties will negotiate an implementation plan prior to concluding a Final Agreement, which addresses, among other matters, the following:
  - 5.8.1 Accountability and responsibilities;
  - 5.8.2 Arrangements for monitoring the implementation of the Final Agreement;
  - 5.8.3 Timing;
  - 5.8.4 Implementation funding;
  - 5.8.5 Dispute resolution; and
  - 5.8.6 Process for consultation and review of the proposed scope and nature of draft settlement legislation.

## 6. INTERIM MEASURES

- 6.1 The Parties have accepted recommendation # 16 of the *Report of the British Columbia Claims Task Force*, which states that "the Parties negotiate interim measures agreements before or during the treaty negotiations when an interest is being affected which could undermine the process."
- 6.2 At any stage of the negotiations, if the Parties consider that an interest is being affected which could undermine the negotiations, or to protect provisions already agreed upon at the negotiation table, the Parties will negotiate and attempt to reach timely conclusion and

implementation of an effective interim measure that is appropriate to the circumstances and that avoids displacing the negotiations.

## **7. NEGOTIATION PROCESS**

- 7.1 The Chief Negotiators will be responsible for the conduct and coordination of negotiations, including:
  - 7.1.1 Implementation and management of the *Procedures Agreement* and the *Openness Protocol*;
  - 7.1.2 Coordination and monitoring of interim measures as referenced in Section 6;
  - 7.1.3 Managing the negotiation process including the development of work plans and the setting of priorities;
  - 7.1.4 Negotiating and recommending for approval an Agreement-in- Principle; and
  - 7.1.5 Implementing dispute resolution mechanisms, as agreed.
- 7.2 Negotiations will be conducted at a common main negotiation table (Common Main Table) or main negotiation table (Main Table) as described in the *Procedures Agreement*.
- 7.3 The results of negotiations on a substantive issue will be recorded in a Chapter.
- 7.4 Once they have been recorded in the Chapters, the Chief Negotiators will negotiate an Agreement-in-Principle by consolidating the Chapters and adding any necessary provisions as agreed.
- 7.5 The Chief Negotiators will signify their agreement on an Agreement-in-Principle by initialling it, and they will recommend the completed Agreement-in-Principle to their respective Party for approval.
- 7.6 Prior to the signing of the Agreement-in-Principle, any Chief Negotiator may request that any Chapter of the Agreement-in-Principle be reconsidered and amended by agreement of the Chief Negotiators in writing.
- 7.7 The Parties will approve the Agreement-in-Principle by signing it.

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

## 8. SHARED TERRITORY

8.1 The Hupacasath will resolve all issues related to Shared Territory with the affected First Nation or First Nations and report back from time to time.

8.2 The Hupacasath will make its best efforts to resolve all Shared Territory issues before the end of Stage 4 of the BCTC Process.

8.3 If lack of resolution related to Shared Territory issues is found to be interfering with the successful conclusion of negotiations, the Hupacasath will seek the assistance of the British Columbia Treaty Commission.

## 9. NEGOTIATION FUNDING

9.1 Each Party will be responsible for obtaining funding for its own participation in the negotiation process.

9.2 The Parties acknowledge that the Hupacasath's participation in the negotiation process may be subject to the continued availability of funding from the British Columbia Treaty Commission, in accordance with the BCTC Process.

## 10. INTERPRETATION

10.1 This Agreement is not legally binding and does not create, recognize, affirm, deny or amend any rights, including any aboriginal rights, title or jurisdiction.

10.2 Neither this Agreement nor the Agreement-in-Principle are intended to be a treaty or a "land claims agreement" within the meaning of Sections 25 and 35 of the *Constitution Act, 1982*.

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

## **11. LEGAL NATURE OF THE FINAL AGREEMENT**

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

## **12. APPROVAL OF THIS FRAMEWORK AGREEMENT**

12.1 The Chief Negotiators, by initialling this Agreement, signify their intention to recommend it to their respective Parties for approval.

12.2 The Chief Negotiators will advise the other Parties whether or not this Agreement is accepted by their respective Parties for approval as soon as practicable.

12.3 The Parties will approve this Agreement by signing it.

12.4 The Chief Councillor of the Hupacasath is authorized to sign this Agreement on behalf of the Hupacasath.

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

12.6 The Minister of Aboriginal Relations and Reconciliation is authorized to sign this Agreement on behalf of British Columbia.

## **13. AMENDMENTS**

13.1 Except where otherwise specifically provided in this Agreement, this Agreement may only be amended by agreement of the Parties in writing.

## **14. SUSPENSION OF NEGOTIATIONS**

14.1 Any Party may suspend the negotiations contemplated by this Agreement and will provide written notice, which sets out the reasons and the date of the commencement of the suspension, to the other Parties and to the British Columbia Treaty Commission.




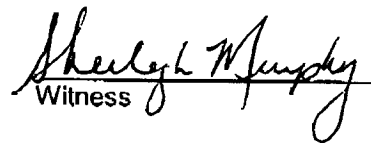
**Signed on behalf of the Hupacasath First Nation**

  
\_\_\_\_\_  
Chief Councillor of the Hupacasath First Nation


  
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Witness

**Signed on behalf of Her Majesty the Queen in Right of Canada**

  
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Minister of Indian Affairs and Northern Development

  
\_\_\_\_\_  
Witness

**Signed on behalf of Her Majesty the Queen in Right of British Columbia**

  
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Minister of Aboriginal Relations and Reconciliation

  
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