

# Tsay Keh Dene Band, Canada and British Columbia Framework Agreement

This Agreement is date 26<sup>TH</sup> November, 1996

## **A FRAMEWORK AGREEMENT TO NEGOTIATE A TREATY**

BETWEEN:

**TSAY KEH DENE BAND**, as represented by Chief and Council (hereinafter referred to as "Tsay Keh Dene")

AND:

**HER MAJESTY THE QUEEN IN RIGHT OF CANADA**, as represented by the Minister of Indian Affairs and Northern Development

(hereinafter referred to as "Canada")

AND:

**HER MAJESTY THE QUEEN IN RIGHT OF BRITISH COLUMBIA**, as represented by the Minister of Aboriginal Affairs

(hereinafter referred to as "British Columbia")

(hereinafter referred to collectively as the "Parties")

**The Parties agree as follows:**

### **1. DEFINITIONS**

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.

1.2 "**BCTC Process**" means the British Columbia Treaty Commission Agreement 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 "**Chief Negotiator**" means the negotiator appointed by each of the Parties for the treaty negotiations contemplated by the BCTC Process.

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

1.6 "**Shared Territory**" means a geographic area within the Territory the traditional use of which is claimed to be shared with another First Nation or over which another First Nation has asserted a claim, which circumstance is referred to in the BCTC Agreement as "overlapping territory".

1.7 "**Sub-Agreement**" means an agreement initialed by the Chief Negotiators on a substantive issue or issues listed 'in Section 5.1 of this Agreement.

1.8 "**Territory**" means that geographic area generally identified by the Tsay Keh Dene as their territory on the map attached to the Tsay Keh Dene Statement of Intent filed with the British Columbia Treaty Commission.

## 2. **PURPOSE**

2.1 The purpose of this Agreement is to promote efficient, effective and orderly negotiations through all stages of the BCTC Process. The Agreement sets out an approach to and process for these negotiations, and identifies their scope; it also establishes an agenda for negotiations leading to an Agreement-in-Principle.

## 3. **SCHEDULING AND TIMING**

3.1 At the commencement of Agreement-in-Principle negotiations, the Parties will address the time frame and schedule required to complete the Agreement-in-Principle.

## 4. **PARTIES**

4.1 The Parties to these negotiations will be the Tsay Keh Dene, Canada and British Columbia.

## 5. **SUBSTANTIVE ISSUES**

The Parties are committed to negotiate the following substantive issues with the intention of concluding an Agreement-in-Principle. The following list of substantive issues is not exhaustive and may be amended by agreement in writing of the Chief Negotiators:

### 5.1.1 General Provisions, including:

- eligibility and enrolment
- approval and ratification processes
- certainty
- dispute resolution
- amendment

#### 5.1.2 Land, including:

- quantum
- selection
- tenure
- existing reserve lands
- non-treaty lands within the Territory
- access and use/easements and rights of way
- expropriation
- foreshore, beds and bodies of water

#### 5.1.3 Land Use Planning and Environmental Management

#### 5.1.4 Resources, including:

- forestry
- mining
- oil and gas
- fisheries
- wildlife/ trapping

#### 5.1.5 Heritage and Culture, including:

- archaeological and sacred sites
- cultural artifacts
- human remains

#### 5.1.6 Self Government, including:

- jurisdiction and authority, including education, social services,
- health services and justice
- interrelationship of laws
- intergovernmental relations.

#### 5.1.7 Financial Matters, including:

- fiscal arrangements, including resource royalties and revenues, and taxation
- financial arrangements
- economic development

#### 5.1.8 Implementation Planning Framework

The inclusion 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.

The Parties are committed to negotiate in conjunction with the Final Agreement an implementation plan that, addresses:

#### 5.3.1 Responsibilities and accountabilities

#### 5.3.2 Identification of consequential amendments to legislation

### 5.3.3 Dispute resolution

### 5.3.4 Timing

### 5.3.5 Funding

### 5.3.6 Settlement legislation

### 5.3.7 Arrangements for monitoring implementation

5.4 The Parties agree to identify opportunities to enhance the capacity of the Tsay Keh Dene to implement the Final Agreement.

5.5 The Parties agree that certain substantive issues identified in Section 5.1 will need regionally coordinated negotiations or province-wide discussions.

For greater certainty, the Parties acknowledge that:

5.5.1 The British Columbia Claims Task Force Report recommended that "The organization of First Nations for the negotiations is a decision to be made by each First Nation", and that "Each of the Parties be at liberty to introduce any issue at the negotiation table which it views as significant to the new relationship";

5.5.2 The determination of the need for and the approach to dealing with any particular substantive issue pursuant to Section 5.5 will be addressed by the Parties during Agreement-in-Principle negotiations; and

5.5.3 Only the Parties to this Agreement will agree on the process for ratification of any treaty flowing from this Agreement.

## 6. INTERIM MEASURES

6.1 The Parties acknowledge that the British Columbia Claims Task Force made the following recommendation concerning Interim Measures:

"16. 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 Interim measures may therefore be negotiated during the Agreement-in-Principle stage where the Parties agree that the matter to be the subject of an interim measure will be a component of the Final Agreement.

## **7. NEGOTIATION PROCESS**

7.1 Negotiations will be conducted at a main table to which each Party will send a Chief Negotiator. Where a Chief Negotiator is unable to attend a main table meeting that Chief Negotiator may designate an acting Chief Negotiator. The Chief Negotiators will be responsible for the conduct and co-ordination of all negotiations, including:

7.1.1 Managing the negotiation process including the development of workplans and the setting of priorities;

7.1.2 Negotiating and concluding an Agreement-in-Principle; and a Final Agreement;

7.1.3 Implementing detailed procedures, consistent with this Agreement, to guide the Parties during these negotiations, including the "Principles for Information Sharing Among Parties during Tsay Keh Dene Band Treaty Negotiations" and the "Protocol Regarding the Openness of the Tsay, Keh Dene Band Treaty Process."

7.1.4 Establishing working groups or side tables directed to explore options for consideration by the main table or to negotiate and make recommendations for consideration by the main table on matters delegated by the Chief Negotiators;

7.1.5 Establishing technical working groups to conduct joint research and analysis on matters arising at the main table;

7.1.6 Implementing dispute resolution mechanisms, as agreed.

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

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

7.4 The Chief Negotiators will signify their agreement on an Agreement-in-Principle by initialing it, and they will recommend the initialed Agreement-in-Principle to their respective Parties for approval.

7.5 Any Chief Negotiator may request that any initialed Sub-Agreement or the Agreement-in-Principle be reconsidered and amended prior to the signing of the Agreement-in-Principle.

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

7.7 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 Tsay Keh Dene shall exercise their best efforts to resolve Shared Territory issues With other First Nations and provide regular reports on the status of any such issues to the Main Table.

## **9. NEGOTIATION FUNDING**

9.1 The Parties will be responsible for obtaining funding for their participation in the negotiations, in the case of Tsay Keh Dene through the British Columbia Treaty Commission.

## **10. GOVERNMENT PROGRAMS**

10.0 During the negotiation process, members of the Tsay Keh Dene will 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 their organizations in accordance with the criteria established from time to time for the application of those programs and services.

## **11. INTERPRETATION**

11.1 This Agreement is not intended to be legally enforceable, and shall not constitute or be deemed to constitute a creation, recognition, affirmation or denial of any rights.

11.2 Neither this Agreement nor the Agreement-in-Principle is intended to be a treaty or to constitute a land claims agreement within the meaning of sections 25 and 35 of the Constitution Act, 1982,

11.3 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 shall not be construed as admissions of fact or of liability.

11.4 For greater certainty, the Parties agree that section 11.3 does not determine the enforceability of any agreement which may flow from this Framework Agreement, nor the admissibility of any such agreement in any proceeding to enforce that agreement.

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

12.1 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.

12.2 The issue of constitutional protection, as it applies to the various substantive issues, will be addressed prior to the conclusion of an Agreement-in-Principle.

### **13. AMENDMENTS**

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

### **14. APPROVAL OF THIS AGREEMENT**

14.1 The signing, of this Agreement by the Parties indicates their approval of it.

14.2 The Chief and the Grand Chief of the Tsay Keh Dene are authorized to sign this Agreement on behalf of the Tsay Keh Dene.

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

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

### **15. SUSPENSION OF NEGOTIATIONS**

15.1 Should any of the Parties suspend the negotiations contemplated by this Agreement, that Party will provide written confirmation, which also sets out the effective date and reasons for suspension, to the other Parties and to the British Columbia Treaty Commission.