

Tsimshian Nation Framework Agreement

This Framework Agreement is dated February 21, 1997

BETWEEN:

THE TSIMSHIAN NATION comprised of:

**Kitasoo/Xaixais First Nation,
Gitga'at First Nation,
Kitkatla First Nation,
Metlakatla First Nation,
Lax Kw'Alaams First Nation,
Kitsumkalum First Nation
Kitselas First Nation**

as represented by the Representative(s) of each Tsimshian First Nation, the Chief Negotiator for the Tsimshian Nation and the President of the Tsimshian Tribal Council ("the Tsimshian Nation")

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")

WHEREAS:

A. The Constitution Act, 1982 recognizes and affirms the 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.

B. The Tsimshian Nation asserts that it is the original peoples within the Territory and that they have Aboriginal rights and the right to govern themselves within the Territory.

C. The Parties are committed to negotiating a treaty in accordance with the BCTC Process.

D. The Parties are committed to negotiating a treaty that will establish the foundation for a new and ongoing relationship based on mutual respect, understanding and trust, and will provide certainty for all Parties.

E. The Tsimshian Nation, Canada and British Columbia enter into these treaty negotiations for the purpose of providing clarity and certainty of jurisdiction, governance arrangements and ownership of lands and resources within the Territory.

F. The Tsimshian Nation has never signed a treaty or land claim agreement with the British Crown, Canada or British Columbia.

G. Canada and British Columbia acknowledge that there are different circumstances affecting the individual Tsimshian First Nations, such as geography, economies and population.

H. The Tsimshian Nation intends to negotiate an Agreement-In-Principle which will provide for the differing circumstances of individual Tsimshian First Nations. The Tsimshian Nation therefore seeks an Agreement-In-Principle which will incorporate Sub-Agreements and First Nation Agreements to address matters that are of particular interest to one or more Tsimshian First Nation(s).

I. The Parties acknowledge the importance of providing public access to the treaty process while recognizing the need to conduct effective negotiations and consequently the Parties have provided for public access to the process in an agreement, referred to as the "Openness Protocol of the Tsimshian Treaty Process".

J. The Parties seek a Final Agreement which is intended to provide increased economic development opportunities for the Tsimshian Nation and will assist the Tsimshian Nation with its aspirations for sustainable and self reliant communities.

1. DEFINITIONS

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

1.2 "BCTC" means the British Columbia Treaty Commission.

1.3 "BCTC Agreement" means the British Columbia Treaty Commission Agreement executed by the First Nations Summit, Canada and British Columbia dated September 21, 1992 and includes amendments made to it from time to time. 1.4 "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.

1.5 "Chief Negotiator" means the negotiator appointed by each of the Parties for the Tsimshian negotiations which will be conducted in accordance with the BCTC Process.

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

1.7 "First Nation Agreement" means an agreement or other arrangement between Canada, British Columbia, and one or more Tsimshian First Nation(s).

1.8 "Main Table" means the table at which negotiations are conducted and at which each Party is represented by its Chief Negotiator or their designates. Chief Negotiators or their designates would attend sessions at this table. 1.9 "Overlap" means a geographic area within the Territory which is claimed by a First Nation, whether participating in the BCTC process or not, other than the Tsimshian Nation. 1.10 "Sub-Agreement" means a part or parts of an Agreement-In-Principle which set(s) out the agreement on any of the substantive issues negotiated. 1.11 "Territory" means the geographic areas identified by the Tsimshian Nation as its traditional territories on the map attached to the December 15, 1993 Statement of Intent filed with the BCTC.

1.12 "Tsimshian First Nation" for the purposes of this agreement, means any one of the following:

Kitasoo/Xaixais First Nation,
Gitga'at First Nation,
Kitkatla First Nation,
Metlakatla First Nation,
Lax Kw'Alaams First Nation,
Kitsumkalum First Nation or
Kitselas First Nation.

1.13 The "Tsimshian Nation" is a First Nation as defined in the BCTC agreement and is comprised of all Tsimshian First Nations.

2. PURPOSE

2.1 The purpose of this Agreement is to promote efficient, effective, and orderly negotiations leading to completion of the Agreement-In-Principle stage of the BCTC Process. This Agreement guides the approach to and the process for negotiations among the Parties; identifies the scope of negotiations; and establishes an agenda and a timetable for the negotiations.

3. SCHEDULE AND TIMING

3.1 The Parties will negotiate with the intention of concluding an Agreement-in- Principle within 36 - 48 months of the signing of this Agreement.

4. PARTIES TO THE AGREEMENT-IN-PRINCIPLE

4.1 The Parties to the Agreement-In-Principle and resulting agreements will be the Tsimshian Nation, Canada and British Columbia.

5. SUBSTANTIVE ISSUES FOR NEGOTIATION

5.1 The following is a list of the substantive issues that the Parties intend to address during Agreement-In-Principle negotiations. The list is not intended to be exhaustive and may be amended in accordance with Section 5.3.

5.1.1 Governance

- Structure of Tsimshian Government
- Law-making Authority/Jurisdiction
- Health and Social Services
- Education and Training
- Policing
- Community Infrastructure
- Intergovernmental Relationships

5.1.2 Natural Resources: Management and Harvesting

- Fish
- Wildlife
- Forests
- Waters
- Mining, Mineral and Sub-surface

5.1.3 Lands

- Quantum and Selection
- Tenure
- Access
- Parks and Protected Areas
- Cultural and Heritage Resources

5.1.4 Environmental Assessment and Protection

5.1.5 Offshore Areas and Ocean Management

5.1.6 Fiscal and Economic Arrangements

Cash

Cash Equivalent Benefits

5.1.7 Eligibility and Enrolment

5.1.8 Ratification

5.1.9 Dispute Resolution

5.1.10 Amendment

5.1.11 Implementation

5.1.12 Certainty

5.2 The negotiation of a substantive issue listed in Section 5.1 does not commit any of the Parties to conclude an agreement on that issue, or any component of that issue.

5.3 The Chief Negotiators may, by agreement in writing, amend the list of substantive issues for negotiation as set out in Section 5.1, and any protocol or procedural agreements referred to in this Agreement.

5.4 The Chief Negotiators may agree that any substantive issue or elements of a substantive issue may be more appropriately dealt with outside the BCTC process.

5.5 The Parties agree that there may be substantive issues or elements of substantive issues that require regional and/or provincial negotiations and such issues will be identified and negotiated accordingly.

5.6 The Parties agree to negotiate an Agreement-In-Principle which includes Sub- Agreements and may include First Nation Agreements.

5.7 As much as possible, Agreement-In-Principle negotiations will be conducted by the Parties but there may be circumstances where Canada and British Columbia will negotiate directly with individual Tsimshian First Nations.

5.8 Where the Parties agree to negotiate a matter with the intention of developing a First Nation Agreement, the Parties will consider the appropriate timing and procedures taking into account the relationship between those negotiations and the overall Agreement-In-Principle negotiations.

5.9 The question of which issues require constitutional protection and which issues are not to be constitutionally protected will be addressed prior to conclusion of an Agreement-In-Principle.

6. NEGOTIATION PROCESS

6.1 The Chief Negotiators will be responsible for the conduct and co-ordination of negotiations.

6.2 Negotiations will be conducted at the Main Table. The Main Table will be responsible for:

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

6.2.2 Establishing working groups, side tables, and other processes, as required;

6.2.3 Implementing the "Principles for Information Sharing During Tsimshian Treaty Negotiations" agreement;

6.2.4 Implementing the "Openness Protocol of the Tsimshian Treaty Process" agreement and

6.2.5 Implementing detailed procedures, consistent with this Agreement, to guide the Parties during the Agreement-In-Principle negotiations as outlined in the "Stage 4 Procedures Agreement".

6.3 Any substantive issue listed in Section 5.1 which is to be included in the Agreement-In-Principle must be negotiated and agreed to by the Parties.

6.4 The Parties agree the results of each negotiation of a substantive issue will be recorded in a Sub-Agreement of the Agreement-In-Principle. The Chief Negotiators and the Negotiators for each Tsimshian First Nation will signify their agreement on a substantive issue by initialling the Sub-Agreement.

6.5 Any Chief Negotiator may request that any initialled Sub-Agreement or Agreement-In-Principle be reconsidered for amendment. The initialled Sub-Agreement or Agreement-In-Principle may only be amended, by agreement in writing, by the Chief Negotiators and the Negotiators for each Tsimshian First Nation.

6.6 The Chief Negotiators for Canada and British Columbia and Negotiator(s) from one or more Tsimshian First Nations who have negotiated a First Nation Agreement shall signify their agreement by initialling the First Nation Agreement.

6.7 Once they have initialled all of the Sub-Agreements and First Nation Agreements to the Agreement-in-Principle, the Chief Negotiators and the Negotiators for each Tsimshian First Nation will take the

necessary steps to complete a draft Agreement-In-Principle by consolidating all Sub-Agreements, First Nation Agreements and other provisions as agreed.

6.8 The Chief Negotiators and the Negotiators for each Tsimshian First Nation will signify their agreement on an Agreement-In-Principle by initialling it, and they will recommend the completed Agreement-In-Principle to their respective Parties for approval.

6.9 The Parties will approve the Agreement-In-Principle by signing it.

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

7. OVERLAPPING CLAIMS

7.1 The Tsimshian Nation shall resolve any Overlap claims it may have with other First Nations and periodically report on the status of Overlap claims to the Main Table.

7.2 Where Canada and British Columbia are engaged in active negotiations under the BCTC Process with First Nations bordering the Territory, Canada and British Columbia will periodically report to the Main Table on the status of those negotiations.

7.3 If the process to resolve Overlaps is not successful, or is found to be interfering with the successful conclusion of negotiations, the Tsimshian Nation will consider other options to resolve the Overlap, including seeking assistance from the BCTC.

8. NEGOTIATION FUNDING

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

9. INTERPRETATION

9.1 This Framework Agreement is not legally binding and is not intended to create, recognize, affirm, deny or amend any of the rights of the Parties.

9.2 Neither this Framework Agreement or any Agreement-In-Principle which may flow from it are intended to constitute a treaty or a land claims agreement within the meaning of Sections 25 and 35 of the Constitution Act, 1982.

9.3 The Final Agreement 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.

9.4 This Agreement and the negotiations leading up to or carried out pursuant to it are without prejudice to any legal positions that have been or may be taken by any of the Parties in any court proceeding, process or other forums, and shall not be construed as an admission of fact or liability in any such proceeding or process.

10. APPROVAL OF THIS AGREEMENT

10.1 The Chief Negotiators and the Negotiators for each Tsimshian First Nation, by initialling this Agreement, will signify their intention to recommend it to their respective Parties for approval.

10.2 The Parties will approve this Agreement by signing it.

10.3 The Representative(s) of each Tsimshian First Nation, the Chief Negotiator of the Tsimshian Nation and the President of the Tsimshian Tribal Council are authorized to sign this Agreement on behalf of the Tsimshian Nation.

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

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

11. AMENDMENTS

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

12. DISPUTE RESOLUTION

12.1 Dispute resolution mechanisms will be used, when agreed to by the Parties, to assist with the resolution of disputes among the Parties.

13. SUSPENSION OF NEGOTIATIONS

13.1 Any Party may suspend the negotiations contemplated by this Agreement by providing written notice, which also sets out the reasons for suspension and the date that the suspension commences, to the other Parties and to the BCTC.

14. INTERIM MEASURES

14.1 The Parties acknowledge their acceptance of the following recommendation made by the British Columbia Claims Task Force 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."

15. ELIGIBILITY FOR GOVERNMENT PROGRAMS

15.1 During the negotiations process, the Tsimshian will continue to enjoy the same rights and benefits as any citizen of Canada and resident of British Columbia, and 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.

Signed on behalf of the Signed on behalf of the:

Kitasoo/Xaixais First Nation

Kitsumkalum First Nation

Gitga'at First Nation

Kitselas First Nation

Kitkatla First Nation

Lax Kw'Alaams First Nation

Tsimshian Nation: Robert H. Hill, President Tsimshian Tribal Council and Gerald D. Wesley, Chief Negotiator

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

The Honourable Ronald A. Irwin Minister of Indian Affairs and Northern Development

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

The Honourable John Cashore Minister of Aboriginal Affairs