

Westbank First Nation Framework Agreement

The Chief Negotiators initial this Agreement to signify their intention to recommend it to the Parties for their approval, this twentieth (20th) day of March, 1996.

Initialed on Behalf of Westbank:

[signed]

Tim Raybould
Chief Negotiator

Initialed on Behalf of Canada:

[signed]

Robin Dodson
Chief Federal Negotiator

Initialed on Behalf of British Columbia:

[signed]

Roger Graham
Provincial Negotiator

WESTBANK FIRST NATION FRAMEWORK AGREEMENT

This Agreement, dated the _____ day of _____, 1996

BETWEEN: **THE WESTBANK FIRST NATION** as represented by its Chief and Council
("Westbank")

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. Westbank is an aboriginal people with a traditional territory. Westbank asserts that this means they have unextinguished aboriginal title, and aboriginal rights, including ownership and jurisdiction over, in and under their traditional territory.
- B. Westbank asserts that it wishes to retain, subject to the Treaty, the aboriginal rights, title, and interests it asserts with respect to its traditional territory.
- C. Canada and British Columbia enter these 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.
- D. Westbank has never signed a Treaty or comprehensive land claims agreement with Canada, British Columbia or the British Crown.
- E. The Constitution Act, 1982, recognizes and affirms the existing aboriginal and treaty rights of the aboriginal peoples of Canada.
- F. Westbank submitted a "Statement of Intent" to the British Columbia Treaty Commission ("BCTC") in December 1993 and the BCTC accepted the Westbank Statement of Intent in January 1994. The BCTC accepted that Westbank was given a mandate, by its membership, to negotiate a just and equitable resolution of the outstanding land and jurisdictional dispute and to enter into a new relationship with Canada and British Columbia.
- G. On September 22, 1995 the BCTC declared Westbank, Canada and British Columbia ready to commence Treaty negotiations.
- H. The Parties enter into these negotiations for the purpose of providing clarity and certainty regarding ownership, jurisdiction, rights and use of lands and resources.

NOW THEREFORE THE PARTIES AGREE AS FOLLOWS:

1. DEFINITIONS

1.1 "Agreement" means this Framework Agreement formally approved by the Parties.

1.2 "Agreement-in-Principle" means the agreement approved as evidenced by signature of the Parties, which will be comprised of various Sub-agreements and other provisions as agreed; the Agreement-in-Principle is not intended to constitute a treaty or a land claims agreement within the meaning of sections 35 of the Constitution Act, 1982.

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 monitored by the BCTC.

1.4 "Chief Negotiator" means the negotiator appointed by each of the Parties for the treaty negotiations contemplated.

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

1.6 "Treaty" means the agreement concluded and ratified by the Parties at the end of Stage V, which is intended to constitute a treaty or land claims agreement within the meaning of section 35 of the Constitution Act, 1982.

2. PARTIES

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

3. PURPOSE

3.1 The purpose of this Agreement is to guide the conduct of Treaty negotiations between the Parties, setting out the principles for the negotiations, the process for and the scope of the negotiations and the agenda and timetable to complete an Agreement-in-Principle.

4. SUBSTANTIVE ISSUES FOR NEGOTIATION

4.1 The following is a list of substantive subject matters that the Parties intend to address during Agreement-in-Principle negotiations. It is not intended to be exhaustive and may be amended at the table by agreement in writing of the Chief Negotiators.

a. Land

- categories
- selection
- quantum
- tenure
- access
- renewable and non-renewable resources
- water
- airspace

b. Jurisdictional Arrangements

- aboriginal language and culture
- use, control, management, protection of lands and resources
- environmental management and protection
- fish and wildlife
- administration of justice
- taxation
- commercial regulation and licensing
- regulation and control of intoxicants
- wills and estates
- family law and child welfare
- education
- health
- labour relations
- gaming
- social services

c. Rights on Settlement and Non-settlement Lands

- governments
- First Nation
- third party and public

d. Intergovernmental Relations

- interrelationship of laws
- linkages and reciprocal agreements
- harmonization of standards and program delivery

e. Financial Component

- fiscal arrangements
- revenue sharing and royalties
- economic development

f. General

- amendment
- dispute resolution
- implementation
- ratification
- eligibility and enrollment
- certainty

4.2 The Parties will make reasonable efforts to reach agreement on each substantive issue listed in 4.1. The failure of the Parties to reach an agreement on any substantive issue will not limit the Parties in concluding Sub-agreements on other issues listed. The inclusion of

a substantive issue in section 4.1 does not require any of the Parties to conclude an agreement on that issue or any component of that issue.

4.3 The issue of constitutional protection will be addressed prior to the conclusion of the Agreement-in-Principle.

5. NEGOTIATION PROCESS

5.1 The Chief Negotiators will be responsible for the conduct and coordination of all negotiations.

5.2 Negotiations will be conducted at the Main Table (the "Main Table") The Main Table will be responsible for:

- a. managing the negotiation process including work planning and setting of priorities;
- b. negotiating and concluding an Agreement-in-Principle, a Treaty and related agreements;
- c. implementing and managing the Openness Protocol ("Protocol Agreement between Westbank First Nation, British Columbia and Canada Regarding the Openness of the Westbank First Nation Treaty Process");
- d. implementing detailed procedures consistent with this Agreement to guide the Parties during Agreement- in- Principle and Treaty negotiations;
- e. establishing working groups, side tables and other processes as required;
- f. implementing dispute resolution mechanisms as agreed.

5.3 The results of each negotiation of a substantive issue will be recorded in a Sub-agreement. The Chief Negotiators will signify their agreement on a substantive issue by initialling the Sub-agreement.

5.4 Prior to the signing of the Agreement in Principle, the Sub-agreements which have been initialled may, by agreement of the Chief Negotiators, be reconsidered or amended.

5.5 Once all Sub-agreements have been initialled, the Chief Negotiators will take the necessary steps to complete a draft Agreement-in-Principle by consolidating all Sub-agreements and such other provisions as may be required.

5.6 The Chief Negotiators will signify their agreement on the draft Agreement-in-Principle by initialling it, and they will recommend the completed draft Agreement-in-Principle to

their respective Parties for approval.

5.7 The Agreement-in-Principle will be concluded upon having been approved and signed by the Parties. After the Agreement-in-Principle has been concluded the Parties will complete, on a timely basis, the proposed Treaty and related agreements based on the Agreement-in-Principle.

5.8 The proposed Treaty and related agreements will be presented to those Westbank First Nation people whose approval is needed in accordance with the requirements and procedures for ratification to be set out in the Agreement-in Principle.

5.9 The Parties will negotiate with the intention of concluding Agreement-in-Principle negotiations on the subjects listed in section 4 within three (3) years from the date of the signing of this Agreement.

5.10 The Parties recognize that certain substantive issues listed in section 4 may require regionally coordinated negotiations or province wide discussions with other First Nations in the BCTC negotiation process. Given the unique circumstances of Westbank, the issue of whether or not there is a need for regional discussion on a particular issue, and if so, how to approach it, will be addressed during the Agreement-in Principle negotiations.

5.11 Negotiation and the implementation of the Treaty and related agreements will be conducted in good faith, with sincerity and with mutual respect.

5.12 It is understood that Westbank will represent its interests in these negotiations. Canada and British Columbia will represent non-aboriginal interests in accordance with recommendation 10 of the "Report of the British Columbia Claims Task Force" which states, (The Task Force recommends that) "...non-aboriginal interests be represented at the negotiating table by the federal and provincial governments".

6. IMPLEMENTATION

6.1 An implementation plan will be developed prior to the conclusion of an Agreement-in-Principle. Finalization of the implementation plan will coincide with the signing of the Treaty and any other related agreements.

7. TYPES OF MEETING

7.1 Main Table:

- a. is the primary forum and decision making body for tripartite negotiations;

- b. may establish side tables and working groups and their terms of reference as required.

7.2 Side Tables:

- a. may be established by the Main Table to address substantive issues or groups of issues to make recommendations to the Main Table.

7.3 Working Groups:

- a. may be established by the Main Table or a side table to conduct research and analysis on specific issues, to develop options and make recommendations for the Main Table or side table.

8. OVERLAPS

8.1 Westbank will use reasonable efforts to resolve any overlapping claims it may have with other First Nations and will report back to the Main Table periodically on the status of overlap discussions.

9. DISPUTE RESOLUTION

9.1 The Parties will endeavour to resolve disputes which may arise in the course of negotiations by utilizing appropriate dispute resolution mechanisms. The Parties may ask the BCTC to assist in the resolution of disputes.

10. SUSPENSION OF THE NEGOTIATIONS

10.1 Subject to the stated commitment of the Parties to negotiate in good faith, any of the Parties may suspend the negotiations contemplated by this Agreement. The party seeking to suspend will provide written notice, setting out the reasons for suspension and the date that the suspension commences, to the other Parties and to the BCTC.

11. NEGOTIATION FUNDING

11.1 Each of the Parties will be responsible for obtaining funding for its own participation in the negotiation process.

12. TREATY RELATED INTERIM MEASURES

12.1 The Parties may negotiate and enter into interim measures agreements during the

Treaty negotiations when an interest is being affected which could undermine the Treaty process and to protect provisions already agreed upon at the negotiation table until a Treaty can be signed and implemented.

13. GOVERNMENT PROGRAMS

13.1 This Agreement will not prevent the members of Westbank from enjoying the same rights and benefits as any citizen of Canada or resident of British Columbia or accessing any of the various programs, services or legislation 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.

14. PUBLIC INFORMATION, OPENNESS AND CONSULTATION

14.1 In accordance with the "Protocol Agreement between Westbank First Nation, British Columbia and Canada Regarding the Openness of the Westbank First Nation Treaty Process," the Parties recognize the need to provide information to the public on the negotiation process and to consult with those whose interests may be affected by the negotiations.

15. INFORMATION SHARING

15.1 The Parties recognize the need to share information during the negotiations in accordance with the "Information Sharing Principles Agreement for the Westbank First Nation Treaty Negotiations".

16. INHERENT RIGHT

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

17. GOVERNMENT-TO-GOVERNMENT RELATIONSHIP

17.1 The Parties are committed to conducting the negotiations in accordance with a "government-to-government" relationship, within the framework of the Constitution of Canada and under the BCTC process, and Canada is committed to negotiating self-government under its inherent right policy. For greater certainty, Canada's inherent right policy will not limit or restrict the positions the other Parties may take on self-government.

18. INTERPRETATION

18.1 The purpose of this Agreement is to improve the effectiveness of the negotiation process and nothing in this Agreement is to be interpreted as creating, recognizing, denying or amending legally enforceable rights or altering the relationship or responsibilities of Canada and British Columbia to Westbank.

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

18.3 The negotiation of a Westbank Treaty will not bind other First Nations within or outside the Okanagan Nation in their assertion of their rights.

18.4 The language of the Treaty and any related agreement will be plain and simple so that the intention of the Parties is clear.

19. APPROVAL OF THIS AGREEMENT

19.1 The Chief Negotiators will initial this Agreement to signify their intention to recommend it to the Parties for their approval. The Parties will signify approval of this Agreement by the signatures of their authorized representatives.

19.2 The Chief and Council of Westbank are authorized to sign this Agreement on behalf of Westbank.

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

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

20. AMENDMENT

20.1 Except as otherwise provided for in this Agreement, this Agreement may be amended by agreement of the Parties in writing.

Signed on Behalf of Westbank:

Chief Robert Louie

Councillor Carol Derickson

Councillor Larry Derrickson

Councillor

Councillor Clarence Clough

Signed on Behalf of Her Majesty The Queen in Right of Canada:

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

Witness

Signed on Behalf of Her Majesty The Queen in Right of British Columbia:

The Honourable John Cashore
Minister of Aboriginal Affairs

Witness

Federal Treaty Negotiation Office
British Columbia Region
2700 - 650 West Georgia Street
Vancouver, BC V6B 4N8

BY HAND March 20, 1996

Tim Raybould
Chief Negotiator
Westbank First Nation
Suite 301 - 515 Highway 97 South

Kelowna, BC V1Z 3J2

Roger Graham
Provincial Treaty Negotiator
Ministry of Aboriginal Affairs
908 Pandora Avenue
Victoria, BC V8V 1X4

Dear Mr. Raybould and Mr. Graham:

Re: Westbank Framework Agreement

This letter concerns the draft Westbank Framework Agreement that we had hoped to be in a position to initial at our Main Table meeting today, March 20, 1996.

As I advised you yesterday and again today at the opening of the Main Table session, Canada regrets bringing forward at this late stage a number of additional changes on which we are seeking your agreement prior to initialling of the Framework Agreement. These changes arise from a number of additional concerns identified by Canada in the course of its internal review.

In this regard, I would prefer to delay today's scheduled initialling in order to give us time to negotiate these additional matters that Canada is bringing forward.

However, understanding the importance of today's scheduled ceremony, I am prepared to join with you in the initialling of the Framework Agreement in its current form, on the understanding that it may not receive the approval of the Federal government and therefore may not be signed by the Minister without additional changes.

Yours sincerely,

[signed]
Robin Dodson
Chief Federal Negotiator
Federal Treaty Negotiation Office
British Columbia Region