

FRAMEWORK AGREEMENT
TO
NEGOTIATE A TREATY

This Agreement is dated

September 25, 2000.

AMONG

THE KWAKWUTL NATION, also known as the Kwakiutl First Nation and the Kwakiutl Band, as represented by the Gigagame of the Kwakiutl Nation and by the Chief and Councilors (the "Kwakiutl")

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 Kwakiutl assert that we are the original governing people within the Traditional Territory and assert that we have unextinguished aboriginal title, rights, ownership, jurisdiction, and the right to govern ourselves. The Kwakiutl know ourselves to be one with the land and the sea, also expressed in our language as *Awina'kola*.
- B. The Kwakiutl further assert that this Framework Agreement does not preclude the Kwakiutl from protecting our asserted aboriginal title, rights and interests, including asserted Douglas Treaty rights, outside of the BCTC Process.
- C. The Parties are committed to negotiating a treaty 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. The Winalagalis Treaty Group, of which the Kwakiutl are a participant, Canada and British Columbia have negotiated the *Procedures Agreement* and the *Openness Protocol*, both dated January 28, 1998, to govern the conduct of these negotiations.
- F. 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.

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 the agreement on one or more of the substantive issues negotiated.
- 1.5 "Chief Negotiator" means the negotiator(s) appointed by each of the Parties for the treaty negotiations contemplated by the BCTC Process.
- 1.6 "Douglas Treaty" means any one of fourteen treaties made between James Douglas, first as chief Factor of the Hudson's Bay Company and later as the Governor of the Colony of Vancouver Island, and aboriginal peoples in and around those areas now known as Victoria, Saanich, Sooke, Nanaimo and Port Hardy on Vancouver Island between the years 1850 and 1854.
- 1.7 "Final Agreement" means the agreement formally ratified and signed by the Parties at the end of Stage 5 of the BCTC Process.
- 1.8 "Gigagame" means the hereditary chiefs as determined by the laws and traditions and practices of the Kwakiutl.
- 1.9 "Shared Territory" means a geographic area within the Kwakiutl Traditional Territory the use of which may be shared with members of a First Nation other than the Kwakiutl or over which another First Nation asserts a claim which such circumstance is referred to in the BCTC Agreement as "overlapping territory."
- 1.10 "Traditional Territory" means that geographic area identified by the Kwakiutl as its territory on the map attached to the Kwakiutl Statement of Intent filed with the British Columbia Treaty Commission as may be amended by the Kwakiutl.
- 1.11 "Treaty" means a treaty within the meaning of Sections 25 and 35 of the *Constitution Act, 1982*.
- 1.12 "Winalagalis Treaty Group" means an organization comprised of the Kwakiutl Nation, the 'Namgis Nation, the Da'naxda'xw/Awaetlala Nation, the Gwa'Sala-'Nakwaxda'xw Nation, the Quatsino First Nation and the Tlatlasikwala

Nation, which has been formed solely for the purposes of coordinating and administering treaty negotiations and related activities which the participating First Nations have agreed to undertake jointly.

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 60 months (5 years) of signing this Agreement and in accordance with the *Letter of Agreement Between the Chief Negotiators* dated February 1, 2000, which includes the *Common Work Plan* dated November 24, 1999.

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 Kwakiutl, Canada and British Columbia exclusively.

5. **DOUGLAS TREATY**

5.1 The Parties have expressed various views with respect to the Douglas Treaties and those views will continue to be discussed during the Agreement-in-Principle Stage. Any Party may raise issues based on those views during discussion in the Agreement-in-Principle Stage.

6. **SUBSTANTIVE ISSUES FOR NEGOTIATION**

6.1 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:

- 6.1.1 Land;
- 6.1.2 Water and water resources;
- 6.1.3 Title, jurisdiction, selection and access;
- 6.1.4 Forestry and forest resources;
- 6.1.5 Fisheries and marine resources;
- 6.1.6 Language, heritage and culture;
- 6.1.7 Mining and subsurface resources;

- 6.1.8 Wildlife and migratory birds;
 - 6.1.9 Governance;
 - 6.1.10 Financial and fiscal arrangements;
 - 6.1.11 Environment;
 - 6.1.12 Air space; and
 - 6.1.13 General provisions, including, but not limited to, certainty, eligibility and enrolment, ratification, amendment and dispute resolution.
- 6.2 The manner in which the Parties will approach topics in common from the list of substantive issues listed in 6.1.1-6.1.13 with the Winalagalis Treaty Group and separately with the Kwakiutl is described in the *Letter of Agreement Between the Chief Negotiators* dated February 1, 2000.
- 6.3 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 participants of the Winalagalis Treaty Group. These components will be determined and agreed to during Stage 4 of the BCTC Process.
- 6.4 The negotiation of a substantive issue in Section 6.1 does not commit any of the Parties to conclude an agreement on that issue, or any component of that issue.
- 6.5 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.
- 6.6 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.
- 6.7 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.
- 6.8 The Parties agree to identify and consider the facilitation of opportunities to enhance the capacity of the Kwakiutl to implement the Final Agreement.
- 6.9 The Parties will negotiate an implementation plan prior to concluding a Final Agreement, which addresses, among other matters, the following:
- 6.9.1 Accountability and responsibilities;
 - 6.9.2 Arrangements for monitoring the implementation of the Final Agreement;

- 6.9.3 Timing;
- 6.9.4 Implementation funding;
- 6.9.5 Dispute resolution; and
- 6.9.6 Process for consultation and review of the proposed scope and nature of draft settlement legislation.

7. INTERIM MEASURES

- 7.1 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."
- 7.2 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.

8. NEGOTIATION PROCESS

- 8.1 The Chief Negotiators will be responsible for the conduct and coordination of negotiations, including:
 - 8.1.1 Implementation and management of the *Procedures Agreement* and the *Openness Protocol*;
 - 8.1.2 Coordination and monitoring of interim measures as referenced in Section 7;
 - 8.1.3 Managing the negotiation process including the development of work plans and the setting of priorities;
 - 8.1.4 Negotiating and recommending for approval an Agreement-in-Principle; and
 - 8.1.5 Implementing dispute resolution mechanisms, as agreed.
- 8.2 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*.
- 8.3 The results of negotiations on a substantive issue will be recorded in a Chapter. The Chief Negotiators will signify their agreement on a substantive issue by initialing that Chapter.
- 8.4 Once they have initialed the Chapters, the Chief Negotiators will negotiate an

Agreement-in-Principle by consolidating the Chapters and adding any necessary provisions as agreed.

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

8.6 Prior to the signing of the Agreement-in-Principle, any Chief Negotiator may request that any initialed Chapter of the Agreement-in-Principle be reconsidered and amended by agreement of the Chief Negotiators in writing.

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

8.8 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.

9. SHARED TERRITORY

9.1 The Kwakiutl will resolve issues related to Shared Territory with the affected First Nation or First Nations where those issues affect the Agreement-in-Principle negotiations, and report back from time to time.

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

10. NEGOTIATION FUNDING

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

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

11. GOVERNMENT PROGRAMS

11.1 Members of the Kwakiutl will continue to enjoy the same rights and benefits as any citizen of Canada, notwithstanding the Kwakiutl's participation in the BCTC process.

11.2 The Kwakiutl and its citizens 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 their organizations, in accordance with the criteria established from time to time for the application of those programs and services.

12. INTERPRETATION

12.1 The purpose of this Agreement is to improve the effectiveness of the negotiation process, and this Agreement is not legally binding and nothing in this Agreement is to be interpreted as creating, recognizing or denying any legally enforceable rights.

12.2 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*.

12.3 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. Any interim measures agreements will be binding upon the Parties where expressly stated.

13. LEGAL NATURE OF THE FINAL AGREEMENT

13.1 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*.

14. APPROVAL OF THIS FRAMEWORK AGREEMENT

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

14.2 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.

14.3 The Parties will approve this Agreement by signing it.

14.4 The Chief and Councilors of the Kwakiutl authorize the Gigagame and Chief Councilor to sign this Agreement on behalf of the Kwakiutl.

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

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

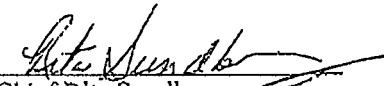
15. AMENDMENTS

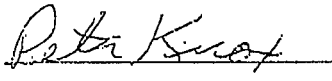
15.1 Except where otherwise specifically provided in this Agreement, this Agreement may only be amended by agreement of the Parties in writing.

16. SUSPENSION OF NEGOTIATIONS


16.1 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 Kwakwaka'wakw Nation

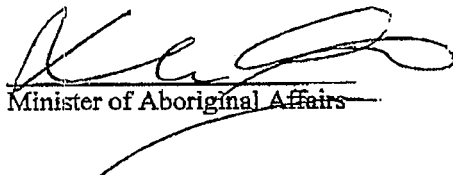

Chief Rita Sundberg


Hereditary Chief

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


Minister of Indian Affairs and Northern Development

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


Minister of Aboriginal Affairs