

KWAKIUTL LAICH-KWIL-TACH COUNCIL OF CHIEFS FRAMEWORK AGREEMENT

FRAMEWORK AGREEMENT TO NEGOTIATE A TREATY

This Framework Agreement is dated *August* 1998

BETWEEN:

**THE MAMALILIKULA FIRST NATION
THE TLOWITSIS FIRST NATION
THE WE WAI KAI FIRST NATION
THE WE WAI KUM FIRST NATION AND
THE KWIAKAH FIRST NATION**

as represented by **THE KWAKIUTL LAICH-KWIL-TACH COUNCIL OF CHIEFS**
(the "Kwakiutl Laich-Kwil-Tach Council of Chiefs")

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 Mamalilikula First Nation, the Tlowitsis First Nation, the We Wai Kai First Nation, the We Wai Kum First Nation and the Kwiakah First Nation assert that they have aboriginal title and rights to all land and sea resources in the Territory and that they never surrendered, ceded or sold all or any of their aboriginal title or rights to the Crown in right of Canada.

B. The Constitution Act, 1982 recognizes and affirms the existing aboriginal and treaty rights of the aboriginal peoples of Canada, including rights that now exist by way of land claims agreements or that

may be so acquired.

C. The Mamalilikula First Nation, the Tlowitsis First Nation, the We Wai Kai First Nation, the We Wai Kum First Nation and the Kwiakah First Nation have mandated the Kwakiutl Laich-Kwil-Tach Council of Chiefs to enter into negotiations with Canada and British Columbia for the purpose of resolving all outstanding claims to aboriginal rights and title as claimed by these First Nations within the BCTC Process.

D. The Parties enter into treaty negotiations in order to provide certainty in-the future with respect to jurisdiction, ownership and rights to lands and resources within the Territory of the First Nations represented by the Kwakiutl Laich-Kwil-Tach Council of Chiefs.

E. The Parties recognize the importance of providing public access to treaty negotiations while recognizing the need to conduct effective negotiations. Public access to negotiations will take place in accordance with the Openness Protocol Agreement dated July 22, 1997.

F. The Kwakiutl Laich-Kwil-Tach Council of Chiefs intend on introducing social and cultural impacts of settlement within the Territory during the course of discussing treaty negotiation issues in accordance with the British Columbia Claims Task Force recommendation that each party may be at liberty to introduce any issue at the negotiation table which it views as significant to the new relationship being negotiated.

1 DEFINITIONS

1.1 "Agreement-In-Principle" means the agreement approved and signed by all the Parties at the end of Stage 4 of the BCTC Process.

1.2 "British Columbia Treaty Commission (BCTC) Agreement" means the BCTC Agreement executed by 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 facilitated by the BCTC.

1.4 "Chief Negotiator" means a negotiator or his or her designate appointed by each of the Parties for negotiation in the BCTC Process.

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

1.6 "Kwakiutl Laich-Kwil-Tach Council of Chiefs" means the governing body, consisting of a negotiating team, mandated by the Mamalilikula First Nation, the Tlowitsis First Nation, the We Wai Kai First Nation, the We Wai Kum First Nation and the Kwiakah First Nation to negotiate for each First

Nation through the BCTC Process. The negotiating team shall consist of a Chief Negotiator from the Kwakiutl Laich-Kwil-Tach Council of Chiefs and a Negotiator from each of the First Nations represented by the Kwakiutl Laich-Kwil-Tach Council of Chiefs.

1.7 "Main Table" means the forum where negotiations are conducted and each Party is represented by a Chief Negotiator.

1.8 "Shared Territory" means a geographical area within the Territory which is also claimed by a First Nation that is not one of the First Nations represented by the Kwakiutl Laich-Kwil-Tach Council of Chiefs and which is referred to as "overlapping territory" in the BCTC Agreement.

1.9 "Sub-Agreement" means an agreement initialed by the Chief Negotiators on one or more substantive issues set out in section 5 of this Framework Agreement, and which will become part of the Agreement-in-Principle.

1.10 "Territory" means the geographical area identified by the First Nations represented by the Kwakiutl Laich-Kwil-Tach Council of Chiefs as the First Nations' territory on the map most recently filed with the BCTC and attached to the Kwakiutl Laich-Kwil-Tach Council of Chiefs Statement of Intent.

2. PURPOSE

2.1 The purpose of this Framework Agreement is to guide the conduct of negotiations among the Parties and to set forth the substantive issues to be negotiated, process and timing required to complete the Agreement-In-Principle stage of the BCTC Process.

3 SCHEDULING AND TIMING

3.1 The Parties will agree on a time frame for concluding Agreement-In-Principle negotiations at the commencement of Stage 4 of the BCTC Process.

4 PARTIES TO THE AGREEMENT-IN-PRINCIPLE

4.1 The Parties to the Agreement-In-Principle will be the Mamalilikula First Nation, the Tlowitsis First Nation, the We Wai Kai First Nation, the We Wai Kum First Nation and the Kwiakah First Nation as represented by the Kwakiutl Laich-Kwil-Tach Council of Chiefs, Canada and British Columbia.

5 SUBSTANTIVE ISSUES FOR NEGOTIATIONS

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

5.1.1 Land, including:

- (a) quantum and selection;
- (b) tenure;
- (c) access and use/ easements and rights of way;
- (d) sub-surface rights;
- (e) expropriation; and
- (f) foreshore and beds of bodies of water.

5.1.2 Land use, planning and management, including:

- (a) land management;
- (b) salt and fresh water management;
- (c) development assessment;
- (d) environmental protection;
- (e) use and occupation of airspace;
- (f) and parks and protected areas.

5.1.3 Resource management, including:

- (a) forests and watershed management;
- (b) sea resources; (fin, shellfish, crustaceans etc.)
- (c) wildlife management;
- (d) minerals (including oil and gas);
- (e) flora; and
- (f) freshwater.

5.1.4 Governance, including

- (a) structure and institutions;
- (b) jurisdiction and authority;
- (c) intergovernmental relations;
- (d) and programs and services.

5.1.5 Language, Heritage and Culture, including

- (a) management and protection of cultural heritage sites including sacred sites and artifacts; and
- (b) repatriation of cultural materials, human remains and assorted information.

5.1.6 Fiscal Arrangements, including

- (a) cash;
- (b) revenue sharing; and
- (c) royalties (resources).

5.1.7 General Provisions, including

- (a) eligibility and enrollment;
- (b) ratification;
- (c) amendment procedures;
- (d) dispute resolution;
- (e) and certainty.

5.1.8 Implementation, including

(a) consultation and review of the proposed scope and nature of draft settlement legislation; and

(b) principles for development and content of an implementation plan, including timing, funding and arrangements for monitoring the implementation of the Final Agreement.

5.2 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.

5.3 The Parties agree to identify which substantive issues or elements of a substantive issue, may require negotiation on a provincial or regional basis and, if required, to identify a process for those negotiations.

6 INTERIM MEASURES

6.1 The Parties accept the following recommendation made by the British Columbia Claims Task Force concerning interim measures:

"The parties may negotiate interim measures agreements before or during the treaty negotiations when an interest is being affected which could undermine the process."

6.2 For greater certainty, interim measures may be negotiated where an interest is being affected which could undermine the process, and where the Parties agree that the matter to be the subject of an interim measure will be dealt with in the Final Agreement.

7 NEGOTIATION PROCESS

7.1 Chief Negotiators will be responsible for the conduct and coordination of the negotiations.

7.2 Negotiations will be conducted at a Main Table at which the Chief Negotiators will be present. The Main Table will be responsible for:

7.2.1 managing the negotiation process including development of work plans and setting priorities;

7.2.2 negotiating and recommending for approval an Agreement-In-Principle and a Final Agreement;

7.2.3 coordinating and monitoring implementation of interim measures as referenced in section 6;

7.2.4 implementing detailed procedures, consistent with this Framework Agreement to guide the Parties during the Agreement-In-Principle negotiations;

7.2.5 establishing working groups, side tables and other process as agreed; and,

7.2.6 implementing and managing the "Openness Protocol Agreement" as outlined in a document entitled Kwakiutl Laich-Kwil-Tach Council of Chiefs Openness Protocol Agreement of July 22, 1997.

7.3 The Parties will record an agreement negotiated on a substantive issue in a Sub-Agreement. The Chief Negotiators will signify their agreement on the substantive issue by initialing the Sub-Agreement.

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

7.5 Once they have initialed all Sub-Agreements, the Chief Negotiators will finalize negotiations on the Agreement-In-Principle by consolidating the Sub-Agreements and adding necessary provisions as agreed.

7.6 The Chief Negotiators will signify their agreement to an Agreement-in-Principle by initialing it and they will recommend this Agreement-In-Principle to their respective Parties for approval.

7.7 The Parties will signify their approval of 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 Kwakiutl Laich-Kwil-Tach Council of Chiefs will resolve any issues it may have with other First Nations respecting Shared Territory and report back to the Main Table.

8.2 All Shared Territory issues will be resolved before the end of Stage 4 of the BCTC Process.

8.3 if the lack of resolution related to Shared Territory issues is found to be interfering with the successful conclusion of negotiations, the Kwakiutl Laich-Kwil-Tach Council of Chiefs may consider other options to resolve the Shared Territory issues, including seeking assistance from the BCTC.

9 INTERPRETATION

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

9.2 This Framework Agreement, or any Agreement-in-Principle which may flow from it, is not 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*.

9.3 Subject to section 9.4, the Final Agreement, once brought into effect, is intended to be a treaty and will constitute a land claims agreement within the meaning of sections 25 and 35 of the *Constitution Act, 1982*.

9.4 The Parties acknowledge that aspects of some substantive issues negotiated, owing to their nature, may not be appropriate to receive constitutional protection. These aspects will be identified prior to the conclusion of an Agreement-In-Principle.

9.5 The Treaty negotiations and all related documents, except for the 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 admission of fact or liability.

10 NEGOTIATION FUNDING

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

11 GOVERNMENT PROGRAMS

11.1 During the negotiation process, the First Nations represented by the Kwakiutl Laich-Kwil-Tach Council of Chiefs will continue to enjoy the same rights and benefits as any other 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 organizations in accordance with the criteria established from time to time for the application of those programs and services.

12 AMENDMENTS

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

13 APPROVAL OF THE FRAMEWORK AGREEMENT

13.1 The Chief Negotiators, by initialing this Framework Agreement, will signify their intention to recommend it to the Parties for their approval.

13.2 The Parties will approve this Framework Agreement by signing it.

13.3 The Chief Negotiator of the Kwakiutl Laich-Kwil-Tach Council of Chiefs and a Negotiator from each of the First Nations represented by the Kwakiutl Laich-Kwil-Tach Council of Chiefs are authorized to sign this Framework Agreement on behalf of the Kwakiutl Laich-Kwil-Tach Council of Chiefs.

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

13.5 The Minister of Aboriginal Affairs is authorized to sign this Framework Agreement on behalf of the Province of British Columbia.

14 SUSPENSION OF NEGOTIATIONS

14.1 Any Party may suspend the negotiations contemplated by this Framework Agreement. Should any of the Parties decide to suspend, the Party suspending will provide written confirmation, which also sets out the reasons for suspension and the date the suspension is to commence, to the other Parties and the BCTC.

14.2 Prior to a Party exercising its right to suspend negotiations under section 14.1, the Parties shall in good faith, make reasonable efforts to enter into appropriate methods of dispute resolution.

14.3 If a Party suspends negotiations under section 14.1, the Chief Negotiators and their advisors are committed to attending one meeting to explore the possibilities of resolving the issue or issues leading to the suspension in negotiations. The assistance of the BCTC or, if the Parties agree, an independent facilitator, may be requested for this meeting.

15 DISPUTE RESOLUTION

15.1 The Parties will endeavor to resolve disputes which may arise in the course of negotiations, and may utilize agreed upon dispute resolution mechanisms.

The Parties have executed this Framework Agreement the 19th day of August 1998.

Signed on behalf of the Kwakiutl Laich-Kwil-Tach Council of Chiefs

Thomas Smith

Chief Negotiator

Willie Dawson
Negotiator, Tlowitsis First Nation

Chief John Smith
Negotiator, We Wai Kum First Nation

Chief Ralph Dick
Negotiator, We Wai Kai First Nation

Chief John Henderson

Chief Steven Dick
Negotiator, Kwiakah First Nation

Signed on behalf of Her Majesty The Queen
in Right of Canada

The Honourable Jane Stewart
Minister of Indian Affairs and Northern Development

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

The Honourable Dale Lovick
Minister of Aboriginal Affairs

Witness (es)

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Witness (es)