

# Framework Agreement to Negotiate a Treaty

This Agreement is dated December 5, 1996

AMONG

THE BEECHER BAY, MALAHAT, NANOOSE, SONGHEES AND T'SOU-KE FIRST NATIONS as represented by the Te'mexw Treaty Association for the purposes of treaty negotiation ("Te'mexw")

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")

The Parties agree as follows:

## 1 DEFINITIONS

For the purposes of this Agreement:

1.1 "**Agreement-in-Principle**" means the agreement ratified as evidenced by signature of the Parties at the end of Stage 4 of the British Columbia Treaty Commission (BCTC) Process, and comprised of various Chapters and other provisions as agreed.

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

1.5 "**Douglas Treaty**" means any one of the 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.

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

1.7 "**Shared Territory**" means a geographic area within the Territory the use of which may be shared with a First Nation other than a Te'mexw First Nation, or over which another First Nation has asserted a claim which such circumstance is referred to in the BCTC Agreement as "overlapping territory".

1.8 "**Chapter**" means an agreement, initialled by the Chief Negotiators, on a substantive issue listed in section 6.1 of this Agreement.

1.9 "**Te'mexw First Nation**" means a member First Nation of the Te'mexw Treaty Association, the member First Nations of which are as of the date of this Agreement, Beecher Bay, Malahat, Nanoose, Songhees, and T'sou-ke First Nations.

1.10 "**Territory**" means the geographic area generally identified by the Te'mexw First Nations on the map attached to the Te'mexw Statement of Intent filed with the BCTC.

## **2 PURPOSE**

2.1 The purpose of this Agreement is to guide the conduct of negotiations among the Parties and to set forth the substantive issues, 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 as soon as practicable.

3.2 The timeframe initially contemplated for completing an Agreement-in-Principle by the Parties is 30-40 months.

3.3 This initial timeframe may be varied by agreement of the Parties as part of the initial and ongoing workplanning process.

3.4 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 the Agreement-in-Principle will be Te'mexw, Canada and British Columbia.

## **5 DOUGLAS TREATIES**

5.1 The Parties have expressed various approaches with respect to the Douglas Treaties and those approaches will inform negotiations during the Agreement-in-Principle Stage. Any Party may raise issues based on those approaches 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 General Provisions, including:**

- treaty beneficiary issues (eligibility and enrolment);
- ratification process;
- certainty;
- dispute resolution; and,
- amendment.

### **6.1.2 Land, including:**

- quantum and selection;
- tenure;
- existing reserve lands;
- access and use/easements and rights of way;
- expropriation; and,
- foreshore and beds of bodies of water.

### **6.1.3 Land use planning and environmental management, including:**

- land management;
- water management;
- development assessment; and,
- airspace management.

### **6.1.4 Resources and Resource Management, including:**

- forests;
- minerals;
- fish;
- wildlife/trapping;

- flora; and,
- water.

#### 6.1.5 Language, Heritage and Culture, including:

- protection of sites and artefacts; and,
- repatriation of artefacts and skeletal remains.

#### 6.1.6 Governance, including:

- heads of jurisdiction and manner and scope of application;
- relationship among laws; and,
- intergovernmental relations, including non-legislative and delegated authorities.

#### 6.1.7 Fiscal Arrangements and Tax Issues, including:

- jurisdiction and authorities; and,
- tax treatment of the Te'mexw First Nations and their members, including application of section 87 of the Indian Act.

#### 6.1.8 Financial component, including:

- cash component;
- cash equivalent benefits;
- tax treatment of treaty proceeds and income derived therefrom;
- schedule of payments; and,
- resource royalties and revenues.

#### 6.1.9 Implementation, including:

- principles;
- objectives;
- dispute resolution; and,
- settlement legislation.

### 6.2 The Parties will negotiate an implementation plan, prior to concluding a Final Agreement, which addresses, among other matters, the following:

#### 6.2.1 - accountability and responsibilities;

#### 6.2.2 - arrangements for monitoring treaty implementation;

6.2.3 - timing;

6.2.4 - implementation funding; and,

6.2.5 - consequential amendments to legislation.

6.3 The negotiation of substantive issues listed in section 6.1 does not commit any of the Parties to conclude an agreement on that issue, or any component of that issue.

6.4 The Parties agree that certain substantive issues identified in section 6.1 will need regionally coordinated negotiations. For greater certainty, the Parties acknowledge that:

6.4.1 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";

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

6.4.3 Only the Parties to this Agreement will agree on and implement the ratification process for any treaty flowing from this Agreement.

## **7 INTERIM MEASURES**

7.1 The Parties have accepted the following recommendation of the British Columbia Claims Task Force contained in their report dated June 28, 1991: "#16. 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 For greater certainty, interim measures will be negotiated during the Agreement-in-Principle Stage, 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.

## **8 NEGOTIATION PROCESS**

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

8.2 Negotiations will be conducted at a main negotiation table (the "Main Table") at which the Chief Negotiators will be present. In the event that a Chief Negotiator is unable to attend a Main Table

meeting, that Chief Negotiator may designate an alternate. The Main Table will be responsible for:

8.2.1 managing the negotiation process including the development of workplans and the setting of priorities;

8.2.2 negotiating and recommending for approval an Agreement-in-Principle and a Final Agreement;

8.2.3 coordinating and monitoring implementation of interim measures as referenced in section 7.0;

8.2.4 implementing detailed procedures, consistent with this Agreement, to guide the Parties during Agreement-in-Principle negotiations;

8.2.5 establishing working groups, side tables and other processes, as agreed;

8.2.6 implementing dispute resolution mechanisms, as agreed; and,

8.2.7 implementing and managing the "Openness Protocol for the Te'mexw Treaty Association Treaty Table" in accordance with its terms.

8.3 The Parties will record the results of each negotiation of a substantive issue in a Chapter. The Chief Negotiators will signify their agreement on a substantive issue by initialling a Chapter.

8.4 Once they have initialled all of the Chapters, the Chief Negotiators will negotiate an Agreement-in-Principle by consolidating the Chapters and adding necessary provisions as agreed.

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

8.6 Any Chief Negotiator may request that any initialled Chapter or Agreement-in-Principle be reconsidered and amended.

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 Te'mexw will resolve Shared Territory issues with other First Nations and provide regular reports, as

requested by the Parties or the British Columbia Treaty Commission, on the status of any such issues to the Main Table.

## **10 NEGOTIATION FUNDING**

10.1 Each Party will be responsible for obtaining funding for its participation in the negotiation of the Agreement-in-Principle.

## **11 GOVERNMENT PROGRAMS**

11.1 During the negotiation process, members of Te'mexw First Nations will enjoy any applicable rights and benefits as citizens of Canada 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.

## **12 INTERPRETATION**

12.1 The purpose of this Framework Agreement is to improve the effectiveness of the negotiation process, 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 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 liability.

## **13 LEGAL NATURE OF THE FINAL AGREEMENT**

13.1 The Final Agreement that will be in 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.

13.2 The Parties acknowledge that aspects of some subject matters negotiated, due to their nature, may not be appropriate to receive constitutional protection and therefore will not be included in the Final Agreement. These aspects will be identified prior to concluding the Agreement-in-Principle.

## **14 AMENDMENTS**

14.1 Except where otherwise specifically provided herein, this Agreement may only be amended by

agreement of the Parties in writing.

## **15 APPROVAL OF THE AGREEMENT**

15.1 The Chief Negotiators, by initialling this Agreement, will signify their intention to recommend it to the Parties for their approval.

15.2 Each Party agrees to confirm approval of this Agreement and attend to its signature, or confirm to the other Parties its non-approval, as soon as is practicable.

15.3 The Parties will approve of this Agreement by signing it.

15.4 The Chief Negotiator for Te'mexw is authorized to sign this Agreement on behalf of Te'mexw.

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

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

## **16 SUSPENSION OF NEGOTIATIONS**

16.1 Should any of the Parties decide to suspend the negotiations contemplated by this Agreement, the Party suspending will provide written confirmation, which also sets out the reasons for suspension, to the other Parties and to the BCTC.

16.2 Prior to the Party exercising its right to suspend negotiations under section 16.1, the Parties shall in good faith, wherever appropriate, make all reasonable efforts to enter into appropriate methods of dispute resolution. 1

6.3 If a Party suspends negotiations under section 16.1, 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, as those issues relate to treaty negotiations. The assistance of the BCTC or, if the Parties agree, an independent facilitator, may be requested for this meeting.

## **17 DISPUTE RESOLUTION**

17.1 The Parties will endeavour to resolve disputes which may arise in the course of negotiations by utilizing agreed upon dispute resolution mechanisms.

Signed on behalf of Te'mexw Treaty Association

Chief Wilson Bob

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