

# HUL'QUMI'NUM TREATY GROUP

## FRAMEWORK AGREEMENT

*This Agreement is dated December 19, 1997*

**BETWEEN:**

**The HUL'QUMI'NUM TREATY GROUP** representing:

Chemainus First Nation  
Cowichan Tribes  
Halalt First Nation  
Lake Cowichan First Nation  
Lyackson First Nation  
Penelakut Tribe

**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:**

The Parties agree that recitals A to G provide only background information and the Parties' reasons for entering into the negotiations and that recital C does not represent an agreement amongst the Parties on the issues set out therein. No Party will rely on or use the recitals to the prejudice of another Party.

A. 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;

B. The Hul'qumi'num Treaty Group has never signed a treaty or comprehensive land claims agreement

with the British Crown, Canada or British Columbia;

C. The Hul'qumi'num Treaty Group asserts that before Confederation the Crown attempted and began measures to conclude treaties with the Chemainus Tribal Group and Cowichan Tribes, but a treaty was never concluded with any Hul'qumi'num Treaty Group member within their Territory;

D. The Parties are committed to negotiating a treaty in accordance with the British Columbia Treaty Commission Process;

E. The Parties intend to negotiate a treaty for the purpose of providing clarity and certainty about ownership and use of land and resources, and First Nation governance. The Parties recognize that there exists considerable scope for treaties to impact profoundly and positively the economic well-being of the Hul'qumi'num Treaty Group members;

F. The Hul'qumi'num Treaty Group seeks an Agreement-in-Principle which will incorporate provisions for agreements or other arrangements with one or more Hul'qumi'num First Nation Tribes and/or Tribe; and

G. 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 for Treaty Negotiations Among the Hul'qumi'num Treaty Group, Canada and British Columbia".

**NOW THEREFORE the Parties agree as follows:**

## **1 DEFINITIONS**

For the purpose of this Agreement:

1.1 "BCTC" means the British Columbia Treaty Commission.

1.2 "BCTC Agreement" means the British Columbia Treaty Commission 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 "Agreement-in-Principle" means the agreement among the Parties at the end of Stage 4 of the BCTC Process.

1.5 "Chief Negotiator(s)" means the negotiator(s) appointed by each of the Parties, or designate, for the

treaty negotiations contemplated by the BCTC process.

1.6 "Final Agreement" means the agreement signed, ratified and brought into effect by the Parties at the end of Stage 5 of the BCTC Process.

1.7 "Main Table" means the table at which negotiations are conducted and at which each Party is represented by its Chief Negotiator.

1.8 The Hul'qumi'num Treaty Group means the Chemainus First Nation, Cowichan Tribes, Halalt First Nation, Lake Cowichan First Nation, Lyackson First Nation and Penelakut Tribe, as represented by the Chief Negotiator for the Hul'qumi'num Treaty Group and representatives of each Hul'qumi'num First Nation and Tribe(s).

1.9 "Shared Traditional Territory" means a geographic area within the Territory which is also claimed by a First Nation that is not a member of the Hul'qumi'num Treaty Group; and which is referred to as "overlapping territory" in the BCTC Agreement.

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 Hul'qumi'num Treaty Group as its traditional territories on the map and statement of intent filed with the BCTC on December 15, 1993.

## **2 PURPOSE**

The purpose of this Agreement is to guide the conduct of treaty negotiations among the Parties towards completion of the Agreement-in-Principle, and to set out the timing, process and substantive issues for the negotiations.

## **3 SCHEDULE AND TIMING**

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 SUBSTANTIVE ISSUES**

4.1 The following is a list of the substantive issues that the Parties intend to address during the Agreement-in-Principle negotiations. The list is not intended to be exhaustive and may be amended in accordance with section 4.2.

### **4.1.1 Lands**

- selection and quantum
- tenure
- access
- parks and protected areas

#### 4.1.2 Natural Resources and Resource Management

#### 4.1.3 Environmental Management - assessment - protection

#### 4.1.4 Culture and Heritage

#### 4.1.5 Economic Development

#### 4.1.6 Fiscal Arrangements

#### 4.1.7 Taxation

#### 4.1.8 Financial Component

#### 4.1.9 Governance

#### 4.1.10 Eligibility and Enrolment

#### 4.1.11 Ratification and Approval

#### 4.1.12 Dispute Resolution

#### 4.1.13 Amendment

#### 4.1.14 Implementation

#### 4.1.15 Certainty

4.2 The Chief Negotiators may, by agreement, amend the list of substantive issues for negotiation as set out in section 4.1.

4.3 The inclusion of a substantive issue in section 4.1 does not commit any of the Parties to conclude an

agreement on that issue.

4.4 Substantive issues requiring regional or province-wide negotiations or discussion will be identified and negotiated accordingly:

4.4.1 the Parties will develop principles and criteria to determine which issue, or an element or elements of an issue will be negotiated on a regional and/or provincial basis, to help guide the process.

4.4.2 the Parties will develop a process for negotiating issues on a regional basis and identifying the other First Nations with which regional negotiations on the specific issues will proceed.

4.5 The issue of constitutional protection as it applies to various provisions negotiated on each substantive issue, will be addressed prior to concluding an Agreement-in-Principle.

## **5 NEGOTIATION PROCESS**

5.1 Negotiations will be conducted at the Main Table.

5.2 The Chief Negotiators will be responsible for the conduct and co-ordination of negotiations, including:

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

5.2.2 negotiating and recommending for approval an Agreement-in-Principle;

5.2.3 establishing working groups, side tables and other processes as required;

5.2.4 implementing the "Openness Protocol for Treaty Negotiations Among the Hul'qumi'num Treaty Group, Canada and British Columbia";

5.2.5 implementing detailed procedures, set out in "Procedures for Stage 4 Treaty Negotiations Among the Hul'qumi'num Treaty Group, Canada and British Columbia" to guide the Parties during the Agreement-in-Principle negotiations; and

5.2.6 implementing dispute resolution mechanisms, as agreed.

5.3 Where negotiations on a subject listed in section 4.1 result in an agreement, the Parties will record it in a Sub-Agreement. The Chief Negotiators will indicate their agreement on the subject by initialling the

## Sub-Agreement.

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

5.5 Any Chief Negotiator may request that any initialled Sub-Agreement or Agreement-in-Principle be reconsidered and amended prior to the signing of the Agreement-in-Principle.

5.6 The Chief Negotiators will signify their agreement to the Agreement-in-Principle by initialling it, and will recommend the initialled Agreement-in-Principle to their respective Parties for approval.

5.7 The Chief Negotiators may agree that any substantive issue, or elements of a substantive issue, may be appropriately dealt with in a different manner or outside the treaty negotiation process.

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

5.9 After the signing of the Agreement-in-Principle, the Parties intend to negotiate, on a timely basis, a Final Agreement based on the Agreement-in-Principle.

## **6 SHARED TRADITIONAL TERRITORY**

6.1 The Hul'qumi'num Treaty Group has the responsibility to resolve any issues it may have with other First Nations and report on the status of Shared Traditional Territory issues to the Main Table.

6.2 If the lack of resolution related to the Shared Traditional Territory is found to be interfering with the successful conclusion of negotiations, the Hul'qumi'num Treaty Group will consider other options to resolve the overlaps, including seeking assistance from the BCTC.

## **7 INTERPRETATION**

7.1 This Framework Agreement or any Agreement-in-Principle which may flow from it is not intended to constitute a treaty or a land claims agreement within the meaning of sections 25 and 35 of the Constitution Act, 1982.

7.2 Subject to section 4.5, the Final Agreement, once 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.

7.3 This Agreement and the negotiations leading up to or carried out pursuant to it, and all related documents except the Final Agreement that is in effect, 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 forum, and

shall not be construed as an admission of fact or liability in any such proceeding or process.

7.4 This Framework Agreement is not legally binding and does not create, recognize, affirm, deny or amend any rights.

## **8 AMENDMENTS**

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

## **9 DISPUTE RESOLUTION**

9.1 When agreed to by the Parties, dispute resolution mechanisms will be used to assist with the resolution of disputes among the Parties.

## **10 SUSPENSION OF NEGOTIATIONS**

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

10.2 If a Party suspends negotiations under section 10.1, 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.

## **11 INTERIM MEASURES**

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

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

11.2 For greater certainty, interim measures will 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.

## **12 NEGOTIATION FUNDING**

Each Party will be responsible for obtaining funding for its participation in the negotiation of the

Agreement-in-Principle.

### **13 GOVERNMENT PROGRAMS**

During the negotiation process, members of the Hul'qumi'num Treaty Group resident in British Columbia shall continue to enjoy the same rights and benefits as any other citizen of Canada and resident of British Columbia. The Hul'qumi'num Treaty Group and its members 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.

### **14 APPROVAL OF THE AGREEMENT**

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

14.2 Each Party will signify approval of this Agreement by the signature of its authorized representative.

14.3 The Chief Negotiator for the Hul'qumi'num Treaty Group is authorized to sign this Agreement on behalf of the Hul'qumi'num Treaty Group.

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

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

Signed on behalf of Hul'qumi'num Treaty Group

Ernest W. Elliott  
Chief Negotiator

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 John Cashore**  
**Minister of Aboriginal Affairs**