

# Openness Protocol

## Regarding Treaty Negotiations between Ktunaxa/Kinbasket Tribal Council, Canada and British Columbia (the "Parties")

### BACKGROUND

The Parties recognize the need to consult with third parties and to provide information to the public to ensure that treaties are lasting and beneficial agreements for the Ktunaxa/ Kinbasket Tribal Council, British Columbians and all Canadians, and;

The Parties recognize that building trust at the treaty table and ensuring public confidence in the treaty process may be achieved through effective information and consultation mechanisms, public access to the process and regular flow of information amongst the parties and to the public, and;

The Parties recognize the need to have an open treaty process where strict confidentiality is the exception and where the parameters for the application of restrictions on openness are expressly made known, and;

The Parties acknowledge the need to respect the confidentiality of culturally sensitive information and materials, such as heritage, language and legends, and that the Ktunaxa/Kinbasket Tribal Council has the right to identify such information as confidential, and,

The Parties recognize the need to balance the need for an open process with the need for a practical and effective negotiating environment, and;

The Parties recognize that information that will be shared with the public must accurately reflect the parties respective and/or joint interests;

THE KTUNAXA/KINBASKET TRIBAL COUNCIL, BRITISH COLUMBIA AND CANADA HAVE AGREED ON THE FOLLOWING OPENNESS PRINCIPLES:

### 1.0 PURPOSES:

#### 1.1

This Protocol shall apply to the treaty negotiations process among the Parties and is intended to provide public access throughout all stages of this process while recognizing the need to conduct effective

negotiations.

## 1.2

In acknowledging the need to have an open and effective process, the desire to provide accurate information to the public and to consult with third parties throughout the process, the Parties agree to provide greater openness through:

- 1.2.1 Public observation of the Main Table;
- 1.2.2 Access to documents;
- 1.2.3 Consultation; and
- 1.2.4 Public information,

as specifically provided for in this Protocol.

## **2.0 OPENNESS OF THE TREATY TABLE**

### 2.1

The Parties agree that public observation of the Main Table negotiations will generally occur in those sessions devoted to a general exchange of information on issues, interests and policies or the discussion of matters of a procedural nature.

### 2.2

In deciding whether the public will have access to observe a Main Table negotiation session, the Chief Negotiators will consider whether attendance at the session by individuals other than the negotiating team members would:

- 2.2.1 Decrease the effectiveness of the session;
- 2.2.2 Interfere with the effectiveness of the process;
- 2.2.3 Reasonably be expected to prejudice the positions or strategies of the negotiating Parties; or
- 2.2.4 Harm the conduct of negotiations.

### 2.3

The public observation referred to in subsection 2.1 and 2.2 of this Protocol may be achieved by opening these sessions to the general public, or representation from advisory committees, or representation from the print media, or broadcast by local television or radio or any combination of the above.

### 2.4

The Chief Negotiators will determine at the Main Table meeting whether the next Main Table will be open, either in whole or in part, in accordance with sub-sections 2.1 and 2.2.

### 2.5

The Chief Negotiators of the Parties will be responsible for the overall conduct of the negotiations and members of the public in attendance at the Main Table sessions will participate as observers only. The Chair is responsible for ensuring that observers are not disruptive to the negotiations and may decide to continue a meeting "in camera" if a productive negotiating environment cannot be maintained.

## **3.0 AVAILABILITY OF AGREEMENTS AND DOCUMENTS**

### 3.1

The Parties agree that, at a minimum, the following documents will be made available to the public in their final form:

- i. Main Table agendas
- ii. Summary of Main Table Decisions
- iii. Periodic reports reviewing the progress of negotiations jointly prepared by the Parties;
- iv. All reports filed with the British Columbia Treaty Commission;
- v. Statements defining interests tabled by a Party at a Main Table session;
- vi. Discussion papers tabled by a Party at a Main Table session.

### 3.2

The Parties will, where the Chief Negotiators agree, also make available to the public documents which have been substantially agreed to by the Parties and prior to initialling, including:

- 3.2.1 The Framework Agreement;
- 3.2.2 Sub-agreements;
- 3.2.3 The Agreement-in-Principle; and
- 3.2.4 The Final Agreement.

### 3.3

The Parties agree that other documents not outlined in 3.1 and 3.2, including working or draft proposals, position papers and draft documents prior to agreement on their contents having been finalized by the Parties, and where the Chief Negotiators agree, will be made public unless:

- 3.3.1 The Party producing the document has identified the document as confidential;
- 3.3.2 The Party producing the document considers that disclosure would prejudice the position or strategy of the Party; or
- 3.3.3 A document is at a stage in the drafting process where it does not accurately reflect their intention or interests.

### 3.4

Nothing in paragraphs 3.1, 3.2 and 3.3 is intended to diminish the ability of a Party to consult with its respective caucus or advisory committees, with respect to drafts of the documents the Party has produced and Agreements referred to in paragraph 3.2

### 3.5

Release of documents to the public is governed by the provincial Freedom of Information and Protection of Privacy Act, and the federal Access to Information Act and Privacy Act.

## **4.0 CONSULTATION**

### 4.1

The Parties will share information with each other and with the general public concerning their respective consultation processes and will arrange negotiation timetables that allow consultation to occur.

### 4.2

The Parties will undertake joint consultation whenever it is mutually desirable to do so.

### 4.3

The Parties retain the right to consult with their respective advisory committees in accordance with this Agreement.

### 4.4

The Parties agree that to assist the advisory committees in providing advise on the items under negotiation, each of the Parties:

4.4.1 Will need to provide information to its advisory committee on the substance of issues being negotiated;

4.4.2 May provide to its advisory committee documents available to the public under subsections 3.1, 3.2 and 3.3; and

4.4.3 May provide periodic briefings to advisory committees established by other Parties where requested to do so.

## **5.0 TREATY ADVISORY COMMITTEE (TAC)**

### 5.1

The Parties acknowledge that British Columbia will include as a member of the provincial negotiation team a representative of local governments from the Kootenay TAC (the "TAC Representative").

### 5.2

The TAC Representative will be subject to the direction of the Chief Negotiator for British Columbia and to all of the provisions in this Protocol.

### 5.3

The Parties will also agree on the specific rules of information sharing (TAC Terms of Reference) that

will apply to the TAC Representative and to the Kootenay TAC prior to the commencement of framework negotiations.

## 6.0 PUBLIC INFORMATION

### 6.1

The Chief Negotiators for the Parties will be responsible for ensuring that an effective and ongoing public information process is established.

### 6.2

The Parties agree to establish a Public Information Working Group comprised of representatives from each of the Parties and any other persons agreed to by the Parties. As soon as possible after the signing of this Protocol and every six (6) months afterward, the Public Information Working Group will develop a draft information plan which will include objectives and activities for the next six (6) months. The draft plan will be subject to approval by the Chief Negotiators for the Parties at a Main Table.

### 6.3

The Parties agree that public information activities will be undertaken in communities within the Ktunaxa/Kinbasket Tribal Council traditional territory as identified in their Statement of Intent by using several approaches, which could include:

- i. Public information forums: these events will be open to the public and will generally involve presentation of information by the Chief Negotiators for the Parties, or their designates, and may involve presentation of information by resource people invited by the Chief Negotiators.
- ii. Open workshops: these events will focus on key issues. They will involve the Parties and will be open to the public and provide an opportunity for discussion.
- iii. Radio, television and newspaper interviews and briefings: these interviews and briefings will focus on the substance and the progress of negotiations and will involve the Parties.
- iv. Meetings with Third Parties and other community groups: these meetings will involve the three Chief Negotiators for the Parties or their designates. They will include groups such as the Chamber of Commerce, municipal governments, unions, business groups and other similar organizations and agencies.
- v. Open Houses: these events will provide the Parties with an opportunity to provide information and to meet with members of the public and to discuss issues under negotiation.
- vi. Public information materials: these materials will be produced and distributed by the Parties.
- vii. First Nation Communities: these meetings will involve the three Chief Negotiators for the Parties or their designates and will be open to members of a First Nation and other persons who are part of a First Nations community. These meetings will focus on key issues and provide an opportunity for discussion. Other resource people may be invited.

### 6.4

Nothing in this Section is intended to prevent the Parties from participating in bilateral or independent

public information activities. In the event such activities are planned, the Parties involved will ensure that the Public Information Working Group is given advance notice of the date and location of the activities.

## **7.0 GENERAL**

7.1

The Parties can amend this Protocol at any time by written agreement of the Chief Negotiators at a Main Table meeting.

7.2

The Chief Negotiators for the Parties will review this Openness Protocol at the start of each stage of treaty negotiations. The Chief Negotiators may amend this Openness Protocol at any time by agreement recorded at a Main Table session.

7.3

The sharing of information among the Parties will be pursuant to the Information Sharing Agreement between the Parties.

DATED the \_\_\_\_ day of \_\_\_\_\_, 1996

On behalf of the Ktunaxa/Kinbasket Tribal Council:  
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On behalf of Canada:  
Wendy Porteous

On behalf of British Columbia:  
Roger Graham