

Homalco First Nation, Canada, British Columbia Treaty Framework Agreement

This Agreement is dated _____, 1996.

BETWEEN:

THE HOMALCO INDIAN BAND as represented by the elected Chief and Councillors
("The Homalco First Nation")

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 Constitution Act, 1982 recognizes and affirms the 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.
- B. The Parties are committed to negotiating a treaty in accordance with the British Columbia Treaty Commission Process ("BCTC Process") and have met BCTC requirements to commence Framework negotiations.
- C. The Parties acknowledge the importance of providing public access to the treaty process while recognizing the need to conduct effective negotiations, and the Parties have provided for public access to the process in an agreement, referred to as the "Openness Protocol for the Homalco First Nation Treaty Negotiations".

1. DEFINITIONS

1.1 "Agreement-in-Principle" means the agreement approved and signed by the Parties at the end of Stage 4 of the BCTC Process, comprised of various sub-agreements and other

provisions, as agreed.

1.2 "BCTC Agreement" means the B.C. Treaty Commission Agreement dated September 21, 1992 and signed by Canada, British Columbia, and the First Nations Summit.

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, or his or her designate, for the treaty negotiations contemplated by the BCTC Process.

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

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

1.7 "Overlap" means a geographic area within the Traditional Territory which is claimed by a First Nation other than the Homalco First Nation.

1.8 "Sub-Agreement" means an agreement initialled by the Chief Negotiators on the subjects as set out in Section 5.

1.9 "Traditional Territory" means that geographic area identified by the Homalco First Nation as its traditional territory on the map attached to the Homalco First Nation Statement of Intent filed with the British Columbia Treaty Commission.

2. PURPOSE

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

3. SCHEDULE AND TIMING

3.1 The Parties will negotiate with the intention of concluding an Agreement-in-Principle within 24 months of the signing of this Agreement.

4. PARTIES TO THE AGREEMENT-IN-PRINCIPLE

4.1 The Parties to the Agreement-in-Principle will be the Homalco First Nation, Canada, and British Columbia.

5. SUBSTANTIVE ISSUES FOR NEGOTIATION

5.1 A list of the subjects which the Parties intend to address in the negotiations is set out below. The list is not intended to be exhaustive and may be amended by agreement of the Chief Negotiators during negotiation of the Agreement-in-Principle or Final Agreement. Each Party may raise a broad range of components for negotiation under each subject heading:

a. **PROCESS REQUIREMENTS:**

- (i) Eligibility
- (ii) Enrollment
- (iii) Ratification
- (iv) Certainty and finality
- (v) Amendment procedures
- (vi) Dispute avoidance and resolution
- (vii) Implementation
- (viii) Beneficiary organizations

b. **CAPITAL TRANSFER AND ECONOMIC DEVELOPMENT**

c. **GOVERNANCE:**

- (i) Relationship and conflict of laws
- (ii) Relationship of the Homalco First Nation's government to federal, provincial and local government
- (iii) Law making authority and jurisdiction
- (iv) Structure of Homalco First Nation political system(s) and government structure(s)

d. **FISCAL ARRANGEMENTS OF THE HOMALCO FIRST NATION:**

- (i) Institutions
- (ii) Jurisdiction/Authority
- (iii) Fiscal framework and standards
- (iv) Program delivery
- (v) Financing of Homalco First Nation's government
- (vi) Taxation
- (vii) Resource Revenues

(viii) Financial transfers

e. PROGRAMS AND SERVICES:

- (i) Jurisdiction/Authority
- (ii) Program standards
- (iii) Program delivery
- (iv) Funding

f. LANGUAGE, CULTURE AND HERITAGE:

- (i) Artifacts
- (ii) Heritage
- (iii) Language
- (iv) Traditional activities

g. LAND, WATER, RENEWABLE AND NON-RENEWABLE RESOURCES

- (i) access and use
- (ii) ownership and tenure
- (iii) selection and retention
- (iv) parks and protected areas
- (v) management (land, water, offshore, renewable and non-renewable resources)
- (vi) riparian and hydro rights
- (vii) subsurface ownership and management

h. ENVIRONMENTAL MATTERS:

- (i) environmental impacts and assessment
- (ii) review
- (iii) referral
- (iv) management
- (v) pollution and air quality

5.2 The negotiation of a subject listed in Section 5.1 does not commit any of the Parties to conclude an agreement on that subject, or any component of that subject.

5.3 The Chief Negotiators agree that any subject or elements of a subject may be more appropriately dealt with on a regional or provincial basis, or outside the treaty negotiation process.

5.4 The Chief Negotiators will present preliminary information relating to the interests each Party intends to pursue in the Agreement-in-Principle negotiations respecting the subjects listed in Section 5.1

5.4.1 The purpose of presenting such preliminary information is to enable the Chief Negotiators to obtain sufficient information to seek further mandates and share information with their respective consultation bodies.

5.4.2 The presentation of such preliminary information referred to in Section 5.4 will not commit or limit any Party to such interests in the negotiation of the Agreement-in-Principle.

6. NEGOTIATION PROCESS

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

6.2 Negotiations will be conducted at the Main Table. The Main Table will be responsible for:

6.2.1 Managing the negotiation process including the development of workplans and the setting of priorities;

6.2.2 Establishing working groups, side tables, and other processes, as agreed;

6.2.3 Implementing the "Principles for Information Sharing" agreed to by the Parties;

6.2.4 Implementing the "Openness Protocol for the Homalco First Nation Treaty Negotiations" agreed to by the Parties;

6.2.5 Implementing detailed procedures, consistent with this Agreement, to guide the Parties during the Agreement-in-Principle negotiations as outlined in a document entitled "Homalco Treaty Table Procedures Agreement";

6.2.6 Implementing dispute resolution mechanisms, as agreed; and

6.2.7 Negotiating an Agreement-in-Principle and a Final Agreement.

6.3 Any subject listed in Section 5.1 which is to be included in the Agreement-in-Principle

or Final Agreement must be negotiated and agreed to by the Parties.

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

6.5 Any Chief Negotiator may request that any initialled sub-agreement or Agreement-in-Principle be reconsidered and amended.

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

6.7 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.

6.8 The Parties will indicate their approval of the Agreement-in-Principle by signing it.

6.9 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.

7. INTERIM MEASURES

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

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

8. OVERLAPPING CLAIMS

8.1 The Homalco First Nation will resolve any issues resulting from overlap claims with other First Nations which affect the conclusion of a Final Agreement. The Homalco First Nation will provide information to the Main Table on a regular basis on the status of overlap claims.

8.2 If the lack of resolution related to overlaps is found to be interfering with the successful conclusion of negotiations, the Homalco First Nation may consider other options to resolve the overlaps, including seeking assistance from the BCTC.

9. GOVERNMENT PROGRAMS

9.1 During the treaty negotiation process, the members of the Homalco First Nation will continue to enjoy the same rights and benefits as any other citizen of Canada and also 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.

10. NEGOTIATION FUNDING

10.1 Each Party will be responsible for obtaining funding for its participation in the negotiation process. The Parties acknowledge that the British Columbia Claims Task Force made the following recommendation:

"The First Nations, Canadian and British Columbian negotiating teams be sufficiently funded to meet the requirements of the negotiations."

11. INTERPRETATION

11.1 The Parties acknowledge that the BCTC Process is voluntary and not legally binding. Nothing in this Agreement is intended to define, create, recognize, deny, or amend any enforceable rights of the Parties.

11.2 Neither this Agreement or any Agreement-in-Principle which may flow from it are intended to constitute a treaty or a land claims agreement within the meaning of Sections 25 and 35 of the Constitution Act, 1982.

11.3 The Final Agreement is intended to be a treaty and is intended to constitute a land claims agreement within the meaning of Sections 25 and 35 of the Constitution Act, 1982.

11.4 The issue of which negotiated matters are intended to receive constitutional protection as treaty rights will be addressed prior to concluding an Agreement-in-Principle.

11.5 The treaty negotiations and all related documents and information except for a Final Agreement, 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.

11.6 For greater certainty, the Parties agree that Section 11.5 does not determine the enforceability of any treaty related agreement, nor the admissibility of any such agreement

in any proceeding to enforce that agreement.

12. APPROVAL OF THIS AGREEMENT

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

12.2 The Parties will approve this Agreement by signing it, and:

(a) the Chief Negotiator for the Homalco First Nation is authorized to sign this Agreement on behalf of the Homalco First Nation;

(b) the Minister of Indian Affairs and Northern Development is authorized to sign this Agreement on behalf of Canada; and

(c) the Minister of Aboriginal Affairs is authorized to sign this Agreement on behalf of British Columbia.

13. DISPUTE RESOLUTION

13.1 Should an impasse be reached, the Parties will endeavour to use dispute resolution mechanisms, and in doing so may approach the BCTC for assistance.

14. SUSPENSION OF NEGOTIATIONS

14.1 While the Parties have each expressed their commitment to negotiate under the BCTC Process, any Party may suspend the negotiations contemplated by this Agreement by providing written notice setting out the reasons for suspension and the date of commencement of suspension to the other Parties and the BCTC.

15. AMENDMENTS

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

Signed on behalf of the Homalco First Nation
Chief Negotiator

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

The Honourable Ron 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

DATED: _____, 1996

BETWEEN:

THE HOMALCO INDIAN BAND

AND:

HER MAJESTY THE QUEEN IN RIGHT OF CANADA

AND:

HER MAJESTY THE QUEEN IN RIGHT OF BRITISH COLUMBIA

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