

TERMS OF REFERENCE
FOR
THE KTUNAXA KINBASKET
LOCAL GOVERNMENT TREATY ADVISORY COMMITTEE

1. DEFINITIONS

"Memorandum of Understanding" or "MOU" means the agreement signed between the Province of British Columbia and the Union of BC Municipalities on March 22, 1993.

"Protocol" means the agreement signed between the Province of British Columbia and the Union of BC Municipalities on September 19, 1994, regarding local government participation in treaty negotiations.

"Ktunaxa Kinbasket claim area" means the area in which Ktunaxa Kinbasket First Nation treaty negotiations are or will be taking place, as set out in Schedule "B" hereto.

"Negotiations" means aboriginal treaty negotiations with the Ktunaxa Kinbasket First Nation commencing at the beginning of Stage 3 of the Treaty Commission process.

"Province" means the Crown in Right of British Columbia, as represented by the Ministry of Aboriginal Affairs.

"Provincial Team" means the Province's treaty negotiation team for the aboriginal treaty negotiations with the Ktunaxa Kinbasket First Nation.

"Treaty Negotiator" means the Negotiator mandated by the province to lead and conduct the negotiations for the province.

"Regional Caucus" means that caucus composed of provincial line ministry, local government, crown corporation and agency staff, officials and consultants which provides advice to the Treaty Negotiator regarding provincial interests in the negotiations.

"Regional Advisory Committee" or "RAC" means the committee of "third party" interests, including local government, that provides advice to British Columbia and Canada regarding their interests in the negotiations.

"Local government" means those bodies in the Ktunaxa Kinbasket claim area incorporated under the Municipal Act, including villages, towns, districts, cities and regional districts.

"Ktunaxa Kinbasket Treaty Advisory Committee" or "TAC" means the committee composed of elected officials from local governments in the Ktunaxa Kinbasket claim area, as set out in Schedule "A" hereto, which shall provide advice to and participate in the negotiation process in the area, as set out in these Terms of Reference and as per S.4.c. of the Protocol.

"TAC Chair" means the elected official who, by agreement of the TAC, chairs and has the responsibility for the conduct of the Ktunaxa Kinbasket TAC.

"TAC Rep" means the individual nominated by the Ktunaxa Kinbasket TAC to be a member of the provincial negotiating team and official liaison, spokesperson and representative of the TAC in the Ktunaxa Kinbasket claim area negotiations, as per S.4.c. of the Protocol.

2. PARTIES

- a) It is understood that there are three parties to the treaty negotiation process - British Columbia, Canada and the First Nations.
- b) The province bears the ultimate responsibility for representing the interests of local governments in the treaty negotiation process.
- c) The parties to these Terms of Reference are the Ktunaxa Kinbasket TAC and the provincial Treaty Negotiator for the Ktunaxa Kinbasket claim area treaty negotiation tables.

3. PURPOSE OF THE TAC

- a) The general purpose of the TAC is to ensure that the interests of local government in the Ktunaxa Kinbasket claim area are identified and taken into account by the province in the negotiations. The TAC in the Ktunaxa Kinbasket claim area will be the point of contact between the provincial team and local governments in that area.
- b) For greater certainty, the Protocol and the MOU are the source documents for the purposes of the TAC and the relationship between the province and local governments.
- c) The Ktunaxa Kinbasket TAC and the province enter this agreement in the spirit of partnership and agree that mutual trust and respect for both the process and for the other parties are the guiding principles in the relationship.

4. PARTICIPATION IN NEGOTIATIONS

- a) At the beginning of the negotiation process the TAC and the Treaty Negotiator will set out the composition of the TAC as set out in Schedule "A" hereto.
- b) It is agreed the TAC will be composed of local government representatives from within the Ktunaxa Kinbasket claim area.
- c) The TAC will participate in each negotiation process through the provincial negotiating team and the designation of a TAC Representative (TAC Rep).
- d) Where there are multiple negotiations in one TAC area, the TAC may, in consultation with the Treaty Negotiator, designate a TAC Rep to each negotiation table.
- e) Each TAC Rep will be identified by way of a letter to the Treaty Negotiator.
- f) The TAC Rep may attend any and all meetings of the Negotiation Team, Regional Caucus, and Main Table and where directed by the Treaty Negotiator, appropriate working group and side table meetings.
- g) As set out in the Protocol, the preference is for the TAC delegate to the Regional Caucus to be a staff or contract person that has technical or other related expertise to bring to the negotiations.

- h) A fundamental principle of participation is consistency: the TAC will undertake that the same representatives participate in the same negotiations over time. This will ensure the success of the process and the confidence of all parties to the negotiations. Where appropriate and approved by the TAC and the Treaty Negotiator, the TAC Rep may change.
- i) As a member of the negotiating team and the Regional Caucus, the TAC Rep has the same privileges and responsibilities as other Regional Caucus and team members and will at all times follow the directions and instructions of the province's Treaty Negotiator conducting the negotiations, as set out in S.4.d.1. of the Protocol.
- j) It is agreed that the TAC will appoint representatives to the Kootenay Regional Advisory Committee (RAC)

5. ACCESS TO NEGOTIATIONS

- a) The TAC Rep is the TAC's official representative in the negotiating process.
- b) The designated TAC Rep has the right and responsibility, as do all team members, to be present at meetings of the negotiating team, the Regional Caucus and all negotiations including Main Table meetings.
- c) These privileges shall be subject to the discretion of the Treaty Negotiator, as it is recognized that there will be a limited number of occasions when the three chief negotiators will wish to meet privately regarding the conduct of negotiations. In that case the TAC Rep will have the same right to the timely release of information regarding that meeting as any other team member.
- d) TAC members may attend meetings that are open according to the openness protocol or declared open to the public by the Parties. TAC members, other than the TAC Rep, may not attend closed meetings, except by agreement of the Parties.
- e) Wherever possible and appropriate, the Province will seek to establish open side tables to the main negotiation table to discuss and resolve local government concerns.
- f) The Agenda for all meetings, and in particular Main Table meetings, shall be provided to the TAC Rep in a timely fashion and any changes to the agenda will be immediately conveyed to the TAC Rep prior to the Main Table meeting. This paragraph is subject to S.6 of these Terms of Reference.

6. RESPONSIBILITIES AND REPORTING

- a) The provincial Treaty Negotiator has the ultimate responsibility for the conduct of negotiations with Canada and First Nations and for the conduct and actions of the provincial team, including the TAC Rep.
- b) The Treaty Negotiator will appoint one person from the provincial negotiating team to act as the liaison to the TAC and local government and identify that person to the TAC.

- c) The TAC is responsible to its constituent local governments in relation to the task of the identification of direct local government interests in each negotiation and ensuring they are brought to the attention of the Treaty Negotiator.
- d) The TAC Chair has the responsibility for the operations and conduct of the TAC and for its relations with the Treaty Negotiator and the province. The TAC Chair will be the signing authority for the TAC.
- e) The TAC Rep has a dual responsibility - to the Treaty Negotiator as a member of the provincial team and to the TAC Chair and the TAC as the official representative of the TAC to the provincial team:
 - 1) In all matters having to do with the conduct of negotiations, the TAC Rep's primary responsibility is to the Treaty Negotiator.
 - 2) In all matters related to the substance of the negotiations, the TAC Rep has the responsibility, as per Section 4.d.2 of the Protocol, for identifying to the Treaty Negotiator what issues "directly affect local government" and for providing related advice and recommendations to the Treaty Negotiator.

7. CONFIDENTIALITY AND INFORMATION SHARING

- a) The TAC Rep, the TAC and the local governments they represent and all staff and contract personnel will be subject to any and all rules of confidentiality that may be agreed to by Canada, the province and the First Nation, and as set out in the openness protocol, for the full duration of each set of negotiations and as agreed to in the UBCM Protocol.
- b) The TAC Rep may share with the TAC any information from sessions which the parties have determined to be public.
- c) The TAC Rep, subject to the terms of 7(a) above, may share with the TAC information which is available only to the Parties and which directly affects local government.
- d) The TAC Rep will share the information set out in 7(c) with the TAC only if each member agrees on behalf of their local government that they will confine discussion of this information to "in camera" sessions of their local governments and not to disclose such information to the public until the information is made public at the decision of the Main Table.
- e) The Ktunaxa Kinbasket TAC will undertake to develop internal communication guidelines and policies respecting the provision of information to the public, subject to the confidentiality provisions of these Terms of Reference.

8. ACCESS TO DOCUMENTS

- a) The TAC Rep will relay to the TAC, as soon as possible, all documents deemed by the Parties to be public and may share with the TAC, subject to S.7 above, any documents not made public.
- b) The TAC will refrain from sharing or distributing documents which are deemed to be available only to the Parties, except in accordance with S.7 above.

9. FREEDOM OF INFORMATION AND PROTECTION OF PRIVACY

- a) The TAC, the TAC Rep and the local governments represented on the TAC are at all times subject to and will comply with the provisions of the Freedom of Information and Protection of Privacy Act.
- b) The TAC agrees that no local government, TAC or TAC Rep will disclose information which may be harmful to intergovernmental relations or treaty negotiations. For greater certainty, the parties refer to Sections 12 to 22 of the Act.

10. SOURCE DOCUMENTS

- a) The MOU signed between the Union of BC Municipalities (UBCM) and the Province of British Columbia on 22 March, 1993 and the Protocol between UBCM and the Province signed 19 September 1994, are the source documents for determining the relationships, rights and responsibilities of the province and the TAC relative to the Ktunaxa Kinbasket Treaty negotiations.

11. GENERAL

- a) In the case of any inconsistencies between these Terms of Reference and any Main Table Agreements between Canada, the Province and Ktunaxa Kinbasket First Nation, the Main Table agreements shall take precedence.
- b) These Terms of Reference may be reviewed from time to time and may be modified with the agreement of the TAC, and the Treaty Negotiator. Where appropriate, the Treaty Negotiator will undertake to seek the agreement of Canada and the applicable First Nation to the revised Terms of Reference.

SCHEDULE "A"

TERMS OF REFERENCE

KTUNAXA KINBASKET LOCAL GOVERNMENT TREATY ADVISORY COMMITTEE

LOCAL GOVERNMENTS IN THE KTUNAXA KINBASKET CLAIM AREA

East Kootenay Regional District - Electoral Areas A, B, C, E, F & G

City of Cranbrook

City of Fernie

City of Kimberley

District of Elkford

District of Invermere

District of Sparwood

Village of Radium Hot Springs

Central Kootenay Regional District - Electoral Areas A, B, C, D, E, F, G, H, I, J & K

City of Castlegar

City of Nelson

Town of Creston

Village of Kaslo

Village of Nakusp

Village of New Denver

Village of Salmo

Village of Silverton

Village of Slocan

Columbia Shuswap Regional District - Electoral Areas A & B

City of Revelstoke

Town of Golden

Kootenay Boundary Regional District - Electoral Areas A & B

City of Rossland

City of Trail

Village of Fruitvale

Village of Montrose

Village of Warfield

SCHEDULE "B"

TERMS OF REFERENCE

KTUNAXA KINBASKET LOCAL GOVERNMENT
TREATY ADVISORY COMMITTEE

KTUNAXA KINBASKET NATION TERRITORY FOR BC TREATY NEGOTIATION

