

Lands and Resources Devolution Negotiation Protocol

BETWEEN:

The Government of Canada
(the "GC")
and

The Government of Nunavut
(the "GN")
and

Nunavut Tunngavik Incorporated
("NTI")

VISION STATEMENT

The Parties support a vision of Nunavut where Nunavummiut increasingly make the decisions regarding lands and resources that will shape the territory in the years ahead and will contribute to their well-being and that of other Canadians.

PREAMBLE

WHEREAS the GN has made devolution a key priority and expressed its desire to assume responsibility for the management of land and resources given that devolution is viewed to be one of the solutions in helping Nunavut create employment and a sustainable economy for the future;

WHEREAS the key objectives of the GC in respect of devolution are to foster the political development of Nunavut, to make the GN more accountable for decisions related to the management and the pace of development of lands and resources in Nunavut, to maintain and enhance favourable conditions which will support a strong and active natural resource sector and to create an opportunity for the GN to share in resource revenues and thereby, over time, reduce its dependency on federal funding transfers in order to help ensure that residents of Nunavut enjoy opportunities and a quality of life similar to that of other Canadians; and

WHEREAS the Inuit of Nunavut are largely a coastal people who have a deep attachment to both the land and the marine areas of Nunavut which has been recognized in the Nunavut Land Claims Agreement which gave the Inuit of Nunavut certain specific rights and responsibilities in respect of Inuit Owned Lands and a role in the territory's overall resource management regime.

NOW THEREFORE, the Parties agree as follows:

PART 1 DEFINITIONS

1.1 In this Negotiation Protocol:

"Agreement-in-Principle" means the Agreement-in-Principle which the parties have committed to negotiate pursuant to this Negotiation Protocol.

"Commissioner" means the Commissioner of Nunavut appointed pursuant to the *Nunavut Act*.

"Chief Negotiator" means the person designated by each of the GC, the GN and NTI as its devolution Chief Negotiator.

"Devolution Final Agreement" means the final agreement negotiated pursuant to the Agreement-in Principle.

"Inuit" means those persons defined as Inuit pursuant to Article 1.1.1 of the NLCA.

"Marine Areas" has the same meaning as set out in the NLCA.

"Negotiation Protocol" means this Nunavut Lands and Resources Devolution Negotiation Protocol.

"Nunavut" means the territory of Nunavut as defined in the *Nunavut Act*, S.C. 1993, c. 28.

"Nunavut Land Claims Agreement" or "NLCA" mean the land claims agreement entered into on May 25, 1993 between Tungavik Federation of Nunavut and Her Majesty the Queen in right of Canada and ratified by the Parliament of Canada through the *Nunavut Land Claims Agreement Act*, S.C. 1993, c. 29.

"Nunavummiut" means all residents of Nunavut.

"Parties" means the three parties to this Negotiation Protocol, being the GC, the GN, and NTI.

"Public Lands" means lands, or any interest in lands, in Nunavut that are vested in the Crown or of which the GC has power to dispose.

"Waters" means any inland waters on or below the surface of land in Nunavut whether in a liquid or frozen state.

PART 2 PURPOSE

2.1 The purpose of this Negotiation Protocol is to:

- a. indicate the Parties' commitment to negotiate with a view to concluding an Agreement-in-Principle and a Devolution Final Agreement;
- b. govern the conduct and state the principles of negotiations;
- c. identify subject matters for negotiation; and
- d. set out the process for negotiations in order to facilitate effective, timely and orderly negotiations.

PART 3 PRINCIPLES

3.1 Negotiations shall be based on and guided by the following principles:

- a. The transfer of administration and control of Public Lands, rights in respect of Waters, legislative powers, programs and responsibilities for the management of lands and resources will be a transfer from the GC to the GN.
- b. The rights of the Inuit under the NLCA, and any Aboriginal or Treaty rights of other Aboriginal peoples recognized and affirmed by Section 35 of the *Constitution Act, 1982*, will be respected.
- c. Existing third-party land, water and resource rights will be respected.
- d. The Parties will develop and implement a human resources strategy parallel to the devolution negotiations. The objectives of the strategy shall be to ensure that:
 - i. consistent with the objectives of the NLCA, a significant proportion of Inuit are recruited to fulfill responsibilities for the management of land, waters and resources;
 - ii. Nunavummiut are recruited to fulfill responsibilities for the management of land, waters and resources;
 - iii. there will be recruitment and retention of federal employees who carry out land and resource management responsibilities identified to be transferred to the GN; and
 - iv. as of the effective date of transfer, the GN will be able to provide effective and efficient program and service delivery in respect of the powers, programs and responsibilities to be transferred to it.
- e. The post-devolution land and resource management regime shall remain consistent with the NLCA and be effective, efficient, timely, transparent, stable, and reliable.
- f. The Devolution Final Agreement shall provide a net fiscal benefit to the GN.
- g. The GC and the GN will provide, in proportions to be agreed by them, funding to NTI to support the participation of NTI in the negotiations.

3.2 Oil and Gas

- a. The parties acknowledge that it is the position of the GN and NTI that the ultimate objective of devolution is the transfer of administration and control in respect of Crown lands and resources in all areas, both onshore and in the seabed. The parties further acknowledge that it is the position of the GN and NTI that a devolution agreement should make no distinction between resource management regimes onshore and in the seabed in and adjacent to Marine Areas.
- b. The parties acknowledge that, owing to, among other factors, the need of the GC to consider national consistency and coherency in seabed resource management, the GC is not prepared to negotiate seabed resource management during the initial phase of devolution negotiations.

- c. The parties recognize the need for the integration of onshore and seabed oil and gas management in order to contribute to the shared objective of having an efficient and effective resource management regime in Nunavut. Therefore, the parties undertake to discuss the management of onshore and seabed oil and gas resources as an integrated unit in a future phase of devolution negotiations and, accordingly, the Agreement-in-Principle shall contain a commitment by the Parties as to the timing of the commencement of negotiations regarding the role of the parties in the management of onshore and seabed oil and gas.
- d. Notwithstanding the timing or pace of devolution negotiations in respect of oil and gas management, the parties are willing to work to develop administrative arrangements which seek to provide the GN greater input in respect of oil and gas management in Nunavut.

PART 4

SUBJECT MATTERS FOR NEGOTIATION OF AN AGREEMENT-IN-PRINCIPLE

4.1 The following subject matters are to be addressed in the negotiations of the Agreement-in-Principle. The list is not intended to be restrictive, and each of the Parties may raise other issues for negotiation:

- a. Transfer of Administration and Control – The transfer by the GC to the Commissioner of the administration and control of Public Lands and rights in respect of Waters administered by the Northern Affairs Program of the Department of Indian Affairs and Northern Development, including negotiations addressing the following:
 - i. the identification and description of Public Lands and rights in respect of Waters which will be the subject of a transfer of administration from the GC to the GN;
 - ii. the provision to the GN of legislative authority to make laws with respect to transferred Public Lands and rights in respect of Waters;
 - iii. the management of programs, services and other responsibilities relating to transferred Public Lands and rights in respect of Waters;
 - iv. the legislative approach required to give effect to the Devolution Final Agreement;
 - v. the protection of existing third-party interests;
 - vi. existing federal interests in lands or waters; and
 - vii. the right of the GC to take back administration and control of Public Lands and rights in respect of Waters for the settlement or implementation of Aboriginal land and resource agreements, treaties, land claims agreements or self-government agreements, the welfare of Indians and Inuit or any matters in the national interest, and the process for the exercise of such a right, including any consultation requirements.

- b. Post-Devolution Land and Resource Management
 - i. identification of the key features of the post-devolution land and resource management regime;
 - ii. development of legislation in respect of the post-devolution resource management regime; and
 - iii. post-devolution implementation of the land and resource management regime.

- c. Contaminated Sites and Waste Sites - The roles and obligations of the Parties in relation to responsibilities for contaminated sites and waste sites.

- d. Human Resources
 - i. terms and conditions respecting the post-devolution employment by the GN of federal employees affected by devolution; and
 - ii. the development of a strategy to ensure that the GN will have the necessary human resource capacity to discharge the responsibilities it receives from the GC.

- e. Federal Properties, Assets, Contracts and Records - Terms and conditions respecting the transfer of certain federal real property, program assets, information technology assets, contracts and records.

- f. Transitional and Ongoing Funding – The provision of one-time transitional funding and ongoing program funding.

- g. Resource Revenue Sharing and Net Fiscal Benefit to Nunavut.

- h. The appropriate post-devolution allocation, between the GN and the GC, of government obligations under the NLCA or other land claims agreements or self government agreements.

PART 5

NEGOTIATION PROCESS

5.1 The Chief Negotiators confirm their commitment to good faith negotiations of the Agreement-in-Principle in accordance with the work plans and schedules determined by the Chief Negotiators pursuant to this Negotiation Protocol.

5.2 The negotiations will be conducted by the Chief Negotiators and their respective negotiating teams.

5.3 The Chief Negotiators may set work plans for the negotiations including agendas, schedules and priorities.

5.4 The Chief Negotiators may establish working groups and drafting groups and set work plans for such groups, including agendas, schedules and priorities. The Parties acknowledge that some working groups will be bilateral in nature.

5.5 As soon as appropriate after the signing of this Negotiation Protocol, the Chief Negotiators shall establish a working group for the development of a strategy to ensure that the GN will have the necessary human resource capacity to discharge the responsibilities it receives from the GC.

5.6 Unless otherwise agreed by the Chief Negotiators, NTI, the GN and the GC will host negotiating sessions on a rotating basis, starting with the GN.

5.7 The host of each negotiating session will prepare a summary record of the decisions taken at that session and circulate it to each of the other negotiating teams for comment and approval.

5.8 Information relevant to the subject matters of these negotiations, not subject to confidentiality restrictions, will be made available by the Chief Negotiators to each other upon request. Any confidential information disclosed shall be held in confidence.

5.9 The Parties will meet to determine which subject matters are appropriate for bilateral agreements. With the agreement of all Parties, any such bilateral agreement may be incorporated into and form part of the Devolution Final Agreement. No such bilateral agreement shall create any legally enforceable rights, obligations or liabilities binding on any Party that is not a party to the bilateral agreement unless agreed in writing by such Party.

5.10 The Chief Negotiators of the Parties involved in the bilateral negotiations referred to in 5.9 shall inform and update the negotiating table on a timely basis on any matters that are the subject of such bilateral negotiations.

5.11 The Parties shall agree on a drafting protocol to be followed by their respective legal counsel in respect of the legal drafting the Agreement-in-Principle.

PART 6 APPROVALS

Initialing and Approval of Agreement-in-Principle

6.1 Upon completion of the negotiation of the Agreement-in-Principle, the Chief Negotiators will initial the Agreement-in-Principle and recommend it to their principals for approval.

Negotiation and Approval of the Devolution Final Agreement

6.2 Upon the approval of the Agreement-in-Principle by each of the Parties, the Chief Negotiators will work toward completion of the Devolution Final Agreement based on, and in the manner set out in, the Agreement-in-Principle.

6.3 The Devolution Final Agreement will set out processes for its approval and for bringing it into effect.

PART 7 GENERAL

Interpretation

7.1 Nothing in this Negotiation Protocol is to be interpreted as creating, recognizing or denying any rights or obligations, or any legal status or capacity, of any of the Parties.

7.2 All negotiations leading to, or pursuant to, this Negotiation Protocol and all related documents except for the Devolution Final Agreement, once it has been brought into effect, are without prejudice to the position of any Party in any proceedings before a court or other forum and shall not be construed as admissions of fact or liability.

7.3 This Negotiation Protocol is not legally binding and is without prejudice to any legal position of the GC, the GN or NTI.

Amendment

7.4 This Negotiation Protocol may be amended with the written consent of the Parties.

Duration

7.5 This Negotiation Protocol shall take effect when signed by each of the Parties and, unless otherwise agreed by the Parties, shall remain in effect until terminated.

7.6 This Negotiation Protocol may be terminated by any Party by the provision of notice to the other Parties indicating such intent to terminate. Such notice shall be provided at least 90 days prior to the effective date of the termination.

This Negotiation Protocol is agreed to on this 5th day of September 2008.

Chuck Strahl
Minister of
Indian Affairs and
Northern Development
and Federal Interlocutor
for Métis and Non-Status
Indians

Paul Okalik
Premier
Government of Nunavut

Paul Kaludjak
President
Nunavut Tunngavik Incorporated

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