



**KTUNAXA NATION
RIGHTS RECOGNITION & CORE TREATY
MEMORANDUM OF UNDERSTANDING**

(the "MOU")

BETWEEN:

HER MAJESTY THE QUEEN

IN RIGHT OF CANADA,

as represented by the Minister of Crown-Indigenous Relations

(hereinafter "Canada")

AND:

HER MAJESTY THE QUEEN

IN RIGHT OF THE PROVINCE OF BRITISH COLUMBIA,

as represented by the Minister of Indigenous Relations and Reconciliation

(hereinafter "British Columbia")

AND:

KTUNAXA NATION,

as represented by the Ktunaxa Kinbasket Treaty Council

(hereinafter the "Ktunaxa Nation")

(each a "Party" and collectively the "Parties")

WHEREAS

- A. The Ktunaxa Nation has existing aboriginal rights, including aboriginal title (“Ktunaxa Section 35 Rights”), in Ktunaxa ʔamakʔis.
- B. The Parties are engaged in treaty negotiations under the British Columbia treaty process and acknowledge that certain key elements of the current draft Agreement-in-Principle are not acceptable to the Ktunaxa Nation and that the Parties intend to take a renewed approach to treaty negotiations.
- C. On July 14, 2017, Canada committed to a set of Principles Respecting the Government of Canada’s Relationship with Indigenous Peoples to guide the review of laws, policies and operational practices and form a foundation for transforming how the federal government partners with and supports Indigenous peoples.
- D. On July 18, 2017, British Columbia committed to work collaboratively and respectfully with First Nations to establish a clear, cross-government vision of reconciliation to guide the adoption of the United Nations Declaration on the Rights of Indigenous Peoples, the Truth and Reconciliation Commission’s Calls to Action, and all relevant case law.
- E. The Parties are now engaged in substantive discussions to explore a rights recognition approach to treaty.
- F. On September 13, 2017, the Parties and the British Columbia Treaty Commission reviewed the Ktunaxa document, “Ktunaxa Approach to Nation Building” (Appendix 1) and have agreed to use this document to inform ongoing exploratory discussions.
- G. The Parties confirm that their evolving exploratory perspectives support a new approach to treaty making between Canada, British Columbia and the Ktunaxa Nation.

NOW THEREFORE the Parties wish to set out their mutual understanding as follows:

1 PURPOSE

The purpose of this MOU is to signify the Parties’ commitment to:

- 1.1 commence Stage 5 of the BC treaty process without signing an Agreement-In-Principle,
- 1.2 explore options for the recognition of the Ktunaxa Nation as a legal entity before a treaty is implemented, and
- 1.3 explore a new approach to treaty focused on core treaty and rights recognition.

2 MOVING FROM STAGE 4 TO STAGE 5 OF NEGOTIATIONS

- 2.1 The Parties are continuing to negotiate a treaty under the British Columbia treaty process.

- 2.2 The Parties will use the draft Agreement-in-Principle to inform the exploratory discussions on the core treaty and rights recognition approach.
- 2.3 The Parties have agreed and confirmed with the British Columbia Treaty Commission that they will move from Stage 4 into Stage 5 of treaty negotiations without signing an Agreement-in-Principle.

3 SCOPE OF NEGOTIATION

- 3.1 The Parties will explore options for recognizing the Ktunaxa Nation as a legal entity before a treaty is implemented, including:
 - 3.1.a. recognizing the Ktunaxa Nation Council (KNC) as the central government body of the Ktunaxa Nation with the authority to represent the Ktunaxa Nation on a variety of matters, including Ktunaxa Section 35 Rights; and
 - 3.1.b. identifying and negotiating Ktunaxa Nation jurisdiction, and/or delegation of jurisdiction, by Canada and/or British Columbia to the Ktunaxa Nation prior to the effective date of a Ktunaxa Nation treaty.
- 3.2 The Parties will also explore options for a core treaty focusing on the key elements required to:
 - 3.2.a. establish the Ktunaxa Nation as a constitutionally recognized government;
 - 3.2.b. describe the essentials of the constitutional relationship between the Parties; and
 - 3.2.c. give effect to a recognition and implementation approach for Ktunaxa Section 35 Rights.
- 3.3 Specific topics that will be considered for a core treaty approach include:
 - 3.3.a. exercise of Ktunaxa Section 35 Rights;
 - 3.3.b. predictable, stable and reliable processes for review, amendment and evolution of rights, jurisdictions and intergovernmental relationships;
 - 3.3.c. form of the Ktunaxa Nation's ownership of and authority over Ktunaxa Lands;
 - 3.3.d. the Ktunaxa Nation's role in stewardship and natural resource decisions in areas where the Ktunaxa Nation exercises Ktunaxa Section 35 Rights;
 - 3.3.e. establishment of the Ktunaxa Nation government, including confirmation of its composition and structure;
 - 3.3.f. application of the concurrent law model;
 - 3.3.g. identification of areas of Ktunaxa Nation jurisdiction and authority;
 - 3.3.h. content and composition of side agreements, which may be evergreen or time limited, with the ability to adapt to changing legal or relationship circumstances;
 - 3.3.i. capital transfer and fiscal matters, including revenue sharing;

- 3.3.j. local government relations; and
- 3.3.k. dispute resolution.

4 PROCESS

- 4.1 The Parties will develop a non-binding document to assist them in seeking mandates that will set out the structure of a core treaty, including a recognition and implementation approach for Ktunaxa Section 35 Rights, and processes for the evolution of rights, jurisdictions and intergovernmental relationships.
- 4.2 After considering the options explored in accordance with section 3.1, the Parties will develop a recommended approach for recognizing the Ktunaxa Nation as a legal entity before a treaty is implemented.
- 4.3 The Parties acknowledge that they will each require further mandates and may require legislation to:
 - 4.3.a. recognize the Ktunaxa Nation and establish it as a legal entity before a treaty is implemented; and
 - 4.3.b. identify and negotiate Ktunaxa Nation jurisdiction, and/or delegation of jurisdiction, by Canada and/or British Columbia to the Ktunaxa Nation prior to the effective date of a Ktunaxa Nation treaty.
- 4.4 The Parties acknowledge that they will each require further mandates to negotiate a core treaty.
- 4.5 Canada is engaged in policy reform with the objective of developing a Rights Recognition Implementation Framework that may include legislation supporting the recognition of Indigenous Nations; however, Canada does not intend that consideration of mandates for the legal recognition of the Ktunaxa Nation would be delayed by, or require the conclusion of, broader work on the recognition of Indigenous Nations.
- 4.6 The Parties will develop a tripartite work plan to guide the work to conclude a core treaty.


5 OTHER

- 5.1 Any disputes regarding the interpretation or implementation of this MOU will be resolved only by the Parties and will not be referred to any other third party for settlement, unless the Parties otherwise agree.
- 5.2 Negotiations under this MOU will continue to take place within the British Columbia treaty process. All negotiations conducted pursuant to this MOU, and all related documents, are confidential unless the Parties otherwise agree in writing, and 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.
- 5.3 This MOU is not intended to constitute a treaty or land claims agreement within the meaning of sections 25 and 35 of the *Constitution Act, 1982*.
- 5.4 This MOU does not establish, create, amend, define, affirm, recognize, deny, abrogate or derogate from any legally enforceable rights, including but not limited to any Aboriginal rights or title of the Ktunaxa Nation which are recognized and affirmed by section 35(1) of the *Constitution Act, 1982*.

- 5.5 This MOU is not legally binding and does not create any contractual or financial obligations for any Party.
- 5.6 This MOU may be amended with the written consent of the Parties.
- 5.7 A Party may withdraw from this MOU by providing written notice to the other Parties.
- 5.8 If a Party chooses to withdraw from this MOU, the remaining Parties will discuss whether they wish to continue discussions under the MOU on a bi-lateral basis or terminate the MOU.

6 EFFECTIVE DATE AND SIGNATURE


6.1 This MOU will come into effect on the date of the last signature.



Kathryn Teneese
Chief Negotiator, Ktunaxa Nation

November 30, 2018

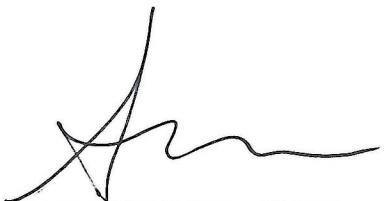
Date



The Honourable Carolyn Bennett, M.D., P.C., M.P.
Minister of Crown-Indigenous Relations

November 30 2018

Date



The Honourable Scott Fraser, M.L.A.
Minister of Indigenous Relations and Reconciliation

Nov. 30, 2018

Date