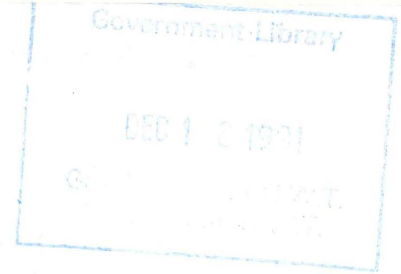


4093

JOINT DRAFT NOVEMBER 27 1991



SELF-GOVERNMENT AGREEMENT

Between

The First Nation

and

The Government of Canada

and

The Yukon Government

Joint Draft - November 27, 1991

This Agreement made this _____ day of _____, 1991

AMONG:

The First Nation as represented by the Clan Leaders/Chief and Councillors (hereinafter referred to as the "First Nation")

AND:

The Government of Yukon as represented by the Premier of the Yukon on behalf of the Yukon (hereinafter referred to as the "Yukon");

AND:

Her Majesty the Queen in Right of Canada as represented by the Prime Minister and the Minister of Indian Affairs and Northern Development (hereinafter referred to as "Canada");

being the Parties (collectively referred to as "the Parties") to this First Nation Self-Government Agreement (hereinafter referred to as "this Agreement").

WHEREAS:

The First Nation asserts aboriginal rights, titles and interests with respect to its Traditional Territory;

The First Nation wishes to retain, subject to the First Nation Settlement Agreement, the aboriginal rights, titles and interests they assert with respect to First Nation Settlement Land;

The Parties recognize and wish to protect a way of life that is based on an economic and spiritual relationship between the First Nation and the land;

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The Parties desire to encourage and protect the cultural distinctiveness and social well-being of the First Nation;

The Parties recognize the significant contributions of the First Nation to the history and culture of Canada and the Yukon;

The Parties wish to enhance the ability of the First Nation to participate fully in all aspects of the economy of the Yukon;

The Constitution Act, 1982 recognizes and affirms the existing aboriginal rights and treaty rights of the aboriginal peoples of Canada, and treaty rights include rights acquired by way of land claims agreements;

The Parties wish to achieve certainty with respect to the ownership and the use of and jurisdiction over lands and other resources within the First Nation's Traditional Territory;

The Parties wish to achieve certainty with respect to their relationships with each other;

The Parties wish to recognize and affirm and enhance the First Nation traditional government institutions;

The Parties wish to support and promote the First Nation's contemporary and evolving institutions of government;

The Parties have negotiated a land claims agreement securing for the First Nation and its Citizens the rights and benefits set out therein;

The Parties recognize that this Agreement provides an essential basis for the protecting, enhancing and exercise of the rights secured in the Settlement Agreement; and

The First Nation, Canada and Yukon have authorized their representatives to sign this First Nation Self-Government Agreement.

NOW THEREFORE,

in consideration of the terms, exchange of promises, conditions, and provisos contained herein, the Parties agree to the following:

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PART I
GENERAL

2.0 DEFINITIONS

2.1 In this Agreement:

"Beneficiary" means a person who is on the official enrolment list of the First Nation, prepared pursuant to the Final Agreement;

"Citizen" means a citizen of the First Nation as determined by its Constitution;

"Constitution" means the constitution of the First Nation;

"Council for Yukon Indians" includes any successor to the Council for Yukon Indians and, in the absence of a successor, the Yukon First Nation;

"Effective Date of this Agreement" means

"Final Agreement" means the Yukon First Nation Final Agreement for the First Nation;

"First Nation" means the First Nation;

"Governing Body" means a body established by the Constitution and includes the Board of Directors and the General Council;

"Government" means Government of Canada or the Government of Yukon, or both, depending on which government or governments have responsibility, from time to time, for the matter in question;

"Implementation Plan" means the plan referred to in section 18.

"Laws" or "Legislation" includes acts, ordinances, regulations, orders-in-councils and by-laws;

"Laws of General Application" means laws of general application as defined by common law";

"Non-Settlement Land" means all lands in the Yukon other than Settlement Land;

"Parties" means the First Nation, the Government of Canada and the Government of Yukon, unless otherwise specified;

"Self-Government Legislation" means the Acts of Parliament and of the Yukon Legislative Assembly which [approve and give effect to] this Agreement;

CYI: "approve, give effect to, and declare valid"

"Settlement Land" means those lands identified as Settlement Land in the Final Agreement;

"Settlement Legislation" means the Acts of Parliament and the Yukon Legislative Assembly which [approve and give effect to] the Umbrella Final Agreement and Final Agreement for the First Nation.

CYI: "approve, give effect to, and declare valid"

"Traditional Territory" means the geographic area within the Yukon identified as First Nation Traditional Territory in the Final Agreement.

"Umbrella Final Agreement" means the Comprehensive Land Claim Umbrella Final Agreement between the Government of Canada, the Council for Yukon Indians and the Government of the Yukon, dated the ____ day of _____, 1991.

"Yukon First Nation Final Agreement" means a land claims agreement for a Yukon First Nation that includes provisions specific to that Yukon First Nation and incorporates the provisions of the Umbrella Final Agreement dated the ____ day of _____, 1991.

Note: Peter Hogg had wondered whether "Self-government Legislation" and "Settlement Legislation" should be amended to replace "give effect to" with "bring into force". The new language above tracks UFA 2.4.2.

1.0 PRINCIPLES

- 1.1 The First Nation has traditional decision-making structures and desires to maintain these traditional structures integrated with contemporary forms of government.
- 1.2 The Parties are committed to promoting opportunities for the well-being of First Nation Citizens equal to those of other Canadians and to providing essential public services of reasonable quality to all First Nation Citizens.

3.0 GENERAL PROVISIONS

- 3.2 The Parties agree to conclude an Implementation Plan pursuant to Section 18 of this Agreement as soon as possible.
- 3.3 This Agreement shall not affect any aboriginal claim, right, title or interest of the First Nation claimed in Canada.
- 3.4 This Agreement shall not affect the identity of the aboriginal people of the First Nation as aboriginal people of Canada.
- 3.5 This Agreement shall not affect the ability of the aboriginal people of the First Nation to exercise, or benefit from, any existing or future constitutional rights for aboriginal people that may be applicable to them.
- 3.6 Nothing in this Agreement shall affect the ability of the First Nation Citizens to participate in and benefit from government programs for status Indians, non-status Indians or native people, as the case may be. Benefits under such programs shall be determined by the general criteria for such programs established from time to time. Programs which apply to Yukon Indian People residing on a reserve or on lands set aside shall not cease only by reason of the fact the land becomes Settlement Land pursuant to the First Nation Final Agreement.
- 3.7 Subject to the First Nation Final Agreement, nothing in this Agreement shall affect any rights or benefits the Yukon Indian people may have or be entitled to under

the Indian Act. OR

3.7 Except for the purpose of determining which [First Nation Citizens] are Indians within the meaning of the Indian Act, the Indian Act does not apply to the First Nation nor does it apply in or in respect of Settlement Land [or the Retained Reserves].

NOTE: Parties must still resolve the applicability of the Indian Act to "retained reserves", pursuant to 4.1.1.1 of the UFA:

3.8 This Agreement shall not:

a) affect the rights of First Nation Citizens as Canadian citizens; and

b) unless otherwise provided herein or in legislation enacted hereunder, affect the entitlement of First Nation Citizens to all of the benefits, services, and protections of other citizens applicable from time to time.

4.0 RATIFICATION

4.1 Ratification of this Agreement shall be sought by the Parties and shall be ratified by each of the Parties in the following manner:

4.1.1 by Canada, by the Governor-in-Council;

4.1.2 by Yukon, by the Commissioner-in-Executive Council; and

4.1.3 by the First Nation, [insert description of the mode of ratification appropriate for that First Nation]

22.0 SELF-GOVERNMENT LEGISLATION

22.1 Prior to ratification of this Agreement, Government shall negotiate, with the Council for Yukon Indians, guidelines for drafting Self-Government Legislation that shall, among other things, take into account the provisions of this Agreement.

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22.2 Government shall consult the Council for Yukon Indians during the drafting of Self-Government Legislation.

22.3 Government shall consult the affected Yukon First Nations during the drafting of any subsequent amendments to the Self-Government Legislation.

5.0 AMENDMENT AND REVIEW

5.1 This Agreement may only be amended with the consent of the Parties.

5.2 Consent to any amendment pursuant to 5.1 may only be given on part of:

5.2.1 Canada, by the Governor-in-Council;

5.2.2 the Yukon, by the Commissioner-in-Executive Council; and

5.2.3 the First Nation, description of the mode of ratification appropriate for that First Nation]. Assembly].

5.3 Government shall negotiate with the First Nation with the intent to accord to the First Nation treatment no less favorable than it accords to another Yukon First Nation. [This has yet been agreed to by the Drafting Group]

5.3 With respect to any provision covered in this Agreement, including the commitments in any attached appendices, each Party shall accord immediately and unconditionally to any other Party, treatment no less favourable than it accords to other First Nation parties with respect to the same or similar provisions.

5.4 A Party may seek a declaration pursuant to 5.3 upon written notice to all Parties, and the following procedure shall apply:

5.4.1 within 30 days of the receipt of a notice pursuant to 5.4, the Parties shall negotiate the necessary amendments to this Agreement in order to give effect to 5.3;

- 5.4.2 failing an agreement within 90 days after receipt of notice referred to in 5.4, then any Party may refer the matter to arbitration pursuant to Chapter 26 of the First Nation Final Agreement; and
 - 5.4.3 an agreement by the Parties or a ruling by the arbitration proceeding which is accepted by all of the Parties or a final determination by a court of competent jurisdiction shall be deemed to be an amendment to this Agreement.
- 5.5 The Parties shall review this Agreement within five years of the Effective Date of this Agreement for the purpose of determining whether:
- 5.5.1 other self-government agreements in Canada have more effectively incorporated self-government provisions respecting any matters considered in this Agreement;
 - 5.5.2 other self-government agreements in Canada have more effectively incorporated implementation and/or fiscal transfer agreements;
 - 5.5.3 the implementation of this Agreement has achieved the objectives set out in the Training and Implementation Plan;
 - 5.5.4 the negotiated transfer of programs, responsibilities and resources pursuant to this Agreement have been successful;

5.5.5 the objectives of this Agreement are being achieved; and

5.5.6 the Parties' need to incorporate new provisions to meet the needs identified in the review and to determine the process then required to give full force and effect of this Agreement.

6.0 REMEDIES

6.1 Neither Government, the First Nation nor any First Nation Citizen shall have a claim or a cause of action in the event any provision of this Agreement or the Self-Government Legislation is invalid.

6.2 Neither Government nor the First Nation shall challenge the validity of any provision of this Agreement or the Self-Government Legislation.

6.3 If any provision of this Agreement or Self-Government Legislation is found by a court of competent jurisdiction to be invalid, the Parties thereto shall make best efforts to amend this Agreement or the Self-Government Legislation to remedy the invalidity or replace the invalid provision.

7.0 INTERPRETATION AND APPLICATION OF LAW

7.1 [deleted]

7.2 Where there is any inconsistency or conflict between any federal, territorial or municipal law and this Agreement, this Agreement shall prevail to the extent of the inconsistency. Where there is any inconsistency or conflict between any federal, territorial or municipal law and Self-Government Legislation, Self-Government Legislation shall prevail to the extent of the inconsistency.

7.3 This Agreement is subject to the Final Agreement, and in the event of any inconsistency or conflict, the Final Agreement shall prevail to the extent of the inconsistency or conflict.

3.1 [deleted]

- 7.4 Common law conflict of law principles shall apply where conflict of law issues arise unless
- (a) in the case of conflict of law issues arising between the laws of the First Nation and the laws of another First Nation, the affected First Nations have otherwise agreed; or
- (b) in the case of conflict of law issues arising between the laws of the First Nation and Laws of General Application, the First Nation and Government have otherwise agreed.
- 7.5 Unless otherwise provided in this Agreement the exercise of First Nation powers pursuant to this Agreement shall not confer any duties, obligations or responsibilities on the Yukon Government.
- 7.6 [deleted]
- 7.7 This Agreement shall be interpreted according to the Interpretation Act (Canada), with such modifications as the circumstances require.
- 7.8 The preamble and the principles in this Agreement are statements of the intentions of the Parties and shall only be used to assist in the interpretation of doubtful or ambiguous expressions in this Agreement.
- 7.9 Capitalized words or phrases shall have the meaning as defined in this Agreement.
- 7.10 Any reference in this Agreement to Legislation or any particular Legislation shall include that Legislation as amended from time to time and any successor Legislation, except where expressly provided otherwise.
- 7.11 Government may determine, from time to time, how and by whom any power or authority of Government or a Minister set out in this Agreement, other than the power to consent to an amendment pursuant to 5.2, shall be exercised.
- 7.12 The Supreme Court of the Yukon shall have jurisdiction in respect of any action or proceeding arising out of this Agreement or Self-Government Legislation.

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- 7.13 Nothing in this Agreement shall limit the jurisdiction of the Federal Court of Canada as set forth in the Federal Court Act.
- 7.14 Notwithstanding any other provisions of this Agreement, the First Nation laws shall not limit the application of the Criminal Code or other laws enacted pursuant to the criminal law power or the national concern branch of the "peace order and good government" power in section 91 of the Constitution Act, 1867.

PART II

THE FIRST NATION

8.0 LEGAL STATUS OF THE FIRST NATION

- 8.1 The First Nation is hereby recognized as successor to the Indian Act Indian Band.
- 8.2 The First Nation is a legal entity and has the capacity, rights, powers and privileges of a natural person and without restricting the generality of the foregoing may:
- 8.2.1 enter into contracts or agreements;
 - 8.2.2 acquire and hold property or any interest therein, sell or otherwise dispose of property or any interest therein;
 - 8.2.3 raise, invest, expend and borrow money;
 - 8.2.4 sue or be sued;
 - 8.2.5 form a corporation or other legal entities; and
 - 8.2.6 do such other things that are conducive to the exercise of its rights, powers and privileges.

- 8.3 The act of acquiring or the holding of any rights, liabilities or obligations by any entity described in 8.2, shall not be construed to effect any aboriginal right, title or interest of the First Nation, a First Nation Citizen it represents or their heirs, descendants or successors.

9.0 FIRST NATION CONSTITUTION

9.1 The First Nation Constitution shall:

- 9.1.1 contain the First Nation Citizenship code;
 - 9.1.2 establish governing bodies and provides for their powers, duties, composition, membership and procedures;
 - 9.1.3 provide for a system of reporting which may include audits through which the First Nation government shall be financially accountable to its Citizens;
 - 9.1.4 establish the rules and procedures relating to the disposition or elimination of rights or interests in land;
 - 9.1.5 recognize and protects the rights and freedoms of citizens;
 - 9.1.6 provide for the challenging of the validity of First Nation laws and for the quashing of any invalid law;
 - 9.1.7 provide for a register of First Nation laws;
 - 9.1.8 provide for amending the Constitution by the Citizens of the First Nation; and
 - 9.1.9 be consistent with this Agreement.
- 9.2 The First Nation Constitution may provide for any other matters relating to the government of the First Nation, of Settlement Lands, or of persons on Settlement Lands.
- 9.3 The Citizenship code established in the Constitution shall enable all eligible Beneficiaries to be Citizens.

20.0 TRANSITIONAL PROVISIONS

- 20.1 Upon coming into force of this Agreement, the Indian Act Indian Band shall cease to exist and its rights, titles, interests, assets, obligations and liabilities including those of the Indian Band Council, shall vest in the First Nation.
- 20.2 A by-law of the Indian Act Indian Band in force immediately before this Agreement comes into force remains in force on Settlement Land and in respect of Citizens to the extent that the by-law is consistent with this Agreement, the Constitution or a law of the First Nation, subject to being repealed or amended by the First Nation or by Government, whichever is the competent legislative body.
- 20.3 The Band Council of the Indian Act Band that is in office on the Effective Date of this Agreement shall be deemed to be the Council of the First Nation until changed pursuant to the First Nation Constitution.
- 20.4 Any money held by Her Majesty in right of Canada for the use and benefit of the Indian Act Indian Band shall be transferred to the First Nation.
- 20.5 [deleted]

17.0 DELEGATION

- 17.1 The First Nation may delegate any of its powers, including legislative powers, to:
- 17.1.1 a public body or official established by the First Nation law;
 - 17.1.2 government, including a department, agency or official of government;
 - 17.1.3 a public body performing a function of government in Canada, including another Yukon First Nation;
 - 17.1.4 a municipality, school board, local body, or legal entity established by Yukon law;
 - 17.1.5 a tribal council; or

17.1.6 the Council for Yukon Indians or any other legal entity in Canada.

17.2 Any delegation under paragraphs 17.1.2 to 17.1.6 shall be made by written agreement with the delegate.

17.3 The First Nation has the capacity to enter into an agreement to receive powers, including legislative powers, by delegation.

18.0 JOINT AGREEMENTS

18.1 The First Nation may enter into agreements to provide for a joint planning and zoning or other land use control by the First Nation and any municipality or other governing bodies of any area adjacent to or extending across any shore boundary.

PART III

FIRST NATION LEGISLATION

11.0 LEGISLATIVE POWERS

Exclusive Powers

11.1 The First Nation shall have the exclusive power to enact laws in relation to the following matters:

- a) administration of First Nation affairs and operation and internal management of the First Nation;
- b) management and administration of rights or benefits which are realized by the Beneficiaries according to the Final Agreements and which are to be controlled by the First Nation; and
- c) other matters ancillary to the foregoing.

Powers Not Restricted to Settlement Land

- 11.2 The First Nation shall have the power to enact laws in relation to the following matters in the Yukon:
- a) programs and services for Citizens in relation to their spiritual and cultural beliefs and practices;
 - b) programs and services for Citizens in relation to the First Nation language;
 - c) provision of health care and services to Citizens, except licensing and regulation of facility-based services off Settlement Land;
 - d) provision of social and welfare services to Citizens, except licensing and regulation of facility-based services off Settlement Land;
 - e) provision of training programs for Citizens subject to Government certification requirements where applicable;
 - f) adoption by and of Citizens;
 - g) guardianship, custody, care and placement of First Nation children, except licensing and regulation of facility-based services off Settlement Land;
 - h) provision of education programs and services for Citizens choosing to participate, except licensing and regulation of facility-based services off Settlement Land;
 - j) inheritance, wills, intestacy and administration of estates of Citizens including rights and interests in Settlement Lands;
 - k) procedures consistent with the principles of natural justice for determining the mental competency or ability of Citizens including rights and interests of those found incapable of responsibility for their own affairs;

- {
- (i) provision of services for resolution of disputes outside the courts;
 - l) administration of justice [in relation to First Nation Citizens and Settlement Land, subject to the terms of an agreement entered into pursuant to section 11.6.;]
- CYI: delete the language [in relation to...]**
- m) solemnization of marriage;
 - mm) licences in respect of matters enumerated in section 11 in order to raise revenue for First Nation purposes;
 - n) other matters necessary to enable the First Nation to fulfil its responsibilities under the Final Agreement or this Agreement; and
 - o) other matters ancillary to the foregoing.

1.2.1 Imminent Danger

- 11.2.1.1 Off Settlement Land, in relation to those matters in 11.2, in any situation that poses an imminent danger to life, health or property of a Citizen, an official of Government may act to relieve the imminent danger, exercising powers conferred by laws of general application, notwithstanding that First Nation laws apply to the situation.
- 11.2.1.2 An official of Government acting pursuant to 11.2 shall, after determining that a person in imminent danger is a Citizen of the First Nation, as soon as practicable, notify the First Nation of the action taken and transfer the matter to the First Nation authority, at which time the authority of the Government to act pursuant to 11.2.1.1 shall cease.
- 11.2.1.3 An official of Government acting pursuant to 11.2.1.1 is not liable for any act done in good faith in the reasonable belief that the act was necessary to relieve an imminent danger to life, health or property.
- 11.2.1.4 On Settlement Land, in relation to those matters in 11.2, in any situation that poses an imminent danger to life, health or property of a non-Citizen, an official of the First Nation may act to relieve the

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imminent danger, exercising powers conferred by the First Nation, notwithstanding that laws of general application apply to the situation.

- 11.2.1.5 An official of the First Nation acting pursuant to 11.2.1.4 shall, after determining that a person in imminent danger is not a Citizen of the First Nation, as soon as practicable, notify Government or where applicable, the affected First Nation, of the action taken and transfer the matter to the relevant authority, at which time the authority of the First Nation to act pursuant to 11.2.1.4 shall cease.
- 11.2.1.6 An official of the First Nation acting pursuant to 11.2.1.4 is not liable for any act done in good faith in the reasonable belief that the act was necessary to relieve an imminent danger to life, health or property.

Powers Restricted to Settlement Land

- 11.3 The First Nation shall have the power to enact laws of a local or private nature on Settlement Land in relation to the following matters:
- a) use, management, administration, control and protection of Settlement Land;
 - b) allocation or disposition of rights and interests in and to Settlement Land, including expropriation by the First Nation for the First Nation's purposes;
 - c) the use, management, administration and protection of natural resources under the ownership, control or jurisdiction of the First Nation;
 - d) gathering, hunting, trapping or fishing and the protection of fish, wildlife and habitat;
 - e) control or prohibition of the erection and placement of posters and advertising signs or billboards;

- f) licensing and regulating of any person carrying on any business, trade, profession, or other occupation;
- g) controlling, or prohibiting public games, sports, races, athletic contests and other amusements;
- h) control of the construction, maintenance, repair and demolition of buildings or other structures;
- i) prevention of overcrowding of residences or other buildings or structures;
- j) control of the sanitary condition of buildings or property;
- k) planning, zoning and land development;
- l) curfews, prevention of disorderly conduct and control or prohibition of nuisances;
- m) control or prohibition of the operation and use of vehicles;
- n) prohibition, limitation or control of the transport, sale, exchange, manufacture, supply, possession or consumption of intoxicants;
- p) establishment, maintenance, provision, operation or regulation of local services and facilities;
- q) caring and keeping of livestock, poultry, pets and other birds and animals, [except game farming and game ranching] and impoundment and disposal of any bird or animal maltreated or improperly at-large;
- r) [deleted]
- s) control or prohibition of any actions, activities or undertakings that constitute, or may constitute, a threat to public order, peace or safety;
- t) control or prohibition of any activities, conditions or undertakings that constitute, or may constitute a danger to public health;
- u) control or prevention of pollution and protection of the environment;

- v) control or prohibition of the possession or use of firearms, other weapons and explosives;
- w) control or prohibition of the transport of dangerous substances; and
- x) other matters coming within the good government of First Nation Citizens on Settlement Land.

11.3.1 Notwithstanding s. 11.4.2, laws of general application shall apply with respect to an emergency arising on Settlement Land, in relation to powers enumerated in 11.3, which has or is likely to have an effect off Settlement Land.

"Emergency" includes apprehended or imminent danger to health, safety, or the environment.

12.0 FINANCIAL ADMINISTRATION

[deleted]

A. Justice

- D 1. The Parties shall enter into agreements respecting the administration of First Nation justice. Such agreements shall deal with powers of adjudication, prosecution, penalties, corrections, law enforcement, and the relation of First Nation courts to other courts and may deal with any other matter related to aboriginal justice.
- 2. Until such time as an agreement to establish a First Nation justice system pursuant to 11.5.1 is reached by the Parties:
 - D a) the First Nation shall have the power to establish penalties of fines up to \$5,000 and imprisonment to a maximum of six months, for the violation of any First Nation Law which is not in respect of criminal matters;

- D b) the Supreme Court of the Yukon Territory and the Territorial Court of Yukon shall have jurisdiction throughout the Yukon to adjudicate in respect of First Nation Laws in accordance with the jurisdiction designated to those courts by Yukon Legislation except that any offence created under First Nation Laws shall be within the exclusive original jurisdiction of the Territorial Court of the Yukon;
- D c) the First Nation shall have the power to appoint officials to administer Laws of the First Nation;
- ** d) any offence created under First Nation Laws shall be prosecuted pursuant to the Summary Convictions Act (Yukon), by prosecutors appointed by the Yukon; and
- ** e) any term of imprisonment ordered by the Territorial Court of the Yukon pursuant to 11.5.2 (a) shall be served in a correctional facility pursuant to the Corrections Act (Yukon).
- ** 3. The interim provisions in 11.5.2 shall be transitional and shall expire five years from the Effective Date of this Agreement. The interim provisions may be extended beyond that five year term by agreement of the Parties for a further term ending December 31, 1999.
- ** 4. All new and incremental costs of implementing the interim provisions in 11.5.2 incurred by the Yukon shall be paid by Canada in accordance with guidelines to be negotiated by Government.

CYI: delete the above text of 11.5 and insert:

The First Nation shall have the power to enact laws in relation to civil remedies and punitive sanctions, including fine, penalty or imprisonment, for enforcing any law of the First Nation. [Note: discuss drafting and placement of provision and discuss "civil remedies"]

13.0 TAXATION AGREEMENTS

13.1 [The First Nation may enter into taxation agreements with Government.]

CYI: rewrite as follows:

At the request of the First Nation, Government shall enter into the negotiation of taxation agreements.

13.2 For the Government of Canada, the Minister of Finance may enter into taxation agreements with the First Nation in respect of any matter [dealt with in this section].

CYI: change to "negotiated pursuant to 13.1".

13.3 For the Government of the Yukon, the Yukon Minister of Finance may enter into taxation agreements with the First Nation in respect of any matter [dealt with in this section].

CYI: change to "negotiated pursuant to 13.1".

14.0 TAXATION

14.1 The First Nation shall have the power to make taxation laws in relation to:

14.1.1 taxation for [local] purposes of interests in Settlement Land, of occupants and tenants of Settlement Land in respect of their interest in those lands, including assessment, collection and enforcement procedures and appeals relating thereto;

CYI: change to "First Nation"

14.1.2 {other revenue generating powers[, if any,] as are contained in this Agreement, [the First Nation Final Agreement or First Nation legislation] or [have been] approved pursuant to section 83 of the Indian Act for an Indian band};

CYI: delete "if any"; include the references to Final Agreement and legislation; change "have been" to "which are hereby deemed to be";

CYI: consider rewrite of the whole clause, as amended

14.1.3 such other taxation power as may be negotiated pursuant to section 14.1.5; and

14.1.4 any taxation agreement [the First Nation may enter into with Government].

CYI: change to "negotiated pursuant to 13.1"

YTG: integrate the following:

The First Nation may levy direct taxation upon Citizens, and corporations carrying on business on Settlement Land, in order to raise revenue for First Nation purposes.

YTG: The question of concurrent taxation powers for Government and First Nation is still to be considered.

14.1.5 After the expiration of three years following the date on which the Self-Government Legislation receives Royal Assent, or at such earlier time as is agreed by the Parties, the Government of Canada shall, at the request of the First Nation, enter into negotiations to determine the extent to which the First Nation shall have the power [to impose sales or income taxes], and the Minister of Finance may, with the approval of the Governor in Council, enter into such arrangements as are agreed by the Parties pursuant to such negotiations and subject to reconciliation with provisions of section 20.6.0 of the Umbrella Final Agreement.

CYI: change "to impose sales or income taxes" to "of direct taxation on Settlement Land in order to raise revenue for First Nation purposes"

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- 14.2 The First Nation shall for the purposes of paragraph 149.1(c) of the Income Tax Act be deemed to be a public body performing a function of government in Canada for each taxation year of the First Nation, where at all times before the end of the year:
- 14.2.1 all of its real property and all or substantially all of its tangible personal property was situate on Settlement Land;
 - 14.2.2 it did not carry on any business other than a business carried on by it on Settlement Land;
 - 14.2.3 all or substantially all of its property was devoted to the exercise of:
 - (a) the powers of government authorized under this Agreement and the Self-Government Legislation, or
 - (b) such other powers as are authorized under the "[band] Final Agreement" or "Settlement Legislation"; and
- CYI: change to "First Nation"**
- 14.2.4 for these purposes, the taxation year of the First Nation shall be the calendar year or such other period as the First Nation may elect.
- 14.3 No tax shall be payable under the Income Tax Act for a taxation year on the income, property or capital of a corporation, in this clause referred to as a "subsidiary". where at all times before the end of the year:
- 14.3.1 all the shares and capital of the subsidiary are owned by the First Nation or by another subsidiary that satisfies the requirements of paragraphs 1,2,3,4, and 5 of this clause;
 - 14.3.2 no part of the earnings of the subsidiary are available to any person other than the First Nation or to another subsidiary that satisfies the requirements of paragraphs 1,2,3,4, and 5 of this clause;

- 14.3.3 all of the real property and all or substantially all of its tangible personal property of the subsidiary is situate on Settlement Land;
- 14.3.4 the subsidiary did not carry on business off Settlement Land; and

14.3.5 the subsidiary was a settlement corporation established pursuant to Chapter 20 of the Umbrella Final Agreement.

19.0 LAWS OF CANADA AND YUKON

19.1 The First Nation has the power to adopt any law of the Yukon or Canada as its own law in respect of matters provided for in this Agreement.

19.2 The Statutory Instruments Act does not apply to a law enacted by the First Nation.

10.0 PUBLIC REGISTER OF LAWS AND NOTIFICATION PROVISIONS

10.1 At the principal administrative offices of the First Nation government there shall be maintained a register of all First Nation laws.

10.2 The First Nation shall enter into Agreements with other Yukon First Nations to establish a central registry of Constitutions and First Nation laws.

10.3 Every law and any amendment thereto, and any amendment to the Constitution shall be entered in its entirety into the register forthwith upon its approval or adoption and also forwarded forthwith to the central registry.

10.4 Any person shall have reasonable access to the registries during normal business hours.

10.5 The First Nation shall forward to Government a list of its Citizens and shall forward any alterations to this list forthwith after they occur.

11.4 PARAMOUNTCY

11.4.1 Unless otherwise provided herein, all laws of general application shall continue to apply to the First Nation, its Citizens and Settlement Land.

11.4.2 Where there is any inconsistency or conflict between First Nation laws and the laws of general application, the First Nation laws shall prevail to the extent of the inconsistency or conflict.

Note: ✓TG and Peter Hogg propose new wording to replace both 11.4.1 and 11.4.2:

Unless otherwise provided herein, all laws of general application shall continue to apply to the First Nation, its Citizens and Settlement Land, except to the extent that such a law is consistent with a law of the First Nation, or except to the extent that a law of the First Nation has made provision for any matter for which provision is made in a law of general application, in which case that law of general application shall, to that extent, be rendered inoperative.

11.4.3 Where it is reasonably foreseeable that legislation proposed by either the Yukon or the First Nation may have an impact upon any existing legislation of the other government, written notice of the contents or nature of the proposed legislation shall be provided by the Yukon or the First Nation, as the case may be, within a reasonable period of time prior to its enactment.

11.4.4 Upon the recommendation of a Yukon Minister and subject to 11.4.5, the Executive Council (Cabinet) may, if it determines that the First Nation law partially renders inoperative a law of general application and that it would unreasonably alter the character of a Yukon law or would make it unduly difficult to administer that law in relation to Citizens or Settlement Land, declare that the law of general application rendered partially inoperative ceases to apply in whole or in part to First Nation Citizens or Settlement Land.

11.4.5 Prior to making a recommendation under 11.4.4, the Minister shall:

- (a) notify the First Nation of the Government's concerns, along with reasons;
- (b) offer to consult and identify solutions, including any amendments to Yukon legislation, that he/she considers would meet the objectives of the First Nation.
- (c) if the First Nation and the Yukon agree that the Yukon legislation should be amended, he or she shall propose such amendments to the Legislative Assembly within a reasonable time.

Note: The parties are still seeking to clarify that YTG laws are wholly displaced once a First Nation passes a law in the same field. This result may not be achieved by the present drafting due to the narrowness of the conflict rule in the traditional paramountcy doctrine.

PART IV

FIRST NATION PROGRAMS AND SERVICES

16.0 PROGRAMS AND SERVICES

Note: To be further discussed during negotiations concerning Fiscal Arrangements.

- 16.1 The First Nation and Government shall negotiate the assumption of responsibility by the First Nation for programs respecting any subject matter within the First Nation's jurisdiction, whether or not the First Nation has enacted a law respecting such matter, as the First Nation expressly indicates pursuant to 16.3.
- 16.2 Unless the Parties otherwise agree, negotiations referred to in 16.1 shall include the First Nation and Government.

CYI: delete 16.2 in view of 16.1?

16.7 Negotiations referred to in 16.1 shall have the following objectives:

- 16.7.1 to promote First Nation self-government;
- 16.7.2 to facilitate sustainable economic and community development in support of First Nation self-government;
- 16.7.3 to provide resources adequate to ensure that existing program quality is not diminished;
- 16.7.4 to promote and enhance the well-being of Citizens;
- 16.7.5 to provide for the establishment of First Nation government administrative structures;
- 16.7.6 to facilitate the protection and enhancement of First Nation culture and cultural activities;
- 16.7.7 to protect the opportunity for First Nation Citizens to pursue culturally based traditional lifestyle opportunities;
- 16.7.8 to provide for mechanisms of cooperation between the First Nation governments and governments at a local, territorial and federal level to ensure the effective and efficient delivery of services and programs;
- 16.7.9 to provide mechanisms for ensuring that programs, systems and laws are compatible between the First Nation and Government;
- 16.7.10 to encourage and support culturally-relevant programming and special programs designed to promote access to greater opportunities for Citizens;
- 16.7.11 to consider financial and administrative limitations and to promote administrative efficiency and economies of scale;

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- 16.7.12 to provide for local management and delivery of programs;
and
 - 16.7.13 to provide mechanisms for negotiating basic common standards between Government and First Nation programs.
- 16.5 Agreements negotiated pursuant to 16.1 shall:
- 16.5.1 identify the scope of the Parties' authority;
 - 16.5.2 coordinate the delivery of the First Nation program or service and the Government program or service in order to minimize any conflicts or duplication;
 - 16.5.3 identify sufficient financial resources to ensure that the program or service offered by the First Nation is of a level or quality equivalent to the Government program or service;
 - 16.5.4 subject to fiscal arrangements agreed to among the Parties pursuant to section 15.0, provide for resources adequate to ensure that program quality at that time is not diminished as a consequence;
 - 16.5.5 identify the training requirements; and
 - 16.5.6 contain an implementation plan.
- 16.3 The First Nation shall notify Government by April 1 of each year of its priority for these negotiations for the next fiscal year.
- 16.4 Within 60 days of receipt of the notification described in 16.3, the Parties shall meet to prepare a workplan to address the First Nation's priorities for negotiation. The workplan shall identify timelines and resources available for negotiations.

11.6 FISCAL ARRANGEMENTS

Note: It is the intention of the Federal Govt that this section would apply to "Block Financing Agreements" only. The Federal Government would intend that "one time costs" e.g. start up costs would be provided for in a separate provision.]

CYI: The "agreements" referred to below (and elsewhere in this Agreement) should have a consistent name; likewise, "programs" should consistently appear as "programs and services".

11.6.1 Subject to s. 11.6.2, The Government of Canada and the First Nation shall enter into financial agreements to provide the resources sufficient to:

- (a) provide reasonably comparable levels of public services at reasonably comparable levels of taxation, where the First Nation has assumed responsibility, to those existing elsewhere in the Yukon;
- (b) provide for the operation of First Nation government institutions;
- (c) [provide for other matters provided elsewhere in this Agreement].

Feds: is (c) covered adequately by (a)?

11.6.2 In determining whether the resources are sufficient, the Government of Canada and the First Nation shall take into account the following:

- (a) the ability and capacity of the First Nation to generate revenues from its own sources;
- (b) the existence of diseconomies of scale, including higher operating and administrative costs;
- (c) due regard to economy and efficiency;
- (d) [participation of the First Nation in other government transfer programs];

Feds: change to "participation in government transfer programs available to First Nation Governments"

- (e) the establishment [and maintenance] of First Nation government institutions;

Feds: delete "and maintenance" - this matter is covered by 11.6.1(b)

- (f) [start up costs, including training];

Feds: one time costs including start up costs should be provided for elsewhere in the Agreement or in the Implementation Plan

- (g) difficulties in transportation and communications;
- (h) demographic features of the First Nation;

- (i) results of reviews pursuant to section 5.5; and
- (j) other matters as agreed to by the Parties.

15.4.1 {To assist the negotiation of financial transfer agreements [pertaining to a program or service], Government and First Nation shall:

- (a) take into account both the direct and indirect costs of managing, administering and delivering that program or service in the Yukon over such historic period as the parties may agree;
- (b) subject to the provisions of section 2.7.0 of the Umbrella Final Umbrella Agreement, disclose all relevant information for the purposes of (a);
- (c) consider the establishment of a base year and appropriate adjustment factors for determining the resources to be provided;
- (d) consider, without prejudice, the methodology of calculations for the purposes of the Yukon Formula Financing Agreement; and
- (e) consider, without prejudice, data similar to that described in (a) and (d), expressed both per capita and in gross, relating to the financing of the NWT.}

CYI: delete ["pertaining to..."] from the opening words

15.1 FINANCIAL ACCOUNTABILITY

15.1.1 [The agreement shall specify the financial accountability requirements of the First Nation consistent with standards generally accepted by the presentation of financial reports by governments in Canada.]

Feds: redraft as follows:

The First Nation shall prepare, maintain and publish its accounts in a manner consistent with the standards generally accepted for governments in Canada.

15.2 GOVERNMENT OF CANADA FINANCIAL ARRANGEMENTS

15.2.1 [Subject to agreement between the First Nation and the Government of Canada, on a program by program basis,] self-government financial transfer agreements may consolidate federal program funding (operating and capital programs) for the First Nation.

Feds: not all funding available to a First Nation will be in a Block Funding Agreement - this is intended as an enabling clause.

CYI: delete the opening clauses [Subject to...]

15.2.2 [Financial transfer payments] shall be provided on an unconditional basis except where criteria or conditions are attached to the provision of funding for similar programs or services in other jurisdictions in Canada.

Query: revise to take into account other kinds of transfer payments? is Financial Transfer Payment the correct term?

15.2.3 The First Nation may continue to access federal program funding for those programs not consolidated in the self-government transfer agreement in accordance with program authorities and conditions in effect from time to time.

15.2.4 [The financial compensation, **including the proceeds from investments** for the comprehensive claims for the Yukon Indian people shall not be taken into account for the purposes of determining the level of funding provided through self-government financial agreements.]

Note: this clause to be discussed by negotiators

- 15.2.5 The level of funding provided pursuant to the self-government transfer arrangement may be adjusted annually according to a formula to be agreed upon by the Parties.
- 15.2.6 Funding pursuant to self-government financial transfer agreements shall be provided in the form of grants or other arrangements as appropriate.
- 15.2.7 [The self-government financial transfer agreement is subject to annual appropriation by Parliament.]

Note: The Government of Canada is to confirm the legal requirement for this clause; also to consider its validity if this Self-Government Agreement is constitutionally entrenched.

YTG and CYI: delete this clause.

- 15.2.8 Unless otherwise agreed, a self-government financial transfer agreement shall be for a term of five years.
- 15.2.9 [At least one year prior to the date of expiry of the then current financial transfer agreement the Government of Canada and the First Nation shall commence to negotiate the terms of a new self-government financial transfer agreement. The then current financial transfer agreement shall continue in force until replaced pursuant to this clause.]

Note: should this clause be clarified to confirm that it does not apply to start-up costs?

CYI: rewrite this clause as follows:

At least one year prior to the date of expiry of the then current self government financial agreement, the Government of Canada and the First Nation shall commence to negotiate the terms of a new agreement. Until replaced pursuant to those negotiations, all provisions of the then current agreement other than for start up costs actually incurred during its term shall continue in force.

15.3 GOVERNMENT OF YUKON FINANCIAL CONTRIBUTIONS

Note: The following remains subject to negotiation

CYI: May need a clause which provides a process to address funding for "municipal" services.

15.3.1 The Governments of the Yukon, Canada and the First Nation shall initially calculate the net savings resulting from the Government of Yukon's withdrawal from the [delivery] of programs and services previously provided to Citizens as a result of the First Nation assuming the responsibility for that program or service.

CYI: change "delivery" to "the management, administration and delivery"

15.3.2 "net savings" shall be deemed to include savings in expenditures and losses in tax revenues resulting from the First Nation occupying tax room previously occupied by the Government of the Yukon

15.3.3 The Government of the Yukon agrees that its base for formula financing shall be reduced by the amount of such net savings.

15.3.4 The calculation of net savings shall take into account diseconomies of scale and the needs of the Government of the Yukon to meet its continuing obligations without reducing the quality or standards of services provided to Yukon residents.

15.5 COST SHARING

15.5.1 Subject to 15.3, the costs of the First Nation government will be shared between Government and the First Nation.

CYI: delete this clause, given 15.3?

15.5.2 During the first funding agreement, any augmented revenues generated by the First Nation under this Agreement will not affect the level of the federal contribution.

15.5.3 [If the First Nation accesses a new tax base, revenues generated pursuant to that tax base shall not affect the level of funding received by the First Nation during the then current self-government financial transfer agreement.]

Note: to be reviewed during negotiations.

15.5.4 When the funding agreement is renegotiated, the First Nation and Government shall review the cost sharing arrangements.

21.0 TRAINING AND IMPLEMENTATION

21.1 There shall be an Implementation Plan developed by the Parties to ensure that the provisions of this Agreement achieve the following objectives:

21.1.1 orderly and effective forms of First Nation Government;

21.1.2 community development that is based on the community's definition of a healthy and socially strong community;

21.1.3 respect for the application of traditional First Nation spirituality, values and practices;

21.1.4 socio-economic development and prosperity of First Nation Citizens;

21.1.5 governing institutions that may be developed and are responsive to the needs of the Citizens;

21.1.6 training for First Nation Citizens to fully participate in the institutions of First Nation Government.

21.2 The First Nation Implementation Plan shall identify, among other things:

21.2.1 the specific activities, research projects, programs and services required to implement this Agreement;

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- 21.2.2 the responsibility for specific activities, research, projects, programs and services, the time frames, the costs and which Party or Parties shall bear the costs;
- 21.2.3 an information strategy to enhance community and public awareness of this Agreement and Implementation Plan;
- 21.2.4 a process to monitor, report on and evaluate the Implementation Plan;
- 21.2.5 a process to amend the Implementation Plan;
- 21.2.6 methods to coordinate the Implementation Plans for the Umbrella Final Agreement, the First Nation Final Agreement and this Agreement;
- 21.2.7 legislation required to give effect to this Agreement;
- 21.2.8 the modification of Government regulatory regimes relevant to this Agreement;
- 21.2.9 Government policies and programs which should be modified to assist in the implementation of this Agreement;
- 21.2.10 the training needs of the First Nation pursuant to 18.1.6; and
- 21.2.11 such other matters that the Parties determine to be necessary.

Funding for Implementation and Training

Note: subject to financial principles to be negotiated.

- 21.3 Government shall provide adequate resources for the carrying out of the Implementation Plan.
- 21.4 Funding for First Nation administrative support and participation in implementation and training planning shall be provided by the Government.

Approval

- 21.5 The Implementation Plan shall be completed and approved by the Parties prior to ratification of this Agreement by the First Nation.
- 21.6 The Implementation Plan shall be appended to this Agreement and form part of this Agreement.

PART V

DISPUTE RESOLUTION

24.1 FINANCIAL DISPUTES

- 24.1.1 In the event that the First Nation and the Government of Canada cannot agree to the terms of a self-government financial transfer agreement, either Party may refer the matter for mediation pursuant to section [26.6.0] of the Umbrella Final Agreement.

CYI: should be "26.3.0"

- 24.1.2 Financial disputes may be referred to arbitration with the consent of the Parties to the dispute.

Note: to consider whether Arbitration Act or other process to be identified shall apply.

- 24.1.3 In the event that the First Nation, the Government of Canada or the Government of the Yukon cannot agree on the calculation of the net savings resulting from the Government of Yukon's withdrawal from the delivery of programs and services previously provided to Citizens as a result of the First Nation assuming the responsibility for that program or service, any Party may refer the matter for mediation pursuant to section 26.6.0 of the Umbrella Final Agreement.
- 24.1.4 Any disputes described in 24.1.3 may be referred to arbitration with the consent of the Parties.

24.2 PROGRAMS AND SERVICES

24.2.1 A dispute arising from negotiations regarding the transfer of programs or services may be referred to mediation pursuant to section [26.6.0] of the Umbrella Final Agreement.

CYI: should be "26.3.0"

16.6 A dispute arising from negotiations referred to in 16.1 may be referred by any Party to mediation under 26.4.0 of the Umbrella Final Agreement.

CYI: could combine 24.2.1 and 16.6 as appropriate

24.3 IMPLEMENTATION

24.3.1 If a dispute should arise in relation to any Party's powers, responsibilities, or obligations pursuant to the Implementation Plan, any Party may refer the matter to mediation pursuant to section [26.6.0] of the Umbrella Final Agreement.

CYI: should be "26.3.0"

21.7 A dispute arising in relation to any Party's powers, responsibilities or obligations pursuant to the Implementation Plan, may be referred by any Party to mediation under 26.4.0 of the Umbrella Final Agreement.

CYI: could combine 24.3.1 and 21.7 as appropriate

24.4 OTHER DISPUTES

Note: parties to consider same approaches as above for application to other disputes arising pursuant to the Self-Government Agreement

CYI: re: YFN costs of dispute resolution: CYI's interest is to ensure that a provision to the following effect appears where appropriate (e.g. could be under implementation funding, political institutions funding, etc.):

x.x.x. Government shall provide the First Nation with the financial resources required to enable the First Nation to participate effectively in dispute resolution proceedings pursuant to this Agreement.