

## Consultation Protocol

This Consultation Protocol dated the 17<sup>th</sup> day of October, 2003

### BETWEEN:

The Tã'än Kwachan Council

AND

The Government of Yukon ("Yukon")

(being the "Parties" to this Protocol)

### WHEREAS:

On January 13, 2002, the Parties signed the Tã'än Kwachan Council Final Agreement ("TKCFA") and the Tã'än Kwachan Council Self-Government Agreement ("TKCSGA");

The TKCFA and TKCSGA contain legal obligations for the Parties to Consult between and among each other on certain specified matters;

The Parties wish to enter into a protocol for a consistent, meaningful and effective process for Consultation under the TKCFA and TKCSGA and any other consultation upon which the Parties agree the protocol will apply; and

The Parties wish to maintain respectful relations with each other and to deal fairly, openly and intelligently in the Consultation process so that decisions with respect to their respective responsibilities are made on the best possible knowledge.

### NOW THEREFORE,

The Parties state the following:

### PURPOSE:

The purpose of the Protocol is to set out the Parties' intentions with respect to the process whereby they will carry out Consultations between them required by the TKCFA and TKCSGA. As a protocol, it is not intended that it be a binding contract and it does not create, recognize or deny rights and obligations, including funding obligations, on the part of any Party.

## **DEFINITIONS:**

"Consult" or "Consultation" means to provide:

- (a) to the party to be Consulted, notice of a matter to be decided in sufficient form and detail to allow that party to prepare its views on the matter;
- (b) a reasonable period of time in which the party to be Consulted may prepare its views on the matter, and an opportunity to present such views to the party obliged to Consult; and
- (c) full and fair consideration by the party obliged to Consult of any views presented.

"Consulted Party" means the Party to be Consulted.

"Consulting Party" means the Party obliged to Consult.

"Protocol" means this Agreement between Tā'än Kwachan Council and Yukon.

## **PRINCIPLES:**

The Parties intend that Consultations between them will be meaningful and will enhance government-to-government relations. Therefore:

- (a) The Parties will Consult in a transparent, proactive, flexible, workable and effective manner, recognizing that the nature and scope of Consultation may vary from obligation to obligation or case to case.
- (b) The Parties will Consult in a mutually respectful manner, striving to demonstrate:
  - (i) a shared understanding of the purpose of the Consultation;
  - (ii) clear communications between the Parties;
  - (iii) timeliness in initiating and responding to Consultations;
  - (iv) an appreciation of the need for workable approaches and solutions.

## **SCOPE:**

This Protocol will apply to all Consultations undertaken by the Parties pursuant to the TKCFA and the TKCSGA, and any other consultations upon which the Parties agree the Protocol will apply.

## PROCEDURES:

The Parties intend the following procedures to be followed for all Consultations except where, by prior agreement between them, the procedures may be modified to address specific circumstances. The Parties will ensure that their departments, agents and contractors carrying out Consultations on their behalf are aware of the understandings in this Protocol.

1. The Consulting Party will initiate the Consultation process as soon as practicable and in any case, sufficiently before substantive decisions are made concerning the matter in question to ensure that the Consultations are meaningful and effective.
2. The Consulting Party will provide written notice of its intention to Consult the Consulted Party, in the form of a written Notice of Consultation to be provided to the Consulted Party in the following manner:
  - (a) The Notice of Consultation will be delivered personally or by courier; transmitted by fax; mailed by prepaid registered or certified post in Canada; or delivered by any other means agreed to by the Parties to the Consultation process.
  - (b) When the Yukon Government is to be Consulted, the Notice of Consultation will be addressed to the Assistant Deputy Minister, Land Claims and Implementation Secretariat, and copied under this notification process to the Director of Implementation, Land Claims and Implementation Secretariat, referenced in Annex A to this Protocol.
  - (c) When the Tã'än Kwachan Council is to be Consulted, the Notice of Consultation will be addressed to the Tã'än Kwachan Council and copied under this notification process to the Implementation Manager referenced in Annex A to this Protocol.
  - (d) The Notice of Consultation will be considered to have been made and received:
    - (i) if delivered personally or by courier, on the next business day after the day on which it was received by the addressee or a responsible representative of the addressee;
    - (ii) if transmitted by fax and the sender receives confirmation of the transmission, on the business day next following the day on which it was transmitted;
    - (iii) if mailed by prepaid registered or certified post in Canada, the business day next following the day on which the post office certifies that the mail was delivered; or
    - (iv) if delivered by any other means agreed to by the Parties to the Consultation, on the business day next following the day on which the agreed means of delivery verifies the receipt.

- (e) A personally delivered, faxed or mailed Notice of Consultation will be made to the address or fax number that may be communicated from time to time by a Party to the Consultation. If no other address or fax number has been communicated for delivery of this notification, such notification will be made to the address or to the fax number of the intended recipient as provided in Annex A.
3. The Notice of Consultation will include the following information:
    - (a) the TKCFA and/or TKCSGA obligation for which Consultation is required;
    - (b) a statement of the purpose of the Consultation, including the nature of the decision being considered and a brief synopsis of both the details of the matter to be decided and of any readily identifiable impacts of a decision on the Parties;
    - (c) a description of the Consultation process including intended activities, timelines, expectations and limitations, if any;
    - (d) the name(s) of the Consulting Party's designated representative(s) responsible to carry out the Consultation;
    - (e) indication of when and how the Consulted Party will receive a comprehensive information package in respect of the matter on which Consultation is occurring.
  4. The Consulting Party will endeavor to set out the substance of the Notice of Consultation in clear, concise and understandable language.
  5. As soon as practicable upon receipt of the Notice of Consultation, a Consulted Party will identify its designated representative(s) who will act on its behalf in the Consultation. Any such identification will be in writing to all affected Parties.
  6. At any time, a Party may identify an alternative point of contact for the Consultation being undertaken. Any such identification will be given in writing to all affected Parties.
  7. Subject to requirements or entitlements to withhold information under any Legislation relating to access to information or privacy, the comprehensive information package will contain relevant information and material facts in sufficient form and detail to assist the Consulted Party to understand the matter in order to prepare a meaningful response.
  8. A reasonable period of time will be provided to the Consulted Party to consider the matter, having regard to:
    - (a) the nature and complexity of the matter to be decided;
    - (b) the Consulted Party's need to consult, in some circumstances, with its respective constituents, citizens and other communities; and, where relevant,
    - (c) constraints on the Consulting Party, including but not limited to statutory time frames that may apply.

9. Upon the request of the Consulted Party, the Parties will discuss the provision of resources to the Consulted Party in order to carry out its consultations with its respective constituents and citizens and other communities with respect to its response.
10. Where the Consulted Party has concerns related to any aspects of the Consultation process as set out in the Notice of Consultation, or if it does not have a clear understanding of the purpose and expectations for the Consultation, it will notify the designated representative of the Consulting Party as soon as practicable. Upon mutual agreement, the Parties will review options to address the concerns and/or to facilitate a mutual understanding about the purpose and expectations for the Consultation.
11. Upon the request of a Consulted Party, the Consulting Party will provide the Consulted Party with an opportunity to meet to communicate its interests and concerns and to propose options related to the matter to be decided.
12. The Consulted Party will endeavor to provide a timely response in writing to the Consulting Party with respect to the matter of the Consultation, describing any concerns or recommendations the Consulted Party may have.
13. Upon receipt of a response from the Consulted Party, within the timelines indicated in the Notice of Consultation or amended as a result of deliberations pursuant to s.10 of this Agreement, the Consulting Party will give full and fair consideration to any views or recommendations presented by the Consulted Party and will make reasonable efforts to accommodate those views in its decision.
14. In the event that a response is not provided within the timelines indicated in the Notice of Consultation or amended as a result of deliberations pursuant to s.10 of this Agreement, the Parties agree that the Consulting Party has discharged its obligation to Consult.
15. The Consulting Party will provide written reasons to the Consulted Party for the decision made in respect of the matter for which the Consultation was initiated. Upon a request of the Consulted Party, the Consulting Party will designate appropriate representatives to meet to explain the decision and the reasons for that decision.

#### **TERM OF THE PROTOCOL:**

16. The Protocol will be in effect for an initial term of 5 years from the date of the last signature.
17. The Parties may agree to extend the term of the Protocol. If a Party wishes to extend the Protocol, that Party must notify the other Party in writing, within 3 months prior to the expiry of the Protocol.

#### **TERMINATION:**

18. Either Party may terminate the Protocol upon expiry of the term or upon giving 3 months written notice to the other.

**AMENDMENT:**


19. The Protocol may be amended in writing, by agreement of the Parties.

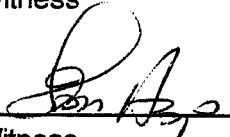
**SIGNING:**

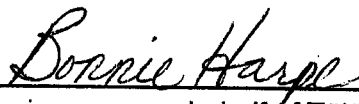
20. The Protocol may be signed in counter-parts. If signed in counter-parts, the Protocol becomes effective on the date of the last signature.

Dated at Whitehorse, in the Yukon Territory this 17 day of October /2003.  
2003

  
Witness

  
Dennis Fentie, Premier

  
Witness

  
Chairperson, on behalf of Tä'an Kwachan Council

## ANNEX A

**Pursuant to the Notice of Consultation notification process, the following are the addresses and fax numbers for each of the recipients:**

**For Yukon:**

Assistant Deputy Minister  
Land Claims and Implementation Secretariat  
Executive Council Office  
Government of Yukon  
Box 2703  
Whitehorse, Yukon  
Y1A 2C6

Director, Land Claims and Self-Government Implementation  
Land Claims and Implementation Secretariat  
Executive Council Office  
Government of Yukon  
Box 2703  
Whitehorse, Yukon  
Y1A 2C6

**For First Nation:**

Chairperson  
Tä'an Kwachan Council  
Box 32081  
Whitehorse, Yukon  
Y1A 5S9  
Fax number 867-667-4295

Implementation Manager  
Tä'an Kwachan Council  
Box 32081  
Whitehorse, Yukon  
Y1A 5S9  
Fax number 867-667-4295  
Phone 867-668-3613

**Notification must be provided for each of the recipients within 10 days of any change of address or fax number.**