

WORKING WITH YUKON FIRST NATIONS IN 2020

**MARCH 6 2020 PRESENTATION TO ENGINEERS YUKON BY
CAMPBELLS NORTH CONSULTING WHITEHORSE**



2 INSTRUCTOR BIO

Mr Campbell holds two degrees, a Bachelor's of Science in Mechanical Engineering and a Masters of Business Administration. He has worked in the electricity sector for over 40 years, of which the last 30 have been in Yukon. He is currently Chair of the Board for Na-Cho Nyak Dun Development Corporation and several associated limited partnerships. He is a Yukon Chamber of Commerce Board member, chairs the YCC Energy Committee and the Low Carbon Yukon Stakeholder Committee.

He has been working with Yukon First Nations, since his arrival in Yukon 30 years ago, to work for both Yukon's electric utilities in various management roles in engineering, operations, planning, permitting, consultation and FN agreement negotiations. Since his retirement from full time work in 2015 he has been working for several First Nations in project management and Development Corporation Board of Directors positions.



3 WORKSHOP OBJECTIVES

- Develop a greater understanding of:
 - Yukon First Nations from their self government and land claims settlements historical perspective
 - Yukon First Nations rights and obligations arising from their land claims and self government agreements
 - Yukon First Nations perspective on sustainable development
 - The current business environment in Yukon

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AGENDA

- Umbrella Final Agreement
- First Nation Final Agreements
- First Nations Traditional Territories
- Working with First Nations Governments
- Working with First Nations Businesses
- Sustainability Engineering Best Practices



5 UMBRELLA FINAL AGREEMENT (UFA) HISTORY

- 1973 Together Today for our Children Tomorrow
 - Yukon FN Chiefs presented this document to PM of Canada Pierre Elliot Trudeau
- 1984 First agreement was rejected by CYI (Council for Yukon Indians)
- 1988 New Agreement–In-Principle was reached
- 1993 Umbrella Final Agreement signed(20 years after starting negotiations)
 - The Umbrella Final Agreement provides a framework within which each of the 14 Yukon First Nations would conclude a final claim settlement agreement, all UFA provisions are a part of each First Nation Final Agreement (FNFA). The FN Final Agreements contain all of the text of the Umbrella Final Agreement with the addition of specific provisions which apply to that individual First Nation.

6 UFA CHAPTERS

The UFA is a 292 page document comprised of 28 chapters that deal with the following:

- Land tenure & access – reserves, land set aside, settlement lands, Special Management Areas (SMA's)
- Land use planning
- Development assessment (YESAB)
- Heritage & Water Management
- Natural resources including Fish & Wildlife, Forest & Non-Renewables
- Financial compensation & taxation
- Economic development
- Resource royalties

7 FIRST NATION FINAL AGREEMENTS

- In 1995 4 First Nations signed their Final Agreements and Self-Government agreements (NNDFN, CAFN, VGFN, TTC)
- By 1998, 3 additional First Nations had ratified their agreements (SFN, LSCFN, THFN)
- By 2005 , 4 additional First Nations ratified their agreements (TKC, KFN, KDFN, CTFN)
- 3 First Nations have currently not signed agreements (LFN, RRDC, WRFN)
- Some of the more recently signed FNFAs have some new economic development commitments such as YACA's (KDFN, CTFN) for major infrastructure projects

8 FIRST NATION FINAL AGREEMENTS SPECIFIC CLAUSES

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9 CHAPTER 22 ECONOMIC OPPORTUNITIES & BENEFITS

22.3.3 Each Yukon First Nation Final Agreement shall provide for specific economic measures which shall address:

22.3.3.1 access to **employment and contract opportunities** for Yukon Indian People generated as a direct consequence of the Settlement Agreements;

22.3.3.2 access to **employment and contract opportunities** for Yukon Indian People generated as a direct consequence of the land and resource management regime set out in the Umbrella Final Agreement;

22.3.3.3 participation by Yukon Indian People in harvesting activities; and

22.3.3.4 the interest of Yukon First Nations in **strategic investments** in areas such as transportation, culture, communication, agriculture, renewable resource services, energy resources, industry and tourism.

22.3.4 Unless otherwise agreed in a Yukon First Nation Final Agreement, participation of Yukon Indian People in **contracts** identified pursuant to 22.3.3.1 and 22.3.3.2 shall be on a competitive basis.

22.3.5 Unless otherwise agreed in a Yukon First Nation Final Agreement, participation of Yukon Indian People in **employment opportunities** pursuant to 22.3.3.1 and 22.3.3.2 shall be based on appropriate qualifications or experience.

10 CHAPTER 22 YUKON ASSET CONSTRUCTION AGREEMENT

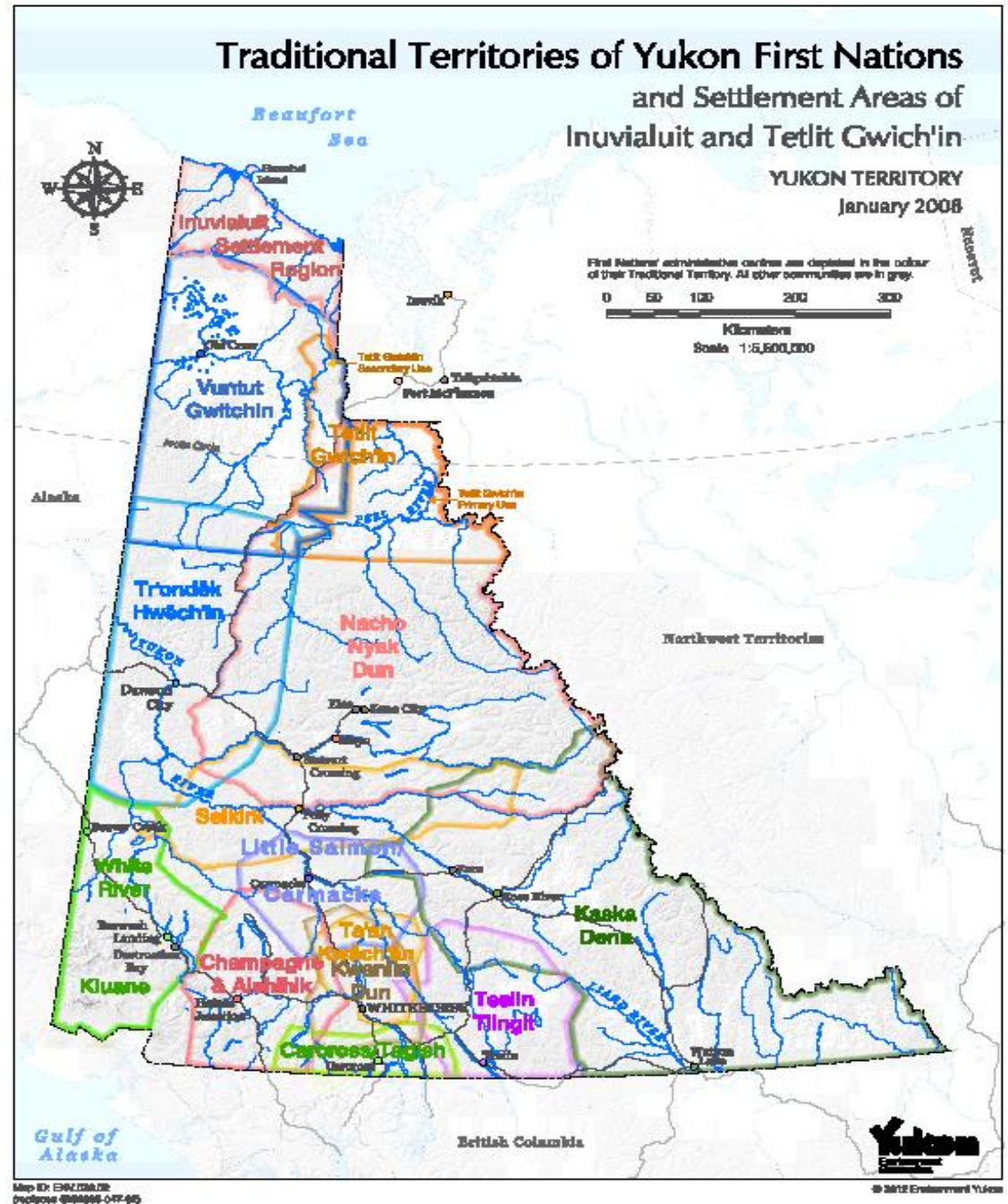
- Yukon Asset Construction Agreements are negotiated under Section 22 of some self-government agreements and are designed to provide opportunities for training, employment, new business or investment for the qualifying First Nation. A YACA opportunity is triggered when the Yukon government intends to construct an asset within the Traditional Territory of the qualifying First Nation.
- Through these negotiations, the First Nation negotiate sole-source contracts for portions of the projects, possibly have assets built on settlement land and negotiate other benefits as long as they relate to the project and help the First Nation build capacity and create employment.

|| CHAPTER 23 CROWN ROYALTY REVENUE SHARING

- 23.2.1.1 the Yukon shall, subject to 23.2.2, pay to YFNs, annually, an amount equal to,
 - (a) 50 percent of the first two million dollars of any amount by which the Crown Royalty exceeds the Yukon First Nation Royalty, in respect of that year, and
 - (b) 10 percent of any additional amount by which the Crown exceeds the Yukon First Nation Royalty in respect of that year.
- In general, the Yukon portion of royalties revenues collected on crown land are shared 50/50 with Yukon First Nations,
- Royalties collected from settlement A lands are given 100% to that First Nation (example Capstone mine royalties got to SFN)
- Mineral royalties range from 3-12% of annual mine net profits

12 TRADITIONAL TERRITORIES

- 11 Self Governing First Nations
- 3 Non Self Governing First Nations
- Overlapping traditional territories



13 SETTLEMENT LANDS

- **Category A lands**

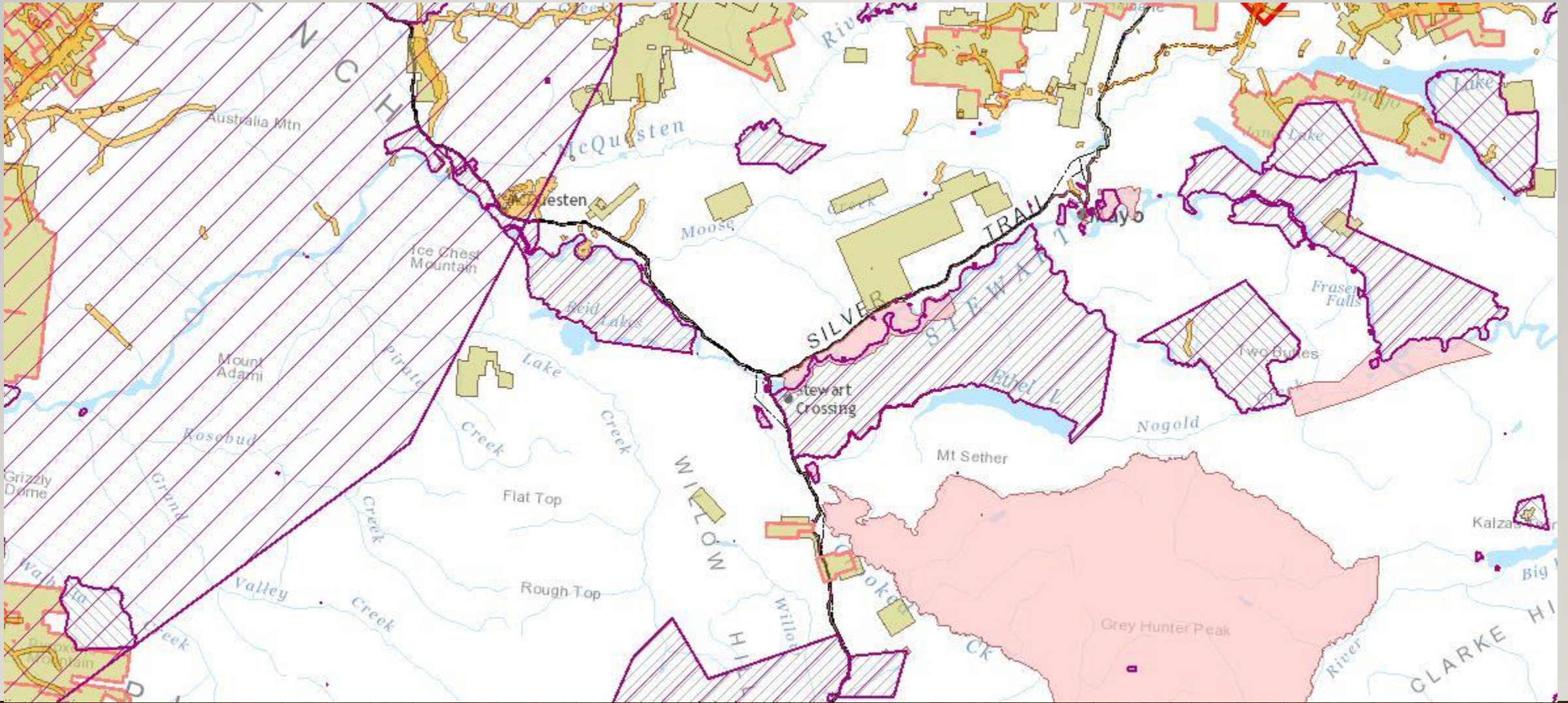
- settlement **land** where a **Yukon** First Nation has ownership of the surface and subsurface, including minerals. All staking, exploration and mining activity is governed by the First Nations for new mineral interests.

- **Category B Lands**

- settlement **land** where a **Yukon** First Nation has ownership of the surface. New and existing staking, exploration and mining activity are governed by the **Yukon** government.



YUKON MINING MAP VIEWER



15 WORKING WITH FIRST NATION GOVERNMENTS

- When you are working within the traditional territory or overlapping territory you are required to notify the local First Nation(s) that you are working within their traditional territory(s).
- Most Yukon First Nations have written communication protocols for initiating contact and ongoing communications
- Most Yukon First Nations has also developed mineral exploration and construction agreement procedures and guidelines

16 COMMUNICATION – SAMPLE NNDFN INITIAL CONTACT

1. Request a meeting, in writing, with Chief and Council including a copy to the Lands and Resources Department. Included in the package there should be a briefing note with information about the company, the proposed project and the associated timelines.
2. Council will ask the Lands and Resources Department to review the information and make a recommendation to Council to either meet with the company or not to meet with the company.
3. Chief and Council will make a decision based on the Lands and Resources Department recommendation regarding a meeting with the company.
4. If the decision is made to meet with the company the Lands and Resources Department will be directed to develop questions for the meeting with the Company and to identify if any additional information is needed. They will also draft a letter of response for Chief and Council to send to the Company.
5. Chief and Council will send the letter to the Company with the associated request for information
6. Once all of the information has been received Chief and Council will identify a time and date for a meeting and the Company will liaise with the Executive Assistant to coordinate a meeting. Council will have a series of pre-selected dates in their schedule to meet on economic initiatives. Every effort will be made to schedule dates within this framework.

17 COMMUNICATION – SAMPLE NNDFN INITIAL MEETING

If a meeting is arranged the following order will be followed.

1/ Company Presentation

2/ Questions and Answers

3/ Chief and Council explains the follow up process

i. Internal discussion (involving the Lands and Resources Department

ii. Chief and Council will decide formally on the proponent's project by way of a Council motion, and will send a letter to the proponent identifying their decision and next steps if required.

18 COMMUNICATION – SAMPLE NNDFN FORMAL ENGAGEMENT

If the project is consistent with goals and interests of the First Nation then the Company will be asked to:

1/ Contact the negotiation team to start the negotiation process and work toward the development of a cooperative agreement for Chief and Council consideration.

2/ Continue the flow of information and discussion with NND Lands and Resources Department regarding the formal assessment and permitting processes (YESAA, land use permitting etc.) and seek NND input prior to the submission of assessment and permitting applications

3/ Work toward reconciling any differences prior to the submission of applications

19 AGREEMENT TYPES

Typically there are at least two types of agreements involved between the proponent and the First Nation. These are:

- Exploration agreement to deal with pre-construction activities involved with exploration (often accessed by existing road/trail/aerial access) and advanced exploration (greater environmental and socio-economic impact)
- Project agreement to deal with activities related to the construction, operation, closure, remediation. These agreements are commonly called IBA's (Impact Benefit Agreements) or CBA's (Comprehensive Benefit Agreements) or just PA's.
- The agreements can overlap, as often operating mines continue exploration activities that require their own agreement.

20 AGREEMENT GUIDING PRINCIPLES - I

The following is a sample of 9 guiding principles used by Yukon First Nation actions and decision making for resource projects:

Stewardship. The FN has a responsibility to care for and protect its Settlement Lands and other lands and resources throughout its traditional territory for future generations. This responsibility, above all others, will guide the participation decisions of the FN with respect to proposed mining activities and projects

Partnership. The FN wants to enter into resource agreements with mining proponents to carry out mining activities on Non-Settlement Land in its traditional territory in order to establish mutually beneficial partnerships.

Consent. A mining proponent must obtain the consent of the FN if he wishes to undertake mining activities on its Category A Settlement Land or to use or cross its Settlement Land with respect to a new mineral right.

Traditional knowledge. All projects within NND traditional territory will be subject to appropriate land and environmental studies which may include a traditional knowledge study in the project area.



21 AGREEMENT GUIDING PRINCIPLES -2

Environmental matters. By entering a resource agreements, the FN is not giving up its right to review, comment and approve or not, any environmental studies, permit applications or environmental monitoring regimes related to a project.

Duty to consult. The fact that the FN may have entered into a resource agreement with respect to a project, does not in and of itself, relieve the Crown of its duty to consult and, where appropriate, accommodate the FN's concerns and interests. Moreover, the duty to consult is not discharged or fulfilled by any review conducted under the *Yukon Environmental and Socio-Economic Assessment Act* (YESAA).

Meaningful provisions. In negotiations with the FN, proponents are expected to negotiate agreements that contain meaningful provisions - not token "best efforts" clauses.

Capacity-building. Enhancing the capacity of FN citizens, businesses, government and community is a key objective of FN involvement in mining activities and projects in their traditional territory.

Funding and support for the FN. The FN's participation in resource agreement negotiations will require access to legal, technical, negotiation and community consultation expertise. proponents have an obligation to ensure the FN has the required reasonable funding for all aspects of the resource agreement negotiation process.

22 EXPLORATION AGREEMENT - SAMPLE CONTENT

- set out non-derogation provisions confirming that the agreement does not define, change or undermine the aboriginal and treaty rights, titles and interests of the FN and its citizens;
- provide a detailed description of the project area and the exploration activities;
- set out interim measures including employment and business opportunities;
- set out the environmental impact mitigation measures the proponent will take;
- deal with compensation and financial matters, such as the granting of an equity interest to the FN in the project or the proponent's company;
- ensure capacity for the FN to be consulted and to conduct due diligence with respect to the exploration activities; and
- contain commitments with respect to the negotiation of a project agreement if the project proceeds to the mine construction and operation stage



23 POST EXPLORATION AGREEMENT

There is a need to set out the terms and conditions for negotiation of a project agreement if the project advances past the exploration stage. This is often done using a Memorandum of Understanding (MOU). It would typically include the following:

- interim measures for benefits while a project agreement is being negotiated;
- sets the agenda, topics and schedule for the negotiation of a project agreement; and
- identifies negotiation funding to support NND participation in the negotiation of a project agreement.

24 PROJECT AGREEMENT – SAMPLE CONTENT I

A project agreement will address the following:

Non-derogation. Provisions to confirm that the terms conditions in the project agreement do not prejudice, limit or derogate from the FN's treaty and aboriginal rights, titles and interests.

Environmental protection. mitigation. monitoring and reporting. To establish and promote measures intended to protect the environment and minimize the adverse environmental effects of the project.

Consultation. To establish a consultation process and promote effective communication and development of measures to minimize the effects of the project on the aboriginal and treaty rights of the FN and its citizens. To include measures to protect and conserve all cultural heritage, sacred sites, archaeological sites and specimens that may be impacted by the activities or projects.

Community well-being. If the proposed activities or projects have the potential for adverse impacts on the wellness of the FN's cultural and community's socio-economic well-being, the proponent must confirm its commitment to work with the FN to take concrete steps to protect cultural and community well-being. This may include funding for socio-economic and health baseline studies.



25 PROJECT AGREEMENT – SAMPLE CONTENT 2

Education and training. Provisions to provide ongoing opportunities for FN citizens to become qualified for employment opportunities during all phases of the project. Should address specific commitments to provide pre-employment training (such as life skills), on-the-job training, and apprenticeship opportunities to the FN citizens in order to achieve the employment objectives of the agreement. Support for the FN education system may include scholarships, bursaries and support for stay-in-school programs.

Employment opportunities. Provisions to enable FN citizens to secure employment during all phases of the project, at all job levels, and to reduce barriers to FN employment on the project. Employment provisions must address requirements for employment, retention and advancement of FN employees. Employment opportunities must include first opportunity for qualified FN citizens.

Business Opportunities. Provisions to maximize the benefit FN citizens and their businesses from business opportunities associated with all phases of the project. To include provisions for set-asides and first bidding opportunities

Financial participation. Lump sum or periodic payments for agreement implementation costs, legacy funding for community wellness programs



26 PROJECT AGREEMENT – SAMPLE CONTENT 3

Revenue sharing. Provisions to provide for the sharing of a portion of the wealth generated by the project which may be negotiated as a share of the revenues (net smelter return or royalty) or of the profits of project at the operational stage.

Equity participation. The FN may choose to acquire equity interest through the acquisition of shares or warrants, the establishment of a joint venture, ownership in the real assets, property or some other form.

Compensation. Compensation for interference with aboriginal and treaty rights must be provided at all stages of a project. Compensation must be for more than direct losses and may include interference and loss of use compensation. Establishment of compensation fund for impacted FN citizens, such as trappers and harvesters.

Workplace conditions. Provisions to promote a workplace and working conditions that are safe, healthy and supportive of FN employees and which are respectful and supportive of language and culture of the NND.

Implementation. To set out implementation processes that will guide the ongoing relationship between the parties, including a dispute resolution process. Establishment of an implementation committee to guide and monitor

27 OTHER AGREEMENTS

For larger projects there may well be several other agreements to be negotiated involving the First Nation and :

- Federal and/or Territorial Government for funding of First Nations capacity building, training, economic development opportunities related to the project
- Government to government agreements related to project activities
- Agreements with other Yukon First Nations and/or their business corporations
- Financing agreements (investments/grants/loans/loan guarantees)

28 PERMITTING AND LICENSING

The following is a list of potential permits and licensing activities that may need to be completed prior to start of work on the land or property:

- YESA assessment (4 levels of assessment possible) and issuance of a positive screening report
- Issuance of a Decision Document by the decision body(s) prior to issuing any permits:
 - Land Use permit(s) or license of occupation
 - Building permit(s)
 - Camp permit
 - Highway ROW and/or access permit
 - Water license
 - Electrical/mechanical permits

29 WORKING WITH FIRST NATION BUSINESSES I

- Yukon First Nations typically have their own business arm. These are usually called the respective FN Development Corporation.
- There may also be FN owned or controlled companies
- Depending on the terms negotiated or agreed to with Chief and Council the proponent may be required to work with these entities throughout the duration of the project and involved them in :
 - Community meetings
 - Training & Employment opportunities
 - Contracting opportunities such as equipment leasing, construction, care & maintenance contracts

30 WORKING WITH FIRST NATION BUSINESSES 2

- Each First Nation Dev Corp may be structured differently but they generally have some or all of the following business models in use:
 - Direct 100% ownership
 - Partial ownership - <50% (minority) and >50% majority
 - Limited Partnerships
 - Joint Ventures
 - Revenue sharing agreements
- Under most CBA agreements there is a requirement for a FN business registry that lists the FN owned or controlled companies that the proponent must recognize and adhere to agree upon contracting obligations that may include early notice of contracting opportunities/tenders, sole sourcing of contracts up to a threshold and meeting FN content requirements in evaluating tenders

3 | SUSTAINABLE DEVELOPMENT & ENVIRONMENTAL STEWARDSHIP

- A good definition of sustainable development, that was devised by the Brundtland Commission in 1987, is “**development that meets the needs of the present without compromising the ability of future generations to meet their own needs**”
- The World Federation of Engineering Organizations defines environmental stewardship as “**the wisest use of the finite resources in nature to produce the greatest benefit while maintaining a healthy environment for the foreseeable future**”.
- Working with Yukon First Nations today requires proponents and engineers to follow many of the current guidelines for best practice for sustainable engineering recently adapted by Engineers Canada

32 GUIDELINES FOR SUSTAINABLE ENGINEERING

6/10/2020

1. Should maintain and continuously improve awareness and understanding of environmental stewardship, sustainability principles and issues related to their field of practice.
2. Should use expertise of others to adequately address environmental and sustainability issues and enhance understanding and improve practices.
3. Should incorporate global, regional and local societal values applicable to their work.
4. Should establish mutually agreed sustainability indicators and criteria for environmental stewardship the earliest possible stage in projects and evaluate these periodically against performance targets.
5. Should assess the costs and benefits of environmental protection, eco-system components, and sustainability in evaluating the economic viability of the work.
6. Should integrate environmental stewardship and sustainability planning into the life-cycle planning management of activities that impact the environment, and should implement efficient, sustainable solutions.
7. Should seek and disseminate innovations that achieve a balance between environmental, social and economic factors while contributing to healthy surroundings in the built and natural environment.
8. Should become engaged in a leadership role in the ongoing discussion of sustainability and environmental stewardship and solicit input from stakeholders and accredited experts in an open and transparent manner.
9. Should assure that projects comply with regulatory and legal requirements by the application of available, economically viable technologies and procedures.
10. Should implement risk mitigation measures in time to minimize environmental degradation where there are threats of serious or irreversible damage but a lack of scientific certainty.

- <https://cyfn.ca/agreements/together-today-for-our-children-tomorrow/>
- <https://www.cyfn.ca/history/history-of-land-claims/>
- <https://www.cyfn.ca/agreements/umbrella-final-agreement/>
- Yukon FN traditional territory map <http://www.env.gov.yk.ca/maps/view/detail/1/10/448>
- Yukon Mining Map Viewer website <https://mapservices.gov.yk.ca/Mining/>
- YESAB website <https://www.yesab.ca/>
- Polytechnique Montreal on-line course **SDES101.3 : Engineers Canada – Sustainability in practice**
- International Council on Mining & Minerals website <https://www.icmm.com/website/publications/pdfs/mining-principles/mining-principles.pdf>
- TRC Calls to Action website http://trc.ca/assets/pdf/Calls_to_Action_English2.pdf
- <https://www.un.org/development/desa/indigenouspeoples/declaration-on-the-rights-of-indigenous-peoples.html>