

# NEGOTIATION PROTOCOL AGREEMENT

## CONCERNING THE SPUZZUM INDIAN BAND CNR RIGHT OF WAY

BETWEEN:

**The Spuzzum Indian Band**, a “band” within the meaning of *the Indian Act*, as represented by its Council

(the “First Nation”)

AND:

**Her Majesty the Queen in Right of Canada**, as represented by the Minister of Crown-Indigenous Relations

(“Canada”)

WHEREAS:

- A. The First Nation submitted a specific claim to Canada on April 2, 2015, regarding the grant by the Federal Crown to the Canadian Northern Pacific Railway (“CNPR”), which became part of the Canadian National Railway (“CNR”), of a right of way over 1.26 acres of Chapman’s Bar IR 10, and alleging that Canada failed to confirm Chapman’s Bar IR 10 as a reserve until 1930, granted an excessively wide right of way and failed to compensate the Band for 0.63 acres of the right of way over Chapman’s Bar IR 10 (the “Claim”).
- B. By letter dated February 15, 2019, Canada accepted the Claim for negotiation under the Specific Claims Policy on the basis set out in that letter of acceptance, which is attached hereto as Schedule “A”.
- C. On September 1, 2020, the council of the First Nation passed a resolution, a copy of which is attached hereto as Schedule “B”, agreeing to enter into negotiations with Canada.
- D. The parties wish to negotiate a settlement of the Claim on a without prejudice basis rather than litigating the Claim before the Specific Claims Tribunal, the courts or any other quasi-judicial board or tribunal.

**THE PARTIES THEREFORE AGREE AS FOLLOWS:**

**1. CONFIDENTIAL, WITHOUT PREJUDICE AND PRIVILEGED**

1.1 Subject to subsection 1.2:

- (a) all admissions, information and communications, oral or written, or any electronic recording of a negotiation meeting, arising from or obtained in the course of negotiations, including Canada's letter accepting the claim for negotiation, are confidential, without prejudice and subject to settlement privilege and such admissions, information, communications and recordings will not be tendered as evidence in any proceeding before the Specific Claims Tribunal, the courts, or any other quasi-judicial board or tribunal unless agreed by the parties in writing or unless the parties have waived confidentiality and privilege in writing;
- (b) all admissions, information, communications, and recordings remain without prejudice and subject to settlement privilege, even if the confidentiality of any of those admissions, information, communications or recordings is not maintained or preserved by a party; and
- (c) the parties will share information with any other First Nation identified as having a beneficial interest in the Claim if that First Nation agrees that the information is confidential, without prejudice and subject to settlement privilege.

1.2 For greater clarity, a party may tender into evidence in a subsequent proceeding before the Specific Claims Tribunal, the courts, or other quasi-judicial board or tribunal any information independently developed by that party, even if exchanged during the course of negotiations, provided that such information does not reference or contain any privileged information of the other party or disclose any compromise by the other party.

1.3 Notwithstanding this Negotiation Protocol Agreement, admissions, information, communications, and recordings arising from or obtained in the course of negotiations may be subject to the *Access to Information Act*, the *Privacy Act*, or other legislation.

1.4 Notwithstanding this Negotiation Protocol Agreement, nothing prevents Canada from fulfilling its legal obligation, arising from section 35 of the *Constitution Act, 1982*, to consult with First Nations that may be adversely affected by the outcome of these negotiations. Canada will only disclose such information as is necessary to fulfill its section 35 legal obligation to consult and will advise the First Nation in advance of the information that Canada intends to disclose.

- 1.5 Nothing in this Negotiation Protocol Agreement prevents a party from consulting in detail with their principals about the course of negotiations. For the First Nation, the meaning of "principals" includes any member on its Band List. For Canada, the meaning of "principals" includes any department or officials within the Government of Canada.
- 1.6 Any party may seek the assistance of any person with special expertise or knowledge to assist in the negotiations, and may provide such persons with confidential or privileged information for this purpose, provided that such persons provide a written undertaking that they will not use the information for any other purpose.
- 1.7 Each party reserves the right to plead any and all claims, rights, and defences available to them in the event negotiations do not produce a final settlement and litigation ensues.

## **2. NEGOTIATION PROCESS**

- 2.1 The parties will advise each other in writing of the composition of their respective negotiation teams, including any changes to those teams subsequent to the commencement of negotiations.
- 2.2 Negotiation meetings will be held on dates and at locations agreed upon by the parties. Where appropriate, technological means of communication such as audio and video conferencing, as well as electronic mail, may be used as part of the negotiation process.
- 2.3 Negotiation meetings must not be electronically recorded or take place in the presence of the media unless mutually agreed upon by the parties in writing.
- 2.4 Electronic copies of documents exchanged for signature during the negotiation process, including this Negotiation Protocol Agreement, will be considered originals. This does not extend to copies of a final settlement agreement.
- 2.5 Any party may withdraw from negotiations at any time upon giving written notice to the other party.

## **3. NEGOTIATOR'S AUTHORITY & RATIFICATION**

- 3.1 Each negotiator's authority is limited to recommending a settlement to their respective principals. Any settlement reached is not binding upon any of the parties unless and until the settlement agreement has been duly ratified by the First Nation, executed by authorized representatives of the parties, and become effective according to its terms.

**4. AMENDMENT OF NEGOTIATION PROTOCOL AGREEMENT**

- 4.1 No change or modification of this Negotiation Protocol Agreement is valid unless it is in writing and signed by each party.

**5. NON-BINDING NEGOTIATION PROTOCOL AGREEMENT**

- 5.1 Nothing in this Negotiation Protocol Agreement is to be interpreted as legally binding or enforceable between the parties except that all parties shall be entitled to rely upon and enforce section 1 in any action, claim, or judicial or quasi-judicial proceeding of any kind, both before and after the termination of negotiations.

**6. EFFECTIVE DATE**

- 6.1 This Negotiation Protocol Agreement was entered into on the date it was last signed by the parties and may be signed in counterpart.

Signed on \_\_\_\_\_  
on behalf of **HER MAJESTY THE  
THE QUEEN IN RIGHT OF CANADA,**  
as represented by a negotiator for  
the Minister of Crown-Indigenous  
Relations

\_\_\_\_\_  
Deanna Sitter  
Negotiator for Canada

Signed on July 26 2021  
on behalf of **Spuzzum Indian Band,**  
as represented by its Chief

\_\_\_\_\_  
Chief James Hobart  
Spuzzum First Nation

SCHEDULE "A"



Affaires autochtones  
et du Nord Canada

Indigenous and  
Northern Affairs Canada

Sous-ministre adjoint principal

Senior Assistant Deputy Minister

Ottawa, Canada  
K1A 0H4

**WITHOUT PREJUDICE**

FEB 15 2019

Chief James Hobart  
Spuzzum First Nation  
Site 3, C 11, RR 1  
YALE BC V0K 2S0

Dear Chief Hobart:

I am writing to advise you that the assessment of the Spuzzum First Nation's CNR Right-of-Way through 1.26 Acres of Chapman's Bar IR 10 specific claim has been completed, and to notify you of the decision of the Minister of Crown-Indigenous Relations to negotiate a settlement of the claim.

I understand that the Spuzzum First Nation alleges that Canada breached its fiduciary obligations when it failed to protect 1.26 acres of land at Chapman's Bar, and failed to complete the reserve creation process in a timely manner. I also understand that the Spuzzum First Nation alleges that, Canada failed to investigate the error that it had committed at Chapman's Bar when it learned from the Canadian Northern Pacific Railway in 1911, that a reserve had been surveyed and further failed to properly investigate the matter when the subject came up before the Royal Commission on Aboriginal Affairs. Although not explicitly stated, I also understand that the Spuzzum First Nation alleges that Canada failed to minimize impairment, and set aside IR 10 in a timely manner which resulted in an excessive right-of-way, for which no compensation was received, or any additional compensation for injurious affection and severance.

For the purposes of negotiating a settlement of this claim, it is Canada's view that it breached a fiduciary obligation when it failed to obtain compensation on behalf of the Spuzzum First Nation for the CNR's taking of a 0.63 acre right-of-way for railway purposes. Canada would like to build a common understanding of the claim, and negotiate a settlement with the Spuzzum First Nation that satisfies both the Spuzzum First Nation and Canada.

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**Canada**

I would welcome the opportunity to discuss further the following allegations in the spirit of ensuring the claim is settled to our mutual satisfaction that Canada failed to preserve and protect the First Nation's interest in the 1.26 acre parcel when it failed to minimize impairment, and that Canada failed to set aside IR 10 in a timely manner, resulting in the Canadian Northern Pacific Railway acquiring an excessively wide railway right-of-way for which the Spuzzum First Nation never received additional compensation for injurious affection and severance.

It is noted that, as part of any final settlement of this specific claim, Canada will seek that the Spuzzum First Nation release Canada from any and all liability in respect to the entirety of the Canadian Northern Pacific Railway Right-of-Way Through 1.26 Acres of Chapman's Bar IR 10 specific claim, and indemnify Canada against any claim or demand with respect to the specific claim. Canada will also require a Solicitor's Certificate that states the Spuzzum First Nation was provided legal advice with respect to the claim, including its negotiation and settlement.

Please be advised that the negotiation of the settlement of the claim will be undertaken on a confidential, privileged, and without prejudice basis.

Although there is no deadline for negotiations, to facilitate the timely resolution of specific claims, Canada is undertaking the settlement of all specific claims based on a three-year operational framework which commences on the date of this notice. Therefore, if the Spuzzum First Nation decides to accept Canada's offer to negotiate a settlement of the claim, it would be appreciated if a Band Council Resolution confirming the Spuzzum First Nation's decision to negotiate the claim be sent to Canada as soon as possible.

Please send the Band Council Resolution to Ms. Natalie Neville, Senior Director at:

Negotiation Directorate  
Specific Claims Branch  
Crown-Indigenous Relations and Northern Affairs Canada  
10 Wellington Street, Room 1610  
GATINEAU QC K1A 0H4  
Telephone: (819) 994-7440 / FAX: (819) 953-9618

Should you have any questions concerning the basis of acceptance of your claim for negotiation, please contact Ms. Susan Sleg, Portfolio Manager, British Columbia and Yukon Negotiation Team, directly at 604-775-7152.



Before you incur negotiation costs, including legal costs, I encourage you to obtain information, details and procedures for loans under the Native Claimants Loan Program by contacting Mr. Kevin Clement, Director at:

Negotiation Support Directorate  
Crown-Indigenous Relations and Northern Affairs Canada  
10 Wellington Street, 8<sup>th</sup> Floor, Office G1  
GATINEAU QC K1A 0H4  
Telephone: (819) 997-9757 / FAX: (819) 953-9855

Please be further advised that this letter is written on a 'without prejudice' basis and should not be considered an admission of fact or liability by the Crown. In the event this claim becomes the subject of litigation, the government reserves the right to plead all defences available to it, including technical defences such as limitation periods, strict rules of evidence or the doctrine of laches. Further, you should be aware that Government of Canada files are subject to the *Access to Information Act* and the *Privacy Act*.

I send my best wishes, and look forward to a settlement of this claim that is fair and acceptable to both the Spuzzum First Nation and Canada.

Sincerely,



Joe Wild  
Senior Assistant Deputy Minister  
Treaties and Aboriginal Government

c.c.: Clarine Ostrove

## SCHEDULE "B"



**SPUZZUM  
FIRST NATION**

*Our Land. Our Future. Our Success. Forward Focused Nation Building.*

16500 Main Road, Spuzzum, BC V0K 2S1  
Office: 604-863-2395 / Fax: 604-863-2218  
www.spuzzumnation.com

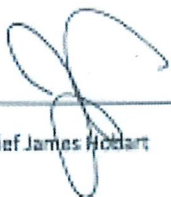
### BAND COUNCIL RESOLUTION

The Council of the: SPUZZUM FIRST NATION		
Date of execution: Sept 1 <sup>st</sup> 2020	Province: B.C.	Resolution Number: 2020-09-01

#### DO HEREBY RESOLVE:

WHEREAS by letter dated February 15, 2019, Canada accepted Spuzzum First Nation Chapman's Bar IR 10 CNR Right of Way Specific Claim for negotiation ("the Claim");

BE IT RESOLVED THAT Spuzzum First Nation hereby agrees to enter into negotiations towards a settlement of the Claim with Canada.

  
\_\_\_\_\_  
Chief James Hobart

A Quorum for this  
Band consists of:

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\_\_\_\_\_  
Councilor Diana Stromquist

  
\_\_\_\_\_  
Councilor Angie Mitchell