DISCUSSION PAPER

MIAWPUKEK BAND

SELF-GOVERNMENT FRAMEWORK

prepared by

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FRAMEWORK AGREEMENT DISCUSSION PACKAGE

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MIAWPukek Indian Band – Evidence of Community Support

The MIAWPukek band, within DIAND’s and Health and Welfare’s devolution policy, is highly independent and self-governing. We are now prepared to enter the next phase, that being legislative framework negotiations. The MIAWPukek band council has undertaken a number of steps to ensure band members are informed of the move towards greater self-government.

During the summer of 1992, the band council released a short paper entitled “understanding the concept of self-government.” The paper explained the issue of self-government as being presented in the media (Charlottetown accord) versus the negotiated legislated form of self-government. The paper further elaborated on the MIAWPukek band’s degree of self-government at present (multi-year funding agent, Indian Act) and future expectations.

The media coverage of the constitutional talks, especially the issue of inherent self-government during the summer of 1992, served to further inform band members on the issue of self-government.

After the release of the short paper four community meetings were called to address the issue of community self-government. The discussion centered around the constitutional talks and self-government as provided for in the Charlottetown Accord. Members present were surprised to learn of the restrictions placed on our own self-government and indicated strong support for greater self-government.

After the community meeting a questionnaire was circulated to every household. Out of the -- households -- completed the questionnaire. The questionnaire was designed to gauge band members’ understanding of the concept plus to gauge band members’ acceptance of greater self-government for the MIAWPukek band. --% of the households completing the questionnaire were in favor of furthering the community’s self-determination.

A presentation was also made at the band school to inform teachers and students on the issue. Furthermore, one-on-one discussions with band members are ongoing. The band council will provide another presentation on community self-government at the upcoming annual assembly of the band. The assembly will further enable band members to raise any questions or concerns they may have.
The band membership of -- has always been supportive of community self-government. Upon official recognition, the government of Conne River has taken upon itself the task of independent delivery of programs and services. This, coupled with historical independence, has instilled a strong sense of autonomy and self-determination in band members. Often band members are of the view that the community is self-governing, notwithstanding Indian Act restrictions, which are not experienced on a day-to-day basis.
MIAWPUKEK BAND SELF-GOVERNMENT

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FRAMEWORK AGREEMENT - MIAWPUKEK BAND

A. PURPOSE

This discussion paper presents the major elements that the Miawpukek band council wish to negotiate in relation to its self-government initiatives. The elements and the position relating to each element are the result of ongoing discussions by chief and council and consultation with the band membership.

B. BACKGROUND

1.0 Community Profile

The Miawpukek Indian reserve is situated on the south east coast of Newfoundland. The Miawpukek band, also known as the Conne River Band, was declared to be a band on 28th June 1984 by P.C. 1984 2273. The reserve consists of 670 living on reserve.

In 1985 the band entered a multi-year funding agreement which enables the band to deliver a broad range of programs. Accountability under the agreement is primary to the band membership. The multi-year agreement was renewed in 1992. The Miawpukek Band has also entered into a five-year Health Transfer Agreement whereby the band obtains funds to deliver a wide range of health services. The health services are delivered through the Conne River Health and Social Sciences Department. This department is directly accountable to chief and council (see Organization Structure).

The Miawpukek Band Council, through its two major funding agreements, is responsible for the delivery of a wide range of services. The band has developed a highly efficient management structure and system. The Miawpukek Band is considered to be one of the most “self-governing” bands in the Atlantic region. The present degree of self-government is within DIAND’s devolution policy. The Miawpukek band is also pursuing a number of economic development opportunities.

2.0 Elements for Negotiation

The Miawpukek Band has prepared a draft constitution which encompasses many of the elements presented in this paper. The elements as presented in the constitution and this paper are continually being developed
and are subject to change. A constitution is a fundamental instrument for every nation’s functioning. It contains provisions of basic values, the operational structure of the government, political responsibility, powers, the method of electing leaders, the decision-making process, the citizens’ rights and freedoms, citizenship criteria and rules, appeal mechanism for members, the means of resolving conflicts and the means by which it can be amended. The following are matters proposed for negotiation. The matters are to be incorporated into the band’s constitution.

C. PROPOSED MATTERS FOR NEGOTIATION

1.0 STATUS AND CAPACITY

The Miawpukek band proposes to negotiate the legal capacity of a natural person including the ability to:
- enter into contracts or agreements;
- acquire and hold property or any interest therein;
- sell or otherwise dispose of property or any interest therein;
- borrow money, lend money and guarantee loans;
- sue or be sued;
- form corporations;
- do such other things that are conducive to the nature of its rights.

2.0 STRUCTURES OF GOVERNMENT

2.1 Institutions of Government

Proposal:

The Miawpukek Band proposes a representative form of government. The executive, judicial and legislative powers of the government will be defined in the constitution and/or enabling legislation which will allow for collective and individual rights and be consistent with the Charter of Rights and Freedoms.

The constitution will set out the powers of each branch of government and the areas of jurisdiction of each government institution. The constitution which will be in writing may:
establish the composition of the governing bodies, the terms of office and tenure, election procedures, appointment and dismissal of members to/from the governing bodies;

- establish the procedures and processes to be followed by the governing body in exercising its powers and duties;

- define the broad parameters of legislative powers;

- provide for a system of financial accountability by the Miawpukek Indian Band

- include the membership code; and

- set out the amending powers of the constitution

The Miawpukek Indian Band will confer, on the elected band council and Chief, the power to make band laws for the effective and efficient governance of the community. Band laws will be drafted establishing administrative bodies necessary for carrying out the responsibilities and requirements of the band government.

Individual recourse to band government decisions would be to the appropriate appeal mechanism. The second level of appeal would be the elders' council. This council would consider the merits of each case and make representation to the elected band council.

2.2 Procedures for Elections

Proposal:

The band proposes to be governed by a duly elected Chief and council. The Chief will be elected by a majority of the electorate for a two-year term as stated in the election regulations and procedures which will be set out in the band constitution.

3.0 MEMBERSHIP

Proposal:

The band proposes to determine its own membership which will be outlined in the membership code of the band constitution.
4.0 MANAGEMENT OF LANDS AND RESOURCES

4.1 Land Title and Management

Proposal:

The band proposes that title to the reserve lands remain with the Crown. The band wishes the federal government to retain a role in land management, however the legislative powers of the band council will include the power to enact laws regarding the use, management and administration of lands and resources. The band shall maintain a land registry.

4.2 Non-Renewable Resources

Proposal:

The Miawpukek Indian Band proposes to delegate to the band council the power to make laws regarding the disposition and control of all natural resources including the granting of permits and removal of minerals from band lands.

4.3 Renewable Resources

Proposal:

The Miawpukek Indian Band proposes to assume control over all renewable resources on its lands. This will include the right to enact and enforce band by-laws respecting fishing and authority over the beds of streams, rivers/lakes, fronting on band lands. It will also include control over hunting on reserve lands.

5.0 FINANCIAL AGREEMENTS

Proposal:

It is proposed that the Miawpukek band, through its band council, will be solely responsible for the collection, control and management of both band revenue and capital monies. Financial accountability to the Government of Canada will continue. However, primary accountability will be to band membership.
The band proposes that the transfer of funds be governed through Parliament's right to give public funds away with limited accountability, reserving only the right to specify how such transfers are to be made. No detailed agreement, reporting or audit would be required, only assurance that the grant would go to whom it was intended.

6.0 IMPLEMENTATION

An implementation plan will have to form part of the self-government arrangements. This will be discussed during negotiations.

7.0 APPLICATION OF THE INDIAN ACT

Proposal:

Further application of the Indian Act will be determined during the process of negotiations. Pursuant to these negotiations, certain sections of the Indian Act will be replaced by the Miatpukek Band Self-Government Legislation.

Existing Situation:

All sections of the Indian Act currently apply to the band.

8.0 EDUCATION

Proposal:

The present bilateral agreement whereby the Province allows the Miatpukek band to operate the band-owned school within a culturally sensitive manner will continue and be incorporated into the framework agreement.

9.0 BUSINESS

Proposal:

The Miatpukek Indian Band wishes to negotiate legislative control of business activities on reserve and maximum participation in external decision-making bodies off-reserve.
10.0 ENVIRONMENT

Proposal:

The band proposes to negotiate legislative authority on-reserve to control environmental protection of land, water and air and to develop an integrated co-management program on adjacent lands. Land use planning and management, environmental assessments, waste management, air and water pollution are some of the topics which the band would like to see addressed.

11.0 HEALTH

Proposal:

In 1991 the band entered into a Health Transfer agreement with Health and Welfare Canada. The framework agreement will incorporate band control and delivery of health services as provided for under the transfer but at a greater degree of autonomy.

12.0 CHILD WELFARE

Proposal:

The band delivers child and family services by virtue of two bilateral agreements with the Province of Newfoundland. The Miawpukek band proposes to incorporate into the framework agreement provisions of the bilateral agreements along with amendments yet to be determined.

12.1 Band Policing

Proposal:

The Miawpukek band police presently enforce band by-laws and assist the local RCMP in criminal matters. The Miawpukek Band Council is presently negotiating with the Solicitor General of Canada and the Province of Newfoundland, Justice Department, to develop a policing agreement whereby the band police force assume total policing function on a graduated basis. The band council proposes that the agreement to be reached shall be incorporated into the framework agreement.
Justice System

Proposal:

The Miatapuke Band Council is proposing to negotiate with the Department of Justice in regard to implementing a Diversion Program on reserve. The Diversion Program will provide a community-based justice system whereby community justices give sentences to band members charged with certain summary convictions. The band proposes to incorporate any agreement in respect of a band justice program into the Framework Agreement.
FEDERAL PARAMETERS FOR

SELF-GOVERNMENT NEGOTIATIONS
PARAMETERS FOR SELF-GOVERNMENT NEGOTIATIONS

1. Negotiations are conducted without prejudice to treaty and aboriginal rights, existing or potential land claims or to future constitutional developments. The process is not intended to define, redefine or renegotiate aboriginal or treaty rights.

2. Community self-government arrangements will continue the special relationship between Indian people and the federal government.

3. Community self-government negotiations and/or arrangements will not alter the division of powers between the federal and provincial governments and will, through practical measures, attempt to accommodate Indian governments within the existing constitutional framework.

4. The negotiation of community self-government arrangements in areas which extend beyond the present reserve base and/or in which provincial legislation, regulations or standards are currently applicable, will require the cooperation and involvement of the provincial government concerned.

5. Community self-government arrangements must be compatible with the established principles, jurisdictions and institutions of government in Canada. For example, they must:

   i. conform with the Charter of Rights and Freedoms;

   ii. ensure political and financial accountability by the Indian government to the general community membership and;

   iii. recognize the rights of redress of citizens.

6. Financial arrangements will be within the resource levels available to the department and consistent with the historical levels of funding provided to that community.

7. Agreements-in-Principle and new self-government arrangements must be formally ratified by the community membership and the federal Cabinet.
8. Federal laws of general application will continue to apply under new community self-government arrangements except to the extent that these laws are inconsistent with the provisions of any legislation giving effect to the self-government arrangements.

9. Provincial laws of general application will continue to apply except to the extent that those laws are inconsistent with the terms of any treaty, the provisions of any legislation giving effect to the self-government arrangements, any other Act of the Parliament of Canada or a law of the community.

10. The negotiation of new community self-government arrangements will be conducted with Indian communities that occupy lands that are recognized as lands reserved for Indians or that hold blocks of land pursuant to comprehensive claims settlement. The population and geographical area over which the Indian government will exercise authority will be defined in the negotiation.