

Text Version of Agreement-in-Principle  
Relating to Tenure  
Between  
Tsuu T'ina Nation  
and  
Province of Alberta  
April 30, 2004

This Agreement made the 30th day of April, 2004.

**AGREEMENT IN PRINCIPLE  
RELATING TO TENURE**

**BETWEEN**

**TSUU T'INA NATION, being an Indian Band  
within the meaning of the *Indian Act***

("the Nation")

**AND**

**HER MAJESTY THE QUEEN IN RIGHT OF ALBERTA, as  
represented by the Minister of Transportation**

("the Minister")

together called "the Parties"

**PREAMBLE**

WHEREAS the Parties are negotiating with a view to concluding and implementing the Final Agreements relating to the Controlled Access Freeway, including the transfer to the Minister of an interest in the Project Lands for Highway and Utility Purposes;

AND WHEREAS the Parties have agreed that the Project Lands should not be reserve lands within the meaning of the *Indian Act* and or Lands Reserved for Indians within the meaning of section 91(24) of the *Constitution Act, 1867* for so long as they are used for Highway Purposes;

AND WHEREAS the Parties have agreed that the Province, and the public must, if the Project proceeds, have secure and uninterrupted access to the Project Land for Highway Purposes and Utilities Purpose, to the same extent as if the Project Lands had never been reserved for the Nation;

AND WHEREAS the Parties agree that the interest in the Project Lands necessary to achieve these goals should, if the Project proceeds, be transferred by the Governor in Council to the Minister pursuant to subsection 35(3) of the *Indian Act*;

AND WHEREAS the Parties have agreed in principle on the nature of the interest that should be so granted in order to achieve those goals;

AND WHEREAS the Parties have agreed that they will evidence their agreement in relation to this issue by entering into this AIP, which has been approved by the Nation Council and the Minister;

**NOW THEREFORE THE NATION AND THE MINISTER agree as follows:**

## **DEFINITIONS**

- 1) In this Agreement, including the Preamble, the following terms shall have the following meanings
  - a) “AIP” means this Agreement in Principle, including the Preamble and Appendix;
  - b) ”Controlled Access Freeway” means a highway which conforms to the standards in Appendix “A” to this Agreement;
  - c) “Federal Minister” means the Minister of Indian Affairs and Northern Development, or any successor thereto;
  - d) “Final Agreements” means the full, final and enforceable agreements that may be negotiated by the Parties and by such other government and other entities as may be necessary, and which may contain provisions relating to the development, financing, design, engineering, construction, operation, maintenance and decommissioning of the Project, including the acquisition and use of the Project Lands and the compensation to be provided to Her Majesty the Queen in Right of Canada, the Nation and others as consideration for the transfer of the Project Lands;
  - e) “Highway Purposes” means the construction, operation, maintenance, repair, improvement, reconstruction, replacement or removal of a Controlled Access Freeway by the Minister or his contractors or agents, and includes the construction, operation, maintenance, repair, improvement, reconstruction, replacement, or removal of any additional device, structure, equipment, thing, work or matter necessary or incidental thereto that is made, built, constructed, erected, extended, enlarged, repaired, maintained, improved, excavated, operated, reconstructed, replaced, or removed by the Minister or his contractor or agent and which is contained within the Project Lands;
  - f) “including” shall be deemed to be followed by the statement “without limitation” and neither of such terms shall be construed to limit any word or statement which it follows to the specific or similar items or matters immediately following it;

- g) “*Indian Act*” means the *Indian Act*, R.S.C. 1985 c. I-5 and regulations thereto, as amended or replaced from time to time, including for greater certainty any new legislation which may be passed to address Indian Band governance, reserve status and similar matters;
- h) “Party” means the Nation or the Minister, and Parties means both of them;
- i) “Project” means the Controlled Access Freeway and all associated and related facilities and structures within the Project Lands, and the use of the Project Lands for Highway Purposes and Utility Purposes;
- j) “Project Lands” means those lands which
  - i) currently form part of Indian Reserve No. 145,
  - ii) will be the subject of a Transfer of Administration and Control by the Governor in Council, and
  - iii) will be utilized for the Project.
- k) “Transfer of Administration and Control” means the authorization by the Governor in Council, pursuant to subsection 35(3) of the *Indian Act*, of the transfer of all right, title and interest of Canada in and to the Project Lands to the Minister for Highway Purposes and Utility Purposes, free and clear of all encumbrances, except:
  - i) mines and minerals shall be excepted from the transfer;
  - ii) any third party interests specified in the Final Agreements; and
  - iii) the Project Lands shall revert to Her Majesty the Queen in Right of Canada when the Project Lands are no longer used for Highway Purposes;
- l) “Utility Purposes” means the construction, operation, maintenance, repair, improvement, reconstruction, replacement or removal of any pipelines, wires, transmission towers, cable, fibre optics or other devices, equipment, structures, things or works for the purpose of transporting oil, gas, electricity, microwaves, telecommunications, water, storm water sewage, or any other form of energy or matter to, from, over, under or across the Project Lands as permitted by the laws of Alberta in force from time to time .

## Conditional Agreement

- 2) It is acknowledged and agreed that the agreement relating to the Transfer of Administration and Control reflected in this AIP cannot be implemented unless and until:
  - a) the Final Agreements are negotiated by the Parties, and are approved and executed by the Chief and Council of the Nation and the Minister in such manner as they deem necessary;
  - b) the Transfer of Administration and Control is approved by Nation citizens in a referendum satisfactory to the Nation and the Federal Minister, conducted in the manner provided by the *Indian Referendum Regulations* passed pursuant to the *Indian Act*;
  - c) the Transfer of Administration and Control is requested by a Band Council Resolution of the Chief and Council of the Nation;
  - d) the Federal Minister agrees to recommend the Transfer of Administration and Control to the Governor in Council, and the Governor in Council issues an order pursuant to subsection 35(3) of the *Indian Act*;
  - e) all permits and approvals required by law are obtained, whether relating to the environment, historical resources or otherwise.
- 3) Without limiting the foregoing, the Parties acknowledge that the matters to be negotiated and addressed in the Final Agreements include:
  - a) the exact legal description of the Project Lands, which lands must be surveyed by a Canada Land Surveyor and approved by the Parties and by the Federal Minister and the Governor in Council;
  - b) the compensation to be provided to the Nation or its designates for the Project Lands, and
  - c) covenants relating to non-interference by each of the parties with the lawful exercise by the other parties and those claiming by, under or through them of the rights granted to the others by the Final Agreements, including the rights of lawful users of the Project Lands and lawful users of such access as may be provided to and from Indian Reserve No. 145 from the Project Lands; and
  - d) such other provisions as may be agreed by the Parties.

## **Transfer of Administration and Control**

- 4) The Parties agree that the Final Agreements, if concluded, shall provide for all matters necessary to effect the Transfer of Administration and Control.
- 5) Without limiting the foregoing, the Nation agrees that it shall, subject to the completion of and as provided by the Final Agreements:
  - a) provide such Band Council Resolutions as may be necessary requesting that the Governor in Council take such steps as may be necessary to implement the Transfer of Administration and Control pursuant to subsection 35(3) of the *Indian Act*; and
  - b) take those steps which must be taken by the Nation to enable the Project Lands to be transferred to the Minister free and clear of all encumbrances for Highway Purposes and Utility Purposes, except only such encumbrances as may be permitted by the Final Agreements, including ensuring that the Project Lands are not subject to any lease, license or any other right of use or occupation in favour of any individual Nation citizen or other person or entity whatsoever.
- 6) For greater certainty, and without limiting the foregoing, the Nation agrees that:
  - a) the Transfer of Administration and Control shall provide the Minister and all other lawful users full, free and uninterrupted access to, from, over, under and across the Project Lands for Highway Purposes and Utility Purposes, for so long as the Project Lands are used for Highway Purposes and Utility Purposes; and
  - b) the Transfer of Administration and Control is intended to result in:
    - i) the removal of the Project Lands from “reserve” status within the meaning of the *Indian Act*;
    - ii) the removal of the Project Lands from the scope of “Lands reserved for the Indians” pursuant to section 91(24) of the *Constitution Act, 1867*;
    - iii) the application of provincial laws which do not apply on lands reserved for Indians, including laws relating to land which do not apply on reserve; and
    - iv) the removal of the Project Lands from the legislative authority of the Band Council of the Nation on lands reserved for the Nation, whether relating to traffic laws, trespass, taxation or otherwise.

### **Minister Covenants**

- 7) The Minister agrees that he shall, subject to the completion of and as provided by the Final Agreements:
  - a) acquire, use and permit the use of the Project Lands solely for Highway Purposes and for Utility Purposes;
  - b) take such steps as may be necessary to transfer the Project Lands to Her Majesty the Queen in Right of Canada when they are no longer used for Highway Purposes.
- 8) The Minister agrees that the Final Agreements, if concluded, are intended to and will provide for all matters necessary to ensure that:
  - a) a Controlled Access Freeway shall be built on the Project Lands after the Transfer and Administration and Control, as provided by the Final Agreements;
  - b) a Controlled Access Freeway shall be operated and maintained on the Project Lands at all times, save and except for any temporary closures pursuant to the *Public Highways Development Act*; and
  - c) the Nation, those authorized by the Nation and other lawful users of Indian Reserve No. 145 shall at all times be provided access to the Controlled Access Freeway to be located on the Project Lands, as and where specified in the Final Agreements.

### **Miscellaneous**

- 9) The Parties agree that if the Parties do not conclude the Final Agreements, subject only to approval by the Chief and Council of the Nation and the Minister in the manner provided by the Final Agreements, within thirty (30) days of receiving notice to that effect from any Party to the other Parties, this AIP shall terminate, and will be null and void and of no further force or effect in relation to any Party. The Chief and Council of the Nation and the Minister each agree with the other that termination of this Agreement shall not constitute grounds for any claim or cause of action for damages, costs or expenses of any kind arising from or relating to the matters dealt with in this Agreement, or the termination thereof.
- 10) This AIP constitutes the entire agreement between the Parties concerning the subject matter of the Agreement and no other understandings or agreements verbal or otherwise exist between the Parties.
- 11) This Agreement shall be subject to and governed by the laws of Canada and Alberta applicable thereto.

12) This Agreement binds and enures to the benefit of the successors and assigns of the Parties.

13) A word denoting gender applies equally to both genders.

14) Any noticed required or implied by this Agreement may be given, in writing,

To the Nation at:

Attention: the Chief  
Tsuu T'ina Nation  
9911 Chiila Boulevard  
Tsuu T'ina, AB T2W 6H6

To the Minister at:

Attention: the Minister  
c/o Executive Director, Aboriginal Affairs and Capital Planning  
3rd Floor, Twin Atria Building  
4999 98<sup>th</sup> Avenue  
Edmonton, Alberta T6B 2X3

Signed this 30th day of April, 2004.

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Her Majesty the Queen in Right of  
Alberta as represented by the Premier

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Tsuu T'ina Nation, as represented by  
Chief Sandford Big Plume

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Her Majesty the Queen in Right of Alberta  
as represented by the Minister of  
Transportation



## APPENDIX "A"

### **STANDARD OF THE CALGARY SOUTHWEST CONNECTOR CONTROLLED ACCESS FREEWAY**

**WHEREAS** the Parties are desirous of describing the initial construction commitment of the Minister;

**AND WHEREAS** the General Design Criteria are applicable to the Minister's initial construction commitment;

**AND WHEREAS** the General Design Criteria are also applicable to future construction that the Minister may wish to undertake;

**NOW THEREFORE** The Nation, and the Minister agree as follows:

#### A. Construction

1. The Minister shall initially construct and maintain a four-lane Controlled Access Freeway consisting of two separate ribbons of pavement that meet the General Design Criteria set out below.
2. The construction described in paragraph 1 above shall fully satisfy the Minister's commitment contained in sub-section 8(a) of this Agreement in Principle.
3. Any future construction that may be contemplated within the General Design Criteria shall be at the sole discretion of the Minister.

#### B. General Design Criteria

1. The Controlled Access Freeway is to be designed to a freeway standard (i.e. high speed, free flow, fully access-controlled facility). The minimum design speed is to be 110 km/h. with rural ditches, including the median.
2. The Controlled Access Freeway will be planned to accommodate the following: a highway with a minimum of 8 basic lanes, auxiliary (exit and entry) lanes, rural drainage ditches, storm water detention ponds, interchanges and noise attenuation and major municipal service utilities, as required.
3. A utility corridor will be required for utility purposes (as defined in the AIP).



14. Superelevation (e max)

.....	Mainline	0.06m/l
.....	Ramps	0.06m/l
.....	(0.08 m/m may be considered if warranted by special circumstances)	

15. Ramps Terminals

Direct taper design as per figures E1.1, E-1.2, and E1.3 in the Alberta Transportation Highway Geometric Design Guidelines 1999 for both exit and entrance terminals.

C. Minimum Weaving Length.....T.A.C. Design Guide

In special cases where weaving lengths cannot be attained, consideration will be given to reducing these distances if justified by a detailed weaving analysis. The absolute minimum on the main line facility will be 600 metres.

D. Cross-Section Elements

16. Lane Width

Mainline	.....	3.7 m
Collector Distributor (C-D) Road	- one lane	.....4.8 m
	- two lane	.....3.7 m
Ramp	- one lane	.....4.8 m
	- two lane	.....3.7 m

17. Shoulder Widths

Mainline	- inside (4-6 basic lanes)	.....(2.0 – 2.5 m)
	- inside (8 basic lanes)	.....3.0 m
	- outside	.....3.0 m
C-D Road	- inside (one lane)	.....1.0 m
	- inside (two lanes)	.....2.0 m
	- outside (one lane)	.....2.5 m
	- outside (two lanes)	.....3.0 m
Ramp	- inside (one lane)	.....1.0 m
	- inside (two lanes)	.....2.0 m
	- outside (one lane)	.....2.0 – 2.5 m)
	- outside (two lanes)	.....3.0 m

18. Median

4-6 basic lanes .....	30.6 m
8 basic lanes .....	23.2 m
Outer separation - C-D Road (single interchange) .....	17.0 m
- C-D Road (multiple interchanges).....	20.0 m

19. Side Slopes

(Desirable)	Median (depressed).....	6:1
	Ditch (sideslope) .....	6:1 (Desirable)
	.....	5:1 – 2.5 to 4.0 m fill, 4:1 – over 4.0 m fill
	.....	3:1 acceptable with guiderail under special circumstances)
	(backslope).....	5:1 (3:1, if > 2 m)
	C-D Road (outer separation – depressed).....	5:1
	Noise attenuation berms.....	3:1 max

20. Width of Ditch

Median .....	3.0 m min
Outside .....	4.0 m des.; 3.0 m min
Ramp, C-D Road – outside .....	3.0 m min
Outer Separation .....	V-ditch min.(rounded)

21. Vertical Clearances

	Roadway – underside of superstructure to top of roadway.....	5.4 m
	Railway – underside of superstructure to top of roadway .....	5.4 m
roadway	Pedestrian Overpass – underside of superstructure to top of	5.7 m
	Roadway – underside of superstructure to top of rail .....	7.01 m

E Lateral Clearances

22. Mainline

- edge of ultimate pavement to face of pier .....	3.0 m min
- edge of travel lane to face of concrete barrier	
- inside - 4-8 lane .....	3.0 m
- outside - 4-8 lane .....	3.0 m

23. Directional ramp – edge of travel lane to face of concrete barrier

Must meet TAC lateral clearances and stopping sight distance requirements as a minimum and in no case shall it be less than ramp shoulder width requirements.

24. C-D Road

- edge of pavement to face of pier.....3.0 m min
- edge of travel lane to face of concrete barrier
- *single/multiple interchange*
  - inside - one lane .....2.5 m
  - inside - two lane .....2.5 m
  - outside -one lane .....3.0 m
  - outside -two lane.....3.0 m