

MUSCOWPETUNG SAULTEAUX FLOODING CLAIM

SETTLEMENT AGREEMENT

THIS SETTLEMENT AGREEMENT dated for reference August 22, 2012.

BETWEEN:

THE MUSCOWPETUNG SAULTEAUX FIRST NATION,
as represented by its duly elected Chief and Council

(hereinafter called the "First Nation")

AND:

HER MAJESTY THE QUEEN IN RIGHT OF CANADA, as represented by
the Minister of Indian Affairs and Northern Development

(hereinafter called "Canada")

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BETWEEN:

THE MUSCOWPETUNG SAULTEAUX FIRST NATION,
as represented by its duly elected Chief and Council
(hereinafter called the "First Nation")

AND:

HER MAJESTY THE QUEEN IN RIGHT OF CANADA,
as represented by the Minister of Indian Affairs and Northern Development
(hereinafter called "Canada")

WHEREAS the First Nation submitted to Canada a Specific Claim (herein defined) under Canada's Specific Claims Policy on June 26, 1986 alleging the unauthorized construction and operation of the Echo Lake water control structure (the "Structure") resulting in the flooding of a portion of its existing reserve lands from 1943 to the present;

WHEREAS pursuant to letters dated November 26, 1998 and December 3, 1998, Canada agreed to accept the Specific Claim for negotiation and the First Nation and Canada entered into negotiations to address past damages caused by the unauthorized flooding of reserve land associated with the operation of the Structure and to provide compensation and lawful authority for the future flooding of reserve lands in accordance with the Easement;

WHEREAS the Structure is currently operated by the Department of Agriculture and Agri-Food Canada, as represented by the Assistant Deputy Minister of Agri-Environment Services Branch ("AESB"), on the advice of the Saskatchewan Watershed Authority (the "Watershed Authority"), for non-agricultural purposes;

WHEREAS the First Nation has agreed, pursuant to subsection 38(2) and section 39 of the *Indian Act*, to designate and authorize Canada to grant a flooding easement on its reserve lands to the Watershed Authority to facilitate the continued operation of the Structure;

WHEREAS Saskatchewan, Canada and the First Nation have negotiated the *Tripartite Agreement to Facilitate the Muscowpetung Saulteaux Flooding Claim Settlement Agreement* and to authorize the future flooding of reserve land; and

WHEREAS the First Nation and Canada have negotiated this Settlement Agreement in order to achieve a full, fair and final settlement of the Specific Claim and all past damages caused by the unauthorized flooding of reserve lands and to provide lawful authority for future flooding of reserve lands in accordance with the Easement.

NOW THEREFORE, IN CONSIDERATION OF THE MUTUAL COVENANTS HEREIN CONTAINED, CANADA AND THE FIRST NATION AGREE AS FOLLOWS:

SECTION 1 – DEFINITIONS

1.1 In this Agreement:

- (a) **“Accretion”** means the slow and imperceptible addition to land through alluvial deposits or the recession of water;
- (b) **“Acquired Lands”** means those lands referred to in section 5.1 of this Agreement;
- (c) **“Additions to Reserves Policy”** means the policy and procedural guidelines set out in the *Land Management Manual* of the Department as amended or replaced from time to time;
- (d) **“Agreement”** means this Settlement Agreement, including the attached Schedules;
- (e) **“Ballot Questions”** means the questions asked of the Voters in the Ratification Vote substantially as set out in Schedule “1”;
- (f) **“Band Council Resolution”** means a duly executed written resolution of the Council adopted at a duly convened meeting;
- (g) **“Canada”** means Her Majesty The Queen in Right of Canada, as represented by the Minister of Indian Affairs and Northern Development;
- (h) **“Compensation”** means the cash payment referred to in sections 3.1 and 3.5;
- (i) **“Council”** means the duly elected Chief and Council of the First Nation, which is a “council of the band” as defined in the *Indian Act*,

- (j) “**Department**” means the Department of Indian Affairs and Northern Development, as established pursuant to the *Department of Indian Affairs and Northern Development Act*, R.S.C. 1985, c. I-6;
- (k) “**Designation Document**” means the *Designation for Easement on Muscowpetung Reserve* attached as Schedule “3” to this Agreement;
- (l) “**Easement**” means the *Instrument of Grant For Flooding Easement* substantially similar in form and content to Schedule “A” of the Designation Document, or such other instrument having similar effect, granting, transferring and conveying an easement in accordance with the terms and conditions of the Easement Agreement;
- (m) “**Easement Agreement**” means the *Easement Agreement for Flooding* substantially similar in form and content to Schedule “B” of the Designation Document;
- (n) “**Easement Holder**” means the Watershed Authority, or its successor ministry, agency or Crown corporation having statutory authority over water management in the Province of Saskatchewan at the date of issuance of the Easement;
- (o) “**Easement Lands**” means those reserve lands as described in Appendix “A” of the Designation Document;
- (p) “**Effective Date**” means that date determined in accordance with section 9.1;
- (q) “**Erosion**” means the slow and imperceptible loss of land caused by the natural action of water or the advance of waters on the upland or riparian parcel;
- (r) “**First Nation**” means the Muscowpetung Saulteaux First Nation, which is a “band” within the meaning of the *Indian Act*, composed collectively of its Members and represented by its duly elected Council;
- (s) “**Financial Institution**” means any bank or trust company that is a member institution for which the Canada Deposit Insurance Corporation has a duty to insure deposits pursuant to the *Canada Deposit Insurance Corporation Act*, R.S.C. 1985, c. C-3 or a credit union operating in the Province of Saskatchewan whose deposits are insured by the Credit Union Deposit Guarantee Corporation;
- (t) “**FNLMA**” means the *First Nations Land Management Act*, S.C. 1999, c.24, as amended;

- (u) “**Indian Act**” means the *Indian Act*, R.S.C. 1985, c. I-5 and the regulations made under that Act as amended or replaced from time to time, and any reference to a section of the *Indian Act* includes that section as amended or replaced, unless otherwise stated;
- (v) “**Indian Referendum Regulations**” means the *Indian Referendum Regulations*, C.R.C. 1978, c. 957, as amended and in effect on the date of the Ratification Vote;
- (w) “**Information Meeting**” means a meeting held pursuant to section 4.3 of the *Indian Referendum Regulations*;
- (x) “**List of Voters**” means the names of Voters eligible to participate in the Vote;
- (y) “**Member**” means a “member of the band” as defined by the *Indian Act*;
- (z) “**Minister**” means the Minister of Indian Affairs and Northern Development or the Minister’s duly authorized representative;
- (aa) “**Negotiation Expenses**” means the sum agreed to by Canada and the First Nation as set out in section 3.2, which sum includes the costs incurred by the First Nation for research, preparation, negotiation, settlement of the Specific Claim, the ratification of the Settlement Agreement, including legal and other professional fees, and for any other costs related to the foregoing;
- (bb) “**Parties**” means the First Nation and Canada;
- (cc) “**Provisional Plan**” means an unrecorded survey plan prepared by a qualified Canada Land Surveyor, which identifies the Easement Lands and the boundary of the Muscowpetung reserve bordering the Qu’Appelle River and Pasqua Lake;
- (dd) “**Ratification Vote**” means a vote on the Ballot Questions conducted in accordance with the *Indian Referendum Regulations*;
- (ee) “**Saskatchewan**” means Her Majesty The Queen in Right of Saskatchewan, as represented by the Minister of Environment;
- (ff) “**Specific Claim**” means any and all of the particular facts, matters and issues, insofar as they directly arise or result from, or are set forth in the First Nation’s claim submitted to Canada on June 26, 1986, regarding the flooding of a portion of its existing reserve lands related to the operation of the Structure;

- (gg) **“Survey Plan”** means the Provisional Plan which has been confirmed by the office of the Surveyor General in accordance with the *Canada Lands Surveys Act*, R.S.C. 1985, c. L-6, and which will be recorded in the Canada Lands Survey Records (“CLSR”) following the Effective Date;
 - (hh) **“Tripartite Agreement”** means the *Tripartite Agreement to Facilitate the Muscowpetung Saulteaux Flooding Claim Settlement Agreement* between the First Nation, Canada and Saskatchewan, which is attached hereto as Schedule “2”;
 - (ii) **“Trust Account”** means the Capital Trust Account established by the Trustee at a Financial Institution pursuant to the Trust Agreement;
 - (jj) **“Trust Agreement”** means the Muscowpetung Legacy Trust Agreement which does not form part of this Agreement;
 - (kk) **“Trustee”** means the person, persons or trust company identified as the Trustee in the Trust Agreement;
 - (ll) **“Urban Municipality”** means a city as defined in *The Cities Act*, S.S. 2002, C-11.1, or a town, village or resort village as defined in *The Municipalities Act*, S.S., 2005, M-36.1;
 - (mm) **“Voter”** means a Member who is eighteen (18) years of age or over on the Voting Day and has the same meaning as an “elector” as used in the *Indian Act* and the *Indian Referendum Regulations*; and
 - (nn) **“Voting Day”** means the day set aside under the *Indian Referendum Regulations* for the Ratification Vote by the First Nation.
- 1.2 Except as otherwise defined in this Agreement, words used in this Agreement which are defined in the *Indian Act*, have the same meaning as they have in the *Indian Act*.
- 1.3 The following Schedules are attached to and form part of this Agreement:
- Schedule “1” Ballot Questions: Settlement Agreement and Designation
 - Schedule “2” Tripartite Agreement to Facilitate the Muscowpetung
Saulteaux Flooding Claim Settlement Agreement
 - Schedule “3” Designation for Easement on the Muscowpetung Reserve
 - Schedule “4” Solicitor’s Certificate
 - Schedule “5” Financial Advisor’s Certificate
 - Schedule “6” Trustees’ Receipt

SECTION 2 – TREATY AND ABORIGINAL RIGHTS

- 2.1 This Agreement shall not be construed so as to abrogate or derogate from the existing aboriginal and treaty rights of the First Nation as recognized and affirmed by section 35 of the *Constitution Act, 1982*.
- 2.2 This Agreement is not a treaty and is not intended to create, define or limit the aboriginal and treaty rights of the First Nation.
- 2.3 Notwithstanding the recognition of any aboriginal or treaty rights by the courts, the Parties agree that this Agreement will continue in accordance with its terms.

SECTION 3 – COMPENSATION

- 3.1 Subject to the terms and conditions set out in this Agreement, Canada will provide to the First Nation a one-time cash payment in the amount of Thirty Million Six Hundred Forty Three Thousand Four Hundred Eighteen (\$30,643,418) Dollars as compensation for all past damages caused by the unauthorized flooding of reserve lands associated with the operation of the Structure and to provide lawful authority for future flooding of reserve lands in accordance with the Easement.
- 3.2 In addition to the amount referred to in section 3.1, Canada shall provide to the First Nation, and has provided by way of a loan, the total sum of Three Million Four Hundred Seventy Five Thousand Nine Hundred Fifty Four Dollars and Fifty Seven Cents (\$3,475,954.57) with respect to Negotiation Expenses. The Negotiation Expenses include all loans incurred by the First Nation under the Native Claims Loan Funding Program, including any and all loans incurred by the First Nation with respect to its involvement in previous negotiations undertaken in the context of the Qu'Appelle Valley Indian Development Authority.
- 3.3 The First Nation acknowledges that Canada has provided monies to the First Nation by way of loan under the Native Claims Loan Funding Program and hereby authorizes and directs Canada to retain the full amount identified in section 3.2 as full and final payment of all monies loaned to the First Nation by Canada. Upon receipt by Canada of the Trustees' receipt for the Compensation as directed by Section 12, Canada shall forward to the First Nation copies of all promissory notes obtained for the loan funding together with an acknowledgment that the indebtedness in relation thereto has been paid in full. From the Effective Date, Canada shall release the First Nation from all claims and liabilities arising in respect of all loans incurred by the First Nation under the Native Claims Loan Funding Program.
- 3.4 Within forty-five (45) days following the execution by Canada of this Agreement, Canada shall deposit the Compensation into the Trust Account.

- 3.5 If the Compensation is not paid in full within the time frame set out in section 3.4, Canada agrees to pay to the First Nation interest at the Bank of Canada's overnight lending rate plus two percent (2%) per annum on any unpaid amounts from the date such payment was due and payable until paid in full by Canada.
- 3.6 The Parties agree that the Compensation is not "Indian moneys" within the meaning of the *Indian Act* and accordingly the provisions of the *Indian Act* with respect to the management of Indian moneys shall not apply to the Compensation.
- 3.7 Upon the deposit of the Compensation into the Trust Account, the Compensation shall be administered by the Trustee on the terms and conditions set out in the Trust Agreement. After such deposit, Canada shall have no responsibility or liability for the safe custody, distribution, management, investment, or any losses or depreciation of the Compensation, and Canada assumes no fiduciary obligations towards the First Nation or its Members regarding the use of the Compensation.

SECTION 4 – SURVEY OF RESERVE AND DESIGNATION FOR EASEMENT

- 4.1 Subject to sections 4.2, 6.3 and 6.4, the Survey Plan identifies the Easement Lands and the boundary of the Muscowpetung Reserve bordering the Qu'Appelle River and Pasqua Lake.
- 4.2 The Survey Plan does not preclude the First Nation from advancing any future claim or proceeding regarding the ownership of the beds and shores of the Qu'Appelle River and Pasqua Lake, including a claim to minerals, but any such claim or proceeding shall not include a claim for compensation related to past and future flooding of the beds and shores arising from the operation of the Structure.
- 4.3 Canada and the First Nation acknowledge that the common law principles of Accretion and Erosion apply to reserve lands and to underlying minerals. In the absence of agreement among all interested Parties that there has been an Accretion or Erosion of lands to the reserve, the person relying on the doctrine has the onus of establishing on a balance of probabilities that Accretion or Erosion did occur in fact and in law. Canada shall take all reasonable steps to confirm accreted lands and minerals as reserve land and shall make necessary amendments to the Survey Plan and other documents referred to in section 4.4 to give effect to the terms of the Tripartite Agreement.
- 4.4 If the First Nation is successful in a claim or proceeding pursuant to section 4.2, or if for any other reason the Survey Plan is modified by a new survey plan in accordance with applicable law:

- (a) the First Nation hereby authorizes and directs Canada to amend the necessary documents, including the Designation Document and Easement Agreement, to include as Easement Lands such additional reserve land as is necessary to give effect to the terms of the Tripartite Agreement and Canada shall make the necessary amendments; or
 - (b) where the First Nation has enacted a Land Code under the FNLMA or has legislative jurisdiction pursuant to a self-government agreement, the First Nation shall amend or issue the necessary instruments to include as Easement Lands any additional reserve land as is necessary to give effect to the terms of the Tripartite Agreement.
- 4.5 Pursuant to subsections 38(2) and section 39 of the *Indian Act*, the First Nation agrees to designate the Easement Lands for the purpose of giving Canada the full authority to grant the Easement to the Easement Holder. Canada shall, through the Minister, recommend the acceptance of the Designation Document to the Governor in Council pursuant to section 39 of the *Indian Act*.
- 4.6 The First Nation and Canada shall enter into the Tripartite Agreement with Saskatchewan to facilitate the settlement of the Specific Claim.
- 4.7 The First Nation shall not seek from Canada, Saskatchewan or the Easement Holder, any compensation or payment for the use of the Easement Lands or any other rights granted in the Easement Agreement, as the consideration for the Easement and the future use of the Easement Lands has been paid in full in the Compensation. Nothing however, shall restrict or prohibit the First Nation from imposing any form of property tax or other charges, assessments or levies, in respect of the Easement Lands or the Easement Holder, as may be permitted by law.
- 4.8 Canada shall grant the Easement to the Easement Holder as soon as practicable following the Effective Date.
- 4.9 Canada shall not file or record the Provisional Plan as the Survey Plan prior to the Effective Date.

SECTION 5 – ADDITIONS TO RESERVE

- 5.1 Subject to this Section, the First Nation shall have the right to buy up to 1,280 acres of land located outside the boundaries of any Urban Municipality in the Province of Saskatchewan, or up to 1100 acres of urban land situated within the boundaries of an Urban Municipality in the Province of Saskatchewan for the purposes of reserve creation (the “Acquired Lands”). The First Nation may, at its option, acquire any combination of urban and other lands provided that the total of such lands shall not exceed 1100 acres in aggregate.

- 5.2 Upon acquisition by the First Nation and subject to the requirements of the Additions to Reserves Policy, the Minister shall set apart the Acquired Lands as reserve lands for the use and benefit of the First Nation.
- 5.3 The setting apart of the Acquired Lands as reserve lands is subject to the following conditions:
- (a) the First Nation is responsible for purchasing the Acquired Lands, not Canada;
 - (b) the title to the Acquired Lands is satisfactory to Canada and the lands have been transferred to Canada;
 - (c) the setting apart of the Acquired Lands as reserve lands has been approved by Canada pursuant to the Additions to Reserves Policy; and
 - (d) the First Nation has either reached an agreement on tax loss with the affected rural municipality, or has offered to pay to the affected rural municipality, as tax loss compensation, five times the annual municipal taxes (which do not include school taxes) based on the year prior to the setting apart of the land as reserve. For greater certainty, Canada agrees that this condition is fulfilled by the First Nation making the offer of five times the annual municipal taxes to the affected rural municipality even if the offer is not accepted by the affected rural municipality.
- 5.4 Prior to setting the Acquired Lands apart as reserve lands pursuant to this Section, Canada shall conduct a Phase I Environmental Site Assessment in accordance with its Additions to Reserves Policy to determine whether the subject property is, or may be, subject to actual or potential contamination. If the Phase I Environmental Site Assessment determines that additional assessment is required, and the First Nation chooses to proceed with the selection, a Phase II Environmental Site Assessment shall be conducted in accordance with the Additions to Reserves Policy at the First Nation's expense. If the Phase II Environmental Site Assessment determines that toxic substances or contamination exists in excess of the criteria used by Canada at the time of the assessment, the First Nation shall advise Canada whether it still wishes to have the lands set apart as reserve lands. If so, the First Nation shall, at its own expense, arrange for the removal (to an appropriate facility) or remediation of the toxic substance or contaminant and the reconditioning of the lands so affected in accordance with applicable standards.
- 5.5 In the event the land does not include all mines and minerals or where mines and minerals are included but are subject to an existing mineral disposition, the First Nation agrees to provide surface access to such persons or entities who own the mines and minerals or hold any interest or mineral disposition in such mines and minerals, and their duly authorized servants and agents, in order to work the

mines and minerals, such agreement to be evidenced by a Band Council Resolution. For greater certainty, Canada agrees to proceed with the process set out in section 5.1 if the First Nation agrees to provide surface access as described above and agrees to indemnify Canada in the event that surface access is denied in the future by the First Nation.

- 5.6 In consultation with the Council, Canada shall at its sole discretion, cause to be prepared by a qualified Land Surveyor, a plan of the Acquired Lands to be set apart as reserve lands. If Canada determines that a plan is not required, Canada shall cause to be prepared a legal description of the Acquired Lands. The plan or description shall be prepared in accordance with the standards of the Surveyor General for Canada. The cost of the preparation of the plan or description shall be paid by the First Nation, shall be conducted in a timely fashion and Canada shall provide a copy of the plan or description to the First Nation.
- 5.7 Except as otherwise noted in this Section, the First Nation agrees to pay all costs related to the purchase of the Acquired Lands, complying with the Additions to Reserves Policy and setting apart the lands as reserve lands including the following costs:
- (a) all conveyances, clearance of title (if required), removal of encroachments or encumbrances (if any), searches, land title registrations, legal fees, commissions, applicable taxes and tax adjustments, feasibility studies and appraisals;
 - (b) payment, if any, arising from agreements between the First Nation and urban municipalities for services in lieu of taxes to be provided by the municipality on the Acquired Lands once they are set apart as reserve lands; and
 - (c) payment of the rural municipality tax loss compensation pursuant to subsection 5.3(d) relating to the Acquired Lands once they are set apart as reserve lands;

but nothing in this Section requires the First Nation to pay for costs internal to the Government of Canada for which a fee would not, in the normal course, be charged to a band.

- 5.8 There is no obligation on the part of Canada to sell or convey any federal real property, including any mines and minerals, or to set apart any federal real property, including mines and minerals, for the use and benefit of the First Nation at any time.
- 5.9 The First Nation and Canada agree that the *Claim Settlements (Alberta and Saskatchewan) Implementation Act*, 49-50-51 Eliz. II, c. 3 applies to this Agreement.

SECTION 6 – RELEASE

- 6.1 For the purposes of this Section, “Canada” includes any of Canada’s Ministers, officials, servants, employees, agents, successors and assigns.
- 6.2 In consideration of this Agreement and the Compensation paid by Canada to the First Nation, the receipt and sufficiency of which is hereby acknowledged by the First Nation, the First Nation on its own behalf and on behalf of all of its past, present and future Members, does hereby agree to forever release, remise and discharge Canada from any action, cause of action, suit, claim or demand whatsoever, whether known or unknown and whether in law, in equity or otherwise, which the First Nation and the past, present and future Members of the First Nation and any of their respective heirs, descendants, legal representatives, successors and assigns may ever have had, may now have or may in the future have against Canada with respect to:
- (a) issues and allegations arising out of the subject matter of the Specific Claim;
 - (b) all past flooding caused by the operation of the Structure and all future flooding within the Easement Lands, pursuant to the terms of this Agreement and the Tripartite Agreement;
 - (c) all costs incurred by the First Nation for research, preparation, negotiation and settlement of the Specific Claim, for preparation, negotiation and ratification of this Agreement, including legal fees and all costs and disbursements relating to the Specific Claim;
 - (d) the procedures resulting in the execution of this Agreement by the First Nation;
 - (e) the opening, use, management or administration of, and any other dealings with respect to, all accounts established pursuant to the Trust Agreement;
 - (f) the deposit of the Compensation into the Trust Account as directed by the First Nation and any subsequent deposit, withdrawal, use, management or any other dealings with respect to this Compensation by the Trustee or Council, including, without limitation, the termination of the Trust Agreement;
 - (g) actions, inactions, malfeasance or negligence of the Trustee;
 - (h) the procedures involved in the Ratification Vote held pursuant to the *Indian Referendum Regulations* and the execution of this Agreement by the First Nation pursuant to Section 8;

- (i) any errors or omissions in the List of Voters for the Ratification Vote; and
 - (j) the representations and warranties of the First Nation under Section 13.
- 6.3 Neither the execution of this Agreement, the Survey Plan, nor the release set out in section 6.2 shall preclude the First Nation from advancing any claim or other proceedings in relation to:
- (a) any matter described in section 4.2;
 - (b) future flooding of any reserve lands or other lands owned by the First Nation which may occur outside the Easement Lands without the consent of the First Nation;
 - (c) any reserve lands which may be located on the north side of the Qu'Appelle River and Pasqua Lake not registered as reserve lands in the Indian Lands Registry as of the Effective Date;
 - (d) the construction and operation of the Katepwa Weir;
 - (e) any claim which the First Nation may advance against Saskatchewan or Canada in relation to, or as a result of, the channelization of the Qu'Appelle River Channel, including but not limited to, the Craven-Pasqua Lake River Channel construction, alterations and modifications adjacent to or comprising any part of the First Nation; and
 - (f) any other claim unrelated to the Specific Claim.
- 6.4 Canada shall not raise or rely upon the existence of the Survey Plan or its recording under the *Canada Lands Surveys Act*, as a defence to any claim or other proceeding brought by the First Nation in relation to subsection 6.3(a), or a claim asserting ownership of any other lands outside the reserve boundary as defined in the Survey Plan.
- 6.5 The releases herein do not release Canada from the due performance of its obligations arising from this Agreement, the Tripartite Agreement and the Easement and nothing herein shall prevent or restrict the First Nation from pursuing any legal or equitable remedies against Canada for any breach of the terms and conditions of those Agreements.

SECTION 7 – INDEMNITY

- 7.1 For the purposes of this Section:
- (a) “Canada” includes any of Canada’s Ministers, officials, servants, employees, agents, successors and assigns; and
 - (b) “Claimant” means the First Nation or a past, present or future Member who has or has had, or may in the future have, a claim to an interest in the Specific Claim, where such claim is based upon an interest that is or was held by such person as a Member of the First Nation or as a descendant of such a Member or as a person eligible to be a Member.
- 7.2 Subject to this Section, the First Nation agrees to indemnify and forever save harmless Canada from and against any and all obligation, liability, duty, loss or damage resulting directly or indirectly from any action, cause of action, suit, claim or demand whatsoever, whether known or unknown and whether in law, in equity or otherwise, brought by any Claimant against Canada with respect to any matters included in the release in section 6.2, provided that such obligation, liability, duty, loss or damage has been awarded or determined by a decision or order of a court or other tribunal of competent jurisdiction, or by a settlement (whether or not court proceedings have been instituted) consented to by the First Nation, such consent not to be unreasonably withheld and notice has been given to the First Nation pursuant to section 7.3.
- 7.3 Canada shall provide notice to the First Nation by registered mail of any claim which may reasonably give rise to indemnification under this Section. Such notice shall set forth in reasonable detail and, to the extent then known, the basis for such claim for indemnification. The First Nation shall have thirty (30) days from the date of receipt of notice, or such other period as may be agreed to by the Parties, to advise Canada if it wishes to join the action as a third party defendant.
- 7.4 If no notice is received by Canada within thirty (30) days, or such other period as may be agreed to by the Parties, Canada shall proceed to defend the action without joining the First Nation as a third party defendant. Canada shall, from time to time, provide to the First Nation copies of all pleadings, documents and offers of settlement in the action filed by it with a court or tribunal.
- 7.5 If Canada receives notice within thirty (30) days, or such other period as may be agreed to by the Parties, that the First Nation wishes to be joined as a third party defendant, Canada shall immediately proceed to join the First Nation to the action as a third party defendant. Joining the action as a third party defendant shall in no way:
- (a) mean that the First Nation is entitled to represent Canada; or

- (b) affect the rights or abilities of Canada to defend any such claim including, without limitation, the appointment of counsel.
- 7.6 Canada shall assume and control the defence of the action against it and any negotiations relating to any action, cause of action, suit, claim or demand referred to in section 7.2. Canada agrees that it shall not refuse to defend any such proceeding based solely on the existence of this Section and that it shall use all reasonable efforts to defend itself in any such proceedings.
- 7.7 Any demand by Canada for indemnification shall be made in writing setting out full particulars of the amount demanded, and if the amount so claimed is not paid by the First Nation within sixty (60) days of receipt of such notice, Canada shall be entitled to invoke all rights and remedies provided by law to recover any amounts owed by the First Nation.

SECTION 8 – RATIFICATION VOTE

- 8.1 The First Nation agrees to and approves the terms and conditions of this Agreement and the Trust Agreement, and authorizes and directs at least a quorum of the Council to sign and implement this Agreement, the Trust Agreement and all ancillary documents if, at the Ratification Vote, a majority (over 50%) of the Voters vote and a majority (over 50%) of the votes cast by the Voters are in favour of this Agreement and the Trust Agreement.
- 8.2 If, at the Ratification Vote held pursuant to section 8.1, a majority (over 50%) of the Voters do not vote, but a majority (over 50%) of the votes cast are in favour of this Agreement and the Trust Agreement, the Minister may call a second Ratification Vote at the request of the First Nation.
- 8.3 Where a second Ratification Vote is held pursuant to section 8.2 and a majority (over 50%) of the votes cast by the Voters are in favour of this Agreement and the Trust Agreement, the First Nation agrees to and approves the terms and conditions of this Agreement and the Trust Agreement and authorizes and directs at least a quorum of the Council to sign this Agreement, the Trust Agreement and all ancillary documents.
- 8.4 For greater certainty, if the required approval and assent pursuant to section 8.1 (or, in the case of a second vote, section 8.3) is not obtained, this Agreement, the Trust Agreement and all other ancillary agreements shall be void and of no force or effect.
- 8.5 The Ratification Vote shall be conducted in accordance with the *Indian Referendum Regulations*.

SECTION 9 – EFFECTIVE DATE OF AGREEMENT

- 9.1 This Agreement shall come into effect and bind the Parties only on the later of the dates on which this Agreement is executed by the First Nation and Canada in accordance with Section 10 and the Tripartite Agreement is executed by the First Nation, Canada and Saskatchewan.

SECTION 10 – EXECUTION

- 10.1 This Agreement shall be executed by at least a quorum of the Council on behalf of the First Nation.
- 10.2 This Agreement shall be executed by the Minister on behalf of Canada after the conditions precedent set out in Section 11 have been met.

SECTION 11 – CONDITIONS PRECEDENT

- 11.1 Canada and the First Nation agree that the following are conditions precedent to any obligation by Canada to execute this Agreement:
- (a) ratification and approval of the terms and conditions of this Agreement and the Trust Agreement by the First Nation in accordance with Section 8;
 - (b) execution of this Agreement, the Tripartite Agreement and Designation Document by the First Nation in accordance with section 10.1;
 - (c) execution of the Tripartite Agreement by Saskatchewan;
 - (d) the Governor in Council has authorized the execution of this Agreement and the Tripartite Agreement by the Minister;
 - (e) funds for the payment of the Compensation have been approved and appropriated for that purpose by Canada;
 - (f) receipt by Canada of a Band Council Resolution approving the content and recording of the Provisional Plan;
 - (g) the Trust Agreement has been signed by the authorized signatories, the Trust Account has been opened and the information required by Canada to deposit monies to the Trust Account has been provided to Canada by the First Nation;

- (h) receipt by Canada of a Solicitor's Certificate from the First Nation's legal counsel, dated on or after the date of execution of this Agreement by the First Nation, substantially in the form attached as Schedule "4";
- (i) receipt by Canada of a Financial Advisor's Certificate from the First Nation's financial advisor, dated on or after the date of execution of this Agreement by the First Nation, substantially in the form attached as Schedule "5"; and
- (j) execution by the Pasqua First Nation of its settlement agreement with Canada regarding its specific claim.

SECTION 12 – RECEIPT AND ACKNOWLEDGMENT

- 12.1 Upon the deposit of the Compensation to the Trust Account, the First Nation hereby authorizes the Trustee to deliver to Canada a receipt from the Trustee substantially in the form attached hereto as Schedule "6".
- 12.2 Upon the issuance of a receipt pursuant to section 12.1, the First Nation acknowledges to Canada, in writing, that Canada's obligations with respect to the Compensation have been met.

SECTION 13 – REPRESENTATIONS AND WARRANTIES

- 13.1 The First Nation represents and warrants that:
 - (a) it intends to use the Compensation for the use and benefit of the First Nation and shall take such actions as it deems necessary or advisable, with the advice of its legal counsel and financial advisor, to give effect to that intent;
 - (b) it has retained legal counsel independent from Canada who is qualified to practice law in the province of Saskatchewan to provide legal advice to the First Nation with respect to this Agreement and the Trust Agreement;
 - (c) its legal counsel has provided the First Nation, via its Council, independent legal advice with respect to the negotiation, preparation, execution, delivery and content of this Agreement and the Trust Agreement;
 - (d) it has retained a financial advisor independent from Canada qualified to provide independent financial advice to the First Nation with regard to this Agreement and the Trust Agreement, as well as the arrangements for the deposit, use and management of the Compensation pursuant to the Trust Agreement;

- (e) its financial advisor has provided to the First Nation, via its Council, independent advice with respect to the Trust Agreement, the management and administration of the Compensation payable pursuant to this Agreement and the deposit of the Compensation into the Trust Account rather than into an account managed by the Department;
- (f) Canada has not and shall not review or advise the First Nation with respect to the structure, terms, management or operation of the Trust or Trust Agreement, or any matter related thereto, and the First Nation has obtained the advice of its own legal and financial advisors in this regard and with regard to all other matters related to the settlement of the Specific Claim, including the negotiation, preparation, execution and delivery of this Agreement and the Trust Agreement, including the Schedules and Appendices attached hereto and any other related documents; and
- (g) an interpreter fluent in the Saulteaux language was present and available to those Members in need of an interpreter (if there were any such Members) at all times during the Information Meeting and at the Ratification Vote.

13.2 These representations and warranties shall survive the execution of this Agreement and shall continue in full force and effect for the benefit of Canada.

SECTION 14 – FURTHER ASSURANCES

- 14.1 The First Nation and Canada shall in good faith do such things, execute such further documents and take such further measures as may be necessary to carry out and implement the terms, conditions, intent and meaning of this Agreement.
- 14.2 Nothing in this Agreement shall affect the ability of the First Nation or any Members to be eligible to apply for, or to continue or have access to, funding for programs and services offered by Canada on the same basis as other First Nations in Canada as if this Agreement had not been concluded, in accordance with the criteria established from time to time for the application of such programs and services. For greater certainty, the Compensation deposited into the Trust Account and any income accrued therefrom, shall not be taken into account by Canada in determining the level of funding provided to the First Nation for programs, services and financial assistance.

SECTION 15 – DISPUTE RESOLUTION

- 15.1 In the event of a dispute among the Parties arising out of this Agreement, the Parties shall explore, for a minimum of thirty (30) days, resolution through negotiation or other appropriate dispute resolution procedure, including

mediation, before resorting to litigation. After thirty (30) days, any Party may resort to litigation.

SECTION 16 – AMENDMENTS

- 16.1 Subject to section 16.2, this Agreement (excluding the Tripartite Agreement) may only be amended or replaced by written agreement between the Parties, approved through the same procedures as this Agreement was approved.
- 16.2 The Parties, by written agreement between the First Nation as represented by at least a quorum of the Council and by the Senior Assistant Deputy Minister, Treaties and Aboriginal Government, on behalf of Canada, may agree to amend this Agreement for any of the following purposes:
- (a) to remove any conflicts or inconsistencies which may exist between any of the terms of this Agreement and any provision of any applicable law or regulation; or
 - (b) to correct any typographical error in this Agreement, or to make corrections or changes required for the purpose of curing or correcting any clerical omission, mistake, manifest error or the ambiguity arising from defective or inconsistent provisions contained in this Agreement.

SECTION 17 – NO BENEFIT

- 17.1 No Member of the House of Commons or Senate of Canada shall be admitted to any share or part of this Agreement or to any benefit arising from this Agreement.

SECTION 18 – NOTICE

- 18.1 Any notice or other written communication required or permitted to be given under this Agreement shall be given as follows:
- (a) to Canada:

Senior Assistant Deputy Minister
Treaties and Aboriginal Government
Indian and Northern Affairs Canada
Ottawa, Ontario K1A 0H4
FAX: (819) 953-0545

c.c.: Regional Director General
Indian and Northern Affairs
Saskatchewan Region
Regina, Saskatchewan S4S 7K5
FAX: (306) 780-5733

(b) to the First Nation:

Muscowpetung Saulteaux First Nation
P.O. Box 1310
Fort Qu'Appelle, Saskatchewan S0G 1S0
FAX: (306) 723-4710
Attention: Chief and Council

or at such other address or facsimile number as may from time to time be communicated in writing by any Party as its address for service.

- 18.2 Any notice may be delivered personally or sent by facsimile or registered mail to any Party at the address or facsimile number set out in section 18.1. The notice shall be presumed to have been received by the Party:
- (a) if delivered personally, on the day that it was delivered;
 - (b) if sent by facsimile, on the next business day after it was transmitted; and
 - (c) if sent by registered mail, on the day it is received.
- 18.3 During an actual or anticipated postal disruption or stoppage, the mail shall not be used for the purposes of delivering notice by any Party.

SECTION 19 – NO PREJUDICE AND NO ADMISSIONS

- 19.1 This Agreement reflects a negotiated settlement between Canada and the First Nation and is not a precedent for the negotiation, implementation or interpretation of agreements involving any other First Nation or aboriginal people.
- 19.2 This Agreement is without prejudice to the position that Canada may take with respect to any First Nation or aboriginal people other than the Muscowpetung Saulteaux First Nation and its Members.
- 19.3 This Agreement is entered into by Canada and the First Nation without any admission of facts or liability.

SECTION 20 – GENERAL PROVISIONS

- 20.1 For the purpose of this Agreement and its execution, where the Council is to act for and on behalf of the First Nation, a quorum of the Council is sufficient to do so.
- 20.2 This Agreement sets forth the entire agreement between Canada and the First Nation relating to the subject matter of this Agreement. This Agreement supersedes all other agreements between the Parties relating to the subject matter of this Agreement. There is no representation, warranty, collateral agreement, undertaking or condition affecting this Agreement or the subject matter of it, whether oral or in writing, except as expressly set out in this Agreement.
- 20.3 This Agreement shall be governed by the applicable laws of Canada and Saskatchewan.
- 20.4 All references in this Agreement to statutes and regulations of Canada shall include, unless a contrary intention is expressed, any such statute or regulation as the same may be amended, re-enacted or replaced from time to time and, in respect of any defined term derived from such statute or regulation, includes any subsequent definition contained in any statute or regulation enacted in substitution therefor, or in modification thereof.
- 20.5 There shall be no presumption that any ambiguity in the terms of this Agreement should be interpreted in favour of either Party.
- 20.6 Words in the singular include the plural and words in the plural include the singular unless the context otherwise requires.

IN WITNESS WHEREOF, at least a quorum of the Council of the First Nation, on behalf of the First Nation, have hereunto set their respective hands on the ____ day of _____, 2012 and the Minister of Indian Affairs and Northern Development, on behalf of Her Majesty the Queen in right of Canada, has executed this Agreement on the ____ day of _____, 2012.

SIGNED on behalf of the
 MUSCOWPETUNG SAULTEAUX FIRST NATION
 by at least a quorum of the
 Council of the MUSCOWPETUNG SAULTEAUX
 FIRST NATION
 in the presence of:

Signature: _____

Name of Witness: _____

Address: _____

) Per: _____
) Chief

) Per: _____
) Councilor

) Per: _____
) Councilor

) Per: _____
) Councilor

) Per: _____
) Councilor

) Per: _____
) Councilor

SIGNED on behalf of HER MAJESTY
 THE QUEEN IN RIGHT OF CANADA,
 as represented by the Minister of Indian
 Affairs and Northern Development,
 in the presence of:

Signature: _____

Name of Witness: _____

Address: _____

) _____
) Minister of Indian and Northern Affairs

SCHEDULE "1"

BALLOT QUESTIONS

SETTLEMENT AGREEMENT AND DESIGNATION

AS A VOTER OF THE MUSCOWPETUNG SAULTEAUX FIRST NATION, DO YOU:

Approve and assent to the terms and conditions set out in the Muscowpetung Saulteaux Flooding Claim Settlement Agreement and the Tripartite Agreement To Facilitate the Muscowpetung Saulteaux Flooding Claim Settlement Agreement (the "Tripartite Agreement"), dated for reference the ____ day of _____, 2012;

Approve and assent to the Designation Document pursuant to subsection 38(2) and section 39 of the *Indian Act*;

Approve and assent to the terms and conditions set out in the Muscowpetung Legacy Trust Agreement;

Agree to authorize and direct present and future Councils of the Muscowpetung Saulteaux First Nation to sign all documents and take all necessary measures as required to give effect to the Muscowpetung Saulteaux Flooding Claim Settlement Agreement, the Tripartite Agreement, the Muscowpetung Legacy Trust Agreement and the Designation Document?

YES

NO

Mark this Ballot by placing a Cross "X", **check mark or other mark** in the box under the word "YES" or "NO".

SCHEDULE "2"

**TRIPARTITE AGREEMENT
TO FACILITATE THE MUSCOWPETUNG SAULTEAUX FLOODING CLAIM
SETTLEMENT AGREEMENT**

SCHEDULE "3"

**DESIGNATION FOR EASEMENT ON THE MUSCOWPETUNG
RESERVE**

SCHEDULE "4"
To
MUSCOWPETUNG SAULTEAUX FIRST NATION
SETTLEMENT AGREEMENT

Dated for reference the ____ day of _____, 2012

CERTIFICATE OF SOLICITOR

I, Dwayne J. Stonechild, Barrister and Solicitor, of the Province of Saskatchewan, state as follows:

1. THAT I am a Member in good standing of the Law Society of Saskatchewan.
2. THAT I have been retained by the Chief and Council of the Muscowpetung Saulteaux First Nation to act as independent legal counsel to the First Nation and to advise the First Nation with respect to the negotiation, preparation, execution and delivery of the Muscowpetung Saulteaux Flooding Claim Settlement Agreement (the "Settlement Agreement"), the Muscowpetung Legacy Trust Agreement (the "Trust Agreement") and any other related documents.
3. THAT I have provided independent legal advice to the Chief and Council, as representatives of the First Nation, with respect to the legal nature and effect upon the First Nation of the Settlement Agreement, the Trust Agreement and any other related documents.
4. THAT I was present at the following information meetings which were called by the First Nation for the purpose of explaining to the members of the First Nation the Settlement Agreement, the Trust Agreement and any other related documents:

Location of information meeting:

Date and Time:

5. THAT I was present at the above listed information meetings and made a presentation at the information meetings to the members of the First Nation then

present, consisting of an overview of the terms and conditions of the Settlement Agreement, the Trust Agreement and any other related documents. The presentation provided an explanation of these aforementioned documents and I answered any relevant legal questions raised at the information meetings to the best of my professional ability.

6. THAT in this Certificate, “independent legal counsel” means that I have not been retained or otherwise acted for or represented any Party other than the First Nation with respect to any aspect of the matters touched upon by the Settlement Agreement, the Trust Agreement and any other related documents, and I am not acting in any conflict of interest.
7. THAT in this Certificate, “independent legal advice” means legal advice I have provided as legal counsel to the First Nation.
8. THAT by providing this Certificate neither myself nor any other lawyer associated with Stonechild & Racine Law Firm, Barristers & Solicitors, acknowledge or admit any type of legal or other duty or obligation to Canada and that providing this Certificate in no way alters this situation. Furthermore, the representations set out in this Certificate are intended for the sole purpose of documenting the fact that the First Nation has received, in the ways described above, independent legal advice in this process and are not intended to create any additional duties, obligations or liabilities on our part to any of the Parties to the Settlement Agreement or the Trust Agreement or to any third Party with respect to the same.

Dated at _____, this _____ day of _____, 2012.

Witness to the signature of
Dwayne J. Stonechild
Barrister & Solicitor

Dwayne J. Stonechild

Address:
Stonechild & Racine Law Firm
Barristers & Solicitors
210 – 335 Packham Avenue
Saskatoon, Saskatchewan
S7N 4S1
Ph. (306) 477-8897
Fx. (306) 477-8896
Em. d.stonechild@shaw.ca

SCHEDULE "5"
To
MUSCOWPETUNG SAULTEAUX FIRST NATION
SETTLEMENT AGREEMENT

Dated for reference the ____ day of _____, 2012

CERTIFICATE OF FINANCIAL ADVISOR

I, Dal McCloy, of the City of Winnipeg, in the Province of Manitoba, of P.M. Associates Ltd., state as follows:

1. I am qualified (MBA – accounting / finance major) to provide advice with regard to the financial matters set out in this Certificate.
2. I was retained by the Council of the Muscowpetung Saulteaux First Nation (the "First Nation") to act as a financial advisor and to provide advice to the First Nation with regard to financial matters related to the Muscowpetung Saulteaux Flooding Settlement Agreement (the "Settlement Agreement") and the Muscowpetung Legacy Trust Agreement ("Trust Agreement").
3. I have provided independent financial advice to the Council of the First Nation and the Voters present at the information meetings with respect to financial matters in relation to the Settlement Agreement and Trust Agreement, including the deposit of all funds by Canada into the Trust Account ("Trust Account"), rather than into an account for the First Nation managed by Canada; and the subsequent safe custody, management, use and disbursement of those funds.
4. I was present at the following information meetings which were called by the First Nation for the purposes of explaining to the Members of the First Nation financial matters related to the Settlement Agreement and Trust Agreement:

Locations of information meeting: Date(s) and Time(s):

_____	_____
_____	_____
_____	_____
_____	_____

5. I was present at the above listed information meetings and made a presentation in conjunction with the First Nation's legal counsel to Voters of the First Nation then present, consisting of an overview of the terms and conditions of the Settlement Agreement and Trust Agreement, including the deposit of the monies

payable pursuant to the Settlement Agreement into the Trust Account, established pursuant to the Trust Agreement, rather than into an account for the First Nation managed by Canada. The presentation provided an explanation of the content of the Trust Agreement to the members of the First Nation then present and I answered any relevant financial questions raised at the information meetings to the best of my professional ability.

6. I provide this Certificate on the following basis:

- (a) it is understood and agreed by Canada, that neither I nor any partner, employee or agent from my firm, including any of my or their heirs, executors and assigns, owe any type of financial or other duty or obligation to Canada and that providing this Certificate in no way alters this situation; and
- (b) the representations set out in this Certificate are intended for the sole purpose of documenting the fact that the First Nation has received independent financial advice in this process and are not intended to create any additional duties, obligations or liabilities on my part nor on the part of any partner, employee or agent of my firm, including any of my or their heirs, executors and assigns to any of the Parties to the Settlement Agreement or to any third party with respect to the same.

DATED at _____, this _____ day of _____ 2012.

Witness

Dal B. McCloy, MBA

Address:
P M Associates Ltd.
65 Dewdney Avenue
Winnipeg, Manitoba
R3B 0E1

SCHEDULE "6"
to
SETTLEMENT AGREEMENT
dated for reference this ____ day of _____, 2012

TRUSTEES' RECEIPT

We are the Trustee of Muscowpetung Legacy Trust established to receive and administer the Compensation paid by Canada to the Muscowpetung Saulteaux First Nation pursuant to the Muscowpetung Saulteaux Flooding Claim Settlement Agreement (the "Settlement Agreement").

We acknowledge receipt on the _____ day of _____, 20__12, of the sum of _____ dollars (\$_____) in Trust for Muscowpetung Legacy Trust Account, representing a payment credited against Article 3.1 of the Settlement Agreement.

DATED this _____ day of _____, 20__12.

The Trustees

Trustee
Peace Hills Trust Company,
10th Floor, 10011 109 Street,
Edmonton, AB
T5J 3S8