

**SCHEDULE 2
TO THE MUSCOWPETUNG SAULTEAUX FLOODING CLAIM SETTLEMENT
AGREEMENT**

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

THIS TRIPARTITE 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")

AND:

HER MAJESTY THE QUEEN IN RIGHT OF SASKATCHEWAN,
as represented by the Minister of Environment

(hereinafter called "Saskatchewan")

WHEREAS:

- A. The structure at the outlet of Echo Lake in the Qu'Appelle Valley (the "Structure") was constructed by Canada in the early 1940s to control water levels and to facilitate agricultural development;
- B. 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;
- C. The First Nation submitted to Canada a specific claim under Canada's Specific Claims Policy on June 26, 1986 alleging the unauthorized construction and

operation of the Structure causing flooding of a portion of its existing reserve lands from 1943 to the present;

- D. 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;
- E. In 2003, Saskatchewan was asked to participate in the negotiations to address certain issues that arose outside of the Specific Claim and Canada's mandate;
- F. At the request of Canada, the Watershed Authority agreed to hold the Easement on behalf of AESB to facilitate the settlement of the Specific Claim;
- G. The Watershed Authority and AESB have entered into:
 - (a) a *Memorandum of Understanding for Continued Negotiations for Proposed Transfer of Water Control Structures* dated July 21, 2009, confirming their mutual intent to negotiate the transfer of administration and control of the Structure from AESB to the Watershed Authority; and
 - (b) the *Qu'Appelle Structures Operating Agreement* dated April 28, 2009, contracting the Watershed Authority to operate the Structure on behalf of AESB pending transfer of the Structure;
- H. The First Nation and Canada negotiated the *Muscowpetung Saulteaux Flooding Claim Settlement Agreement* dated for reference August 22, 2012 (the "Settlement Agreement") in order to achieve 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; and
- I. Saskatchewan, Canada and the First Nation have negotiated and agreed to those terms necessary to facilitate the settlement of the Specific Claim and for the flooding of reserve land pursuant to the terms of this Agreement.

NOW THEREFORE IN CONSIDERATION OF THE PREMISES AND THE MUTUAL COVENANTS HEREIN CONTAINED, THE RECEIPT AND SUFFICIENCY OF WHICH IS HEREBY ACKNOWLEDGED, SASKATCHEWAN, CANADA AND THE FIRST NATION AGREE AS FOLLOWS:

1. DEFINITIONS

1.1 In this Agreement:

- (a) **“Agreement”** means this *Tripartite Agreement to Facilitate the Muscowpetung Saulteaux Flooding Claim Settlement Agreement*, including the attached Schedule;
- (b) **“Band Council Resolution”** means a duly executed written resolution of the Council adopted at a duly convened meeting;
- (c) **“Buffer Zone”** means that portion of the Easement Lands defined as the buffer zone in clause 7.2 of this Agreement;
- (d) **“Canada”** means Her Majesty The Queen in Right of Canada, as represented by the Minister of Indian Affairs and Northern Development;
- (e) **“Compensation”** means the cash payment referred to in sections 3.1 and 3.5 of the Settlement Agreement;
- (f) **“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*;
- (g) **“Designation Document”** means the *Designation for Easement on the Muscowpetung Saulteaux Reserve* attached as Schedule “3” to the Settlement Agreement;
- (h) **“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;
- (i) **“Easement Agreement”** means the *Easement Agreement For Flooding*, substantially similar in form and content to Schedule “B” of the Designation Document;
- (j) **“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;
- (k) **“Easement Lands”** means those reserve lands as described in Appendix “A” of the Designation Document;
- (l) **“Effective Date”** means that date determined in accordance with section 9.1 of the Settlement Agreement;
- (m) **“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;

- (n) “**FNLMA**” means the *First Nations Land Management Act*, S.C. 1999, c.24, as amended;
- (o) “**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;
- (p) “**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;
- (q) “**Information Meeting**” means a meeting held pursuant to section 4.3 of the *Indian Referendum Regulations*;
- (r) “**List of Voters**” means the names of Voters eligible to participate in the Vote;
- (s) “**Member**” means a “member of the band” as defined by the *Indian Act*;
- (t) “**Minister**” means the Minister of Indian Affairs and Northern Development or the Minister’s duly authorized representative;
- (u) “**Parties**” means the First Nation, Canada and Saskatchewan;
- (v) “**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 Saulteaux Reserve bordering the Qu’Appelle River and Pasqua Lake;
- (w) “**Ratification Vote**” means a vote on the Ballot Questions as referenced in the Settlement Agreement conducted in accordance with the *Indian Referendum Regulations*;
- (x) “**Saskatchewan**” means Her Majesty The Queen in Right of Saskatchewan, as represented by the Minister of Environment;
- (y) “**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;
- (z) “**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;

- (aa) **"Trust Agreement"** means the *Muscowpetung Legacy Trust Agreement* which does not form part of this Agreement;
- (bb) **"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
- (cc) **"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 Saskatchewan may fulfill its obligations hereunder by delegating its rights and obligations under this Agreement to that agency, ministry or Crown corporation which, from time to time, holds the Easement. Saskatchewan shall advise Canada and the First Nation within thirty (30) days following delegation, provided always that any such delegation shall not release Saskatchewan from its obligations hereunder.

1.4 Schedule "A" as attached hereto forms part of this Agreement.

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.

3. RESERVE BOUNDARY

3.1 Subject to clauses 3.2, 9.3 and 9.4, the Survey Plan identifies the Easement Lands and the boundary of the Muscowpetung Saulteaux reserve bordering the Qu'Appelle River and Pasqua Lake.

3.2 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.

- 3.3 If the First Nation is successful in a claim or proceeding pursuant to clause 3.2, 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 the Easement Agreement, to include as Easement Lands such additional reserve land as is necessary to give effect to the terms of this 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 this Agreement.

4. DESIGNATION AND GRANT OF EASEMENT FOR FLOODING

- 4.1 Pursuant to subsection 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*.
- 4.2 Saskatchewan agrees to recommend that an Order in Council be passed, conditional on the Designation Document being accepted by the Governor in Council, authorizing the execution of the Easement Agreement.
- 4.3 Canada shall grant the Easement to the Easement Holder as soon as practicable following the Effective Date.
- 4.4 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.

5. ENVIRONMENTAL BASELINE STUDY

- 5.1 No later than one year from the Effective Date, or such other period of time as agreed to by the First Nation, Canada and Saskatchewan, Saskatchewan shall undertake, at its expense and in consultation with the First Nation and Canada, to

contract independent consultants who are qualified environmental professionals to conduct an *Environmental Baseline Study* on the Easement Lands.

- 5.2 The *Environmental Baseline Study* referred to in clause 5.1 shall be conducted in accordance with the *Terms of Reference for Environmental Baseline Study* attached as Schedule "A".
- 5.3 The purpose of the *Environmental Baseline Study* is to document the environmental condition of the Easement Lands at or near the Effective Date.
- 5.4 Saskatchewan shall forward a draft of the *Environmental Baseline Study* to the First Nation and Canada.
- 5.5 The First Nation and Canada shall, within one hundred and twenty (120) days of receiving the draft *Environmental Baseline Study*, or such other period of time as agreed to by the Parties, either approve, reject or propose modifications to the draft *Environmental Baseline Study* based on matters relating to the process or analysis contemplated by the *Terms of Reference for Environmental Baseline Study*.
- 5.6 Where the First Nation or Canada approves the draft *Environmental Baseline Study*, such approval shall be in writing to Saskatchewan and the other party.
- 5.7 Where the First Nation or Canada rejects the draft *Environmental Baseline Study*, such rejection, including the reasons for the rejection, shall be in writing to Saskatchewan and the other party.
- 5.8 Where the First Nation or Canada proposes modifications to the draft *Environmental Baseline Study*, such modifications, including the reasons for the proposed modifications, shall be in writing to Saskatchewan and the other party and thereupon Saskatchewan shall direct the independent consultants to give full and fair consideration to the proposed modifications in preparing the final *Environmental Baseline Study*.
- 5.9 Saskatchewan shall forward the final *Environmental Baseline Study* to the First Nation and Canada which may include some or all of the proposed modifications and any proposed modifications not accepted shall be noted and considered by the independent consultant preparing the *Decommissioning and Restoration Plan* referred to in Clause 8 of the Easement Agreement.

6. PERMITTED USES OF AND ACCESS TO THE EASEMENT LANDS

- 6.1 Subject to any applicable laws, including any laws of the First Nation, the First Nation and its Members shall have the right to utilize the Easement Lands for the purpose of agricultural crop production, livestock grazing, commercial, recreational and social purposes and to access the water, providing that such uses do not interfere with and are subject to the rights of the Easement Holder under the Easement.

- 6.2 Nothing in this Agreement shall restrict the right of the First Nation to explore for, extract and remove oil, gas, sand, gravel, minerals and petroleum within, upon or under the Easement Lands and, for that purpose, to drill wells, lay pipelines and build such tanks, stations, structures and roads as may be necessary, providing that such uses do not interfere with and are subject to the rights of the Easement Holder under the Easement.
- 6.3 The First Nation and its Members having any right to the Easement Lands, may construct, excavate, drill, install, erect or permit to be constructed, excavated, drilled, installed or erected within, upon, under or across the Easement Lands, any pit, well, foundation, pavement or other structure, building or installation, providing that any such structure, building or installation does not interfere with and is subject to the rights of the Easement Holder under the Easement.
- 6.4 The First Nation may enter upon the Easement Lands at all reasonable times for the purpose of examining the condition of the Easement Lands.
- 6.5 The First Nation acknowledges and agrees that Canada will grant the Easement Holder a non-exclusive right to pass or repass over reserve roads and trails to such extent as may be reasonably required for the purpose of ingress and egress to and from the Easement Lands, provided that the Easement Holder shall provide the First Nation with notice, reasonable in the particular circumstances, of the requirement to enter the First Nation's reserve land to access the Easement Lands.

7. OPERATIONS

- 7.1 The First Nation acknowledges and agrees that spring flooding, extreme weather conditions and other natural events not related to the operation of the Structure may occasionally result in flooding of reserve lands outside the Easement Lands or may result in operation of the Structure at less than 1572 feet (479.146 m) above sea level (ASL) from time to time.
- 7.2 For so long as the Structure is operated and the Easement is in effect, water levels shall, in the normal course, be maintained at approximately 1572 feet (479.146m) ASL during the operating season. The authority provided for in the Easement to flood the Easement Lands from 1572 feet (479.146m) ASL up to a maximum of 1574 feet (479.755 m) ASL is intended as a buffer zone (the "Buffer Zone"). The First Nation acknowledges and agrees that certain natural events such as extreme weather conditions, high spring run off or human error may occasionally result in flooding within the Buffer Zone.
- 7.3 In the event of flooding in the Buffer Zone, Saskatchewan shall, or shall direct, the Easement Holder to take all reasonable steps to operate the Structure to reduce the water level to approximately 1572 feet (479.146 m) ASL in a timely manner.

- 7.4 Saskatchewan agrees that it shall not intentionally operate the Structure or cause or permit the Easement Holder to intentionally operate the Structure in a manner that would cause regular flooding of the Easement Lands within the Buffer Zone.
- 7.5 In the event that the First Nation alleges that clauses 7.3 or 7.4 have been breached, it shall provide written notice to Saskatchewan setting out the particulars of the alleged breach and the matter shall be resolved in the following sequence although steps may be bypassed by mutual written consent:
- (a) negotiation;
 - (b) mediation; or
 - (c) binding arbitration.
- 7.6 Either the First Nation or Saskatchewan may, after fifteen (15) days of receipt of the notice in accordance with clause 7.5, take the dispute to mediation. In the event of mediation, Saskatchewan and the First Nation shall jointly appoint one impartial mediator to undertake the process according to mutually agreed upon procedures.
- 7.7 After thirty (30) days following receipt of the notice in accordance with clause 7.6, either party may, by further notice to the other take the dispute to binding arbitration.
- 7.8 In the event of arbitration, Saskatchewan and the First Nation agree as follows:
- (a) that this Agreement constitutes a written agreement to refer any dispute arising from an alleged breach of any contractual obligation under Clause 7 to arbitration proceedings to be conducted pursuant to *The Arbitration Act, 1992*, S.S. 1992 c. A-24.1 as am., or pursuant to any succeeding legislation and all regulations made thereunder;
 - (b) Saskatchewan and the First Nation shall, within thirty (30) days notice of either party to refer any dispute to arbitration, jointly appoint the arbitrator to adjudicate the arbitration, failing which, an application may be made by either party under *The Arbitration Act, 1992*, S.S. 1992 c. A-24.1 as am., to appoint an arbitrator;
 - (c) notwithstanding Clause 30 of the Easement Agreement, the arbitrator may award, but is limited to awarding, damages to the First Nation based on the permitted uses as set out in clause 6.1, for any flooding which may occur within the Buffer Zone as a result of a breach of clauses 7.3 or 7.4. Provided however, the arbitrator shall not have authority to award damages, and neither Saskatchewan nor the Easement Holder shall be liable for any damages, caused to any activity, structure, building or installation referred to

in clauses 6.2 and 6.3 including any related or consequential damages or business losses caused by the exercise of its rights under the Easement; and

- (d) the arbitrator's decision shall be final and binding on Saskatchewan, the Easement Holder and the First Nation.

7.9 Nothing in this Agreement obligates Saskatchewan or the Easement Holder to operate the Structure. However, if operation of the Structure ceases, the provisions of Clause 35 of the Easement Agreement will apply.

8. WATER MANAGEMENT

8.1 Saskatchewan and the First Nation agree, concurrent with the execution of this Agreement, to enter into the *Pasqua Lake Water Management Agreement* attached hereto as Appendix "A", and which does not form part of this Agreement. The First Nation, Saskatchewan and Canada agree that the *Pasqua Lake Water Management Agreement* is independent of the Settlement Agreement and shall not be raised as a challenge to the finality of the Settlement Agreement or this Agreement in any manner.

9. RELEASE

9.1 For the purposes of this Clause, "Saskatchewan" includes any of Saskatchewan's Ministers, officials, servants, employees, agents (including Crown corporations), successors and assigns.

9.2 In consideration of the covenants made herein by Saskatchewan and other good and valuable consideration, 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 Saskatchewan 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 Saskatchewan with respect to:

- (a) issues and allegations arising out of the subject matter of the Specific Claim;
- (b) all past flooding caused by operation of the Structure and all future flooding within the Easement Lands pursuant to the terms of the Settlement Agreement and this Agreement;
- (c) the procedures resulting in the execution of the Settlement Agreement and this Agreement by the First Nation;
- (d) the procedures involved in the Ratification Vote held pursuant to the *Indian Referendum Regulations* and the execution of the Settlement Agreement,

including this Agreement, by the First Nation pursuant to Section 8 of the Settlement Agreement;

- (e) any errors or omissions in the List of Voters for the Ratification Vote; and
- (f) the representations and warranties of the First Nation under Clause 14.

9.3 Neither this Agreement, the Survey Plan, nor the release set out in clause 9.2, shall preclude the First Nation from advancing any claim or other proceedings in relation to:

- (a) any matter described in clause 3.2;
- (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.

9.4 Neither Canada nor Saskatchewan shall 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 subclause 9.3(a) or a claim asserting ownership of any other lands outside the reserve boundary as defined in the Survey Plan.

9.5 The release under this Clause does not discharge Saskatchewan or the Easement Holder, as the case may be, from the due performance of any of their obligations arising from this Agreement, the *Pasqua Lake Water Management Agreement* and the Easement, and nothing herein shall prevent or restrict the First Nation or Canada, as the case may be, from pursuing any legal or equitable remedies against Saskatchewan or the Easement Holder for any breach of the terms and conditions of those agreements.

10. INDEMNITY IN FAVOUR OF SASKATCHEWAN BY FIRST NATION

10.1 For the purposes of this Clause:

- (a) "Saskatchewan" includes any of Saskatchewan's Ministers, officials, servants, employees, agents (including Crown corporations), 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.

10.2 Subject to this Clause, the First Nation agrees to indemnify and forever save harmless Saskatchewan from and against any and all obligation, liability, duty, loss, damage or costs 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 Saskatchewan with respect to any matters included in the release in clause 9.2, provided that such obligation, liability, duty, loss, damage or cost 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 clause 10.3.

10.3 Saskatchewan shall provide notice to the First Nation by registered mail of any claim which may reasonably give rise to indemnification under this Clause. 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 Saskatchewan if it wishes to join the action as a third party defendant.

10.4 If no notice is received by Saskatchewan within thirty (30) days, or such other period as may be agreed to by the parties, Saskatchewan shall proceed to defend the action without joining the First Nation as a third party defendant. Saskatchewan 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.

10.5 If Saskatchewan 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, Saskatchewan 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 Saskatchewan; or
- (b) affect the rights or abilities of Saskatchewan to defend the claim against it including, without limitation, the appointment of counsel.

- 10.6 Saskatchewan 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 clause 10.2. Saskatchewan agrees that it shall not refuse to defend any such proceeding based solely on the existence of this Clause and that it shall use all reasonable efforts to defend itself in any such proceedings.
- 10.7 Any demand by Saskatchewan 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, Saskatchewan shall be entitled to invoke all rights and remedies provided by law to recover any amounts owed by the First Nation.

11. INDEMNITY IN FAVOUR OF FIRST NATION BY SASKATCHEWAN

- 11.1 Subject to this Clause, Saskatchewan agrees to indemnify and forever save harmless the First Nation from and against any and all obligation, liability, duty, loss, damage or costs 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 person against the First Nation in connection with a breach of any obligation, covenant or agreement of Saskatchewan or the Easement Holder in the Easement Agreement or a personal injury, death, property damage or loss arising from, or related to, any act or omission relating to operation of the Structure or the exercise of rights under the Easement by the Easement Holder, Saskatchewan, or its officers, servants, employees, contractors and subcontractors, agents, invitees, licensees, or any other person over whom Saskatchewan is in law responsible, provided that such obligation, liability, duty, loss, damage or cost 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 Saskatchewan, such consent not to be unreasonably withheld and notice has been given to Saskatchewan pursuant to clause 11.2.
- 11.2 The First Nation shall provide notice to Saskatchewan by registered mail of any claim which may reasonably give rise to indemnification under this Clause. Such notice shall set forth in reasonable detail and, to the extent then known, the basis for such claim for indemnification. Saskatchewan 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 the First Nation if it or the Easement Holder wishes to join the action as a third party defendant.
- 11.3 If no notice is received by the First Nation within thirty (30) days, or such other period as may be agreed to by the parties, the First Nation shall proceed to defend the action without joining Saskatchewan or the Easement Holder as a third party defendant. The First Nation shall from time to time provide to Saskatchewan copies of all pleadings, documents and offers of settlement in the action filed by it with a court or tribunal.

11.4 If the First Nation receives notice within thirty (30) days, or such other period as may be agreed to by the parties, that Saskatchewan or the Easement Holder wishes to be joined as a third party defendant, the First Nation shall immediately proceed to join Saskatchewan or the Easement Holder, as the case may be, to the action as a third party defendant. Joining the action as a third party defendant shall in no way:

- (a) mean that Saskatchewan or the Easement Holder is entitled to represent the First Nation; or
- (b) affect the rights or abilities of the First Nation to defend the claim against it including, without limitation, the appointment of counsel.

11.5 The First Nation 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 clause 11.2. The First Nation agrees that it shall not refuse to defend any such proceeding based solely on the existence of this Clause and that it shall use all reasonable efforts to defend itself in any such proceedings.

11.6 Any demand by the First Nation 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 Saskatchewan within sixty (60) days of receipt of such notice, the First Nation shall be entitled to invoke all rights and remedies provided by law to recover any amounts owed by Saskatchewan.

12. EXECUTION OF AGREEMENT

12.1 This Agreement shall be executed by at least a quorum of the Council on behalf of the First Nation after approval through the Ratification Vote set out in Section 8 of the Settlement Agreement.

12.2 This Agreement shall be executed on behalf of Saskatchewan by the Minister of Environment after the conditions precedent set out in Clause 13 of this Agreement have been met.

12.3 This Agreement shall be executed on behalf of Canada by the Minister of Indian Affairs and Northern Development after the conditions precedent set out in Section 11 of the Settlement Agreement have been met.

13. CONDITIONS PRECEDENT

13.1 Canada, Saskatchewan and the First Nation agree that the following are conditions precedent to any obligation by Saskatchewan to execute this Agreement:

- (a) prior to posting notice of the Ratification Vote, confirmation in writing from the Controller of Surveys of Saskatchewan to Canada agreeing to the content and recording of the Survey Plan in the CLSR by the Surveyor General;

- (b) ratification and approval of the terms and conditions of the Settlement Agreement, including this Agreement, and the Trust Agreement by the First Nation in accordance with Section 8 of the Settlement Agreement;
- (c) execution of the Settlement Agreement and this Agreement by the First Nation;
- (d) the Lieutenant Governor in Council having authorized the execution of this Agreement, the *Pasqua Lake Water Management Agreement* and the Easement Agreement;
- (e) execution by the Pasqua First Nation of a settlement agreement and tripartite agreement regarding its specific claim; and
- (f) confirmation by Canada of receipt of a Band Council Resolution approving the content and recording of the Provisional Plan.

14. REPRESENTATIONS AND WARRANTIES

14.1 By voting in favour of the Settlement Agreement, the First Nation represents and warrants to Saskatchewan that:

- (a) it has retained legal counsel independent from Saskatchewan, who is qualified to practice law in the province of Saskatchewan, to provide legal advice to the First Nation with respect to this Agreement;
- (b) its legal counsel has provided the First Nation, through its Council, independent legal advice with respect to the negotiation, preparation, execution, delivery and content of this Agreement; and
- (c) 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.

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

15. FURTHER ASSURANCES

15.1 The First Nation, Canada and Saskatchewan 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.

15.2 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 Saskatchewan, on the same basis as other First Nations in Saskatchewan 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.

15.3 Nothing in this Agreement or the Easement Agreement shall be interpreted as an acknowledgement of, improvement upon or detracting from the existing legal rights of any Party by any other Party concerning ownership and use of water, and no Party shall have waived such rights by reason of having been a signatory to this Agreement or the Easement Agreement.

16. DISPUTE RESOLUTION

16.1 Unless otherwise provided for in this Agreement, if there is 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.

17. AMENDMENTS

17.1 This Agreement may only be amended or replaced by written agreement between the Parties.

18. NOTICE

18.1 Except as provided herein, any notice or other written communication required or permitted to be given under this Agreement shall be given as follows:

(a) to Canada

Regional Director General
Indian and Northern Affairs
Saskatchewan Region
1 First Nations Way, Room 200
Regina, SK S4S 7K5
Fax: (306) 780-7305

cc. Senior Assistant Deputy Minister
Treaties and Aboriginal Government
Fax: (819) 953-0545

(b) to the First Nation:

Muscowpetung Saulteaux First Nation
P.O. Box 1310
Muscowpetung Saulteaux, SK SOG 1S0
Attention: Chief and Council
Fax: (306) 723-4710

(c) to Saskatchewan:

Saskatchewan Watershed Authority
111 Fairford Street E
Moose Jaw, SK S6H 7X9
Attention: President
Fax: (306) 694-3991

Copy to Vice President, Legal, Regulatory and Aboriginal Affairs
Suite 420 - 2365 Albert Street
Regina SK S4P 4K1
Fax: (306)787-0780

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 clause 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.

19. NO PREJUDICE AND NO ADMISSIONS

19.1 This Agreement reflects a negotiated settlement between Canada, Saskatchewan 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 Saskatchewan may take with respect to any other First Nation or aboriginal people other than the First Nation and its Members.

19.3 This Agreement is entered into by Canada, Saskatchewan and the First Nation without any admission of facts or liability.

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 For greater certainty, this Agreement is a Schedule to and forms part of the Settlement Agreement.

20.3 Except as otherwise provided for herein, this Agreement sets forth the entire agreement as between Saskatchewan and the First Nation and supersedes any prior negotiations, representations, agreements, undertakings or conditions, whether oral or in writing, relating to the subject matter of this Agreement.

20.4 This Agreement shall be governed by the applicable laws of Canada and Saskatchewan.

20.5 There shall be no presumption that any ambiguity in the terms of this Agreement should be interpreted in favour of any Party.

20.6 Words in the singular include the plural and words in the plural include the singular unless the context otherwise requires.

20.7 This Agreement shall come into effect on the Effective Date.

IN WITNESS WHEREOF, at least a quorum of the Council on behalf of the Muscowpetung Saulteaux First Nation, have hereunto set their respective hands on _____, ____ 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 _____, ____ and the Minister of Environment, on behalf of Her Majesty the Queen in Right of Saskatchewan, has executed this Agreement on _____, _____.

IN THE PRESENCE OF

Signature

Name of Witness

Position

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

Chief

Councillor

Councillor

Councillor

Councillor

Councillor

IN THE PRESENCE OF

Signature

Name of Witness

Position

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

Minister of Indian Affairs and Northern
Development

IN THE PRESENCE OF

Signature

Name of Witness

Position

SIGNED on behalf of HER MAJESTY)
THE QUEEN IN RIGHT OF)
SASKATCHEWAN, as represented by)
the Minister of Environment:)

Minister of Environment

SCHEDULE "A"
TERMS OF REFERENCE FOR ENVIRONMENTAL BASELINE STUDY

APPENDIX "A"
(WATER MANAGEMENT AGREEMENT)