

**SCHEDULE 1
TO THE MUSKODAY FIRST NATION TREATY LAND ENTITLEMENT
SETTLEMENT AGREEMENT**

DATED THE _____ DAY OF _____, 200 .

I. PROVINCIAL MINERAL REVENUE SOURCES

A. General

1. Saskatchewan Resource Surcharge

B. Oil and Gas

1. Crown Royalties
2. Crown Enhanced Oil Recovery (EOR) Royalty
3. Oil and Gas Land Sale Bonus Bids
4. Oil and Gas Disposition Rentals
5. Net Royalty
6. Compensatory Royalty
7. Freehold Production Tax on Crown Land
8. Freehold EOR Production Tax on Crown Land

C. Potash

1. Potash Royalties
2. Potash Base Payments
3. Potash Lease Rentals
4. Potash Profit Tax on Crown Land

D. Uranium

1. Uranium Royalties - Basic
2. Uranium Royalties - Graduated

E. Coal

1. Coal Royalties

F. Other Minerals

1. Sodium Sulfate Royalties
2. Metallic Royalties
3. Quarrying Royalties
4. Salt Royalties

**SCHEDULE 2
TO THE MUSKODAY FIRST NATION TREATY LAND ENTITLEMENT
SETTLEMENT AGREEMENT**

DATED THE _____ DAY OF _____, 200

**Agreement Concerning Amendment of the
Natural Resources Transfer Agreement**

MEMORANDUM OF AGREEMENT made the _____ day of _____ 200.

BETWEEN:

THE GOVERNMENT OF CANADA, as represented by
the Minister of Indian Affairs and Northern Development,
(hereinafter referred to as "Canada")

OF THE FIRST PART

AND:

**THE GOVERNMENT OF THE PROVINCE OF
SASKATCHEWAN**, as represented by the Minister of First Nations and
Métis Relations,
(hereinafter referred to as "Saskatchewan")

OF THE SECOND PART

WHEREAS a Memorandum of Agreement between Canada and Saskatchewan made the 20th day of March, 1930 (hereinafter referred to as the "*Natural Resources Transfer Agreement*") was duly approved by the Parliament of Canada and the Legislature of Saskatchewan and, upon an address to His Majesty from the Senate and House of Commons of Canada, was confirmed and declared to have the force of law by an Act of the Parliament of the United Kingdom of Great Britain and Northern Ireland entitled the *Constitution Act, 1930*;

AND WHEREAS, pursuant to paragraph 26 of the *Natural Resources Transfer Agreement*, it was agreed that provisions of the *Natural Resources Transfer Agreement* may be varied by an agreement confirmed by concurrent statutes of the Parliament of Canada and the Legislature of Saskatchewan;

AND WHEREAS paragraphs 10 and 11 of the *Natural Resources Transfer Agreement* provide as follows:

10. *All lands included in Indian reserves within the Province, including those selected and surveyed but not yet confirmed, as well as those confirmed, shall continue to be vested in the Crown and administered by the Government of Canada for the purposes of Canada, and the Province will from time to time, upon the request of the Superintendent General of Indian Affairs, set aside, out of the unoccupied Crown lands hereby transferred to its administration, such further areas as the said Superintendent General may, in agreement with the appropriate Minister of the Province, select as necessary to enable Canada to fulfill its obligations under the treaties with the Indians of the Province, and such areas shall thereafter be administered by Canada in the same way in all respects as if they had never passed to the Province under the provisions hereof.*
11. *The provisions of paragraphs one to six inclusive and of paragraph eight of the agreement made between the Government of the Dominion of Canada and the Government of the Province of Ontario on the 24th day of March, 1924, which said agreement was confirmed by status of Canada, fourteen and fifteen George the Fifth chapter forty-eight shall (except so far as they relate to the Bed of Navigable Waters Act) apply to the lands included in such Indian reserves as may hereafter be set aside under the last preceding clause as if the said agreement had been made between the parties hereto, and the provisions of the said paragraphs shall likewise apply to the lands included in the reserves heretofore selected and surveyed, except that neither the said lands nor the proceeds of the disposition thereof shall in any circumstances become administerable by or be paid to the Province.*

AND WHEREAS Canada, Saskatchewan and the Muskoday First Nation have negotiated and concluded the Muskoday First Nation Treaty Land Entitlement Settlement Agreement, pursuant to which Canada's outstanding Treaty land entitlement obligations in respect of the Muskoday First Nation are to be fulfilled;

AND WHEREAS Canada and Saskatchewan have agreed that, in consideration of the financial and land related contributions to be made by Saskatchewan pursuant to the Muskoday First Nation Treaty Land Entitlement Settlement Agreement, Saskatchewan's obligations under paragraph 10 of the *Natural Resources Transfer Agreement* in respect of the Muskoday First Nation shall be fulfilled on the earlier of the date the Muskoday First Nation reaches its Shortfall Acres Acquisition Date or the date upon which Saskatchewan has paid all amounts required to be paid by Saskatchewan to

Canada and the Treaty Land Entitlement (Saskatchewan) Fund pursuant to the Muskoday First Nation Treaty Land Entitlement Agreement;

AND WHEREAS paragraph 6 of the agreement made between Canada and the Government of the Province of Ontario on the 24th day of March, 1924, provides as follows:

6. *Except as provided in the next following paragraph, one-half of the consideration payable, whether by way of purchase money, rent, royalty or otherwise, in respect of any sale, lease or other disposition of a mining claim staked as aforesaid, and, if in any other sale, lease or other disposition hereafter made of Indian Reserve lands in the Province of Ontario, any minerals are included, and the consideration for such sale, lease or other disposition was to the knowledge of the Department of Indian Affairs affected by the existence or supposed existence in the said lands of such minerals, one-half of the consideration payable in respect of any such other sale, lease or other disposition, shall forthwith upon its receipt from time to time, be paid to the Province of Ontario; the other half only shall be dealt with by the Dominion of Canada as provided in the paragraph of this agreement numbered 1.*

AND WHEREAS Canada and Saskatchewan have further agreed that Saskatchewan should not be entitled to any consideration in respect of any sale, lease or other disposition of any mining claim or minerals on or in any lands set apart as an Entitlement Reserve.

NOW, THEREFORE, THIS AGREEMENT WITNESSETH AS FOLLOWS:

1. In this Memorandum of Agreement, including the recitals, the following capitalized terms shall have the following meanings hereafter ascribed to them:
 - (i) "**Entitlement Land**" means land in Saskatchewan which is hereafter purchased or otherwise acquired by the Muskoday First Nation pursuant to the provisions of the Muskoday First Nation Treaty Land Entitlement Settlement Agreement to be set apart as an Entitlement Reserve;
 - (ii) "**Entitlement Reserve**" means Entitlement Land which is set apart by Canada as a Reserve for the use and benefit of the Muskoday First Nation pursuant to the Muskoday First Nation Treaty Land Entitlement Settlement Agreement;

- (iii) "**Execution Date**" means the date that Canada, Saskatchewan and the Muskoday First Nation executed the Muskoday First Nation Treaty Land Entitlement Settlement Agreement;
 - (iv) "**Muskoday First Nation**" means the Muskoday First Nation of Saskatchewan;
 - (v) "**Muskoday First Nation Treaty Land Entitlement Settlement Agreement**" means the agreement among Canada, Saskatchewan and the Muskoday First Nation dated the ____ day of _____, 200 , pursuant to which Canada's outstanding Treaty land entitlement obligations in respect of the Muskoday First Nation, and Saskatchewan's obligations to Canada under paragraph 10 of the *Natural Resources Transfer Agreement* in respect of the Muskoday First Nation, are to be fulfilled;
 - (vi) "**Reserve**" means a "reserve" within the meaning of the *Indian Act*, R.S.C. 1985, c. I-5, as such statute may be amended or replaced from time to time;
 - (vii) "**Shortfall Acres**" means 6,144 acres of land (including all existing minerals and improvements in respect thereof);
 - (viii) "**Shortfall Acres Acquisition Date**" means the date upon which Entitlement Land (including all existing minerals and improvements in respect thereof) in an aggregate area at least equal to the Muskoday First Nation's Shortfall Acres has hereinafter been transferred to Canada and is set apart as an Entitlement Reserve or Entitlement Reserves;
 - (ix) "**Treaty Land Entitlement (Saskatchewan) Fund**" means the fund established pursuant to the *Saskatchewan Treaty Land Entitlement Act*, S.C. 1993, c.11 and administered by Canada for the purpose of, *inter alia*, accepting and depositing payments by Saskatchewan in respect of the Muskoday First Nation.
2. Canada hereby agrees that the Superintendent General of Indian Affairs shall not request Saskatchewan to set aside any land pursuant to paragraph 10 of the *Natural Resources Transfer Agreement* to fulfill Canada's obligations under Treaty No. 6 in respect of the Muskoday First Nation (or in respect of the past, present and future members of the Muskoday First Nation), as long as Saskatchewan is paying to Canada and the Treaty Land Entitlement (Saskatchewan) Fund the amounts required to be paid by Saskatchewan in respect of the Muskoday First Nation in accordance with the Muskoday First Nation Treaty Land Entitlement Settlement Agreement and Saskatchewan has not failed, in any material way, to comply with its other obligations thereunder.

3. Notwithstanding section 2 hereof, Canada further agrees that it will forever release and discharge Saskatchewan from all of its obligations pursuant to paragraph 10 of the *Natural Resources Transfer Agreement* in respect of the Muskoday First Nation from and after the earlier of:
 - (a) the date upon which the Muskoday First Nation reaches its Shortfall Acres Acquisition Date; or
 - (b) the date upon which Saskatchewan has paid all amounts required to be paid by Saskatchewan to Canada and the Treaty Land Entitlement (Saskatchewan) Fund pursuant to the Muskoday First Nation Treaty Land Entitlement Settlement Agreement.
4. Saskatchewan agrees to relinquish any claim that it may have pursuant to paragraph 11 of the *Natural Resources Transfer Agreement* to any of the consideration payable in respect of any sale, lease or other disposition of any mining claim or minerals on or in any lands set apart as an Entitlement Reserve.
5. Canada and Saskatchewan agree to take all necessary steps to ratify and confirm this Memorandum of Agreement.
6. This Memorandum of Agreement shall take effect upon being duly confirmed by statutes of the Parliament of Canada and the Legislative Assembly of the Province of Saskatchewan, thereby amending the *Natural Resources Transfer Agreement* in accordance with section 26 of the *Natural Resources Transfer Agreement* in the manner contemplated therein.

IN WITNESS WHEREOF the parties hereto have set their hands on the day and year first above written.

SIGNED on behalf of the Government
of Canada as represented by the
Honourable Minister of Indian Affairs
and Northern Development

WITNESS

The Honourable
Minister of Indian Affairs and
Northern Development

SIGNED on behalf of the Government
of Saskatchewan as represented by the Honourable
Minister of First Nations and Métis Relations

WITNESS

The Honourable _____,
Minister of First Nations and Métis
Relations

**SCHEDULE 3 TO THE MUSKODAY FIRST NATION TREATY LAND
ENTITLEMENT SETTLEMENT AGREEMENT**

**RATIFICATION VOTE GUIDELINES AND PROCEDURES
APPROVING THE MUSKODAY FIRST NATION TREATY LAND ENTITLEMENT
SETTLEMENT AGREEMENT AND ASSOCIATED INSTRUMENTS**

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PART I
GUIDELINES

1.0 MEANING OF CERTAIN DEFINED TERMS

1.1 Unless otherwise specifically defined herein, capitalized terms utilized in this document shall have the same meaning ascribed thereto in the Muskoday First Nation TLE Settlement Agreement.

2.0 ADDITIONAL DEFINITIONS

- (a) "*Associated Instruments*" has the meaning ascribed thereto in paragraph 3 hereof;
- (b) "*Assistant*" means the person appointed by the Ratification Officer to be his assistant;
- (c) "*Band*" means the Muskoday First Nation of Saskatchewan;
- (d) "*Muskoday First Nation TLE Settlement Agreement*" means the agreement in principle entitled the "Muskoday First Nation Treaty Land Entitlement Settlement Agreement" between the Band, Canada and Saskatchewan, which is the subject matter of the Ratification Vote;
- (e) "*Ratification Officer*" means the person appointed by the Department to conduct and supervise the Ratification Vote;
- (f) "*Ratification Vote*" means a vote by the eligible Voters of the Band to formally approve, confirm and sanction the execution and delivery by the Chief and Councillors of the Band of the Muskoday First Nation TLE Settlement Agreement and Associated Instruments and requiring a response in either the affirmative or the negative;
- (g) "*Voter*" means a Member who has attained the full age of eighteen (18) years at the date upon which the Ratification Vote is conducted; and
- (h) "*Voting*" means a polling of Voters by secret ballot in respect of a Ratification Vote.

3.0 CALLING THE RATIFICATION VOTE

3.1 The Ratification Vote may be called by:

- (a) the Council of the Band; or
- (b) the Minister at request of the Council of the Band;

to approve the Muskoday First Nation TLE Settlement Agreement and any other instruments or agreements (including, without limitation, the Trust Agreement and Replacement Public Utility Easement agreements) required to be executed, delivered or adopted in connection with the Muskoday First Nation TLE Settlement Agreement (hereinafter collectively referred to as the "Associated Instruments").

4.0 ADVANCE DOCUMENTATION

4.1 In advance of the proposed Ratification Vote, or at the same time the call for a Ratification Vote is made, all documentation related to the Ratification Vote shall be filed with the Saskatchewan Regional Office of the Department at Room 200, 1 First Nations Way, Regina, Saskatchewan, S4S 7K5, Attention: Director, Lands and Trusts Services, such documentation to be complete and to include:

- 4.1.1** a Band Council Resolution approving in principle the terms of the Muskoday First Nation TLE Settlement Agreement and all Associated Instruments;
- 4.1.2** a Band Council Resolution calling for a Ratification Vote on the Muskoday First Nation TLE Settlement Agreement and Associated Instruments in accordance with these Ratification Vote Guidelines and Procedures and requesting the Department to appoint an individual as the Ratification Officer;
- 4.1.3** a copy of the Muskoday First Nation TLE Settlement Agreement and the Associated Instruments, all of which have been initialled for identification (but not signed) by an authorized representative on behalf of each of the Band, Canada and Saskatchewan, with the exception of the Trust Agreement, which shall be initialled only by a representative of the Band;
- 4.1.4** if applicable, one copy of any relevant appraisals, reports or other direct evidence supporting the proposed Muskoday First Nation TLE Settlement Agreement and Associated Instruments;
- 4.1.5** one (1) copy of the question as it is to appear on the ballot paper to be put to the Voters during the Ratification Vote;
- 4.1.6** one (1) copy of the notice to Voters, as it is to appear, stating:
 - (i) the date (or consecutive dates) on which the Ratification Vote (or Ratification Votes) will take place;
 - (ii) the hours during which the Voters may vote on such date(s);
 - (iii) the locations(s) at which Voting will take place (which, for greater certainty, may be in different locations inside or outside of Saskatchewan, as may be agreed);
 - (iv) the questions to be submitted to the Voters;

- (v) instructions for obtaining a copy of the proposed Muskoday First Nation TLE Settlement Agreement and Associated Instruments, which shall be made readily available to all eligible Voters; and
- (vi) that if a Voter is ordinarily resident on a Reserve but is not able to vote in person on the day scheduled for Voting, due to a planned absence or for medical reasons, such Voter may request a mail-in ballot package from the Ratification Officer, and such notice shall also include instructions for contacting the Ratification Officer for such purpose.

5.0 ELIGIBILITY OF VOTERS

5.1 Any Voter may apply to the Ratification Officer within ten (10) days of the posting of the list of Voters referred to in paragraphs 10.6 and 10.7 to have the list revised if such Voter believes that:

5.1.1 the name of a Voter has been omitted from the list of Voters; or

5.1.2 the name of a Voter is incorrectly set out or should not be included on the list of Voters.

5.2 A Voter may, up to and including the date of the Ratification Vote, apply to the Ratification Officer to have his name added to the list of Voters if that Voter can:

5.2.1 produce adequate current identification;

5.2.2 provide adequate proof of age; and

5.2.3 if required, obtain corroborating testimony from another Voter who is willing to swear out an Affidavit as to the identity of the applicant.

5.3 If the Ratification Officer is satisfied that the list of Voters requires revision, he shall make the revision and such revision shall be final.

5.4 The Council of the Band shall, by Band Council Resolution, either strike a committee or appoint individuals whose function shall be:

5.4.1 to provide assistance to the Ratification Officer in identifying, properly recording and including Voters in the list of Voters; and

5.4.2 to provide a person to act as the Assistant to the Ratification Officer by carrying out duties and assignments delegated by the Ratification Officer.

6.0 RATIFICATION

6.1 The question put to the Voters at the Ratification Vote shall be deemed to have been ratified and approved if fifty (50%) percent plus one (1) of those Voters eligible to vote cast ballots in the affirmative approving of the execution and delivery of the Muskoday First Nation TLE Settlement Agreement and Trust Agreement by the Chief and Councillors of the Band.

6.2 If ratification and approval by the said majority of the Voters is not attained:

6.2.1 the Muskoday First Nation TLE Settlement Agreement and Trust Agreement shall not be executed and delivered by the Chief and the Councillors on behalf of the Band and shall have no effect; and

6.2.2 unless otherwise agreed, should the Muskoday First Nation TLE Settlement Agreement and Trust Agreement not be subsequently ratified after a second Ratification Vote (which is also to be held in accordance with these Ratification Vote Guidelines and Procedures within three (3) years of the Execution Date) Canada and the Band agree to enter into good faith negotiations to determine any alternate method available for such purpose, and unless otherwise agreed, the Muskoday First Nation TLE Settlement Agreement and Trust Agreement may not be re-submitted for a Ratification Vote without the prior consent of Canada, Saskatchewan and the Band.

7.0 ORDERLY VOTING

7.1 The Ratification Officer shall maintain peace and good order during the Voting and for this purpose may enlist the assistance of constables, peace officers and other persons present.

7.2 No person shall interfere or attempt to interfere with a Voter who is casting a vote, nor shall any person obtain or attempt to obtain at the Voting place, information on how a Voter is about to vote or has voted.

7.3 The Ratification Officer or the Assistant shall allow only one Voter at any one time into a Voting compartment for marking a ballot paper.

7.4 A Voter who is inside the place of Voting at the hour appointed for closing of the place of Voting and who has not cast a vote shall be entitled to cast a vote after closure is called by the Ratification Officer.

8.0 VOIDED (BALLOTS) VOTES

8.1 A Voter who receives a soiled or improperly printed ballot paper, or inadvertently spoils his ballot paper in marking it, shall, upon returning the ballot paper to the Ratification Officer or the Assistant, be entitled to another ballot paper.

8.2 A Voter who has received a ballot paper and

8.2.1 fails to deliver the ballot as herein provided;

8.2.2 fails to deliver the ballot paper to the Ratification Officer in the manner specified in paragraphs 12.3.4 and 13.3.4; or

8.2.3 refuses to cast a vote;

forfeits the right to vote and shall not be counted as actually voting for the purposes of paragraph 6.1, and the Ratification Officer or the Assistant shall make an entry on the list of Voters opposite the name of the Voter that such Voter did not so deliver the ballot paper, or refused to cast a vote, as the case may be.

9.0 GENERAL PROVISIONS

9.1 Unless otherwise specified in the text hereof, where references are made to a person by the term "he", it shall be understood to include or mean "she" as well, as the text may appropriately imply.

9.2 Where the singular is used in reference to proper nouns, common nouns and pronouns and the context implies the plural, the text shall be interpreted to include the implied meaning in the plural.

9.3 Notwithstanding paragraphs 8.2 and 13.7.2, the Ratification Officer may order that a ballot be accepted and recorded in the Ratification Vote where he and the Chief of the Band agree that the intention of the Voter can be ascertained and it appears to them that the ballot was marked in a fair and reasonable manner.

9.4 While it is intended that the participants in the Ratification Vote comply with the Ratification Vote Guidelines and Procedures as set out herein, in the event that circumstances suggest discretion should be exercised in their implementation, the Ratification Officer and the Chief of the Band may agree on a departure from the procedural requirements in the Ratification Vote Guidelines and Procedures where it will not result in any substantive change and where it is necessary to give effect to and carry out the objectives, purpose and intent of the Ratification Vote.

9.5 In the event that the Ratification Officer and the Band Council deem that the same is warranted, arrangements may also be made for advance polling in lieu of, or in addition to, the mail-in voting procedures contemplated herein.

9.6 The Ratification Officer and the Chief of the Band must reduce to writing all of the terms of each agreement entered into in accordance with subparagraphs 9.3 and 9.4 and must deliver a copy of each such written agreement, signed by both of them, to the Department.

PART II

PROCEDURES

10.0 PRELIMINARY PROCEDURES

- 10.1** Upon Band Council Resolution approving in principle the Muskoday First Nation TLE Settlement Agreement and Associated Instruments pursuant to subparagraph 4.1.1, and subject to ratification by the majority of Members committing the Chief and Councillors of the Band to execute and deliver the Muskoday First Nation TLE Settlement Agreement and the Associated Instruments, Council shall forward to the Saskatchewan Regional Office of the Department a copy of the Band Council Resolution, accompanied by any documentation specified in paragraph 4 that the Ratification officer may request.
- 10.2** The date or dates fixed for the Ratification Vote should be at least thirty (30) days after notice is first posted in accordance with paragraph 10.7.
- 10.3** Appointment of the Ratification Officer and the establishment of the committee or the appointment of individuals referred to in paragraph 5.4, shall be made at the time documentation referred to in paragraph 4 has been filed in accordance with the provisions of paragraph 4.
- 10.4** Upon appointment of the Ratification Officer, the Council of the Band shall set dates for and then hold general Band meetings for the purpose of providing information to Members of the Band as to the form and substance of the Muskoday First Nation TLE Settlement Agreement and Associated Instruments, copies of which shall be available prior to and during such meetings, and shall provide the Ratification Officer with a confirmation letter that the meetings were held on specified dates and that such information was provided. Legal counsel for the Band shall attend at least one (1) such information meeting on reserve to explain the proposed settlement and to answer any relevant questions.
- 10.5** As determined by the Council of the Band, information sessions may be scheduled in centres off-Reserve where, in the sole discretion of the Council, Band Members reside in sufficient numbers, and any such meetings shall be held in accordance with paragraph 10.4 at least ten (10) days after mail-in ballot packages have been sent pursuant to paragraph 13.
- 10.6** The Ratification Officer shall compile a list of Voters:
- 10.6.1** as herein provided; or
- 10.6.2** as provided by the Council of the Band, and agreed to by the Department.
- 10.7** The Ratification officer or the Assistant shall post notices, as prescribed in subparagraph 4.1.6, in such places as he deems necessary and at least thirty (30) days prior to the first date set for Voting to take place, but not necessarily prior to receipt of the documentation referred to in paragraph 4.

- 10.8** At least fourteen (14) days prior to the first date set for Voting, the Ratification Officer or the Assistant shall post, or cause to be posted, the list of Voters in such locations as he, in his sole discretion, deems necessary both on and off the Reserve.
- 10.9** The Ratification Officer or the Assistant, prior to the date or dates set for Voting, shall:
- 10.9.1** procure a sufficient number of ballot boxes;
 - 10.9.2** prepare or cause to be prepared ballot papers;
 - 10.9.3** ensure that all physical arrangements are completed including voting stations, tables, chairs, paper supplies, forms, pencils, markers, flip charts, etc.;
 - 10.9.4** ensure that sample ballot papers are posted or available for examination by Voters; and
 - 10.9.5** ensure that a Commissioner for Oaths, Notary Public or practising solicitor in and for the Province of Saskatchewan, shall be available when and as required during such Voting day or days.
- 10.10** Immediately prior to the commencement of Voting, the Ratification Officer or the Assistant shall open the ballot box and call upon any person or persons who may be present to inspect the ballot box and ascertain that the ballot box is empty. The Ratification Officer or the Assistant shall then lock, seal and place the ballot box in a convenient location and position for the reception of ballot papers.
- 10.11** The Ratification Officer or the Assistant shall ensure that a declaration in the form of that annexed as Appendix D.1 is sworn by at least one of the persons described in paragraph 10.10 confirming that there was compliance with the procedure set out in paragraph 10.10.
- 10.12** Every ballot paper shall:
- 10.12.1** be printed on paper of a quality, weight and size determined and supplied by the Ratification Officer;
 - 10.12.2** be of the same description, as nearly as possible, as other ballot papers intended for use in the same Ratification Vote;
 - 10.12.3** contain a stub on the top edge which shall be one-half inch in width, and there shall be a line of perforations between the stub and the portion of the ballot paper on which the question is printed; and
 - 10.12.4** be numbered consecutively on the back of the stub.

11.0 VOTING HOURS

- 11.1** Subject to subparagraph 4.1.6(ii) and paragraphs 7.4, 11.2 and 13, Voting shall take place between the hours of 9 o'clock in the forenoon and 6 o'clock in the afternoon for each day set for Voting.
- 11.2** Where it appears to the Ratification Officer that it would be inconvenient to the Voters to close the Voting stations at the appointed hour, he may order that such changes be made to the Voting hours as can reasonably be made to accommodate the Voters' requirements.

12.0 VOTING

- 12.1** The Ratification Officer or the Assistant, after satisfying himself that a person presenting himself for the purpose of Voting is entitled to cast a vote, shall provide such person with a ballot paper on the back of which the Ratification Officer or the Assistant has affixed his initials so placed that when the ballot paper is folded, the initials can be seen without unfolding the ballot paper.
- 12.2** The Ratification Officer or the Assistant shall place on the list of Voters a line through the name of every Voter receiving a ballot paper, without obliterating the Voter's name.
- 12.3** Except as provided in paragraph 8.1 and paragraph 13.0, every Voter receiving a ballot paper shall:
- 12.3.1** proceed immediately to the Voting compartment provided for marking the ballot paper;
 - 12.3.2** mark his ballot by placing an "X" in the respective box associated with either the word "YES" or the word "NO" appearing on the ballot paper beneath the question appearing therein;
 - 12.3.3** fold the ballot paper so as to conceal the mark placed on the face of the ballot paper and so as to expose the Ratification Officer's or the Assistant's initials on the back of the ballot paper; and
 - 12.3.4** forthwith deliver to the Ratification Officer or the Assistant the marked ballot paper folded in accordance with the provisions of subparagraph 12.3.3.
- 12.4** Upon receiving a ballot paper from a Voter, the Ratification Officer or the Assistant shall, in the full view of the Voter and all others present, without unfolding the ballot paper or in any way disclosing the mark made by the Voter, ascertain by examination of the initials appearing on the ballot paper that it is the same ballot paper that was delivered to the Voter and if it appears to be the same ballot paper that was delivered to the Voter, the Ratification Officer or the Assistant shall tear the stub from the ballot paper, deposit the ballot paper in the ballot box and destroy the stub after recording opposite the name of the Voter on the list of Voters the number printed on the stub of the ballot paper of that Voter.

13.0 MAIL-IN VOTING

13.1 Subject to paragraph 13.8, the Ratification Officer or the Assistant shall send by registered mail, with a request for confirmation of receipt, a mail-in ballot package to each Voter who:

13.1.1 is on the list of Voters; and

13.1.2 does not ordinarily reside on the Reserve, or ordinarily resides on the Reserve but informs the Ratification Officer that due to a planned absence, or for medical reasons, he will not be available to Vote in person on the days set for Voting;

at least thirty (30) days prior to the first date set for Voting and prior to any information sessions held off Reserve pursuant to paragraph 10.5.

13.2 A Voter who returns the mail-in ballot with attached declaration forfeits the right to cast a vote in person at a Voting station.

13.3 A mail-in package shall include:

13.3.1 a ballot paper with the initials of the Ratification Officer or the Assistant affixed;

13.3.2 a ballot envelope in which a ballot paper may be enclosed;

13.3.3 a copy of the draft Affidavit annexed to these Ratification Guidelines and Procedures as Appendix "A";

13.3.4 a return envelope in which the documents listed in subparagraphs 13.3.2 and 13.3.3 may be enclosed and which is pre-addressed to the Ratification Officer;

13.3.5 a copy of the proposed Muskoday First Nation TLE Settlement Agreement and Associated Instruments; and

13.3.6 a letter of instructions from the Ratification Officer and an information letter from the Chief.

13.4 The Ratification Officer or the Assistant shall place on the list of Voters, a mark opposite the name of every Voter to whom a mail-in ballot package has been sent.

13.5 Except as provided in paragraph 8.1, every Voter receiving a mail-in ballot package shall:

13.5.1 mark his ballot paper by placing an "X" in the respective box associated with either the word "YES" or the word "NO" appearing on the ballot paper beneath the question appearing thereon;

- 13.5.2** fold the ballot paper so as to conceal the mark on the face of the paper but so as to expose the Ratification Officer's initials on the back of it, and place the ballot paper so folded in the ballot envelope and seal the ballot envelope;
- 13.5.3** complete and sign the declaration included therein before a witness who has attained the full age of eighteen (18) years and is not a relative of the Voter, and the witness shall then also sign the declaration;
- 13.5.4** place the declaration completed in accordance with subparagraph 13.5.3 and the ballot envelope referred to in subparagraph 13.5.2 in the return envelope pre-addressed to the Ratification Officer and seal the return envelope; and
- 13.5.5** make arrangements for delivery or mailing of the sealed return envelope referred to in subparagraph 13.5.4 to the Ratification Officer at the address specified on the return envelope so that such sealed return envelope shall be received by the Ratification Officer prior to the close of the last on Reserve Voting station.
- 13.6** Upon receiving a return envelope prior to closing the last scheduled on Reserve Voting station, the Ratification Officer or the Assistant shall, in the full view of at least two (2) other persons present, place on the list of Voters an appropriate mark opposite the name of the Voter to whom a mail-in ballot package was sent as having delivered the return envelope to the Ratification Officer.
- 13.7** Prior to closing the last scheduled on Reserve Voting station, the Ratification Officer or the Assistant, in the full view of at least two other persons present, at the Voting Station, shall, in respect of each return envelope delivered to the Ratification Officer or the Assistant prior to closing the on Reserve Voting station open the return envelope, and determine that a declaration in substantially the form annexed as Appendix "A" is enclosed therein and ascertain by examination that the declaration enclosed therein has been completed and is properly executed; and:

 - 13.7.1** if the declaration enclosed in the return envelope is in acceptable form and has been completed and executed as required, the Ratification Officer or the Assistant shall open the ballot envelope and without unfolding the ballot paper or in any way disclosing the mark made by the Voter ascertain by examination of the initials appearing on the ballot paper that it appears to be the same ballot that was mailed to the Voter and upon ascertaining that it appears to be the same ballot paper that was mailed to the Voter, the Ratification Officer or the Assistant shall tear the stub from the ballot paper, deposit the ballot paper in the ballot box and destroy the stub after recording opposite the name of the Voter on the list of Voters the number printed on the stub of the ballot paper of that Voter, and place a line through, without obliterating, the name of the Voter on the list of Voters; or

13.7.2 if no declaration was enclosed in the return envelope or if the declaration enclosed therein was not in acceptable form or has not been completed and executed as required, the Ratification Officer or the Assistant shall make an entry on the list of Voters opposite the name of the Voter that no declaration was enclosed in the return envelope or that the declaration enclosed was not in proper form or was not completed and executed as required in subparagraph 13.5, the Ratification Officer or the Assistant shall mark the ballot envelope of the Voter "IMPROPER MAIL-IN BALLOT" and place a line through, without obliterating, the name of the Voter on the list of Voters and shall neither open that ballot envelope nor deposit the ballot paper enclosed therein in the ballot box, and such ballot such not be counted as a vote for the purpose of paragraph 6.1.

13.8 For the purpose of 13.1, the Ratification Officer or the Assistant shall make such enquiries as he, in his sole discretion, deems necessary to ascertain the current address of a Voter described in that paragraph, and shall send the mail-in ballot package to that address, or the Voter's last known address, as circumstances may require, but if no address can be ascertained, or no confirmation of receipt is obtained, the Ratification Officer shall so inform the Band and record this fact on the list of Voters opposite the name of that Voter, and the Ratification Vote shall be held notwithstanding the failure to send or deliver mail-in ballot packages.

14.0 INTERPRETATION AND CLARIFICATION

14.1 The Ratification Officer or the Assistant shall explain the mode of Voting to a Voter when requested to do so by that Voter.

14.2 On application of a Voter who is:

14.2.1 not able to read;

14.2.2 incapacitated by blindness or other physical cause; or

14.2.3 does not understand English and is not accompanied by his own interpreter;

14.2.4 the Ratification Officer or the Assistant shall assist the Voter by marking his ballot paper in the manner directed by the Voter and shall place such ballot paper in the ballot box.

14.3 The Ratification Officer or the Assistant shall make an entry in the list of Voters opposite the name of the Voter that the ballot paper was marked by him at the request of the Voter and the reasons therefor.

14.4 Whenever the Ratification Officer or the Assistant does not understand the language spoken by a Voter, he shall appoint an interpreter conversant in the language of that Voter who shall be the means of communication between the Ratification Officer or the Assistant, as the case may be, and the Voter with reference to all matters required to enable such Voter to cast a vote.

15.0 CLOSING THE VOTING STATION

15.1 One hour prior to the appointed closing hour, the Ratification Officer or the Assistant shall announce to those present that the on Reserve Voting station will close in one (1) hour.

15.2 At the closing hour, the Ratification Officer shall declare the on Reserve Voting station closed at which time entry to the Voting station will be denied and the location shall be secured or locked, as the case may be.

16.0 COUNTING THE VOTES

16.1 Immediately after closing the on Reserve Voting station, the Ratification Officer and the Assistant, in the presence of any Voters who may be present, shall:

16.1.1 arrange the room so as to have complete control of the area being utilized for tabulating Voting results;

16.1.2 explain to all present how the ballot papers will be counted and on what basis a ballot paper is considered "spoiled";

16.1.3 unseal and unlock the ballot box;

16.1.4 proceed with the counting of the ballot papers by removing one ballot paper at a time, inspecting each ballot paper for proper marking by the Voter and for the Ratification Officer's or the Assistant's initials, display both sides of each opened ballot paper to those present and indicate in a clearly audible voice whether the ballot paper is marked a "YES" or a "NO" or is considered spoiled;

16.1.5 upon completion of the count, turn over the empty ballot box such that those present can see that the inside of the ballot box is empty; and

16.1.6 tabulate and confirm the results of the count, record the results of the vote and arrange for and attend to the completion and execution of all the statements, declarations and affidavits annexed hereto as Appendices "B", "C", "D", "D.1", "E" and "F".

17.0 BALLOT DISPOSITION

- 17.1** The Ratification Officer or the Assistant shall seal all ballot papers in an envelope and place them in a secure location for a period of sixty (60) days after the Ratification Vote.
- 17.2** The Ratification Officer or the Assistant shall place in a separate envelope all ballot envelopes marked "Improper Mail-In Ballot" and each declaration included in a return envelope received by the Ratification Officer prior to closing an on Reserve Voting station and place the separate sealed envelope in a secure location for a period of sixty (60) days after the Ratification Vote.
- 17.3** After the expiry of the sixty (60) day period and no legal proceeding concerning the Voting having been initiated or commenced, the Ratification Officer or the Assistant shall transfer the sealed envelopes referred to in paragraphs 17.1 and 17.2 together with the contents thereof, and the mailing and confirmation receipts (referred to in paragraph 13.1) to the Department for storage.

18.0 REPORT AND WRAP-UP

Forthwith after completion of the Ratification Vote and counting of the ballots, the Ratification Officer shall transfer the completed and executed documents referred to in subparagraph 16.1.6 to the Director, Lands and Trusts Services of the Department at Room 200, 1 First Nations Way, Regina, Saskatchewan, and deliver a copy thereof to the Chief of the Band at the Band office.

**APPENDIX "A" TO THE
RATIFICATION VOTE GUIDELINES AND PROCEDURES**

DECLARATION

Ratification of the Muskoday First Nation TLE Settlement Agreement between the Muskoday First Nation, Canada and Saskatchewan and Associated Instruments

I, _____, _____,
(name of Voter) (Occupation)

DECLARE THAT:

1. I am a registered Member of the Muskoday First Nation, my Treaty Number is ____, and I will be at least 18 years of age on or before _____, 200 , being the date scheduled for Voting herein.
2. I live at _____.
(full address)
3. I have read and understood the mail-in package sent to me, and of my own free will and consent, without the compulsion or undue influence of anyone, have marked the ballot. I understand that by using this mail-in ballot procedure I will not be permitted to vote in person at the Ratification Vote.
4. I have folded the ballot paper, hiding my mark and showing the initials marked on the back, and I have placed the ballot paper in the ballot envelope.

SIGNED this _____ day of _____, _____ at
(day) (month) (year)

(town/city and province)

)	In the presence of:
)	
)	Name: _____
)	(Witness)
_____ (Signature of Voter))	
)	Address: _____
)	_____
)	_____

(Witness must be 18 years of age or over and must not be a relative of the Voter.)

**APPENDIX "B" TO THE
RATIFICATION VOTE GUIDELINES AND PROCEDURES**

STATEMENT

(Subparagraph 16.1.6 of the Ratification Vote Guidelines and Procedures)

We, the undersigned, severally state that a Ratification Vote on the proposed Muskoday First Nation TLE Settlement Agreement and Associated Instruments was held on the _____ day of _____, 200 , and the results of this Ratification Vote were as follows:

- (a) the names of _____ Voters appear on the list of Voters prepared by the Ratification Officer pursuant to paragraph 10.6 of the Ratification Vote Guidelines and Procedures, and the number of Voters who were entitled to cast a vote on the Ratification Vote was therefore _____;
- (b) _____ Voters actually voted in the Ratification Vote in accordance with paragraphs 6.1, 8.2, and 13.7 of the Ratification Vote Guidelines and Procedures;
- (c) _____ Voters voted in favour of the ratification question, and _____ Voters voted against the ratification question; and
- (d) _____ ballots were spoiled and were not counted in (b) above in accordance with paragraph 8.2 and subparagraph 13.7.2 of the Ratification Vote Guidelines and Procedures.

DATED at _____, in the Province of Saskatchewan, this _____ day of _____, 200 .

Signed in the Presence of)	
)	
)	
)	_____
)	Ratification Officer or
)	Ratification Officer's Assistant
)	
)	
_____)	_____
Witness)	Chief or a Councillor of the Band
As to both signatures)	

**APPENDIX "C" TO THE
RATIFICATION VOTE GUIDELINES AND PROCEDURES
STATEMENT**

(Subparagraph 16.1.6 of the Ratification Vote Guidelines and Procedures)

POLL LOCATION: _____

POLL NO.: _____

We, the undersigned, severally state that in the Ratification Vote of the Muskoday First Nation held on _____, 200 , _____ votes were given in favour of the ratification question, _____ votes were given against the ratification question, and _____ ballot papers were spoiled, and we declare, therefore, that a majority of the eligible Voters did/did not cast ballots affirming the question appearing on the ballot paper, thereby approving/failing to approve and authorizing/not authorizing the execution and delivery by the Chief and Councillors of the Band of the proposed Muskoday First Nation TLE Settlement Agreement and Associated Instruments.

DATED at _____, in the Province of Saskatchewan, this _____ day of _____, 200 .

Signed in the Presence of)
)
)
)
)
)
)
)
)
_____)
Witness)
As to both signatures)

Ratification Officer or
Ratification Officer's Assistant

Chief or a Councillor of the Band

**APPENDIX "D" TO THE
RATIFICATION VOTE GUIDELINES AND PROCEDURES**

STATEMENT

(Subparagraph 16.1.6 of the Ratification Vote Guidelines and Procedures)

This is to certify that, immediately before the opening of the poll on the _____ day of _____, 200 , I opened the ballot box used for the Ratification Vote concerning the proposed Muskoday First Nation TLE Settlement Agreement and Associated Instruments by the _____ Band on the _____ day of _____, 200 , in accordance with paragraph 10.10 of the Ratification Vote Guidelines and Procedures. I found the ballot box empty and called upon the persons who were present to witness that it was empty. I then locked and properly sealed the box and placed it in a convenient position for the reception of ballot papers.

DATED at _____, Saskatchewan, this _____ day of _____, 200 .

Signed in the Presence of)
)
)
)
)
)
)
_____)
Witness)

Ratification Officer or
Ratification Officer's Assistant

**APPENDIX "D.1" TO THE
RATIFICATION VOTE GUIDELINES AND PROCEDURES**

DECLARATION BY WITNESS

(Paragraph 10.11 and subparagraph 16.1.6 of the Ratification Vote Guidelines and Procedures)

CANADA)
)
PROVINCE OF SASKATCHEWAN)
)
TO WIT:)

I, _____, being a Member of the Muskoday
First Nation, **MAKE OATH AND SAY:**

1. **THAT** I was personally present on the _____ day of _____, 200 and did witness, before the opening of the poll on such date, the opening of the ballot box to be used in connection with the Ratification Vote by the Ratification Officer or his Assistant.
2. **THAT** the said ballot box was seen by me to be empty and the Ratification Officer or his Assistant called on me to verify that such was the case.

SWORN before me at the _____ of)
_____ in the Province of)
Saskatchewan, this _____ day of)
_____, 200 .)
)
)
_____)

Signature of Witness

A Commissioner for Oaths in and for the
Province of Saskatchewan.
Being a Solicitor.
Or
My Commission expires _____.

**APPENDIX "E" TO THE
RATIFICATION VOTE GUIDELINES AND PROCEDURES
CERTIFICATION BY DEPARTMENTAL OFFICER**

(Subparagraph 16.1.6 of the Ratification Vote Guidelines and Procedures)

CANADA)
)
PROVINCE OF SASKATCHEWAN)
)
TO WIT:)

I, _____, Ratification Officer/Assistant to the Ratification Officer, of _____, in the Province of Saskatchewan, _____ of Treaty Land Entitlement/Specific Claims, _____ District, _____ with the Department of Indian Affairs and Northern Development, **MAKE OATH AND SAY:**

1. **THAT** I was present at the _____, on _____, 200 , when Members of the Muskoday First Nation voted in a Ratification Vote concerning a proposed Muskoday First Nation TLE Settlement Agreement and Associated Instruments, as provided in the Ratification Vote Guidelines and Procedures.
2. **THAT** a true copy of the notice to the Members of the Muskoday First Nation to approve and ratify the proposed Muskoday First Nation TLE Settlement Agreement and Associated Instruments is attached as Exhibit "1" to this my Affidavit.
3. **THAT** I did cause the said notice to be posted in accordance with paragraph 10.7 of the Ratification Vote Guidelines and Procedures at least thirty (30) days prior to the first date set for Voting to take place.
4. **THAT** I arranged for mail-in ballot packages, as described in paragraph 13.3 of the Ratification Vote Guidelines and Procedures, to be mailed in accordance with paragraph 13.1 of the Ratification Vote Guidelines and Procedures.

**APPENDIX "F" TO THE
RATIFICATION VOTE GUIDELINES AND PROCEDURES**

CERTIFICATION BY CHIEF

(Subparagraph 16.1.6 of the Ratification Vote Guidelines and Procedures)

CANADA)
)
PROVINCE OF SASKATCHEWAN)
)
TO WIT:)

I, _____, of _____, in the Province of Saskatchewan, being Chief of the Muskoday First Nation , **MAKE OATH AND SAY:**

1. **THAT** I was present at the _____, on _____, 200 , when Members of my Band voted in the Ratification Vote concerning a proposed Muskoday First Nation TLE Settlement Agreement and Associated Instruments, as provided in the Ratification Vote Guidelines and Procedures.
2. **THAT** a true copy of the notice to the Members of my Band setting forth, among other things, the date and time set to approve and ratify the proposed Muskoday First Nation TLE Settlement Agreement and Associated Instruments is attached as Exhibit "1" to this my Affidavit.
3. **THAT** the Ratification Officer or his Assistant did cause to be posted a notice in accordance with paragraph 10.7 of the Ratification Vote Guidelines and Procedures at least thirty (30) days prior to the date of the Ratification Vote.
4. **THAT** the proposed Muskoday First Nation TLE Settlement Agreement and Associated Instruments were approved/were not approved by Ratification Vote, in accordance with paragraph 6.1 of the Ratification Vote Guidelines and Procedures, the results of which are set out in a true copy of the Statement attached as Exhibit "2" to this my Affidavit.

SWORN before me at _____)
 , in the Province of Saskatchewan,)
 this _____ day of _____,)
 200 .)
)
 _____)

Chief of the Muskoday First Nation

A Commissioner for Oaths in and for the Province of Saskatchewan.

Being a Solicitor.

Or

My Commission expires _____.

**SCHEDULE 4 TO THE MUSKODAY FIRST NATION TREATY LAND
ENTITLEMENT SETTLEMENT AGREEMENT**

CERTIFICATE OF INDEPENDENT LEGAL ADVICE

I, _____, 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 Muskoday First Nation to act as independent legal counsel to the Muskoday First Nation and its members (the “Band”) and to advise the Band with respect to all legal matters related the settlement of the Treaty Land Entitlement claim of the Band, including the negotiation, preparation, execution, and/or delivery of the Muskoday First Nation Treaty Land Entitlement Settlement Agreement (the ASettlement Agreement@) and the Trust Agreement, as defined therein (the ATrust Agreement@), the Schedules and Appendixes attached thereto, and any other related documents.
3. **THAT** I have provided Chief and Council, as representatives of the Band, independent legal advice with respect to all legal matters related the settlement of the Treaty Land Entitlement claim of the Band, including the negotiation, preparation, execution, and delivery of the Settlement Agreement and the Trust Agreement, the Schedules and Appendixes attached thereto, and any other related documents.
4. **THAT** the I was present at the following information meeting(s) which were called by the Band for the purpose of explaining to the members of the Band the Settlement Agreement and the Trust Agreement, the Schedules and Appendixes attached thereto, and any other related documents:

Location of Meeting(s):

Date(s) and Time(s):

5. **THAT** I was present at the information meeting(s) and made a presentation at the information meeting(s) to the members of the Band then present, consisting of an overview

of the terms and conditions of the Settlement Agreement and the Trust Agreement, the Schedules and Appendixes attached thereto, and any other related documents. The presentation provided an explanation of the Settlement Agreement and Trust Agreement, including the Schedules and Appendixes attached thereto, and any other related documents. I provided independent legal advice to members of the Band present at the information meeting(s) and I answered any relevant legal questions raised at those times 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 Band with respect to any aspect of the matters touched upon by the Settlement Agreement or Trust Agreement, including the Schedules and Appendixes attached thereto, 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 independent legal counsel.

DATED at Saskatchewan, this _____ day of _____, 200 .

Witness to the signature of

Barrister & Solicitor

(Address)

**SCHEDULE 5 TO THE MUSKODAY FIRST NATION TREATY LAND
ENTITLEMENT SETTLEMENT AGREEMENT**

CERTIFICATE OF INDEPENDENT FINANCIAL ADVICE

I,....., of the City of, in the Province of Saskatchewan, Chartered Accountant, **DO HEREBY CERTIFY THAT:**

1. **I** am qualified to practice as a Chartered Accountant in Saskatchewan and I am a member in good standing of the
2. **I** was retained in my professional capacity by Chief and Council of the Muskoday First Nation , as representatives of the Muskoday First Nation and its members (the ABand@), to act as independent financial advisor to the Band to provide financial advice to the Band with regard to the Muskoday First Nation Treaty Land Entitlement Settlement Agreement (the ASettlement Agreement) and the Trust Agreement, as defined therein (the ATrust Agreement@).
3. **I** have provided the Band, via its Chief and Council, independent financial advice of the kind included in the practice of public accounting (including, if appropriate, investment counseling) with respect to the Trust Agreement, the management and administration of the Entitlement Monies and Trust Property, and the deposit of the Entitlement Monies into the Trust Account established pursuant to the Trust Agreement rather than into an account for the Band managed by the Department of Indian Affairs and Northern Development including, without limitation, financial advice which contrasts the potential rates of return, potential investment risks, and income tax implications associated with placing the Entitlement Monies, into the Trust Account rather than into an account managed by the Department.
4. **I** was present at the following information meeting(s) which were called by the Band for the purpose of explaining to the members of the Band the Settlement Agreement, the Trust Agreement, and related documents:

Location of Meeting:

Date and Time:

5. **I** was present at the information meeting(s) and made a presentation at the information meeting(s), to the members of the Band then present, consisting of an overview of the

terms and conditions of the Trust Agreement, including the deposit of the Entitlement Monies payable pursuant to the Settlement Agreement into the Trust Account established pursuant to the Trust Agreement rather than into an account for the Band managed by the Department of Indian Affairs and Northern Development or Consolidated Revenue Account, which provided an explanation of the contents of the Trust Agreement to the members of the Band then present and answered any relevant financial questions raised at the information meeting(s) to the best of my professional ability.

DATED at, Saskatchewan, this day of 200

Witness to the signature of

Chartered Accountant

**SCHEDULE 6
TO THE MUSKODAY FIRST NATION TREATY LAND ENTITLEMENT
SETTLEMENT AGREEMENT**

DATED THE _____ DAY OF _____, 200 .

TERMS AND CONDITIONS OF ENTITLEMENT RESERVE CREATION

A. PURPOSE

In conjunction with the requirements set forth in the Muskoday First Nation Treaty Land Entitlement Settlement Agreement (the "Agreement"), the purpose of this document is to identify the terms and conditions upon which Entitlement Reserves will be created by Canada in Saskatchewan. In the event of any direct conflict between these provisions and those of Article 11 of the Agreement, the provisions of Article 11 prevail.

B. APPLICATION AND TERM

Unless otherwise provided in the Agreement, these terms and conditions of Entitlement Reserve creation apply only with respect to Land, Minerals or Improvements acquired up to the Band's Equity Quantum, which is not located within an Urban Municipality and to such an extent replace the Additions To Reserves Policy.

These terms and provisions shall, except as otherwise provided in the Agreement, be in effect for a period of 15 years from the Execution Date and thereafter according to section 11.12 of the Agreement.

C. DEFINITIONS FROM THE AGREEMENT APPLICABLE

Unless otherwise specifically defined herein, all capitalized terms utilized herein shall have the same meaning ascribed thereto in the Agreement, and all references to a section or an Article shall be to a section or an Article of the Agreement.

D. ADDITIONAL DEFINITIONS

When utilized herein, the following capitalized terms shall have the following meanings:

"Environmental Review" means Steps 1 - 5, inclusive, of Stage 2 hereof;

"Environmental Screening" means Steps 1 - 3, inclusive, of Stage 2 hereof;

"Regional Director General" or **"RDG"** means the Saskatchewan Regional Director General of the Department (or whoever may be acting in his or her capacity) and his or her successors in title from time to time;

"Submission" means the formal request and supporting documentation necessary to have Entitlement Land created as an Entitlement Reserve according to the process described herein and in Article 11 of the Agreement.

E. RDG APPROVAL IN PRINCIPLE

The approval by the RDG of a Submission (an "Approval in Principle") constitutes a recommendation for Entitlement Reserve creation to the Minister. Subject to amendment of applicable Federal law, it is only the Governor in Council (by Order in Council) which can grant Entitlement Reserve status to Land, Minerals or Improvements, unless Entitlement Land is set aside as Entitlement Reserve pursuant to the *Claim Settlements (Alberta and Saskatchewan) Implementation Act*, S.C. 2002, c.3, s.1.

F. FEDERAL PROGRAM FUNDING

The creation of an Entitlement Reserve is intended to be a "revenue neutral" event on the part of the Band and Canada. Any application for program funding for the development of infrastructure or capital expenditures for any improvements to any Reserve or Entitlement Reserve shall occur (and shall be considered by the Department) separate and apart from a Submission by the Band for the creation of an Entitlement Reserve.

G. MUTUAL UNDERSTANDINGS

It is acknowledged by both Canada and the Band that the Band and the Department will be operating under the following understandings and will take all necessary and reasonable steps to:

1. Ensure that the Band representatives and Departmental officials exercise due diligence and reasonable care by undertaking the Environmental Screening (and, where necessary, an Environmental Review), the scope of which will depend on the circumstances in each case.
2. Ensure that the Council receives a copy of the environmental review checklists, other relevant correspondence or documentation and any

consultant's reports(s) which may have been prepared. The Council must also be advised of any concerns arising out of the Environmental Screening/Environmental Review process. This will assist the Band in making an informed decision as to whether to accept or reject the proposed acquisition of Land, Minerals or Improvements and is particularly important where the Band may be interested in accepting Land, Minerals or Improvements on an "as is" basis.

3. Where required under Step 5, ensure that the Council passes a Band Council Resolution or conducts a membership vote accepting the environmental status of any Land, Minerals or Improvements referred to in Steps 4 and 5 prior to Canada taking title to, or assuming the administration and control of, such Land, Minerals or Improvements.
4. Ensure that the Band is encouraged to seek independent professional advise, (e.g., legal, environmental), particularly where the Band may be interested in accepting any Land, Minerals or Improvements on an "as is" basis.

H. GENERAL CONSIDERATIONS

A Submission by the Band for creation of an Entitlement Reserve must be dealt with as herein set forth including the following:

1. Completion of an Environmental Screening and, where necessary, an Environmental Review under Steps 1 - 5 hereof.
2. Compliance with Article 11 of the Agreement.

I. PROCEDURES

The following procedures apply to all acquisitions where Land is intended to be transferred to Canada for the purpose of being granted Entitlement Reserve status.

For greater certainty, where the Band has acquired Entitlement Land (or wishes to acquire any Land, Minerals or Improvements) located within the boundaries of an Urban Municipality, a Northern Municipality or within the Northern Administration District with the intention that the same be granted Entitlement Reserve status, the creation of any such Entitlement Reserve shall be subject to the provisions of the Agreement including, without limitation, Article 9 of the Agreement.

STAGE 1: Band Council Resolution Request

A Band Council Resolution is required to formally initiate the process when the Band wishes to obtain Entitlement Reserve status in respect of any Entitlement Land in accordance with section 11.03 of the Agreement. After the appropriate searches under subsection 11.03(1)(a) of the Agreement have been completed the Band Council Resolution should indicate that:

- (a) the Land (including, where required all Minerals and Improvements) is available for purchase;
- (b) the Band consents to the execution and registration by Canada of all applicable Replacement Public Utility Easements which may affect such property pursuant to section 8.03; and
- (c) the Band intends to purchase and transfer title to any Entitlement Land (which has already been acquired by the Trustees) to the administration and control of Canada; or
- (d) the Band intends to have Canada assist the Band by agreeing to accept the direct transfer of Land, Minerals or Improvements from the current owner thereof to Canada, subject to section 11.03 of the Agreement.

Such Band Council Resolution should be forwarded to the Department's Saskatchewan regional office, to the attention of the Director, Lands and Trusts Services, together with a complete legal description, an uncertified certificate of title, complete copies of all encumbrances, a photocopy of the original Crown grant of title and a preliminary completion of the Additions Proposal Checklist (Appendix A hereto).

STAGE 2: Preparation of the Submission for the Regional Additions to Reserves Committee

- A. Upon receipt of the BCR and all other relevant supporting documentation by the Department, and registration of such BCR on the central registry system, the Department shall forthwith:
 - 1. Assign a Regional Project Manager to assist the Band in the preparation and finalization of the formal Submission required for the Regional Additions to Reserves Committee.
 - 2. Forward the BCR and relevant supporting documentation to FNMR in accordance with subsection 11.03(2), requesting information, in accordance with section 8.03, respecting the existence and location of any unregistered Public Utility

Easements, and shall further request the best available information in the possession of Saskatchewan respecting the existence and location of any Waterbody affecting the identified Land (other than a wholly enclosed Waterbody referred to in section 6.01), together with written information which clearly defines any issues with respect to the potential implications to Saskatchewan of the Submission.

Saskatchewan shall then review the Submission and as soon as reasonably possible, but in any event:

- (i) within 45 days of the receipt of such documents in the event that the identified Land, Minerals or Improvements are provincial Crown assets which Saskatchewan has agreed to sell pursuant to section 4.05 or section 5.03; or
- (ii) within 90 days of receipt of such documents in respect of any other property;

deliver the following information to the Department's Saskatchewan regional office:

- (a) If Saskatchewan identifies the existence and location of any Waterbody affecting the land which is not wholly enclosed therein (and which Saskatchewan has not agreed to transfer the related beds and shores), Saskatchewan agrees as soon as reasonably possible at its expense to supply to the Band and to Canada a correct registerable legal description for such Waterbody and any available information with respect to the acreage of each such identified Waterbody.
- (b) Provide information respecting the existence of any registered or unregistered Public Utility Easement in accordance with section 8.03.
- (c) Provide written information which clearly defines any other concerns or issues Saskatchewan has with respect to the potential implications of the creation of an Entitlement Reserve on provincial programs and services.

- B. The Band and the Project Manager shall prepare a Submission for the Regional Additions to Reserves Committee addressing the following matters:

- (i) completion of an Environmental Screening and, if necessary, an Environmental Review (the procedures of which are outlined hereafter);
- (ii) determination of all survey requirements;
- (iii) wherever applicable, satisfaction or extinguishment of all interests in Land (including Third Party Interests and Interests in a Mineral Disposition) in accordance with the requirements of this Schedule, and of Articles 4 - 9 inclusive, and Article 11 of the Agreement;
- (iv) correct legal descriptions for the Entitlement Land and, without limitation, identification of all Third Party Interests, Mineral Dispositions, and other encumbrances and Waterbodies affecting the same as contemplated in Article 11 of the Agreement;
- (v) the written record of consultations undertaken between the Band and the province and the relevant Rural Municipality to address concerns raised by the province and the relevant Rural Municipality, if any;
- (vi) if such Land, Minerals or Improvements have not already been acquired by or on behalf of the Band and competition for the same selection amongst Bands exists, an agreement between such Bands as to who will acquire the selection.

Upon finalization of the Submission (as determined between the Regional Project Manager and the Band), a further Band Council Resolution may, at the discretion of either party, be required to have the Band formally approve the final form and contents of the Submission prior to its delivery to the Regional Additions to Reserves Committee and, concurrently therewith, by the Department (together with such other title related documentation as the Department deems necessary or advisable) to the Department of Justice.

NOTE: The RDG may wish to proceed with a Submission notwithstanding the fact that the concerns of Saskatchewan or the Rural Municipality have not been resolved. In such an event, the Submission should be forwarded to the Department's Assistant Deputy Minister of Lands and Trust Services for review, along with the RDG's recommendations.

C. ENVIRONMENTAL CONSIDERATIONS

Where the Band, via its Trustees, is planning to acquire or is in the process of acquiring Entitlement Land to be transferred to reserve status an Environmental Screening in accordance with these terms and conditions should be conducted *prior to the Land purchase* and not when the Band wishes the Entitlement Land to be transferred to Canada. **Should the Band, via its Trustees, elect to Purchase Entitlement Land prior to the Environmental Screening/ Environmental Review procedures contemplated herein, the Band shall bear the sole risk of any loss associated with the failure of the Land, Minerals or Improvements so Purchased not being transferred to Reserve Status due to the failure to meet any required environmental standards.**

ACQUISITIONS OF PRIVATE VERSUS PUBLIC LAND

Where the Band or, where agreed between the parties, the Band and the Department, is/are attempting to acquire privately owned Land, Minerals or Improvements, the allocation of environmental costs will normally be determined during negotiations over the purchase Price. The vendor may lower the Price if the Band agrees to assume responsibility for any required detailed site investigation and/or clean-up. Alternatively, the vendor may undertake to hire consultants and present the Band with an environmental report and a "clean bill of health", in which case there would be abatement of the Price.

The same reasoning will be applicable to the Purchase of Entitlement Land by or on behalf of the Band where Saskatchewan is the vendor. **It should be stressed that the Department will not agree to assume detailed site investigation and clean-up costs (beyond those Environmental Screening costs agreed to in the Agreement) in the event that Saskatchewan refuses to remedy environmental problems associated with provincial Crown Land.**

OUTLINE OF THE ENVIRONMENTAL PROCEDURES

For each Submission a clear determination of any attendant environmental issues and liabilities must be made utilizing the following Environmental Screening or, where applicable the Environmental Review procedures before the Department will accept the transfer to Canada's administration and control of any Land.

NOTE:

- **Environmental Screening (Steps 1 - 3):** An Environmental Screening must be undertaken at the outset of a Submission and information gathering from these procedures should be submitted as part of the Submission to the Regional Additions to Reserves Committee. The Department will assume the reasonable costs associated with the Environmental Screening as contemplated in section 11.07 of the Agreement.

- **Environmental Review (Steps 1 - 5):** Note that Steps 4 and 5 will only be undertaken where required and should only be implemented once RDG Approval in Principle has been obtained.

- **Due to the fact that the Band may choose not to enter into an Agreement to Purchase, or an agreement in principle, as the case may be, with the owner of privately held land until unconditional RDG Approval in Principle has been obtained, the Department's Regional Office should, in such an event, together with the Band seek the vendor's co-operation before proceeding. Appendix F contains precedent clauses which may assist in making such request for vendor co-operation.**

- **Responsibility For Conducting Environmental Screening:** This includes Steps 1 - 3. Unless otherwise agreed between the Department and the Band, Steps 1 and 3 are to be undertaken by the Band representative and Step 2 is to be undertaken jointly by the Band and an officer from the Department's Lands and Trust Services.

Step 1: Land Use History

Information must be obtained on the existing and previous Land, Minerals or Improvements use. The vendor will generally be the primary source of information; however, the Council, local residents, provincial, regional, municipal or township authorities and the relevant land titles authority can also provide valuable data on the following:

- (a) name and description of any business that is, or has been, since 1940 conducted on or adjacent to such Land, Minerals or Improvements;

- (b) legal description of property and lot size;

- (c) a detailed description of all structures which are on the Land. Any structures which are on the Land that may have contained environmentally hazardous/sensitive substances must be identified in detail, (e.g., buildings, equipment, storage facilities, fuel tanks, etc.);
- (d) description of all present and former Land, Minerals or Improvements uses, including use by third parties (e.g. lessees); and
- (e) existing maps, surveys and/or aerial photos indicating buildings, facilities, equipment, man-made features, storage facilities and any natural features.

Notwithstanding the foregoing, it is understood that in certain cases it may be reasonable to limit the scope of the information required. Any such derogation should only be done in consultation with the Department.

The Environmental Screening Checklist is found in Appendix B.

Step 2: Preliminary Site Visit

The site visit shall be conducted by an officer of the Department's Lands and Trust Services Unit and the Band, jointly, to identify visible (though undocumented) signs of contamination. A tour of the property and facilities should include noting Land, Minerals or Improvements uses on adjacent properties. Additionally, photographs may be taken to further document current site conditions if it is deemed necessary. The information obtained from the land use history should be used to assist those persons conducting the site visit.

Appendix C contains the Site Visit Checklist to be completed by an officer of the Department's Environmental Unit or designate with commentary, if any, from the Band representative.

Step 3: Searches of Public Authorities and Government Records

Searches should be conducted by the Band representatives with the following federal, provincial or local authorities:

- (a) routine real estate/title and execution searches including complete copies of all registered encumbrances affecting the Land, Minerals and Improvements and the registered owner;

- (b) business name/corporate records searches to confirm the legal name of any individual or corporate entity (including, in the case of a corporation, its shareholders and directors) under which other government records may be accurately searched; and
- (c) searches of government authorities, such as the federal and provincial environment ministries, the federal Department of Transport and the municipal works and fire departments of the relevant municipality to reveal, among other things, ownership by an entity known to have a "bad" environmental reputation. (For example, the federal and provincial environment ministries maintain records of reported spills as well as all orders, approvals and prosecutions issued under their legislation; the federal Department of Transport has records of who transports/stores dangerous goods; municipal works departments keep records of all sewer discharge violations and local fire departments maintain reports of spills and leaks of hazardous materials).

Notwithstanding the foregoing, it is understood that in certain cases it may be reasonable to limit the scope of the information required. Any such derogation should only be done in consultation with the Department.

Upon completion of Steps 1 - 3 above, an officer from the Department's Environmental Unit shall prepare a recommendation on the environmental status of the land as outlined in Appendix E. A copy shall be forwarded to the Band before the Submission is delivered to the Regional Additions to Reserve Committee for review.

Step 4: Detailed Site Investigation

In the event that it has been determined that, in addition to completion of any Environmental Screening, a complete Environmental Review shall be undertaken, Steps 4 and 5 shall also be required.

This step will only be undertaken where:

- (a) Steps 1 - 3 identify:
 - (i) specific and potentially significant environmental problems associated with the site; or
 - (ii) likely or suspected contamination;
- (b) the vendor or the Band has agreed to pay for the cost of the detailed site investigation; or

- (c) the Department is otherwise willing to proceed with acquisition and is willing to contribute to or assume the cost of the detailed investigation.

In such a case, scientific testing and analysis of the property must be done by a technical consultant in order to determine:

- (a) whether the site is actually contaminated and, if so, the type and extent of the contamination (including the type and extent of contamination impacting on neighbouring property);
- (b) the need to clean-up such contamination and the extent of any remedial action required; and
- (c) where clean-up is required, the estimated cost of cleaning up the site.

The technical consultant's report should be prepared detailing the results of the detailed site investigation and addressing the issues of clean-up and costs thereof. As the consultant's reporting obligation is to his/her client, where the vendor hires the consultant a clause should be inserted in the relevant Land transaction documentation stating that both the Department and the Band will receive a full and unedited copy of the report. Similarly, where the Band hires the technical consultant, the contract must clearly provide that the Department is, in addition to the Band, relying upon the accuracy of the technical consultant's report and, further, that the Department shall receive a full and unedited copy of the report. Where a party other than the Band or Department has hired the consultant, the Departmental lands officer from the Environmental Unit should, in writing, request a copy of the report from the consultant, as this may give the Department legal recourse against the consultant in the event environmental hazards are later discovered which were not disclosed in the report.

The technical consultant's completed environmental report should contain at least the following information:

- (a) a detailed summary, with maps and charts, of all findings, including descriptions of the property, facilities procedures and methodologies used;
- (b) identification of type, source and extent of any contamination on site;

- (c) identification of any actual or projected health and/or environmental risks associated with contamination on site; and
- (d) where appropriate, a plan of remedial action, including options, estimated costs of clean-up and recommendations.

Step 5: Final Assessment/Monitoring Clean-Up

The technical consultant's report issued in accordance with Step 4, will identify the type and extent of any contamination on the property to be acquired, as well as the need for and projected cost of clean-up. Based on a review of the technical consultant's report, the Departmental lands officer from the Environmental Unit must choose one of the following:

1. Where there is no contamination the Department may continue to proceed with the transaction together with the Band.
2. Where insignificant contamination has been identified (actual or projected health and/or environmental risks are considered to be minimal) the Entitlement Land may be purchased (subject always to the fulfillment of all other terms and conditions set forth in the Agreement, Trust Agreement and herein) on an "as is" basis as long as the Band:
 - (i) is fully apprised of the condition of the property;
 - (ii) has, by Band Council Resolution, approved the acquisition of such Land on an "as is" basis; and
 - (iii) has, to the satisfaction of the Department of Justice, released the Department from liability for any existing and future environmental claims which may arise in connection with, or as a result of, the current environmental status of the subject property, as such status has been determined as of the date the Entitlement Land is set apart by Canada for the use and benefit of the Band as an Entitlement Reserve.
3. **Where significant contamination exists and clean-up is required, the Department must exercise its option to terminate the Agreement to Purchase (or, in the event that the Band has entered into any such agreement without making Canada a party thereto, shall advise the Band that Canada will not accept the transfer of title and administration and control of the Land in question) *unless*:**

- (i) the Department has otherwise indicated in writing that it is willing to either contribute to or to assume the cost of clean-up;
- (ii) the vendor has agreed to assume the cost of clean-up and has provided evidence satisfactory to the Department, acting reasonably, that it is financially capable of honoring such a commitment; or
- (iii) the Band is fully apprised of the condition of the property and has either:
 - (a) by way of a membership vote conducted in a manner satisfactory to the Department acting reasonably, approved of the acquisition of the Land in question as a Reserve on an "as is" basis; or
 - (b) has posted sufficient cash or other liquid security with the Department to cover the anticipated cost of any required clean-up;

and, in either case, has agreed to pay for all costs associated with such clean-up and has executed a release satisfactory to the Department of Justice releasing Canada from liability for existing and future environmental status of the subject property, as such status has been determined as of the date the Entitlement Land is set apart by Canada for the use and benefit of the Band as an Entitlement Reserve.

4. **Once it has been determined that a clean-up of Entitlement Land is required, the Band must ensure that the property is given a "clean bill of health" *before* the Land may be transferred to the administration and control of the Department. Accordingly, where either the vendor or the Band undertakes the clean-up, the Department must, acting reasonably, obtain satisfactory evidence from the Band that a clean-up has been completed.** The responsible party should confirm the clean-up by letter to the Department, accompanied by a consultant's report detailing the procedures used and the final results of the clean-up operation. Where, in rare cases, the Department is responsible for clean-up, the Departmental lands officer from the Environmental Unit must ensure that a satisfactory clean-up has been completed. In all cases, the clean-up should be well documented and the documentation retained on file by the Band and the Department.

See Appendix B for Environmental Review Checklist which will summarize the information gathered from Steps 1 - 3 and 4-5. Also, see Appendix F for a sample clause addressing the question of clean-up.

STAGE 3: Regional Additions to Reserves Committee

The Regional Additions to Reserves Committee (in consultation where necessary with the Department of Justice) will review and report on the Submission within 30 days of receipt of such Submission. Such review and report will result in one of the following:

- A. A recommendation by the Additions to Reserves Committee for the RDG to grant an unconditional Approval in Principle; or
- B. A recommendation by the Additions to Reserves Committee for a conditional Approval in Principle by the RDG, which shall clearly list the conditions which the Regional Additions to Reserves Committee has, acting reasonably, determined must be met before the RDG should grant an unconditional Approval in Principle; or
- C. A rejection of the Submission with a written report from the Regional Additions to Reserves Committee to the Band clearly identifying the areas of deficiency in the Submission.

The Regional Additions to Reserve Committee will forthwith forward its report and recommendations to the RDG, for consideration in those cases where subsections A or B above are applicable.

STAGE 4: Approval in Principle

Upon receipt of a report and recommendations from the Regional Additions to Reserves Committee, the RDG, shall review and report on the Submission within 15 days. Such review shall result in:

- A. The RDG granting Approval in Principle for Entitlement Reserve status; or
- B. A conditional Approval in Principle, which clearly lists the conditions which the RDG, acting reasonably, has determined must be met before an unconditional Approval in Principle will be granted; or

- C. A rejection of the Submission by the RDG, with a written report to the Band clearly identifying the areas of deficiency in the Submission.

In accordance with subsection 11.03(3)(a)(iv), in the event of a rejection of a Submission by the Regional Additions to Reserves Committee or the RDG, the Band acting reasonably, may request in writing that the RDG and any appropriate officials of the Department (including, where necessary, the members of the Regional Additions to Reserves Committee) agree to meet with appropriate officials of the Band to further clarify or explain the basis for the rejection and compliance with such request shall not be unreasonably withheld.

STAGE 5: Acquisition of Land

In the case of an unconditional Approval in Principle by the RDG, the Band may, if they have not already done so, promptly proceed to acquire the Entitlement Land within 15 months of the Approval in Principle and, following such Purchase Canada shall accept the transfer of title from the Band to Canada in accordance with the terms hereof and the Agreement.

STAGE 6: Conclude Acquisition and Transfer to Canada

Once the Entitlement Land has been acquired and following the transfer of title to Canada (which transfer of title shall be conditional upon no additional and unresolved Third Party Interests or Mineral Dispositions having arisen subsequent to the Approval in Principle), Canada shall, at its cost, as soon as reasonably possible subject to prevailing weather conditions, carry out any required outer boundary surveys or obtain any other alternative legal description satisfactory to Canada.

STAGE 7: Order In Council

Once the acquisition and survey (or other legal description satisfactory to Canada) is complete, the Entitlement Land shall, in accordance with the Agreement, be set apart as an Entitlement Reserve for the use and benefit of the Band and the Department will cause to be prepared the necessary Submission to the Governor in Council (or, if applicable under Federal law, to the Minister) to give effect to such recommendation.

In the event that Canada accepts title to Land, Minerals or Improvements and, notwithstanding the Minister's recommendation to the Governor in Council that the same be set apart as an Entitlement Reserve, Entitlement

Reserve status is denied, then the provisions of section 11.05 of the Settlement Agreement shall be applicable.