

1 SUMMARY OF AGREEMENT

Preamble

The Preamble sets out the context under which the *Agreement concerning a New Relationship between the Government of Canada and the Crees of Eeyou Istchee* (the Agreement) was negotiated including the intentions of the parties ie. the Grand Council of the Crees (Eeyou Istchee) (GCC(EI)) and the Cree Regional Authority (CRA) and the federal government (Canada), to resolve their differences as to the implementation of the James Bay and Northern Quebec Agreement (JBNQA), as well as non-JBNQA claims, grievances and other matters.

.1 Definitions

The terms used in the Agreement are defined in this chapter.

.2 General Provisions

Principal Purposes

The Agreement was developed on a number of principal purposes which consist of a new relationship between the Cree Nation and Canada; improved implementation of the JBNQA; recommendation to Parliament of amendments to the *Cree-Naskapi (of Quebec) Act* (CNQA); establishing a process for negotiating an agreement and related legislation concerning a Cree Nation Government with powers and authorities beyond the scope of the CNQA and correlative amendments to the JBNQA and the CNQA; providing for the assumption by the CRA and subsequently by the Cree Nation Government, of certain responsibilities of Canada under the JBNQA; resolving claims, grievances and other matters between Canada, the GCC(EI), the CRA and/or one or several Cree bands; resolving disputes between the Cree Nation and Canada concerning Canada's past implementation of the JBNQA through the resolution, to the greatest extent possible, of legal proceedings, and providing a framework for the resolution of future issues that may arise.

Agreement Does Not Amend the JBNQA/Existing Legislation and Quebec's Responsibilities

The Agreement does not amend the JBNQA, the *James Bay and Northern Quebec Native Claims Settlement Act* or any other related legislation. It does not alter the Constitution of Canada and it does not affect the responsibilities of Quebec towards the Cree Nation or towards Crees under the JBNQA or any other relevant agreement or legislation of Quebec adopted to implement the provisions of the JBNQA.

Existing Agreements and Financial Arrangements

The provisions of all existing agreements and existing financial arrangements between Canada and the GCC(EI), the CRA, any Cree band, any Cree organization established under or pursuant to the JBNQA and/or the CNQA, or any combination of these organizations will continue to apply in the absence of indications to the contrary in the Agreement and the Payments provided by Canada under the Agreement are in addition to such agreements and financial arrangements.

Rights and Access to Programs

With respect to rights and access to programs, the Crees, Cree bands, GCC(EI), the CRA and the Cree Nation Government will continue to access funding and benefits, including enhancement, from programs which they are currently receiving; they will be eligible to access any new programs to the extent that the such new or enhanced programs do not duplicate the Assumed Federal JBNQA Responsibilities which the CRA, and subsequently the Cree Nation Government will assume; and they will also be eligible to access all existing, new or enhanced programs related to housing, subject to applicable criteria.

Funding for New Cree Bands

Canada confirms and the GCC(EI)/CRA acknowledge that no additional funding will be provided by Canada, for the Term of the Agreement, with respect to additional costs which may be associated with the recognition and establishment of any new Cree band located in the Territory.

Term

The Agreement comes into force upon the fulfilment of all of the conditions as set out in the Final Provisions – Chapter 10 of the Agreement – and shall end at midnight on the twentieth (20th) anniversary of its coming into force. It contemplates a successor agreement with specific provisions which are described further in this summary.

Authorities and Capacities of the GCC(EI) and CRA

The GCC(EI) and the CRA each represents and warrants that it has the authority and capacity to enter into and enters into the Agreement on behalf of itself, the Cree Nation, the Cree bands and the Crees.

Judicial Determination in Respect of Validity

If a Court of competent jurisdiction determines any provision of the Agreement to be invalid or unenforceable, the provision will be severable from the Agreement to the extent of the invalidity or unenforceability, and the remainder of the Agreement will be

construed, to the extent possible, to give effect to the intent of the Parties. The Parties will make efforts to discuss and, where necessary, amend the Agreement to remedy the invalidity or replace the invalid or unenforceable provision.

If, under a Court judgement which has become final, any provision of the legislation amending the CNQA as contemplated in the Governance chapter, is declared invalid or unenforceable, unless the Parties agree otherwise, Canada shall make best efforts, where possible, to recommend to Parliament amendments to the CNQA to remedy the invalidity or replace the invalid provision.

.3 Cree Nation Governance

The purpose of the Chapter on Governance is twofold: (a) to equip the CRA with by-law making powers similar to those of the Cree bands under the CNQA, through proposed amendments to the CNQA; and (b) set out a process for negotiations leading to a Governance Agreement, Governance Legislation and possible amendments to the JBNQA and the CNQA concerning a Cree Nation Government. If the negotiations are successful, this would expand Cree Nation governance beyond the CNQA powers by establishing the structures and powers of a Cree Nation Government and the relationship of such Government with Cree bands and federal and provincial governments. The parties agree that Quebec will be a party in the negotiations leading to the Governance Agreement, insofar as areas of jurisdiction of Quebec are involved.

This Chapter also provides for consultation with the Inuit and Naskapis during the drafting of the CNQA amendments and during the drafting of the Governance Legislation as well as with other Aboriginal groups in the event that overlapping governance issues would arise.

.4 Assumption of Certain Federal JBNQA Responsibilities:

The Agreement provides that the CRA, and subsequently the Cree Nation Government, will assume for the 20-year term of the Agreement the responsibilities of Canada in regard to certain provisions of the JBNQA referred to as the Assumed Federal JBNQA Responsibilities, and will have full and complete discretion to implement these Assumed Federal JBNQA Responsibilities for that term. The Assumed Federal JBNQA Responsibilities comprise the federal share of capital costs, operations and maintenance (including insurance) and programs and services, as applicable, respecting the items listed under the following provisions of the JBNQA:

-)a Section 18 – Administration of Justice, including post-detention rehabilitation institutions, almshouses, workhouses and refuges for women but excluding i) detention facilities contemplated by paragraphs 18.0.26, 18.0.27 and 18.0.29, ii) amendments to the *Criminal Code* and the *Canada Evidence Act*, and iii) appointments of justices of the peace.
-)b Paragraphs 24.3.24, and 28.4.1 and Sub-sections 28.5, 28.6 and 28.7 regarding the CTA, COTA and CNACA subject to continued annual funding to these associations by Canada;
-)c Paragraphs 28.9.1 and 28.9.2 regarding training courses, job recruitment, and placement related to Territorial Programs and Enhanced Delivery Structure;
-)d Paragraphs 28.9.1 regarding training facilities and 28.9.5 regarding Manpower offices;
-)e Paragraph 28.11.1 regarding, in each Cree community, the construction or provision of a community centre, essential sanitation services and fire protection;
-)f Paragraph 28.11.2 regarding the provision of an Economic Development Agent in each Cree community and community affairs services.

The assumption in regard to paragraphs 28.9.1 and 28.9.2 regarding training courses, job recruitment, and placement related to Territorial Programs and Enhanced Delivery Structure is premised on the continuation by Canada for the duration of the Agreement of the additional funding for training programs and facilities and of job recruitment and placement services in the Territory on terms reasonably comparable to those provided to the CRA in 2008-09 by Canada pursuant to the current HRSDC Agreement.

.5 Resolution of Claims, Grievances and Other Matters

This chapter provides for resolution of claims, grievances and other matters, whether related or not to JBNQA. The Parties agree to put in place a process to address the JBNQA's provision relating to amendments of the *Criminal Code* and the *Canada Evidence Act* and certain environmental matters, and they fully resolve other issues enumerated in the Agreement such as:

- a) reimbursement for past construction and past maintenance of the Nemaska access road;
- b) past relocations of the Cree Nation of Nemaska and the Waswanapi Band;
- c) past housing and related infrastructure funding in any of the Cree communities;

- d) past constructions, past upgrades, past improvements, past repairs and past replacements of Band Facilities (band offices, warehouses, garages and related equipment) in any of the Cree communities;
- e) Washaw Sibi Eeyou; and,
- f) Chisasibi "Block D" land transfer.

Moreover, contemporaneously, or as soon as possible following the coming into force of the Agreement, the Parties will sign a Complementary Agreement [which is the term used for agreements that amend the JBNQA] regarding the establishment of the Oujé-Bougoumou Band and its Category 1A land.

The costs associated with the construction, replacements and expansions of Band Facilities (band offices, warehouses, garages and other facilities and equipment required for local government needs of Cree bands) for the 20-year Term of the Agreement are also assumed by the CRA and funding related thereto is included in the payments provided in chapter 6 of the Agreement.

In addition, the Parties agree to discuss other Complementary Agreements to the JBNQA dealing with: changes to the JBNQA to modify the general amending provision to allow amendments to the JBNQA to be made without the consent of all parties when the amendment does not affect the interest of that party; changes to the JBNQA to modify the section on eligibility in a manner similar to the changes for the Quebec Inuit agreed to by Canada and all other parties to the JBNQA under Complementary Agreement No. 18; and changes to incorporate in the JBNQA final territorial descriptions of the Cree Category 1 lands.

.6 Payments by Canada

Canada will make 3 payments to a non-profit corporation, partnership, foundation or trust designated by the CRA:

- One Billion and Fifty Million Dollars (\$1,050,000,000) (the "First Payment") on coming into force of the Agreement;
- One hundred Million Dollars (\$100,000,000) (the "Second Payment") within 30 days of Royal Assent of the amendments to the CNQA; and
- Two Hundred Million Dollars (\$200,000,000) (the "Third Payment") within thirty (30) days of Royal Assent of the Governance Legislation.

The payments are subject to appropriation by Parliament, and Canada will recommend to Parliament such appropriations. In the event the amendments to the CNQA are not adopted, or the Governance Legislation is not assented to, Canada shall not be obliged

to provide the Second Payment of \$100,000,000 or, as the case may be, the Third Payment of \$200,000,000.

Please note that a separate and distinct agreement, known as the *Agreement Regarding Certain Community Specific Issues*, provides an additional \$50,000,000 to resolve claims related to the Wemindji access road, the conversion of the electrical supply to the community of Waskaganish and the Bosum litigation concerning certain claims of Oujé-Bougoumou. This *Agreement Regarding Certain Community Specific Issues* is not however part of the referendum process.

Funding in addition to that provided in the Agreement may be provided by Canada to assist in defraying significant costs which arise in the event of fire, flood or other natural disaster or from new initiatives of the Canadian government.

With respect to the payments and any revenues or gains accrued thereon, Canada will be provided the copies of the Reports and Audited Financial Statements presented to the annual general assembly of the GCC(EI) and thereafter, the annual general assembly of the Cree Nation.

.7 Litigation and Related Issues

This chapter provides for full and final releases, indemnities, “undertakings not to sue” and discontinuances of the *Coon Come I*, *Coon Come II*, and Part B of the *Coon Come III* litigation related to the past implementation of the JBNQA and related agreements and undertakings by Canada.

From the date of the coming into force of the Agreement, Canada remains fully responsible and accountable to the Crees for the delivery of the responsibilities of Canada under the JBNQA and related agreements and undertakings, save for the Assumed Federal JBNQA Responsibilities for the 20-year term of the Agreement during which these are assumed by the CRA or the Cree Nation Government.

The Cree release Canada in regard to the Assumed Federal JBNQA Responsibilities for the term of the Agreement, which will be deemed to have been implemented for that term regardless of whether or not they were in fact implemented.

The Cree also release Canada for the term of the Agreement in regard to places of detention as contemplated by paragraphs 18.0.26, 18.0.27 and 18.0.29 of the JBNQA.

The Cree also release Canada in regard to the use, management, administration and investment of the payments received under chapter 6 of the Agreement by the CRA or by the entity actually receiving these payments.

The Cree also release Canada in regard to a) reimbursement relating to past construction and past maintenance of the Nemaska access road; b) any past

relocations of the Cree Nation of Nemaska and the Waswanipi Band; c) past housing and related infrastructure funding in any of the Cree communities d) past constructions, past upgrades, past improvements, past repairs and past replacements of Band Facilities in any of the Cree communities; e) Washaw Sibi Eeyou; and f) Chisasibi Block D.

The Cree also release Canada for the 20-year term of the Agreement in regard to new or expanded Band Facilities (band offices, warehouses, garages and other facilities and equipment required for local government needs of Cree bands).

The Parties acknowledge that the *Vanadium* proceedings concerning the application of federal environmental assessment processes in the Territory are not contemplated nor affected by the Agreement. Any negotiations related to the *Vanadium* proceedings may be dealt with through a separate and distinct process.

The chapter acknowledges that the negotiations with respect to the *Bosum* proceedings concerning certain claims of Oujé-Bougoumou have been dealt with through a separate and distinct process and have led to a proposed agreement known as an *Agreement Regarding Certain Community Specific Issues* that is not subject to the referendum.

The chapter also provides that the provisions of the Agreement in no way affect the rights or interests of any Crees with respect to residential schools claims, including any settlement or proceedings related thereto.

.8 Cree – Canada Standing Liaison Committee

The Parties will create a senior-level Cree – Canada Standing Liaison Committee to act as a forum between the Cree Nation and Canada in order to exchange and coordinate implementation of the Agreement and of the JBNQA. The provisions in this chapter establish the representatives, meetings, mandate, timing, implementation, and responsibilities for expenses.

The Parties will also seek annually to have one (1) of the meetings of the Cree – Canada Standing Liaison Committee as a joint meeting with the Quebec – Cree Standing Liaison Committee created under the agreement known as the “Paix des Braves”.

.9 Dispute Resolution Process

Disputes unresolved at the Cree – Canada Standing Liaison Committee and related to the interpretation or implementation of the Agreement or of the JBNQA may be referred to mediation. If the dispute is not resolved through mediation, on the consent of the Authorized Parties, it may be referred to arbitration. However, no dispute in relation to chapters 3 (Cree Nation Governance) or 6 (Payments by Canada) of the Agreement or in relation to any financial transfer from Canada to the Crees may be referred to

arbitration. If a dispute is not referred to arbitration, the Courts can then be seized of the issue.

The provisions in this chapter provide for: the preservation of prescription periods and interim / interlocutory relief; the Authorized Parties for dispute resolution purposes; matters that may be referred to mediation; timing of mediation; authorization of representatives in mediation; mediation notice; selection or appointment of mediator; a mediation process; confidentiality of mediation; and matters which cannot be referred to arbitration. The provisions of the *Code of Civil Procedure of Quebec (CCP)* shall apply to an arbitration carried out pursuant to the Dispute Resolution Process Chapter unless varied by the Agreement.

.10 Final Provisions

This chapter provides several “Final Provisions” of a general nature, including:

Complementary Agreements to the JBNQA

The CRA and Canada agree to enter into Complementary Agreements to the JBNQA in order to:

- a) amend the environmental and social impact assessment process so as to provide for a regional Administrator responsible for the protection of the environment on Cree Category I lands;
- b) replace the provisions of Section 19 of the JBNQA so as to create a regional Cree Police into which the Cree local police will be merged.

Effects on Individuals from Contaminants

This provision confirms that the provisions of the Agreement, including Chapter 7, shall in no way affect the rights and recourses of Crees in respect of physical or psychological harm and resulting damages attributable to contaminants or the discharge of pollutants arising from development of the Territory contemplated by the JBNQA.

Consent of Cree Bands

Each Cree band, acting through its representative duly authorized by appropriate Council Resolution, will need to acknowledge by signing a Concurrence document attached to the Agreement, that it is represented by the GCC(EI) and the CRA in the making of the Agreement and that it is bound by the terms of the Agreement.

Successor Agreement

The Parties will negotiate a successor agreement no later than two (2) years before the end of the term of the Agreement, which is 20 years. The negotiations will focus primarily on extending the Assumed Federal JBNQA Responsibilities beyond the 20 year term; determining the funding required from Canada for such purposes; determining the funding which may be required from the Crees during the term of the successor agreement where a contribution by the Crees is specifically contemplated in this regard by the JBNQA.

In determining the funding levels in relation to the Assumed Federal Responsibilities for the successor agreement, the Parties agree to take into account the following indicators: capital facilities, operations and maintenance and programs provided by or through the CRA, the Cree Nation Government or the Cree bands during the term of the Agreement; the nature and extent of the responsibilities set out under the JBNQA and related to the Assumed Federal JBNQA Responsibilities; the evolution of socio-economic conditions of the Crees during the term of the Agreement and the projected evolution of their socio-economic conditions during the term of the successor agreement; the evolution of the demography of the Crees during the term of the Agreement and the projected evolution of such demography during the term of the successor agreement; and any other indicators that the Parties may agree to take into account.

If no successor agreement is reached by the end of the Term of the Agreement, and unless agreed to by Canada and the CRA, or, as the case may be, the Cree Nation Government, the provisions in this chapter provide for Canada to reassume all the Assumed Federal JBNQA Responsibilities referred to in Chapter 4 of the Agreement.

Approval by Canada and the Crees

The Agreement was submitted to Cabinet for approval and is now being submitted to the Crees for ratification. This Referendum has been organized by the GCC(EI) and the CRA, and the Agreement will be approved if more than fifty percent (50%) of those who vote in this referendum vote in favour of ratifying this Agreement, and those voting in favour represent at least twenty-five percent (25%) plus one (1) of all Crees who are aged 18 years or more at the time this referendum is held. The referendum is being conducted in accordance with the Procedures agreed to by the Parties and appended to the Agreement as Schedule A.

Canada has provided funding to the GCC(EI)/CRA by means of an advance in order to carry out the referendum. If the Agreement is approved, Canada will deduct the amount of the advance from the amount of the First Payment referred to in Paragraph 6.2a) of the Agreement. If the Agreement is not approved, Canada will not seek reimbursement.

Schedule A – Procedures for Approving the Agreement

The Schedule establishes Referendum Procedures, a Referendum Committee with participation by both Canada and the GCC(EI), and the ability of the Referendum Committee to adopt rules in a variety of areas set out in the Procedures to ensure the conduct of a fair, inclusive, transparent, open and democratic referendum. The areas for which the Referendum Committee may establish rules include: establishment of the referendum period, the polling period, ballot and mail-in ballot requirements, polling station procedures, mail-in ballot procedures and procedures for roving polls, and criteria for conducting a review of voting results in the event of challenge. The Referendum Committee may also set qualifications for, appoint and determine the mandate of a Chief Referendum Officer and establish rules for hiring other required personnel. The Procedures also provide for the Eligible Voters List, a Notice of Vote and information-sharing requirements. The referendum question is established.

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