

**INDIVIDUAL AGREEMENT
ON
FIRST NATION LAND MANAGEMENT**

BETWEEN

FORT MCKAY FIRST NATION

AND

HIS MAJESTY THE KING IN RIGHT OF CANADA

**September 15, 2022
(date for reference only)**

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THIS AGREEMENT made in duplicate this [] day of [], 20[].

**INDIVIDUAL AGREEMENT
ON
FIRST NATION LAND MANAGEMENT**

BETWEEN:

FORT MCKAY FIRST NATION, as represented by their Chief and Council (hereinafter called the "Fort McKay First Nation" or the "First Nation")

AND

HIS MAJESTY THE KING IN RIGHT OF CANADA, (hereinafter called "Canada") as represented by the Minister of Indigenous Services Canada (hereinafter called the "Minister")

(the "Parties")

WHEREAS the Framework Agreement on First Nation Land Management was signed by Canada and fourteen First Nations in 1996 (the "Framework Agreement") and was ratified and brought into effect by the *First Nations Land Management Act*, S.C. 1999, c. 24 (the "Act");

AND WHEREAS the First Nation has been added as a signatory to the Framework Agreement by an adhesion signed by the First Nation and Canada on September 13, 2007;

AND WHEREAS the First Nation and Canada wish to provide for the assumption by the First Nation of responsibility for the administration of Fort McKay First Nation Land in accordance with the Framework Agreement and the Act;

AND WHEREAS clause 6.1 of the Framework Agreement and subsection 6(3) of the Act require the First Nation to enter into an individual agreement with the Minister for the purpose of providing for the specifics of the transfer of administration;

AND WHEREAS subsection 6(3) of the Act further requires that the individual agreement provide for the date and other terms of the transfer to the First Nation of Canada's rights and obligations as grantor of interests and licences in or in relation to the land, the environmental assessment process that will apply to projects until the enactment of applicable First Nation laws, and any other relevant matter;

AND WHEREAS clause 6.1 of the Framework Agreement further requires that the individual agreement settle the actual level of operational funding to be provided to the First Nation;

NOW THEREFORE, in consideration of the exchange of promises contained in this Agreement and subject to its terms and conditions, the Parties agree as follows:

1. INTERPRETATION

1.1 In this Agreement,

"Act" means the *First Nations Land Management Act*, S.C. 1999, c.24, as amended;

"this Agreement" means this Individual Agreement on First Nation Land Management, including the Annexes attached hereto, and any documents incorporated by reference, all as amended from time to time;

"Fort McKay First Nation Land" means the land to which the Land Code will apply and more specifically means the reserves known as Fort McKay Indian Reserve No. 174, Namur River Indian Reserve No. 174A, Namur Lake Indian Reserve No. 174B, Fort McKay Indian Reserve No. 174C and Fort McKay Indian Reserve No. 174D as described in the Land Description Report(s) referred to in Annex "G" and includes all the interests in and resources of the land that are within the legislative authority of Parliament;

"Fiscal Year" means Canada's fiscal year as defined in the *Financial Administration Act*, R.S.C. 1985, c. F-11, as amended;

"Framework Agreement" has the same meaning as in the Act;

"Funding Arrangement" means an agreement between Canada and the Fort McKay First Nation, or between Canada for the purpose of providing funding, during the Fiscal Year(s) identified in that agreement, for the programs and services referred to in that agreement;

"*Indian Act*" means the *Indian Act*, R.S.C. 1985, c. I-5, as amended;

"Land Code" means the Fort McKay First Nation Land Code, developed in accordance with clause 5 of the Framework Agreement and section 6 of the Act;

"Minister" means the Minister of Indigenous Services Canada and his or her duly authorized representatives;

"Operational Funding" means the resources to be provided by Canada to the Fort McKay First Nation pursuant to clause 30.1 of the Framework Agreement to manage First Nation lands and make, administer and enforce its laws under a land code, and includes financial resources, as



described in clause 27 of the Framework Agreement, to establish and maintain environmental assessment and environmental protection regimes;

“Operational Funding Formula” means the method approved by Canada for allocating to First Nations such Operational Funding as may have been appropriated by Parliament for that purpose;

“Project Lands” means the project lands as defined in the Fort McKay First Nation Oil Sands Regulations, SOR/2007-79.

- 1.2 Unless the context otherwise requires, words and expressions defined in the Framework Agreement, the Act or the *Indian Act* have the same meanings when used in this Agreement.
- 1.3 This Agreement is to be interpreted in a manner that is consistent with the Framework Agreement and the Act.
- 1.4 In the event of any inconsistency or conflict between the wording in any Article set out in the main body of this Agreement and the wording in any Annex attached hereto, the wording set out in the Article shall prevail.

2. INFORMATION PROVIDED BY CANADA

- 2.1 The Minister has, to the best of the Minister’s knowledge, provided the First Nation with the information required by clause 6.3 of the Framework Agreement, namely:
 - (a) a list, attached as Annex “C”, and copies, or access to copies, of all the interests and licences granted by Canada in or in relation to the Fort McKay First Nation Land that are recorded in the Reserve Land Register and the Surrendered and Designated Lands Register;
 - (b) a list, attached as Annex “D”, and copies of all existing information in Canada’s possession, respecting any actual or potential environmental problems with the Fort McKay First Nation Land; and
 - (c) a list, attached as Annex “E”, and copies of any other information in Canada’s possession that materially affects the interests and licences mentioned in clause 2.1(a).
- 2.2 The First Nation has, in writing, acknowledged receipt of all the information provided to it by the Minister.




3. TRANSFER OF LAND ADMINISTRATION

- 3.1 The Parties acknowledge that, as of the date the Land Code comes into force, the First Nation shall have the power to manage the Fort McKay First Nation Land in accordance with section 18 of the Act and clause 12 of the Framework Agreement.
- 3.2 As provided in subsection 16(3) of the Act, all of the rights and obligations of Canada as grantor in respect of the interests and licences in or in relation to Fort McKay First Nation Land that exist on the coming into force of the Land Code shall be transferred to the First Nation on the coming into force of the Land Code.
- 3.3 As of the date the Land Code comes into force, the First Nation shall be responsible for, among other responsibilities identified in this Agreement, the Framework Agreement and the Act, the following:
- (a) the collection of all rents and other amounts owing, payable or accruing pursuant to any instrument granting an interest or a licence in or in relation to Fort McKay First Nation Land; and
 - (b) the exercise of any power and authorities, and performance of any covenants, terms and conditions, under the instruments referred to in paragraph (a) which, but for the transfer, would have been Canada's responsibility.
- 3.4 The Parties acknowledge that the transfer of administration referred to in this Agreement is subject to section 39 of the Act, which addresses the applicability of the *Indian Oil and Gas Act*.

4. ACCEPTANCE OF TRANSFER OF LAND ADMINISTRATION

- 4.1 The First Nation hereby accepts the transfer of land administration described in Article 3 of this Agreement, including, without limitation, the transfer of all the rights and obligations of Canada as grantor of the interests and licences referred to in clause 3.2 of this Agreement.
- 4.2 As of the date the Land Code comes into force, and in accordance with the Framework Agreement and section 18 of the Act:
- (a) the land management provisions of the *Indian Act*, as listed in clause 21 of the Framework Agreement and section 38 of the Act, cease to apply and Canada retains no powers and obligations in relation to Fort McKay First Nation Land under these provisions, and

- (b) the First Nation shall commence administering Fort McKay First Nation Land pursuant to its Land Code.

5. OPERATIONAL FUNDING

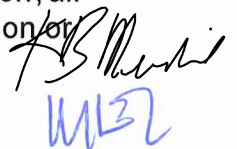
- 5.1 In accordance with clause 30.1 of the Framework Agreement, and subject to appropriation by Parliament and the approval of the Treasury Board of Canada, Canada shall provide Operational Funding to the Fort McKay First Nation as indicated in Annex "A" in accordance with the Operational Funding Formula as amended from time to time.
- 5.2 The Operational Funding referred to in clause 5.1 will be incorporated by the Parties into the Fort McKay First Nation's Funding Arrangement in effect in the year in which the payment is to be made. For greater certainty, payment of Operational Funding will be subject to the terms and conditions of the Funding Arrangement into which it is incorporated.

6. TRANSFER OF MONEYS

- 6.1 Following the date that the Land Code comes into force, Canada shall transfer the revenue and capital moneys referred to in section 19 of the Act and clause 12.8 of the Framework Agreement to the First Nation in accordance with the provisions set out in Annex "B".
- 6.2 Revenue and capital moneys transferred pursuant to clause 6.1 shall be deposited in the First Nation's account at such financial institution as the First Nation may direct by notice in writing.

7. NOTICE TO THIRD PARTIES OF TRANSFER OF ADMINISTRATION

- 7.1 Immediately following approval of the Land Code and this Agreement by the members of the First Nation, the First Nation shall give written notice (the "Notice of Transfer of Administration"), by registered mail, to each holder of an interest or a licence in or in relation to Fort McKay First Nation Land that is listed or referred to in Annex "C".
- 7.2 The Notice of Transfer of Administration shall state that:
 - (a) the administration of Fort McKay First Nation Land and Canada's rights in Fort McKay First Nation Land, other than title, will be transferred to the First Nation effective the date the Land Code comes into force;
 - (b) the holder of the interest or licence shall pay to the First Nation, all amounts owing, payable or due under the interest or licence on or



after that date; and

- (c) as of that date, the First Nation shall be responsible for the exercise of the powers and authorities, and the performance of any covenants, terms and conditions, under that instrument which, but for the transfer of administration, would have been Canada's responsibility.

7.3 The Fort McKay First Nation shall deliver to Canada a copy of every Notice of Transfer of Administration and a copy of every acknowledgement of receipt of the Notice of Transfer of Administration received by the First Nation within 30 days of the issuance or receipt of the same.

7.4 The Notice obligations set out in this Article do not apply in respect of a holder of an interest or licence who is a member of the First Nation.

8. INTERIM ENVIRONMENTAL ASSESSMENT PROCESS

8.1 As of the date the Land Code comes into force, the environmental assessment process set out in Annex "F" shall apply to projects on Fort McKay First Nation Land, other than the Project Lands, until the coming into force of First Nation laws enacted in relation to that subject.

8.2 The environmental assessment process for the Project Lands will be consistent with the Fort McKay First Nation Oil Sands Regulations.

9. AMENDMENTS

9.1 This Agreement may be amended by agreement of the Parties.

9.2 Any amendment to this Agreement shall be in writing and executed by the duly authorized representatives of the Parties.

10. NOTICES BETWEEN THE PARTIES

10.1 Any notice or other official communication under this Agreement between the Parties shall be in writing addressed to the Party for whom it is intended.

10.2 The notice referred to in clause 10.1 shall be effective using any one of the following methods and shall be deemed to have been given as at the date specified for each method:

- (a) by personal delivery, on the date upon which notice is delivered;



- (b) by registered mail or courier, the date upon which receipt of the notice is acknowledged by the other party; or
- (c) by facsimile or electronic mail, the date upon which the notice is transmitted and receipt of such transmission by the other party can be confirmed or deemed.

10.3 The addresses of the Parties for the purpose of any notice or other official communication are

Canada:

Director, Lands and Economic Development
Indigenous Services Canada
Alberta Region
630, 9700 Jasper Avenue
Edmonton, AB T5J 4G2
Facsimile: (780) 495-4088

Fort McKay First Nation:

Chris Johnson, CEO
PO Box 5360
Fort McMurray, AB T9H 3G4
Facsimile: (780) 828-4393

11. DISPUTE RESOLUTION

11.1 For greater certainty, any dispute arising from the implementation, application or administration of this Agreement may be resolved in accordance with the Dispute Resolution provisions set out in Part IX of the Framework Agreement.

12. DATE OF COMING INTO FORCE

12.1 The Parties acknowledge that the members of the First Nation have voted to approve the Land Code and this Agreement in accordance with the Framework Agreement and the Act.

12.2 This Agreement shall be effective as of the date on which the last of the Parties signs this Agreement.



12.3 The Parties acknowledge that the signing of this Agreement alone does not bring the Land Code into force, and that the First Nation is not an operational First Nation under First Nation Land Management until the Land Code comes into force in accordance with the provisions of the Land Code, the Framework Agreement and the Act.

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IN WITNESS WHEREOF, the duly authorized representatives of the First Nation have signed this Agreement on behalf of the First Nation on [_____], 20[___], and the Minister of Indigenous Services Canada has signed this Agreement on behalf of His Majesty the King in right of Canada, on [_____], 20[___].

His Majesty the King in right of Canada,
as represented by the Minister of
Indigenous Services Canada

Fort McKay First Nation

Chief Mel Grandjamb

Minister of Indigenous Services Canada

Councillor Raymond Powder

Councillor Melinda Stewart

Councillor Crystal McDonald

Councillor David Bouchier

ANNEX "A"

FUNDING PROVIDED BY CANADA

1. The amount of Operational Funding by Fiscal Year is shown in the table below. The amount shall be prorated based on the number of months from the date the Land Code comes into force to the end of the Fiscal Year, and the First Nation shall be paid the prorated amount for that year. Transitional Funding will be provided for the year the Land Code comes into force and for the subsequent Fiscal Year, as shown in the table below.
2. Operational Funding will increase 1% annually over the term of the Memorandum of Understanding.
3. Subject to appropriation by Parliament and the approval of the Treasury Board of Canada, Operational Funding for Fiscal Years after March 31, 2023, will be calculated and provided in accordance with the Operational Funding Formula as amended from time to time.

OPERATIONAL FUNDING	
<i>2022-2023 Fiscal Year</i>	\$283,313 <i>(This amount shall be prorated in accordance with paragraph (a) above) and \$75,000.00 - One time Transitional Funding per 1st Fiscal Year</i>
<i>2023-2024 Fiscal Year</i>	Subject to paragraph (c) above, Operational Funding will be calculated and paid each Fiscal Year based on the Operational Funding Formula as amended from time to time. \$75,000.00 – <i>One time Transitional Funding per 2nd Fiscal Year</i>
Subsequent Fiscal Year(s)	Subject to paragraph (c) above, Operational Funding will be calculated and paid each Fiscal Year based on the Operational Funding Formula as amended from time to time.

ANNEX "B"

DETAILS FOR THE TRANSFER OF MONEYS

1. As of the 15th day of September, 2022, Canada is holding \$0.00 of revenue moneys and \$154,797.02 of capital moneys for the use and benefit of the First Nation or its members. This amount is included for information purposes only and is subject to change.
2. **Initial Transfer.** Within thirty (30) days of the Land Code coming into force, Canada shall transfer to the First Nation all revenue and capital moneys collected, received or held by Canada for the use and benefit of the First Nation or its members.
3. **Subsequent Transfers.** Following an initial transfer of moneys, Canada shall, on a semi-annual basis, transfer to the First Nation all revenue and capital moneys that are subsequently collected or received by Canada for the use and benefit of the First Nation or its members. The first such subsequent transfer shall be made in the month of April or October, whichever month comes first after the month of the initial transfer.

ANNEX "C"

LIST OF INTERESTS AND LICENCES GRANTED BY CANADA

All interests and licences granted by Canada in or in relation to the Fort McKay First Nation Land that are recorded in the Reserve Land Register and the Surrendered and Designated Lands Register are listed in reports that are available for review at the Fort McKay First Nation Land Management Office located at Fort McMurray, AB T9H 3G4:

Reserve General Abstract Reports for:

- Fort McKay Indian Reserve No. 174
- Namur River Indian Reserve No. 174A
- Namur Lake Indian Reserve No. 174B
- Fort McKay Indian Reserve No. 174C
- Fort McKay Indian Reserve No. 174D

Lease or Permits Reports for:

- Fort McKay Indian Reserve No. 174
- Namur River Indian Reserve No. 174A
- Namur Lake Indian Reserve No. 174B
- Fort McKay Indian Reserve No. 174C
- Fort McKay Indian Reserve No. 174D

The above reports identify all interests or licences granted by Canada that are registered in the Indian Lands Registry System (ILRS).

ANNEX "D"

LIST OF ALL EXISTING INFORMATION IN CANADA'S POSSESSION RESPECTING ANY ACTUAL OR POTENTIAL ENVIRONMENTAL PROBLEMS WITH THE FORT MCKAY FIRST NATION LANDS

The following Phase 1 Environmental Site Assessment Reports are available for review at the Fort McKay First Nation Administration Office located at Fort McKay, Alberta:

1. Phase 1 Environmental Site Assessment: Fort McKay #174, 174D, 174A, 174B, and 174C dated January 2021
2. Phase 1 Environmental Site Assessment: Lot 1A, 2A, 5A, 5B, RL6, 8A and 9A. Fort McKay Developments Ltd dated 2016

Canada supported the fulfilment of clause 6.3(b) of the Framework Agreement on First Nation Land Management by funding the Phase 1 Environmental Site Assessment (ESA) for the entire reserve prior to a ratification vote on the proposed land code and Individual Agreement.

Due to Covid-19 health restrictions, the consultant was unable to complete visual inspection of 31 sites identified in the Phase 1 ESA titled Phase 1 Environmental Sites Assessment: Fort McKay #174, 174D, 174A, 174B, and 174 C. Canada has provided funding for a consultant to complete visual assessment of all 31 sites, and supplemental information will be available at the Fort McKay First Nation Administration Office upon completion.

ANNEX "E"

**LIST OF OTHER INFORMATION PROVIDED BY CANADA THAT MATERIALLY
AFFECTS INTERESTS AND LICENCES**

- Not Applicable

ANNEX "F"

INTERIM ENVIRONMENTAL ASSESSMENT PROCESS

The Framework Agreement specifies that the First Nation and the Minister will address in the Individual Agreement how to conduct environmental assessments on First Nation land on an interim basis until the First Nation's environmental assessment process is developed. This Annex describes that interim environmental assessment process.

The interim process is intended to be broadly consistent with requirements of the federal environmental assessment process but without imposing requirements that are only appropriate to federal organizations and departments.

- 1) The First Nation shall carry out an environmental assessment in circumstances where federal environmental assessment legislation would likely require Canada to carry out an environmental assessment for a project on federal lands.
- 2) When the First Nation must conduct an environmental assessment of a proposed project, the First Nation shall ensure that the environmental assessment is carried out in the early planning stages of the project, before the First Nation makes an irrevocable decision that would allow the project to proceed (i.e. approve, regulate, fund or undertake the project). The environmental assessment shall be conducted at the expense of the First Nation or proponent of the project.
- 3) The First Nation shall not approve, regulate, fund, or undertake the project unless the First Nation has determined that:
 - a. the project is unlikely to cause any significant adverse environmental effects; or
 - b. that those effects are justifiable under the circumstances,taking into consideration:
 - the results of a required environmental assessment;
 - any economically and technically feasible mitigation measures identified as necessary during the assessment; and
 - any public comments received during the assessment.
- 4) If the First Nation approves, regulates, funds, or undertakes the project, the First Nation shall conduct project monitoring, review implementation of approved mitigation measures, and follow-up programs as the First Nation considers necessary.

- 5) If a project on First Nation land is also subject to a federal or provincial environmental assessment process, the First Nation must make its own determination in accordance with Section 3 above, but may:
- a. agree with the Province, Canada, or both on a harmonized environmental assessment process appropriate to that project, taking into account the Framework Agreement's principle that the First Nation's environmental assessment process be used where a federal environmental assessment is required; or
 - b. use the environmental assessment completed by the Province, Canada, or both, in substitution for undertaking a First Nation-led environmental assessment process.

ANNEX "G"

DESCRIPTION OF FORT MCKAY FIRST NATION LAND

The following Land Descriptions, prepared by Danica Pratt, CLS, and Noelle Machon, CLS, of the Surveyor General of Canada Lands, are available for review at the Fort McKay First Nations' Administration Office located at Fort McMurray, Alberta T9H 3G4.

- Fort McKay Indian Reserve No. 174 (06718) – Canada Lands Survey Record FB43859
- Namur River Indian Reserve No. 174A (06719) – Canada Lands Survey Record FB43866
- Namur Lake Indian Reserve No. 174B (06720) – Canada Lands Survey Record FB43865
- Fort McKay Indian Reserve No. 174C (09678) – Canada Lands Survey Record FB43864
- Fort McKay Indian Reserve No. 174D (09779) – Canada Lands Survey Record FB43863