

INDIVIDUAL AGREEMENT
ON
FIRST NATION LAND MANAGEMENT

BETWEEN

MEMBERTOU FIRST NATION

AND

HER MAJESTY THE QUEEN IN RIGHT OF CANADA

_____, 20__

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THIS AGREEMENT made in duplicate this _____ day of _____, 20____.

**INDIVIDUAL AGREEMENT
ON
FIRST NATION LAND MANAGEMENT**

BETWEEN:

MEMBERTOU FIRST NATION, as represented by their Chief and Council (hereinafter called the “Membertou First Nation” or the “First Nation”)

AND

HER MAJESTY THE QUEEN IN RIGHT OF CANADA, (hereinafter called “Canada”) as represented by the Minister of Indian Affairs and Northern Development and the Minister of Indigenous Services (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 April 13, 2012;

AND WHEREAS the First Nation and Canada wish to provide for the assumption by the First Nation of responsibility for the administration of Membertou 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;

"Membertou First Nation Land" means the land to which the Land Code will apply and more specifically means the reserves known as Membertou Indian Reserve No. 28B, Sydney Indian Reserve No. 28A, and Caribou Marsh Indian Reserve No. 29 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 Membertou First Nation, or between Canada and a Tribal Council of which the First Nation is a member, 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 Membertou First Nation Land Code, developed in accordance with clause 5 of the Framework Agreement and section 6 of the Act;

“Minister” means either the Minister of Indian Affairs and Northern Development or the Minister of Indigenous Services, or both, as the case may be, and his or her duly authorized representatives;

“Operational Funding” means the resources to be provided by Canada to the Membertou 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.

- 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 Membertou 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 Membertou 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 Membertou hereby acknowledges that it has received copies of the Reserve General Abstract Report, Lawful Possessors Report and Instrument Report for Membertou Land in relation to clause 2.1. Copies of each registered instrument, and all related documentation, will be provided by the Minister at Membertou’s request.

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 Membertou 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 Membertou 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 Membertou 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 Membertou First Nation Land under these provisions; and
 - (b) the First Nation shall commence administering Membertou 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 Membertou 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 Membertou 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.
- 6.3 For greater certainty, the transfer of the revenue and capital moneys does not release the First Nation from its commitment to reimburse Canada for any amount paid as a result of a default under any loan entered into by the First Nation or any of its members and guaranteed by Canada in accordance with the terms and conditions relating to ministerial loan guarantees.

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 Membertou 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 Membertou First Nation Land and Canada's rights in Membertou 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 Membertou 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 Membertou First Nation land until the coming into force of First Nation laws enacted in relation to that subject.

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, Environment and Economic Development
Indigenous Services Canada - Atlantic Region
PO Box 160, 40 Havelock Street
AMHERST NS B4H 3Z3
FAX: (902) 661-6237

Membertou First Nation:

Council of Membertou First Nation
111 Membertou Street
SYDNEY NS B1S 2M9
FAX: (902) 539-6645

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 the First Nations Land Management regime until the Land Code comes into force in accordance with the provisions of the Land Code, the Framework Agreement and the Act.

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 Indian Affairs and Northern Development and Minister of Indigenous Services have signed this Agreement on behalf of Her Majesty The Queen in right of Canada, on _____, 20__.

Her Majesty the Queen in right of Canada, as represented by the Minister of Indian Affairs and Northern Development and the Minister of Indigenous Services

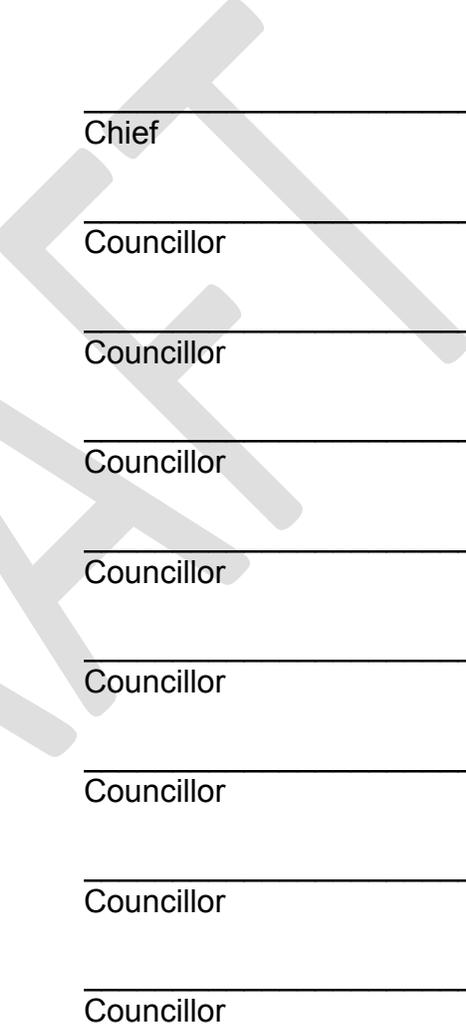
Membertou First Nation

Chief

Councillor

Minister of Indian Affairs and Northern Development

Minister of Indigenous Services



ANNEX "A"

FUNDING PROVIDED BY CANADA

- (a) The amount of Operational Funding for Fiscal Year 2019-2020 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.
- (b) Operational Funding will increase 1% annually over the term of the Memorandum of Understanding.
- (c) 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	
2019-2020 Fiscal Year	\$ 272,259 (This amount shall be prorated in accordance with paragraph (a) above) and \$ 75,000.00 - One time Transitional Funding per 1 st Fiscal Year
2020-2021 Fiscal Year	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 – One time Transitional Funding per 2 nd Fiscal Year
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 ___ day of _____, _____, Canada is holding \$_____ of revenue moneys and \$_____ 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 Membertou 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 Membertou First Nation Land Management Office located at **111 Membertou Street**:

Reserve General Abstract Reports for:

- Membertou Indian Reserve No. 28B
- Sydney Indian Reserve No. 28A
- Caribou Marsh Indian Reserve No. 29

Lawful Possessors Reports for:

- Membertou Indian Reserve No. 28B

Lease or Permits Reports for:

- Membertou Indian Reserve No. 28B
- Sydney Indian Reserve No. 28A
- Caribou Marsh Indian Reserve No. 29

The above reports identify all interests or licences granted by Canada that are registered in the Indian Lands Registry System (ILRS). The following is a list of interests granted by Canada that have not been registered or are pending registration in the ILRS. Copies of these interests shall be provided to the First Nation.

[List interests]

ANNEX “D”

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

The complete reports on the environmental assessments listed below are available at Membertou First Nation Land Management Office located at **111 Membertou Street**:

- Phase I Environmental Site Assessment Final Report – Sydney Indian Reserve No. 28A dated November 18, 2013 Project no. 121412404.200.200 conducted by Stantec Consulting Ltd.
- Phase I Environmental Site Assessment Final Report – Membertou Indian Reserve No. 28B dated November 13, 2013 Project no. 121412404.200.200 conducted by Stantec Consulting Ltd.
- Phase I Environmental Site Assessment Final Report – Caribou Marsh Indian Reserve No. 29 dated April 23, 2013 Project no. 121412404.200.300 conducted by Stantec Consulting Ltd.
- Groundwater Sampling Program, Existing Monitor Wells, IR 29, Caribou Marsh Site, Marion Bridge, Nova Scotia dated February 26, 2015 file no. 121413329 conducted by Stantec Consulting Ltd.
- Environmental Site Assessment, Delineation, and Remedial Action Plan – Caribou Marsh Indian Reserve No. 29 – Stantec report dated January 28, 2018 file no. 121414278.
- Phase II Environmental Site Assessment (draft) - Membertou Indian Reserve No. 28B and Sydney Indian Reserve No. 28A – Dillon report dated May 2018 file no. 17-6777.

ANNEX "E"

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

NONE

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ANNEX "F"

INTERIM ENVIRONMENTAL ASSESSMENT PROCESS

- (1) In this Annex,
 - (a) "CEAA (1992)" means the *Canadian Environmental Assessment Act*, S.C. 1992, c. 37 [repealed, 2012, c. 19, s. 66], as it read immediately prior to its repeal;
 - (b) "CEAA 2012" means the *Canadian Environmental Assessment Act*, 2012, S.C. 2012, c. 19, s. 52, as amended from time to time.
- (2) This Annex sets out the environmental assessment process that will apply to projects on Membertou First Nation Land until the enactment and coming into force of First Nation Laws on that subject.
- (3) The First Nation shall conduct an assessment process in respect of every project on Membertou First Nation Land consistent with:
 - (a) CEAA (1992), or
 - (b) CEAA 2012.
- (4) Notwithstanding clause (3), the First Nation is not required to conduct an additional environmental assessment if the First Nation decides to adopt an environmental assessment that Canada conducts in respect of that project.
- (5) If the First Nation elects to use a process consistent with CEAA (1992), the following applies:
 - (a) When the First Nation is considering the approval, regulation, funding or undertaking of a project on Membertou First Nation Land that is not described in the exclusion list as defined in CEAA (1992), the Council of the First Nation shall ensure that an environmental assessment of the project is carried out in accordance with a process that is consistent with that of CEAA (1992). Such assessment shall be carried out as early as practicable in the planning stages of the project before an irrevocable decision is made.
 - (b) The First Nation shall not approve, regulate, fund, or undertake the project unless the Council has concluded, taking into consideration the results of the environmental assessment, any economically and technically feasible mitigation measures identified as necessary during the assessment, and any public comments received during the assessment, that the project is unlikely to cause any significant adverse environmental effects or that any such effects are justifiable under the circumstances.

(c) If the First Nation approves, regulates, funds, or undertakes the project, the First Nation shall ensure that all mitigation measures referred to paragraph (b) above are implemented at its expense or it is satisfied that another person or body will ensure their implementation. The Council shall also consider whether a follow-up program, as defined in CEAA (1992), is appropriate in the circumstances and if so, shall design a follow-up program and ensure its implementation.

(6) If the First Nation elects to use a process that is consistent with CEAA 2012, the following applies unless it is inconsistent with any amendments made to CEAA 2012 in the future or any legislation that replaces CEAA 2012:

(a) If the project is a “designated project” as defined in CEAA 2012, the First Nation shall conduct an environmental assessment of that project in accordance with a process that is consistent with that of CEAA 2012.

(b) If the project is a “project” as defined in section 66 of CEAA 2012, the First Nation shall not carry out the project on Membertou First Nation Land, or exercise any power or perform any duty or function conferred on it under the Land Code or a First Nation law that would permit the project to be carried out, in whole or in part, on Membertou First Nation Land, unless the Council of the First Nation determines that the carrying out of the project

- (i) is not likely to cause significant adverse environmental effects as defined in CEAA 2012; or
- (ii) is likely to cause significant adverse environmental effects and the Council decides that those effects are justified in the circumstances.

(7) All processes shall be conducted at the expense of the First Nation or of the proponent of the project.

(8) The provisions in this Annex are without prejudice to any environmental assessment process that the First Nation may develop in accordance with the Act and the Framework Agreement for incorporation in First Nation laws respecting environmental assessment.

ANNEX "G"

DESCRIPTION OF MEMBERTOU FIRST NATION LAND

Surveyor General Branch - Land Description for Membertou Indian Reserve No. 28B prepared under First Nation Land Management Act (S.C. 1999, c.24).

- **Canada Lands Surveys Records No. FB41942 dated February 7, 2018**

Surveyor General Branch - Land Description for Sydney Indian Reserve No. 28A prepared under First Nation Land Management Act (S.C. 1999, c.24).

- **Canada Lands Surveys Records No. FB41943 dated February 12, 2018**

Surveyor General Branch - Land Description for Caribou Marsh Indian Reserve No. 29 prepared under First Nation Land Management Act (S.C. 1999, c.24).

- **Canada Lands Surveys Records No. FB41101 dated March 30, 2016**