

MEMORANDUM OF UNDERSTANDING ON FUNDING

This Memorandum of Understanding dated for reference the [#] day of [month], [year]:

BETWEEN: Operational First Nation signatories to the *Framework Agreement on First Nation Land Management* (“*Framework Agreement*”), as represented by the Chair of the Lands Advisory Board (“LAB”) and the Chair of the First Nations Land Management Resource Centre Inc. (“Resource Centre”)

AND: Her Majesty the Queen in Right of Canada, as represented by the Minister of Indian Affairs and Northern Development (“Canada”), or such other member of the Queen’s Privy Council as is designated by the Governor in Council for the purposes of this Memorandum of Understanding;

WHEREAS:

The *Framework Agreement*, Part VI Funding, clause 30 OPERATIONAL FUNDING, sub-clause 30.2 states that:

“A method for allocating such operational funds as may have been appropriated by Parliament will be developed by the Parties and the Lands Advisory Board”;

The *Framework Agreement*, Part V ENVIRONMENT, clause 27 RESOURCES, sub-clause 27.1 states that:

“The Parties understand that the obligation of a First Nation to establish an environmental assessment and environmental protection regime depends on adequate financial resources and expertise being available to the First Nation”;

This Memorandum of Understanding (“MOU”) is the result of the LAB negotiations with Canada and sets out a new operational funding formula (“OFF”) consistent with sub-clauses 27.1 and 30.2 of the *Framework Agreement*; and

This MOU has been presented by the LAB to the *Framework Agreement* Operational First Nations at [EVENT] held in [CITY] on [DATE] and has been approved by resolution.

NOW THEREFORE THE PARTIES AGREE AS FOLLOW:

A. DEFINITIONS

In this MOU,

“Funding Agreement” means an agreement between Canada and an Operational First Nation, or between Canada and a Tribal Council of which the Operational 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;

“Individual Agreement” means the individual agreement referred to in subsection 6(3) of the *First Nations Land Management Act*, S.C. 1999, c. 24 clause 6 of the *Framework Agreement*;

“Operational First Nations” means First Nations who have ratified the *Framework Agreement* pursuant to clause 48.2 of the *Framework Agreement*, and who have a land code that has come into force.

B. PURPOSE

This MOU sets out a new operational funding formula (“OFF”) consistent with sub-clauses 27.1 and 30.2 of the *Framework Agreement on First Nation Land Management*.

C. TERM

1. The OFF will begin on April 1st of fiscal year 2018-2019 and will continue through fiscal years 2019-2020, 2020-2021, 2021-2022, and 2022-2023.
2. Prior to March 31, 2023, the Parties may agree to extend the terms of this MOU and the OFF.

D. LAND AND ENVIRONMENTAL GOVERNANCE FUNDING

1. The OFF provides funding to assist with land, environmental governance and management, which include the following activities:

- i. Establishing and maintaining the legislative, regulatory, and policy framework, including an environmental assessment and protection regime;
 - ii. Enforcement which includes enforcing First Nation laws (both environmental laws and other laws) and the prosecution of individuals contravening First Nation laws; and
 - iii. Undertaking periodic evaluations of the land governance regime, similar to the reviews undertaken by other governments performing similar functions, to ensure First Nation members have access to information they need to assess the performance of the First Nation in administering its land governance responsibilities.
2. Annex A sets out four Core Contribution Categories of funding and identifies under which Category each of the current Operational First Nations will be funded and provides a 1% inflationary adjuster to account for inflation over the term of this agreement.
 - i. Operational First Nations listed in Category I will be provided annual funding of \$272,259 in the first year increasing 1% annually over the term of this agreement starting April 1, 2018;
 - ii. Operational First Nations listed in Category II will be provided annual funding of \$348,699 in the first year increasing 1% annually over the term of this agreement starting April 1, 2018;
 - iii. Operational First Nations listed in Category III will be provided annual funding of \$457,283 in the first year increasing 1% annually over the term of this agreement starting April 1, 2018; and
 - iv. Operational First Nations listed in Category IV will be provided annual funding of \$491,005 in the first year increasing 1% annually over the term of this agreement starting April 1, 2018.
3. The annual funding provided to each of the current Operational First Nations, as well as to those First Nations approving their Land Code and individual Agreement and the *Framework Agreement* by March 31, 2018 shall remain fixed at the levels described in section 2 above, and set out in Annex A, for the five year term of this MOU.

4. First Nations which approve their Land Code and Individual Agreement after March 31, 2018 will be identified under a Category I, Category II, Category III, or Category IV funding level in their Individual Agreement with Canada.

E. TWO YEAR TRANSITIONAL FUNDING

1. Another component of the OFF is a contribution towards transitional activities including, but not limited to, the following matters:
 - i. development and passage of a core body of land laws
 - ii. Establishing a land code implementation structure including hiring, systems start up, instruments development, communications, work planning, training and development;
2. As of March 31, 2018, new Operational First Nations be eligible for the two year transitional funding.
3. Canada will contribute transitional funding in the following manner:
 - i. First Nations that approve their Land Code and Individual Agreement and the *Framework Agreement* and become operational in the future will receive a payment of \$75,000 in the year their land code comes into effect and a second payment of \$75,000 the year thereafter. If a First Nation becomes operational after March 31, 2023 the second payment will be in accordance with the terms of the operational funding formula applicable at that time.
 - ii. Current Operational First Nations that have already received both payments of transitional funding under the previous OFF are not eligible for transitional funding under the new OFF;
 - iii. Current Operational First Nations that have received their first transitional funding payment of \$75,000 under the previous OFF will receive their second transitional funding payment of \$75,000 under the new OFF;

F. FIRST NATION DISCRETION

Another component of the OFF is that Operational First Nations will have the sole discretion to determine how to use the funding provided to meet their land and environmental governance and management responsibilities, subject to the terms and conditions of the *Framework Agreement*, the Individual Agreement and the First Nation's Funding Agreement.

G. PAYMENTS TO FIRST NATIONS

Funding provided under the OFF will be paid through Funding Agreements, and payments will be subject to the terms and conditions of the Funding Agreements.

The Department has committed to pursue a grant authority for Operational Funding to First Nations. If approved, Funding Agreements will reflect this new funding arrangement.

H. NEW OPERATIONAL FIRST NATIONS

The amount of Canada's funding contribution (excluding the Two Year Transitional Funding) to new Operational First Nations for the first fiscal year that their Land Code comes into effect shall be prorated based on the number of months from the date the Land Code comes into effect to the end of the first fiscal year.

I. GENERAL PROVISIONS

1. Funding provided by Canada to Operational First Nations is subject to the appropriation of funds by the Parliament of Canada for the fiscal year in which the funding is to be provided.
2. Obligations of Canada to fund Operational First Nations, as required under Parts V and VI of the *Framework Agreement* have been addressed by the OFF.
3. Any amendments to this MOU shall be in writing and executed by both parties to this MOU.

IN WITNESS WHEREOF, the Chair of the Lands Advisory Board and the Chair of the First Nations Land Management Resource Centre have signed this Memorandum of Understanding on behalf of the Operational First Nations on _____, 2018, and a duly authorized representative of the Minister of Indian Affairs and Northern Development has signed this Memorandum of Understanding on behalf of Her Majesty The Queen in right of Canada, on _____, 2018.

For the Minister of Indian Affairs and Northern Development

Chair of the Lands Advisory Board

Chair of the First Nations Land Management Resource Centre

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