

ANISHINAABE AKI

Governance and Management Agreement

Pine Creek First Nation

- and -

Ebb and Flow First Nation

**(each a “Signatory Nation” and collectively, referred to
as the “Joint First Nations”)**

Dated April 17, 2023

ANISHINAABE AKI GOVERNANCE AND MANAGEMENT AGREEMENT

WHEREAS, the establishment of an agreement for the governance and management structure for the Joint use and co-management of the Joint Reserve Land in the City of Dauphin is required by the Joint First Nations;

AND WHEREAS we, the Joint First Nations, have consulted our respective Elders and citizens to pursue the Joint reserve creation of the Joint Reserve Land;

AND WHEREAS we, the Joint First Nations, assert the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) including the right to self-determination and autonomy in relation to their internal affairs (Articles 3 and 4), right to maintain and develop their political, economic, and social institutions (Articles 20 and 21), and right to lands, Natural Resources, laws, traditions and customs by other governments (Articles 26, 27 and 28);

AND WHEREAS we, the Joint First Nations, have elected to join in unity for the purposes of collectively engaging in a socio-economic venture for the benefit of our respective Signatory Nations;

AND WHEREAS we, the Joint First Nations, through immemorial alliance with one another sharing the same gifted songs, languages, ceremony, ways of life, teachings, and stories. These gifts carry the natural laws and protocols in which we live and govern ourselves;

AND WHEREAS this Agreement is the foundational governance and management document of the Joint First Nations, entered into by each one of the Signatory Nations for the purposes of declaring that exclusive executive governing and supervisory authority of and over the Joint First Nations Lands is hereby vested in the Governing Council and empowering the Governing Council, with the support and advice of the Elders Council, to govern, manage and supervise the interests of the Joint First Nations;

AND WHEREAS the Signatory Nations intend that their relationship with each other, in respect of the establishment of a governance structure shall be governed by the terms and conditions hereinafter set forth;

AND WHEREAS each one of the Signatory Nations is a party to this Agreement in their own capacity as a First Nation in addition to their membership in and participation collectively as the Joint First Nations, an unincorporated association.

NOW THEREFORE THIS AGREEMENT WITNESSETH that in consideration of the premises and of the mutual covenants herein contained, and for other good and valuable consideration, the receipt and sufficiency whereof is hereby acknowledged by the Parties hereto, the Parties hereby agree as follows:

1. Definitions and Rights

1.1 Definitions and Interpretations

- (a) “**Agreement**” means this governance and management agreement, as such Agreement is amended from time to time in accordance with its terms;
- (b) “**Applicable Rules and Regulations**” means applicable laws and regulations of a governmental authority with appropriate jurisdiction;
- (c) “**Canada**” means His Majesty the King in Right of Canada;
- (d) “**Chief and Council**” means the duly elected Chief and Councillors as that term is defined in the *Indian Act*, *First Nations Election Act* or Band Custom Election Law, for each of the constituent Signatory Nations;
- (e) “**Council Resolution**” means a resolution duly made and passed by a quorum of Chief and Council of a Signatory Nation;
- (f) “**Elders Council**” means the Council of community Elders as described in Section 3.2 hereof;
- (g) “**Effective Date**” means the date on which this Agreement is duly approved and executed by each of the Signatory Nations;
- (h) “**Finance Committee**” means that financial body constituted in accordance with Section 5.1 hereof;
- (i) “**Governing Council**” means the principal governing and supervisory body of Joint First Nations, as constituted in accordance with Section 2.1 hereof;
- (j) “**Indian Act**” means the *Indian Act*, R.S.C. 1985 c. 1-5;
- (k) “**Joint Corporation**” means the general partner of JOINT Limited Partnership;
- (l) “**Joint First Nations**” means Pine Creek First Nation and Ebb and Flow First Nation respectively;
- (m) “**Joint First Nation Lands**” means all lands that are lawfully subject to this Agreement, and held for the collective use and benefit of JOINT First Nations and their citizens, as described in Schedule “A”;
- (n) “**Joint Limited Partnership**” means the entity mandated and empowered by the Joint First Nations to govern, manage, and administer Joint First Nations lands, Natural Resources, and revenues derived from those lands and Natural Resources, by and through, the Joint Corporation;
- (o) “**Lease Agreement**” means a lease entered into by Joint Limited Partnership or its nominee, granting a party tenant exclusive use and occupation to a specified

portion of the Joint Reserve Land for an appropriate term, and for fair market rent payment(s);

- (p) **“Mines and Minerals”** includes all mines and minerals (precious and base), including sand and gravel, oil and gas and the royalties derived therefrom;
- (q) **“Natural Resources”** means renewable and non-renewable natural resources such as: timber, mines and minerals, stone, sand, gravel, clay, soil, and similar substances;
- (r) **“Ordinary Council Resolution”** means:
 - (i) a resolution passed by the affirmative vote of a majority of the voting Governing Council members present or participating at a meeting of the Governing Council duly called; or
 - (ii) by an instrument signed by all of the Signatory Nations that make up the Governing Council.

A quorum for a meeting of the Governing Council shall be a minimum of six (6) Governing Council members, three of which shall be from Pine Creek Council and three of which shall be from Ebb and Flow Council, either present in person or participating by conference telephone or by other electronic means.

- (s) **“Signatory Nation”** means any of the following: Pine Creek First Nation, Ebb and Flow First Nation;
- (t) **“Special Governing Council Resolution”** means:
 - (i) a resolution that is passed by a unanimous affirmative vote of the Signatory Nations that make up the Governing Council who vote on the resolution in person at a duly convened meeting of the Governing Council; or
 - (ii) a written resolution in one or more counterparts consented to in writing by all of the Signatory Nations that make up the Governing Council who are otherwise entitled to vote.

1.2 Non-Abrogation of Treaty and Aboriginal Rights

Nothing in this Agreement abrogates or derogates from any aboriginal, inherent, treaty or other rights or freedoms of either of the Signatory Nations as independent First Nations recognized and affirmed by section 35 of the *Constitution Act, 1982*.

1.3 Decisions Binding on Joint First Nations Only

Decisions of the Governing Council are binding on the Joint First Nations Lands only and are the responsibility of the Joint First Nations jointly. For greater certainty, this

Agreement does not apply to other reserve land of the Signatory Nations. The Governing Council is hereby authorized to provide indemnification, in writing or otherwise, to third parties, including Canada, in respect of the decisions and actions taken by the Joint First Nations at the direction of the Governing Council.

2. Establishment of the Governing Council

2.1 Governing Council

All executive governing, managing, and supervisory authority of and over the Joint First Nations Lands is hereby declared by the Signatory Nations to be vested in the Governing Council, subject to the terms of this Agreement and the Council Resolutions delegating such authority to the Governing Council by each Signatory Nation.

The Governing Council shall be constituted of the Chiefs and Councillors of the two Signatory Nations.

Nothing in this Agreement abrogates or derogates from the right of each Signatory Nation to select their own Chief and Council, the selection of each Chief and Council shall be determined by such Signatory Nation's own community elections conducted pursuant to the *Indian Act*, the *First Nations Elections Act* or their respective custom election code, and such Chief and Council shall sit as a representative of the Governing Council free from any interference from any other community-related committees, representatives or councils.

2.1.1 Grant of Executive Authority to the Governing Council

The Signatory Nations hereby acknowledge and agree that the Governing Council is the principal governing and supervisory body of Joint First Nations in respect of the Joint First Nations Lands, and shall at all times be respected by each Signatory Nation.

Unless delegated by the Governing Council in writing or as otherwise expressly required by this Agreement, or other Applicable Rules or Regulations, all decision-making responsibility in respect of the Joint First Nations Lands remains under the authority of the Governing Council.

2.1.2 Governing Council Member Term of Office

The term of a member of the Governing Council shall be their elected term as Chief and Councillors of the Signatory Nation they represent on the Governing Council.

Each member of the Governing Council is deemed to have resigned from the Governing Council on the date their term ends as a member of the Signatory Nation's band council, without any further action required by the Joint First Nations, the Governing Council, the resigning Chief or Councillor or the resigning Chief's Signatory Nation.

Any nominee of a Chief or a Councillor then sitting on the Governing Council shall be deemed to have resigned from the Governing Council on the date of the appointer's term as Chief or a Councillor for their Signatory Nation ends, without any further action required

by the Joint First Nations, the Governing Council, the retiring Chief or their nominee, or the resigning Chief or Councillor's Signatory Nation.

2.1.3 Ex Officio Members of Governing Council

A representative of the Elders Council, selected by the Elders Council, shall be a non-voting ex officio member of the Governing Council, entitled to be present and receive notice of all meetings of the Governing Council, subject to reasonable allowances for regularly scheduled in-camera sessions of the voting members of the Governing Council. By majority vote, the Governing Council may invite additional individuals to serve as ex officio members of the Governing Council, from time to time, for so long as the Governing Council authorizes.

For certainty and the avoidance of doubt, the ex officio members are not to be included among the representatives to be counted for the purposes of waiving meeting notice requirements, electing a chairperson of a meeting, or establishing quorum.

2.1.4 Governing Council Meetings

In order to ensure appropriate input from representatives from each Signatory Nation in respect of the governance and supervision of the political, economic and social interests of the Joint First Nations, including the development and management of the Joint First Nations Lands, is the intention that the Governing Council meet at as required, but no less than four times per year.

For purposes of accountability, the authority and responsibility for the coordination, management, and implementation of Governing Council meetings and decisions will be delegated to an executive position or other mandated entity as determined by the Governing Council. Such delegated individual(s) or entity as the case may be, shall be entitled to be present and receive notice of all meetings of the Governing Council, subject to reasonable allowances for regularly scheduled in-camera sessions of the voting members of the Governing Council.

2.1.5 Notice of Meetings and Location

At least seventy-two (72) hours prior written notice shall be given to all members of the Governing Council by the Chairperson or the delegated executive position with respect to each meeting of the Governing Council unless the giving of such notice is waived before, or during the meeting by all representatives. Such notice of meetings shall set out in reasonable detail the business to be considered at such meetings.

All decisions required by the Governing Council must be approved by one of the instruments outlined in Section 2.1.8. An instrument in one or more counterparts consented to in writing by all members of the Governing Council who are otherwise entitled to vote is a valid decision of the Governing Council.

Unless consented to by all of the representatives, all meetings of the Governing Council and advisory bodies of the Governing Council, if any, shall be held on Joint First Nations Lands or Signatory First Nation Lands.

2.1.6 Chairperson and Vice-Chairperson

At the first meeting of the Governing Council, and each calendar year as required, shall be the selection of a Chairperson and Vice-Chairperson of the Governing Council.

The Chairperson will be a Chief of the Signatory Nations and will hold office for a two (2) year period.

The Vice-Chairperson shall also be a Chief of the Signatory Nations and will hold office for a two (2) year period. The Chairperson and Vice-Chairperson of the Governing Council shall each hold office until the earlier of:

- (i) the expiry of their term as Chairperson or Vice-Chairperson;
- (ii) the expiry of their term on the Governing Council; or
- (iii) a vote to remove the Chairperson or Vice-Chairperson, as applicable, authorized by no fewer than six (6) members of the Governing Council. The Vice-Chairperson shall be responsible for carrying out the responsibilities of the Chairperson in the absence or incapacity of the Chairperson. For certainty, in the case of a tie vote by the Governing Council on any matter, such officers shall not have a second vote.

If at any time the office of Chairperson or Vice-Chairperson is vacant, the Governing Council shall, at its first meeting following the occurrence of such vacancy, vote to fill the vacant office for the remainder of the then current two (2)-year term.

From time to time, the Governing Council may assign and authorize additional roles and responsibilities to the Chairperson of the Governing Council, in addition to the Chairperson's responsibility to chair meetings of the Governing Council.

From time to time, the Chairperson of the Governing Council may delegate certain roles and responsibilities of the Chairperson to the Vice-Chairperson, in addition to the vice-Chairperson's responsibility to chair meetings of the Governing Council in the absence of the Chairperson.

2.1.7 Quorum

A quorum for a meeting of the Governing Council shall be a minimum of six (6) representatives, three (3) of which shall be from Pine Creek Council and three (3) of which shall be from Ebb and Flow Council, either present in person or participating by other electronic communications. If at any meeting of the Governing Council (the "first meeting") a quorum shall not be present, then, notwithstanding anything herein contained, the representatives present at such meeting may call a supplementary meeting of the Governing Council on not less than seventy-two (72) hours' notice to each representative.

2.1.8 Governing Council Resolutions and Voting

Except as otherwise provided herein, all decisions of the Governing Council must be approved, by either:

- (1) an Ordinary Governing Council Resolution; or
- (2) a Special Governing Council Resolution.

Any duly appointed representative may participate in a meeting by telephone, or other electronic means of communication including, but not limited to virtual participation methods.

2.1.9 Certain Matters Requiring Approval by Ordinary Governing Council Resolution

The Signatory Nations that make up the Governing Council shall not, without an Ordinary Council Resolution:

- (1) amend this Agreement;
- (2) enter into any contract, agreement or commitment, including, without limitation, any respecting Joint Reserve Land, any development agreement, Joint venture agreement or management agreement for the Joint Reserve Lands, or establish any additional business or make any material change in, or terminate or suspend any material part of, its existing business;
- (3) establish a per diem for each meeting of Governing Council members in attendance as compensation for their time and services. Such per diem should be in accordance with the policy established by the Finance Committee;
- (4) enact a Law or by-law of any Signatory Nation that will affect the Joint First Nations Lands;
- (5) delegate any authority as outlined in Section 3.1.1;
- (6) approve the mandate for the Finance Committee;
- (7) negotiate to receive other compensation, such as money or other additional parcels of land; and vote on any other matter or make a decision that the Governing Council shall require an Ordinary Governing Council Resolution;

2.1.10 Certain Matters Requiring Approval By Special Governing Council Resolution

The Signatory Nations that make up the Governing Council shall not, without the prior written unanimous consent of all Governing Council members:

- (1) sell, surrender, dispose of any Joint Reserve Lands;

- (2) carry out a voluntary exchange of Joint Reserve Land for other lands that will be set apart as Joint Reserve Lands;
- (3) cause any change in number of the Governing Council Members of the Governing Council or the quorum requirements for meetings of the Governing Council;
- (4) dissolution of the Joint Nations or the Governing Council.

3.1.1 Scope of Authority and Right of Delegation

Except as otherwise provided herein, and subject always to the terms and conditions of the within Agreement, the governance and management of the Joint First Nations Lands, shall, in all cases, be managed by the Governing Council.

The Signatory Nations acknowledge and agree that other than the Governing Council, no other entity, community-related committees, representatives, councils, boards, or advisory councils are entitled to take part in the affairs and control of the Joint First Nations Lands, unless such authority is lawfully delegated by the Governing Council Members, by way of an Ordinary Council Resolution, to such entity, community-related committees, representative, council, board, advisory councils or other entity by Ordinary Council Resolution that:

- (a) specifies the administrative authority granted to the entity;
- (b) specifies the financial authority, if any, granted to the entity;
- (c) indicates the positions, by title, or name, of the individuals who have signing responsibility for any financial authority granted;
- (d) indicates that the delegated authority must be exercised in strict compliance with the delegation of authority and all relevant Joint First Nations policies and laws, copies of which or references to which shall be included;
- (e) outlines any restrictions or requirements related to exercising the delegation of authority;
- (f) outlines the reporting requirements for administrative responsibilities; and
- (g) outlines the consequences of failure to comply.

3.2 Elders Council

It is the intent of each Signatory Nation that the development and management of the Joint First Nations Lands by the Governing Council be undertaken with the input of Elders, from time to time, from each Signatory Nation. In order to facilitate this input, a Council of community Elders (the "Elders Council") is hereby established.

The Elders Council will provide advice, counsel on the historical development of the Joint First Nations Lands and provide guidance and integrate strong cultural principles into the governance, management, operations and resolutions of disputes for the Joint First Nations.

The role of the Elders Council shall be:

- (a) to provide spiritual and cultural guidance and counsel and make recommendations to the Governing Council on both the nature and scope of the development and management of the Joint First Nations Lands;
- (b) to provide advice and counsel to the Governing Council on the interpretation and enforcement of laws and by-law adopted by the Governing Council from time to time;
- (c) participate in the mediation of disputes in accordance with Section 6 hereof; and
- (d) to consult with the Governing Council from time to time on any other matter the Governing Council deems appropriate, and the recommendations of the Elders Council shall be given due regard by the Governing Council.

The Elders Council shall be made up of at least 3 to a maximum of 4 Elder representatives from the Signatory Nations. At all times, each Signatory Nation shall be entitled to have at least one (1) representative on the Elders Council and no Signatory Nation shall have more than two (2) representatives on the Elders Council.

Taking into consideration the above, the size of the Elders Council shall be determined from time to time by the Governing Council.

The process for appointing representatives to the Elders Council shall be left to the discretion of each Signatory Nation in respect of Elders from each Signatory Nation.

All Elders appointed to the Elders Council shall be entitled to an honorarium for each meeting they attend as a gift, for their time and as a symbol of appreciation for their valued knowledge and guidance.

3.3 Accountability to Community Members: Engagement and Consultation

The Signatory Nations agree that the development and management of the Joint First Nations Lands or the general governance of the Joint First Nations may, from time to time, require or otherwise benefit from the input of community members from the Signatory Nations. It is acknowledged and agreed that each Signatory Nation has the authority to and is responsible for maintaining its own membership code and/or band registry, and that for the purposes of determining community members of the Joint First Nations that may participate in community consultation, the Governing Council and the Elders Council

shall rely on the membership codes and band registries administered and maintained by each Signatory Nation.

In order to ensure that community members from each Signatory Nation have an active and informed voice on the issues and management of the Joint First Nations Lands, the Governing Council shall hold a community forum at least once every calendar year that will be open to all community members from the Signatory Nations (the "Annual Forum").

Each Annual Forum shall consist of a report on Joint First Nations Nation's activities from the previous year, presented by a representative of the Governing Council, a report on the most recently completed annual financial statements of Joint First Nations, presented by a representative of the Finance Committee and a representative of Joint First Nations Nation's external auditor. A report on the previous year's activities of the Elders Council presented by a representative of the Elders Council. An appropriate amount of time shall be designated for questions and answers between community members from the Signatory Nations and representatives of the Governing Council, Finance Committee and Elders Council.

The Governing Council shall adopt, with the input of the Elders Council, a Joint First Nations Community Consultation Policy within twelve (12) months of the Governing Council's first meeting under this Agreement. The Joint First Nations Community Consultation Policy will establish standards and procedures for information sharing, engagement, community decision-making, and amending the Joint First Nations Community Consultation Policy. Where the Joint First Nations Community Consultation Policy requires community input on a decision of the Joint First Nations, the Governing Council shall thereafter act in good faith to implement and carry out the decision informed by community members.

Once adopted, the Governing Council and the Elders Council will review the Joint First Nations Consultation Policy every 3rd year to ensure that the standards continue to meet or exceed the terms and conditions set out in the within Agreement.

4. Governance of Joint First Nations Lands

4.4 Environmental Matters

- (a) The Governing Council has authority to and shall develop an environmental management plan, which shall include procedures to conduct an assessment process in respect of every project on Joint First Nations Lands and in accordance with the *Impact Assessment Act*, S.C. 2019, c.28 as may be amended from time to time.
- (b) The Governing Council shall not approve, regulate, fund, or undertake any development project unless the Governing 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 significant adverse environmental effects or that any such effects are justifiable under the circumstances.

4.5 Joint First Nations Lands Lease Agreements

Subject to successful designation referendum votes of each Signatory Nation to allow leasing, as soon as practicable, the Signatory Nations, its nominee, or the Joint Corporation shall enter into a Head Lease Agreement with His Majesty the King in Right of Canada for an indefinite term. The Head Lease Agreement will provide the Signatory Nations, nominee, or the Joint Corporation with general authority for the day-to-day oversight of the development and management of the Joint First Nations Lands. The Joint Corporation will be responsible to enter into sublease agreements with interested parties that will set out terms such as the term, fair market rent payments, and use.

For clarity, all Leases or sublease agreements will require the consent of both of the First Nations by Ordinary Council Resolution, in order to be legally binding.

4.6 Delegation of Authority

4.6.1 Administrative Functions

The Governing Council may, by written Ordinary Council Resolution, at a duly convened meeting, delegate a duty or responsibility for which it has authority to an employee of the Joint Corporation, any advisory committee, or a mandated entity, except that the Governing Council shall not delegate the duty to make and pass Joint First Nations laws or by-laws or the duty to establish fees and rents for interests and licences on Joint First Nations Land.

5. Financial Accountability

5.1 Finance Committee

The Governing Council shall appoint a Finance Committee composed of one (1) representative from the Governing Council as well as one (1) financial advisor to provide guidance and information to the Governing Council as to the appropriate financial reserves for the Joint First Nations to support effective governance and long-term sustainable development; and when appropriate, the amount(s) to be disbursed (on an equal basis) to each of the Joint First Nations, who shall be entitled to use the funds so disbursed at their sole discretion. The Finance Committee shall operate in accordance with the terms and conditions of a written committee mandate adopted by the Governing Council; and in accordance with any Joint Limited Partnership Agreement and any Unanimous Shareholders Agreement of the Joint First Nations.

The Finance Committee shall operate in accordance with the policies, guidelines, and terms and conditions of a written committee mandate adopted by a majority the members of the Governing Council. The key objectives of the Finance Committee are:

- (a) to establish and oversee fiscal, monetary and regulatory frameworks that result in a stable and a sustainable economic environment;
- (b) to ensure that the finances of the Joint First Nations and the Joint First Nations Lands are managed efficiently, effectively, and sustainably; and
- (c) to ensure that institutional and regulatory settings that support the economic growth of the Joint First Nations are in place, such that the equitable, intergenerational well-being of the Signatory Nations' citizens is enhanced.

5.2 Audit and Appointment of Auditor

The financial records and transactions of the Joint First Nations shall be audited on an annual basis by the independent auditor appointed by the Governing Council which shall produce an audited financial statement annually. The audited financial statement shall be provided to each Signatory Nation Chief and Council and will be publicly available on each Signatory Nation's website. The Joint First Nations shall appoint a reputable accounting firm as accountants and auditors. The scope of the audit shall be focused on the financial activities for which the Governing Council has responsibility in connection with its ownership and development, including leasing the Joint First Nations Lands.

5.3 Joint First Nations Funds

Each Signatory Nation acknowledges and agrees that it will transfer to the Joint Corporation, in care of the Finance Committee, all funds received by each Signatory Nation for the development, operation and management of the Joint First Nations Lands "Joint Designated Funds"), as soon as practicable following receipt of such funds. To the greatest extent permissible, the Signatory Nations will, at the request of the Governing Council, execute one or more written instruments in order to direct the transfer of Joint Designated Funds from source to the Joint Corporation in care of the Finance Committee.

5.4 Insurance

The Governing Council shall exercise their discretion with respect to the management and operation of the Joint Corporation and shall maintain sufficient officers and directors' liability insurance together with such other policies of insurance as deemed necessary or desirable by the Governing Council, from time to time, including but not limited to policies of insurance as listed in the Head Lease with His Majesty the King and the Joint First Nations, its nominee or the Joint Corporation, the later insurance being subject to successful referendum votes by each Signatory Nation to allow leasing.

6. Dispute Resolution

The Parties hereby confirm their agreement with the following dispute resolution principles:

- (a) the dispute resolution process set out in this Agreement is only applicable to disputes that arise between the Signatory Nations in respect of the matters governed by this Agreement;
- (b) in the event of any dispute between the Parties relating to the application or interpretation of this Agreement, the resolution of issues or matters in dispute shall be a progressive process, from informal discussions and negotiations, to mediation to binding arbitration;
- (c) the Parties may, by agreement, resolve any dispute at any stage of the dispute resolution process;
- (d) any individual who has provided dispute resolution services for one method of dispute resolution may not be appointed for the same issue or matter in dispute for another method of dispute resolution unless agreed to by the Parties; and
- (e) timelines set out in this Article may be amended by the agreement of the Parties.

6.1 Informal Discussions and Negotiations

In the event of a dispute, the Parties may engage in informal discussions as agreed to by the Parties, and failing resolution of any issues in dispute, either Party shall serve the other Party with a formal written statement identifying the issue(s) or matter(s) in dispute, the relevant facts, the position of the Party and the outcome the Party seeks; and the Party so served shall serve a formal written response on the other Party within 14 days of service;

- (a) the notice and response may be delivered by any method that would provide proof of delivery;
- (b) the negotiation between the authorized representatives of the Parties will take place within 14 days after the date of the delivery of the written notice to negotiate;
- (c) the negotiation will be held in Winnipeg, Manitoba or any other locations as agreed between the parties; and
- (d) the language of the negotiation will be English.

If, using good faith efforts, an agreement has not been reached by the Parties to the dispute through informal discussions as set out in Section 6.1, either Party may deliver

notice to the other Party and the Parties shall proceed to mediation with the Joint First Nations Elders Council.

6.2 Mediation with the Elders Council

Within 30 days of receiving notice for mediation, the Parties will:

- (a) provide the Elders Council with information about the issue or matter in dispute, including a written definition of the issue or matter in dispute, any report on or proposed solution of the issue or matter in dispute submitted by either Party;
- (b) determine a time period for the completion of the mediation;
- (c) agree to follow through with spiritual and cultural activities as deemed necessary by the Elders Council;
- (d) determine other appropriate procedures in order to ensure the issue or matter in dispute is resolved pursuant to the Signatory Nations Laws, customary values and principles in a timely and cost efficient manner;
- (e) the mediation will be held on Joint First Nations Lands or any other locations as agreed between the parties;
- (f) the language of the mediation shall accommodate for translation as required.

6.3 Arbitration

Either Party may refer a dispute about the Agreement to binding arbitration by serving a Notice of Arbitration with particulars of the dispute on the other Party if mediation has not been completed within 60 days (or such longer time period agreed to by the Parties).

The matter in dispute shall be referred to a single arbitrator to be agreed to by the Parties. If the Parties are unable to reach an agreement with respect to the appointment of an arbitrator within 14 days after service of the notice referred to in this Section 6.3, the Parties shall each prepare a list of 3 acceptable arbitrators and submit the lists to the Associate Chief Justice of the Court of King's Bench of Manitoba who will select an arbitrator from the two lists.

- (a) The arbitration shall proceed pursuant to the process set out in this Agreement. The arbitrator will decide the dispute in accordance with the laws of Manitoba and Canada as applicable. The arbitrator may, in addition to making a determination on the issue or matter in dispute, also determine the award and allocation of costs of arbitration and payment of costs of the Parties.
- (b) The Parties agree that any and all documents and information that are disclosed as part of the arbitration proceeding may only be used for the purpose of the arbitration, except as may be necessary to implement or

enforce the arbitrator's award or as may be required for appeal, or as otherwise required by law.

- (c) The Parties agree that the arbitration proceeding shall not be open to the public or media and that the outcome of the arbitration shall be kept strictly confidential, except as may be necessary to implement or enforce the arbitrator's award. The Parties will agree on the procedure to be followed in conducting the proceedings. Failing such agreement, the arbitrator may, subject to the provisions of this Agreement, conduct the arbitration in such manner as he or she consider appropriate.
- (d) The Parties will agree when the arbitration will commence and by when the proceedings will be terminated; however, if the Parties fail to agree, the arbitrator will decide the matter and such determination cannot be appealed. The arbitrator shall apply the laws of evidence as if the hearing was a trial in the Manitoba Court of King's Bench, Civil Division, including the provisions of Manitoba Queen's Bench Rule 53 and The Manitoba Evidence Act.
- (e) The arbitrator shall be authorized to determine facts, interpret and apply the provisions of this Agreement, require a Party to take action to implement this Agreement and determine if a Party is in breach of this Agreement. Except as expressly provided herein, the arbitrator shall have no power to modify or change the Agreement in any manner.
- (f) The Parties will agree on all procedural matters and claims for interim relief arising before the arbitration and failing agreement, the Parties will submit the matter or claim to the arbitrator in writing for a decision.
- (g) The arbitration proceedings shall take place in Winnipeg, Manitoba or any other locations as agreed between the parties and the costs of arbitration shall be equally divided between the Parties, subject to any order for costs that the arbitrator may award. Where an order for costs is awarded, the arbitrator shall be guided by the Manitoba Court of Queen's Bench rules relating to the award of costs in litigation, including the principle that ordinarily the unsuccessful party to the proceedings would be required to pay reasonable costs.
 - i. The award of the arbitrator shall be final and binding on the Parties.
 - ii. The decision of an arbitrator shall be rendered within 90 days of their appointment, unless otherwise agreed to by the Parties.
 - iii. The arbitrator may, on their own initiative within 30 days after making an award or at a Party's request made within 30 days after receiving the award, correct typographical errors, errors of calculation and similar errors in the award.

7. General Provisions

7.1 Reasonable Action

Time shall be of the essence of this Agreement and of every part hereof. The Parties shall at all times and upon every reasonable request shall do all such things as are necessary for the purpose of giving full effect to the provisions of this Agreement.

7.2 Notice

Any notice, demand or other communication required or permitted to be given to any party hereunder shall be in writing and shall be given by prepaid first class mail, by facsimile, by email or other means of electronic communication or by personal delivery as hereafter provided. Address for notice is as follows:

Pine Creek First Nation

Attention: Chief and Council

Fax: (204) 524 2801

Email: beverley.richard@pcfn.ca

cc: paulette.lavallee@pcfn.ca

Ebb and Flow First Nation

Attention: Chief and Council

Fax: (204) 448 2305

Email: adrienneflatfoot1977@hotmail.com

cc: darcymalcolm@outlook.com

In the case of Joint Corporation

Attention: President

Fax:

Email:

Any notices given pursuant to this section shall be sent to the Parties at their respective addresses as set out above or such other address as the party to whom such notice is to be given shall have last notified to the party giving the same in the manner provided in this section.

Any notice given by personal or email delivery shall be deemed to be given and received on the date of delivery if delivered during normal business hours provided that if such day is not a Business Day, or such notice is delivered after normal business hours on such day, then the notice shall be deemed to have been given and received on the Business Day next following such day. Any notice given by mail as aforesaid shall be deemed to have been given and received on the third Business Day next following the date of its mailing provided no postal strike is then in effect or comes into effect within three (3) Business Days after such mailing. Any notice transmitted by facsimile or other form of electronic communication shall be deemed given and received on the day of its transmission if such day is a Business Day and if delivered during normal business hours on such day, and, if not, on the next following Business Day.

7.3 Miscellaneous

- (a) The Parties hereto shall sign such further and other papers, cause such meetings to be held, resolutions passed and by-laws enacted, exercise their vote and influence, do and perform and cause to be done and performed such further and other acts and things as may be necessary or desirable in order to give full effect to this Agreement and every part hereof.
- (b) No waiver by any of the Parties hereto of any breach of any condition, covenant or agreement hereof shall constitute a waiver of such condition, covenant or agreement except in respect of the particular breach giving rise to such waiver.
- (c) If any of the terms or provisions of this Agreement are determined to be invalid or unenforceable by any court of competent jurisdiction, it shall not invalidate the rest of the Agreement which shall remain in full force and effect as if such terms and provisions had not been made a part of this Agreement.
- (d) This Agreement (including the Schedules) and the agreements contemplated in this Agreement contain the entire agreement between the Parties hereto relating to the subject matter hereof and there are no collateral or precedent representations, warranties, agreements, or conditions (including any that may be implied by statute) relating to the subject matter hereof not specifically set forth herein.

- (e) This Agreement shall be governed by and construed in accordance with the laws of the Province of Manitoba and the laws of Canada applicable therein. The Parties hereby attorn to the exclusive jurisdiction of the courts of the Province of Manitoba.
- (f) This Agreement shall enure to the benefit of and be binding upon the Parties hereto and their respective heirs, executors, administrators, successors and assigns.
- (g) No alteration or amendment of this Agreement shall take effect unless the same is duly executed by each of the Parties hereto.
- (h) By signing this Agreement, each of the Parties hereto acknowledges that such party has either obtained independent legal advice with respect to the terms of this Agreement or that such party has, despite having been given the opportunity to do so and being encouraged to do so, declined to seek independent legal advice with respect to the terms of this Agreement; and such party understands the terms of, and such party's rights and obligations under, this Agreement.

IN WITNESS HEREOF the Parties have duly executed this Agreement on 17 of APRIL, 2023

Pine Creek First Nation



Chief



Councillor



Councillor



Councillor

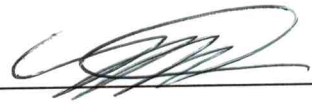


Councillor

Ebb and Flow First Nation



Chief



Councillor

Councillor



Councillor

Councillor

Schedule "A"
Anishinaabe Aki Joint Reserve Lands

In the Province of Manitoba and being:

Parcels A, B, and C Plan 28535 DLTO

Including all Mines and Minerals whether they are solid, liquid or gaseous

Excepting thereout of the above described Parcel A all of public road plan 69464 Dauphin Land Titles Office, and

Subject to all third party encumbrances on the Designated Lands at the date of this Designation, which include, but are not limited to:

A Permit to Bell Canada and;

A Permit to The Manitoba Hydro-Electric Board

It is understood that this description will be replaced by a Plan meeting the requirements of the *Interdepartmental Agreement Related to the Cooperation in the Area of Surveys and the Specification for Descriptions of Lands for Transactions of Reserve Lands, 2014*.