

THIS AGREEMENT made as of this        day of  
1990.

BETWEEN:

CHEMAWAWIN FIRST NATION as represented by the  
Chief, Alpheus Brass and First Nation Councillors,  
being McLeod George, William Easter, William John Thomas,  
Roderick George and Percy George

(hereinafter referred to as the "First Nation")

OF THE FIRST PART,

- and -

EASTERVILLE COMMUNITY COUNCIL, as represented by the  
Mayor, Lawrence Ledoux and Community Councillors being  
Thomas Young, Jonas Chartier, Joey Lavallee and  
Ethel McKay

(Easterville Community Council hereinafter referred to  
as the "Community")

OF THE SECOND PART,

- and -

MANITOBA HYDRO ELECTRIC BOARD,

(hereinafter referred to as "Hydro")

OF THE THIRD PART.

WHEREAS Hydro built the Project, as hereinafter  
defined, the construction of which caused the substantial  
alteration of the water regime on local waterways, including  
Cedar Lake, while providing ongoing benefits to the people of  
Manitoba through the revenues generated therefrom;

AND WHEREAS there is a continuing impact from such substantial alteration;

AND WHEREAS the Government of Manitoba (hereinafter referred to as "Manitoba") and the Government of Canada (hereinafter referred to as "Canada") participated with Hydro in arranging for the management of the impact of the Project on the Chemawawin Cree;

AND WHEREAS the construction of the Project also caused the loss of land and other property of the Chemawawin Cree;

AND WHEREAS the loss and taking of such land led to the total relocation of the First Nation and the Community to the area of Easterville, Manitoba, resulting in fundamental and irreversible changes to their local way of life;

AND WHEREAS Manitoba, compensated for the taking of Indian lands by the provision of certain exchange lands and other measures and undertakings, which were deemed by Canada, pursuant to an Order in Council, to be sufficient compensation;

AND WHEREAS, notwithstanding the foregoing, it is considered to be right and fair that the First Nation and Community receive benefits which can contribute to the basis for the betterment of the First Nation and the Community;

AND WHEREAS the Chief and Council of the First Nation and the Mayor and Council of the Community have been involved in negotiations with Hydro to resolve outstanding issues among Hydro, the First Nation and the Community, which negotiations have included the exchange of settlement offers

and the mutual acceptance of settlement principles dated August 17, 1990;

AND WHEREAS all parties wish to proceed quickly to finalize the terms of the aforesaid settlement;

AND WHEREAS the parties hereto acknowledge that this Agreement shall not diminish any of the rights of the First Nation or the Community under the Constitution of Canada or Treaty No. 5.

AND WHEREAS the Minister of Northern Affairs is required to give his approval to this Agreement pursuant to The Northern Affairs Act (Manitoba);

AND WHEREAS the First Nation and the Community are currently involved in negotiations with Canada and Manitoba to resolve outstanding issues related to the Project among the said governments, the First Nation and the Community;

NOW THEREFORE, THIS AGREEMENT WITNESSETH that, in consideration of the premises and mutual covenants herein contained, the sufficiency of which is hereby acknowledged, the parties hereto hereby agree as follows:

#### ARTICLE I - INTERPRETATION

##### 1.01 Definitions

In this Agreement, unless there is something in the context of the subject matter inconsistent therewith, the following words and expressions shall have the following meanings:

- (1) "Adverse Effects" - means those direct and indirect negative impacts on the Collective Rights and Interests of the First Nation or the Community, as the case may be, which impacts are attributable in whole or in part to the Project and are caused by the change from the Pre-Project Water Regime to the Recurring Water Regime, whether caused prior to, at, or following the Effective Date and, without limiting the generality of the foregoing, related to:
- (a) reduced level and/or enjoyment of activity;
  - (b) additional costs incurred related to such activity or activities; and
  - (c) stress, anxiety and other social and psychological impacts arising from (a) and (b), above.

For greater certainty, Adverse Effects shall not include Incremental Adverse Effects and Unanticipated Adverse Effects, as defined herein, or negative impacts attributable in whole or in part to a material breach, if any, by Hydro at any time of any material conditions contained in any temporary, interim, supplementary or final license issued under The Water Power Act (Manitoba) or otherwise.

- (2) "Chemawawin Resource Area" - means that area comprised of lands, including lands reserved for Indians and Provincial Crown lands, marsh, rivers and lakes which area is now or was traditionally available to and used and enjoyed by First Nation Members and Community Residents as a source of food supply, income in kind and income and, without limiting the generality of the foregoing, shall include the following:
- (a) the Cedar Lake Registered Trap Line District;
  - (b) the commercial fishery on all of Cedar Lake including the area extending beyond the Registered Trap Line boundary; and
  - (c) in addition to the land and waterways included in the above area an undetermined portion of area D, now known as the Tom Lamb Wildlife Management Area.

- (3) "Collective Rights and Interests" - means those individual and community rights and interests shared universally and in common by the First Nation Members and/or the Community Residents, which derive from belonging to the First Nation or the Community as the case may be, including non-commercial access to, use, enjoyment and benefit of lands, resources and waterways.
- (4) "Community Resident" - means an Indian or Metis person of Cree descent who is not a First Nation Member and either:
- (a) who was ordinarily resident at the Old Post or Easterville, Manitoba for a period of at least five (5) consecutive years since 1962; or
  - (b) who was born to a person described in paragraph (a) above and who continues to be ordinarily resident at the Old Post or Easterville, Manitoba; or
  - (c) who would otherwise be a Community Resident by virtue of paragraphs (a) or (b) hereof and who intends to reside again at the Old Post or Easterville, Manitoba, but is absent from the community for educational or health reasons.
- (5) "Development Works" - means those activities which have as their goal the improvement of the social, economic or infrastructural resource base of the First Nation or the Community.
- (6) "Effective Date" - means the date upon which all of the conditions referred to in Article III hereof have been fulfilled, satisfied or waived, as the case may be.
- (7) "Junior Elders" - means those First Nation Members and Community Residents who attained the age of 55 on or before January 1, 1990 and who are still living at the Effective Date.

"Senior Elders" - means those First Nation Members and Community Residents who attained the age of 65 on or before January 1, 1990 and who are still living at the Effective Date.

- (8) "Elector" - means for the purposes of the First Nation, an "elector" of the First Nation pursuant to the Indian Act and, for the purposes of the Community, a Community Resident who is qualified to vote in respect of the election of the Community Council pursuant to The Northern Affairs Act (Manitoba).
- (9) "First Nation Member" - means a "member" from time to time of the First Nation pursuant to the Indian Act.
- (10) "Incremental Adverse Effects" - means those direct and indirect negative impacts on the Collective Rights and Interests of the First Nation or the Community, as the case may be, which are attributable in whole or in part to the Project and are caused by a departure or deviation from the Recurring Water Regime. For greater certainty, Incremental Adverse Effects shall not include any Adverse Effects or Unanticipated Adverse Effects, as defined herein and shall not be considered to exist with respect to the period prior to the Effective Date.
- (11) "Pre-Project Water Regime" - means the pre-1964 water levels and flows, including, without limiting the generality of the foregoing, the range, fluctuations and rate and timing of fluctuation of the waterways of the Chemawawin Resource Area.
- (12) "Project" - means the undertaking commonly known as the Grand Rapids Hydro Electric Generating Station, including, without limiting the generality of the foregoing, its duly licensed works and operations.
- (13) "Recurring Water Regime" - means the post-1964 licensed water levels and flows, including, without limiting the generality of the foregoing, the range, fluctuations and rate and timing of fluctuation on the waterways of the Chemawawin Resource Area, with a maximum Cedar Lake forbay elevation of 842 feet as measured at the head water of the generating station.
- (14) "Restorative Work" - means those activities and initiatives which are intended to respond to the Adverse Effects either through remedial or mitigative efforts and shall include, without

limiting the generality of the foregoing, any activities related to shoreline clearing and community landscaping.

- (15) "Unanticipated Adverse Effects" - means those direct and indirect negative impacts on the Collective Rights and Interests of the First Nation or the Community, as the case may be, which are attributable in whole or in part to the Project and are caused by the change from the Pre-Project Water Regime to the Recurring Water Regime, but are unknown and/or unanticipated and are not discernible with the ordinary exercise of due diligence by the First Nation or the Community at the Effective Date. For greater certainty, Unanticipated Adverse Effects shall not include any Adverse Effects or Incremental Adverse Effects, as defined herein.

1.02 Interpretation - In this Agreement:

- (1) Any reference to a statute shall include and shall be deemed to include a reference to such statute and to the regulations made pursuant thereto, together with all amendments made thereto and in force from time to time, and any statute or regulation, as amended from time to time, which may be passed and which has the effect of supplementing, replacing or superseding a statute so referred to or the regulations made pursuant thereto, as the same may be amended from time to time;
- (2) Any reference to a person shall include and shall be deemed to be a reference to any person that is the successor to such person;
- (3) The terms "this Agreement", "hereof", "herein", "hereunder" and similar expressions refer, for greater certainty, to this Agreement and not to any particular article, section, sub-section or other portion hereof;
- (4) Words importing the singular number only shall include the plural and vice versa;
- (5) Words importing one gender only shall include both genders; and

- (6) The headings and the division of this Agreement into articles, sections and subsections are for convenience of reference only and shall not affect the construction or interpretation of this Agreement.

## ARTICLE II - SETTLEMENT

### 2.01 Settlement Amount

Hydro hereby agrees to pay within ten (10) days following the Effective Date the sum of THIRTEEN MILLION SEVEN HUNDRED THOUSAND (\$13,700,000) DOLLARS (hereinafter referred to as the "Settlement Amount") in full and final satisfaction of any outstanding responsibilities in relation to Adverse Effects for which Hydro may be liable, in accordance with and subject to the provisions hereof.

### 2.02 Credits for Advances

Hydro shall receive credit for any advances paid to the First Nation or the Community in respect of this Agreement and designated as such in writing by Hydro, which credit or credits shall be deducted from the Immediate Use Monies referred to in section 2.03(1) hereof.

### 2.03 Immediate Use Monies

- (1) Hydro shall pay out of and from the Settlement Amount the sum of ONE MILLION NINE HUNDRED THOUSAND (\$1,900,000) DOLLARS (hereinafter referred to as the "Immediate Use Monies") in accordance with sections 2.03(2) and (3) hereof.
- (2) Within ten (10) days following the Effective Date:



- (a) Hydro shall pay the sum of ONE MILLION, SEVEN HUNDRED AND TEN THOUSAND (\$1,710,000) DOLLARS to Buchwald Asper Henteleff out of and from the Immediate Use Monies, in trust for the benefit of the First Nation, as represented by its Chief and Council; and
  - (b) Hydro shall pay the sum of ONE HUNDRED AND NINETY THOUSAND (\$190,000) DOLLARS to Buchwald Asper Henteleff out of and from the Immediate Use Monies, in trust for the benefit of the Community, as represented by its Mayor and Council.
- (3) The foregoing payment shall be made by way of cheque or bank draft.
- (4) For greater certainty, the Immediate Use Monies are to be used in their respective shares by the Councils of the First Nation and Community as follows:
- (a) for Restorative and Development Works identified by the First Nation and the Community;
  - (b) resource, economic or infrastructure development initiatives;
  - (c) a SEVEN HUNDRED FIFTY (\$750) DOLLARS payment, in the case of the First Nation, to each First Nation Member who is not a Junior or Senior Elder and, in the case of the Community, to

each Community Resident who is not a Junior or Senior Elder;

- (d) a TWO THOUSAND (\$2,000) DOLLARS payment to each Junior and Senior Elder; and
- (e) reasonable consulting, legal and administrative costs of the First Nation and Community in respect of the negotiation, settlement and implementation of settlement measures.

2.04      Continuing Trust Monies

- (1) Hydro shall pay out of and from the Settlement Amount, within ten (10) days following the Effective Date, an amount equal to the balance of the Settlement Amount, being ELEVEN MILLION EIGHT HUNDRED THOUSAND (\$11,800,000) DOLLARS (hereinafter referred to as the "Continuing Trust Monies") to Buchwald Asper Henteleff, in trust, as to TEN MILLION SIX HUNDRED TWENTY (\$10,620,000) DOLLARS (hereinafter referred to as the "First Nation's Portion") for the benefit of the First Nation, as represented by its Chief and Council, and as to ONE MILLION ONE HUNDRED EIGHTY THOUSAND (\$1,180,000) DOLLARS (hereinafter referred to as the "Community's Portion") for the benefit of the Community, as represented by its Mayor and Council, which amount shall be deposited into an interest bearing trust account or accounts, upon receipt and shall be dealt with in accordance with this section 2.04.

(2) Immediately upon receipt of:

- (a) a copy of a Trust Indenture (hereinafter referred to as the "Chemawawin First Nation Development Trust") certified by the Chief of the First Nation to be a true copy of a Trust Indenture made by the Chief and Council in favour of the Trustees named therein in respect of the First Nation's Portion of the Continuing Trust Monies;
- (b) Hydro's consent to release the First Nation's Portion of the Continuing Trust Monies in accordance with the terms of this Agreement;

Buchwald Asper Henteleff shall pay out of the balance of the sum deposited in its trust account or accounts in accordance with this paragraph 2.04(2), together with any accrued interest thereon:

- (c) the reasonable consulting, legal and administrative costs of the First Nation, which costs are specified in any irrevocable direction to pay issued by the Chief and Council to Buchwald Asper Henteleff, in respect of the completion of the documentation, negotiation and implementation of the settlement, the trusts and any other matters required herein; and
- (d) the balance of the said sum to the Corporate Trustee named in the Chemawawin First Nation

Development Trust indenture, for and on behalf of the Chief and Council of the First Nation.

(3) Immediately upon receipt of the balance of the said First Nation's Portion of the Continuing Trust Monies, the Chief and Council, for and on behalf of the First Nation, shall forthwith settle the balance of such First Nation's Portion, together with any accrued interest thereon, on the Trustees named in the Chemawawin First Nation Development Trust which monies are to be held by them in trust with, and subject to, the powers and provisions declared and confirmed in the said trust indenture, which trust indenture may only be varied or terminated with Hydro's consent.

(4) Immediately upon receipt of:

(a) a copy of a Trust Indenture (hereinafter referred to as the "Easterville Community Development Trust") certified by the Mayor of the Community to be a true copy of a Trust Indenture made by the Community Council in favour of the Trustees named therein in respect of the Community's Portion of the Continuing Trust Monies;

(b) Hydro's consent to release the Community's Portion of the Continuing Trust Monies in accordance with the terms of this Agreement;

Buchwald Asper Henteleff shall pay out of the balance of the sum deposited in its trust account

or accounts in accordance with this paragraph 2.04(4), together with any accrued interest thereon:

- (c) the Community's contribution to the reasonable consulting, legal and administrative costs of the First Nation, which costs are specified in any irrevocable direction to pay issued by the Community Council to Buchwald Asper Henteleff, in respect of the completion of the documentation, negotiation and implementation of the settlement, the trusts and any other matters required herein; and
  - (d) the balance of the said sum to the Corporate Trustee named in the Easterville Community Development Trust Indenture, for and on behalf of the Community.
- (5) Immediately upon receipt of the balance of the said Community's Portion of the Continuing Trust Monies, the Community shall forthwith settle the balance of such Community's Portion, together with any accrued interest thereon, on the Trustees named in the Easterville Community Development Trust which monies are to be held by them in trust with, and subject to, the powers and provisions declared and confirmed in the said trust indenture, which trust indenture may only be varied or terminated with Hydro's consent.
- (6) The parties hereto shall use their best efforts to agree to a form or forms of trust indentures in

respect of the First Nation's Portion and the Community's Portion of the Continuing Trust Monies, which trust indenture or indentures shall be substantially in accordance with the terms and conditions set out in paragraph 17 of the Settlement Principles agreed to by Hydro, the First Nation and the Community as of August 17, 1990, an excerpt of which Settlement Principles is appended hereto as Schedule A.

(7) In any trust indenture prepared in accordance herewith, the permitted uses of the Continuing Trust Monies shall be:

(a) resource rehabilitation and development measures to support increased viability for traditional and commercial resource pursuits and other resource harvesting;

(b) cultural and social support and development initiatives;

(c) business and employment development undertakings;

(d) local community infrastructure and housing development;

(e) the payment of One Hundred Twenty-Five (\$125) Dollars per month to each Senior Elder for the life of each Elder; and

- (f) technical and legal costs related to effective control and utilization of the respective Trust Fund, management of local development challenges and pursuit of rights and responsibilities.
- (8) (a) The Chemawawin First Nation Development Trust indenture will be deemed to be approved in accordance with this Agreement, once a copy of the same is appended hereto as a schedule and is initialled on the signature page by Hydro and the First Nation.
- (b) Notwithstanding the foregoing, the First Nation shall be deemed not to have approved the said trust indenture unless and until it authorizes the Chief and Council to enter into the same and that decision is ratified at a meeting according to the procedure set out in section 3.04 hereof within ninety (90) days of the Effective Date, unless all the parties hereto agree to extend the deadline in writing, a copy of which agreement shall be delivered to Buchwald Asper Henteleff, Attention: Mr. Jack R. London, Q.C.
- (9) (a) The Easterville Community Development Trust indenture will be deemed to be approved in accordance with this Agreement, once a copy of the same is appended hereto as a schedule and is initialled on the signature page by Hydro, the Minister of Northern Affairs of Manitoba and the Community.

(b) Notwithstanding the foregoing, the Community shall be deemed not to have approved the said trust indenture unless and until its decision is ratified at a meeting held according to the procedure set out in section 3.05 hereof within ninety (90) days of the Effective Date, unless all the parties hereto agree to extend the deadline in writing, a copy of which agreement shall be delivered to Buchwald Asper Henteleff, Attention: Mr. Jack R. London, Q.C.

(10) In the event that the form of either of the said trust indentures is not agreed to and approved in accordance herewith within ninety (90) days of the Effective Date, then, unless all the parties hereto agree to extend the deadline in writing, a copy of which agreement shall be delivered to Buchwald Asper Henteleff, attention, Mr. Jack R. London, Q.C.;

(a) Buchwald Asper Henteleff shall pay the balance of the monies in the said trust accounts established in accordance with this section 2.04 hereof to Hydro, which payment shall be an absolute discharge of Buchwald Asper Henteleff;

(b) this Agreement shall continue to be effective, save and except for sections 2.04, 4.01, 4.02, 4.03, 4.04, 4.05, 4.06, 4.07 and 4.08 hereof, which provisions shall cease to have effect at that time.



- (11) Notwithstanding anything contained herein, for greater certainty, sections 4.01 to 4.08 hereof inclusive shall only have force and effect when the form of each of the trusts referred to hereunder is agreed to and approved by the parties hereto in accordance with the terms of this Agreement.

2.05 Completion of Power Line

- (1) As additional consideration, Hydro shall complete construction of a three-phase power line with appropriate service drops to the fish plant on Chemawawin Reserve No. 3 at Denbeigh Point as soon as possible and, in any event, with the first power to be available no later than six (6) months from the Effective Date.
- (2) Subject to the time restriction set out in section 2.05(1) hereof, Hydro further covenants to make all reasonable provision to maximize local labour and business in the construction of the line by:
- (a) meeting as soon as possible with the First Nation and the Community to identify all manpower and equipment requirements;
  - (b) utilizing local invitational tenders and sole source negotiations with the First Nation and the Community, rather than merely utilizing public tenders in the procurement process; and
  - (c) applying its Northern Preference Policy in the awarding of work.

- (3) It is further understood that, subsequent to construction, any electric power utilized shall be charged to users consistent with Hydro standard rates and billing practices in effect from time to time.

### ARTICLE III - CONDITIONS

#### 3.01 Condition for the Benefit of Hydro

This Agreement is subject to the following terms and conditions for the exclusive benefit of Hydro to be fulfilled and/or performed at or prior to the Effective Date:

- (1) the First Nation duly authorizing the Chief and Council of the First Nation to enter into this Agreement, for and on behalf of the First Nation Members, in respect of their Collective Rights and Interests, in accordance with section 3.04 hereof;
- (2) the Community being duly authorized to enter into this Agreement, for and on behalf of the Community Residents, in respect of their Collective Rights and Interests, in accordance with section 3.05 hereof; and
- (3) The Minister of Northern Affairs, or his designate, approving this Agreement for the Community.

#### 3.02 Condition for the Benefit of the First Nation and the Community

This Agreement is subject to the following term and condition for the exclusive benefit of the First Nation and

the Community to be fulfilled and/or performed at or prior to the Effective Date:

- (1) the Manitoba Hydro-Electric Board authorizing the appropriate executive authority to enter into this Agreement.

### 3.03 Waiver of Conditions

In case any of the foregoing terms and conditions for the benefit of Hydro or the First Nation or the Community, as the case may be, shall not have been performed on or before November 20, 1990, the party in whose favour the term and condition was to have been fulfilled and/or performed may terminate this Agreement by notice in writing and, in such event all parties hereto shall be released from all obligations hereunder, unless the party required to fulfill and/or perform the term and condition can show that the non-performed condition or conditions is reasonably capable of being performed within a reasonable period of time. Provided, however, that a party in whose favour a term or condition is to be fulfilled and/or performed shall be entitled to waive compliance with any such conditions, obligations or covenants, in whole or in part, if it sees fit to do so, without prejudice to any of its rights in the event that any other term or terms or conditions are not fulfilled and/or performed in whole or in part.

### 3.04 Ratification by First Nation

- (1) For the purpose of complying with section 3.01(1) hereof, the First Nation shall have held a public meeting of Electors, together with its consultants

and legal advisers, on or before November 12, 1990. Such meeting shall be held in Easterville, Manitoba and shall be announced in Easterville at least five (5) days in advance of the public meeting being held. Hydro shall be entitled to attend as witness at the meeting and, to that end, the First Nation shall give to Hydro three (3) days written notice of the meeting. The First Nation shall cause to be explained to the Electors attending at such meeting the nature and significance of the Agreement.

- (2) Notwithstanding, and in addition to, any provisions contained in the Indian Act authorizing the First Nation to enter into this Agreement, the Chief and Council shall be deemed not to have authorized the First Nation to enter into this Agreement unless and until a majority of Electors attending at such meeting vote in favour of such authorization.

### 3.05 Ratification By Community

- (1) For the purposes of complying with section 3.01(2) hereof, the Community shall have held a public meeting of Electors, together with its consultants and legal advisers, on or before November 12, 1990. Such meeting shall be held in Easterville, Manitoba and shall be announced in Easterville at least five (5) days in advance of the public meeting being held. Hydro shall be entitled to attend as witness at the meeting and, to that end, the Community shall give to Hydro three (3) days written notice of the meeting. The Community shall cause to be explained to the Electors attending at such meeting the nature and significance of the Agreement.

- (2) Notwithstanding, and in addition to, any provisions contained in The Northern Affairs Act (Manitoba) authorizing the Community to enter into this Agreement, the Community Council shall be deemed not to have been authorized to enter into this Agreement unless and until a majority of Electors attending at such meeting vote in favour of such authorization.

ARTICLE IV - COVENANTS, ACKNOWLEDGEMENTS AND RELEASES

4.01 Release in Favour of Hydro

- (1) The First Nation and the Community certify that they have in all relevant respects been independently advised by legal counsel and professional consultants of their choice in relation to this Settlement Agreement.
- (2) The First Nation and the Community, jointly and severally, on behalf of themselves and the First Nation Members and Community Residents, do hereby covenant with Hydro that neither they, nor any of them, or any of their successors, assigns or personal representatives will at any time hereafter sue or bring or take any action or proceeding whatsoever against Hydro on account of, or by reason of, or in respect of any outstanding responsibilities in relation to Adverse Effects for which Hydro may be liable notwithstanding that the settlement monies payable under this agreement do not constitute an accord and satisfaction with

respect to loss and damage suffered by the First Nation and Community Residents in relation to Adverse Effects.

- (3) The First Nation shall terminate existing legal action against Hydro.
- (4) The parties agree that nothing herein shall extend to or effect or constitute a remission, release, acquittance or discharge of Manitoba, except as set out in section 4.03 hereof, or Canada or in any wise prejudice or affect any action, proceeding, remedy, claim or demand which the First Nation and Community, and the First Nation Members and Community Residents, or any of them, may now or at any time hereafter bring, take, enforce or make or have against Manitoba or Canada in respect of any outstanding responsibilities for which Manitoba or Canada may be liable.
- (5) The parties agree that nothing herein contained shall extend to or affect or act to prevent or hinder Hydro from seeking or enforcing indemnification and/or contribution from Canada for or by reason of the consideration paid and delivered by Hydro to the First Nation and the Community as provided herein.

4.02      Acknowledgement in Favour of Hydro

The First Nation and the Community do hereby acknowledge that upon payment of the Continuing Trust Monies, the trustees thereof do thereby assume absolute

responsibility for the disbursement of the Continuing Trust Monies in accordance with the provisions of the Chemawawin First Nation Development Trust and Easterville Community Development Trust.

4.03 Covenant in Favour of Manitoba

- (1) The First Nation and the Community certify that they have in all relevant respects been independently advised by legal counsel and professional consultants of their choice in relation to this Settlement.
  
- (2) The First Nation and the Community, jointly and severally, on behalf of themselves and the First Nation Members and Community Residents, recognize that a portion of the payment by Hydro is a contribution toward fulfilling outstanding responsibilities of Manitoba. Moreover, the First Nation and the Community, upon successful completion of negotiations with Manitoba, shall provide to Manitoba a covenant that neither they, nor any of them, or any of their successors, assigns or personal representatives would at any time hereafter sue or bring or take any action or proceeding whatsoever against Manitoba on account of, or by reason of, or in respect of any outstanding responsibilities in relation to the development and operation of the Project, notwithstanding that the settlement monies payable under this Agreement do not constitute an accord and satisfaction with respect to loss and damage suffered by the First Nation and Community

Residents in relation to the development and operation of the Project.

- (3) The First Nation shall terminate existing legal action against Manitoba.

#### 4.04 Indemnification in Favour of Hydro

- (1) The First Nation and the Community, jointly and severally, on behalf of themselves and the First Nation Members and the Community Residents, do hereby indemnify and save harmless Hydro from and against any and all actions, causes of action, suits, claims, demands, losses, costs, damages and expenses in respect of the use or misuse of the Settlement Amount.
- (2) The First Nation, on behalf of itself and the First Nation Members, does hereby indemnify and save harmless Hydro from and against any and all actions, causes of action, suits, claims, demands, losses, costs, damages and expenses, with respect to any action which may be taken by Canada against Hydro with respect to the payment by Hydro of the First Nation's share of the Continuing Trust Monies.
- (3) Upon payment of the Settlement Amount and the completion of the other settlement measures by Hydro as set out herein, there shall be no further recourse by the First Nation and the Community or the First Nation Members and Community Residents whatsoever as against Hydro in respect of any



outstanding responsibilities in relation to Adverse Effects for which Hydro may be liable.

4.05 Exceptions to Covenants and Releases

For greater certainty, notwithstanding anything contained herein and, in particular, sections 4.01, 4.02, 4.03 and 4.04 hereof, the First Nation, the Community and the First Nation Members and the Community Residents may still sue Hydro, and Hydro agrees to retain residual liability, in respect of the following events:

- (1) in the event that there are Incremental Adverse Effects;
- (2) in the event that there are Unanticipated Adverse Effects, including, without limiting the generality of the foregoing, the future recurrence of unacceptable mercury levels, if any; and
- (3) in the event that any individual suffers personal injury or death attributable in whole or in part to the Project.

4.06 Environmental Monitoring

- (1) Hydro and the First Nation and the Community shall establish a joint environmental review committee in order to advise on the collection and evaluation of the relevant water regime and bio-physical data and to review environmental monitoring results in an orderly and continuing fashion, with the reasonable costs to be borne by Hydro.

(2) In the event that a dispute arises between Hydro and the First Nation and/or the Community with respect to the Unanticipated and Incremental Adverse Effects referred to herein, and without prejudice to any other rights of the parties established herein, a technical panel may be established, by agreement of the parties, consisting of one representative appointed by agreement of the First Nation and the Community and one representative appointed by Hydro and a chairperson appointed by agreement of the First Nation and the Community and Hydro. The members of such a panel shall have expertise relevant in making judgments regarding the significance of unanticipated and incremental bio-physical changes and socio-economic impacts. Such a panel, the reasonable costs of which will be paid by Hydro, if agreed to be established, will make timely recommendations to the parties to the dispute, which recommendations shall be without prejudice to any party.

#### 4.07 Related Negotiations

It is acknowledged by the parties hereto that the First Nation and the Community are presently engaged in negotiations with Canada and Manitoba, with respect to outstanding issues among these governments and the First Nation and the Community related to the Project, the common objective of which negotiations is to arrive at a comprehensive negotiated settlement of all outstanding issues related thereto. The parties further acknowledge that the settlement contained herein is intended to be without

prejudice to, but a component within, the overall negotiation process, and, in particular, a material consideration to be integrated with normal and accelerated government programs and increased land and resources resulting from these negotiations. The ongoing specific details of such integration shall be at the discretion of the First Nation, the Community and the trustees administering the Continuing Trust Monies.

4.08 No Precedent and No Admission of Liability

- (1) It is expressly understood and agreed by the parties hereto that the terms and conditions contained in this Agreement shall not constitute a precedent among the parties and that the parties have entered into this Agreement without admission as to liability and on a without prejudice basis to this or any other dispute.
- (2) Neither the payment of the Settlement Amount nor the entering into of this Agreement, shall be construed in any way as an admission of liability by Hydro.

ARTICLE V - REPRESENTATIONS AND WARRANTIES

5.01 Representations and Warranties of First Nation

The First Nation represents and warrants to Hydro as follows, and acknowledges and confirms that Hydro is relying on such representations in connection with the completion of this Agreement, namely that the First Nation shall have on the Effective Date the power and authority to

enter into this Agreement and to perform its obligations hereunder.

5.02        Representations and Warranties of Community

The Community represents and warrants to Hydro as follows, and acknowledges and confirms that Hydro is relying on such representations in connection with the completion of this Agreement, namely, that the Community shall have on the Effective Date the power and authority to enter into this Agreement and to perform its obligations hereunder.

ARTICLE VI - ARBITRATION

6.01        Optional Arbitration

If at any time a dispute, difference or question shall arise among the parties hereto concerning any question relating to this agreement, the rights or liabilities of any of the parties hereto, or any other dispute involving either the interpretation of this Agreement or anything contained herein, then if agreed to by all parties to the dispute, difference or question, the matter shall be referred to arbitration, failing which the parties shall be entitled to pursue other remedies as they may have at law. In the event that the matter is submitted to arbitration, it shall be referred to a single arbitrator if one can be mutually agreed upon by the parties to the dispute, difference or question within seven (7) days of the notice of desire for arbitration being served. In the event that the parties to the dispute, difference or question cannot agree upon a single arbitrator then after the expiry of such seven (7) day period, any one of the parties to the arbitration may apply to a Chief

Justice of Manitoba to appoint the arbitrator to sit and hear the arbitration. The decision arrived at by the arbitrator shall be binding upon all the parties to the arbitration and no appeal shall lie therefrom. The provisions of this section shall be deemed to be a submission to arbitration within the provision of The Arbitration Act (Manitoba) and any statutory modification or re-enactment thereof, unless the parties agree to opt out of such legislation in part. Costs of any such arbitration shall be borne by Hydro.

ARTICLE VII - PROVISIONS OF GENERAL APPLICATION

7.01 Governing Law

This Agreement and the rights, duties and obligations of the parties as herein set forth, shall be construed and governed by, and settled and determined in accordance with, the laws of the Province of Manitoba, including, without limiting the generality of the foregoing, the Indian Act.

7.02 Entire Agreement

This Agreement contains and constitutes the entire Agreement among the parties hereto in respect of the subject matter hereof and supersedes any and all earlier agreements, whether written or oral. This Agreement may be altered and amended only by further written agreement of the parties hereto in accordance with, and subject to, the procedures contained in Article III hereof.

7.03      Severability

All parties to this Agreement covenant and agree with the other that in case any one or more of the provisions contained in this Agreement, shall, for any reason, be held to be, in whole or in part, invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provision of this Agreement or other remaining part of any provision hereof which might contain invalid, illegal or unenforceable parts, but this Agreement shall be construed as if such invalid, illegal or unenforceable provisions had never been contained herein.

7.04      Further Assurances

Each of the parties hereto agrees to make, do and/or execute or cause to be made, done and/or executed, all such further and other things, acts, deeds, documents, conveyances, agreements, instruments and assurances as may be necessary or reasonably required to carry out the express language, spirit and intent of this Agreement fully and effectually.

7.05      Waiver

No waiver by any party hereto of any breach of any of the covenants, provisoes, conditions or stipulations hereunder contained, whether express or implied, or negative or positive in form, by any party hereto, shall have any effect or be binding upon such party unless the same shall be

in writing under the authority of such party. Any waiver shall extend to the particular breach so waived and shall not limit or affect any of the parties hereto with respect to any other future breach.

7.06        Enurement and Assignment

This Agreement shall enure to the benefit of, and be binding upon, the parties hereto and their respective heirs, executors, administrators, successors and permitted assigns. For greater certainty, the First Nation and the Community shall not be entitled to assign this Agreement without the permission of Hydro first being sought and obtained.

7.07        Time of Essence

Time shall be of the essence hereof.

7.08        Preamble and Schedule

The preamble and any schedules attached or to be attached hereto shall be integral parts hereof.

7.09 Instrument under Seal

This Agreement is intended to take effect as a document under seal.

IN WITNESS WHEREOF the parties hereto have caused the Agreement to be executed the day and year first above written.

In the presence of:

*Alkhatt*  
*Alkhatt*  
*Alkhatt*  
*Alkhatt*  
*Alkhatt*  
*Alkhatt*  
\_\_\_\_\_

CHEMAWAWIN FIRST NATION

*Alpheus Brass*  
ALPHEUS BRASS, Chief

*Paul George*  
Councillor

*William J. Th...*  
Councillor

*Paul G.*  
Councillor

*Michael George*  
Councillor

\_\_\_\_\_  
Councillor

In the presence of:

*Alkhatt*  
*Alkhatt*  
*Alkhatt*  
\_\_\_\_\_

EASTERVILLE COMMUNITY COUNCIL

*Lawrence Ledoux*  
LAWRENCE LEDOUX, Mayor

*Ethel McKay*  
Councillor

*James Christie*  
Councillor



Alcott  
Alcott

Thomas Young  
Councillor

Joseph W. E. Laflamme  
Councillor

THE MANITOBA  
HYDRO-ELECTRIC BOARD

Per: J. R. R.

Per: Drumro

APPROVED IN FORM AND  
CONTENT BY THE MINISTER  
OF NORTHERN AFFAIRS OF  
MANITOBA

Jim Downey  
HON. JAMES DOWNEY

17. A trust indenture will be drawn up and form part of the final settlement documentation, consistent with the following terms and conditions:
- a) Manitoba Hydro will have no liability with respect to the purposes and uses of the moneys provided, and will be released and indemnified accordingly by the First Nation and the Community.
  - b) The Trust arrangements will be consistent with the provisions of the Manitoba Trustee Act.
  - c) There will be five trustees of the Trust Fund as follows:
    - the Chief, and 2 other First Nation members appointed by the Chief and Council;
    - one trustee appointed by the Mayor and Council; and
    - one corporate trustee, which will be a federally or provincially chartered Trust Company.
  - d) In the case of the First Nation and Community trustees, their term will be consistent with the term of the respective, elected Council and will not extend more than thirty days beyond the date of commencement of office of a new Council without explicit authorization by the new Council.
  - e) In the case of the corporate trustee, it will serve at the discretion of the First Nation and Community trustees. Manitoba Hydro will be advised in advance of the intention to change the corporate trustee.
  - f) The First Nation and Community trustees will have sole discretion to authorize the use of Trust Fund income and capital consistent with the permissible uses of the Fund. The approval of the respective representative trustee or trustees will be required with respect to the separate beneficial interests of the First Nation and the Community.
  - g) The authority of the trustees to authorize any permissible expenditure is subject to the receipt of a duly authorized resolution of the Chief and Council and/or the Mayor and Council, in the absence of which none other than reasonable administrative expenditures may be authorized.
  - h) In the event of continuing, unresolved dispute between the Chief and Council and/or the Mayor and Council and the trustees with respect to the disposition of Trust assets, the elected leaders will have the right to submit the dispute to a mutually agreed and/or Court-appointed Arbitrator. In the event the Arbitrator finds in favour of the elected Council, the trustees will implement the decision, or if not the Council will have the right to appoint replacement trustees.

- i) The corporate trustee will be responsible only to certify that the decision process with respect to any authorized expenditure has been followed consistent with the terms of the Trust, and to ensure that services provided with respect to the management and accounting of Trust assets meet statutory and professional requirements and standards.
- j) A First Nation or Community trustee will be permitted to participate in any decision of the trustees notwithstanding that he may be personally interested or concerned in the matter in question, provided that each trustee so interested has declared to the other trustees in writing the nature and extent of his/her interest.
- k) All property from time to time constituting the Chemawawin-Easterville Trust Fund will be held and registered in the name of the Trust. Moneys within the Trust Fund will be held in such investments or business undertakings as are consistent with the provisions of the Manitoba Trustee Act.
- l) A majority of the trustees and the Head Office of the Chemawawin-Easterville Trust will be located on one of the Indian reserves of the Chemawawin First Nation.
- m) The moneys available for use annually from the Trust Fund will be restricted to the income earned on Trust assets, net of expenses and taxes chargeable to the Trust, if any.
- n) From time to time it may be desirable to encroach upon the capital of the Trust Fund in order to respond to local needs and opportunities. Such encroachment will not exceed five percent in any given year, without the advance approval of Manitoba Hydro and the Government of Manitoba. Notwithstanding this provision, no use of the capital will be authorized which would have the effect of reducing the capital in the Trust below the opening capital amount in the Trust.
- o) The capital in the Trust will not be assigned or otherwise be given as security, and pursuant to the terms of the Indian Act will not be subject to seizure or attachment.
- p) Subject to authorization by respective, formal Council Resolution and the decision of the respective trustees, up to fifty percent of the annual income, for periods not exceeding fifteen years, may be assigned or otherwise provided as security with respect to debt incurred to support the attainment of local objectives consistent with the permissible uses of the Trust Fund.

- q) Authorized payments from the Trust Fund will be made either to the elected Council or Councils or to recipients that are formally designated by appropriate Council resolutions, and in either case the trustees will not be accountable for the use of such payments, although in their sole discretion they may require reasonable accounting with respect to use to be maintained by the recipient in order to facilitate annual reporting of Trust Fund activities.
- r) The trustees will keep a complete and accurate set of accounts of the administration of the Trust Fund. Annual financial statements from the corporate trustee and narrative description of uses of Trust proceeds, signed by all of the trustees, will be provided to the Chief and Council of the Chemawawin First Nation, the Mayor and Council of the Easterville Community, any interested First Nation member or Community resident, Manitoba Hydro and the Government of Manitoba.
- s) Manitoba Hydro and Manitoba may retain the right to intervene in the operation of the Trust Fund, if in their sole discretion the Fund is not operating pursuant to the agreed terms and conditions. In the event the trustees are notified in writing of such an intervention, no further expenditure of Trust proceeds will be authorized until the problem is resolved to the satisfaction of Manitoba Hydro and/or Manitoba. In the event of continuing dispute an Arbitrator may be appointed either by mutual agreement or Court order, the decision of which Arbitrator will be binding on the parties to the dispute.
- t) No trustee will be held responsible for any loss or damage suffered by the Trust Fund, however caused, except if such loss or damage has been caused by the gross negligence or willful default of such trustee.
- u) The Trust Fund terms and conditions will exist for the life of the Trust, to be varied only by formal written agreement of the relevant local elected Council, Manitoba Hydro and Manitoba.