

AGREEMENT

To Establish a Substituted Panel for the Inuvik to Tuktoyaktuk Highway Project

Between
**The Government of Canada as represented by the Minister of the
Environment, Canada (hereinafter “Canada”)**

- and -

**The Environmental Impact Review Board (hereinafter the
“Board”)**

PREAMBLE

WHEREAS the Environmental Impact Review Board has responsibility for conducting public reviews of proposed Developments pursuant to the Inuvialuit Final Agreement (the IFA) as ratified by the *Western Arctic (Inuvialuit) Claims Settlement Act* (the Act); and

WHEREAS the Minister of the Environment, Canada (the Federal Minister of the Environment) has statutory responsibilities pursuant to the *Canadian Environmental Assessment Act*; and

WHEREAS the Inuvik to Tuktoyaktuk Highway Project (the Project) has been referred to the Board for environmental assessment and review pursuant to the IFA and is subject to an assessment under the *Canadian Environmental Assessment Act*; and

WHEREAS the Board will conduct a public hearing in relation to the Project; and

WHEREAS the Federal Minister of the Environment has referred the Project to a review panel in accordance with section 29 of the *Canadian Environmental Assessment Act*; and

WHEREAS the Federal Minister of the Environment has determined that the federal review panel process will be substituted by the Board's process, in accordance with the *Canadian Environmental Assessment Act*; and

WHEREAS in accordance with section 43 of the CEAA, the Federal Minister of the Environment is of the opinion that the process for assessing the environmental effects of projects that is followed by the Board is an appropriate substitute for an assessment by a review panel; and

WHEREAS the Federal Minister of the Environment and the Board established a framework for the substitution of processes through the *Memorandum of Understanding Concerning Approvals for Substitution of Process* signed in 1999; and

WHEREAS the Board and the Federal Minister of the Environment have determined that the substituted review process should be conducted in a manner consistent with the provisions of Article 5 of the *Memorandum of Understanding Concerning Approvals for Substitution of Process*:

NOW THEREFORE, the Board and the Federal Minister of the Environment hereby establish a substituted process for the Project in accordance with the provisions of this Agreement and the Terms of Reference attached as an Appendix to this Agreement.

1. Definitions

For the purpose of this Agreement and of the Appendix attached to it,

"Agency" means the Canadian Environmental Assessment Agency established by the *Canadian Environmental Assessment Act*.

"Board" means the Environmental Impact Review Board established by section 11(22) of the IFA.

"Environment" means the components of the Earth, and includes

- a. land, water and air, including all layers of the atmosphere;
- b. all organic and inorganic matter and living organisms; and
- c. the interacting natural systems that include components referred to in (a) and (b).

"Environmental Effect" means, in respect of the Project,

- a. any change that the Project may cause in the Environment, including any change it may cause to a listed wildlife species, its critical habitat or the residence of individuals of that species, as those terms are defined in subsection 2(1) of the *Species at Risk Act*,
- b. any effect of any change referred to in paragraph (a) on
 - i. health and socio-economic conditions
 - ii. physical and cultural heritage
 - iii. the current use of lands and resources for traditional purposes by aboriginal persons, or
 - iv. any structure, site or thing that is of historical, archaeological, paleontological or architectural significance, or
- c. any change to the Project that may be caused by the environment,

whether any such change or effect occurs within or outside Canada.

"Follow-up Program" means a program for

- a. verifying the accuracy of the EA of the Project, and
- b. determining the effectiveness of any measures taken to mitigate the adverse environmental effects of the Project.

"Mitigation" means, in respect of the Project, the elimination, reduction or control of the adverse environmental effects of the Project, and includes restitution for any damage to the environment caused by such effects through replacement, restoration, compensation or any other means.

"Panel" means a Review Panel established according to subsection 11(23) of the IFA which has been approved by the Minister to substitute for a Review Panel under the *Canadian Environmental Assessment Act*;

"Parties" means the signatories to this Agreement.

"Public Registry" means a repository to facilitate public access to the records relating to the EA of the Project in accordance with section 55 of the CEAA and subsection 11(31) of the IFA.

"Report" means the document produced by the Panel, which contains decisions required pursuant to the IFA, as well as the Panel's rationale, conclusions and recommendations, including any mitigation measures and follow-up program pursuant to the *Canadian Environmental Assessment Act* with respect to the environmental assessment (EA) of the Project.

2. Conduct of Assessment by the Panel

2.1. The Panel shall conduct its review in a manner that discharges the responsibilities of the Board under the IFA and the Board's Operating Procedures.

2.2. The Panel shall conduct its review in a manner that discharges the requirements set out in the Terms of Reference attached as an Appendix to this Agreement and that were approved by the Federal Minister of the Environment and the Board.

2.3. The Panel hearing shall be public and the review will provide opportunities for timely and meaningful public participation.

3. Secretariat

3.1. Administrative, technical, and procedural support requested by the Panel shall be provided by the Board.

4. Record of Panel and Report

4.1. A Public Registry will be maintained by the Board during the course of the review in a manner that provides for convenient public access, and for the purposes of compliance

with section 55 and 55.4 of the *Canadian Environmental Assessment Act* and with subsection 11(31) of the IFA.

4.2. Subject to subsections 35(4), and 35(4.1) and section 55.5, of the *Canadian Environmental Assessment Act*, the Public Registry will include all submissions, correspondence, hearing transcripts, exhibits and other information received by the Panel and all public information produced by the Panel relating to the review of the Project.

4.3. On completion of the assessment of the Project, the Panel will prepare a Report. The Report will be conveyed to the Federal Minister of the Environment within one hundred and twenty (120) days of the close of hearing. The Panel will provide a French translation of the Executive Summary and recommendations. Translation of the full report will be the responsibility of Canada.

4.4. Until the submission of the Report, the Board will be responsible for the maintenance of the Public Registry.

4.5. Canada will be responsible for the translation of key documents prepared by the Panel, including public notifications and releases and the Report, into both of the official languages of Canada.

5. Participant Funding

5.1. The responsibility for providing participant funding will rest with the Agency under the federal Participant Funding Program. The Agency will provide participant funding for participation in the technical review of the Environmental Impact Statement, and in the Public Hearing process of the Panel. The Board and the Panel will provide a reasonable period for the Agency to administer the Participant Funding Program with respect to public notification and the disbursement of funds.

6. Costs Associated with the Review

6.1. The Agency will be solely responsible for all costs associated with the federal Participant Funding Program;

6.2. Canada will be responsible for all other costs associated with the administration of the Review Process not anticipated or covered by the funding provided by Canada to the Board for the Review in accordance with section 11(28) of the IFA.

7. Amending this Agreement

7.1. The terms and provisions of this Agreement may be amended in writing by both the Minister of the Environment and the Chair of the Board. Subject to section 27 of the *Canadian Environmental Assessment Act*, this Agreement may be terminated at any time by an exchange of letters signed by both parties.

13. Signatures

WHEREAS the parties hereto have put their signatures

<original signed by>

The Honourable Peter Kent
Minister of the Environment

<original signed by>

Elizabeth Snider
Chair
Environmental Impact Review Board

MAR 02 2011

Date

18 January 2011

Date

Appendix Terms of Reference

Part I - Scope of Project

The Inuvik to Tuktoyaktuk Highway Project proposed by the Hamlet of Tuktoyaktuk, Town of Inuvik, and the Government of the Northwest Territories includes the construction, operation and maintenance of a 140-kilometre all-weather highway from the Town of Inuvik to the Hamlet of Tuktoyaktuk. The scope of the Project includes the following components:

- an all-weather highway from Inuvik to Tuktoyaktuk;
- watercourse crossing structures;
- borrow and quarry areas to support construction, operations and maintenance requirements;
- construction staging areas;
- maintenance areas;
- temporary construction camp facilities;
- temporary construction access roads; and
- ongoing operations of the all-weather highway.

Part II - Scope of the Environmental Assessment

1. The Substituted Panel will conduct an assessment of the Environmental Effects of the Project based on the Scope of Project (Part I).
2. The assessment will include a consideration of the factors listed in subsection 16(1)(a) to (d) and 16(2) of the *Canadian Environmental Assessment Act*, namely:
 - a. the environmental effects of the Project, including the environmental effects of malfunctions or accidents that may occur in connection with the Project and any cumulative environmental effects that are likely to result from the Project in combination with other projects or activities that have been or will be carried out;
 - b. the significance of the effects referred to in paragraph (a);
 - c. comments from aboriginal persons that are received during the review;
 - d. comments from the public that are received during the review;
 - e. measures that are technically and economically feasible and that would mitigate any significant adverse environmental effects of the Project;
 - f. the purpose of the Project;
 - g. alternative means of carrying out the Project that are technically and economically feasible and the environmental effects of any such alternative means;
 - h. the need for, and the requirements of, any follow-up program in respect of the Project; and
 - i. the capacity of renewable resources that are likely to be significantly affected by the Project to meet the needs of the present and those of the future.

3. Pursuant to subsection 16(1)(e) of the *Canadian Environmental Assessment Act*, the assessment by the Substituted Panel will also include a consideration of the additional following matters:
 - a. the need for the Project; and
 - b. alternatives to the Project received during the review.
4. Pursuant to subsection 16.1 of the *Canadian Environmental Assessment Act*, the assessment by the Substituted Panel may also include a consideration of the community knowledge and aboriginal traditional knowledge received during the review.
5. The assessment will also include the following:
 - a. terms and conditions relating to mitigation measures that would be necessary to minimize any negative impact on wildlife harvesting, as referred to in paragraph 13(11)(a) of the IFA, including, as far as is practicable, measures to restore wildlife and its habitat to its original state and to compensate Inuvialuit hunters, trappers and fishermen for the loss of their subsistence or commercial harvesting opportunities.
 - b. an estimate of the potential liability of the Proponent(s), determined on a worst case scenario, taking into consideration the balance between economic factors, including the ability of the Proponent(s) to pay, and environmental factors, as referred to in paragraph 13(11)(b) of the IFA.
 - c. any impacts identified pursuant to the Board's Operating Procedures.

Part III – Scope of the factors

In addition, in accordance with section 16(3) of the *Canadian Environmental Assessment Act*, the Panel in conducting its consideration of the factors outlined in Part II should have regard for the Environmental Impact Statement Terms of Reference finalized on November 3, 2010 by the Board.