

## BI-LATERAL AGREEMENT

### BETWEEN:

**THE GOVERNMENT OF YUKON**, as represented by  
the Premier of Yukon ("Yukon")

### AND:

**THE KASKA**, as represented by the Liard First  
Nation, the Ross River Dena Council, the Daylu Dena  
Council, the Dease River First Nation, the Kwadacha  
First Nation, the Kaska Dena Council, and the Kaska  
Tribal Council ("the Kaska")

### WHEREAS:

Yukon acknowledged, in agreements entered into with the Kaska in  
January 1997, that the Kaska have aboriginal rights, titles and interest in  
and to the Kaska Traditional Territory in the Yukon,

The Kaska, Yukon and Canada have not yet concluded Kaska  
Agreements in respect of the Kaska's aboriginal rights, titles and interests  
in and to the Kaska Traditional Territory,

Canada has formally withdrawn from the negotiations for Kaska  
Agreements on the grounds that the Government of Canada's land claims  
negotiation mandate has expired,

In response to Canada's formal withdrawal from negotiations the Kaska  
have turned to the courts to protect their rights in and to the Kaska  
Traditional Territory,

The Kaska and Yukon have signed and started to implement a Letter of  
Understanding of February 26, 2003 regarding the steps that the parties  
will take to resolve the outstanding land claims issues as presented by  
Kaska during the signing,

The parties acknowledge that Yukon is not solely responsible for  
achieving a fair and equitable Transboundary Agreement with the Kaska

Dena Council and that the Government of Canada has the primary constitutional duties and responsibilities to the Kaska in that regard,

Representatives of Yukon and the Kaska have held discussions, on a government to government basis, regarding a number of important matters of mutual concern including the parties' mutual desire to establish, on a government to government basis, a partnership, including an economic partnership, between the Kaska and the Yukon in respect of the management, development and beneficial enjoyment of the lands and resources within the Kaska Traditional Territory in the Yukon,

**NOW THEREFORE** in consideration of the premises and the mutual covenants and agreements hereinafter set out, Yukon and the Kaska hereby agree with each other as follows:

## **1.0 DEFINITIONS**

1.1 Capitalized words shall have the meaning assigned in the Umbrella Final Agreement signed by Canada, Yukon and the Council for Yukon Indians on May 29, 1993, unless the context otherwise requires.

1.2 "DTA" means the Yukon Northern Affairs Program Devolution Transfer Agreement which was entered into between Yukon and the Government of Canada in October, 2001.

1.3 "Kaska" means those individual Kaska who are eligible to be enrolled as a beneficiary under a Kaska Agreement.

1.4 "Kaska Agreement" means a Yukon First Nation Final Agreement with the Ross River Dena Council, a Yukon First Nation Final Agreement with the Lard First Nation, or a Transboundary Agreement with the Kaska Dena Council, and also includes any associated Self-Government Agreements.

1.5 "Kaska Business" means any corporation owned by a Kaska Band/First Nation and any joint venture in which the Kaska, a Kaska Band/First Nation, or any such corporation may participate.

1.6 "Kaska Traditional Territory" means that portion of the Kaska's traditional territory located in the Yukon Territory as shown on the map attached to this Agreement and marked as Schedule "B", and as shown in more detail on the maps entitled "Kaska Dena Nation Traditional Territory" which were signed by the leaders of the Kaska and submitted to government in or about November 1988.

1.7 "mirror resource legislation" means the legislation, including regulations, that Yukon will put in place as required by s.2.3 of the DTA.

1.8 "successor resource legislation" means the legislation, including regulations, that may succeed mirror resource legislation.

## 2.0 OBJECTIVES

2.1 The following objectives shall govern the relationship, on a government to government basis, between Yukon and the Kaska in respect of the management, development and beneficial enjoyment of the lands and resources within the Kaska Traditional Territory in the Yukon:

(a) the conclusion of just and equitable Kaska Agreements shall continue to be of the highest priority to the parties and Yukon and Kaska shall jointly make best efforts to re-engage Canada in negotiations towards Kaska Agreements;

(b) dispositions of interests in and authorizations for exploration work and resource development on lands and resources within the Kaska Traditional Territory shall be granted only in accordance with the process set out in 3.3, 3.4 and 3.5.

(c) sharing in any revenues accruing to Yukon from either the disposition of any interest in, or the development of, the lands and resources within Kaska Traditional Territory;

(d) sharing the benefits from the exploration and development of the lands and resources within Kaska Traditional Territory;

(e) Kaska participation in the management of lands and resources within the Kaska Traditional Territory, in accordance with the processes set out in 3.3, 3.4 and 3.5, and

(f) the desirability of fostering an economic partnership on a government to government basis between the Kaska and Yukon in respect of the development of the lands and resources within the Kaska Traditional Territory to allow and promote such development prior to the achievement of Kaska Agreements.

2.2 The parties shall execute such further documents as may be necessary to achieve the objectives of this Agreement.

2.3 Yukon shall ensure that the spirit and objectives of this Agreement are conveyed to all government departments and officials who may be involved in negotiations towards Kaska Agreements or in the management of lands and

resources in the Kaska Traditional Territory.

### **3.0 KASKA CONSENT**

**3.1** As soon as possible following the signing of this agreement, Yukon and the Kaska Dena Council shall enter into negotiations with a view to finalizing an agreement on the elements of a fair and equitable Transboundary Agreement particularly as concerns matters of primary concern to Yukon and the Kaska Dena Council. The Parties recognize that to complete a Kaska Dena Transboundary Agreement requires the participation of Canada.

**3.2** Yukon agrees that it will, pursuant to Yukon legislation, make or execute regulations, orders, and other instruments satisfactory to the Parties in order to provide the Kaska or a Kaska Business mining tenures or rights to Ross River Dena Council land selection R15 on reasonable commercial terms, such rights to include the right to explore, develop, and mine that land.

**3.3** Yukon shall not agree to any significant or major dispositions of interests in lands or resources or significant or major authorizations for exploration work and resource development in the Kaska Traditional Territory without consulting and obtaining the consent of the Kaska. Consultation and consent shall be required in particular for the following:

- (a) Hard rock mines with a type A water license, coal mines, major hydro developments, major construction and linear projects such as highways and pipelines;
- (b) Any other project subject to a level II screening process under the Yukon's Environmental Assessment Act;
- (c) Major land use designations, and
- (d) Such other similar matters which the working group established under 3.4 may recommend and to which the parties agree.

**3.4** A working group consisting of equal representation from the Yukon and the Kaska shall be struck and given the task of establishing a process for the consent requirement set out in 3.3. To that end, the working group may propose changes to legislation, regulations and policies, practices and procedures. The process shall reflect the following principles:

- (a) It must be transparent and timely;
- (b) Consent will not be withheld unreasonably, and
- (c) It must be consistent with existing Yukon First Nation Final Agreements

**3.5** In respect of all other dispositions of interests in and authorizations for exploration work and resource development on lands and resources within the Kaska Traditional Territory, Yukon will meet all common law obligations to consult with the Kaska and accommodate their interests. For greater certainty,

Yukon will meet those common law obligations in respect of any dispositions of interests in land in a transboundary claim in the Kaska Traditional Territory.

3.6 The parties agree that Yukon will have met its obligations under 3.3 and 3.5 in respect of the recording of quartz and placer interests if, as soon as practical upon the coming into effect of the DTA, it amends the forms upon which quartz and placer claims or leases are recorded under the *Yukon Quartz Act* and the *Yukon Placer* so as to ensure that any person who wishes to record a claim is given timely notice that the lands where the claims are located are subject to unsettled aboriginal land claims.

3.7 In order to achieve the objective of having the Kaska share in any revenues and economic benefits flowing from the exploration and development of the lands and resources within the Kaska Traditional Territory, Yukon shall, upon the coming into effect of the DTA, take all necessary steps to achieve this result.

3.8 Whenever the Yukon proposes successor resource legislation, Yukon shall, in conjunction with the Kaska and other Yukon First Nations, establish a working group to consider options and make recommendations for the new legislation.

3.9 In order to facilitate resource development, Yukon and Kaska shall, on a government to government basis, develop a process of resource planning that takes into account an integrated strategy for all social and economic values within the Kaska Traditional Territory.

#### 4.0 LAND CLAIMS

4.1 The parties agree to implement and build on the Letter of Understanding of February 26, 2003 regarding the steps that the parties need to take to resolve the outstanding land claims issues as presented by Kaska during the signing. A copy of that Letter of Understanding is attached to this Agreement as Schedule "A" and will include any understandings achieved by the parties.

4.2 During the term of this Agreement, the Kaska shall not seek to challenge the validity of either the DTA or the legislation giving effect to the DTA.

4.3 The adjournment by the Kaska Dena Council of the interlocutory proceedings against devolution scheduled for May 13-16, 2003 is a condition precedent to the coming into effect of this Agreement.

#### 5.0 FINANCIAL MATTERS AND KASKA ECONOMIC BENEFITS AND ECONOMIC PARTNERSHIP

5.1 The parties agree, as soon as practicable upon signing of this Agreement, to implement and build upon the economic partnership described in paragraph

2(f) of this Agreement. As part of this partnership the parties shall discuss:

- (a) requirements for Impact and Benefit Agreements between proponents and the Kaska in the various resource sectors and the appropriate triggers and thresholds for requiring such agreements,
- (b) resource revenue sharing arrangements,
- (c) Kaska access to resource revenue sharing from the Kotaneelee gas development, and
- (d) Kaska preferential access to other economic opportunities in the Kaska Traditional Territory including the contract and employment opportunities associated with the clean-up, remediation and maintenance of all contaminated or abandoned sites.

5.2 Yukon acknowledges that the Kaska do not have the financial resources which are required to enable the Kaska to effectively prepare for and participate in the processes and initiatives referred to in this Agreement. Accordingly, the parties shall work together to identify financial and other resources for building Kaska capacity. Nothing in this Agreement shall be construed to impose any financial obligations upon the Yukon.

## 6.0 INTERPRETATION

### 6.1 This Agreement:

(a) shall not be construed so as to abrogate or derogate from, or define the content of, Kaska aboriginal rights, titles and interests in and to the Kaska Traditional Territory,

(b) shall not be construed so as to abrogate from any fiduciary duties or other obligations owed to the Kaska by either the Crown in right of Canada or the Yukon in respect Kaska of aboriginal rights, titles and interest in and to the Kaska Traditional Territory, and

(c) shall, be construed to be without prejudice to the Kaska's right to challenge the validity of devolution prior to the achievement of Kaska Agreements, except as expressly provided otherwise in this Agreement

6.2 The Schedules attached to this Agreement are intended to be an operative part of this Agreement.

6.3 The Parties agree that it is not their intention to replicate any of the provisions of this Agreement in any future Kaska Agreement.

## **7.0 TERM OF THIS AGREEMENT**

7.1 This Agreement will be in effect for a period of twenty-four months, commencing on the date of execution. The parties will commence a review of the effectiveness of this Agreement six months before its termination date.

7.2 This Agreement may be terminated by either party by providing 60 days notice in writing.

## **8.0 DISPUTE RESOLUTION**

8.1 Subject to 8.2 any disagreement as to the interpretation or implementation of this Agreement shall be referred to the principals for resolution.

8.2 This Agreement is without prejudice to the rights of the parties to refer any dispute to court except as provided in 4.2.

## **9.0 CONTACT REPRESENTATIVES**

9.1 The Kaska:

Tribal Chief  
Kaska Tribal Council  
Box 530  
Watson Lake, Y.T.  
Y0A 1C0  
Fax: (867) 536-2806

9.2 Government of Yukon:

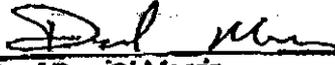
Deputy Minister  
Executive Council Office  
Government of Yukon  
Box 2703  
Whitehorse, Y.T.  
Y1A 1C6  
Fax: (867) 393-6214

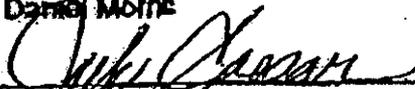
## **10.0 AMENDMENTS**

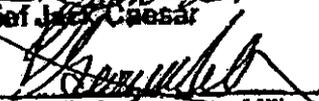
10.1 This Agreement may be amended upon the written agreement of the parties.

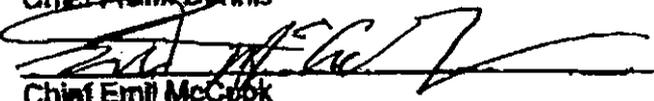
THIS AGREEMENT MADE at the City of Whitehorse, in the Yukon Territory  
this 8<sup>th</sup> day of May, 2003.

THE KASKA

  
\_\_\_\_\_  
Chief Daniel Morris

  
\_\_\_\_\_  
Chief Jack Caesar

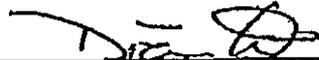
  
\_\_\_\_\_  
Deputy Chief George Miller

\_\_\_\_\_  
Chief Frank Dennis  
  
\_\_\_\_\_  
Chief Emil McCook

  
\_\_\_\_\_  
Dave Foner, Chair, Kaska-Dena Council

  
\_\_\_\_\_  
Hamish Dick, Tribal Chief, Kaska Tribal Council

GOVERNMENT OF YUKON

  
\_\_\_\_\_  
Premier Dennis Fentie

SCHEDULE A TO THIS AGREEMENT

LETTER OF UNDERSTANDING

BETWEEN:

THE GOVERNMENT OF YUKON, as represented  
by the Premier of the Yukon

("Yukon")

AND:

THE KASKA, including the Liard First Nation,  
the Ross River Dena Council, the Daylu Dena Council,  
the Dease River First Nation, the Kwadacha First Nation,  
the Kaska Dena Council, and the Kaska Tribal Council as  
represented for the purposes of this understanding by the  
Tribal Chief of the Kaska Tribal Council

("the Kaska")

REGARDING the mutual desire of the parties to establish a process for addressing the unsettled  
land claims of the Kaska in respect of the portion of the Kaska Traditional Territory located in  
the Yukon.

THE PARTIES wish to confirm the following understandings:

1. As soon as possible following the signing of this Letter of Understanding:

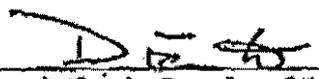
a) Yukon shall provide the Kaska with an opportunity to provide a detailed  
briefing to the Yukon's cabinet and caucus regarding the outstanding land  
claims issues which must be resolved in order to achieve Kaska  
Agreements; and,

b) the parties shall establish a high level committee for the purposes of  
reviewing Yukon's land claim policies in relation to the settlement of  
Kaska Agreements.

2. The Kaska and Yukon shall make best efforts, following the briefing and the  
establishment of the committee referred to above, to establish a principals' meeting with  
the Minister of Indian Affairs for the purpose of attempting to re-establish negotiations  
towards Kaska Agreements.

SIGNED THIS 26<sup>th</sup> day of February, 2003, in the City of Whitehorse  
in the Yukon Territory.

GOVERNMENT OF YUKON

  
Dennis Pentie, Premier of the Yukon

THE KASKA

  
Tribal Chief Hammond Dick

SCHEDULE B TO THIS AGREEMENT

