

## Document 2: Memorandum of Agreement between Canada and FSIN

### MEMORANDUM OF AGREEMENT

#### BETWEEN

**HER MAJESTY IN THE RIGHT OF CANADA**  
*of the First Part represented by the  
Minister of Indian Affairs and Northern Development  
(hereinafter the "Minister")*

#### AND

**THE FEDERATION OF SASKATCHEWAN INDIAN NATIONS**  
*of the Second Part represented by the  
Chief of the Federation of Saskatchewan Indian Nations  
(hereinafter the "FSIN")*

**WHEREAS** the Constitution of Canada recognizes and affirms the existing Aboriginal and treaty rights of the Indian peoples of Canada;

**AND WHEREAS** the Government of Canada recognizes the inherent right of self-government as an existing Aboriginal right under section 35 of the *Constitution Act*, 1982 and recognizes as well that the inherent right may find expression in treaties and in the context of the Crown's relationship with Treaty First Nations;

**AND WHEREAS** the Federation of Saskatchewan Indian Nations and the Government of Canada wish to renew the Office of the Treaty Commissioner and revise its mandate;

**AND WHEREAS** the Federation of Saskatchewan Indian Nations and the Government of Canada wish to establish processes to discuss treaty and jurisdictional issues;

**AND WHEREAS** the Federation of Saskatchewan Indian Nations and the Government of Canada recognize that bilateral discussions may affect Saskatchewan.

## **NOW THEREFORE IT IS AGREED:**

### **1.0 Definitions**

In this Memorandum of Agreement:

- 1.1 "Authority means authority other than law making power.
- 1.2 The Federation of Saskatchewan Indian Nations "represents the First Nations of Saskatchewan who are signatories to the FSIN Convention, including the Treaty First Nations.
- 1.3 "Jurisdiction" means law making power.
- 1.4 "Saskatchewan" means the Government of Saskatchewan
- 1.5 "Treaties" refers to Treaty 4, 5, 6, 8, and 10 in Saskatchewan.
- 1.6 "Treaty First Nations" refers to those Treaty First Nations in Saskatchewan represented by FSIN.

### **2.0 Principles**

2.1 The Parties agree that:

- 2.1.1 The treaties are a fundamental part of the relationship between Treaty First Nations in Saskatchewan and the Crown;
- 2.1.2 It is desirable to arrive at a common understanding of Treaties 4,5,6,8 and 10 as they apply in Saskatchewan;
- 2.1.3 There are differences of views over the content and meaning of the treaties, which the Parties are committed to exploring. The Treaty First Nations believe that the treaties have not been implemented according to their spirit and intent, including oral promises, while the Government of Canada relies primarily on the written text of the treaties as the embodiment of the Crown's obligation;
- 2.1.4 Respect for Aboriginal and treaty rights is an important part of maintaining the honour of the Crown in its relations with Treaty First Nations, and
- 2.1.5 A renewed OTC will be an effective intergovernmental mechanism to assist both Parties in the bilateral process, and in the identification and discussion of treaty and jurisdictional issues.

### **3.0 Renewal of the Office of the Treaty Commissioner**

- 3.1 Upon executing this Agreement, the Parties agree to renew the Office of the Treaty Commissioner for five years.
- 3.2 The term of Office of the Treaty Commissioner may be extended beyond the five year period provided for in section 3.1 by agreement of the Parties.
- 3.3 The Office of the Treaty Commissioner shall function in accordance with the authorities as defined in this Agreement or further assigned in subsequent agreements by the Parties.
- 3.4 The Office of the Treaty Commissioner shall be renewed as an independent body to co-ordinate and facilitate the bilateral process between FSIN and the Government of Canada, and, if as directed by the Parties to this Agreement, to assist in the task of defining the rights and obligations accruing from the Treaties, and exploring the implementation of those rights and obligations. The Minister's ability to deal with issues related to the definition and implementation of treaty rights and obligations is dependent on the authorities in place from time to time.
- 3.5 The mandate of the Office of the Treaty Commissioner is to facilitate a common understanding between the FSIN and the Government of Canada, where they now have different views, on the following issues:
  - 3.5.1 treaty rights, and/or jurisdiction in the area of child welfare;
  - 3.5.2 treaty rights, and/or jurisdiction in the area of education;
  - 3.5.3 treaty rights, and/or jurisdiction in the area of shelter;
  - 3.5.4 treaty rights, and/or jurisdiction in the area of health;
  - 3.5.5 treaty rights, and/or jurisdiction in the area of justice;
  - 3.5.6 treaty annuities; and
  - 3.5.7 treaty rights, and/or jurisdiction in relation to hunting, trapping, fishing and gathering.
- 3.6 The order of priority in which these items will be addressed and the outputs and time frames will be set out in a workplan to be agreed upon by the Parties.

- 3.7 The Parties agree that, in addition to section 3.5 above, the subject matter assigned to the Office of the Treaty Commissioner may be further defined and determined by agreement of the Parties.
- 3.8 Within the mandate set out in section 3.5, the role of the Office of the Treaty Commissioner shall include, but is not limited to the following:
- 3.8.1 facilitating meetings between the Crown and Treaty First Nations, to discuss treaty issues identified herein, or by future mutual agreement between the Parties;
  - 3.8.2 facilitating and coordinating meetings of essential non-governmental and/or third party interests affected by treaty interpretation and implementation and agreements arising from this process, at the request of the Parties;
  - 3.8.3 arranging for mediation services upon mutual request by the Parties. The mediator shall be selected from a list presented by the Commissioner to the Parties involved in the mediation process and must be acceptable to both of the Parties;
  - 3.8.4 developing as an independent capacity to analyze and report on the positions of the parties on specific treaty issues and advising the Parties of areas of agreement and dispute if:
    - i) requested to do so by the parties to this Agreement, and
    - ii) determined by the Treaty Commissioner to be necessary to advance the resolution of an issue;
  - 3.8.5 developing a capacity to conduct independent and focused research and prepare reports which will contribute to the resolution of an issue and promote solutions if:
    - i) requested to do so by the parties to this Agreement, and
    - ii) determined by the Treaty Commissioner to be necessary to advance the resolution of an issue;
  - 3.8.6 developing a capacity for, and engaging in, public information and public awareness programming as requested by the Parties to this Agreement;
  - 3.8.7 monitoring the implementation of agreements reached between the Parties as directed by the Parties;



- 3.8.8 monitoring of the Saskatchewan Treaty Land Entitlement Agreement (September 22, 1992), as requested by the Parties; and
- 3.8.9 presenting simultaneously to both Parties, an annual report, detailing the progress on fulfilling the mandate of the Office of the Treaty Commissioner and agreed upon workplan.
- 3.9 FSIN and the Government of Canada will establish a joint committee, consisting of the Minister of Indian Affairs and Northern Development and the Chief of the FSIN, to provide direction to the Treaty Commissioner and to participate and provide direction related to the monitoring, evaluation, and progress of the Office of the Treaty Commissioner process as identified in section 6.0 of the Agreement. This committee will meet twice a year or as otherwise agreed upon by the Parties.

#### **4.0 Treaty Commissioner**

- 4.1 There shall be a Treaty Commissioner appointed by an Order in Council of the Government of Canada.
- 4.2 The Treaty Commissioner shall be an individual appointed by agreement of the Parties for a term mutually agreed upon by the Parties.
- 4.3 The Treaty Commissioner shall be responsible for overseeing the operation of the Office of the Treaty Commissioner according to an agreed-upon work plan by the Parties to this Agreement.
- 4.4 The Treaty Commissioner may be removed prior to the expiry of his or her term by mutual agreement of the Parties.

#### **5.0 Process: Government of Canada - FSIN**

- 5.1 Upon executing this Agreement, the Parties intend to enter into political and technical discussions on treaty rights and First Nations government jurisdiction and/or authority.
- 5.2 An objective of the bilateral treaty discussion is to gain a better understanding of the positions and make progress on resolving disagreements between Treaty First Nations and Canada over the existence and scope of treaty rights.
- 5.3 A further objective of the process is the recognition and implementation of First Nation jurisdiction and/or authority.

- 5.4 The initial items to be addressed in the bilateral treaty discussions are those identified in section 3.5. The order of priority in which these items will be addressed, the outputs and time frames will be set out in the work plan to be agreed upon by the Parties as provided for in section 3.6. Agenda items for jurisdictional discussions will be agreed upon by the parties and set out in workplans.
- 5.5 The Minister of Indian Affairs and Northern Development will co-ordinate involvement of other Federal Ministers in the bilateral process as required.

## **6.0 Evaluation**

- 6.1 The Parties, on an annual basis and through the joint committee described in section 3.9, will jointly assess the progress being made on matters set out in this Agreement, and the role of the Office of the Treaty Commissioner.
- 6.2 There shall be evaluation in the third year following the execution of this Agreement on the effectiveness of the Office of the Treaty Commissioner process and both Parties agree to participate fully in such an evaluation process. The Treaty Commissioner will be invited to participate in appropriate aspects of the evaluations process.

## **7.0 Financing the Bilateral Process and the Office of the Treaty Commissioner**

- 7.1 Funding to support the bilateral process described in section 5.0, for the support of the Treaty Commissioner and the Office of the Treaty Commissioner in this process, and for the evaluation described in section 6.0, shall be negotiated by the Parties.
- 7.2 Upon signing this Agreement, the Parties agree to initiate discussion on work plans and funding arrangements. Funding will be tied to agreed upon products, outputs and timeframes.

## **8.0 Common Table: FSIN - Canada - Saskatchewan**

- 8.1 Notwithstanding the bilateral nature of this Agreement, the Parties agree that when provincial jurisdiction, referred to in sections 92 and 93 of the *Constitution Act*, 1867, may be affected, the subject will be referred to a common table of representatives of the FSIN, the Government of Canada, and

Saskatchewan to ensure there is a common understanding and agreement on jurisdictional and related fiscal arrangements.

- 8.2 The structure, work plan, and financing of the common table is set out in the *Protocol Agreement to Establish a Common Table*, signed by the FSIN, the Government of Canada, and Saskatchewan.

## 9.0 Other Issues

- 9.1 Nothing in this Agreement shall prejudice any treaty or Aboriginal rights as currently defined or which may be further defined through litigation, agreements or settlements of claims between the Government of Canada and the Treaty First Nations.
- 9.2 This Agreement is not a treaty and does not create any legal obligations.
- 9.3 The parties intend that the processes set out in this agreement will be the primary mechanisms for facilitating a common understanding on the issues listed in 3.5. Nothing in this Agreement will bar individual Treaty First Nations or Tribal Councils from engaging in discussions with the government of Canada on subjects not included in this Agreement.
- 9.4 Notwithstanding the provisions of section 9.3, nothing in this Agreement will preclude or limit in any way, individual First Nations or Tribal Councils from continuing or completing negotiations already underway on subjects included in this agreement.

Signed this thirty-first day of October, 1996  
at Saskatoon in the Province of Saskatchewan.