



December 15, 2022

Chief Ross Perley
Chief Shelley Sabattis
Chief Allan Polchies, Jr.
Chief Gabriel Atwin
Chief Patricia Bernard
Chief Tim Paul

Dear Chiefs,

Re: Path Forward

I am writing as Minister of Aboriginal Affairs in respect of your letter of November 29, 2022, addressed to me and to Minister Ernie Steeves as qualified by your subsequent letter of December 5, 2022 in response to my letter of December 2, 2022.

Preliminary Matters

Your letter of November 29, 2022 is brief and focused on an extension of the tax revenue sharing agreements (the “**Wolastoqey Tax Agreements**”) between the Province of New Brunswick (the “**Province**”) and each of Negotkuk, Sitansisk, Bilijk, Welamuktok, Wotstak and Matawaskiye (collectively, the “**Wolastoqey First Nations**”).

Your letter references my letter of November 24, 2022, in response to the statement of all 15 First Nations collectively making up the Mi'gmaq and Wolastoqey nations in New Brunswick. I confirmed in that letter that the Province:

1. welcomed the commitment to of the 15 First Nations to unification with a focus on the collective good,
2. accepted the First Nations' call to carry on negotiations with all 15 First Nations collectively,
3. agreed that housing, healthcare, social assistance and education have been chronically underfunded by the Federal government and, through the requested negotiations on a collective basis, I was sure a solution could be found,
4. saw all First Nations as rightful partners at the table,

5. looked forward to meaningful good faith negotiations, and
6. was prepared to provide the necessary funds through a new economic partnership focused on the “*housing, healthcare, social assistance and education needs in First Nation communities*” as set out in your statement to improve the lives of all First Nations community members across the Province.

We have received a response from MTI confirming its desire to carry on certain negotiations separately. The only response from the Wolastoqey First Nations is your letter of November 29, 2022. Your letter does not address the Province’s commitments or affirm in any manner that there is a commitment to negotiate as a collective for the common good of all members of every community. We are left in the position where the only conclusion is that the Province’s letter of November 24, 2022 and the proposed collective negotiations have been rejected by the Wolastoqey First Nations. If this is not accurate, please let me know.

November 29, 2022 and December 5, 2022 Letters

As you are aware, there is significant history related to the tax agreements with all First Nations, the termination of the tax agreements, the litigation commenced by the Wolastoqey First Nations and the Mi’gmaq First Nations, the Orders of the Court resolving that litigation and the Province’s efforts focused on having the Wolastoqey First Nations meaningfully engage in good faith negotiations. As a result, in addition to setting out the Province’s position in response to your request for an extension of the Wolastoqey Tax Agreements, the following will set out important information that you are already aware of but which is needed for context.

The Tax Agreements

The original tax sharing agreements were executed in 1995/1996 with the first payments being made to First Nations in the 1996/1997 fiscal period and totaling approximately \$28,265 on an annual basis. The original agreements were amended over time with the most recent versions being executed in 2016/2017. The Wolastoqey Tax Agreements at issue were entered into in January 2017. As you are aware, there has always been variations as to the termination date between the Wolastoqey Tax Agreements and the tax agreements with Mi’gmaq First Nations. This is as a result of when the agreements were entered into and not as a result of the terms of the agreements themselves.

As previously communicated, the Province considered the tax agreements to be outdated mechanisms that did not provide for a balanced distribution of benefit between

all First Nation communities and their members. Attached is a schedule of the payments made to the Wolastoqey First Nations under the Wolastoqey Tax Agreements since 2003 when the original agreements were modernized. As set out in the schedule, the payments varied greatly between First Nations on an annual basis as did the overall amount paid over time.

The Wolastoqey First Nations received the following approximate total amounts from 2003/2004 fiscal period until the end of the 2020/2021 fiscal period:

Kingsclear Total	\$ 24,919,681
Madawaska Total	\$ 124,496,474
Oromocto Total	\$ 29,045,117
St. Mary's Total	\$ 96,515,439
Tobique Total	\$ 1,091,325
Woodstock Total	\$ 50,463,907
Wolastoqey First Nations Total	<u>\$ 326,531,945</u>

In contrast, there are 7 Mi'gmaq First Nations that entered into the modernized tax agreements. The first of which was in 2004, one year later than the Wolastoqey First Nations, and the most recent of which was entered into in 2012. For the fiscal period of 2004/2005 until the end of the 2020/2021 fiscal period, the total amount paid to these Mi'gmaq First Nations was approximately \$ 45,013,452 or only 13.8% of the amount paid to the Wolastoqey First Nations.

Termination of Tax Agreements & Court Orders

In the face of the foregoing information that clearly demonstrates the unequal benefit to all members of all First Nation communities in New Brunswick, the Province issued notice of termination under all tax agreements on April 13, 2021 (the "**Termination Notices**"). In response, the Wolastoqey First Nations and the 7 Mi'gmaq First Nations with tax agreements commenced separate litigation for, among other things, the interpretation of the tax agreements, the determination of the termination date and an order against the Province extending the deadlines set out in the Termination Notices.

On June 8, 2021, the 7 Mi'gmaq First Nations with tax agreements served the Province with notice of their intended Notice of Action and Statement of Claim. Through the significant

work of those First Nations and the Province over a period of 20 days, their claim was resolved, and a Consent Order issued by the Court on June 28, 2021 (the “**Mi'gmaq Order**”). As set out in the second recital of the Mi'gmaq Order, the applicable tax agreements terminated in accordance with the applicable Termination Notices.

The Province did not agree to any new tax agreements and did not amend the tax agreements with the Mi'gmaq as you suggest in your letter. The Province did agree to financial support for the Mi'gmaq First Nations during the negotiation provided for in the Mi'gmaq Order through bridge funding. The details of the bridge funding is set out in Schedule “C” to the Mi'gmaq Order.

The Mi'gmaq Order sets out in detail a First Nation led agenda and process to negotiate a new partnership. Schedule “D” to the Mi'gmaq Order confirms the agreement by those First Nations to “*promptly undertake good faith negotiations towards a new partnership with the goal of the Province and each such First Nation entering into a First Nation Development Agreement*” in accordance with the following phased negotiation process:

1. *Each First Nation and the Province shall commence their own information gathering and preparation for negotiations over the 60 days following the issuance of this Order so as to be in a position to commence negotiations over the phases set out in section 2 of this Schedule “D”. During this initial information gathering period, each First Nation and the Province shall carry on such discussions as required between them to ensure all steps are taken to be prepared for meaningful discussions including the designation of representatives for the purpose of any notices required under this Order and the manner in which notices may be provided to each other.*
2. *Following the information gathering process provided in section 1 of this Schedule “D”, the parties shall carry out the negotiations in the following phases:*
 - a. *Commencing 61 days from the issuance of this Order and continuing for a period of up to 6 months, Phase 1, recognizing that the First Nation is best able to determine its needs and future goals, will focus upon the First Nation developing and identifying to the Province:*
 - i. *its unique short and medium term needs and funding requirements;*

- ii. *its medium and long term development and sustainability goals and plans with specific self-sufficiency targets in areas for which goals have been identified (for ex. in relation to own source revenues, housing, employment, social assistance, educational achievement, healthcare, income levels, etc.), including financial projections with respect to costs and funding requirements for each goal identified; and*
 - iii. *specific proposals of the First Nation for funding and other partnership opportunities with the Province.*
- b. *Commencing on the completion of Phase 1 and continuing for a period of up to 5 months, Phase 2 will focus upon discussions between the First Nation and the Province for the Province to understand the First Nation's needs, funding requirements, development sustainability goals and specific proposals; for the parties to identify common objectives; and for the Province to ascertain how and to what extent it is able to provide financial or other support to the First Nation to meet its needs and goals;*
- c. *Commencing on the completion of Phase 2 and continuing for a period of up to 5 months, Phase 3 will focus upon negotiation and drafting of a First Nation Development Agreement between the Province and the First Nation.*

On May 18, 2021 the Wolastoqey First Nations had started their own litigation by filing a Notice of Application with the Court. There was no notice provided to the Province as was the case with the Mi'gmaq litigation. The Province considered Wolastoqey First Nations' claims and, despite disagreeing with the Wolastoqey First Nations' position, initiated discussions through counsel to explore a resolution. This initial pursuit of a meaningful resolution occurred as early as August 2021 and continued into September and October 2021.

You were aware of the Mi'gmaq Order contained in the public Court record and its terms through the various press releases and statements by both the Mi'gmaq First Nations and the Province. In addition, the Mi'gmaq Order in its entirety was provided to your legal counsel as an example of what could be achieved as part of the Province's attempt to reach a consensual resolution to your litigation. After you received the Mi'gmaq Order there were significant negotiations between the Province and yourselves that resulted in a Consent Order being issued on October 7, 2021 (the "**Wolastoqey Order**").

Despite being presented with the Mi'gmaq Order including the schedules setting out the First Nation led phased negotiation and the associated bridge funding as what was possible, this approach was rejected by the Wolastoqey First Nations. The Province understood at the time that the phased First Nation led negotiation process and associated bridge funding was refused by the Wolastoqey First Nations as they had no desire at that time to negotiate with this Government.

The Wolastoqey Order is clear and in reliance on the Wolastoqey First Nations' agreement to it, the Province agreed to the extension of the original termination date set out in the Termination Notices from April 13, 2022 to January 31, 2022. The Wolastoqey Order provides for a complete resolution of the issues and provides certainty as to the termination date of the Wolastoqey Tax Agreements.

Further Attempts at Negotiating with the Wolastoqey First Nations

Although the Wolastoqey First Nations rejected the Province's attempts to reach an agreement on negotiations within the Wolastoqey Order, the Province continued to hope the Wolastoqey First Nations would change their mind and enter into negotiations for the benefit of their communities. The Province again initiated discussions with the Wolastoqey First Nations through counsel after the Wolastoqey Order to further pursue negotiations.

The Province's efforts were partially successful as on November 16, 2021 we documented our agreement that our respective legal counsel could carry on discussions focused on common ground and understanding. It was hoped that through these discussions the Wolastoqey First Nations would agree to meaningful negotiations. This did not conclude with any agreement but did result in further discussions.

In particular, there were the following important meetings:

- December 16, 2021 – First Wolastoqey First Nations Chiefs meeting with the Premier and myself.
- January 20, 2022 - Second Wolastoqey First Nations Chiefs meeting with the Premier and myself.
- April 27, 2022 – Third Wolastoqey First Nations Chiefs meeting with the Premier and myself along with legal counsel for each of us and our respective staff.

In addition to these meetings, there were significant discussions between our counsel who attempted to find a path towards meaningful negotiation. As you set out in your letter

of December 5, 2022, the Province's efforts have been received differently by each of you. As you indicate, there have been limited meetings with each of Negotkuk, Sitansisk, Bilijk, and Welamuktok. I understand that information provided by Negotkuk has led to the preparation of schedules for a Development Agreement with Negotkuk in which only a few items remain outstanding, while Sitansisk, Bilijk and Welamuktok each has yet to provide the information required to move discussions forward. I remain hopeful that the work to date will be continued.

You state in your letter of December 5, 2022 that "*Wotstak and Matawaskiye have not to date been engaged...*". For clarity, the Province sought out the engagement by these First Nations on multiple occasions who to date have refused to engage and have maintained that the only item they will accept is a new tax agreement or simply the extension of the ones terminated by the Wolastoqey Order.

As you can appreciate, I am not able to go into further detail in this letter due certain agreed terms of confidentiality. If you would agree to waive those terms we will provide further correspondence with additional details related to the Province's extensive efforts to date to have meaningful negotiations.

Province's Position

Your November 29, 2022 letter states "It has recently come to our attention that Mi'gmaq First Nations with similar agreements have agreed with the Minister to extend those agreements to December 2023 or until new economic development agreements are reached. No such offer was extended to Wolastoqey First Nations.". As set out above, this is not accurate.

In addition, your November 29, 2022 letter states that you are invoking the most-favoured nation clause set out at section 9 of the Wolastoqey Tax Agreements as support for your request that your Tax Agreements be extended to December 2023. As set out above, this position is not supported by the facts and in addition thereto that section has no application to what has occurred. As set out in the Wolastoqey Order, the Wolastoqey Tax Agreements terminate on January 31, 2023 as agreed to by you and on which agreement the Province has relied. There has been no agreement with the Mi'gmaq First Nations as you allege.

Further, your November 29, 2022 letter states that the Mi'gmaq First Nations are receiving more favourable treatment as they are receiving an additional year of revenue. The variation in revenue under the tax agreements between the Wolastoqey First Nations

and the the Mi'gmaq First Nations is stark and telling. The variation may be explained in part by geographic location, the timing of when the agreements were put in place and various other possible factors such as any arrangement a First Nation had in place with retailers or distributors. Notwithstanding any explanation for the variation, it is clear that the Wolastoqey First Nations have benefited the most from the tax agreements and that benefit was not equal as between them. Your position that the Mi'gmaq First Nations are receiving more favorable treatment is not accurate.

Your letter of December 5, 2022 sets out that the Province not agreeing to extend the Wolastoqey Tax Agreements would force you into litigation. The Province is not forcing anyone into litigation and has been attempting since the termination of all tax agreements to have the Wolastoqey First Nations meaningfully engage in negotiations with a focus on the very items that you have identified as being a priority including housing, healthcare, social assistance and education. If the Wolastoqey First Nations make the choice to litigate as opposed to negotiate, that is your choice and not a result of any action of the Province.

The Province will not extend the Wolastoqey Tax Agreements that will terminate on January 31, 2023 in accordance with the the Wolastoqey Order.

Path Forward

For ease of reference, enclosed is a copy of:

- Province's mandate document of January 20, 2022
- A template development agreement that provides for the identification of needs by First Nations and a process led by First Nations

I confirm that:

- the Province's mandate remains as set out in the attached,
- the Province remains interested in meaningful negotiations focused on the items identified by you as being a priority including housing, healthcare, social assistance and education, and
- the Province's negotiators are available to work with you between now and January 31, 2023 to continue the work to date and conclude an agreement by that date.

Conclusion

There have been many public statements as of late with respect to what has or has not occurred. These statements have included comments with respect to the underlying intent of this Government and the Premier or as to the effect of what is occurring such as “*economic genocide*”. There is no basis for these statements and we will not address these comments further at this time other than to note that the Province has affirmed many times, including as late as in my letter of November 24, 2022, that the Province is prepared to provide the necessary funds through a new economic partnership focused on the “*housing, healthcare, social assistance and education needs in First Nation communities*” as set out in your November 24th statement to improve the lives of all First Nations community members across the Province.

I again affirm the Province’s commitment as set out above. Although it is hoped that you chose to negotiate, we understand you may chose to litigate and in that case the Province will defend its actions and the terms of the Wolastoqey Order. If the Province cannot have confidence in an order of the Court agreed to by the Wolastoqey First Nations it is difficult to see how any agreement can be reached.

Sincerely,



Arlene Dunn
Minister

C.c. Chief Brenton Leblanc. Tjipogtotjg
Chief George Ginnish, Natoaganeg
Chief Sacha Labillois, Ugpi'ganjig
Chief Arren Sock. Elsipogtog
Chief Alvery Paul, Esgenoopetitj
Chief Rebecca Knockwood, Amlamgog
Chief Kenneth Barlow. L'nui Menikuk
Chief Bill Ward. Metepenagiag
Chief Terrence Richardson. Oinpegitjoig

Schedule of Payments to Wolastoqey First Nations

First Nation	Fiscal Year	Diesel	Gasoline	Carbon	Tobacco	HST	Total
Kingsclear	2003-2004	\$ 16,700.36	\$ 83,776.04	\$ -	\$ 177,323.71	\$ -	\$ 277,800.11
	2004-2005	\$ 17,936.41	\$ 94,090.66	\$ -	\$ 137,800.56	\$ 111,226.36	\$ 361,053.99
	2005-2006	\$ 29,499.26	\$ 196,809.20	\$ -	\$ 266,041.78	\$ 104,466.60	\$ 596,816.84
	2006-2007	\$ 24,146.87	\$ 209,063.63	\$ -	\$ 224,103.58	\$ 149,484.12	\$ 606,798.20
	2007-2008	\$ 40,824.24	\$ 223,753.64	\$ -	\$ 326,251.90	\$ 175,005.61	\$ 765,835.39
	2008-2009	\$ 7,189.10	\$ 43,977.61	\$ -	\$ 118,242.42	\$ 96,045.66	\$ 265,454.79
	2009-2010	\$ 63,582.61	\$ 330,259.04	\$ -	\$ 176,344.67	\$ 91,435.93	\$ 661,622.25
	2010-2011	\$ 31,205.57	\$ 197,163.63	\$ -	\$ 614,696.95	\$ 195,100.83	\$ 1,038,166.98
	2011-2012	\$ 29,841.96	\$ 317,113.55	\$ -	\$ 686,939.93	\$ -	\$ 1,033,895.44
	2012-2013	\$ 43,740.79	\$ 378,636.62	\$ -	\$ 641,329.48	\$ 348,808.24	\$ 1,412,515.13
	2013-2014	\$ 63,393.24	\$ 502,688.42	\$ -	\$ 761,085.23	\$ -	\$ 1,327,166.89
	2014-2015	\$ 56,747.20	\$ 461,999.83	\$ -	\$ 487,049.12	\$ 589,729.54	\$ 1,595,525.69
	2015-2016	\$ 58,368.08	\$ 645,154.71	\$ -	\$ 550,137.74	\$ 503,263.08	\$ 1,756,923.61
	2016-2017	\$ 56,745.43	\$ 662,476.77	\$ -	\$ 521,110.32	\$ 418,607.96	\$ 1,658,940.48
	2017-2018	\$ 79,025.33	\$ 934,615.71	\$ -	\$ 770,177.10	\$ 563,551.31	\$ 2,347,369.45
2018-2019	\$ 116,541.51	\$ 1,335,683.28	\$ -	\$ 685,973.39	\$ 1,495,532.07	\$ 3,633,730.25	
2019-2020	\$ 90,936.18	\$ 1,229,726.00	\$ -	\$ 647,392.51	\$ 1,063,839.02	\$ 3,031,893.71	
2020-2021	\$ 68,536.90	\$ 690,984.79	\$ 266,578.91	\$ 733,938.56	\$ 788,133.06	\$ 2,548,172.22	
Kingsclear Total		\$ 894,961.04	\$ 8,537,973.13	\$ 266,578.91	\$ 8,525,938.95	\$ 6,694,229.39	\$ 24,919,681.42
Madawaska	2003-2004	\$ 14,397.13	\$ 229,831.92	\$ -	\$ 554,213.94	\$ 1,001,678.96	\$ 1,800,121.95
	2004-2005	\$ 44,006.62	\$ 198,323.74	\$ -	\$ 892,076.44	\$ 965,730.02	\$ 2,100,136.82
	2005-2006	\$ 95,262.76	\$ 220,466.49	\$ -	\$ 638,262.08	\$ 386,973.32	\$ 1,340,964.65
	2006-2007	\$ 83,185.93	\$ 167,994.74	\$ -	\$ 578,904.48	\$ 463,748.13	\$ 1,293,833.28
	2007-2008	\$ 67,675.42	\$ 116,083.62	\$ -	\$ 417,317.20	\$ 455,044.04	\$ 1,056,120.28
	2008-2009	\$ 55,837.70	\$ 110,823.50	\$ -	\$ 401,910.13	\$ 424,601.72	\$ 993,173.05
	2009-2010	\$ 68,730.18	\$ 135,745.78	\$ -	\$ 1,040,185.84	\$ 437,529.03	\$ 1,682,190.83
	2010-2011	\$ 67,806.00	\$ 123,597.13	\$ -	\$ 1,384,257.60	\$ -	\$ 1,575,660.73
	2011-2012	\$ 128,327.58	\$ 160,548.61	\$ -	\$ 1,233,561.19	\$ 1,146,653.69	\$ 2,669,091.07
	2012-2013	\$ 312,781.14	\$ 308,370.46	\$ -	\$ 1,220,303.26	\$ 1,208,014.67	\$ 3,049,469.53
	2013-2014	\$ 2,671,043.33	\$ 758,381.54	\$ -	\$ 1,187,026.22	\$ 1,814,864.76	\$ 6,431,315.85
	2014-2015	\$ 3,756,784.56	\$ 942,729.22	\$ -	\$ 1,072,579.13	\$ 1,473,682.59	\$ 7,245,775.50
	2015-2016	\$ 5,322,849.59	\$ 1,690,144.14	\$ -	\$ 1,300,640.07	\$ 5,340,735.29	\$ 13,654,369.09
	2016-2017	\$ 6,660,654.34	\$ 2,122,911.65	\$ -	\$ 1,365,165.00	\$ 6,320,089.40	\$ 16,468,820.39
	2017-2018	\$ 4,470,664.52	\$ 1,572,324.54	\$ -	\$ 895,007.22	\$ 7,539,823.78	\$ 14,477,820.06
2018-2019	\$ 5,966,790.07	\$ 1,726,662.70	\$ -	\$ 927,505.85	\$ 4,201,188.22	\$ 12,822,146.84	
2019-2020	\$ 4,277,061.47	\$ 1,288,899.05	\$ -	\$ 647,228.36	\$ 13,499,349.60	\$ 19,712,538.48	
2020-2021	\$ 3,321,194.60	\$ 760,262.79	\$ 1,696,901.23	\$ 1,775,542.06	\$ 8,569,025.66	\$ 16,122,926.34	
Madawaska Total		\$ 37,385,052.94	\$ 12,634,101.62	\$ 1,696,901.23	\$ 17,531,686.07	\$ 55,248,732.88	\$ 124,496,474.74
Oromocto	2003-2004	\$ -	\$ 206,096.99	\$ -	\$ 1,224,836.89	\$ 334,133.54	\$ 1,765,067.42
	2004-2005	\$ -	\$ 242,480.63	\$ -	\$ 999,381.55	\$ 223,284.90	\$ 1,465,147.08
	2005-2006	\$ -	\$ 200,374.03	\$ -	\$ 1,088,523.92	\$ 188,737.56	\$ 1,477,635.51
	2006-2007	\$ -	\$ 145,190.13	\$ -	\$ 807,326.14	\$ 106,749.15	\$ 1,059,265.42
	2007-2008	\$ -	\$ 177,161.42	\$ -	\$ 788,237.73	\$ -	\$ 965,399.15
	2008-2009	\$ -	\$ 190,950.04	\$ -	\$ 722,063.00	\$ -	\$ 913,013.04
	2009-2010	\$ -	\$ 185,877.08	\$ -	\$ 823,696.84	\$ -	\$ 1,009,573.92
	2010-2011	\$ -	\$ 204,438.25	\$ -	\$ 934,201.58	\$ -	\$ 1,138,639.83
	2011-2012	\$ -	\$ 273,084.42	\$ -	\$ 1,255,847.38	\$ -	\$ 1,528,931.80
	2012-2013	\$ -	\$ 345,996.31	\$ -	\$ 1,093,945.70	\$ -	\$ 1,439,942.01
	2013-2014	\$ -	\$ 325,028.31	\$ -	\$ 967,034.61	\$ -	\$ 1,292,062.92
	2014-2015	\$ -	\$ 328,007.25	\$ -	\$ 692,932.87	\$ -	\$ 1,020,940.12
	2015-2016	\$ -	\$ 377,112.38	\$ -	\$ 620,318.34	\$ -	\$ 997,430.72
	2016-2017	\$ -	\$ 567,410.79	\$ -	\$ 1,246,173.99	\$ -	\$ 1,813,584.78
	2017-2018	\$ -	\$ 366,097.92	\$ -	\$ 1,199,985.04	\$ -	\$ 1,566,082.96
2018-2019	\$ -	\$ 411,480.67	\$ -	\$ 1,489,578.15	\$ 953,818.46	\$ 2,854,877.28	
2019-2020	\$ -	\$ 432,589.26	\$ -	\$ 1,195,673.93	\$ 3,047,739.10	\$ 4,676,002.29	
2020-2021	\$ -	\$ 250,550.91	\$ 92,780.27	\$ 1,260,222.71	\$ 457,967.06	\$ 2,061,520.95	
Oromocto Total		\$ -	\$ 5,229,926.79	\$ 92,780.27	\$ 18,409,980.37	\$ 5,312,429.77	\$ 29,045,117.20
	2003-2004	\$ 54,259.18	\$ 249,174.84	\$ -	\$ 2,815,546.67	\$ 2,090,318.69	\$ 5,209,299.38
	2004-2005	\$ 40,736.22	\$ 238,487.74	\$ -	\$ 2,612,344.62	\$ 725,299.47	\$ 3,616,868.05
	2005-2006	\$ 34,883.02	\$ 282,713.18	\$ -	\$ 2,538,598.01	\$ 710,387.30	\$ 3,566,581.51
	2006-2007	\$ 41,304.60	\$ 264,982.58	\$ -	\$ 1,933,889.99	\$ 758,787.78	\$ 2,998,964.95

Schedule of Payments to Wolastoqey First Nations

First Nation	Fiscal Year	Diesel	Gasoline	Carbon	Tobacco	HST	Total
St. Mary's	2007-2008	\$ 46,320.06	\$ 295,053.24		\$ 2,359,665.31	\$ 767,739.60	\$ 3,468,778.21
	2008-2009	\$ 36,262.86	\$ 289,979.21		\$ 1,921,174.14	\$ 786,116.44	\$ 3,033,532.65
	2009-2010	\$ 36,757.48	\$ 349,862.07		\$ 2,553,104.94	\$ 1,005,233.41	\$ 3,944,957.90
	2010-2011	\$ 22,529.08	\$ 380,039.26		\$ 2,975,432.26	\$ 475,825.68	\$ 3,853,826.28
	2011-2012	\$ 21,682.20	\$ 481,831.85		\$ 4,032,257.70	\$ 1,024,446.08	\$ 5,560,217.83
	2012-2013	\$ 19,936.81	\$ 546,047.64		\$ 3,888,988.44	\$ 1,174,478.46	\$ 5,629,451.35
	2013-2014	\$ 22,185.94	\$ 1,009,976.05		\$ 4,898,967.49	\$ 1,631,824.74	\$ 7,562,954.22
	2014-2015	\$ 18,787.33	\$ 707,272.31		\$ 4,279,883.16	\$ 1,920,736.46	\$ 6,926,679.26
	2015-2016	\$ 20,004.17	\$ 683,122.69		\$ 4,411,718.45	\$ 1,609,477.67	\$ 6,724,322.98
	2016-2017	\$ 30,244.59	\$ 677,818.99		\$ 4,920,880.21	\$ 2,468,267.94	\$ 8,097,211.73
	2017-2018	\$ 23,467.97	\$ 675,463.34		\$ 5,010,777.43	\$ 816,821.50	\$ 6,526,530.24
	2018-2019	\$ 16,651.93	\$ 597,925.73		\$ 4,504,616.25	\$ 1,665,401.09	\$ 6,784,595.00
2019-2020	\$ 2,646.66	\$ 493,430.64		\$ 3,836,630.40	\$ 1,969,956.70	\$ 6,302,664.40	
2020-2021	\$ 505.80	\$ 296,512.68	\$ 112,986.60	\$ 4,274,209.57	\$ 2,023,788.68	\$ 6,708,003.33	
St. Mary's Total		\$ 489,165.90	\$ 8,519,694.04	\$ 112,986.60	\$ 63,768,685.04	\$ 23,624,907.69	\$ 96,515,439.27
Tobique	2008-2009	\$ 11,551.57	\$ 61,467.14		\$ 29,861.33	\$ 28,202.00	\$ 131,082.04
	2009-2010	\$ 1,538.44	\$ 47,696.73		\$ 33,773.00	\$ -	\$ 83,008.17
	2010-2011	\$ 1,664.18	\$ 33,343.36		\$ 14,062.30	\$ -	\$ 49,069.84
	2011-2012	\$ 1,413.95	\$ 36,446.98		\$ 36,067.24	\$ -	\$ 73,928.17
	2012-2013	\$ 3,592.61	\$ 35,860.50		\$ 20,914.01	\$ -	\$ 60,367.12
	2013-2014	\$ 1,845.99	\$ 18,413.73		\$ 27,792.47	\$ -	\$ 48,052.19
	2014-2015	\$ 441.01	\$ 8,527.59		\$ 16,604.03	\$ -	\$ 25,572.63
	2015-2016	\$ 808.15	\$ 18,492.36		\$ 21,174.12	\$ 65,847.48	\$ 106,322.11
	2016-2017	\$ 2,627.30	\$ 52,913.03		\$ 37,646.39	\$ 6,307.95	\$ 99,494.67
	2017-2018	\$ 7,427.99	\$ 62,738.31		\$ 29,026.99	\$ 65,941.29	\$ 165,134.58
	2018-2019	\$ 3,269.83	\$ 36,252.97		\$ 28,917.53	\$ 13,185.61	\$ 81,625.94
	2019-2020	\$ 7,969.61	\$ 51,723.06		\$ 17,415.04	\$ -	\$ 77,107.71
2020-2021	\$ 7,271.40	\$ 39,837.61	\$ 16,021.36	\$ 27,429.89	\$ -	\$ 90,560.26	
Tobique Total		\$ 51,422.03	\$ 503,713.37	\$ 16,021.36	\$ 340,684.34	\$ 179,484.33	\$ 1,091,325.43
Woodstock	2003-2004	\$ -	\$ 108,268.64		\$ 275,018.90	\$ 546,257.30	\$ 929,544.84
	2004-2005	\$ -	\$ 207,978.93		\$ 280,934.69	\$ 103,098.85	\$ 592,012.47
	2005-2006	\$ -	\$ 295,532.29		\$ 422,342.15	\$ 146,056.32	\$ 863,930.76
	2006-2007	\$ 15,144.69	\$ 382,432.34		\$ 453,287.22	\$ 112,991.39	\$ 963,855.64
	2007-2008	\$ 78,721.36	\$ 353,631.61		\$ 348,122.63	\$ -	\$ 780,475.60
	2008-2009	\$ 62,974.44	\$ 348,856.82		\$ 297,151.37	\$ -	\$ 708,982.63
	2009-2010	\$ 34,178.03	\$ 303,722.06		\$ 349,221.89	\$ -	\$ 687,121.98
	2010-2011	\$ 21,640.84	\$ 268,683.02		\$ 376,392.59	\$ -	\$ 666,716.45
	2011-2012	\$ 28,404.50	\$ 290,337.75		\$ 384,742.81	\$ 1,865,237.55	\$ 2,568,722.61
	2012-2013	\$ 73,235.98	\$ 410,571.24		\$ 471,378.31	\$ 400,093.13	\$ 1,355,278.66
	2013-2014	\$ 69,814.20	\$ 446,122.18		\$ 562,268.56	\$ 495,757.59	\$ 1,573,962.53
	2014-2015	\$ 48,939.56	\$ 373,150.02		\$ 464,360.04	\$ 363,168.36	\$ 1,249,617.98
	2015-2016	\$ 1,035,415.69	\$ 481,590.54		\$ 510,590.74	\$ 515,174.15	\$ 2,542,771.12
	2016-2017	\$ 3,885,219.08	\$ 483,813.11		\$ 575,009.19	\$ 1,676,886.23	\$ 6,620,927.61
	2017-2018	\$ 3,684,515.92	\$ 411,421.92		\$ 688,699.40	\$ 2,493,682.56	\$ 7,278,319.80
2018-2019	\$ 3,915,517.67	\$ 482,791.17		\$ 566,441.56	\$ 3,074,065.88	\$ 8,038,816.28	
2019-2020	\$ 3,552,737.62	\$ 426,053.55		\$ 452,950.21	\$ 3,042,967.70	\$ 7,474,709.08	
2020-2021	\$ 2,036,755.20	\$ 359,532.86	\$ 745,194.51	\$ 524,230.22	\$ 1,902,428.26	\$ 5,568,141.05	
Woodstock Total		\$ 18,543,214.78	\$ 6,434,490.05	\$ 745,194.51	\$ 8,003,142.48	\$ 16,737,865.27	\$ 50,463,907.09

Kingsclear Total	\$ 894,961.04	\$ 8,537,973.13	\$ 266,578.91	\$ 8,525,938.95	\$ 6,694,229.39	\$ 24,919,681.42
Iadawaska Total	\$ 37,385,052.94	\$ 12,634,101.62	\$ 1,696,901.23	\$ 17,531,686.07	\$ 55,248,732.88	\$ 124,496,474.74
Oromocto Total	\$ -	\$ 5,229,926.79	\$ 92,780.27	\$ 18,409,980.37	\$ 5,312,429.77	\$ 29,045,117.20
St. Mary's Total	\$ 489,165.90	\$ 8,519,694.04	\$ 112,986.60	\$ 63,768,685.04	\$ 23,624,907.69	\$ 96,515,439.27
Tobique Total	\$ 51,422.03	\$ 503,713.37	\$ 16,021.36	\$ 340,684.34	\$ 179,484.33	\$ 1,091,325.43
Woodstock Total	\$ 18,543,214.78	\$ 6,434,490.05	\$ 745,194.51	\$ 8,003,142.48	\$ 16,737,865.27	\$ 50,463,907.09
						\$ 326,531,945.15

PROVINCE OF NEW BRUNSWICK MANDATE RESPECTING NEW BRUNSWICK FIRST NATIONS

The Province is committed to improving its relationship with First Nations. The mandate of the Province in its relationship with First Nations is based on three Principles which guide the Province in the relationship.

FIRST PRINCIPLE - RIGHTS-BASED OBLIGATIONS

The Province maintains the honour of the Crown in its dealings with First Nations and is to respect First Nations Aboriginal and Treaty Rights. This includes:

- (a) Discharging duty to consult obligations in relation to initiatives that may impact existing or asserted Aboriginal or Treaty rights, including implementation of and respect for accommodations that arise from this process.
- (b) Recognizing the Province and First Nations may have divergent views regarding asserted Aboriginal and Treaty rights that are not easily resolved, maintaining an openness to discuss and negotiate these differences even in the face of litigation.

SECOND PRINCIPLE - LEGISLATED OBLIGATIONS

The Province is to ensure that legislated obligations of the Province to Indigenous persons and First Nations are satisfied.

THIRD PRINCIPLE - CONSENSUAL ARRANGEMENTS

The Province is prepared to work with First Nations to identify consensual opportunities beyond rights-based or legislated obligations, including contractual arrangements with respect to social, economic or financial matters of mutual interest. The Province recognizes that First Nations are best able to determine the needs and goals of their communities. Consensual provincial partnerships and collaborations to assist First Nations to achieve meaningful and measurable development, sustainability or self-sufficiency outcomes and goals have the potential to benefit not only First Nations, but the Province as a whole.

PRIORITIES AND IMPLEMENTATION

It is a priority of the Province to ensure government actions across all departments respect and comply with the above three Principles. The Department of Aboriginal Affairs is specifically mandated to supervise and coordinate all government initiatives with First Nations to ensure a coordinated and consistent common path forward that implements the above Principles in all interactions with First Nations. To achieve this objective, the Department is to:

- (a) Work to remove barriers to the relationship to achieve a new partnership and build good relations with First Nations;
- (b) Identify and review all existing and proposed government initiatives with First Nations, and achieve a full understanding of Provincial and First Nations interactions;
- (c) Evaluate and assess all government initiatives for compliance with the above Principles and for effectiveness in achieving outcomes respecting each Principle;
- (d) Support and provide assistance to all departments on initiatives, engagement and consultation;
- (e) Assess the effectiveness of and prioritize the improvement of negotiations with First Nations including the availability of necessary technical and operational expertise and decision-making authority to achieve mutually-beneficial outcomes.

FIRST NATION DEVELOPMENT AGREEMENT

BETWEEN:

[_____] **FIRST NATION**
as represented by its Chief, [_____]
(the “First Nation”)

- and -

HIS MAJESTY THE KING IN RIGHT OF THE PROVINCE OF NEW BRUNSWICK
as represented by the Minister of Aboriginal Affairs
(the “Province”)

(together, the “Parties”)

WHEREAS the First Nation is a significant contributor to the economy of its region and the Province of New Brunswick and the Parties wish to establish mechanisms to enhance and support the First Nation’s continuing contributions to New Brunswick;

AND WHEREAS [pursuant to a Memorandum of Understanding executed by the Parties on _____ (“the MOU”),] the First Nation has identified to the Province medium- and long-term development and sustainability goals respecting social, environment, cultural and economic matters of importance to the First Nation that guide its decision-making in relation to economic growth and self-sufficiency (“**First Nation Goals**”) and has made specific proposals to the Province in relation to same;

AND WHEREAS the Province is supportive of the First Nation achieving the First Nation Goals;

AND WHEREAS the MOU provides that, upon the First Nation identifying First Nation Goals and the Province agreeing to provide support to meet the First Nation Goals, the Parties would enter into a First Nation Development Agreement, while also sharing a desire to continue to discuss further partnership opportunities in the future;

THE PARTIES AGREE AS FOLLOWS:

A. Development Agreement Principles

1. The Parties’ relationship under this Development Agreement, including the specific goals, funding and partnership opportunities outlined herein as well as others which may be added to this Agreement in the future, are governed by the following principles:
 - (a) The First Nation is best able to determine its needs and goals, including the requirements of its community.
 - (b) The First Nation seeks to pursue development and other actions and initiatives to enhance the social, environmental, cultural and economic wellbeing of the members of its community, including by achieving goals set by the First Nation as outlined below. The Province supports these goals and objectives of the First Nation.

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- (c) All investment, work and activities to be undertaken pursuant to this Development Agreement will be carried out in a manner that is open and transparent to the Parties and to the members of the First Nation.
- (d) The projects and opportunities to be carried out under this Development Agreement are intended to achieve measurable outcomes to enhance the social, environmental, cultural and economic wellbeing of members of the First Nation. Each project or initiative undertaken shall set out the measurable goals identified by the First Nation that the Parties shall work to achieve.
- (e) The First Nation may at any time provide the Province with a statement of community priorities to achieve self-sufficiency and to improve the wellbeing of its members, including such funding or other needs the First Nation has identified to meet these priorities. Upon receipt of such statement, the Province agrees to undertake discussions with the First Nation to identify common objectives and to ascertain how and to what extent the Province is able to provide financial or other support to the First Nation with respect to the First Nation's identified priorities.
- (f) The Parties agree that, on an annual basis, they will jointly prepare an annual report and assessment of the funding and other initiatives undertaken pursuant to this Development Agreement for the purpose of enhancing initiatives to ensure First Nation identified outcomes can be successfully achieved.

B. Funding and Partnership Opportunities to Achieve First Nation Goals

2. The Parties agree that:

- (a) the First Nation is best able to determine its needs and future goals, including in relation to the First Nation Goals already identified, as well as other development, sustainability and self-sufficiency goals that may be identified by the First Nation in the future;
- (b) identification of First Nation Goals to the Province, along with specific proposals in relation to same, allows the Parties to identify common objectives and the Province to determine the extent to which it is able to provide financial or other support to the First Nation to meet identified goals; and
- (c) the three-phase negotiation framework as set out in Schedule C provides a helpful process through which to negotiate, and add to this Agreement, partnership opportunities and additional First Nation Goals supported by the Province.

3. The Parties agree to meet as often as required and no less than twice per calendar year to ascertain whether:

- (a) the identified funding and partnership opportunities set out in this Agreement are meeting their intended objectives and outcomes; and
- (b) there are opportunities to re-initiate the process set out at Schedule C to explore further funding and partnership opportunities.

4. At the time of executing this Agreement, the following First Nation Goals have been identified by the First Nation and supported by the Province:

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- (a) ***Residential Housing Goal***: The First Nation has identified a First Nation Goal to construct an additional XX homes over the next five (5) years at an estimated cost of XX as set out at **Schedule A**.
- (b) *[Insert Additional First Nation Goals:]*
- (c) ...

C. Provincial Obligations to Support First Nation Goals

- 5. The Province agrees to assist the First Nation to meet its **Residential Housing Goal** [Cross-reference specific project description developed by First Nation] by:
 - (a) [Is a land transfer needed? – identify if additional land is required]
 - (b) providing funding in the amount of XX per year over the next XX years to address the Housing Funding Deficit identified by **Schedule B**, which funds will be disbursed as follows:
 - (i) [insert criteria milestones to be met to disburse funds]
- 6. The Province agrees to assist the First Nation to meet its [_____]
Goal [Cross-reference specific project description developed by First Nation] by:
 - (a) providing funding of XX over the next five (5) years to the First Nation to assist [_____]
which funding shall be disbursed as follows:
 - (i) [insert criteria / milestones to be met to disburse funds]
 - (ii) ...
 - (b) ...
- 7. The Province agrees to assist the First Nation to meet its [Insert Additional First Nation Goals].

D. First Nation Obligations

- 8. The First Nation is a significant contributor to the economic well-being of its region and the Province of New Brunswick and, as part of its continuing contribution, agrees to continue to support equitable and efficient taxation and competition in the Province by fulfilling the obligations set out in **Schedule D**.
- 9. [Insert any additional First Nation obligations]

E. Term, Default and Termination

- 10. The Parties agree that all obligations of the Province, including the obligation to disburse funds, shall immediately cease if the First Nation fails to meet the requisite fund disbursement criteria for any First Nation Goal or fails to meet any other First Nation Obligation under this Agreement, including without limitation any of the First Nation

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Obligations set out at Section D or Schedule D and upon the Province ceasing to disburse funds it shall promptly issue a written notice of default under Section 11.

11. Failure by either party to comply with any term or condition of this Agreement shall be construed as an event of default. Upon an event of default, the non-defaulting party may provide the defaulting party with written notice of default. If the default is not cured to the satisfaction of the non-defaulting party within 90 days of the issuance of a written notice of default, this Agreement shall terminate automatically and without further notice on the 91st day after the notice of default was issued.
12. This Agreement is effective as of [January 1, 2023]. It will terminate five (5) years from the effective date on December 31, 2027, unless extended by the mutual agreement in writing of the Parties or terminated in accordance with the provisions in Section 11.
13. The Parties may jointly amend or extend the term of this Agreement at any time in writing.
14. Disputes concerning the interpretation, application, termination or any other dispute arising from or in connection with this Agreement, including any matter referred to in Sections 10 and 11 hereof, shall be referred to a Dispute Resolution Arbitration Committee under the provisions of the *Arbitration Act*, RSNB 2014, c 100, which shall have exclusive jurisdiction to finally determine all such disputes. Such Committee shall consist of one representative appointed by the First Nation, one representative appointed by the Province, and a third person to be chosen by the two representatives to act as Chairperson, or the Parties to this agreement may agree on a sole arbitrator. Any arbitration decision will be final and binding on the Parties to this Agreement.

F. Miscellaneous

15. **Notice.** Any notice or other communication under this Agreement (each, a “**Notice**”) must be in writing and addressed to the other party as follows (or to such other address that may be designated by the party giving Notice from time to time in accordance with this Section):

To the Province: **DEPARTMENT OF ABORIGINAL AFFAIRS**
PO Box 6000
Fredericton, New Brunswick
E3B 5H1

Attn: _____
Fax: _____
Email: _____

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To the First Nation: _____

Attn: _____

Fax: _____

Email: _____

Notices will be deemed effectively given: (a) when received, if delivered by hand; (b) when received, if sent by a nationally recognized overnight courier, signature required; (c) when sent, if by facsimile or email (in each case, with confirmation of transmission); and (d) on the fifth Business Day after the date mailed by ordinary mail, postage prepaid.

- 16. In and for purposes of this Agreement, the words “include”, “includes” and “including” are deemed to be followed by the words “without limitation”; the word “or” is not exclusive; the words “herein,” “hereof,” “hereby,” “hereto” and “hereunder” refer to this Agreement as a whole, including any Schedules attached to or incorporated in this Agreement; words denoting the singular have a comparable meaning when used in the plural, and *vice versa*, and words denoting any gender include all genders.
- 17. **Time of the Essence.** Time is of the essence of this Agreement.
- 18. **Entire Agreement.** This Agreement and the Schedules to this Agreement constitute the entire agreement between the Parties pertaining to the subject-matter hereof and supersedes all prior and contemporaneous agreements, understandings, negotiations, and discussions, whether oral or written, with respect to such subject-matter. There are no conditions, warranties, representations or other agreements between the Parties in connection with the subject-matter hereof (whether oral or written, express or implied, or otherwise) except as specifically set out herein.
- 19. **Further Assurances.** Each party agrees to do and execute and perform such further deeds, documents, assurances, acts and things as may be reasonably required to give effect to the terms, intent and purposes of this Agreement.
- 20. **Amendment.** This Agreement may only be amended, modified or supplemented by an agreement in writing signed by each party.
- 21. **Waiver.** No waiver by any party of any provision of this Agreement shall be effective unless explicitly set forth in writing and signed by the party so waiving. Waiver of any part of this Agreement shall not constitute a waiver of any other part or a continuing waiver unless otherwise agreed to in writing by the waiving party. Except as otherwise set forth in this Agreement, no failure to exercise, or delay in exercising, any rights, remedy, power or privilege arising from this Agreement shall operate or be construed as a waiver thereof.
- 22. **Survival.** The provisions of this Agreement that are by their nature intended to survive termination of this Agreement shall survive such termination.
- 23. **Assignment and Enurement.** Neither party may assign any of its rights or delegate any of its obligations hereunder without the prior written consent of the other party. Any

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purported assignment or delegation in violation of this Section shall be null and void. No assignment or delegation shall relieve the assigning or delegating party of any of its obligations hereunder. Subject to the foregoing, this Agreement is binding upon and shall enure to the benefit of the Parties and their respective successors and permitted assigns.

24. **Severability.** If any provision of this Agreement is invalid, illegal, or unenforceable in any jurisdiction, such invalidity, illegality, or unenforceability will not affect any other term or provision of this Agreement or invalidate or render unenforceable such term or provision in any other jurisdiction.
25. **Counterparts.** This Agreement may be executed in one or more counterparts, each of which when so executed and delivered shall be deemed an original, and such counterparts shall together constitute one and the same instrument. Delivery of a facsimile or electronic copy of this Agreement, including the signature page, shall be deemed to be delivery of an original.
26. Nothing in this Agreement derogates from Aboriginal, treaty or other rights of the First Nation or its members, or from the powers, rights or privileges of the Legislature or the Government of the Province of New Brunswick.

Dated _____, 2022.

[_____] **FIRST NATION**

CHIEF [_____]

MINISTER OF ABORIGINAL AFFAIRS

HONOURABLE ARLENE DUNN

[Depending on the agreed First Nation Goals,
additional Ministers may need to sign]

SCHEDULE A

First Nation Residential Housing Goals

There are XX housing units on the First Nation as of December 31, 2022, categorized as follows:

- XX [Band owned?] units;
- XX [individually-owned] housing units (supported by on-reserve mortgages?).

The five-year goal is to build XX additional _____ housing units per year and XX additional individual-owned housing units to increase to totals by December 31 of each year to the following:

Year	_____ Housing Units	Individually Owned	Total
2023			
2024			
2025			
2026			
2027			

The estimated cost per home in 2022 dollars is \$_____, requiring an investment of an estimated \$_____ over five years to accomplish the five-year goal set out above.

[Note: Is there a First Nation Goal regarding multiple-unit housing?]

SCHEDULE B

First Nations Housing Baseline

The housing units built on the First Nation in the five years preceding this Agreement, and the funding dedicated to such units, were as follows:

Year	Housing Expenditures		Units Built		
	Own Source Revenue	ISC & Other proposal-based funding	_____ Housing	Individual Owned	Total
2018					
2019					
2020					
2021					
2022					

Assuming the average funding over the past five years continues for the next five years, the First Nation has a gap of XX to achieve its five-year goal (“the Housing Funding Deficit”).

SCHEDULE C

3-PHASE NEGOTIATION FRAMEWORK

1. Phase 1 will focus upon the First Nation developing and identifying to the Province:
 - (a) its unique short and medium term needs and funding requirements;
 - (b) its current and projected funding from all sources and timing of such funding;
 - (c) its medium- and long-term development and sustainability goals and plans with specific self-sufficiency targets in areas for which goals have been identified (for ex. in relation to own source revenues, housing, employment, social assistance, educational achievement, healthcare, income levels, etc.), including financial projections with respect to costs and funding requirements for each goal identified; and
 - (d) specific proposals of the First Nation for funding and other partnership opportunities with the Province.
2. Phase 2 will focus upon discussions between the First Nation and the Province for the Province to understand the First Nation's needs, funding requirements, development sustainability goals and specific proposals; for the Parties to identify common objectives; and for the Province to ascertain how and to what extent it is able to provide financial or other support to the First Nation to meet its needs and goals.
3. Phase 3 will focus upon negotiation and drafting of amendments or additional schedules to the First Nation Development Agreement, or a further standalone Development Agreement, as applicable.

Timetable for Phases 1, 2 and 3 to be determined by the Parties:

Phase	Begins	Ends
1		
2		
3		

SCHEDULE D

1. The First Nation shall cause all retailers operating on reserve land to:
 - (a) register in accordance with Part IX of the *Excise Tax Act*, R.S.C. 1985, c. E-15 and adhere to all requirements of that legislation;
 - (b) obtain a vendor's licence in accordance with the *Tobacco Tax Act*, RSNB 1973, c. T-7 (the "**Tobacco Tax Act**"), if tobacco or tobacco products are sold by such retailer, and to adhere to all requirements of that legislation;
 - (c) obtain a retailer's licence in accordance with the *Gasoline and Motive Fuel Tax Act*, RSNB 1973, c. G-3 (the "**Gasoline and Motive Fuel Tax Act**"), if gasoline or motive fuel is sold by such retailer, and adhere to all requirements of that legislation;
 - (d) purchase all gasoline, motive fuel and tobacco products tax-paid from a wholesale vendor or wholesaler, as applicable, duly licensed in respect thereof in the Province of New Brunswick;
 - (e) maintain a record of all sales to First Nation purchasers who are tax-exempt pursuant to section 87 of the *Indian Act*, R.S.C. 1985, c. I-6 by recording the identification number of the purchaser's Indian Status Card, along with date of sale and the type and volume of product sold;
 - (f) collect from all purchasers, other than those referenced at the immediately preceding paragraph of this Schedule D, any tax imposed by provincial law, including, without limitation, tobacco tax, gasoline and motive fuel tax, carbon emitting product tax and harmonized sales tax, and remit such tax to the Minister of Finance or the Canada Revenue Agency in accordance with provincial and federal legislation and regulations, as amended from time to time; and
 - (g) comply with all quantity, pricing and reporting requirements set out or referred to in this Schedule D.
2. The First Nation shall not, and shall not permit any retail vendor on reserve land to, sell or post gasoline, motive fuel or tobacco products at prices which are lower than local market prices, or are designed to or have the effect of lessening competition or eliminating a competitor, and shall continue, and cause each such retail vendor to continue, to comply with all existing measures for determining compliance with this provision that are in effect as of the date of this Agreement.
3. The Parties agree that:
 - (a) the current applicable weekly or other allocations by the Province to the First Nation for consumption of cigarettes, other tobacco products, gasoline, diesel and other motive fuel for personal use of First Nation members (each an "**Allocation**") will remain in place;
 - (b) at the request of the First Nation, but no more than once every six months, the Province may review the applicable Allocations to assess whether an adjustment is required;

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- (c) the current designation by the First Nation of retailers to whom personal consumption amounts are allocated will remain in the place, unless an applicable Band Council Resolution providing alternate designations is provided to the Province; and
 - (d) the Province will monitor the volumes of cigarettes, other tobacco products, gasoline, diesel and other motive fuel sold exempt of tax on each reserve to ensure that the volumes are appropriate for satisfying Section 87 of the *Indian Act*, as it pertains to personal consumption.
4. In accordance with the *Tobacco Tax Act*, the *Gasoline and Motive Fuel Tax Act* and the *Revenue Administration Act*, SNB 1983, c. R-10.22, retailer vendors of tobacco products, gasoline or motive fuel located on reserve land shall submit to the Minister of Finance, on a form provided by the Province, the following information at the end of each month:
- (a) the beginning and ending meter readings for each gasoline/motive fuel pump, the total number of litres of gasoline/motive fuel that were sold to Status Indians and purchased during the month, and the total number of gasoline/motive fuel inventory at the end of each month;
 - (b) the total inventory of tobacco products at the beginning and end of each month and the total inventory of tobacco products purchased and sold during the month; and
 - (c) any other information or supporting documentation the Province may reasonably require to verify the information in this section.
5. The First Nation shall permit, and cause all retail vendors of tobacco, gasoline or motive fuel on its reserve land to permit, representatives of the Province, upon reasonable notice, to inspect, audit and examine the retail vendor's accounts in respect to sales to determine if the retail vendor is compliant with the terms of this Schedule and applicable legislation.
6. If the Province determines that the First Nation or a retail vendor on the First Nation's reserve land is not in compliance with this Schedule D, it may take such remedial measures as it deems appropriate, including but not limited to one or both of the following:
- (a) restricting the amount of tax-exempt product sold to a particular purchaser; and
 - (b) cancelling funding under this Agreement if compliance is not rectified within 90 days after written notice by the Province to the First Nation of non-compliance with the terms of this Schedule D.