

**DRAFT AGREEMENT  
To Conduct a Cooperative Environmental Assessment,  
Including the Establishment of a Joint Review Panel,  
of the Site C Clean Energy Project**

**Between**

**The Minister of the Environment, Canada**

**and**

**The Minister of the Environment, British Columbia**

**PREAMBLE**

**WHEREAS** this is a project-specific agreement consistent with the Canada-British Columbia Agreement for Environmental Assessment Cooperation signed on March 11<sup>th</sup>, 2004; and

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

**WHEREAS** the Minister of the Environment, British Columbia (the provincial Minister of the Environment) has statutory responsibilities pursuant to the British Columbia *Environmental Assessment Act* (the “BCEAA”); and

**WHEREAS** British Columbia Hydro and Power Authority is proposing to construct and operate a dam and hydroelectric generating station on the Peace River near Fort St. John, British Columbia, referred to as the Site C Clean Energy Project, which is subject to environmental assessment requirements under both the CEAA and the BCEAA; and

**WHEREAS** the federal Minister of the Environment has referred the Site C Clean Energy Project to a review panel in accordance with section 29 of the CEAA; and has determined that a review panel should be established pursuant to subsection 40(2) of the CEAA to consider the Site C Clean Energy Project; and

**WHEREAS** under section 27 of the BCEAA, the provincial Minister of Environment has the authority to enter into an agreement with Canada regarding any aspect of an environmental assessment and may establish procedures with Canada to cooperatively complete an environmental assessment of a project; and has determined that a cooperative environmental assessment including a hearing panel should be established; and

**WHEREAS** the federal Minister of the Environment and the provincial Minister of Environment have determined that a cooperative environmental assessment including a joint review panel for the Site C Clean Energy Project will avoid unnecessary duplication and delays that could arise from individual reviews by each government; and agree to establish a joint review panel for the Site C Clean Energy Project; and

**WHEREAS** a draft version of this Agreement, including the Joint Review Panel's Terms of Reference, was subject to consultation with the Responsible Authorities for the Project and with Aboriginal groups as well as a public comment period of 30 days.

**THEREFORE**, the federal Minister of the Environment and provincial Minister of the Environment hereby establish a cooperative environmental assessment including a joint review panel for the Site C Clean Energy Project; in accordance with the provisions of this Agreement and the Joint Review Panel's Terms of Reference attached as Appendix 1 to this Agreement.

## **1. Definitions**

For the purpose of this Agreement and of the Terms of Reference for the Joint Review Panel,

**"Agency"** means the Canadian Environmental Assessment Agency.

**"Agreement"** means this agreement between the Minister of the Environment, Canada and the Minister of Environment, British Columbia.

**"British Columbia Environmental Assessment Act" or "BCEAA"** means the *Environmental Assessment Act*, R.S.B.C. 2002, c. 43.

**"Canadian Environmental Assessment Act" or "CEAA"** means the *Canadian Environmental Assessment Act*, S.C. 1992, c.37.

**"EAO"** means the British Columbia Environmental Assessment Office.

**"Environmental Impact Statement" or "EIS"** means the environmental impact statement report and supplemental information that is prepared by the proponent for submission to the Agency and EAO for review, and to the Joint Review Panel.

**"EIS Guidelines"** means the document provided to the proponent by the federal Minister of the Environment and the Executive Director of EAO that identifies the issues to be addressed and the information to be provided in the EIS.

**"Federal Authority"** has the same meaning as set out in subsection 2(1) of the *CEAA*.

**“Joint Review Panel”** means an independent body established pursuant to this Agreement.

**“Joint Review Panel Report”** means the report produced by the Joint Review Panel in accordance with the Terms of Reference.

**“Joint Review Panel Stage”** means those portions of the environmental assessment process that occur from the time the Joint Review Panel is appointed to the time the Joint Review Panel Report is submitted.

**“Party”** means either signatory to this Agreement, and **“Parties”** means both of them.

**“Post-Panel Stage”** means those portions of the environmental assessment process that take place following the submission of the Joint Review Panel Report.

**“Pre-Panel Stage”** means those portions of the environmental assessment process that take place before the Joint Review Panel is appointed and commences its review.

**“Project”** refers to the Project proposed by the proponent, a description of which is outlined in Part I of the Terms of Reference.

**“Proponent”** means British Columbia Hydro and Power Authority.

**“Public Registry”** means both the Canadian Environmental Assessment Registry established under section 55 of the *CEAA* which will be maintained by the Agency in consultation with EAO from the notice of consideration for the environmental assessment of the Project until the Government Response to the Joint Review Panel Report is posted; and the British Columbia Project Information Centre (e-PIC) established under section 25 of the *BCEAA* which will be maintained by the Executive Director of EAO.

**“Referral Package”** means the referral package set out in section 8.1 of this Agreement.

**“Responsible Authority”** has the same meaning as set out in subsection 2(1) of the *CEAA*.

**“Steering Committee”** means the steering committee established under section 9.1 of this Agreement.

**“Terms of Reference”** means the Terms of Reference for the Joint Review Panel attached as Appendix 1.

**“Working Group”** means the Working Group established under section 3.1 of this Agreement.

## **2. Overview of the Environmental Assessment**

2.1 The environmental assessment for the Project will follow the schematic attached in Appendix 2. The environmental assessment will consist of the following components:

- Pre-Panel Stage: As set out in section 3 of this Agreement, the Agency and EAO will oversee the production of the EIS Guidelines and will determine when the EIS is ready for review by the Joint Review Panel;
- Joint Review Panel Stage: As set out in sections 4 through 7 of this Agreement, the Joint Review Panel will determine the sufficiency of the EIS, hold public hearings, and produce the Joint Review Panel Report, with the support of a secretariat; and,
- Post-Panel Stage: As set out in sections 8 through 10 of this Agreement, the Agency and EAO will coordinate public release of the Joint Review Panel Report and referral documentation going forward to federal and provincial decision makers.

## **CONDUCT OF THE ENVIRONMENTAL ASSESSMENT**

### **3. Pre-Panel Stage**

- 3.1 The Parties agree to establish a Working Group composed of representatives of federal, provincial and territorial government agencies, including those of British Columbia, Alberta and the Northwest Territories, and Aboriginal groups and local governments that have been identified as having an interest in the Project, which will be invited by EAO and the Agency to be members of the Working Group.
- 3.2 The Working Group will provide advice to the Agency and EAO on issues related to the assessment of the Project. The Working Group will not make any decisions in relation to the assessment of the Project.
- 3.3 All records of Working Group meetings will be made available for the Joint Review Panel’s consideration.
- 3.4 The proponent will prepare a first draft of the EIS Guidelines following communication with the Agency and EAO.

- 3.5 The Working Group will review the draft EIS Guidelines and provide comments to the Agency and EAO, which will provide comments to the proponent. The proponent will provide a detailed response to these comments. The proponent's response will be considered by the Agency, EAO and Responsible Authorities, and the Agency and EAO will direct the proponent to amend the draft EIS Guidelines as required.
- 3.6 The Agency and EAO will make the draft EIS Guidelines available for a public comment period of 45 days.
- 3.7 Following the close of the public comment period, the proponent will provide a detailed response to public comments. The Working Group will consider the public comments and the proponent's response and will provide its advice on the draft EIS Guidelines to the Agency and EAO. The Agency and EAO will amend the draft EIS Guidelines where appropriate.
- 3.8 The federal Minister of the Environment and Executive Director of EAO will determine whether the EIS Guidelines are adequate and will finalize the EIS Guidelines. The Federal Minister of the Environment and the Executive Director of EAO will issue the final EIS Guidelines to the proponent.
- 3.9 The proponent will prepare the EIS in accordance with the final EIS Guidelines and will submit the EIS to the Agency and EAO.
- 3.10 The Working Group will review the EIS and submit comments and information requests to the Agency and EAO, which will provide comments to the proponent. The proponent will provide a detailed response to these comments. The proponent's response will be considered by the Agency, EAO and Responsible Authorities, and the Agency and EAO will direct the proponent to supplement the EIS as required.
- 3.11 The Agency and EAO will make the EIS available for a public comment period of 60 days.
- 3.12 Following the close of the public comment period, the proponent will provide a detailed response to public comments. The Working Group will consider the public comments and the proponent's response and will provide its advice on the EIS to the Agency and EAO. The Agency and EAO will direct the proponent to amend the EIS where appropriate.
- 3.13 The Agency and EAO will determine when the EIS is satisfactory to them. When this determination is made, the Pre-Panel Stage is complete and the Joint Review Panel Stage will commence.

- 3.14 The Pre-Panel Stage is not expected to exceed 24 months from the date that the Notice of Consideration under the *CEAA* was posted on the Agency's website (August 2, 2011).
- 3.15 EAO will prepare a report summarizing the activities that took place during the Pre-Panel Stage.

#### **4. Joint Review Panel Stage**

##### **Establishment of and Administrative Support for the Joint Review Panel**

- 4.1 A Joint Review Panel will be established for the purposes of conducting an environmental assessment of the Project pursuant to sections 40, 41 and 42 of the *CEAA* and pursuant to the *BCEAA*.
- 4.2 Once the Joint Review Panel is established, the Agency and EAO will make arrangements to coordinate the announcement of the establishment of the Joint Review Panel of the Project by both Parties.
- 4.3 While not fettering the Joint Review Panel's responsibilities pursuant to section 34 of the *CEAA* to ensure that the information required for an assessment by a review panel is obtained and made available to the public, the Joint Review Panel stage of the assessment, including preparation and submission of the Joint Review Panel Report, is not expected to exceed eight months from the time the Joint Review Panel is appointed.
- 4.4 A secretariat for the Joint Review Panel will be established by the Agency and EAO. The secretariat will provide administrative, technical and procedural support requested by the Joint Review Panel. The secretariat will consist of employees of the Agency and EAO, and will be free of conflict of interest relative to the Project.
- 4.5 The secretariat will support the Joint Review Panel and will be structured so as to allow the Joint Review Panel to conduct its review in an efficient and cost-effective manner.

##### **Constitution and Mandate of the Joint Review Panel**

- 4.6 The Joint Review Panel will consist of three members, one of whom will be the chairperson.
- 4.7 The Agency and EAO will jointly evaluate potential candidates and will each recommend a candidate to be appointed as a panel member, with a joint recommendation of one candidate for chairperson. In developing these recommendations, the Agency and EAO may consider candidate names put forward by Aboriginal groups or members of the public.

- 4.8 The federal Minister of Environment will appoint one panel member, the provincial Minister of Environment will appoint one panel member, and the chair of the panel will be jointly appointed by the federal and provincial Ministers of Environment.
- 4.9 Joint Review Panel members will be unbiased and free of any conflict of interest relative to the Project.
- 4.10 Joint Review Panel members will not be employed by the Public Service nor Crown Corporations of British Columbia or of Canada.
- 4.11 The members will have knowledge and experience relevant to the anticipated effects of the Project.
- 4.12 In the event that a Joint Review Panel member resigns or is unable to continue to work, the remaining members will continue to work and will constitute the Joint Review Panel. However, the Parties may choose to replace the Joint Review Panel member. If they do so, the replacement Panel member will be appointed by the provincial Minister of Environment, the federal Minister of the Environment, or jointly, depending on who had appointed the Panel member being replaced.
- 4.13 The Joint Review Panel will conduct its review in a manner consistent with the requirements of the *CEAA* and associated Regulations, and in a manner that discharges the requirements set out in the Terms of Reference.
- 4.14 The Joint Review Panel will conduct its review in a manner that will facilitate the participation of Aboriginal groups.
- 4.15 The Joint Review Panel may request clarification of the Terms of Reference by sending a letter signed by the chairperson to the President of the Agency and the Executive Director of EAO setting out the request. Upon receiving a request for clarification from the Joint Review Panel, the President of the Agency, on behalf of the federal Minister of the Environment, and the Executive Director of EAO, on behalf of the provincial Minister of Environment, are authorized jointly to provide the Joint Review Panel such clarification. Should clarification be requested, the President and the Executive Director will use best efforts to ensure a joint response is provided to the Joint Review Panel's letter within 14 days. The Joint Review Panel will continue with the joint review to the extent possible while waiting for the response in order to adhere to the time periods of the Terms of Reference. The Joint Review Panel will notify the public of any clarifications to the Terms of Reference.

4.16 The Joint Review Panel may seek an amendment to the Terms of Reference by sending a letter signed by the chairperson to the President of the Agency and the Executive Director of EAO setting out the request. In seeking an amendment, the Joint Review Panel may recommend to the Parties whether a public comment period on the proposed amendment is warranted. The President of the Agency, on behalf of the federal Minister of the Environment, and the Executive Director of EAO, on behalf of the provincial Minister of Environment, are authorized to jointly consider and, if appropriate, amend the Terms of Reference. Should an amendment be requested, the President and the Executive Director will use best efforts to ensure a joint response is provided to the Joint Review Panel's letter within 14 days. The Joint Review Panel will continue with the joint review to the extent possible while waiting for the response in order to adhere to the time lines of the original Terms of Reference. The Joint Review Panel will notify the public of any amendments to the Terms of Reference.

### **Conduct of Assessment by the Joint Review Panel**

- 4.17 The Joint Review Panel will assess the EIS as well as the records of and any information obtained during the Pre-Panel Stage, according to the EIS Guidelines and in accordance with the Terms of Reference.
- 4.18 The Joint Review Panel must make a determination on the sufficiency of information in the EIS in accordance with the Terms of Reference in order to provide public notice and hold public hearings in accordance with the Terms of Reference.
- 4.19 The Joint Review Panel will undertake a public hearing. The review will provide opportunities for timely and meaningful participation by Aboriginal groups, the public, governments, and other interested groups.
- 4.20 The Joint Review Panel will have all the powers and duties of a panel described in section 35 of the *CEAA* and those set out in the Terms of Reference, as well as powers described in subsection 14(4) of the *BCEAA*.
- 4.21 The Joint Review Panel will produce a Joint Review Panel Report which will be submitted to the federal Minister of the Environment and the Executive Director of EAO within 90 days from the date that the chairperson of the Joint Review Panel formally closes the hearing process. The Report will contain an executive summary in both official languages. The Agency and EAO, on behalf of the Parties, will publish and make available this report to the public in a manner consistent with section 9 of this Agreement. The Agency and EAO will also provide a hard copy of the Joint Review Panel Report to each Aboriginal group that has participated in the environmental assessment.



## **5. Record of Joint Review**

- 5.1 A public registry will be maintained by the Agency during the course of the joint review in a manner that provides for convenient public access, and that complies with sections 55 to 55.5 of the *CEAA*.
- 5.2 A public registry will be maintained by EAO on the electronic Project Information Centre for purposes of compliance with section 25 of the *BCEAA*.
- 5.3 Subject to subsections 35(4), and 35(4.1) and section 55.5(1) of the *CEAA*, the public registry will include all records produced, collected or submitted relating to the environmental assessment of the Project.
- 5.4 After the Joint Review Panel Report is submitted and posted on the Agency's public registry, and following posting of the Government of Canada response to the Joint Review Panel Report, the responsibility for the maintenance of the Agency's public registry, as well as the project file, will be transferred to the Responsible Authorities for the Project.

## **6. Participant Funding**

- 6.1 Participant funding for the joint review will be provided by the Agency pursuant to the federal Participant Funding Program, and will be administered by the Agency.

## **7. Cost Sharing and Invoicing**

- 7.1 Costs associated with this cooperative environmental assessment will be apportioned between the Parties in accordance with a cost-sharing agreement. EAO in consultation with the Agency will develop a budget estimate for the anticipated expenses of the Pre-Panel Stage of the cooperative environmental assessment. Prior to the initiation of the Joint Review Panel Stage, the Agency, in consultation with EAO, will develop a budget estimate for the anticipated expenses of the Joint Review Panel.

## **Post-Panel Stage**

### **8. Draft Referral Package**

- 8.1 Once the Joint Review Panel submits its Report to the federal Minister of the Environment and the Executive Director of EAO, the Executive Director will prepare a Referral Package for the provincial Minister of the Environment and other responsible provincial Minister's consideration, which may include the following documents:

- Draft report summarizing the activities that took place during the Pre-Panel Stage as stated in section 3.15
- Draft provincial report regarding consultation and accommodation
- The Joint Review Panel Report
- Draft response of the Executive Director to the Joint Panel Review Report
- Draft Environmental Assessment Certificate

Preparation of the draft Referral Package is not expected to exceed 45 days from the time that the Joint Review Panel Report is submitted to the Executive Director of EAO.

- 8.2 If the Joint Review Panel recommends that the executive summary be translated into Aboriginal languages, the Agency will use this estimated 45 day period to identify and obtain translators or interpreters who would be available to provide this service with the goal to release the oral or written translation of the executive summary in these Aboriginal languages as soon as possible after the Joint Review Panel Report is made public. Taking into consideration the availability of translators, the Agency will use all reasonable efforts to expedite and make available translated information.
- 8.3 The Agency and EAO agree to coordinate the timing of the release of the Joint Review Panel Report.
- 8.4 During this 45 day period, the Agency will initiate translation of the entire Joint Review Panel Report into both official languages. The Agency will also prepare a federal report regarding consultation and accommodation.
- 8.5 Following the 45 day period during which the draft Referral Package is prepared, the Agency and EAO will make public the Joint Review Panel Report by posting it on the Agency's public registry and EAO's electronic Project Information Centre. The Agency and EAO will provide copies of the Joint Review Panel Report to Aboriginal groups who have participated in the environmental assessment process in order to initiate consultation on the Joint Review Panel Report.

## **9. Referral Package**

- 9.1 Once the Joint Review Panel Report has been made public, a Steering Committee will be established consisting of senior representatives of EAO, Responsible Authorities for the Project, and the Agency in its role as federal Crown consultation coordinator.
- 9.2 The Steering Committee will discuss elements of the proposed provincial and federal responses to the Joint Review Panel Report, the recommendations and conclusions contained in the Joint Review Panel

Report, and key issues and responsibilities respecting these recommendations and conclusions in order for EAO and federal government to prepare and finalize their respective key documents.

- 9.3 Finalization of key documents is not expected to exceed 60 days from the day the Joint Review Panel Report is made public. During this approximately 60 day period, Aboriginal groups will be consulted on the Joint Review Panel Report and the draft federal report on consultation and accommodation. Comments will be considered by the federal government and EAO and revisions will be made to the draft reports on consultation and accommodation where appropriate.
- 9.4 If Aboriginal groups do not agree with the conclusions of the Joint Review Panel Report or the sections of the provincial report on consultation and accommodation that relate to their interests, they may provide a separate submission to be included in the Referral Package for the provincial Minister of Environment and the other responsible provincial Minister.
- 9.5 The Executive Director of EAO will finalize the Referral Package.

## **10. Provincial and Federal Decision Making Authorities**

- 10.1 The Parties agree to make best efforts to coordinate the timing of the release of the Government of Canada response to the Joint Review Panel Report and the announcement of the decision of the provincial Minister of the Environment and other responsible provincial Minister under section 17 of the *BCEAA*. If timing of the release cannot be coordinated, each Party will give advance notice to the other Party regarding timing of decisions.
- 10.2 The Governor in Council or the provincial Minister of Environment may require the Joint Review Panel to clarify any of the recommendations set out in the Joint Review Panel Report.
- 10.3 The provincial Minister of Environment and other responsible provincial Minister will make a decision within 45 days of receipt of the Referral Package from EAO, unless the provincial Minister of Environment determines that a timeline extension is required for his or her decision.

## **11. Administration of this Agreement**

### **Amending this Agreement**

- 11.1 This Agreement, and any amendment to it, comes into force upon its execution by both Parties. Subject to section 4.16, this Agreement can be amended at any time with mutual consent of both Parties.

Signatures

**WHEREAS** the parties hereto have put their signatures

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The Honourable Peter Kent  
Minister of the Environment, Canada  
Date

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The Honourable Terry Lake  
Minister of Environment, British Columbia  
Date

## Appendix 1. Joint Review Panel Terms of Reference

### PART I: Description of the Project

British Columbia Hydro and Power Authority (the proponent) proposes to develop and operate a dam and hydroelectric generating station on the Peace River (the Project) approximately 7 kilometres southwest of the city of Fort St. John. The scope of the Project will include all components of the Project as proposed by the proponent. The Project would include the following major components:

- **Dam, Generating Station and Associated Structures**
  - Earthfill dam
  - Up to 1,100 MW six-unit generating station with vertical axis turbines
  - Approach channel with concrete training walls to convey water from reservoir to power intakes and spillway
  - Penstocks, power intakes and spillways
- **Reservoir**
  - Access roads, clearing, filling and shoreline protection at Hudson's Hope
- **Transmission Line Connecting Site C to Peace Canyon**
  - Three 500-kilovolt (kV) circuits connecting the generating station to the switchyard
  - A 500 kV switchyard
  - Two 500 kV Alternating Current lines, approximately 77 km in length connecting the switchyard to Peace Canyon Substation. Lines would be located along an existing right-of-way currently occupied by two 138 kV transmission lines and would require a widening of the right-of-way by approximately 35 metres.
  - Access roads
- **Highway 29 Realignment**
  - Realignment of segments of the existing highway, including new bridges
  - Erosion protection of highway sections along the shore of the reservoir
- **Temporary Project Components and Activities**
  - Access roads from the north and south sides of the Peace River, temporary construction access bridge across the Peace River, and access roads at site between the various construction facilities and areas
  - Worker housing and offices at site
  - Staging areas, storage facilities, workshops, aggregate processing, concrete batch plants, maintenance shops and other facilities required by contractors to support construction activities and assemble parts
  - Construction of temporary cofferdams and concrete-lined diversion tunnels

- Excavations and relocation of excess soil and rock near dam site, and excavations for construction materials from quarries and borrow areas north of the dam site and in the Pine Pass vicinity
- Temporary access and transportation of construction materials from on-site areas and off-site areas by road and rail
- Access roads and laydown areas along the transmission line route as required for right-of-way clearing, construction of the towers, and stringing the lines

## PART II: Factors to be considered in the Cooperative Environmental Assessment

- 2.1 The Joint Review Panel must conduct an assessment of the environmental, economic, social, health and heritage effects of the Project referred to in the Description of the Project (Part I).
- 2.2 The Joint Review Panel must include in its assessment of the Project, consideration of the following factors:
  - the purpose of the Project;
  - the need for the Project;
  - alternatives to the Project;
  - alternative means of carrying out the Project that are technically and economically feasible and the environmental effects of any such alternative means;
  - the environmental, economic, social, health and heritage effects of the Project, including the cumulative effects that are likely to result from the Project in combination with other projects or activities that have been or will be carried out;
  - the environmental effects of malfunctions and accidents that may occur in connection with the Project;
  - any change that the Project may cause in the environment on the current use of lands and resources for traditional purposes by aboriginal persons;
  - the significance of the environmental, economic, social, health and heritage effects;
  - measures that are technically and economically feasible and that would mitigate any significant adverse environmental, economic, social, health or heritage effects of the Project;
  - 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;
  - the need for, and the requirements of, any follow-up program in respect of the Project;
  - comments from the public and Aboriginal persons and groups that are received during the assessment; and

- community knowledge and Aboriginal traditional knowledge.
- 2.3 The Joint Review Panel will receive:
- information provided by Aboriginal groups and the proponent regarding the manner in which the Project may adversely affect asserted or established Aboriginal and treaty rights; and
  - information provided by Aboriginal persons or groups regarding the location, extent and exercise of asserted or established Aboriginal and treaty rights in the area of the Project.
- 2.4 The Joint Review Panel will use the information collected pursuant to section 2.3 of this Terms of Reference to make recommendations which if implemented would avoid or minimize potential adverse effects of the Project on Aboriginal and treaty rights and to inform its assessment of the potential environmental, economic, social, health or heritage effects of the Project.
- 2.5 The Joint Review Panel will not make any conclusions or recommendations as to:
- a) the nature and scope of asserted Aboriginal rights or the strength of those asserted rights;
  - b) the scope of the Crown's duty to consult Aboriginal groups;
  - c) whether the Crown has met its duty to consult Aboriginal groups and, where appropriate, accommodate their interests in respect of the potential adverse effects of the Project on asserted or established Aboriginal rights or treaty rights; ,
  - d) whether the Project is an infringement of Treaty No. 8; and
  - e) any matter of treaty interpretation.
- 2.6 The Joint Review Panel will in the Joint Review Panel Report describe any Aboriginal rights that are asserted during public hearings and any impacts on those rights as articulated by those Aboriginal groups.
- 2.7 All information obtained by the Joint Review Panel for the environmental assessment of the Project shall be made publicly available, unless the Joint Review Panel determines that subsections 34(4) or 35(4.1) of the *CEAA* applies to the information provided by a participant.
- 2.8 The scope of factors to be considered in the environmental assessment are those outlined in the EIS Guidelines as finalized by the federal Minister of the Environment and the Executive Director of EAO.

## PART III Environmental Assessment Process

The Joint Review Panel roles and responsibilities are set out in the Agreement. Further directions on the process to be followed by the Joint Review Panel are as follows:

### EIS Sufficiency

- 3.1 The Joint Review Panel must determine if the EIS contains sufficient information to proceed to public hearings. If the Joint Review Panel determines that the EIS (including information received during the Pre-Panel Stage) contains sufficient information to proceed to public hearings, it must schedule and announce the hearing in accordance with the procedures set out in the Terms of Reference.
- 3.2 If the Joint Review Panel determines that the EIS is not sufficient to proceed to public hearings, it must issue a statement requesting additional information from the proponent. At the same time, the Joint Review Panel must place the statement on the public registry and make it available to the public.
- 3.3 The Joint Review Panel must place the additional information provided by the proponent, if any, on the public registry and make it available to the public. The Joint Review Panel must determine whether there is a need for a public comment period on any supplemental information provided by the proponent in response to deficiencies identified by the Joint Review Panel, and if it so determines, it must allow for a public comment period.
- 3.4 Upon completion of the public comment period in article 3.3 of these Terms of Reference, if required, the Joint Review Panel, taking into consideration any comments received, must determine within 10 days if the EIS, supplemented by the additional information, is sufficient to proceed to public hearing. The procedures described above in articles 3.1 to 3.3 of the Terms of Reference will apply until such time as the Joint Review Panel determines it has sufficient information to proceed to public hearings.

### Announcement of Public Hearing

- 3.5 Once the Joint Review Panel determines that the EIS contains sufficient information to proceed to public hearings, it must announce the public hearings. The public hearings must not begin earlier than 30 days after the Joint Review Panel has announced that public hearings will take place. In scheduling the public hearings, the Joint Review Panel must take into consideration the timing of traditional activities in Aboriginal communities.



- 3.6 The Joint Review Panel must issue procedures for the conduct of the public hearings (the “hearing procedures”). The Joint Review Panel may issue the hearing procedures along with or following the notice of the public hearings. The hearing procedures must:
- allow for the public hearings to be conducted in a manner that provides for a full examination of the matters determined by the Joint Review Panel to be relevant; and,
  - provide the proponent, federal, provincial, territorial and local governments, Aboriginal groups and members of the public with an opportunity to present their views on the Project and to question information that has been provided by other participants.
- 3.7 Before finalizing the hearing procedures, the Joint Review Panel must receive comments from the public about them.
- 3.8 The Joint Review Panel, where practicable, must hold public hearings in the communities in closest proximity to the proposed Project in order to provide convenient public access for potentially affected Aboriginal persons and groups and the public. The Joint Review Panel must endeavour to complete the public hearing within 30 days.
- 3.9 All public hearings must be open to the public, unless the Joint Review Panel determines that subsection 35(3) of the *CEAA* applies to the information provided by a participant.

#### Specialist Advisors to the Joint Review Panel

- 3.10 The Joint Review Panel may retain experts, or otherwise obtain specialist information with respect to the Project, in order to satisfy these Terms of Reference.
- 3.11 Should the Joint Review Panel retain the services of non-governmental experts, the names of the experts retained and any documents obtained or created by the experts and that are submitted to the Joint Review Panel must be placed on the public registry, subject to the provisions in section 35 of the *CEAA*. For greater certainty, this shall exclude any information subject to solicitor-client privilege.
- 3.12 The Joint Review Panel may require an expert to appear before the Joint Review Panel at the public hearing sessions and present information with regard to the documents they have created or obtained and that were submitted to the Joint Review Panel. The Joint Review Panel has the same power to enforce the attendance of witnesses and to compel them to give evidence and produce documents and other things as is vested in a court of record.

## Joint Review Panel Report

- 3.13 Following the completion of the public hearing, the Joint Review Panel must prepare and submit to the federal Minister of the Environment and the Executive Director of EAO, a report in accordance with the Terms of Reference, which must include:
- a description of the Joint Review Panel process;
  - the rationale, conclusions and recommendations of the Joint Review Panel relating to the environmental assessment of the Project, including any recommended mitigation measures and follow-up programs;
  - a summary of any comments received, including those from the public and Aboriginal groups;
  - recommendations with respect to conditions to be attached to the Environmental Assessment Certificate; and
  - an executive summary in both official languages.
- 3.14 The Joint Review Panel must ensure that where it has concluded that the Project is likely to cause significant adverse environmental, economic, health, heritage or social effects, taking into account the implementation of any mitigation measures, information with respect to the justifiability of any significant adverse effects is included in its Joint Review Panel Report, where the information has been received by the Panel.
- 3.15 The Joint Review Panel Report must include the views of each member of the Joint Review Panel.
- 3.16 The Joint Review Panel must consider any requests made by Aboriginal groups to have the executive summary of the report translated into their Aboriginal languages. If the Joint Review Panel agrees with such a request, it must recommend to the Agency that such translations be provided by the Agency in a timely manner.
- 3.17 The Joint Review Panel must submit the Joint Review Panel Report to the federal Minister of the Environment and the Executive Director of EAO at the earliest possible date, and no later than 90 days from the date that the chairperson of the Joint Review Panel closes the hearing to the receipt of further information. The Panel must not release the Report publicly. The federal and provincial governments will publish and make available the Joint Review Panel Report as submitted. Further to section 4.3 of this Agreement, the Joint Review Panel Stage of the assessment is not expected to exceed eight months from the time the Joint Review Panel is appointed.

## Appendix 2

# SITE C ENVIRONMENTAL ASSESSMENT

If inconsistencies are identified between this schematic and the text of the agreement, the text supersedes this schematic

