

**Dawson Regional Planning Commission – Yukon Land Use
Planning Council -Yukon
Transfer Payment Funding Agreement
April 1, 2013 - March 31, 2014**

THIS AGREEMENT made at Whitehorse, Yukon

BETWEEN:

The Government of Yukon, as represented by the Minister of the Executive Council Office (“Yukon”)

AND:

Yukon Land Use Planning Council as established to carry out responsibilities under the Umbrella Final Agreement (“UFA”) and the Yukon First Nation Final Agreements (“YFNFA”), as represented by the Chairperson (the “Council”)

AND:

Dawson Regional Planning Commission as established to carry out responsibilities under the Umbrella Final Agreement (“UFA”) and the Yukon First Nation Final Agreements (“YFNFA”), as represented by the Chairperson (the “Commission”)

being collectively the parties (the “Parties”) to this Funding Agreement (the “Agreement”).

WHEREAS:

- A. The UFA and the YFNFA 2.12.2.8, 11.9.1 and 11.9.2 requires that the Commission prepare an annual budget for the review of the Council, who will then recommend it for review and approval by Government;
- B. The Umbrella Final Agreement Implementation Plan (“UFAIP”) and the Yukon First Nation Final Agreement Implementation Plans (“YFNFAIP”) set out the funding relationship between Canada, Yukon, the Council and the Commission;
- C. The UFAIP and YFNFAIP requires that Canada provide funding to Yukon which approves and provides funding to the Council for its own operation and for the development of regional land use plans as set out in the budget of the Commission.
- D. The Parties recognize the need for a framework of accountability that maintains confidence in the use of public funds.

NOW THEREFORE in consideration of the mutual promises contained in this Agreement, the Parties agree as follows:

1.0 The Agreement

- 1.1 This Agreement, together with the attached Appendices, shall be read collectively and constitute the whole Agreement between the Parties, and no oral or written representations on its subject matter are valid unless incorporated in this Agreement.

2.0 Definitions

- 2.1 In this Agreement:

“Amendment” means a formal change to the terms and conditions of this Agreement, or to any of the appendices, which is made in writing and executed by the Parties.

“Annual Report” means the template as attached in Appendix C.

“Annual Workplan” means the workplan for the Commission which has been approved by Yukon, that sets out the specific deliverables and activities planned for the Term of this Agreement, for the Commission to carry out its responsibilities under the UFA, UFAIP AND YFNFAAs and YFNFAIPs, as set out in Appendix A to this Agreement.

“Budget” means the anticipated expenditures and revenues for the Commission for the Annual Workplan as approved by Yukon and set out in Appendix B to this Agreement.

“Closing Surplus” means the amount of Funds not expended at the end of the Term of this Agreement or upon termination of this Agreement.

“Deliverables” means the deliverables set out in Table F-1 of Appendix F.

“Fiscal Year” means a twelve month period beginning on and including April 1 of a year, and ending on and including March 31 of the immediately following calendar year.

“Funds” means the funding provided by the Council pursuant to the terms and conditions of this Agreement to the Commission for the current fiscal year including the Opening Surplus.

“In-House Financial Statements” means the unaudited balance sheet and income statement detailing all revenues received, expenses incurred, and budget amounts produced by the Commission’s Secretariat’s accounting software in a form acceptable to Yukon.

“Interim Report” means the template as attached in Appendix D.

“Opening Surplus” means the amount of money that the Commission has identified in the Budget which represents money that the Commission was provided under previous funding agreements with the Council that was not expended under those agreements.

“Records” includes administrative records, minutes, agendas, financial records, invoices, receipts, vouchers, bank statements, and all transactional information pertaining to expenditures and commitments made by the Commission or its agents in carrying out the Annual Plan and the obligations under this Agreement.

“Remedial Action Plan” means an agreement between the Council, the Commission and Yukon which sets out what the Commission must do in the event that there is a default under this Agreement as set out in s. 10.1.

“Reporting Schedule” means the schedule of Deliverables as set out in Table F-1 in Appendix “F” to this Agreement.

“Terms of Payment” means the terms of payment of the Funds by the Council as set out in Table F-2 in Appendix “F” to this Agreement.

“Terms of Reference” means the document entitled “Terms of Reference for the Dawson Regional Land Use Planning Commission” attached as Appendix “E” to this Agreement.

2.2 The headings used in this Agreement are inserted for convenience of reference only.

3.0 The Purpose

3.1 The purpose of this Agreement is to provide Funds to the Commission so that the Commission is able to fulfil its mandate and carry out their responsibilities under the YFNFA’s for the period April 1, 2013 to March 31, 2014.

4.0 Term

4.1 The term of the Agreement shall be from April 1, 2013 to March 31, 2014.

5.0 Provision of Operational Funding for the Commission

5.1 The Council shall provide the Commission with Funds in an amount not to exceed \$305,000.00 to be used by the Commission in carrying out the Annual Workplan, in accordance with the Budget.

5.2 The Council shall pay the Funds to the Commission in accordance with the Terms of Payment.

5.3 The obligation of the Council to provide the Funds in this Agreement is subject to the following:

- 5.3.1 the Council receiving the Funds for the purpose of this Agreement from Yukon pursuant to the Yukon Land Use Planning Council – Yukon Transfer Payment Funding Agreement April 1, 2013 – March 31, 2014.
- 5.3.2 the Commission maintaining a separate joint account solely for the management of the Funds provided by this Agreement;
- 5.3.3 the Commission abiding by the terms and conditions of this Agreement;
- 5.3.4 the Commission operating in accordance with the Terms of Reference as attached in Appendix “E” of this Agreement; and
- 5.3.5 this agreement being the sole source of funds for the Commission unless otherwise disclosed in the Commission’s Budget.

6.0 Financial Accountability

- 6.1 In respect of the Funds, the Commission shall:
 - 6.1.1 make expenditures only for the purpose of this Agreement;
 - 6.1.2 allocate the Funds received in accordance with this Agreement;
 - 6.1.3 keep financial records and prepare financial statements in accordance with generally accepted accounting principles as defined within the *Public Sector Accounting and Auditing Handbook* or the *Canadian Institute of Chartered Accountants (CICA) Handbook*;
 - 6.1.4 use a financial management regime as directed by the Council that sets out Commission procedures for the approval of expenditures, the allocation and reallocation of Funds and in general, for the management of the Funds provided under this Agreement; and
 - 6.1.5 submit updated financial management and operational procedures as amended.
- 6.2 The Council shall provide financial and administrative review of the Annual Workplan and Budget under this agreement, including monitoring Budget and Workplan compliance, budget variance and ensuring that the Commission meets its requirements in accordance with this Agreement.
- 6.3 The Commission shall provide notice to Yukon and the Council in writing of the appointment of the auditor at least two (2) weeks prior to the end of the Fiscal Year and this notice shall authorize Yukon to release revenue information to the auditor for purposes of completing the audit.

- 6.4 Any Funds provided through this Agreement that are not properly expended for the purposes of this Agreement shall constitute a debt due to Yukon and shall be repaid immediately by the Commission to Yukon or may be set-off by Yukon against any Funds owing under this Agreement.
- 6.5 Any interest owing upon a debt arising under 6.4 is calculated from the date that the amount became repayable and will be calculated at current bank rates.
- 6.6 The Commission may retain the Closing Surplus subject to Yukon and the Council approving an Annual Workplan and Budget for the subsequent fiscal year which includes the Closing Surplus; and to the Parties entering into another funding agreement, taking into account whether commitments of the Commission under this Agreement have been met.
- 7.0 Reporting Requirements**
- 7.1 The Commission shall submit to Yukon and the Council the Deliverables by the Deliverable Due Date as set out in the Reporting and Payment Schedule, Appendix F.
- 7.2 Commencing April 20th, 2013, the Commission shall provide to Yukon and the Council per the Reporting Schedule, In-House Financial Statements by the 20th of each month for the prior month, or within thirty (30) days of the date of termination of this Agreement if the Agreement is terminated pursuant to 12.1.
- 7.3 The Commission shall provide to Yukon and the Council per the Reporting Schedule, interim In-House Financial Statements and Interim Report to Yukon for the period April 1, 2013 to August 31, 2013 by September 30th, 2013, or within thirty (30) days of the date of termination of this Agreement if the Agreement is terminated pursuant to 12.1.
- 7.4 The Commission shall provide to Yukon and the Council per the Reporting Schedule, an Annual Report and signed original final consolidated audited financial statement and related management letter for the period April 1, 2012 to March 31, 2013, by July 31, 2013 or within thirty (30) days of the date of termination of this Agreement if the Agreement is terminated pursuant to 12.1.
- 7.5 After the Commission have approved the audit, the Commission shall instruct the auditor to provide Yukon and the Council with a copy of the audited financial statements and any related management letter.
- 7.6 Yukon shall provide a response to the Commission's final consolidated audited financial statements within twenty (20) working days of receipt.

8.0 Yukon's Ability to Audit

8.1 Where the deadline for receipt of the Annual Report and consolidated audited financial statements as set out in 7.4 has not been complied with, Yukon may appoint an independent auditor and the Council and the Commission shall ensure that such an auditor shall have the same access to its Records and files as Yukon has under 8.2.

8.2 The Council and the Commission shall:

8.2.1 acknowledge that Yukon or its agents may audit any or all of the Records, including financial records of the Commission or its agents, whether directly or indirectly related to this Agreement, as is necessary to satisfy Yukon that the objectives and activities of the Annual Workplan have been carried out and that the Funds have been spent in accordance with the terms of this Agreement;

8.2.2 make such Records available for review by Yukon upon reasonable notice, and permit Yukon to audit and inspect the Records, and to take extracts from and make copies of the Records;

8.2.3 provide reasonable facilities to Yukon for such audits and inspections, and provide Yukon with all information necessary to understand the Records;

8.2.4 immediately reimburse Yukon any overpayments or non-allowed expenditures, as determined by the audit; and

8.2.5 shall reimburse Yukon in full for the cost of an audit conducted in accordance with section 8.1.

8.3 The Council shall keep all records of the Commission in the office of the Council for seven (7) years after the expiry or termination of this Agreement, unless otherwise notified in writing by Yukon that such information and documents are no longer needed;

9.0 Budget

9.1 The amount in the Budget for the line items identified as "honoraria" and "travel" respectively shall be based on:

9.1.1 the Honoraria guidelines as outlined in the UFAIP Annex B, Part 5, Budget Procedures and Financial Arrangements; and

9.1.2 Yukon government travel rates effective for the period covered by this Agreement.

9.2 With respect to the Budget, the Commission may:

- 9.2.1 reallocate between the line items identified as long as the sum total of these reallocations does not exceed 5% of the total approved Budget for each Budget category as set out in the attached Budget;
- 9.2.2 prior to March 1, 2014, make reallocations within the Budget that are in excess of 5% after obtaining the express written consent of Yukon and the Council and they may require the Commission to submit a revised Budget and Annual Workplan prior to providing such consent;
- 9.2.3 reallocate between line items to allow for the expense of developing a Remedial Action Plan pursuant to 11.1.5; and
- 9.2.4 amend the Budget if the Commission is provided additional funds and provide a copy of the amended budget to Yukon and Council within thirty (30) days of the receipt of the additional funds, at which time the amended budget becomes the Budget.

10.0 Default by the Commission

- 10.1 In addition to any default that would at law entitle Yukon and the Council to terminate the Agreement, any of the following shall also constitute a default by the Commission entitling Yukon, or the Council with the consent of Yukon, to terminate the Agreement:
 - 10.1.1 the Commission fails to perform or comply with any term, condition or obligation of this Agreement;
 - 10.1.2 the Commission has in connection with this Agreement made materially false or misleading representations or statements, or has provided materially false or misleading information to Yukon or the Council;
 - 10.1.3 in the opinion of Yukon or the Council, the Commission is experiencing financial problems or there is a risk that the Commission will become insolvent;
 - 10.1.4 the Commission fails to limit its activities to those directly related to its mandate and responsibilities noted in the Final Agreement and Implementation Plan;
 - 10.1.5 the Commission ceases to operate;
 - 10.1.6 the Commission becomes bankrupt or insolvent, goes into receivership or takes the benefit of any statute being in force from time to time relating to bankruptcy or insolvency; or
 - 10.1.7 the Commission is dissolved, or an order is made or a resolution is passed for the winding up of the Commission.

10.2 The failure of either Yukon, the Council or the Commission to give notice to the other parties of the breach, default or non-fulfillment of any provision of this Agreement shall not constitute acceptance of:

10.2.1 the breach, default or non-fulfillment;

10.2.2 a further breach, default or non-fulfillment of the same provision or of the same kind; or

10.2.3 the breach, default or non-fulfillment of any other provision of this Agreement.

11.0 Action by Yukon and the Council upon Default

11.1 If, in the opinion of Yukon and the Council, an event of default occurs pursuant to 10.1 Yukon and the Council will, as soon as practicable after determining the existence of the default, provide notice to the Commission and Yukon, or the Council with the consent of Yukon, may without restricting any remedies otherwise available:

11.1.1 withhold all or part of the Funds payable under this Agreement;

11.1.2 require that the Commission takes such reasonable actions as may be necessary to remedy the event of the default;

11.1.3 audit or cause to have audited the accounts and records of the Commission;

11.1.4 direct the Commission to repay forthwith to Yukon all or part of the Funds paid under this Agreement;

11.1.5 require that the Commission meet with Yukon and the Council to develop a Remedial Action Plan; or

11.1.6 terminate the Agreement and the Council's obligations to provide any further Funds under this Agreement to the Commission.

11.2 Yukon, or the Council with the consent of Yukon, may exercise any one or more of the remedies set out in 11.1.

11.3 Upon receipt of a notice under 11.1, the Commission shall within thirty (30) days respond in writing with a proposed Remedial Action Plan.

11.4 If Yukon and the Council agree to the terms proposed by the Commission under 11.3, the Parties shall enter into a Remedial Action Plan upon those terms.

11.5 If Yukon and the Council do not agree to the terms proposed by the Commission under 11.3, the Parties shall meet to attempt to come to agreement on a Remedial Action Plan.

11.6 The Council shall pay to the Commission any Funds withheld under 11.1.1 within sixty (60) days of the Commission fulfilling its obligations under a Remedial Action Plan.

12.0 Termination

12.1 Yukon or the Council with the consent of Yukon may terminate this Agreement upon default by the Commission pursuant to 11.1 by giving the Commission thirty (30) days written notice of its intention to terminate including the reason for such termination.

12.2 The Commission shall, within the thirty (30) days of receiving notice of Yukon or the Council's intention to terminate, discharge any outstanding obligations under this Agreement.

12.3 Any obligations not discharged at the end of the thirty (30) days will remain outstanding and shall survive the termination of this Agreement.

13.0 Obligations upon Expiry

13.1 Any outstanding obligations of the Commission shall survive the expiry of this Agreement, and may be taken into account by the Council and Yukon with respect to subsequent Agreements.

14.0 Legal Relationship

14.1 Nothing in this Agreement shall create the relationship of principal and agent, employer and employee, partnership, or joint venture between the Parties.

14.2 The Council and the Commission shall not make any representation that the Council and the Commission are agents of Yukon and shall ensure that any officers, employees, contractors, members, servants, agents, or successors of the Council and the Commission do not make any representation that could reasonably lead any member of the public to believe that the Council and the Commission, its officers, employees, contractors, members, servants, agents, or successors are agents of Yukon.

15.0 Liability

15.1 The Council and the Commission shall use due care in carrying out the Annual Workplan and in performing its obligations under this Agreement to ensure that it does not cause any injury (including death) to persons, damage or loss to property or infringement of rights.

- 15.2 Yukon shall not be liable for any action or inaction of the Council and the Commission or any of the Council and the Commission officers, employees, contractors, members or agents in carrying out the Annual Workplan or otherwise connected with this Agreement.
- 15.3 Yukon shall not be liable for any injury to the Council and the Commission, its officers, employees, contractors, or agents or for any damage to or loss of property of the Council and the Commission, its officers, employees, contractors, or agents caused by, arising from, or in any way related to the performance of this Agreement.

16.0 Indemnification

- 16.1 The Council and the Commission shall save harmless and fully indemnify Yukon, its employees, contractors, servants, and agents, from and against all claims, liabilities, and demands arising directly or indirectly from:
- 16.1.1 any act, omission, or negligence of the Council and the Commission, its officers, employees, contractors, servants, agents, or successors arising in connection with this Agreement;
- 16.1.2 any breach of this Agreement by the Council and the Commission, its officers, employees, contractors, servants, agents, or successors unless such breach is a direct result of a breach by Yukon of its obligations under this Agreement; and
- 16.1.3 any injury (including death) to persons, damage or loss to property, infringement of rights, or any claims, demands, or liabilities whatsoever that may arise directly or indirectly out of the performance or non-performance (in whole or in part) of the Council and the Commission's obligations under this Agreement and such indemnification shall survive the termination or expiration of this Agreement.
- 16.2 The above indemnity shall include all reasonable legal costs.

17.0 Conflict of Interest

- 17.1 The Council and the Commission shall not allow any Member of the Yukon Legislative Assembly to be involved with or benefit from any part of this Agreement.
- 17.2 The Council and the Commission each warrants that it does not employ a member of the immediate family of the Minister of the Executive Council Office such immediate family to include spouse, parents, children, brothers and sisters, as well as the spouse's parents, children, brothers and sisters.

18.0 Amendment

18.1 Any Amendments to this Agreement shall be made in writing and executed by both Parties.

19.0 Assignment

19.1 This Agreement shall not be assignable by the Council or the Commission.

20.0 Notice

20.1 Any written communication, report, or notice required pursuant to this Agreement maybe given by personal delivery to the undersigned, or by fax or by prepaid mail to the addresses set out below. A notice shall be considered to be received if delivered personally on the date of delivery; if delivered by fax, two business days after transmission; or if delivered by mail, three business days after mailing.

Commission	Council	Yukon
Chair Dawson Regional Planning Commission PO Box 8010 Dawson, Yukon Y0B 1G0 Phone: (867) 993-4400 Fax: (867) 667-4624	Chair Yukon Land Use Planning Council 201-307 Jarvis Street Whitehorse, Yukon Y1A 2H3 Phone: (867) 667-7397 Fax: (867) 667-4624	Director of Implementation, Land Claims and Implementation Secretariat, Executive Council Office A-14 Box 2703, Whitehorse, Yukon Y1A 2C6 Phone: (867) 667 -5717 Fax: (867) 667-3599

20.2 Copies of any written communication, report or notice referred to in 20.1 shall be provided to:

Manager
Regional Land Use Planning
Energy, Mines and Resources
P.O. Box 2703
Whitehorse, Yukon Y1A 2C6
Phone: (867) 393-7126
Fax: (867) 667-8601

21.0 Signing of this Agreement

21.1 Each Party represents and warrants that it has full power and authority to enter into, perform, and execute this Agreement, and that each person signing this Agreement on behalf of a Party has been properly authorized and empowered to enter into and execute this Agreement.

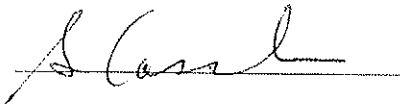
22.0 Counterparts

22.1 This Agreement may be executed in counterparts, each of which will be considered an original, and all of which will constitute one and the same document.

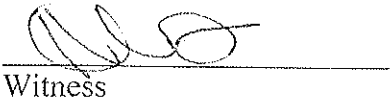
IN WITNESS WHEREOF the Parties have executed this Agreement by their duly authorized representatives on the dates noted below.

Dawson Regional Planning Commission

Chair



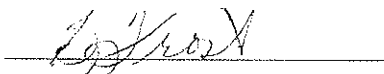
April 29, 2013
Date


Witness

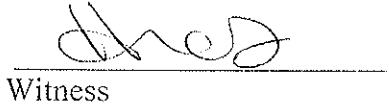
APRIL 29, 2013
Date

Yukon Land Use Planning Council

Chair



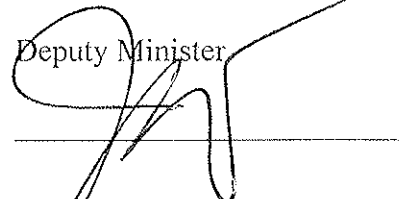
May 1/13
Date


Witness

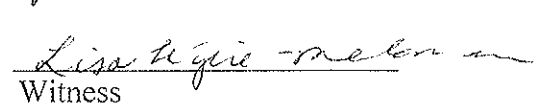
MAY 1, 2013
Date

Government of Yukon Executive Council Office

Deputy Minister



May 13, 2013
Date


Witness

May 13, 2013
Date

This document has been reviewed and approved by the Director Corporate Policy & Planning, Energy, Mines & Resources.



2013-05-07
date