

Manitoba-First Nations Mineral Development Protocol

This MINERAL EXPLORATION AND DEVELOPMENT CONSULTATION PROTOCOL dated _____, 20__.

Between

Her Majesty the Queen in Right of Manitoba,

as represented by the Minister of Growth, Enterprise and Trade

(“Manitoba”),

-and-

[Insert Name]

as represented by Chief and Council,

(“the First Nation”).

WHEREAS:

- A. Manitoba has a responsibility to consult in a meaningful way with First Nations about government decisions or actions that may adversely affect the exercise of Aboriginal or treaty rights. Section 35(1) of the *Constitution Act, 1982* recognized and affirmed the existing Aboriginal and treaty rights of the Aboriginal peoples of Canada.
- B. The First Nation is signatory to Treaty No. [INSERT NUMBER].
- C. The members of the First Nation have treaty or Aboriginal rights, including the right to hunt, trap, and fish, for food at all seasons of the year on unoccupied Crown lands and other land to which they have a right of access as set out in paragraph 13 of the Manitoba Natural Resources Transfer Agreement, and may include other rights including the right to gather plants for food, medicine, and ceremonies on unoccupied Crown lands.
- D. The Constitution of Canada, including the recognition and affirmation of Aboriginal and treaty rights under section 35 of the *Constitution Act, 1982*, and international human rights instruments including the *United Nations Declaration on the Rights of Indigenous Peoples* support the principle that Aboriginal peoples and governments in Canada should cooperate through agreements and other constructive arrangements to protect Aboriginal and treaty rights of Aboriginal peoples.
- E. Manitoba and the First Nation intend to provide for a productive environment for the conduct of the consultation process. It is desirable for Manitoba and the First Nation to have a common

understanding with respect of sharing information about all phases of mineral exploration and development that may take place within the First Nation's traditional territory.

- F. The creation of this mineral exploration and development consultation protocol is fundamental to Manitoba's *The Path to Reconciliation Act* and Canada's Principles Respecting the Government of Canada's Relationship with Indigenous Peoples.
- G. Manitoba has an interest in creating and improving relationships, fulfilling obligations to consult with Indigenous communities and in enhancing economic opportunities and participation in resource development in the province, including providing clarity and certainty of process to industry.
- H. Manitoba is developing a provincial framework for consultation with Indigenous communities that represents Manitoba's approach to consultation and it will include Manitoba's Provincial Policy for Consultation and Accommodation with Indigenous Communities and Guidelines to support consistent implementation. Manitoba will conduct consultations in a manner consistent with its Policy and Guidelines.

This Protocol has been developed and agreed to by Manitoba and the First Nation ("the Parties") as a method for developing and conducting a consultation process that is robust, transparent, empowering and collaborative with respect to proposed government decisions or actions related to all phases of mineral exploration and development in the province of Manitoba.

SECTION 1.00 - DURATION OF PROTOCOL

- 1.01 The Protocol comes into effect on the date set out above and shall continue for an initial term of XX years.**
- 1.02 The Parties may agree to extend the term of the Protocol. If a party wishes to extend the Protocol, that party must notify the other party in writing, within three (3) months prior to the expiry of the Protocol.**
- 1.03 Either party may seek a review of the Protocol annually. If a party wishes to review the Protocol, that party must notify the other party in writing, within three (3) months of the anniversary of the signing of the Protocol.**
- 1.04 Either party may terminate the Protocol upon expiry of the term or upon giving three (3) months written notice to the other.**
- 1.05 The expiry or termination of the Protocol will not affect any consultations about proposed decisions or actions of the Crown conducted before the date of expiry or termination, and, in the event of termination, the Parties will address any consultation processes in good faith outside of this Protocol.**

SECTION 2.00 - OBJECTIVE

2.01 The objective of this Protocol is to set out the framework for a clear, certain and timely consultation process between the Parties that includes principles of communication and information sharing that will enable:

- (a) the process of reconciliation to be advanced between the Crown and Indigenous communities and between Indigenous and non-Indigenous peoples;
- (b) the Parties to engage in a considered and meaningful consultation process;
- (c) the First Nation to meet its reciprocal responsibility to participate in the consultation process to bring forward relevant information and their concerns respecting the potential adverse effects the proposed government decision or action may have on the exercise of their treaty or Aboriginal rights;
- (d) Manitoba to understand the information and concerns of the First Nation about the potential adverse effects of the government's decision or action on the exercise of their treaty or Aboriginal rights;
- (e) Manitoba to give serious consideration to the specific and real concerns of the First Nation; and where those proposed decisions or actions may adversely affect the exercise of treaty or Aboriginal rights of the First Nation to determine accommodation measures that may be appropriate to substantially address those effects;
- (f) Manitoba to make decisions in a clear and certain manner for all parties involved in mineral exploration and development activities in the province of Manitoba; and
- (g) Manitoba to provide clear and predictable permitting and licensing processes for mineral resource projects that fall within the First Nation's traditional territory recognizing that consultation is a critical step in the process.

2.02 The Parties acknowledge that the relationship fostered through implementation of this Protocol may lead to future discussions and processes that relate to the development of a shared management model for mineral exploration and development.

SECTION 3.00 - BENEFIT SHARING

3.01 Manitoba recognizes the importance of establishing a new fiscal relationship with First Nations to support communities to advance reconciliation.

3.02 Manitoba is committed to facilitating trilateral discussions and arrangements with the Federal government and First Nations, with respect to resource revenue sharing, increasing First Nations fiscal powers through the creation and implementation of tools that support direct financial benefits to First Nations, and other mechanisms that will accommodate First Nations on mineral development projects within their traditional territories.

SECTION 4.00 - TRADITIONAL TERRITORY

- 4.01 The First Nation's traditional territory means the area described in the map attached as Schedule "A" to this Protocol.**
- 4.02 The boundaries of the First Nation's traditional territory may be amended from time to time by agreement, in writing, by the Parties.**
- 4.03 The Parties agree that the traditional territories of other Indigenous communities may overlap or fall within the First Nation's traditional territory and that any terms or designations in this Protocol do not affect the treaty or Aboriginal rights of other Indigenous communities nor the Crown's duty to consult with those other Indigenous communities.**

SECTION 5.00 - PRINCIPLES

5.01 The Parties agree to conduct the consultation process in accordance with these principles:

- (a) The Parties will participate in consultations in good faith.
- (b) The consultation process will be in keeping with the honour of the Crown.
- (c) The consultation process will apply to inform decision-making by the Crown at various stages of the consultation process.
- (d) During the consultation process, the Parties will exchange relevant information concerning the proposed decision or action and possible effects on the exercise of treaty or Aboriginal rights.
- (e) Manitoba will arrange for the proponents of mineral exploration and development activities to be involved in the consultation processes to provide information and to assist in developing accommodation measures to minimize adverse effects as appropriate.
- (f) Manitoba will engage in a considered, meaningful two-way dialogue with the First Nation in order to understand concerns about potential adverse effects on the exercise of treaty or Aboriginal rights and seek ways to substantially address the reasonable concerns raised.
- (g) The First Nation will be given a reasonable amount of time to permit it to prepare its views, information and concerns as a result of notifications or raised at meetings or at community consultation sessions.
- (h) In the consultation process interpretation services will be provided, where required, that will enable traditional harvesters and members of the First Nation to receive and share information, including the sharing of Indigenous Knowledge by Elders, in their preferred language.

- (i) Manitoba will fully consider any views or concerns expressed by the First Nation in respect of the information and issues raised by the First Nation at consultation meetings or at community sessions.
- (j) The consultation process will be based on mutual respect taking into account the different values, belief systems, interests, perspectives and cultural understandings held by each party.

SECTION 6.00 - INFORMATION SHARING

- 6.01 Manitoba will provide notice to the First Nation of any mineral exploration or development activities proposed to be conducted within the First Nation's traditional territory, as appropriate to enable any necessary consultation to take place between Manitoba and the First Nation.**
- 6.02 Manitoba will provide the First Nation with enough information for the First Nation to be aware of and to understand the proposed mineral exploration or development activities.**
- 6.03 The Parties will work to provide information that is in a manageable, accessible and understandable format.**

SECTION 7.00 - COORDINATORS

- 7.01 The Parties recognize that the coordination of sharing information and the coordination of consultation processes will be aided by the identification of a single representative as a point of contact and liaison.**
- 7.02 The First Nation will provide for a community consultation coordinator, who will act as the principal point of contact with the Manitoba coordinator for the purposes of sharing information and for coordinating consultation processes and ongoing communications between the Parties.**
- 7.03 Manitoba will provide for a Manitoba coordinator, who will act as the principal point of contact with the First Nation coordinator for the purposes of sharing information and coordinating the consultation processes and ongoing communications between the Parties.**
- 7.04 The Parties are committed to pursuing discussions about funding for the community consultation coordinator position to establish ongoing consultation coordination, which includes information sharing, coordination of community consultation meetings, and the creation of expertise within the community to review and provide advice on mineral dispositions, applications, consultation processes and project information for all levels of mineral exploration and development activities throughout all phases of consultation.**

SECTION 8.00 - CONSULTATION

- 8.01** The Parties acknowledge that consultation falls on a spectrum, with its depth and scope varying depending on the strength of the established or asserted right, the nature of the activity, and its potential to adversely affect the exercise of the established or asserted right.
- 8.02** This Protocol is intended to support the development of and implementation of finalized consultation plans that will guide consultation processes in respect of mineral exploration and development activities. It is to address and facilitate the exercise of the respective duties and obligations of Manitoba and the First Nation in respect of consultation.
- 8.03** Attached as Schedule “B” to this Protocol is a table of activities that is expected in all phases of the mining cycle.
- 8.04** Attached as Schedule “C” to this Protocol is a matrix and the level of consultation and process guide the Parties agree as being appropriate and desired relative to the activities set out in Schedule “B”.

SECTION 9.00 - NON-DEROGATION

- 9.01** Nothing in this Protocol shall be construed so as to abrogate or derogate from the existing Aboriginal or Treaty rights of the Aboriginal peoples of Canada, as recognized and affirmed by section 35 of the *Constitution Act, 1982*.

SECTION 10.00 - NOTICE

- 10.01** Any notice or other communication to the First Nation under this Protocol shall be in writing and shall be sent to:
XXX
- 10.02** Any notice or other communication to Manitoba under this Protocol shall be in writing and shall be sent to:
XXX

SECTION 11.00 - GENERAL

- 11.01** This Protocol may be amended by the Parties in writing.
- 11.02** This Protocol may not be assigned by any party.

The authorized representatives of the Parties have signed this Protocol on the dates noted below:

**FOR: HER MAJESTY THE QUEEN IN RIGHT
OF THE PROVINCE OF MANITOBA**

Witness

Date: _____

FOR: [INSERT NAME OF COMMUNITY]

Witness

[Chief]

Witness

[Councillor]

Witness

[Councillor]

Witness

[Councillor]

Witness

[Councillor]

This is Schedule “A” to the Mineral Exploration and Development Consultation Protocol between Manitoba and the First Nation dated _____, 20__.

TRADITIONAL TERRITORY MAP

[INSERT MAP]

This is Schedule “B” to the Mineral Exploration and Development Consultation Protocol between Manitoba and the First Nation dated _____, 20__.

This table provides examples of the types of activities to be expected in all phases of the mining cycle and includes on-the-ground activities that require a claim or disposition (licence or permit).

EXPLORATION		MINING
Early Exploration	Advanced Exploration	Development / Production / Closure
<ul style="list-style-type: none"> • Prospecting and claim staking • Grid line • Geophysical or Geochemical survey • Temporary camp • Channel sampling • Initial trenching • Drilling from existing pads or roads/trails • Trenching, stripping and power washing in previously trenched or disturbed areas 	<ul style="list-style-type: none"> • Trenching, stripping and power washing in new areas or greater than 1.0 hectare • New drill pads greater than 40 feet • Access development greater than 5km • Non-temporary camp • Pilot plant 	<ul style="list-style-type: none"> • Drilling & blasting • Construction – Mine Infrastructure • Tailings management • Water source required • Process water supply requirement • Mine closure and reclamation plans

This table is for illustrative purposes only and is not exhaustive of all mining activities. The parties recognize that there are other activities, including, but not limited to water use, sewer, hydro, roads, drainage, tailing ponds, operations and maintenance and other studies and approvals. Approvals for these activities often occur simultaneously and consultation will be coordinated where possible.

This is Schedule “C” to the Mineral Exploration and Development Consultation Protocol between Manitoba and the First Nation dated _____, 20__.

The following Crown-Aboriginal Consultation Matrix and Process Guide will assist Manitoba and the First Nation in determining the level of consultation according to the scale of potential impact and disturbance (sensitivity), and the type of proposed activity of mineral exploration or development.

Level of Consultation	Category of Activity	Mineral Claim/Disposition/Outcome
Potential Adverse Effect on the Decision or Action on the exercise of Aboriginal or Treaty Rights <i>(Low, Moderate, High)</i>		
Level 1 (Low to Moderate) Short-term disturbance to resource use/availability with potentially minimal adverse effect.	Early Exploration Issuance of a Mineral Exploration Licence (no impact)	Mineral exploration licence (MEL)
Level 2 (Moderate to High) Short-term disturbance to resource use/availability with potentially moderate/significant adverse effect Or Long-term disturbance to resource use/availability with potentially minimal/moderate adverse effect.	Advanced exploration	Work permit
Level 3 (High) Long term or permanent disturbance to resource use/availability with potentially significant adverse effect.	Mine Development/ Production/ Closure Mine complex development and mine production Mine closure and rehabilitation	Work permit Environment Act Approvals (Licences) (Project could require a federal and/or provincial environmental approval-harmonization of federal and provincial EA approval processes is highly recommended) Mineral Lease or Surface Lease
NOTE: Potential Impacts at all levels are determined through the Initial Assessment.		

Informational Notification

General Process for Notification: A letter is sent to the chief and council and/or an authorized consultation coordinator with relevant information, proposed activity and notification of claim.

Potential adverse effect/disturbance: NONE

Proposed Timeframe for Community Response: This is concurrent with the registration of claim.

Crown Decision Timeframe: The Crown must wait 30 days from staking, before the claim can be issued, as per regulation. Notification of issuance of the claim is sent to First Nations in the Community Interest Zone.

Level 1 Consultation

General Process for Level 1 Consultation: Consultation will be undertaken by letter, which provides necessary information about the proposed decision and/or activity. The proponent is to advise and engage the community on proposed project plans.

Follow up is required.

Proposed Timeframe for Community Response: A response to initial letter is requested within 45 calendar days. The department will provide follow-up by telephone or email after 10 days without receiving a response. The department may consider no response as though there are no concerns.

Community Response: Communities provide concerns, if any, in writing to the department.

Potential adverse effect/disturbance: There is a short-term disturbance to resource use and availability, with potential minimal adverse effect.

Crown Decision Timeframe: A decision is anticipated within 60 calendar days. A letter is sent to the community reporting the Crown's decision.

Level 2 Consultation

General Process for Level 2 Consultation: An initial consultation letter is sent to the community, which provides necessary information with an offer for one to two consultation meetings to be held to discuss the proposed activity and to inform the decision on the application for the disposition. Application for the disposition could include possible special conditions imposed on the disposition, based on the information provided through the consultation process.

Follow up is required.

Potential adverse effect/disturbance: There is a short-term disturbance to resource use and availability, with a potentially moderate to significant adverse effect, or a long-term disturbance to resource use and availability, with a potentially minimal adverse effect.

Proposed Timeframe for Community Response: A response is requested within 45 calendar days.

Community Response: This requires a formal response from the community to initiate the workplan and formalize consultation.

Crown Decision Timeframe: Decision anticipated within 90 days

A letter is sent to the community reporting the Crown decision.

Level 3 Consultation

General Process for Consultation: The process is department facilitated between the First Nation and the company. Number of consultation meetings to be determined through the consultation workplan.

Follow up is required.

Potential Impact: There is a long-term or permanent disturbance to resource use and availability, with a potentially adverse effect.

(The presence, duration, size and intensity of exploration activities, near or at climax, may require continuous presence on the land.)

Proposed Timeframe for Community Response: A response is required within 60 calendar days.

Reasonable timeframes need to be established for decisions. Mine production involves multiple levels of approval and the involvement of multiple departments and provincial and federal Environmental Act processes and licences.

Under the Mines and Minerals Act, all proposed mine developments require mine closure and rehabilitation plans, which are included in the consultation process for mine development and required approvals.

Community Response: This requires a formal response from the community to initiate the workplan and formalize consultation.

Crown Decision Timeframe: Decision anticipated to exceed 90 days

A letter is sent to the community reporting the Crown decision.

***Timeframes, as outlined above for community response as part of the Crown-Aboriginal Consultation process, are recommended as reasonable timeframes to be established. It is recognized that there may be exceptional circumstances that may require extending the timeframes, and these circumstances will be considered on a case-by-case basis.