

**AGREEMENT OF SETTLEMENT AND COMPROMISE TO RESOLVE THE
AKWESASNE MOHAWK TITLE AND TRESPASS CLAIMS
WITH RESPECT TO LANDS SITUATED IN THE STATE OF NEW YORK**

Subject to the authorization and ratification by an Act of Congress, this Agreement of Compromise and Settlement (“Agreement”) is made this 1st day of February, 2005, between the Akwesasne Mohawks and the State of New York, *et al.*

I. Understanding

1. It is the understanding of the State of New York (the “State”) and its political subdivisions, including, without limitation, the counties of St. Lawrence and Franklin (“Counties”), and the Power Authority of the State of New York (“Power Authority”) (collectively referred to herein as the “State Parties”), and the tribal plaintiffs in Civil Action Nos. 82-CV-783, 82-CV-1114, and 89-CV-829 (the “Akwesasne Mohawks”) (collectively, the “Parties”) that it would be mutually beneficial to resolve all Akwesasne Mohawk land claims within New York State.

2. All references to state or federal law shall mean the laws as they exist and are interpreted by state or federal courts from time to time and shall include all future changes, amendments and revisions thereto unless otherwise stated.

II. Scope of the Agreement:

A. Release

Except as otherwise provided in this settlement agreement, the Akwesasne Mohawks hereby release and discharge the State, its political subdivisions, its citizens, inhabitants, the Power Authority and any successors in interest, of and from any claim which could be brought under federal or state law at the time of the execution of this settlement agreement to land or interest in land in New York State.

1. Nothing in this agreement shall alter or diminish any treaty, statutory, contractual or

aboriginal hunting, harvesting, fishing, trapping and/or gathering rights that the Akwesasne Mohawks may have; provided, however, that nothing in this settlement agreement shall be construed as recognizing the existence of, creating or conferring any such rights.

B. Monetary Settlement

1. The State shall pay the sum of thirty million dollars, to be paid in five equal annual payments commencing January 1, 2008. Further, the Parties agree that the Power Authority shall pay the sum of two million dollars per year for thirty-five years commencing within ninety days of the effective date of this settlement agreement. The payments shall be exempt from federal or state taxation.

2. None of the payments, funds, assets or distributions set forth herein and none of the interest earned or income received on the same shall be subject to levy, execution, forfeiture, garnishment, lien, encumbrance, or seizure. None of the payments, funds, assets or distributions set forth herein and none of the interest earned or income received on the same shall at any time be used as a basis for denying or reducing funds to the Akwesasne Mohawks under any Federal, State or local program nor shall the same be deemed to be taxable, and such transfers shall not be deemed taxable events.

C. Land

1. Upon the effective date of the settlement, the Akwesasne Mohawks may acquire the following lands by purchase of parcels from willing sellers at fair market value or by voluntary transfer:

- a. Land located in the Hogansburg-Bombay Triangle, as shown as "A" on the annexed map.
- b. Up to 1300 acres of land located in the area in the Town of Fort Covington marked as "B" on the annexed map. The Akwesasne Mohawks may acquire additional lands beyond the 1300 acres in area "B" either by purchase from willing sellers or by transfer from Akwesasne Mohawks or by voluntary transfer, provided, however, that before any such acquisition, the

Akwesasne Mohawks will obtain the prior written concurrence of both the County and Town in which such land is located, such concurrence which shall not be unreasonably withheld. When such land is acquired, it shall have the same status and be subject to administration by the Akwesasne Mohawks as set forth in C.5 of this settlement agreement.

c. Land located in the areas in the Town of Brasher marked as “C” on the annexed map, excepting the land on which the Power Authority transmission lines are located.

d. Land located in the area in the Town of Massena marked as “D” on the attached map, up to the Racquette River.

2. The Akwesasne Mohawks will be notified of all lands in the areas mentioned above which may come up for sale or auction as a result of a foreclosure by the State or County or other political subdivisions and shall be granted status as an “interested party” pursuant to section 1126 of the Real Property Tax Law of the State of New York.

Further, the Akwesasne Mohawks will be given a right of first refusal to purchase, at the appraisal value (as set forth in the most recent tax assessment), lands in the areas mentioned above that have passed to the state by escheat pursuant to the Abandoned Property Law of the State of New York.

3. In addition, the Power Authority shall convey Long Sault and Croil Islands above the normal average surface elevation, defined as elevation 241 feet (United States Lake Survey 1935), as depicted in the attached maps, to the Akwesasne Mohawks; provided, however, that prior to such conveyance those islands shall have been removed from the Federal Energy Regulatory Commission (“FERC”) boundary of the Power Authority’s St. Lawrence FDR Project (“Project”), which removal shall be provided for by the federal legislation ratifying this settlement agreement. The Akwesasne Mohawks shall grant to the Power Authority a flooding easement [the terms of which will be agreed to by the Power Authority and the Akwesasne

Mohawks and attached as an Exhibit to this settlement agreement] up to elevation 250 feet for potential high water levels. The Power Authority and the Akwesasne Mohawks shall identify mutually agreeable sites on Barnhart Island and/or within Project boundaries to locate boat launching and marina docking facilities for development by the Akwesasne Mohawks to facilitate access to Croil and Long Sault Islands. The Power Authority shall issue permits to the Akwesasne Mohawks for the construction and maintenance of such facilities upon receipt of any necessary approval by FERC and any other appropriate federal or state agency. The Akwesasne Mohawks agree that they will not use or develop the Islands in a manner that interferes with the operation of the St. Lawrence Seaway or the Project.

4. The Power Authority shall also convey to the Akwesasne Mohawks a 215-acre parcel on Massena Point as depicted in the attached map; provided, however, that prior to such conveyance such parcel shall have been removed from the FERC boundary of the Project, which removal shall be provided for by the federal legislation ratifying this settlement agreement. The Akwesasne Mohawks shall grant to the Power Authority a flooding easement [the terms of which will be agreed to by the Power Authority and the Akwesasne Mohawks and attached as an Exhibit to this settlement agreement] up to elevation 183 ft. for potential high water levels. The Power Authority shall maintain at its own expense and provide for the Akwesasne Mohawks access to Massena Point from the existing roads controlled by the Power Authority within the new Project boundary.

5. Except as otherwise provided herein, when such lands are purchased from willing sellers or conveyed by the Power Authority or by the county of St. Lawrence or Franklin to the Akwesasne Mohawks, or conveyed to the Akwesasne Mohawks by voluntary transfer, in accordance with the provisions of this Section C, they shall become Indian reservation land and be considered Indian country as a matter of federal law, will be subject to federal restrictions against alienation and will enjoy all of the rights and immunities, specifically including but not

limited to tax immunities, attributed to Indian Reservation lands and Indian country. Lands that are conveyed to or acquired by the Akwesasne Mohawks will be held and administered in the same manner as the current reservation lands, and according to an agreement to be negotiated among the Akwesasne Mohawks.

6. Lands acquired, whether individually or collectively, by the Akwesasne Mohawks outside of the areas described in the preceding paragraphs of this section shall be held in fee by the Akwesasne Mohawks unless acquired under Part 151 or other federal legal procedures.

7. The Office of Parks, Recreation and Historic Preservation shall waive any vehicle use fee for admission by any Akwesasne Mohawk to Robert Moses State Park.

8. The Akwesasne Mohawks will have the opportunity to bid for the purchase of lands on Barnhart Island (such as parks, surplus lands, etc.), if the State should decide to sell it.

9. The State agrees, within 60 days of the effective date of this settlement agreement, to use its best efforts to provide the Akwesasne Mohawks with a list of public and cultural facilities, including churches, cemeteries and parks (collectively "Cultural/Recreation Areas") that may become landlocked by lands which gain reservation status and/or are otherwise conveyed as a result of this settlement. The general public shall continue to have access to all such Cultural/Recreation Areas.

10. The State agrees, within 60 days of the effective date of this settlement agreement to use its best efforts to provide the Akwesasne Mohawks with an inventory listing of utility and highway easements and rights of way on the conveyed lands. The Parties agree that all valid utility, railroad and highway easements and rights of way shall continue to be valid and of full force and effect, provided that any rights to future payments or benefits to which the original grantor of the easement(s) or right(s) of way would otherwise be entitled to inures to the Akwesasne Mohawks, as successors to such grantors.

11. Akwesasne Mohawks shall continue to have access over publicly-owned land to public and cultural facilities located on publicly-owned lands off the reservation, such as churches and cemeteries and other spiritual and cultural sites that are on or landlocked by non-Reservation lands. Provided, however, that nothing in this agreement shall limit, abridge or alter the Akwesasne Mohawks ability to access such properties on private lands, pursuant to agreement with the landowner(s).

12. The Akwesasne Mohawks currently use standard building codes that are at least as stringent as those contained in the International Building Codes when constructing public facilities. The Akwesasne Mohawks agree to continue to utilize these standards, as amended from time to time.

13. The Akwesasne Mohawks may adopt and enforce environmental regulations on the Reservation at least as strict as those contained in federal law and regulations (which federal law and regulations shall continue to apply to the same extent as on any other land that is Indian country). If the Akwesasne Mohawks adopt and enforce on the Reservation more stringent environmental laws and regulations, then such more stringent regulations shall apply only on the Reservation and not to non-Reservation lands.

14. In making decisions as to the development and use of reservation land, the Akwesasne Mohawks shall give consideration to (i) the protection of established or planned residential areas from any use or development that would adversely affect residential living outside the Reservation, and (ii) protection of the health, safety and welfare of the communities contiguous to the Reservation. Prior to developing or otherwise altering the existing use of land within five hundred feet of the Reservation boundary, the Akwesasne Mohawks shall consult with local officials about the potential effect of such use on the adjacent community.

15. In making decisions as to the development and use of non-reservation land, local officials will give consideration to (i) the protection of established or planned residential areas from any

use or development that would adversely affect residential living within the Reservation, and (ii) protection of the health, safety and welfare of the Reservation community adjacent to the Reservation. Prior to developing or otherwise altering the existing use of land within five hundred [500] feet of the Reservation boundary, the local officials will consult with Mohawk officials about the potential effect of such use on the Reservation.

D. Local Government Issues

1. Land that gains reservation status as a result of this settlement shall be exempt from local real property taxes. All such land within the areas marked as “A”, “B”, “C”, or “D” on the attached map shall remain subject to local real property taxes and other laws effective within the State until they are acquired by the Akwesasne Mohawks by purchase from a willing seller or by voluntary transfer to the Akwesasne Mohawks.

2. Beginning January 1, 2008, and for so long as prescribed by the state settlement legislation, the state shall annually pay the sum of two million dollars (which sum, as compounded, shall be increased by two percent each year, beginning with the second annual payment made hereunder) to the counties of St. Lawrence and Franklin to be distributed pursuant to an agreement reached between the state, the counties of St. Lawrence and Franklin and the towns therein that include lands that may be acquired by the Akwesasne Mohawks under this Agreement.

3. In the event that real property owned by the Akwesasne Mohawks, or part or individual member thereof, as of the effective date of this act has been removed from the real property tax rolls of either the county of St. Lawrence or Franklin, or otherwise resulted in unpaid real property taxes, then the State shall pay to such counties, in ten equal annual installments beginning January 1, 2008, such amounts as are necessary to reimburse the counties and the affected towns, villages and other taxing districts in such counties for the principal amount (as

verified by the state office of real property services) of any such unpaid real property taxes exclusive of any interest or penalties imposed thereon; provided, however, that, as soon as practicable and upon receipt of the first annual payment of monies to the counties, the local governments shall consent to the dismissal with prejudice of all foreclosure actions brought against lands owned by Akwesasne Mohawks for failure to pay real property tax and all taxes owed shall be forgiven, and further, if such foreclosure has occurred and title has passed to Franklin and/or St. Lawrence County, then the county or counties shall transfer to the Akwesasne Mohawks the title to any lands which have been transferred by a member or members to the Akwesasne Mohawks. Additionally, in the event that real property acquired as a result of this Agreement by the Akwesasne Mohawks shall be removed from the real property tax rolls of either the county of St. Lawrence or Franklin, then the State shall pay to the counties such amounts as are necessary to hold each of the counties of St. Lawrence and Franklin and their affected towns, villages and other taxing districts harmless against any losses in real property taxes (based upon the assessed value at the time of acquisition of such land by the Akwesasne Mohawks and the tax rate or rates applicable from time to time, as verified by the state office of real property services) resulting from such removal of such real property from the county tax base.

4. Local governments shall be eligible to receive all benefits provided by the United States to local governments impacted by Indian trust lands in other Indian land claim settlements, including but not limited to payments in lieu of real property taxes for parcels removed from the local tax rolls as a result of the settlement.

E. New York Power Authority Issues

1. The Power Authority shall make available within 90 days after the effective date of this settlement up to nine (9) megawatts (MW) of power and energy for sale to the power corporation established by the Akwesasne Mohawks which power will be resold for the sole

purpose of serving, without mark-up, the load of the Akwesasne Mohawks Reservation. This power shall be available to the Akwesasne Mohawks at the Power Authority's lowest rate for St. Lawrence-FDR Project power and energy (i.e., the rate charged to preference power customers). The Power Authority shall deliver and sell the power and associated energy to the Akwesasne Mohawks at the Delivery Point at the Project Switch-Yard. It shall be the Akwesasne Mohawks responsibility to arrange for the transmission and distribution, including all charges imposed by the New York Independent System Operator or any Successor. In order to ensure that this power and energy is made available to the Akwesasne Mohawks beyond the expiration of the current license for the Project, and is binding upon any and all future owners and operators of the Project, the Power Authority shall seek FERC approval of the power sales agreement with the Akwesasne Mohawks pursuant to Section 22 of the Federal Power Act.

2. Nothing in this settlement agreement shall affect or otherwise remove those Mohawk land owners or Mohawk-owned businesses currently on the Massena Electric grid, unless mutually agreed upon.

3. Upon the effective date of this settlement agreement the Akwesasne Mohawks shall: (a) withdraw with prejudice all pending, and refrain from initiating any new, rehearing or reconsideration requests, petitions for judicial review, or any other administrative or judicial challenge to FERC's October 23, 2003, order issuing the Power Authority a new license for the Project, or any subsequent orders on rehearing or reconsideration of that October 23, 2003 order; and (b) participate as a concurring party under Section 106 of the National Historic Preservation Act, with the Power Authority's efforts to develop an Historic Properties Management Plan under the Programmatic Agreement and the new license for the Project.

4. The Parties agree that the conveyance or acquisition of lands described in Section II of this settlement agreement does not entitle the Akwesasne Mohawks or their members to: (a) any interest or right to the license for said Project; (b) any annual charges or other payments relating

to ownership and operation of said Project or (c) any ownership, use, control or jurisdiction over the lands, waters, or operation of said Project

5. In order to ensure that certain provisions of the Federal Power Act regarding federal reservations are not implicated at the Project, the Parties agree that the federal legislation ratifying this settlement agreement shall expressly: (a) direct FERC to permanently remove from the Project boundary all lands described in Section II of this settlement agreement; (b) direct FERC to remove Article 418 from the Project's license.

F. Education

Mohawks enrolled at Akwesasne who qualify for admission to any New York State institution of higher learning shall, upon their timely application for admission, be entitled to enroll in and attend such institution without payment of tuition or mandatory fees. The benefits provided to any Mohawk under this section shall not at any time affect the eligibility of the Akwesasne Mohawks or be used as a basis for denying or reducing funds to the Akwesasne Mohawks under any Federal, State, or local program. Benefits provided under this section may be used, where appropriate, as matching funds for Federal grants or loans.

G. Settlement Legislation

The land claim settlement described herein shall take effect upon the enactment of such federal and state legislation as is mutually acceptable to the Parties to effectuate the terms of this settlement agreement.

H. Dispute Resolution

In the event of any dispute, claim, question, or disagreement (collectively referred to hereafter as "claim") between the Akwesasne Mohawks and any of the State Parties, arising from or relating to this Settlement Agreement, or any of the terms therein, the Federal Settlement Legislation, or the State Settlement Legislation, the Akwesasne Mohawks and the State Parties shall use their best efforts to settle the claim. To this effect, any of the Akwesasne Mohawks or

any of the State Parties may provide written notice of a claim to the other and shall then meet within fourteen (14) days to negotiate in good faith and attempt to reach a just and equitable solution satisfactory to each party to the claim. If such a solution is not achieved within a period of thirty (30) days after such meeting, or the parties to the claim fail to meet and thirty (30) days pass after the written notice of a claim is received then, upon notice by the unsatisfied party to the other parties to the claim, the claim shall be finally settled by arbitration.

The notice shall specify with particularity the nature of the claim, the particular provision of this Settlement Agreement, or any of the terms therein, the Federal Settlement Legislation, or the State Settlement Legislation at issue and the proposed relief sought by the party demanding arbitration.

If the Akwesasne Mohawks and the State Parties so agree, a single arbitrator may be selected. In the event of a disagreement as to the arbitrator to be selected, each party to the claim shall select one arbitrator and the two arbitrators shall select the third. The arbitrator(s) shall be selected within (30) days of the notice of arbitration set forth above. Arbitration under this Section shall be conducted in accordance with the International Rules of the American Arbitration Association.

The cost of the arbitration shall be shared equally by the parties to the claim, but each party shall bear its own costs and attorneys' fees associated with its participation in the arbitration. All arbitration proceedings shall be conducted to expedite resolution of the claim and minimize cost to the participants.

Among other things, the federal legislation ratifying this settlement agreement shall provide for resolution of disputes between or among the Parties by arbitration, with arbitration decisions to be subject to enforcement and/or vacatur in the United States District Court in accordance with the Federal Arbitration Act, 9 U.S.C. §1, et seq. and provide for federal court jurisdiction over actions brought to enforce or review decisions issued in such arbitration proceedings. Any

Party may bring an action in the United States District Court of the Northern District of New York to compel arbitration under the arbitration provisions of this Settlement Agreement, to confirm, vacate, modify or correct a decision of the arbitrator in any arbitration provided for by this Settlement Agreement, or to enforce any judgment entered by the court with respect to any such arbitration, and the Parties each hereby expressly consent to the jurisdiction and venue in such court over such actions. Such actions in the District Court shall be governed by the Federal Arbitration Act, 9 U.S.C. § 1 et seq. In the event the United States District Court issues a final determination that it lacks jurisdiction over any such action, then any Party may bring such action in the Supreme Court of the State of New York and any such action will be governed by the provisions of Article 75 of the New York CPLR.

The Parties agree to waive their respective sovereign immunity solely and exclusively for the strictly limited purpose of arbitration brought under the arbitration provisions of this Settlement Agreement and court actions with respect thereto and for no other purpose. It is further understood and agreed that the Akwesasne Mohawks specifically and expressly waive their tribal sovereign immunity from suit with respect to such arbitrations and court actions and the State specifically and expressly waives its sovereign immunity, including its 11th Amendment immunity, from suit with respect to such arbitrations and court actions. The Akwesasne Mohawks and State Parties shall also waive the defenses of exhaustion of administrative or tribal remedies with respect to any such arbitrations or court actions.

I. Execution in Multiple Counterparts

This Agreement may be executed and delivered in one or more counterparts, each of which shall be deemed an original, and all of which taken together shall constitute one and the same instrument. The Parties agree that an executed counterpart of this Agreement transmitted by facsimile shall be deemed an original. Any such counterpart signature pages may be attached to the body of this Agreement to form one complete integrated whole.

By signing this Agreement, the signatories represent that they are authorized to execute this Agreement on behalf of the Parties, respectively.

IN WITNESS WHEREOF, the parties have hereunto set their hands and seals.

St. Regis Mohawk Tribal Council

Mohawk Council of Akwesasne

Mohawk Nation Council of Chiefs

Governor of the State of New York

Power Authority of the State of New York

County of St. Lawrence

County of Franklin
