

## PERFORMANCE AND ACCOUNTABILITY AGREEMENT

THIS AGREEMENT made the 13 day of September, 2006.

BETWEEN:

**HER MAJESTY THE QUEEN IN RIGHT OF THE PROVINCE OF BRITISH COLUMBIA**, represented by the Minister of Economic Development

(the "Province")

AND:

**VANCOUVER ORGANIZING COMMITTEE FOR THE 2010 OLYMPIC AND PARALYMPIC WINTER GAMES**, a not-for-profit corporation incorporated under Part II of the Canada Corporations Act (Corporation #4193424), and having an office at 3585 Graveley Street  
Vancouver, BC V5K 5J5

("VANOC")

WHEREAS:

- A. The Province has committed in the MPA to share equally with the Government of Canada ("Canada") in the capital costs of sport and event venues for the Games and, under the MPA, the Province and Canada have committed to contribute \$235 million each to the venue capital budget of \$470 million, excluding contributions for Olympic Live Site Regional Centres;
- B. VANOC has prepared an updated estimate of the expected venue capital budget required to develop, finance and construct the venue facilities required to host the Games, totaling \$580 million, excluding contributions for Olympic Live Site Regional Centres, and has presented a request to the Province and Canada to commit to a further contribution of \$55 million each to the updated venue capital budget of \$580 million;
- C. The Province has reviewed VANOC's request and has retained a consultant to assist in that review and to make recommendations where appropriate, on the venue capital budget and management of Games venue development;

- D. In fulfillment of the Province's commitment in Recital A above, the Province wishes to confirm its agreement to make a further contribution of up to \$55 million to the venue capital budget, providing that an equal contribution is made by Canada; and
- E. In acknowledgement of the Province's Additional Contribution, VANOC wishes to reaffirm its commitment to (i) the provisions of the MPA, (ii) provide further assurance to the Province of expected performance, accountability and transparency that will lead to successful completion of Games venues within the updated venue capital budget and completion schedule, and (iii) the successful hosting of the Games on the terms and conditions hereinafter set forth.

NOW THEREFORE in consideration of the premises and agreements set out in this Agreement, and for other good and valuable consideration (the receipt and sufficiency of which is hereby acknowledged by the parties), the parties agree as follows.

#### **DEFINITIONS**

1.01 In this Agreement and the Recitals to this Agreement:

- (a) "Games" means the XXI Olympic Winter Games and X Paralympic Winter Games, each to be held in and around Vancouver in the year 2010;
- (b) "Additional Contribution" means any payment up to a maximum of \$55 million that may be made by the Province to VANOC pursuant to this Agreement;
- (c) "Capital Advisory Committee" means a committee of at least four persons with expertise in complex, large-scale construction projects, who, at the request of VANOC's Board of Directors, Chief Executive Officer and Executive Vice-President of Construction will provide advice on the management of Games venue construction;
- (d) "MPA" means the agreement entitled "Multiparty Agreement for the 2010 Winter Olympic and Paralympic Games" dated for reference November 14, 2002 among the Province, the Government of Canada, the City of Vancouver, the Resort Municipality of Whistler, the Canadian Olympic Committee, the Canadian Paralympic Committee and the Vancouver 2010 Bid Corporation (whose rights

and obligations under the MPA were assigned to and assumed by VANOC following VANOC's execution of the Joinder Agreement attached to the MPA as Annex J);

- (e) "PDRs" means the project definition reports that lay out in a comprehensive way, the scope of the project to be delivered in a form that is generally accepted in project management field; and
- (f) "Term" means the term of this Agreement described in section 2.01.

#### **TERM**

- 2.01 Notwithstanding the actual date of execution and delivery of this Agreement, the term of this Agreement will commence on June 14, 2006 and will end on the earlier of June 30, 2012 or the windup of VANOC.

#### **CONTRIBUTION**

- 3.01 The Province will disburse all or part of the Additional Contribution to VANOC in a manner and in accordance with a schedule determined by the Province after the Province has approved the report and plan described in section 4.01(d).
- 3.02 VANOC agrees that the Province, in its sole discretion, may:
  - (a) withhold or delay all or part of the Additional Contribution if VANOC fails to comply with this Agreement; and
  - (b) waive its right to withhold or delay under subsection (a) of this section.
- 3.03 Notwithstanding any other provision of this Agreement, in no event will the Province be or become obligated to pay to VANOC pursuant to this Agreement, a cumulative amount exceeding \$55 million, excluding contributions for Olympic Live Site Regional Centres, for the capital costs of sport and event venues for the Games.
- 3.04 VANOC acknowledges that it is the intention of the Province to include in any future contribution agreements regarding the capital costs of sport and event venues contemplated under section 18.1 (a) of the MPA those provisions set out in section 4.01 that, in the sole discretion of the Province, are applicable.

**OBLIGATIONS OF VANOC**

- 4.01 In recognition of any payments of the Additional Contribution by the Province to VANOC under this Agreement, VANOC agrees that it will:
- (a) comply with the provisions of this Agreement;
  - (b) comply with those provisions of the MPA that are applicable to VANOC;
  - (c) establish a Capital Advisory Committee by October 13, 2006;
  - (d) provide to the Province, for its prior written approval, an updated report on the total capital costs of sport and event venues for the Games, including completed PDRs and risk management plans for all Games venues by October 31, 2006, such reports and plans not to contemplate expenditures exceeding \$580 million;
  - (e) consider the recommendations in the report of the Province's consultant retained to review the venue capital construction program, a copy of which VANOC hereby acknowledges having received, and where appropriate, incorporate those recommendations in the completion of the reports and plans in 4.01(d) as well as the next update to the Business Plan as contemplated in the MPA;
  - (f) continue to seek scope changes in venues, or alternative design/delivery options, that reduce costs while meeting International Olympic Committee requirements and post-Games legacy potential;
  - (g) under the authority of VANOC's Board of Directors, acting on the recommendations of VANOC's Finance Committee, establish and administer, a centralized capital contingency allocation for the total \$580 million venue construction budget, and maintain minimum contingency allocation balances as set out in the attached Schedule "A";
  - (h) obtain prior written approval of the Province's minister responsible for the Games of changes to the allocations or projected allocations from the centralized capital contingency allocation exceeding the amounts shown in Schedule "A", by providing to the minister responsible for the Games a plan that demonstrates how VANOC

will achieve its Games venue capital construction program within schedule deadlines and within the venue construction budget of \$580 million;

- (i) transfer all budget reductions or savings achieved by VANOC for any individual venue through scope changes or other actions to the centralized capital contingency allocation before any further commitments may be made against those reductions or savings;
- (j) provide to the Province quarterly reports, beginning October 31, 2006 of construction progress, period-to-date capital spending, forecast cost and schedule to completion for each individual Games venues, risk and mitigation strategies, and status and forecast use of the VANOC centralized capital contingency allocation;
- (k) work together with the Province in the negotiation of any outstanding venue agreements and any amendments to existing venue agreements;
- (l) submit to the minister responsible for the Games for approval draft agreements and amendments , as well as final executed copies, of venue agreements and, at the request of the Province, any related construction or venue contribution agreements between VANOC and a third party;
- (m) ensure that VANOC's venue management and construction team is appropriately staffed with experienced project managers, and maintain a direct reporting relationship between VANOC's new Executive Vice President of Construction and VANOC's Chief Executive Officer; and
- (n) make publicly available by October 31, 2006, information on VANOC's procurement policies and practices, and initiate a plan to ensure that VANOC's procurement practices involving use of the Province's contributions to the venue capital budget are consistent with the policies and best practices of public bodies, including the Province and Canada.

**APPROPRIATION**

- 5.01 Notwithstanding any other provision of this Agreement, the payment of money by the Province to VANOC pursuant to this Agreement is subject to:
- (a) there being sufficient monies available in an appropriation, as defined in the FAA, to enable the Province in any fiscal year or part thereof when any such payment may be required, to make that payment; and
  - (b) Treasury Board, as defined in the FAA, not having controlled or limited, pursuant to the FAA, expenditure under any appropriation referred to in section 5.01(a).

**ASSIGNMENT AND SUBCONTRACTING**

- 6.01 VANOC will not, without the prior written consent of the Province assign, either directly or indirectly, this Agreement or any right of VANOC under this Agreement.

**RELATIONSHIP**

- 7.01 No partnership, joint venture, agency or other legal entity will be created by or will be deemed to be created by this Agreement or any actions of the parties pursuant to this Agreement.

**REPRESENTATIONS AND WARRANTIES**

- 8.01 VANOC represents and warrants to the Province, with the intent that the Province will rely thereon in entering into this Agreement, that
- (a) it has the power and capacity to accept, execute and deliver this Agreement; and
  - (b) this Agreement is binding upon, and enforceable against, VANOC in accordance with its terms.
- 8.02 All statements contained in any certificate or other document delivered by or on behalf of VANOC to the Province under, or in connection with, this

Agreement will be deemed to be representations and warranties by VANOC under this Agreement.

**NOTICES**

- 9.01 Any notice, document, statement, report, demand or grant desired or required to be given or made pursuant to this Agreement will be in writing and may be given or made if delivered personally to the party to whom it is to be given or made, or if mailed in Canada with postage prepaid addressed to:

if to the Province:

BC Olympic & Paralympic Winter Games Secretariat  
860 - 1095 West Pender Street  
Vancouver, British Columbia  
Canada, V6E 2M6

Attention: President and CEO, BC Olympic & Paralympic Winter Games Secretariat

and if to VANOC:

Vancouver Organizing Committee for the 2010 Olympic and Paralympic Winter Games  
3585 Graveley Street  
Vancouver, British Columbia  
Canada, V5K 5J5

Attention: Chief Executive Officer

- 9.02 Any notice, document, statement, report or demand desired or required to be given or made pursuant to this Agreement may be transmitted by facsimile transmission from either party or the Province and will be conclusively deemed validly given to and received by the intended recipient when so transmitted if transmitted to the following numbers:

If to the Province: (604) 660-3437; and

If to VANOC: (604) 247-4600

- 9.03 Either party may, from time to time, give written notice to the other party of any change of address or facsimile number of the party giving such notice

and after the giving of such notice, the address or facsimile number therein specified will, for purposes of this Agreement be conclusively deemed to be the address or facsimile number of the party giving such notice.

**NON-WAIVER**

- 10.01 No term or condition of this Agreement and no breach by one party of any such term or condition will be deemed to have been waived unless such waiver is in writing signed by the other party.
- 10.02 The written waiver by one party of any breach by the other party of any term or condition of this Agreement will not be deemed a waiver of such term or condition or of any subsequent breach by the other party of the same or any other term or condition of this Agreement.

**ENTIRE AGREEMENT**

- 11.01 This Agreement constitutes the entire agreement between the parties with respect to the subject matter of this Agreement and may be amended by mutual consent.

**FURTHER ACTS AND ASSURANCES**

- 12.01 Each of the parties will, upon the reasonable request of the other, make, do, execute or cause to be made, done or executed all further and other lawful acts, deeds, things, devices, documents, instruments and assurances whatever for the better and absolute performance of the terms and conditions of this Agreement.

**TIME OF ESSENCE**

- 13.01 Time will be of the essence of this Agreement.

**SURVIVAL OF PROVISIONS**

- 14.01 All of the provisions of this Agreement in favour of the Province and all of the rights and remedies of the Province, either at law or in equity, will survive any expiration or sooner termination of this Agreement.



**INTERPRETATION**

- 15.01 This Agreement will be governed by and construed in accordance with the laws of the Province of British Columbia.
- 15.02 The headings appearing in this Agreement have been inserted for reference and as a matter of convenience and in no way define, limit or enlarge the scope of any provision of this Agreement.
- 15.03 Any reference to a statute in this Agreement, whether or not that statute has been defined, includes all regulations at any time made under or pursuant to that statute and amendments to that statute.
- 15.04 This Agreement will be interpreted and construed with such changes in number and gender as the context so requires.
- 15.05 The Schedule to this Agreement is an integral part of this Agreement as if set out at length in the body of this Agreement.
- 15.06 Any discretion or obligation of the Province under this Agreement may be exercised or performed by the Minister of Economic Development, the Deputy Minister of Economic Development, the President and Chief Executive Officer of the BC Olympic & Paralympic Winter Games Secretariat or any person authorized to act for, or on behalf of, any of them.

**SUCCESSORS AND ASSIGNS**

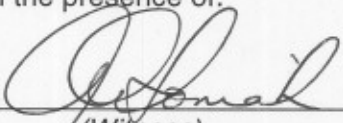
- 16.01 This Agreement will enure to the benefit of and be binding upon VANOC and its successors and permitted assigns and the Province and its assigns.

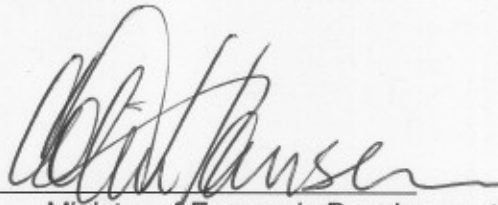
**EXECUTION BY COUNTERPARTS**

17.01 This Agreement may be entered into by each party signing a separate copy of this Agreement (including a photocopy or facsimile copy) and delivering it to the other party by facsimile transmission.


IN WITNESS WHEREOF the parties hereto have executed this Agreement the day and year first above written.

SIGNED on behalf of Her Majesty the Queen in Right of the Province of British Columbia by the Minister of Economic Development in the presence of:

  
\_\_\_\_\_  
(Witness)

  
\_\_\_\_\_  
Minister of Economic Development and Minister Responsible for the 2010 Olympic and Paralympic Winter Games

SIGNED on behalf of the Vancouver Organizing Committee for the 2010 Olympic and Paralympic Winter Games by a duly authorized representative in the presence of:

  
\_\_\_\_\_  
(Witness)

  
\_\_\_\_\_  
For the Vancouver Organizing Committee for the 2010 Olympic and Paralympic Winter Games

**Schedule "A"**  
**Minimum Balances for VANOC Centralized Capital Contingency  
Allocation**

From the VANOC perspective, Games venues are provided in two ways. Venue construction and management may be undertaken directly by VANOC, or through its partners. For example, the Richmond Speed-skating Oval is being procured and managed directly by the City of Richmond and VANOC has capped its contribution so that financial risks of construction lie with the City of Richmond. On the other hand, there are venues where VANOC is responsible directly for construction and management, like the Sliding Centre in Whistler, and VANOC bears the full financial risk of construction.

The following projected balances are based on VANOC's review and analysis of the Venue Development Program and the risks and project schedules related to those venues delivered directly by VANOC. An allocation of \$5.0 million is included for partner delivered venues in case there are changes needed to those venues as a result of International Olympic Committee or sport federation requirements, beyond the specifications already assumed in those partner venue agreements.

1. September 06	\$66.8
2. October 06	\$55.0
3. January 07	\$45.0
4. April 07	\$40.0
5. August 07	\$25.0
6. October 07	\$22.0
7. January 08	\$20.0
8. April 08	\$18.0
9. August 08	\$15.0
10. October 08	\$12.0
11. January 09	\$10.0*

\* Amount is to provided for construction claims after all of the projects are complete and for any capital works that might be required to adjust the venues after they have been tested by athletes (for example, at the Salt Lake City Games, these changes cost about \$500,000)