

**CANADA – MANITOBA**  
**CANADA STRATEGIC INFRASTRUCTURE FUND**  
**AGREEMENT FOR THE EXPANSION OF THE MANITOBA FLOODWAY**

2003-2004 / 2008-2009

**THIS AGREEMENT** is entered in duplicate on

**BETWEEN:** **HER MAJESTY IN RIGHT OF CANADA**, represented by the federal Minister of Industry and Minister responsible for Infrastructure ("Canada")

**AND** **MANITOBA FLOODWAY EXPANSION AUTHORITY INC**, a corporation incorporated under the laws of the Province of Manitoba ("the Authority").

**BACKGROUND TO THIS AGREEMENT**

This is an agreement between the Government of Canada and an agent of the Province of Manitoba, the Manitoba Floodway Expansion Authority Inc., for the expansion of the Manitoba Red River Floodway around the City of Winnipeg to prevent flooding of the City by enhancing various components of the existing flood control works and Floodway diversion system. The project will include the construction and operation of an expanded control channel around the City of Winnipeg, the modification of several bridges and utilities, upgrades to dikes, inlet and outlet structures, and related works, all designed to help Winnipeg withstand a 1-in-700-year flood.

The governments of Canada and Manitoba wish to provide the City of Winnipeg and the Red River Valley with greater flood protection, shielding families and the economy from the devastation of floods similar to the one experienced in 1997. The Floodway Project is designed to respond to the International Joint Commission's study and other concerns for increasing Winnipeg's flood protection infrastructure.

The total project costs for this phase of the project are estimated at \$240 million to which the Government of Canada will contribute up to \$120 million and the Province, through its agent the Manitoba Floodway Expansion Authority Inc., will contribute at least an equal amount.

**WHEREAS** Canada and the Province recognize that investments in public infrastructure are fundamental to the quality of life of Canadians and are necessary for ensuring continued economic growth;

**AND WHEREAS** \$2.6 billion was provided in the 2001 Budget for infrastructure investments in Canada of which \$2 billion was allocated to the *Canada Strategic Infrastructure Fund Act* for large-scale strategic infrastructure projects that emphasize partnerships with any combination of municipal, provincial, territorial governments, as well as the private sector, and an additional \$200 million was set aside in 2003 Budget for national priority infrastructure projects;

**AND WHEREAS** Canada and the Province agree that:

- major investments to expand the Manitoba Red River Floodway (the "Floodway") will enhance flood mitigation strategies and help to reduce flood damage;
- expansion of the Floodway is a national infrastructure priority;

- the \$120 million federal contribution will support the first phase of the expansion of the Floodway;

**AND WHEREAS** on April 3, 2003, the Prime Minister of Canada and the Premier of Manitoba each announced a contribution of \$80 million towards the expansion of the Floodway;

**AND WHEREAS** on August 18, 2003, the Minister of Industry and Minister responsible for Infrastructure and the Premier of Manitoba each announced an additional contribution of \$40 million towards the expansion of the Floodway;

**AND WHEREAS** the Authority is a duly incorporated body intended to act as the agent of the Crown in right of the Province of Manitoba to develop, coordinate and oversee implementation of plans for the Manitoba Red River Floodway Expansion Project ("the Floodway Expansion Project");

**THEREFORE**, in accordance with the principles set out above, Canada and the Authority hereby agree as follows:

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## SECTION 1. – INTERPRETATION

### 1.1 *Definitions*

For the purposes of this Agreement, the Parties agree to the following definitions:

**Committee:** the Agreement Oversight Committee established pursuant to subsection 6.1;

**Completion Date:** the date of completion of a Project Component;

**Eligible Costs:** costs falling within the categories listed in section D.1 of Schedule D;

**Fiscal Year:** a twelve-month period beginning on April 1 of a year and ending on March 31 of the following calendar year;

**Parties:** Canada and the Authority exclusively;

**Party:** Canada or the Authority, as the case may be;

**Program:** the aggregate of all Project Components approved under this Agreement and added to Table B.2 in accordance with Schedule B;

**Project Component:** an item added to Table B.2, in accordance with Schedule B, consisting of a Proposed Project or portion thereof that the Authority is committed to implement and Canada and the Authority committed to assist in funding under this Agreement;

**Proposed Project:** an item in Table B.1 of Schedule B;

**Third Party:** any entity with whom the Authority contracts with in relation to the Project, in whole or in part.

### 1.2 *Accounting and Financial Terms*

Unless otherwise set out in this Agreement, either expressly or by necessary implication, all accounting and financial terms used in this Agreement shall be interpreted and applied in accordance with accounting principles and auditing standards generally accepted in Canada, in particular those of the Canadian Institute of Chartered Accountants.

### 1.3 *Agreement*

This Agreement is composed of:

- a) this document;
- b) Schedule A, Communications Protocol;
- c) Schedule B, General Description- Statement of Work;
- d) Schedule C, Information;
- e) Schedule D, Eligible and Ineligible Costs;
- f) Schedule E, Audit Framework;
- g) Schedule F, Disposal of Assets; and
- h) Schedule G, Program Dates and Milestones.

### 1.4 *Conflict*

In the event of a conflict between different parts of this Agreement, the order in which the following take precedence in resolving the conflict shall be:

- a) this document;

- b) Schedule G, Program Dates and Milestones;
- c) Schedule B, General Description - Statement of Work;
- d) Schedule D, Eligible and Ineligible Costs; and
- e) all other Schedules.

### **1.5 *Entire Agreement***

This Agreement is made under the *Canada Strategic Infrastructure Fund Act* and comprises the entire agreement between the Parties. No other prior document, negotiation, provision, undertaking or agreement in relation to the subject of this Agreement shall have legal effect.

## **SECTION 2. - PURPOSE OF THE CONTRIBUTION**

### **2.1 *Purpose of the Contribution***

The purpose of this contribution is to fund the Program in accordance with the terms and conditions set forth in this Agreement, including the capital investment, asset construction, administration and related items added to Table B.2 in accordance with Schedule B.

### **2.2 *Scope of Contribution***

This Agreement relates solely to the funding of the Project Components added to Table B.2 in accordance with Schedule B and, subject to subsection 6.5, excludes any Proposed Project not listed in Table B.1 at the time of signing of this Agreement.

## **SECTION 3. - UNDERTAKINGS AND REPRESENTATIONS**

### **3.1 *Program Implementation***

The Authority shall be responsible for implementing the Program within the costs and deadlines specified in this Agreement. As the implementing Party, the Authority shall undertake, or cause to be undertaken, the design, engineering and construction work, in accordance with the provisions of the *Manitoba Building Code* and the recommended practices of the National Building Standards or any other equivalent provincially-sanctioned guidelines approved by the Committee.

### **3.2 *Compliance with Laws***

The Authority shall apply, in relation to the Program, and in all material respects, the requirements of all applicable laws, regulations, orders and orders in council, including environmental laws, regulations, and shall comply with the requirements of all regulatory bodies.

### **3.3 *Annual Report***

Before the end of a Fiscal Year, the Authority shall provide the Committee with an annual report on progress achieved under this Agreement during the previous Fiscal Year, in accordance with Schedule C.

### **3.4 *Information***

At Canada's request, the Authority shall provide information to be taken into account in evaluating the progress of the work, which information shall include updates and all other relevant documents in accordance with the content stipulated in Schedule C.

### **3.5 *Binding Obligations***

Each Party declares to the other that the signing and execution of this Agreement was duly and validly authorized and that each has incurred a legal and valid obligation that is binding on it in accordance with the terms and conditions of the Agreement.

### **3.6 *No Actions or Proceedings***

The Authority represents that it is not subject to an obligation or prohibition, and that no action or legal proceedings, or threat of action or proceedings, that could or may interfere with its performance of this Agreement, has or have been brought, and agrees to inform Canada immediately if any such action or proceedings are brought during the term of this Agreement.

### **3.7 *Impediment***

The Authority represents, at the time of each addition to Table B.2, that, to the best of its knowledge, there is no known or foreseeable impediment, to the full and complete performance of the Project Components listed in Table B.2 as they are approved.

### **3.8 *Project Completion***

The Authority agrees to complete the Project Components in accordance with the terms and conditions of this Agreement.

## **SECTION 4. - FINANCIAL PROVISIONS**

### **4.1 *Contribution by Canada***

Canada agrees to pay a contribution of not more than 50% of Eligible Costs incurred and paid by the Authority for the Project Components added to Table B.2 in accordance with Schedule B during the 2003-2004 through 2008-2009 Fiscal Years, up to a total of \$120 million.

### **4.2 *Contribution by the Authority***

The Authority agrees to pay the costs needed for the full and timely implementation of the Program, net of Canada's contribution.

### **4.3 *Final Project Component Approval Date***

Project Components may be approved and added to Table B.2 under this Agreement until March 31, 2007, and all work must be tendered by that date.

### **4.4 *Final Claim Date***

A claim for payment in respect of a Project Component must be submitted within twelve months after the Project Component has, in the opinion of Canada, been completed. If not, Canada will have no obligation to pay the claim.

### **4.5 *Other Funding***

The Authority agrees to inform Canada promptly of any other federal financial assistance received for any Project Component funded under this Agreement. If the total federal financial assistance toward the Program exceeds fifty percent of total Eligible Costs, Canada may reduce its contribution by an amount equal to the excess.

## **SECTION 5. - PAYMENT PROCEDURES**

### **5.1 *Claims and Method of Payment***

The Authority shall submit, at least every six (6) months, periodic progress claims with supporting documents satisfactory to Canada, certified by the Authority's Vice-President of Finance.

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Subject to Sections 9.4 and 15.3, a claim by the Authority shall be paid promptly by Canada, when in its opinion, the requirements of this Agreement in respect of the claim have been met.

## **5.2 *Audit***

The Authority is responsible for having an annual audit carried out of its claims for Eligible Costs incurred and paid in the previous Fiscal Year to ensure that the claims were properly paid in accordance with the terms of this Agreement. The Authority will file a report of the audit with the Committee within the first six (6) months of the new Fiscal Year. Canada shall not make any payments after the first six (6) months of a Fiscal Year unless and until the Authority has filed the audit report.

The Authority will also provide the Committee with a first version of items a) to e) in Section C.3.1 within 90 days of a new Fiscal Year.

## **5.3 *Holdback***

Canada may hold back up to 10% of any amount payable under this Agreement.

## **5.4 *Request for Final Payment***

The request for final payment in respect of a Project Component shall be accompanied by:

- a) a certificate signed by the Authority's Vice President of Finance confirming compliance with the terms and conditions of this Agreement, and supported by a certified statement of the use made of the claims paid;
- b) the documents and reports required under this Agreement; and
- c) a separate claim for any holdback.

## **5.5 *Final Adjustment***

A final adjustment of claims in respect of the Program shall be made no later than twelve (12) months after all Project Components have, in the opinion of Canada, been completed.

For the purposes of the final adjustment, the Authority shall present to Canada an official report on all outstanding financial items, including any amount claimed by the Authority for ineligible expenditures as well as Eligible Costs incurred by it that are unpaid at the time. The Parties shall make the adjustments required in the circumstances.

# **SECTION 6. – AGREEMENT OVERSIGHT COMMITTEE**

## **6.1 *Establishment***

As soon as possible after the signing of this Agreement, a Committee shall be established to manage and implement it. The Committee shall consist of not less than four and not more than six members, of which one half shall be appointed by each Party. Canada shall appoint senior government officials as its members and the Authority shall make its appointments from among the members of its Board of Directors or its senior executives. The members shall be appointed and notice given to the other Party within sixty (60) days from the date on which this Agreement comes in force. The Committee shall continue to exist until its activities, including the audits, reports and final adjustments, have been completed.

## 6.2 *Co-chairs*

The Committee shall be chaired by two co-chairs, a federal Co-chair appointed by Canada, being the Assistant Deputy Minister – Program Operations of Infrastructure Canada or another Government of Canada senior official, and a Recipient Co-chair appointed by the Authority from the Authority's members. If a co-chair is absent or unable to act, the other federal member or the other Authority member shall replace him or her as the case may be.

## 6.3 *Meetings*

The Committee shall meet regularly as agreed to by the co-chairs or their representatives, or at the written request of one of the co-chairs. Each member of the Committee may authorize a person in writing to attend a Committee meeting and to vote on the member's behalf. The Committee shall adopt rules relating to the conduct of meetings and the making of decisions.

## 6.4 *Recommendations and Decisions*

All recommendations and decisions of the Committee must be consensual and in writing.

## 6.5 *Responsibilities*

The Committee shall:

- a) monitor the progress of the Program;
- b) prior to the beginning of a Fiscal Year, review and recommend adjustments to the descriptions, approved budgets and cash flows and milestones for the Proposed Projects in Table B.1;
- c) make adjustments, including financial adjustments, to the specifics of a Proposed Project set out in Table B.1, provided that no adjustment shall:
  1. increase the budget for the Proposed Project by an amount that, in Canada's opinion is significant, without Canada's prior written approval;
  2. alter the scope of the Proposed Project without Canada's prior written approval;  
or
  3. result in an increase in the amount of Canada's total contribution in excess of the limit specified in subsection 4.1.
- d) recommend the addition, in accordance with Schedule B, of, and adjustments to, Project Components in Table B2;
- e) review the annual audit reports required under in Schedules C and E, and all other reports that Canada may deem necessary for reporting on the progress made under this Agreement;
- f) ensure that contracts are awarded in accordance with section 8.1;
- g) establish sub-committees, as needed, for carrying out this Agreement; and
- h) attend to any other function specified in this Agreement.

The Committee may also make a recommendation to Canada to add or subtract from the list of Project Components in Table B.1, provided that the recommendation does not:

- (1) increase the amount of Canada's total contribution as specified in subsection 4.1; or
- (2) change the scope of the Program.

## 6.6 *Other Duties*

The Authority Co-chair shall:

- a) establish a fixed location where the Agreement will be managed for the duration of the Agreement, and maintain that place until the Committee's activities have concluded and, if a relocation is required, establish a new location;
- b) retain at the location, and make available to the Parties, all documents relevant to the Agreement and the work of the Committee;
- c) prepare the documentation needed for the proper administration of the Agreement, including claims, approval documents, agendas and minutes of meetings of the Committee and its subcommittees, contracts of service, etc.;
- d) ensure that financial and technical audits are performed in accordance with Schedule E and arrange for the performance of any audit requested by the Committee;
- e) ensure that administrative and financial systems are developed and implemented for the Program;
- f) inform the federal Co-chair promptly of any proposed change to a material term of this Agreement; and,
- g) perform any other duty that the Committee may assign in writing.

## **SECTION 7. - DISPOSAL OF ASSETS**

### 7.1 *Disposal of Assets*

The transfer or disposal of an asset acquired, created, or produced as a result of the funding provided under this Agreement, or any part thereof to a third party, other than to Canada, the Province, or a Crown corporation of the Province that is the latter's agent for the purpose of implementing this Agreement, shall be subject to the protocol set out in Schedule F.

## **SECTION 8. - CONTRACT PROCEDURES**

### 8.1 *Contracts*

All contracts related to the performance of work on a Project Component shall be entered into and managed in accordance with the Authority's policies and procedures for awarding contracts. All contracts shall be awarded in a way that is:

- a) transparent, fair, and equitable;
- b) in accordance with the Agreement on Internal Trade; and
- c) acceptable to Canada.

The policies and procedures shall be submitted to Canada in writing, for Canada's approval within one hundred and twenty (120) days of the date on which this Agreement is signed.

### 8.2 *Notification of Changes*

The Authority agrees to:

- a) inform Canada of any change to its policies and procedures; and
- b) submit in advance and in writing for Canada's approval, a copy of the amended policies and procedures that apply to a Project Component with the reasons why the changes are requested.

### **8.3 Indemnification**

The Authority agrees at all times, to indemnify and save harmless Canada, its officers, servants, employees, or agents from and against all claims and demands, loss, costs, damages, actions, suits, or other proceedings by whomsoever brought or prosecuted in any manner based upon, or occasioned by any injury to persons, damage to or loss or destruction of property, economic loss or infringement of rights caused by or arising directly or indirectly from: (i) the Program; (ii) the performance of the Agreement or the breach of any term or condition of the Agreement by the Authority, its officers, employees and agents, or by a third party, its officers, employees, or agents; (iii) the ongoing operation, maintenance and repair of the Project Components; (iv) any omission or other wilful or negligent act of the Authority or third party and their respective employees, officers, or agents except to the extent to which such claims and demands, losses, costs, damages, actions, suits, or other proceedings relate to the act or negligence of an officer, employee, or agent of Canada in the performance of his or her duties.

### **8.4 Agreements with Third Parties**

All agreements with Third Parties entered into pursuant to Section 8.1 will be consistent with and will incorporate the relevant provisions of this Agreement and (without limiting the foregoing) the Authority will use reasonable efforts to include, in the agreements, provisions to ensure that:

- a) proper and accurate accounts and records are maintained with respect to the Project Component;
- b) the Parties are permitted, at all reasonable times, to inspect the terms of the contract and any records and accounts respecting the Project Component; and
- c) all applicable labour, environmental and human rights legislation is complied with.

The Authority agrees that any agreement entered into with a Third Party shall guarantee Canada, to the extent possible under the legislation applicable in Manitoba, free access to the Project Component sites and to any documentation that is relevant for the purpose of audit, and that a representative of Canada may, if necessary, conduct such audit.

## **SECTION 9. - ACCOUNTING RECORDS AND AUDIT**

### **9.1 Accounts and Records Maintained**

The Authority shall ensure that proper and accurate accounts and records are kept of the work undertaken pursuant to this Agreement, in particular by keeping appropriate invoices, statements, receipts and vouchers and shall, upon reasonable notice, make such accounts and records available to a representative of Canada for inspection and audit.

### **9.2 Facilities and Information**

The Authority shall provide all facilities required for inspection and audit, and shall make them available to a representative of Canada.

### **9.3 Accounts and Records Retained**

Accounts and records relating to the administration of this Agreement shall be kept for at least three (3) years after the final payment under this Agreement.

### **9.4 Audit by Canada**

Canada may audit all accounts, records, and claims for reimbursement relating to a Project Component and may undertake reviews of the Authority's administrative, financial and claim certification processes and procedures to ensure compliance with this Agreement.

## **SECTION 10. - PROGRAM EVALUATION**

### **10.1 *Evaluation by the Parties***

The Authority agrees to participate with Canada in conducting prospective and retrospective evaluations of the Program.

### **10.2 *Evaluation by Canada***

The Authority agrees to provide all of the relevant data and information as set out in Schedule C that may be needed for an evaluation of the Canada Strategic Infrastructure Fund program that Canada may conduct. Costs associated with the national evaluation shall be borne by Canada.

## **SECTION 11. - COMMUNICATIONS**

### **11.1 *Communications***

Communications relating to this Agreement shall be governed by the Protocol in Schedule A.

## **SECTION 12. - DISPUTE RESOLUTION**

### **12.1 *Initial Notice***

The Parties shall keep each other informed of any matter that could be litigious, by exchanging information within the Committee, and shall attempt to seek its resolution through the Committee.

### **12.2 *Referral to Canada***

If an issue contemplated by paragraph 12.1 arises, the Federal Co-chair and the Provincial Co-chair shall examine it together as soon as possible, and in any event within fourteen (14) days (unless the Parties agree to a longer time). Any issue that cannot be resolved will be submitted to Canada for resolution insofar as it relates to Canada's contribution under this Agreement.

### **12.3 *Legal Forum***

Any legal proceeding regarding this Agreement shall be submitted to the Court of Queen's Bench for the Province of Manitoba.

## **SECTION 13. - DEFAULT**

### **13.1 *Events of Default***

Canada may declare that an event of default has occurred if the Authority:

- a) has submitted false or misleading information to Canada or made a false or misleading representation;
- b) has not complied with any material condition, undertaking or term in the Agreement;  
or
- c) has neglected or failed to pay to Canada any amount due in accordance with this Agreement.

Canada will not declare an event of default unless it has given notice to the Authority of the condition or event which in Canada's opinion constitutes an event of default and unless the Authority has failed, within 30 days of receipt of the notice, either to correct the condition or event complained of, or to demonstrate, to the satisfaction of Canada, that it has taken or is taking such steps as are necessary to correct the condition, and has notified Canada of the rectification or the process for rectification.

### **13.2 Remedies on Default**

If following an attempt to resolve any dispute in the Committee, Canada declares that an event of default has occurred, Canada may exercise one or more of the following remedies:

- a) suspend any obligation by Canada to contribute or continue to contribute to the Eligible Costs including any obligation to pay any amount owing prior to the date of such suspension;
- b) terminate any obligation of Canada to contribute or continue to contribute to the Eligible Costs, including any obligation to pay any amount owing prior to the date of such termination;
- c) require the Authority to repay to Canada all or part of the Contribution paid by Canada to the Authority, together with interest from the date of demand at the interest rate set out in subsections 16.17.

### **13.3 Remedies Fair and Reasonable**

The Authority acknowledges that in view of the policy objectives served by Canada's agreement to make the contribution, the fact that the contribution comes from public monies, and that the amount of damages sustained by the Crown in the event of default is difficult to ascertain, that it is fair and reasonable that Canada be entitled to exercise any or all of the remedies provided for in this Section and to do so in the manner provided for in that section if an event of default occurs; provided that in exercising any remedy in accordance with paragraph 13.2 (c) other than for a breach of paragraph 13.1 (c), Canada will credit the Authority for any amounts paid to Canada.

### **13.4 No Waiver**

The fact that Canada refrains from exercising a remedy that it is entitled to exercise under the Agreement will not constitute a waiver of such right and any partial exercise of a right will not prevent Canada in any way from later exercising any other right or remedy under the Agreement or other applicable law.

## **SECTION 14. - NO AGENCY OR LEGAL PARTNERSHIP**

### **14.1 No Agency or Legal Partnership**

It is understood, recognized and agreed that no provision of this Agreement and no action by Canada or the Authority shall establish or be deemed to establish a partnership, joint venture, principal-agent relationship, or employer-employee relationship in any way or for any purpose whatsoever between Canada and the Authority or between Canada, the Authority and a third party.

## **SECTION 15. - SPECIAL PROVISIONS**

### **15.1 Confidentiality**

Notwithstanding any other provision of this Agreement, and subject to applicable legislation, any cost estimates found in Schedule B.1 may be kept confidential by the Parties until the Project Component is approved.

### **15.2 Authority is Agent**

The Authority warrants that it is an agent of the Province of Manitoba for the purposes of executing and implementing this Agreement, and that it shall not amend its Articles of Incorporation or transfer any of its shares, without the prior written consent of Canada. However, no consent is required if, following any such amendment or transfer, the Authority or its successor remains an agent of, and controlled by, the Province of Manitoba.

### **15.3 Environmental Assessment**

Canada acknowledges that the first three Proposed Projects listed in Table B.1, namely Project Description and Environmental Assessment, Final Design (Major Components), and Administration, are not subject to the requirement of an environmental assessment prior to being funded under this Agreement as set out in Schedule B. These three Proposed Projects will therefore become Project Components for which progress claims may be submitted by the Authority on signing of this Agreement.

### **15.4 Board Membership**

#### The Authority

- a) represents that all the members of its Board of Directors are senior officials of the Government of Manitoba; and
- b) undertakes to appoint future Board members from among senior officials of the Government of Manitoba.

## **SECTION 16. - GENERAL PROVISIONS**

### **16.1 Parliamentary Appropriation**

Any payment by Canada under this Agreement is subject to there being an appropriation by Parliament for the Fiscal Year in which the payment is to be made.

### **16.2 Senate and House of Commons**

No member of the House of Commons or the Senate shall be admitted to any share or part of a contract, agreement or commission resulting from this Agreement, nor to any benefit arising therefrom.

### **16.3 Conflict of Interest**

No person governed by the post-employment terms and conditions set out in the *2003 Values and Ethics Code for the Public Service* of Canada shall derive a direct benefit from this Agreement unless that person complies with the applicable post-employment provisions.

### **16.4 Third Party**

No provision of this Agreement shall be construed as authorizing either of the Parties to enter into a contract or to contract an obligation on behalf of the other Party, or to sign as agent for the other Party. No provision of this Agreement shall be construed as authorizing a claimant or a third party to enter into a contract or to contract an obligation on behalf of either of the Parties, and the Authority shall take the necessary action to ensure that any Agreement between the Authority and a third party contains a provision to that effect.

### **16.5 Waiver**

Each of the Parties may waive any of its rights under this Agreement only in writing, and any tolerance or indulgence demonstrated by that Party shall not constitute waiver of such right. Unless a waiver is executed in writing, that Party shall be entitled to seek any remedy that it may have under this Agreement or under the law, notwithstanding any tolerance or indulgence on the part of the other Party.

#### **16.6 Severability**

If for any reason a provision of this Agreement that is not a fundamental term of the Agreement between the Parties is found to be or becomes invalid or unenforceable, in whole or in part, and if both co-Chairs agree, it shall be deemed to be severable and shall be deleted from this Agreement, but all the other terms and conditions of this Agreement shall continue to be valid and enforceable.

#### **16.7 Assignment**

The Authority shall not transfer or assign its rights or obligations under this Agreement to any person without the prior written consent of Canada. Consent shall not be required for an assignment to the Province or a Crown corporation of the government of Manitoba that is the latter's agent for the purposes of implementing this Agreement.

#### **16.8 Amendments**

The Parties acknowledge that this Agreement can only be amended in writing by the Parties.

#### **16.9 Survival**

The Parties' rights and obligations set out in sections 7, 9, 10 and 13; subsections 16.5, 16.8, 16.15, 16.16, 16.17, 16.19, and Schedule C and Schedule E shall survive the expiry or early termination of this Agreement.

#### **16.10 Intellectual Property**

The Authority shall obtain the necessary authorizations, as needed for the implementation of the Project Components from third parties who may own the intellectual property rights or other rights in respect of Project Components. Canada shall not be liable for any claim by a third party in respect of such rights.

#### **16.11 Signed Copies of the Agreement**

This Agreement may be signed in counterpart, and the signed copies shall, when attached, constitute an original Agreement.

#### **16.12 Governing law**

This Agreement is governed by the laws applicable in the Province of Manitoba.

#### **16.13 Lobbyists**

Any person who lobbies or has lobbied on behalf of the Authority to obtain funding under this Agreement, or any benefit thereunder, and who is required to be registered pursuant to the *Lobbyists Registration Act* (Canada), must be registered pursuant to that Act.

#### **16.14 No Agency Fees**

The Authority declares and warrants that neither it nor any other person acting on its behalf has employed anyone to solicit this Agreement in exchange for a commission, contingency fee or any other consideration dependent on the signing of this Agreement.

#### **16.15 Term of Agreement**

This Agreement shall come into force on the date on which it is signed, and, subject to subsection 16.9, shall terminate on the date when the final payment adjustment is made in accordance with subsection 5.4.

#### **16.16 Debts Due to Her Majesty**

Any amount owed to Canada under this Agreement shall constitute a debt due to Canada, which the Authority shall reimburse forthwith, on demand, to Canada.

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**16.17 *Interest on Debts Due to Canada***

In accordance with the *Interest and Administrative Charges Regulations*, SOR/96-188, in all cases where there is a debt due to Canada, interest calculated and compounded monthly at the average Bank Rate plus three percent is payable on that amount and accrues during the period beginning on the due date and ending on the day on which payment is received by Canada.

**16.18 *Set Off***

Where applicable, and at Canada's sole discretion, the amount of any such amount due may be deducted from or offset against any amounts payable by Canada to the Authority.

**16.19 *Successors***


This Agreement shall be binding on the Parties, their successors, and permitted assigns.

IN WITNESS WHEREOF this Agreement is signed on behalf of Canada by the Minister of Industry and Minister responsible for Infrastructure and on behalf of the Authority by its proper officer in that behalf.

**FOR THE GOVERNMENT OF CANADA**

DEC - 8 2003

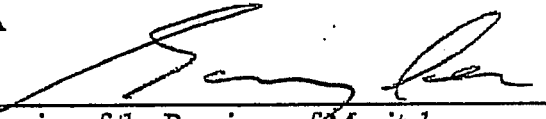
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Date

  
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Minister of Industry and Minister responsible  
for Infrastructure  
The Honourable Allan Rock

**FOR THE GOVERNMENT OF MANITOBA**

DEC - 8 2003

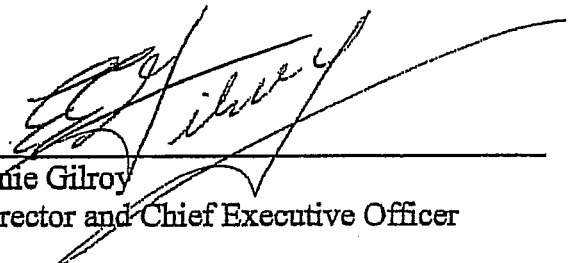
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Date

  
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Premier of the Province of Manitoba  
The Honourable Gary Doer

**FOR THE AUTHORITY**

DEC - 8 2003

\_\_\_\_\_  
Date

  
\_\_\_\_\_  
Ernie Gilroy  
Director and Chief Executive Officer