

# **Deh Cho Bridge**

## **Memorandum of Intent**

**Between:**

The Fort Providence Combined Council Alliance (herein represented by the Chief of the Deh Gah Got'ie First Nation, the President of the Fort Providence Metis Council and the Mayor of the Fort Providence Hamlet Council) hereinafter referred to as the 'Alliance',

**and**

The Government of the Northwest Territories (herein represented by the Minister of Transportation) hereinafter referred to as the 'GNWT'.

Whereas the Alliance has submitted a proposal to the GNWT to enter into a public-private partnership to design, finance, build, maintain and operate the Deh Cho Bridge at Fort Providence (the project),

Whereas the GNWT has reviewed the Alliance proposal,

Whereas the Alliance and the GNWT have made necessary adjustments to the proposal and have identified the basic parameters and conditions for negotiation of an agreement for the project to proceed, and,

Whereas the Alliance and the GNWT wish to proceed with the project.

**Now Therefore:**

**Purpose:**

The purpose of this Memorandum of Intent (MOI) is to confirm the parameters for negotiations for an agreement to enter into a public-private partnership to design, build and operate the Deh Cho Bridge near Fort Providence.

**1. Basic Parameters**

The Alliance and the GNWT agree to the following basic parameters:

- 1.1. A Business Entity, of which Alliance members will be majority shareholders, will be created to design, finance, build, operate and maintain the Deh Cho Bridge near Ft Providence. Once created, the Business Entity will replace the Alliance for all purposes relating to this MOI.
- 1.2. Shareholders of the Business Entity will invest a minimum of \$2 million in equity.

- 1.3. The bridge will be designed and built and operated and maintained to standards agreed to by consensus of the Alliance, the Business Entity and the GNWT. Any standards adopted shall be consistent with applicable laws and regulations of the Northwest Territories and Canada, and good engineering practices.
- 1.4. The 'Concession Period' will start when the bridge goes into operation and will end on December 31 of the 35<sup>th</sup> full year of operation. The ownership of the bridge will revert to the GNWT at the end of the Concession Period.
- 1.5. During the bridge operation, the GNWT will collect a 'Commercial Vehicle Toll' and remit funds to the Business Entity as outlined herein.

## **2. Flows of Funds During Operations**

- 2.1. The Business Entity and the GNWT shall agree on a Base Year Operating Cost which shall include all costs necessary to manage, operate and maintain the bridge including, but not limited to the following costs: operations, maintenance, insurance and administration. The Annual Operating Cost in any given year shall be the Base Year Operating Cost inflated by an agreed proxy for inflation. The Annual Operating Cost will be reviewed and adjusted every five years by agreement of the Business Entity and the GNWT.
- 2.2. During the Concession Period the GNWT will remit funds consisting of the GNWT contribution (\$1.4 million, adjusted annually by an agreed proxy for inflation) and the toll revenues of the Bridge (the two collectively referred to as the 'Base Amount') to the Business Entity, on an annual basis or such other period as is acceptable to both the Alliance and the GNWT, subject to paragraphs 2.1 – 2.8 of this section of this MOI.
- 2.3. It is intended that the Base Amount will be sufficient to meet the following:
  - The Annual Operating Cost
  - Debt Service (on long term debt approved by the GNWT)
  - A return of 4.5% on the deemed equity of a minimum \$2 million, (the shareholders investment) and any DIAND funding up to an additional \$3 million

The above three items, being collectively referred to as the 'Annual Requirement'.

- 2.4. To the extent that the Base Amount in any given year is insufficient to meet the Annual Requirement, the GNWT will advance additional funds ('Additional Funds') to the Business Entity sufficient to meet the Annual Requirement.
- 2.5. The Additional Funds advanced to the Business Entity will accrue interest at the rate equal to that of the GNWT short term borrowing rate. The amount of additional funds advanced and not yet repaid, including interest will be known as the Additional Funds Outstanding Balance.

- 2.6. To the extent that the Base Amount is greater than the Annual Requirement in any given year, the Additional Funds Outstanding Balance will be paid to the GNWT out of the Base Amount through a reduction in the remittance to the Business Entity. The Business Entity will not be entitled to either an Enhanced Return Amount or a Shared Return Amount (as defined herein) if there is an Additional Funds Outstanding Balance.
- 2.7. In the event that the Base Amount Exceeds the Annual Requirement and there is no Additional Funds Outstanding Balance then an enhanced return shall be payable to the Business Entity. This enhanced return shall be remitted by the GNWT out of the Base Amount in the amount by which the Base Amount exceeds the Annual Requirement up to a maximum annual return of 15% on deemed equity. The amount payable as an enhanced return shall be known as the 'Enhanced Return Amount'. This amount shall be payable annually, if applicable.
- 2.8. To the extent that that Base Amount exceeds the Annual Requirement and the Enhanced Return Amount payable, the excess shall be divided equally between the Business Entity and the GNWT. The Business Entity's 50% share of the excess shall be known as the 'Shared Return Amount' and shall be payable annually.

### **3. Conditions**

The following conditions are considered critical to continuing negotiations towards an agreement:

- 3.1. The construction cost estimate, including all design and construction costs, construction permitting, environmental assessment, financing, insurance, GST and bonding shall not exceed \$55 million.
- 3.2. The initial Commercial Vehicle Toll shall be equivalent to \$5 to 6 per tonne of commercial vehicle freight. It is anticipated that a truck configuration based toll will be utilized.
- 3.3. The Alliance and/or the Business Entity shall provide to the GNWT written confirmation from the Northern Transportation Company Ltd. of the acceptability of the proposed navigation opening.
- 3.4. The Business Entity shall develop a design and construction scheme acceptable to both Parties, based on the Alliance's August 2002 revised preliminary design report and subject to further agreement on technical issues.
- 3.5. The Business Entity must be able to arrange suitable project financing.
- 3.6. The Business Entity shall ensure that the overall bridge construction is covered by adequate performance security acceptable to the GNWT.
- 3.7. The Alliance shall support GNWT ownership of all the land under the bridge and bridge approaches and shall assist the GNWT in obtaining title to said land for the sole purpose of accommodating the bridge.

- 3.8. The GNWT will require Executive Council approval of the MOI and Legislative approval to proceed with a final agreement.

#### **4. Plan**

The Alliance and the GNWT agree that the work will proceed in three phases and that continuing with any phase is contingent upon successful completion of the previous one.

##### **4.1. Project Development Phase**

This phase begins on signing of this MOI and concludes with a formal agreement to proceed with the Implementation Phase. It is estimated that this phase will take approximately 1 year (October 2002 – October 2003).

4.1.1. The Alliance and the GNWT will make best efforts to agree on a plan and budget for this phase within 30 days of executing this MOI.

4.1.2. The GNWT will guarantee direct project development costs, excluding legal fees, approved in advance by the GNWT up to \$2 million as incurred. These costs will be reimbursed to the Business Entity/Alliance by the GNWT, should the project fail to proceed to implementation.

4.1.3. This phase and plan will include:

- ✓ Community and Public consultation
- ✓ Environmental assessment
- ✓ Permit application and regulatory approval processes
- ✓ Further project definition (design, construction, cost details)
- ✓ Development of implementation and operations phase agreements with GNWT
- ✓ Establishing of implementation and operations entities.
- ✓ Development of construction agreements
- ✓ Development of financing agreements
- ✓ Other items as agreed by the Alliance/Business Entity and the GNWT

4.1.4. Either the Alliance/Business Entity or the GNWT may withdraw from negotiations and terminate this agreement during the *Project Development Phase*. Should this agreement be terminated, the Alliance/Business Entity shall cease to make new commitments and wind down its work in an orderly fashion. Any costs incurred will be dealt with in accordance with paragraph 4.1.2.

##### **4.2. Project Implementation Phase**

This phase covers the construction of the bridge. It will begin with successful conclusion of all elements of the *Project Development Phase* and signing of a binding implementation agreement.

It is anticipated that the construction will take approximately 20 months (November 2003 – June 2005).

4.3. Bridge Operations Phase

This phase covers the operation of the bridge and commences the day the bridge is open to traffic (target July 2005). The rights and obligations will be detailed in the operations agreement with the GNWT.

5. Effect of Memorandum of Intent

- 5.1. This MOI is not intended to be a binding agreement and nothing herein shall be construed as creating any binding rights or obligations on the part of or in favour of any of the parties to it. The parties acknowledge that they are under no obligation to reach an agreement in regard to the project or to proceed with the project. They further acknowledge that the terms of any final agreement they enter into in respect of the project may differ from the parameters set out herein.
- 5.2. For greater certainty the parties hereto acknowledge and agree that nothing herein, including without limitation the expression “public-private partnership”, shall be construed to create any partnership or joint venture between the GNWT and any other person.

**Signed:**

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Chief Samuel Gargan  
Deh Gah Got'ie First Nation

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Date

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Albert Lafferty  
President, Fort Providence Metis Council

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Date

\_\_\_\_\_  
A/Mayor Maggie Levavasseur  
Hamlet of Fort Providence

\_\_\_\_\_  
Date

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Joseph L. Handley  
Minister  
Department of Transportation

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Date