AGREEMENT
Between

HER MAJESTY THE QUEEN IN RIGHT OF CANADA

-and-

THE CORPORATION OF THE CITY OF VICTORIA

Date of Agreement : March 23, 2011
Description : Building Canada Fund Contribution Agreement for Johnson Street Bridge Replacement

Term : 2010-2011 / 2016-2017
This Contribution Agreement made as of 23rd day of March 2011

BETWEEN: HER MAJESTY THE QUEEN IN RIGHT OF CANADA, represented by the Minister of Transport, Infrastructure and Communities ("Canada")

AND THE CORPORATION OF THE CITY OF VICTORIA incorporated pursuant to the Victoria Incorporation Act, 1862, and duly authorized under Resolution of the Council of the City of Victoria dated February 24, 2011 (the "Recipient" or the "City of Victoria")

Collectively referred to as the Parties,

1. INTERPRETATION

1.1 DEFINITIONS

In addition to the terms defined in the recitals and elsewhere in this Agreement, a capitalized term has the meaning given to it in this Section.

"Agreement" means this contribution agreement and all schedules, as may be amended from time to time.

"Contract" means an agreement between the City of Victoria and a Third Party whereby the latter agrees to supply a product or service to the Project in return for financial consideration which, in part or in whole, constitutes Eligible Costs under this Agreement.

"Effective Date" means the date this Agreement is signed by the last Party.

"Eligible Costs" means those costs of the Project incurred and paid by the City of Victoria and eligible for reimbursement by Canada as set out in Schedule A to this Agreement.

"Fiscal Year" means the period beginning April 1 of a year and ending March 31 of the following year.

"Fixed Asset" means any non-movable asset, purchased, constructed, rehabilitated, or improved, in whole or in part, with funds contributed by Canada under the terms of this Agreement.

"Fixed Asset Disposal Period" means the period commencing from the Effective Date and ending twenty-five (25) years after the Project Completion Date.

"Non-Fixed Asset" means any movable asset, purchased, constructed, rehabilitated, or improved, in whole or in part, with funds contributed by Canada under the terms of this Agreement.

"Non-Fixed Asset Disposal Period" means the period commencing from the Effective Date and ending ten (10) years after the Project Completion Date.

"Project" means the infrastructure project described in Schedule B.

"Project Approval Date" means December 4, 2009.

"Project Completion Date" means twelve (12) months after the Substantial Completion Date but no later than September 30, 2016, except for audit and evaluation costs where the project completion date shall be November 30, 2016.

"Project Implementation" means stages of the Project directly related to the completion of the Project and includes, but is not limited to, environmental assessment and monitoring, aboriginal consultation, design, planning, engineering, construction, testing and evaluation. Project implementation does not include, among other things, the subsequent operation, maintenance, repair, rehabilitation, demolition, or reconstruction of the Project.

"Substantial Completion" occurs when the Project can be used for the purpose for which it was intended.

"Substantial Completion Date" means the date as shown on the Solemn Declaration of Substantial Completion, attached as Schedule E.

"Third Party" means any person or legal entity, other than a Party, who participates in the Project Implementation.

"Tolls" means the user fees, rates or other charges imposed by the City of Victoria, or by a
third party operator pursuant to an agreement between the City of Victoria and a third party operator, for the use of, in whole or in part, an infrastructure constructed, rehabilitated or improved under this Agreement. For the purposes hereof, weight-distance taxes or other highway/road network-wide levies will not be deemed Tolls.

1.2 ENTIRE AGREEMENT
This Agreement comprises the entire agreement between the Parties. No prior document, negotiation, provision, undertaking or agreement in relation to the subject of the Agreement has legal effect, unless incorporated by reference into this Agreement. No representation or warranty express, implied or otherwise, is made by Canada to the City of Victoria except as expressly set out in this Agreement.

1.3 DURATION OF AGREEMENT
This Agreement will be effective as of the Effective Date and will terminate on the earlier of:

a) eighteen (18) months after the Substantial Completion Date of the Project; and
b) March 31, 2017,
subject to early termination in accordance with this Agreement.

1.4 SURVIVAL
The Parties' rights and obligations, which by their nature extend beyond the expiration or termination of this Agreement, will survive any expiration or termination of this Agreement.

1.5 ACCOUNTING PRINCIPLES
All accounting terms will have the meanings assigned to them, all calculations will be made and all financial data to be submitted will be prepared, in accordance with the Generally Accepted Accounting Principles (GAAP) in effect in Canada.

2. PURPOSE OF AGREEMENT
The purpose of this Agreement is to establish the terms and conditions whereby Canada will reimburse the City of Victoria a part of the Eligible Costs paid by the City of Victoria for the Project.

3. OBLIGATION OF THE PARTIES

3.1 CONTRIBUTION BY CANADA

a) Canada agrees, subject to the terms and conditions of this Agreement and the Fiscal Year breakdown at Schedule B.2, to pay a contribution to the City of Victoria of not more than thirty-three and one third percent (33.33%) of the total Eligible Costs for the Project, but only up to a maximum of $21,000,000 million; and

b) The Parties acknowledge that Canada's role in the Project is limited to making a financial contribution to the Project and that Canada will have no involvement in the Project or their subsequent operation. Canada is neither a decision maker nor an advisor to the Project.

3.2 COMMITMENTS BY THE CITY OF VICTORIA

a) The City of Victoria will be responsible for the complete, diligent and timely Project Implementation, within the costs and deadlines specified in this Agreement and in accordance with all other terms of this Agreement, and for all the costs thereof including overruns, if any.

b) The City of Victoria will assume full responsibility for the operation, maintenance and repair of the infrastructure investment that is the subject of this Agreement, as per appropriate standards, for the full lifecycle of the infrastructure.

3.3 DISCLOSURE OF OTHER FUNDING AND ADJUSTMENTS

a) The City of Victoria will inform Canada promptly of all financial assistance received for the Project. If the federal government's total financial assistance toward the Project exceeds fifty percent (50%) of total Eligible Costs or if the total financial assistance received or due in respect of the Project's total Eligible Costs exceeds one hundred percent (100%) thereof Canada may recover the excess from the City of Victoria or reduce its contribution by an amount equal to the excess for the Project. Federal funding from all sources includes funding from the Building Canada Fund as well as from any other federal program such as the Gas Tax Fund;

b) The City of Victoria will declare to Canada any amounts owing to the Crown, under legislation or contribution agreements that constitute an overdue debt. The City of Victoria recognizes that any such amount owing is debt due to the Crown and may be set-off by Canada; and
c) The City of Victoria will repay to Canada any and all disallowed costs, surpluses, and overpayments made under and according to the terms of this Agreement.

3.4 APPROPRIATIONS AND FUNDING LEVELS

Notwithstanding Canada's obligation to make any payment under this Agreement, this obligation does not arise if, at the time when a payment under this Agreement becomes due, the Parliament of Canada has not passed an appropriation that is sufficient and constitutes lawful authority for making the payment. Canada may reduce or terminate any payment under this Agreement in response to the reduction of appropriations or departmental funding levels in respect of transfer payments, the program under which this Agreement was made or otherwise, as evidenced by any appropriation act or the government's main or supplementary estimates expenditures. Canada will not be liable for any direct, indirect, consequential, exemplary or punitive damages, regardless of the form of action, whether in contract, tort or otherwise, arising from any such reduction or termination of funding.

3.5 FISCAL YEAR BUDGETING

Subject to the terms and conditions in this Agreement, Canada agrees to commit funds for the Project for a Fiscal Year in accordance with the table of estimated contributions in Schedule B. If, in a Fiscal Year, an amount less than the estimated contribution is paid or payable by Canada, Canada will, subject to Section 3.4 (Appropriations and Funding Levels), make reasonable efforts to re-allocate the difference to a subsequent Fiscal Year.

3.6 INCREASE IN PROJECT COSTS

If, at any time during the term of this Agreement, one or all of the Parties determines that it will not be possible to complete construction of the Project unless the City of Victoria expends amounts in excess of the funding available to it, the Party will immediately notify the other Party of that determination. The City of Victoria will, within thirty (30) days of a request from Canada, provide a summary of the measures that it proposes to remedy the shortfall. If Canada is not satisfied that the measures proposed will be adequate to remedy the shortfall, then Canada may terminate or suspend its funding obligations until such time as measures are proposed that, in Canada's opinion, will be adequate to remedy the shortfall, whereupon its funding obligation will be reinstated.

3.7 GUIDELINES

The City of Victoria will undertake, or cause to be undertaken, the engineering and construction work, in accordance with the guidelines recognized by the Transportation Association of Canada (TAC), or any other equivalent guidelines approved by the Committee.

4. AGREEMENT MANAGEMENT COMMITTEE

4.1 ESTABLISHMENT

Within thirty (30) days of the Effective Date, the Parties agree to establish a four-member management committee ("Committee") headed by a Federal Co-chair, the Manager Highways and Borders West Transport Canada Surface Infrastructure Programs, and a City of Victoria Co-chair, City of Victoria Director of Engineering and Public Works, to administer and monitor this Agreement. In addition to the Co-chairs, the Parties will each appoint one committee member. The Committee will adopt written rules and procedures with respect to its meetings and those of its sub-committees, the roles of the members, and any other relevant matters. Decisions and recommendations of the Committee must be unanimous and recorded in writing.

4.2 MANDATE

The Committee will:

a) Review the procedures described in Section 5 (Contracts), and ensure that the principles stated therein are respected;

b) Monitor the progress of the Project;

c) Review claims, review and approve reports and cash flows;

d) Amend the information in Schedule B, as required, for changes that are not significant, subject to Sections 3 (Obligations of the Parties) and 4.3 (Changes during the life of the Project);

e) Establish sub-committees, as needed, for carrying out this Agreement;

f) Ensure that all provisions and Schedules of this Agreement are implemented in accordance with this Agreement; and

g) Attend to any other function required by this Agreement or as mutually directed by the
4.3 CHANGES DURING THE LIFE OF THE PROJECT

a) In this Section, "significant change" includes, in respect of the Project:
   i. Any material change to its location, scope or timing. A material change is a change which:
      a. changes quantifiable elements of the Project as determined by Canada, or
      b. significantly changes the location or timing of the Project, as determined by Canada;
      c. adds or removes the Project
   ii. any change that may require a further environmental assessment decision under Section 15.2 or further Aboriginal consultation under Section 15.3;
   iii. any increase to Canada's contribution to the Project; and
   iv. anything else that in the unanimous opinion of the Committee is significant.

b) A request for a change to the Project will be reviewed by the Committee; and
   i. if the change is not significant, the Committee may approve or reject it;
   ii. in the case of a request for a significant change, the Committee will recommend to Canada whether to approve it or not.

5. CONTRACT PROCEDURES

5.1 AWARDING OF CONTRACTS

a) The City of Victoria will ensure that all Contracts are awarded and managed in accordance with its policies and procedures; copies of same policies and procedures will be provided to the Committee within thirty (30) days of the first Committee meeting. Notwithstanding the foregoing, the City of Victoria will ensure that Contracts will be awarded in a way that is transparent, competitive, consistent with value for money principles, and in accordance with the Agreement on Internal Trade.

b) If Canada determines that the City of Victoria has awarded a Contract in a manner that is not in compliance with the foregoing, upon notification to the City of Victoria:
   i. Canada may require that the Contract be re-tendered; or
   ii. Canada may consider the costs associated with the Contract to be ineligible.

c) If Canada requires that a Contract be re-tendered, Canada will not reimburse the City of Victoria for any costs associated, directly or indirectly, with said Contract re-tendering.

5.2 CONTRACT PROVISIONS

The City of Victoria will ensure that all Contracts are consistent with, and incorporate, the relevant provisions of this Agreement. More specifically but without limiting the generality of the foregoing, the City of Victoria agrees to include in the Contract provisions to ensure that:

a) Proper and accurate accounts and records, including but not limited, contracts, invoices, statements, receipts and vouchers, in respect of the Project are maintained for at least six (6) years after the Substantial Completion Date and that the City of Victoria has the contractual right to audit them;

b) All applicable labour, environmental and human rights legislation is respected; and

c) Canada, the Auditor General of Canada, and/or their designated representatives, to the extent permitted by law, will, at all times, be permitted to inspect the terms of the Contract and any records and accounts respecting the Project and will have free access to the Project sites and to any documentation relevant for the purpose of audit.

6. CLAIMS AND PAYMENTS

6.1 PAYMENT CONDITIONS

Canada will not be required to make any payment until after June 30 of a Fiscal Year, other than the first Fiscal Year in which claims are submitted, and only if it has received and approved the annual report and audits required under this Agreement for the prior Fiscal Year. Canada will, within thirty (30) days of receipt, approve the report or audits, or notify the City of Victoria of any deficiency.

6.2 HCOMS
The Parties will use Transport Canada's Highway Contribution Management System (HCoMS) to process claims and payments and monitor progress under this Agreement. HCoMS will be available to the City of Victoria in both official languages. Modifications and improvements to the system may be made by Canada at its own expense.

6.3 **CLAIM PROCEDURES**

The City of Victoria will submit claims to Canada, following a review by the Committee in a form acceptable to Canada, and must include the following:

a) Certification, in HCoMS, by the City of Victoria Co-chair or a senior official designated in writing by the City of Victoria, as to accuracy of the information submitted in support of the claim;

b) Breakdown of Eligible Costs claimed; and

c) Identification of any deferred payment amounts.

6.4 **TIME LIMITS FOR CLAIMS**

The City of Victoria will submit all claims for payment no later than the earlier of:

a) Twelve (12) months after the Substantial Completion Date of the Project; and

b) November 30, 2016.

Canada will have no obligation to pay a claim submitted after this date.

6.5 **FINAL PAYMENT**

A request by the City of Victoria to Canada for final payment must be accompanied by a certificate from the City of Victoria Co-chair confirming compliance with all terms and conditions of the Agreement, including a completed Solemn Declaration of Substantial Completion, in the form prescribed at Schedule E.

6.6 **FINAL ADJUSTMENTS**

After the City of Victoria has submitted the final report and final audit as well as the Solemn Declaration of Substantial Completion of the Project and before January 31, 2017, the Parties will jointly carry out a final reconciliation of all claims and payments in respect of the Project and make any adjustments required in the circumstances.

6.7 **RELEASE OF FINAL PAYMENT**

Canada may release to the City of Victoria up to 90% of its contribution for each Project under this Agreement. The remaining 10% of Canada's contribution for each Project will be released when the City of Victoria fulfils its obligations under Section 6.6 (Final Adjustments).

7. **DISPUTE RESOLUTION**

7.1 **DISPUTE RESOLUTION**

a) The Parties agree to use best efforts to resolve potential disputes within the Committee, in good faith and reasonably. If an issue arises, the Co-Chairs will examine it together as soon as possible and in any event within twenty (20) business days within receipt of notice of such contentious matter. Where the Co-Chairs cannot agree on a resolution, the matter will be referred to the Parties for resolution. The Parties will provide a decision within ninety (90) days.

b) Where the Parties cannot agree on a resolution, the Parties may explore any alternative dispute resolution mechanisms available to them to resolve the issue.

c) Any payments related to the issue in dispute will be suspended, together with the obligations related to such issue, pending resolution.

8. **DEFAULT**

8.1 **EVENTS OF DEFAULT**

The following constitute Events of Default under this Agreement:

a) The City of Victoria has not completed the Project on the terms and conditions herein;

b) The City of Victoria has submitted false or misleading information to Canada or made a false or misleading representation in respect of the Project, except for an error in good faith, demonstration of which is incumbent on the City of Victoria, to Canada’s satisfaction;

c) The City of Victoria has not complied with any condition, undertaking or term of this Agreement in respect of the Project;
d) The City of Victoria has not complied with Sections 15.2 (Environmental Assessment) and 15.3 (Aboriginal Consultations) in respect of the Project;

e) The City of Victoria has neglected or failed to pay Canada any amount due in accordance with this Agreement in respect of the Project;

f) The City of Victoria becomes insolvent, commits an act of bankruptcy, takes the benefit of any statute relating to bankrupt and insolvent debtors, or goes into receivership or bankruptcy; or

g) The City of Victoria is wound up or dissolved.

8.2 DEFAULT

a) Canada will not declare that a default has occurred unless Canada has given notice to the City of Victoria of the event which in Canada’s opinion constitutes an Event of Default and the City of Victoria has failed, within thirty (30) days of receipt of the notice, either to remedy the Event of Default or to demonstrate, to the satisfaction of Canada, that it has taken such steps as are necessary to remedy the Event of Default, and has notified Canada of the rectification.

b) Notwithstanding subsection 8.2(a), the occurrence of any of the Events of Default listed at subsections 8.1(f) or 8.1(g) will automatically trigger a default under this Agreement, without any further notice to the City of Victoria.

8.3 REMEDIES ON DEFAULT

In the event of default under this Agreement, 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 in respect of the Project, including any obligation to pay an 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 in respect of the Project, including any obligation to pay any amount owing prior to the date of such termination; and

c) Require the City of Victoria to reimburse Canada all or part of the contribution paid by Canada to the City of Victoria in respect of the Project.

9. REPORTING, AUDIT AND EVALUATION

a) The Parties agree that auditing and reporting activities will be undertaken in accordance with Schedule D - Reporting, Audit and Evaluation of this Agreement.

b) The City of Victoria agrees that the Auditor General of Canada may, at Canada’s cost, after consultation with the City of Victoria conduct an inquiry under the authority of subsection 7.1(1) of the Auditor General Act in relation to the use of funds. For the purposes of any such inquiry undertaken by the Auditor General, the City of Victoria will provide, upon request and in a timely manner, to the Auditor General or its designated representative,

i. All records held by the City of Victoria, or by its agents or Third Parties relating to this Agreement and the use of the funds; and

ii. Such further information and explanations as the Auditor General, or its designated representative, may request relating to any of this Agreement or the use of the fund

10. COMMUNICATIONS

a) The Parties will comply with the Communications Protocol as established in Schedule C.

b) The City of Victoria acknowledges that its name, the contribution amount awarded and the general nature of the activities supported by the contribution may be made publicly available by Canada.

11. INDEMNIFICATION

The City of Victoria will at all times indemnify and save harmless Canada, its officers, servants, employees and/or agents, from and against all actions, whether in contract, tort, or otherwise, claims and demands, losses, costs, damages 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, in connection with, or arising directly or indirectly from:

a) The Project;
b) The performance of this Agreement or the breach of any term or condition of this Agreement by the City of Victoria or Third Party and their respective officers, servants, employees or agents;
c) The design, construction, operation, maintenance and repair of any part of the Project;
d) Any omission or other wilful or negligent act of the City of Victoria or Third Party and their respective servants, employees, officers, or agents;
e) The entering into by the City of Victoria or its officers, servants, employees and agents, of a loan, capital lease or other long term obligation in relation to the Project;
f) Any actions taken by Canada as Federal Co-chair of the Committee pursuant to Section 4 (Agreement Management Committee) of this Agreement; and
g) Any decision of a court that prevents Canada from performing any obligation under this Agreement,

except to the extent to which such claims, demands, losses, costs, damages, actions, suits, or other proceedings relate to the negligence or intentional wrongdoing of an officer, servant, employee, or agent of Canada in the performance of his or her duties.

12. DISPOSAL OF ASSETS

12.1 DISPOSAL OF ASSETS

a) The City of Victoria undertakes to notify Canada in writing, one hundred eighty (180) days in advance if, at any time during the Fixed Asset Disposal Period or Non-Fixed Asset Disposal Period, the City of Victoria proposes to sell, lease, encumber, use in a manner other than as described in their request for funding under BCF, or otherwise dispose of, directly or indirectly, any Fixed Assets or Non-Fixed Assets, purchased, constructed, rehabilitated or improved, in whole or in part, with funds contributed by Canada under the terms of this Agreement, other than to Canada, the City of Victoria or a Crown corporation of the City of Victoria that is the latter's agent for the purpose of implementing the Agreement and, upon disposition, undertakes to reimburse Canada, on demand, a proportionate amount of the funds so contributed by Canada, in the following proportion:

i) Fixed Assets:
Prior to and up to one (1) year after the Project Completion Date, the return of the contribution for a Fixed Asset in current dollars is one hundred percent (100%); this will be reduced by four percent (4%) every year thereafter. Twenty-five (25) years after the Project Completion Date, the return of the contribution for a Fixed Asset in current dollars will be zero percent (0%).

ii) Non-Fixed Assets:
Prior to and up to one (1) year after the Project Completion Date, the return of the contribution for a Non-Fixed Asset in current dollars is one hundred percent (100%); this will be reduced by ten percent (10%) every year thereafter. Ten (10) years after the Project Completion Date, the return of the contribution for a Non-Fixed Asset in current dollars will be zero percent (0%).

b) Notwithstanding the foregoing, if the City of Victoria takes any action described in subsection 12.1(a) of this Agreement during the Fixed Asset Disposal Period or Non-Fixed Asset Disposal Period, based on technical or operational requirements of the City of Victoria, the City of Victoria proposes to sell, lease, encumber, use in a manner other than as described in their request for funding under BCF, or otherwise dispose of, directly or indirectly, any Fixed Assets or Non-Fixed Assets, purchased, constructed, rehabilitated or improved, in whole or in part, with funds contributed by Canada under the terms of this Agreement, other than to Canada, the City of Victoria or a Crown corporation of the City of Victoria that is the latter's agent for the purpose of implementing the Agreement and, upon disposition, undertakes to reimburse Canada, on demand, a proportionate amount of the funds so contributed by Canada, in the following proportion:

i) Fixed Assets:
Prior to and up to one (1) year after the Project Completion Date, the return of the contribution for a Fixed Asset in current dollars is one hundred percent (100%); this will be reduced by four percent (4%) every year thereafter. Twenty-five (25) years after the Project Completion Date, the return of the contribution for a Fixed Asset in current dollars will be zero percent (0%).

ii) Non-Fixed Assets:
Prior to and up to one (1) year after the Project Completion Date, the return of the contribution for a Non-Fixed Asset in current dollars is one hundred percent (100%); this will be reduced by ten percent (10%) every year thereafter. Ten (10) years after the Project Completion Date, the return of the contribution for a Non-Fixed Asset in current dollars will be zero percent (0%).

c) Notwithstanding the foregoing, if the City of Victoria takes any action described in subsection 12.1(a) of this Agreement during the Fixed Asset Disposal Period or Non-Fixed Asset Disposal Period, for a nominal amount, and the disposed asset remains available for its originally intended use, Canada may, at its discretion, choose to waive the remedies identified in subsection 12.1(a).

d) Subject to Section 14.7 (Assignment), if the City of Victoria takes any action described in subsection 12.1(a) of this Agreement during the Fixed Asset Disposal Period or Non-Fixed Asset Disposal Period, Canada may require the City of Victoria to assign its rights and obligations under this Agreement to the third party involved.

12.2 PUBLIC BENEFIT
The Parties acknowledge that their contributions to the Project are meant to accrue to the public benefit.

13. TOLLING

The City of Victoria will not toll or cause to be tolled any of the Project, as described under this Agreement, during a period of twenty-five (25) years after the Project Completion Date, unless an agreement is reached with Canada which provides for the establishment of Tolls, the treatment of funds contributed by Canada for the Project under this Agreement, and:

a) A free and fully accessible alternate route is available, without significant restrictions, unless the only alternate route is serviced by ferry, bridge, or through tolled facilities already existing as at the Effective Date;

b) Toll revenues are used exclusively to offset Project costs for the Project where toll revenues, in whole or in part, flow to a private sector operator excluding Eligible Costs covered under this Agreement, ongoing operating costs, capital maintenance (e.g., resurfacing), a contingency reserve, rate of return on capital (excluding all public contributions), and purchase of private land for the right-of-way, if any;

c) A tariff of Tolls be made available by the City of Victoria to any member of the public, on request;

d) The tariff of Tolls, and exemptions, be applied without discrimination for the same class of user, regardless of their place of origin; and

e) Tolls are collected, where feasible, through the use of electronic tolling systems that are compatible with North American standards.

14. GENERAL

14.1 DEBTS DUE TO THE CROWN

Any amount owed to Canada under this Agreement by the City of Victoria will constitute a debt due to the Crown, which the City of Victoria will reimburse Canada forthwith on demand.

14.2 INTEREST ON DEBTS DUE TO THE CROWN

Debts due to the Crown by the City of Victoria will accrue interest in accordance with the Interest and Administrative Charges Regulations.

14.3 SET-OFF BY CANADA

Any debt due to the Crown by the City of Victoria may be set-off against any amounts payable by Canada to the City of Victoria.

14.4 NO BENEFIT

No member of the House of Commons or the Senate of Canada will be admitted to any share or part of any Contract made pursuant to this Agreement, or to any benefit arising from it.

14.5 NO AGENCY

No provision of this Agreement and no action by the Parties will 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 City of Victoria or between Canada and a Third Party.

The City of Victoria agrees not to represent itself, including in any agreement with a Third Party, as a partner or agent of the Crown.

14.6 NO AUTHORITY TO REPRESENT

Nothing in this Agreement is to be construed as authorizing any person, including a Third Party, to contract for, or to incur any obligation on behalf of, a Party or to act as an agent for a Party. The City of Victoria will take the necessary action to ensure that any agreement between the City of Victoria and any Third Party contains a provision to that effect.

14.7 NO ACTIONS OR PROCEEDINGS

The City of Victoria represents and warrants that there are no actions, suits, investigations or other proceedings pending or, to the knowledge of the City of Victoria, threatened and there is no order, judgment or decree of any court or governmental agency which could materially and adversely affect the City of Victoria’s ability to carry out the activities contemplated by this Agreement. The City of Victoria will inform Canada immediately if any such action or proceedings are threatened or brought during the term of this Agreement.

14.8 ASSIGNMENT

The City of Victoria will not transfer or assign its rights or obligations under this Agreement
without the prior written consent of Canada. Any attempt by the City of Victoria to assign any of the rights, duties or obligations of this Agreement without Canada's express written consent is void.

14.9 COUNTERPART SIGNATURE

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

14.10 VALUES AND ETHICS CODE

No person governed by any post-employment, ethics and conflict of interest guidelines or policies of Canada or the City of Victoria will derive a direct benefit from this Agreement unless that person complies with the applicable provisions of the guidelines or policy.

The City of Victoria will inform Canada, in writing, should any real and/or apparent conflict of interest exist or arise that could have a direct impact on Canada's contribution to the Project.

14.11 SEVERABILITY

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

14.12 LOBBYISTS AND AGENT FEES

The City of Victoria:

a) Warrants that any person it has hired, for payment, to speak to or correspond with any employee or other person representing Canada on the City of Victoria's behalf, concerning any matter relating to the contribution under this Agreement or any benefit hereunder and who is required to be registered pursuant to the Lobbying Act, is registered pursuant to that Act; and

b) Warrants it has not and will not make a payment or other compensation to any legal entity that is contingent upon or is calculated upon the contribution hereunder or negotiating the whole or any part of the terms of this Agreement.

14.13 AMENDMENTS

Subject to subsections 4.2 (d) and 4.3, this Agreement can only be amended in writing by the Parties.

14.14 WAIVER

A Party may waive any of its rights under this Agreement only in writing, and any tolerance or indulgence demonstrated by the Party will not constitute a waiver.

14.15 NOTICE DEEMED GIVEN

Any notice, information or document provided for under this Agreement may be delivered in person or sent by registered mail or facsimile. Said notice shall be deemed to have been received, if sent by registered mail when the postal receipt is acknowledged by the other Party; by facsimile, when transmitted and receipt is confirmed; and in person, when delivered. A Party may change the address below by notifying the other Party in writing.

Any notice to Canada must be sent to:

Surface Infrastructure Programs, Highways & Borders Directorate
Transport Canada
Place de Ville, 336 Sparks St.
Ottawa (Ontario)
K1A 0N5

Any notice to the City of Victoria will be addressed to:

Johnson Street Bridge Project
City of Victoria
1 Centennial Square
Victoria, BC V8W 1P6

14.16 COMPLIANCE WITH LAWS

The City of Victoria will comply with, in relation to the Project, in all material respects, the requirements of all applicable laws, regulations, orders and orders in council, including environmental laws and regulations, and will comply with the requirements of all regulatory bodies.

14.17 ACCESS
The City of Victoria will provide Canada and/or the Auditor General of Canada with reasonable access to the Project sites, facilities and any documentation for the purposes of audit, inspection, monitoring and ensuring compliance with this Agreement.

14.18 GOVERNING LAW
This Agreement is governed by the laws applicable in the Province of British Columbia.

14.19 SUCCESSOR
This Agreement is binding upon the Parties and their respective administrators and successors.

14.20 INTELLECTUAL PROPERTY
All intellectual property that arises in the course of the Project will vest in the City of Victoria.

15. SPECIAL CONDITIONS

15.1 BY-LAW OR RESOLUTION
Prior to funding, the City of Victoria will provide certified copy of the By-Law or Resolution authorizing the within transaction and execution of all documents.

15.2 ENVIRONMENTAL ASSESSMENT
a) If, in the opinion of Canada, an environmental assessment (EA) of the Project is required to be conducted in accordance with the Canadian Environmental Assessment Act (CEAA), the City of Victoria agrees that construction of the Project will not be undertaken or will be suspended and no funds or additional funds will become or will be payable by Canada to the City of Victoria unless and until:
   i. An EA of the Project has been conducted in accordance with the CEAA; and
   ii. Where, taking into account the implementation of any mitigation measures that Canada considers appropriate, the Project is not likely to cause significant adverse environmental effects or is likely to cause significant adverse environmental effects that can be justified in the circumstances and in accordance with the CEAA.

b) The City of Victoria will comply with all conditions arising out of an EA conducted in accordance with the CEAA as a result of the Project, including the implementation, at its own expense, of mitigation measures and any follow up program. Failure to comply with the conditions, the implementation of any mitigation measures and any follow up program may be a cause for default in respect of the Project in accordance with Section 8 (Default).

c) The City of Victoria will allow Canada and its agents, employees or contractors to access and enter at any time during reasonable hours upon any real property under the ownership or control of the City of Victoria for the purpose of ensuring that mitigation measures and any follow up program are implemented for the Project.

d) Notwithstanding any other provisions of this Agreement, should the EA conducted under the CEAA be revisited or should a subsequent EA be conducted in accordance with the CEAA for the Project, the City of Victoria agrees that all of Canada's obligations pursuant to this Agreement in respect of the Project will be suspended from the moment that Canada informs the City of Victoria and such situation will remain until Canada has decided that, taking into account the implementation of any mitigation measures that Canada considers appropriate, the Project is not likely to cause significant adverse environmental effects or is likely to cause significant adverse environmental effects that can be justified in the circumstances and in accordance with the CEAA. The City of Victoria will continue to be responsible under this Agreement to comply with all conditions, to implement any mitigation measures and any follow up program arising out of the revisited EA or the subsequent EA conducted in accordance with the CEAA for the Project.

15.3 ABORIGINAL CONSULTATION
a) With respect to the Project, the City of Victoria agrees that:
   i. No construction of the Project will occur and Canada has no obligation to reimburse Eligible Costs until Canada is satisfied that any legal duty to consult with, and where appropriate, to accommodate Aboriginal groups has been met.
   ii. If, as a result of changes to the Project or otherwise, Canada should determine that further consultation is required, the City of Victoria will work with Canada to ensure that the legal duty to consult, and where appropriate, to accommodate, is met to Canada's satisfaction.
iii. It will consult with Aboriginal groups that might be affected by the Project, explain the Project to them, including Canada’s role, and will provide a report to Canada, which includes a:

1. List of all Aboriginal groups contacted;
2. Summary of all communications to date with the Aboriginal groups, indicating which groups support or object to the Project, and whether their positions are final, preliminary, or conditional in nature;
3. Summary of any issues or concerns that the Aboriginal groups have raised and an indication of how the City of Victoria has addressed or proposes to address those issues or concerns; and
4. Any other information Canada may deem appropriate.

SIGNATURES

This Agreement has been executed on behalf of Her Majesty the Queen in Right of Canada by the Minister of Transport, Infrastructure and Communities and on behalf of the Corporation of the City of Victoria by the Mayor of the City of Victoria.

HER MAJESTY THE QUEEN IN RIGHT OF CANADA

The Honourable Chuck Strahl
Minister of Transport
Date: MAR 23 2011

CORPORATION OF THE CITY OF VICTORIA

Dean Fortin, Mayor
Date: 11 March 2011

Witnessed by
Name: LAURIE THONESS

Witnessed by
Name:

DONALD S. SCHAFFER
A Commissioner for taking Affidavits in British Columbia
#1 Centennial Square
Victoria, B.C. V8W 1P6
SCHEDULE A – ELIGIBLE AND INELIGIBLE COSTS

A.1. **ELIGIBLE COSTS**

Eligible Costs will be all direct costs, which are in Canada’s opinion properly and reasonably incurred and paid by the City of Victoria under a Contract for goods or services necessary for the Project Implementation. Eligible Costs include only the following:

a) The capital costs of acquiring, constructing or renovating a tangible capital asset, as defined and determined according to accounting principles generally accepted in Canada;

b) The costs of joint communication activities (press releases, press conferences, translation, etc.) and road signage recognition set out in the Communication Protocol that forms part of the Framework Agreement;

c) All planning (including plans and specifications) and assessment costs specified in the agreement such as the costs of environmental planning, surveying, engineering, architectural supervision, testing and management consulting services. Canada will contribute no more than 15% of its contribution to this cost;

d) Active transportation projects including sidewalks, bicycle lanes, pedestrian/bike/multi-use pathways are Eligible Costs as part of public transit, local roads or highway projects;

e) The costs of engineering and environmental reviews, including environmental assessments and follow-up programs as defined in the Canadian Environmental Assessment Act and the costs of remedial activities, mitigation measures and follow-up identified in any environmental assessment;

f) Costs of project-related signage, lighting, project markings and utility adjustments;

g) Costs of aboriginal consultation;

h) The costs of developing and implementing innovative techniques for carrying out the Project;

i) City of Victoria audit and evaluation costs as specified in the Agreement; and

j) Other costs that, in the opinion of Canada, are considered to be direct and necessary for the successful Project Implementation and have been approved in writing prior to being incurred.

Eligible Costs can begin to accrue effective as of the Project Approval Date. However all Eligible Costs outlined above can be reimbursed to the City of Victoria only following the signing of the Agreement in respect of the Project.

A.2. **INELIGIBLE COSTS**

The following costs are Ineligible:

a) Costs incurred prior to the formal Project review and prior to December 4, 2009;

b) Costs incurred after the Project Completion Date;

c) The cost of developing a business case or proposal for funding;

d) The cost of purchasing land and associated real estate and other fees;

e) Financing charges and interest payments on loans;

f) Leasing land, buildings, equipment and other facilities;

g) General repairs and maintenance of the Project work and related structures, unless they are part of a larger capital expansion project tied to capital expansion;

h) Services or works normally provided by the City of Victoria, incurred in the course of Project Implementation, except those specified as Eligible Costs;

i) The cost of any goods and services which are received through donations or in kind;

j) Employee wages and benefits, overhead costs as well as other direct or indirect operating, maintenance and administrative costs incurred by the City of Victoria, and more specifically costs relating to services delivered directly by permanent employees of the City of Victoria, or of a Crown Corporation or corporation owned and controlled by the City of Victoria.

k) Provincial sales tax and Goods and Services Tax or the Harmonized Sales Tax, for which the City of Victoria is eligible for a rebate, and any other costs eligible for rebates; and

l) Legal fees.
SCHEDULE B - THE PROJECT

B.1. SCOPE OF THE PROJECT

The Project will replace the existing Johnson St. Bridge and approaches with a new bascule bridge that will span the Victoria Harbour. Project construction will begin in Summer 2011 with completion expected in late 2015.

The key deliverables for the Project will be:

1. A new opening span bridge over the Inner Harbour with 3 travel lanes to a lifeline seismic standard;
2. On-road bike lanes on the bridge deck in both directions;
3. Multi-use trail for both pedestrians and cyclists;
4. Separate pedestrian pathway on south side of bridge;
5. New signalized intersection at Esquimalt Road / Harbour Road;
6. Integration with existing and future pathways and trails;
7. Marine navigation channel to modern standards;
8. Improved road approaches on both sides;
9. Preserved rail corridor for future use;
10. Relocated rail station on west side;
11. Utility relocations; and
12. Decommissioning and removal of the existing bridges;

An Environmental Assessment pursuant to the requirements of the Canadian Environmental Assessment Act was completed for this project on February 22, 2011.
### B.2. PROJECT TIMELINE AND COST BREAKDOWN

<table>
<thead>
<tr>
<th>Name of Project</th>
<th>Description of Project</th>
<th>Estimated Total Costs</th>
<th>Estimated Eligible Costs</th>
<th>Estimated Contribution by Canada</th>
<th>Estimated contribution to Eligible Costs per Party, per Fiscal Year</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Johnson Street Bridge Replacement</strong></td>
<td>The Project will replace the existing Johnson St. bridge and approaches with a new bascule bridge that will span the Victoria Harbour. Project construction will begin in Summer 2011 with completion expected in late 2015. The key deliverables for the Project will be: 1. A new opening span bridge over the inner Harbour with 3 travel lanes to a lifetime seismic standard; 2. On-road bike lanes on the bridge deck in both directions; 3. Multi-use trail for both pedestrians and cyclists; 4. Separate pedestrian pathway on south side of bridge; 5. New signalized intersection at Esquimalt Road / Harbour Road; 6. Integration with existing and future pathways and trails; 7. Marine navigation channel to modern standards; 8. Improved road approaches on both sides; 9. Preserved rail corridor for future use; 10. Relocated rail station on west side; 11. Utility relocations; and 12. Decommissioning and removal of the existing bridges;</td>
<td>$77,000,000</td>
<td>$75,000,000</td>
<td>Canada</td>
<td>$4,000,000  $7,886,667  $7,956,667  $1,156,666</td>
</tr>
<tr>
<td><strong>City of Victoria</strong></td>
<td></td>
<td></td>
<td></td>
<td>City of Victoria</td>
<td>$8,000,000  $15,773,333  $15,913,333  $16,313,334</td>
</tr>
<tr>
<td><strong>TOTAL</strong></td>
<td></td>
<td>$77,000,000</td>
<td>$75,000,000</td>
<td><strong>Canada</strong></td>
<td><strong>$12,000,000</strong>  <strong>$23,660,000</strong>  <strong>$23,870,000</strong>  <strong>$17,470,000</strong></td>
</tr>
</tbody>
</table>

*For greater certainty, Canada’s total contribution cannot exceed the amount set out in Section 3.1.*
SCHEDULE C – COMMUNICATIONS PROTOCOL

C.1 SCOPE
The communications provisions of this Agreement apply to the Project. The Parties will be required to meet all relevant terms and conditions of the communications protocol set out in this schedule.

C.2 GUIDING PRINCIPLES

C.2.1 The Parties agree to undertake joint communications activities and collaborate on products to ensure open, transparent, proactive and effective communications with the public. This transparency and accountability will be achieved through appropriate and consistent public communications activities that recognize the contributions of all participating parties under this Agreement as well as the Framework Agreement.

C.2.2 The Parties agree that all communications products produced pursuant to this Agreement shall comply with the Federal Identity Program (FIP). Branding standards, protocols, graphic guidelines, and templates for public information material and signage will be developed by the Parties to guide development of communications products and activities under this Agreement.

C.2.3 The mechanisms for communications and public information activities and products shall be determined by the Management Committee.

C.2.4 All communications through electronic media such as web sites or management information systems should follow the same guiding principles as those established for “traditional” means of communications.

C.2.5 All public information material pursuant to this Agreement shall be in both official languages (English and French) and indicate, where applicable and practicable, that the Project is being implemented under the Building Canada Fund. All such material shall fairly reflect the contribution of all parties to the Project. This includes ensuring equal recognition and prominence where words, logos, symbols and other types of identification are incorporated into materials.

C.3 PROJECT COMMUNICATIONS

C.3.1 General
All written communications concerning the Project shall be prepared in a manner that supports the communications objectives and branding of the Building Canada Fund.

C.3.2 Contracts
All public information material related to calls for tendering for the Project shall clearly and prominently indicate that the Project is funded under the Building Canada Fund.

C.3.3 Project Promotion

a) The City of Victoria is responsible for the promotion of the Project and its activities and objectives within their jurisdiction. The City of Victoria will provide, as appropriate, project communications such as: the Project web site, print, audiovisual and other communications about the project as it proceeds. The City of Victoria will inform Canada of any such promotional communication before it takes place. The City of Victoria will also ensure appropriate recognition of Canada’s contribution is mentioned and the contribution of all parties in annual reports, speeches or other opportunities, as appropriate.

b) The City of Victoria is solely responsible for operational communications including calls for tender, construction, design, property, emergency and public safety notices. Notwithstanding C.2.5, operational communications as described above are not subject to official language policy and may be in English only. Notwithstanding C.4.7., the City of Victoria is not required to provide any notice to Canada with respect to operational communications, including advertising, required for such operational communications.

c) The City of Victoria will share information promptly with Canada on significant emerging media and stakeholder issues relating to the project. Canada will advise the City of Victoria, where appropriate, about media inquiries received concerning the project. (For example, joint management questions or serious safety matters.)
d) The Parties reserve the right to refer to funding provided under the Building Canada Fund in their own separate, and non-project specific communications. Each Party commits to acknowledge the other Parties’ involvement in the project.

e) The City of Victoria will provide, whenever possible, professional quality audio-visual material about the project to Canada to support wider communications about funding under the Building Canada Fund.

C.4 COMMUNICATING WITH THE PUBLIC

C.4.1 General

a) The Parties shall consult with each other, fifteen (15) working days in advance, about all proposed news releases, new media communications activities, or public announcements relating to the Project. This is to provide the Parties sufficient notice of key Project communications, and, where appropriate, the time to determine a course of action, line up principals and prepare joint material. Notwithstanding the advance notice requirement, consent shall not be unreasonably withheld by the Parties if a news release or public announcement must be issued in less than fifteen (15) working days as the result of unforeseeable circumstances, including matters of public safety or where an emergency response is required.

b) The City of Victoria will advise Canada regularly of upcoming public events or community relations activities relating to the Project as per the initial communications plan specified in C.4.1(c). The Parties commit to acknowledge the other Parties’ involvement.

c) The Project will include a communications plan showing how the City of Victoria intends to manage communications and provide the Parties with equal visibility. This plan should also forecast: major milestones for joint communications, Project communications activities (e.g., tender notices, plans to provide partner visibility after Project completion), and estimated expenditures for key communications activities and issue management.

d) The Management Committee may monitor the Parties’ performance with respect to the communications provisions of this Agreement and order appropriate remedies, as it sees fit, where insufficiencies are found.

e) In the event of an election call that affects a riding that the Project is located in, whether federal, provincial or municipal, no public announcements will be permitted. For clarification, this does not include announcements and communications made under C.3.3 b).

C.4.2 Signing of the Agreement

The Parties shall issue a joint news release when this Agreement is signed. The Parties agree to hold, where appropriate, an official ceremony on these occasions.

C.4.3 Public Information Kits

The Parties may develop joint information kits, brochures, public reports, new media products, and web site material to inform the public about the Project and the Building Canada Fund. Such material shall be prepared in a manner consistent with this schedule and any core messages developed by the Parties.

C.4.4 New Releases

The Parties shall issue joint news releases after the Agreement is signed or upon Project milestones. In all such news releases, the Parties shall receive equal prominence. The Parties shall mutually agree on the use of quotes from the designated representatives of Canada or the City of Victoria in the news releases.

C.4.5 News Conferences, Public Announcements, Official Events or Ceremonies

a) The Parties agree to hold news conferences at the request of any Party. The requestor shall provide at least fifteen (15) working days notice of such a news conference, which will take place at a mutually agreed date and location. The Ministers, Mayor and Chair or a designated representative of each of the Parties, should participate in such news conferences.
b) No public announcement relating to the Project, with the exception of those notices described in C.3.3 b), shall be made by any Party without prior consent of the Management Committee, or its communications sub-committee or designate.

c) The Party proposing a public announcement or official ceremony related to the Project shall provide the other Parties with at least fifteen (15) working days notice. The Ministers, Mayor and Chair or their designated representative, will participate in such announcements or ceremonies to take place at a mutually agreed date and location.

d) The Parties shall cooperate in the organization of announcements or ceremonies. The Table of Precedence of Canada, as established by Canadian Heritage (http://www.pch.gc.ca/programs/cpsc-cscp/po/precedence_e.cfm), or other mutually agreed protocol, should be respected. Messages and public statements for such events should be mutually agreed upon. The Management Committee may recommend special events and ceremonies be held where and when appropriate.

C.4.6 Signage

a) Within 15 days of the signing of this agreement, the City of Victoria agrees to produce and erect temporary signage at each of the project sites acknowledging the federal government's contribution to the project. The signage will be produced in accordance with the design requirements to be provided by Canada and will be at least equivalent in size and prominence to other partners' project signage. The signage will remain in place until 90 days after construction is completed.

b) Design, wording and specifications of joint signage shall reflect the participation of all of the Parties, and must be approved by the Management Committee or its designate. Signage and other identifiers must conform to the Building Canada graphic guidelines, FIP and applicable Canada visual identity guidelines and its successor programs graphic and visual identity guidelines. Wording, in both official languages, designs, and logos of one Party should be of the same size and occupy the same amount of space as the other Parties'. Signs or other identifiers shall have appropriate space indicating participation by the City of Victoria, if requested.

c) Canada shall issue specifications for signs or other identifiers, as well as timeframes for their installation. Temporary signs must be removed within ninety (90) working days of project completion.

d) The City of Victoria will provide and install, upon completion of the Project, where feasible, a plaque, permanent sign or other suitable identifier bearing an appropriate inscription. The design, wording and specifications of such permanent signs shall respect the general provisions of this Agreement and must be approved by Canada.

e) Except for traffic control; safety devices; contractor signage; retail signage or normal construction related signage, no additional signage concerning the Project shall be erected by any Party.

f) The costs of Project signage are an Eligible Cost.

C.4.7 Advertising

Recognizing that advertising can be an effective means of communicating with the public, any Party may, at its own cost, organize an advertising or public information campaign related to the Project. However, such a campaign must respect the provisions of this Agreement. In the event of such a campaign, the sponsoring Party agrees to inform the other Party of its intention as soon as possible, as early notice is essential for any required review process. In any event, notice must be provided a minimum of twenty (20) working days before launch.

C.5 COST ALLOCATION

With the exception of advertising campaigns outlined in subsection C.4.7, the costs of communication activities and signage will follow the eligibility rules established in Schedule A – Eligible and Ineligible Costs.

C.6 DISPUTES, MONITORING AND COMPLIANCE

C.6.1 The Management Committee will monitor with this Schedule, and may, at its discretion, advise the Parties of issues and required adjustments. Should there be any disagreement or contentious issues, Section 7 (Dispute Resolution) of the Agreement will be followed.
SCHEDULE D – REPORTING, AUDIT AND EVALUATION

D.1 REPORTING

D.1.1 ANNUAL PROGRESS REPORT

Save as herein provided, an annual progress report must be submitted by the City of Victoria to Canada by June 30th of each year. The introduction must provide a general description of the Project focusing on major achievements to date. In the event that this Agreement is executed by Canada between January 1st and June 30th, the annual progress report must be submitted to Canada by June 30th in the following year, that is, not in the year of execution of this Agreement. The annual progress report will include the following:

i. detailed summary information on the Project progress;

ii. an overview about the status of both expected and unanticipated significant environmental issues related to the Project and the proposed mitigation strategies to deal with these concerns;

iii. an update of qualitative and quantitative project benefits (environmental, economic, social, cultural, safety, etc.) along with results or successes achieved during the fiscal year. The City of Victoria will ensure that appropriate data collection processes are in place to enable the capture and reporting of benefits;

iv. an explanation of any variations from Schedule B.2 in this Agreement, along with the intended course of action to remedy the situation;

v. i) any areas of concern on risk factors and proposed mitigation strategies affecting the schedule or the budget of the Project;

vi. ii) any issues or risk factors that may affect completion of the Project as per original plans; and,

vii. highlights of communication activities of the project this fiscal year.

D.2 RETENTION OF INFORMATION

The City of Victoria must keep all pertinent information a minimum of six (6) years after completion of the Project. Canada information is subject to the Management of Government Information Policy and consequently the Library and Archives Act of Canada. With the assistance of its Building Canada Fund partners, Infrastructure Canada (INFC) will set up a retention and disposal schedule for Canada Information. It is very likely that some of the information will be transferred to the National Archives at the end of the retention period because of its historical value.

D.3 AUDIT

The City of Victoria is responsible for requesting and managing the undertaking of all audits of the Project and delivering them in the timeframe set out in this Agreement, other than audits set out in subsection 9(b). All audits will be carried out at the City of Victoria’s expenses by accredited and independent auditors in accordance with Generally Accepted Auditing Standards (GAAS). The costs of carrying out these annual audits, by the City of Victoria, are recognized as Eligible Costs in accordance with Schedule A – Eligible and Ineligible Costs, of this Agreement.

D.3.1 FINANCIAL AUDIT(S)

a) financial audits must be conducted by external auditors in accordance with the GAAS.

b) the key objective of the annual financial audit is to determine whether information has been coded correctly and presented fairly in the project/entity financial statements in accordance with GAAP.

D.3.2 COMPLIANCE AUDIT(S)

The key objectives of the compliance audit(s) are to:

a) determine whether funds were expended for the purposes intended and with due regard to economy, efficiency and effectiveness;

i. determine compliance with the Agreement;

ii. ensure the Project and financial information is complete, accurate and timely, in accordance with the terms and conditions of the Agreement;

iii. ensure that information and monitoring processes and systems are sufficient for the identification, capture, validation and monitoring of achievement of intended benefits;
iv. to assess the overall management and administration of the project;

v. provide recommendations for improvement or redress; and,

vi. ensure that prompt and timely corrective action is taken on audit findings.

D.3.3 AUDIT PLANS
The Committee is responsible for establishing, overseeing, managing and implementing an audit plan, including any required corrective actions. The Committee will use an agreed upon risk-based assessment approach. INFC will provide a model risk assessment tool for use by the Committee.

The audit plan will be determined within three (3) months of the establishment of the Committee. The Committee reserves the right to have final approval of the audit plan.

Audit plans must specify:

a) the audit objectives to be achieved for the audits in question, including both the financial audits and compliance audits;

b) the audit methodology;

c) the costs and resources to be allocated for the audit plan;

d) clear understanding with respect to access to working papers by Canada and the City of Victoria;

e) the time frames for audits and public access to audit reports.

There may be a requirement for a separate environmental audit to be undertaken. Audit(s) may be posted on relevant websites of the departments/agencies and available under Access to Information legislation.

D.3.4 AUDIT DELIVERABLES AND TIMELINES
There will be an annual financial audit of the Agreement, as part of the annual progress report. For this Agreement, there will be two (2) compliance audits.

Reporting will occur on the following basis:

a) audit report(s) will be submitted to the Committee;

b) a report on follow-up actions taken to address the recommendations and results of the audits will be submitted to the Committee by the date set out in the audit plan;

c) the Committee will submit audit plans by the dates as established; the annual progress reports are due by June 30th;

The compliance audit frequency may be altered by Canada.

D.4 EVALUATION
Joint Program Evaluations
Canada will conduct the joint formative program evaluation for the BCF following the fourth (4) year of program operations (2011-2012), in order to provide sufficient time to obtain the assurance that the design and delivery of BCF remain within the intended terms and conditions for the program life. The joint summative program evaluation for BCF will be conducted in fiscal year 2015-2016. The City of Victoria agrees to provide information to Canada, as requested, during and following the termination of the Agreement in respect of these evaluations.

The City of Victoria will prepare a retrospective analysis for each Project, to the satisfaction of Canada, prepared from data collected following the Substantial Completion of the Project and submitted before October 31, 2016. The costs of which are eligible under this Agreement as identified in Schedule B. The retrospective analysis will be used to evaluate whether the objectives of the Project have been met.
In the matter of the Agreement entered into between Her Majesty the Queen, in right of Canada, represented by the Minister of Transport, Infrastructure and Communities, and the Corporation of the City of Victoria on [date].

1. [Name], a Professional [Engineer or Architect], duly licensed in the Province of British Columbia do solemnly declare/certify as follows:

1. That I am the Director of Engineering and Public Works of the City of Victoria, and as such have knowledge of the matters set forth in this affidavit;

2. That the work identified as the Project in the above-mentioned Agreement has been substantially completed as described in Schedule B, [date], dated [date] on the _____ day of _____ 20__.

3. That the work:
   - was carried out by (the prime contractor), between the dates (start date) and (completion date);
   - was supervised and inspected by qualified staff;
   - conforms with the plans, specifications and other documentation for the work;
   - conforms with applicable environmental legislation, and appropriate mitigation measures have been implemented; and
   - conforms with the guidelines referenced in Section 3.8 or any other equivalent provincially sanctioned guidelines approved by the Committee established under the above mentioned Agreement.

Declared at (city) ___________________________ in the Province of

this __________ day of

(name, title)

(Witness name, title)