

## **AGREEMENT**

This Agreement dated this 31st day of December, 2009.

**Between:**

**HER MAJESTY THE QUEEN,  
if right of the Province of Saskatchewan,  
as represented by the Minister responsible  
for The Ministry of Highways and Infrastructure  
(the "Minister")**

**And:**

**Canadian Pacific Railway Company  
("CP")**

### **Recitals**

**Whereas:**

(A) the Minister has a statutory mandate to develop and support transportation systems that provide for the safe and efficient movement of traffic and the economic development and social well-being of the Province of Saskatchewan (the "Province");

(B) CP requires a new Intermodal Facility ("IMF", as defined below) near Regina, Saskatchewan to provide the capacity and level of integrated rail/truck service required by its current and future customers;

(C) the Minister and CP understand and agree that the Province and CP will receive substantial benefits from the construction of the IMF as part of the larger Project described herein;

(D) the Parties have reached final agreement on their respective contributions, roles and responsibilities for the Project; and

(E) the purpose of this Agreement is to record the Parties commitment to proceed with the construction of the IMF and other components of the Project, in accordance with the understandings, undertakings and commitments expressed herein.

### **Agreement**

The Parties therefore agree as follows:

#### **1. Purpose**

- 1.1 The Parties will finance, construct and make operational, the IMF and other components of the Project in accordance with the terms of this Agreement.

#### **2. Definitions**

- 2.1 **"Agreement"** means this agreement and all schedules to it.
- 2.2 **"Business Day"** means any Monday, Tuesday, Wednesday, Thursday or Friday which is not a statutory holiday in the Province.
- 2.3 **"Improvements"** means the construction or upgrading in accordance with the Specifications and Design referred to in paragraph 5.4 (the "Specifications") of:
- (a) West Bypass, a provincial highway connecting provincial Highway 1 to provincial Highway 11, including the grade separation over CP's main tracks;
  - (b) Dewdney Avenue; and
  - (c) the IMF access road from the IMF to Dewdney Avenue, including that portion of the IMF access road that lies on the Land,

to an asphalt surfaced structured highway designed by the Ministry for a heavy haul truck route.

- 2.4 **"Intermodal Freight"** means freight transported in containers designed to be transferred from rail car to truck and from truck to rail car.
- 2.5 **"IMF"** means the Land, buildings, equipment, railway track and railway equipment, parking lots, internal roads, lighting, signals and communications, security systems and other facilities required by CP to efficiently receive, ship, store, load, unload and handle Intermodal Freight and all incidental facilities and equipment related thereto, in accordance with the Specifications and Design prepared by CP; referred to in paragraph 5.4.
- 2.6 **"Land"** means:
- (a) Parcel C Plan 101950163, Surface Parcel Number 164145315
  - (b) Parcel B Plan 101950163, Surface Parcel Number 164145348
  - (c) Parcel A Plan 101950163, Surface Parcel Number 164145337
  - (d) Parcel D Plan 101950163, Surface Parcel Number 164145326
  - (e) All that portion of the NE 14-17-21-2; being 121.92 meters in perpendicular width; lying north and parallel to the northern boundary of the CPR right-of-way as shown on Registered Plan 16074

comprising approximately 300 acres, and all as shown in Schedule A to this Agreement.

- 2.7 **"Management Committee"** means the management committee described in paragraph 11.
- 2.8 **"Party"** means either CP or the Minister and **"Parties"** means both of them.
- 2.9 **"Project"** means:
- (a) the construction of the IMF;
  - (b) acquisition of the Land for the IMF by the Minister and the transfer of the Land by the Minister to CP;
  - (c) the construction of the Improvements; and
  - (d) provision of the Services.
- 2.10 **"Services"** means gas, electric power, telephone, sewer and water service for the IMF, sufficient to

meet the requirements of the IMF in accordance with the Specification and Design set out in 5.4.

2.11 "Transfer Date" has the meaning given to it in paragraph 4.2.

### **3. Project Contributions**

#### **CP's Scope of Work**

- 3.1 Subject to paragraphs 3.3 and 3.4 and any other cost or responsibility assigned to the Minister by this Agreement, CP shall at its cost construct or cause to be constructed the railway infrastructure, container handling facilities, buildings and related ancillary structures required for the IMF in accordance with the Specifications and Design of IMF set in 5.4 and bringing it into operational status.
- 3.2 CP will construct the IMF, as outlined in the scope of work in 3.1, as expeditiously as reasonably feasible, and will make, subject to events of force majeure, and constraints such as storms and inclement weather, winter conditions including snow and frozen ground conditions, labour disruptions, delay in delivery of materials from suppliers and other similar matters beyond CP's reasonable control, as well as the availability of materials, workers and equipment, and the need for efficient operations on the Indian Head Subdivision. CP will make all reasonable efforts to place the IMF in service by December 31, 2012.

#### **Minister's Scope of Work**

- 3.3 Subject to 3.5, the Minister shall, at its cost:
- (a) construct or cause to be constructed, in consultation with CP, all internal roadways, parking lots for intermodal transfer of containers on the Land in accordance with the Specifications and Design of IMF referred to in paragraph 5.4, and bringing them to operational status;
  - (b) acquire the Land required for the IMF and transfer it to CP;
  - (c) construct or cause to be constructed, the Improvements and bring them to operational status;
  - (d) provide or cause to be provided the Services to the point or points designated by CP within the Land; and
  - (e) relocate or lift the SaskPower transmission lines located on the Lands to a location agreed upon by the Parties.
- 3.4 For greater certainty, CP shall be responsible for monthly or other usage charges and all other costs, fees, assessments or charges related to the Services or other utilities, except only for the costs referred to in 3.3 (d).

#### **Funding**

- 3.5 For the scope of work identified in 3.1 and 3.3, the costs shall be apportioned as follows:
- (a) the Minister will contribute:
    - (i) the total cost of the Improvements in recognition of the contribution arrangement between the Federal Government of Canada, the Province of Saskatchewan, the City of Regina, and CP; and
    - (ii) a maximum of \$20 million to the total cost of those items described in 3.3(a), (b), (d) and (e), with the portion of the cost of 3.3(b) not to exceed \$11,000 per acre.

- (b) CP shall be responsible for all other costs within the IMF footprint.

#### **4. Land for the Intermodal Facility**

- 4.1 In consideration of CP's contributions to the Project, the Minister will transfer the Land to CP at no cost to CP and free and clear of all encumbrances, except for the following :
- (a) Parcel B; Plan 101950163:
    - i) Interest No.141898001; easement by SaskTel
    - ii) Interest No.141898012; easement by SaskPower
  - (b) Parcel A; Plan 101950163:
    - i) Interest No.141660918; easement by SaskTel
    - ii) Interest No.141660895 and 141660907; easement by SaskPower
  - (c) Parcel C; Plan 101950163:
    - i) Interest No. 103120636; easement by SaskTel
    - ii) Interest No. 103120614; easement by SaskPower
    - iii) Interest No. 103120625; pipeline easement by Kinder Morgan Canada Inc.
  - (d) Parcel D; Plan 101950163:
    - i) no registered easements exist against road allowance;
    - ii) SaskTel and SaskPower require easements when title transfers
  - (e) NE 14-17-21-2 Ext 1 Parcel No.110620741; Interest No.123926755; easement by SaskTel
  - (f) NE 14-17-21-2 Ext 2 Parcel No.110670595; Interest No. 123926744; easement by SaskTel
  - (g) NE-14-17-21-2 Parcel A; Plan DD5841 Ext 0;
  - (h) drainage ditch owned by the Ministry of Highways and Infrastructure; (the Grand Coulee drainage ditch)
- 4.2 As part of the consideration payable in 4.1, the Minister will or will undertake to have permanently closed and transferred those portions of the road allowances shown and highlighted as area A,B,and C in Schedule A (the "Road Allowance Land), to CP free and clear of all encumbrances, at no cost to CP, except as provided in 4.1"
- 4.3 The transfer of the Land by the Minister to CP shall take place on the 20<sup>th</sup> Business Day following the day on which CP receives the last of the consents and approvals referred to in 8.3 (the "Transfer Date") or such earlier date as the Parties agree. The Minister shall, if requested by CP, provide its support and assurances regarding the Land for all regulatory consents and approval.
- 4.4 The Minister agrees to prepare the land transfer documentation, and CP shall be responsible for normal registration fees charged by the land titles system.
- 4.5.1 Taxes and all other normal assessments or charges relating to the Land and typically adjusted in the purchase and sale of real property shall be adjusted as of the Transfer Date and detailed in a Statement of Adjustments in a form to be prepared by the Minister with the intent that CP shall be responsible for all expenses and liabilities and be entitled to receive all revenues in respect of the Land from and including the Transfer Date, and that the Minister shall be responsible for all expenses and liabilities and be entitled to receive all revenues in respect of the Land prior to the Transfer Date.
- 4.5.2 The Minister expressly represents and warrants in favour of CP, that the Lands are suitable and fit for the purpose of an intermodal facility and the Project.

- 4.7 The Minister and CP acknowledge and agree that it is of paramount importance to CP that CP has a continuous and uninterrupted IMF facility as part of the Project and the transfers of land described in 4.1 and 4.2 are critical to this effect.
- 4.8 On or before the transfers described in 4.1 and 4.2, the Minister shall have obtained approval from the relevant subdivision authority for a subdivision application allowing the Lands and the Road Allowance Lands to be subdivided from any adjacent lands, such that the Lands and the Road Allowance Lands shall have separate certificates of title capable of being conveyed to CP, all at the Ministers cost. For clarity the Minister shall be responsible for any survey costs and applications fees, charges costs, levies and other fees with respect to the subdivision or imposed by any authority in order to comply with applicable planning legislation requirements.

### **5. Design and Specifications**

- 5.1 The IMF shall replace CP's current intermodal facility in downtown Regina and will be of sufficient design and capacity to meet the current and foreseeable needs of CP for the receiving, shipping, storage, loading, unloading and handling of Intermodal Freight to handle future demand volumes.
- 5.2 CP shall be responsible for the specifications and design of the IMF.
- 5.3 The Minister shall be responsible for the specifications and design of the Improvements.
- 5.4 Prior to construction, the Minister and CP acknowledge that they will exchange, for review by the other party, the general design and general specifications for the IMF, Improvements, and Services as identified below:

Specifications and Design of IMF  
Prepared by: Canadian Pacific

Specifications and Design for the Regina West Bypass  
Prepared by: The Minister

Specifications and Design for upgrades on Dewdney Avenue  
Prepared by: The Minister

Specifications and Design for Access Road to IMF  
Prepared by: The Minister

Specifications and Design for Services  
Prepared by: The Minister

- 5.5 The reviews referred to in paragraph 5.4 are required solely for the protection of the Party or Parties and neither the Party or Parties nor their respective officers, servants or agents shall be liable for the safety, adequacy, soundness or sufficiency of anything reviewed by reason of performing such review nor shall the review constitute a waiver or release by the Party or Parties performing the review of any duty or liability owed to them under this Agreement or to its or their officers, servants or agents.
- 5.6 Notwithstanding anything in this Agreement, neither Party shall have any obligation to the other Party under this Agreement until the reviews for the general design and general specifications for the IMF, Improvements, and Services referred to in 5.4 above have been completed and are consistent with the scope of work in 3.1 to 3.4.

## **6. Direction, Control and Supervision of Construction**

- 6.1 CP shall have sole direction, management, control, supervision and responsibility for the successful and timely construction of the IMF.
- 6.2 The Minister shall have sole direction, management, control, supervision and responsibility for the successful and timely construction of the Improvements.

## **7. Commencement and Completion Dates**

- 7.1 The Minister warrants that: it has acquired title to the Land; there is no litigation existing, pending or threatened with respect to title to the Land, and it may transfer the Land free and clear of all encumbrances, except as provided in 4.1.
- 7.2 Subject to 3.2 and to obtaining all applicable governmental consents and approvals for the construction and operation of the IMF, CP shall complete construction of the IMF and it shall be in operation by no later than December 31, 2012, or as otherwise agreed upon by the Parties in writing.
- 7.3 The Minister shall complete construction of :
  - (a) the access road to the IMF by December 31, 2010;
  - (b) the West Bypass and Dewdney Avenue as required to meet CP's traffic volumes and to ensure fluid, safe, and efficient IMF and Railway Operations;
  - (c) the Services to be provided by the Minister, as described in paragraph 3.3(d), by December 31, 2011.
- 7.4 The Minister shall ensure that there is road access to the IMF reasonably satisfactory to CP to ensure efficient IMF Operations during the interval between the date the IMF is operational and the date the Improvements to the West Bypass and Dewdney Avenue are operational.
- 7.5 On, or as soon as possible after the completion of construction of the IMF, CP shall permanently cease receiving, shipping, storing and handling Intermodal Freight at its intermodal facility in downtown Regina and thereafter provide all such Intermodal Freight services from the IMF.

## **8. Approvals**

- 8.1 CP shall be responsible, at its own expense apply for all applicable consents and approvals for the IMF, including the following:
  - 8.1.1 approval from the CTA pursuant to section 98 of the *Canada Transportation Act* to construct the IMF in order to relocate CPR's main line Railway Operations;
  - 8.1.2 submit the environmental assessment to the CTA, (as the responsible authority under the *Canadian Environmental Assessment Act*), and respond to any questions or public objections received in response to such report; and
  - 8.1.3 serve notices of proposed railway works required under the *Railway Safety Act*, respond to any objection received in respect of such notices and, subject to the decision of Transport Canada, obtain any approval of Transport Canada for such railway works that may be required under the *Railway Safety Act*.

- 8.2 The Minister shall be responsible, at its own expense, for any other consultations, approvals, permits and authorities. The Minister agrees to ensure that applicable consultations and approvals are made and progressed in coordination with the applications to be made by CP under Section 8.1 and subject to any requirements CPR may communicate from time to time.
- 8.3 CP's obligation to construct and operate the IMF is subject to CP obtaining all applicable governmental consents and approvals for the construction and operation of the IMF including without limitation, those set out in Section 8.1.
- 8.4 The Minister shall be responsible, at its own expense, for ensuring that the Improvements comply with applicable environmental zoning and land use regulations and for obtaining all permits, consents and approvals that are required to construct and operate the Improvements.

#### **9. Standard of Work**

- 9.1 Each Party shall ensure that all work or services provided to the part of the Project for which it is responsible, is of a good quality and is completed in a good and professional manner, in accordance with the Design and Specifications and in accordance with the terms of this Agreement and all applicable federal, provincial or municipal statutes, regulations, guidelines, standards, bylaws and codes.

#### **10. Good Faith**

- 10.1 The Parties represent to one another that they will act reasonably and in good faith when carrying out their obligations.
- 10.2 The Parties agree to act reasonably in exercising any discretion, judgment, approval or extension of time which may be required to affect the purpose and intent of this Agreement. Whenever the approval or consent of a Party is required under this Agreement, such consent shall not be unreasonably withheld or unduly delayed. For clarity the Parties agree that if the applicable approvals for the construction and operation of the IMF or Improvements are delayed, the Parties' obligation to complete construction, and commence operation, of the IMF or Improvement shall be delayed for a similar period of time.
- 10.3 The Parties shall execute and deliver all such further documents, give such further consents, approvals and authorizations and do all such things as may be necessary or desirable for the due carrying out of this Agreement.
- 10.4 If either Party is delayed or temporarily prevented from progressing their obligations under this Agreement to completion due to a condition of force majeure or other conditions beyond the reasonable control of that Party, then that Party will diligently work to remove such force majeure condition or develop a work around to the same in an attempt to diligently and expeditiously complete their work.

#### **11. Management Committee**

- 11.1 In order to facilitate the administration of this Agreement, there shall be a Management Committee consisting of one representative of each of the Parties. A Party may change its representative on the Management Committee on written notice to the other Party. The Management Committee shall meet from time to time and in such manner as it determines for the purpose of exchanging information and discussing and resolving any matter or issue that arises out of this Agreement.

**11.2 Until further written notice, the representatives on the Management Committee are:**

<b>Minister:</b>	<b>Mr. Bill Cooke</b> Ministry of Highways and Infrastructure 1200 - 1855 Victoria Avenue REGINA SK S4P 3T2 Tel: (306) 787-5526 Fax: (306) 787-9777 Email: <a href="mailto:bill.cooke@gov.sk.ca">bill.cooke@gov.sk.ca</a>
<b>CP</b>	<b>Mr. Jim Buggs</b> GM Business Development & Strategic Projects Suite 500, Gulf Canada Square 401 - 9 Avenue SW CALGARY AB T2P 4Z4 Tel: (403) 319-7350 Fax: 403-319-3198 Email: <a href="mailto:jim_buggs@cpr.ca">jim_buggs@cpr.ca</a>

- 11.3 The representatives may be accompanied at all meetings of the Management Committee by persons possessing such technical, legal and other expertise as the representatives consider advisable.**

**12. Dispute Resolution**

- 12.1 All disputes directly or indirectly arising out of or in relation to this Agreement or the interpretation, construction, performance, or breach of this Agreement (collectively "Disputes") shall be resolved in accordance with the procedures set out in this paragraph 12. Whenever either Party believes that a Dispute exists that requires resolution pursuant to this paragraph 12, it shall give written notice of such fact to the other Party with sufficient detail concerning the Dispute so that it is adequately identified.**
- 12.2 All oral and written communications between the Parties or their respective representatives issued or prepared in connection with the attempted resolution of any Dispute shall be deemed to have been prepared and communicated in furtherance of a Dispute settlement and shall be exempt from discovery and production, and shall not be admissible in evidence (whether as an admission or otherwise) in any proceedings for the resolution of the Dispute.**
- 12.3 The Parties will make good faith business efforts to resolve all Disputes under this Agreement. The Parties will initially attempt to resolve all Disputes amicably between themselves by having the Management Committee discuss the Dispute, in consultation, where appropriate, with their commercial, financial, technical or legal representatives. If such initial attempt does not result in resolution of the Dispute in question within 20 Business Days after commencement of discussions, the Dispute will be referred to the Deputy Minister of the Ministry of Highways and Infrastructure of the Minister and the Senior Vice-President Strategy and Yield of CP (the "Executive Panel"). If the Executive Panel are unable to resolve the Dispute within a further 20 Business Days, it may be referred to arbitration in accordance with paragraph 12.4.**
- 12.4 If the Executive Panel are not able to resolve a Dispute, such Dispute may be referred to arbitration and either Party shall be entitled to request such arbitration any time after the failure of the Executive Panel to resolve the Dispute. Any request for arbitration shall be made by notice**



from one Party to the other. Both Parties shall within 20 Business Days of delivery of the request for arbitration appoint one arbitrator and within a further 10 Business Days of the appointment of the second arbitrator, such arbitrators shall jointly select a third arbitrator who shall serve as chair. In the event either Party fails to appoint an arbitrator in accordance with the foregoing, the arbitrator appointed by the other Party shall serve as the sole arbitrator. In the event that the two arbitrators fail to select a third arbitrator in accordance with the foregoing, either Party may apply to a judge of the Saskatchewan Court of Queen's Bench for the appointment of a third arbitrator pursuant to the provisions of the Arbitration Act, 1992, S.S. 1992, c. A-24.1.

- 12.5 The arbitrators appointed pursuant to paragraph 16.4 (the "Arbitrators") will be deemed to be arbitrators within the meaning of the Arbitration Act, 1992, S.S. 1992, c. A-24.1, and the provisions of that Act as amended or replaced from time to time will apply to the arbitration.
- 12.6 The Parties agree that the Arbitrators will be directed by the Parties to evaluate the Dispute and to make their decision concerning the Dispute having regard to the entire agreement between the Parties as set out in this Agreement.
- 12.7 The Parties agree that the submission of any Disputes to arbitration pursuant to this paragraph 12 and the making of an award in respect of those Disputes, shall be a bar to commencing or bringing any legal proceedings by either Party in respect of the matters to be submitted to arbitration. The decision of the sole Arbitrator (if a one member arbitration panel) or of two Arbitrators (if a three member arbitration panel) shall be final and binding on the Parties.
- 12.8 In any arbitration proceeding each party shall pay its own costs and one half the other costs of and incidental to such arbitration.
- 12.9 It is understood that when a matter is left to the discretion or option of one of the Parties or is left to be negotiated under this Agreement, such matters shall not be matters which are subject to arbitration.

### **13. Notices**

- 13.1 Any notice required to be given by one Party to the other, may be given to by delivery in person, mail, fax or e-mail to the Party's representative on the Management Committee, and any notice, demand or request so mailed shall be deemed to have been given or made on the second business day following the day of mailing of the same or if sent by facsimile or delivered personally shall be deemed to have been given and made on the date of sending or delivery, provided that in the case of delivery by fax a delivery receipt is produced.

### **14. Relationship Of Parties**

- 14.1 The Parties acknowledge and agree that they are each independent contractors and nothing in this Agreement shall be construed to make the Parties partners, joint venturers, principal and contractor or agent, or render either of them liable for the acts, omissions, debts, responsibilities or obligations of the other, except as provided in paragraph 15.

### **15. Term**

- 15.1 This Agreement shall be effective as of the date first written above and continue until the Parties have agreed that all components of Project have been fully completed.

### **16. Confidentiality**

- 16.1 The Parties acknowledge that this Agreement contains confidential information of each Party that, if publicly disclosed, would interfere with the contractual or other negotiations of a Party and prejudice the Parties' commercial and economic interests. This Agreement and all negotiations, discussions and documentation of any kind involving either of the Parties that is related directly or indirectly to the IMF and whether or not those negotiations, discussions and documentation preceded or follow the execution of this Agreement, shall be held by the Parties in confidence and shall not be disclosed to any third party without the consent of both Parties.
- 16.2 Paragraph 16.1 shall not apply where disclosure is required by law. The Parties agree that if either Party receives notice of a proposed order requiring production of this Agreement, the Party receiving such notice shall provide the other Party with notice of such notice so that the other Party has an opportunity to appear at any hearing concerning the granting of such an order.

## **17. General**

- 17.1 This Agreement constitutes the entire agreement between the Parties and supersedes all previous negotiations. No implied terms or obligations of any kind shall arise from anything in this Agreement or otherwise, and the express provisions and agreements contained herein are the only provisions and agreements upon which any rights against a Party may be founded.
- 17.2 No waiver by either of the Parties of any breach of condition, covenant or agreement contained in this Agreement shall constitute a waiver of any condition, covenant or agreement except in respect of the particular breach giving rise to such waiver.
- 17.3 No failure or delay on the part of either Party in exercising any right, power, privilege or remedy will be, or be deemed to be, a waiver of it; nor may any single or partial exercise of any right, power, privilege or remedy preclude any other or further exercise of the same or any other right, power, privilege or remedy.
- 17.4 No change or modification of this Agreement shall be valid unless it be in writing and signed by each Party hereto.
- 17.5 This Agreement shall be construed to be in accordance with and governed by the laws in force in the Province of Saskatchewan.
- 17.6 In this Agreement, where the context so requires, the singular of any word includes the plural, and vice versa, the use of any term is generally applicable to any gender and, where applicable, to a corporation.
- 17.7 All paragraph headings are inserted for convenience of reference only and shall not affect any construction or interpretation of the Agreement.
- 17.8 This Agreement may be executed by the Parties by facsimile and in separate counterparts each of which when so executed and delivered shall be an original, but all such counterparts shall together constitute one instrument.
- 17.9 Neither Party may assign this Agreement without the prior written consent of the other Party, which consent shall not be unreasonably withheld.

In Witness Whereof the Parties hereto have executed this Agreement on the day and year hereunder mentioned.

**HER MAJESTY THE QUEEN IN RIGHT OF SASKATCHEWAN**, as represented by the Minister responsible for the Ministry of Highways and Infrastructure

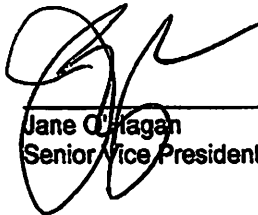
**Ministry of Highways and Infrastructure:**



John Law, Deputy Minister  
Ministry of Highways and Infrastructure

Date: 31/12/09

**CANADIAN PACIFIC RAILWAY COMPANY:**



Jane O'Hagan  
Senior Vice President Strategy and Yield

Date: Dec 31/2009



Don Campbell  
Vice-President Finance

Date: Dec 31/2009