

AGREEMENT

THIS AGREEMENT made as of the 27th day of July, 1995.

BETWEEN:

HER MAJESTY THE QUEEN IN RIGHT OF THE PROVINCE OF BRITISH COLUMBIA, represented by the Minister of Employment and Investment (the "Province")

OF THE FIRST PART

AND:

COLUMBIA BASIN TRUST, a corporation incorporated under the *Columbia Basin Trust Act* (the "Trust")

OF THE SECOND PART

WHEREAS:

- A. The Province desires to develop long term, meaningful employment opportunities and to foster investment in British Columbia;
- B. The board of directors of the Trust comprises directors appointed by the Ktunaxa-Kinbasket Tribal Council and five Regional Districts (Central Kootenay, Kootenay Boundary, East Kootenay, Columbia Shuswap and Fraser-Fort George) of the Region and the Province;
- C. The Province and the Trust acknowledge that the Region, as the site of operational infrastructure to produce hydroelectricity under the Treaty, has suffered environmental and socioeconomic impacts as a result of Treaty operations;
- D. The Province and the Trust wish to construct, operate and own in equal partnership the Power Projects to provide sustainable funding for the Trust to create employment and economic opportunities throughout the entire Region;
- E. The Province and the Columbia River Treaty Committee Inc. have set out certain understandings regarding the establishment and funding of the Trust in the MOU;
- F. The parties wish to formalize in this Agreement and make binding upon each other the understandings set out in the MOU;

NOW THEREFORE THIS AGREEMENT WITNESSES that in consideration of the premises and the mutual covenants set out herein, the parties agree as follows:

1. DEFINITIONS

1.1 In this Agreement and the recitals hereto:

- (a) "Act" means the *Columbia Basin Trust Act*;
- (b) "Brilliant Expansion" has the meaning set out for that term in Article 1.1.10 of the Power Asset Sale and Development Agreement;
- (c) "Brilliant Expansion Right" has the meaning set out in Article 1.1.12 of the Power Asset Sale and Development Agreement;
- (d) "Brilliant Expansion Rights Amount" means the book value of the Brilliant Expansion Rights on the date of the Joint Venture Agreement relating to the Brilliant Expansion;
- (e) "Capital Expenditures" means expenditures for or in connection with the acquisition or construction of fixed or capital assets which are required to be recorded as increases in fixed or capital assets in accordance with GAAP;
- (f) "CPC" means Columbia Power Corporation, a government corporation incorporated under the *Company Act*, whose authority and capacity to make material decisions are subject to the approval of the Treasury Board and Cabinet of the Province;
- (g) "Expansion Rights Amount" means the aggregate of the Brilliant Expansion Rights Amount and the Waneta Expansion Rights Amount;
- (h) "GAAP" means those generally accepted accounting principles (including the methods of application of such principles) established by the Canadian Institute of Chartered Accountants;
- (i) "Joint Venture" means an unincorporated joint venture or limited partnership between CPC and a Trust Subsidiary (and possibly one or more third parties) and formed pursuant to a Joint Venture Agreement for the sole purpose of owning, constructing or operating a Power Project;
- (j) "Joint Venture Agreement" means each agreement to be made between CPC and the Trust (the benefit of which will be assigned by the Trust to a Trust Subsidiary such that the Trust is not, in relation to a Power Project, carrying on any active business or incurring any liabilities or obligations to third parties) in respect of a Power Project which will include provisions for the following:

- (i) in the case of an agreement relating to the Brilliant Expansion, a dedication by CPC of the Brilliant Expansion Rights to the Brilliant Expansion Joint Venture and agreement by the Trust to contribute to the Joint Venture the Brilliant Expansion Rights Amount on the earlier of the date that such amount is received by the Trust under paragraph 4.3 and the date of a default by the Trust hereunder, such agreement to be secured by an assignment of the amounts receivable by the Trust under paragraph 4.3, and
- (ii) in the case of an agreement relating to the Waneta Expansion, a dedication by CPC of the Waneta Expansion Rights to the Waneta Expansion Joint Venture and an agreement by the Trust to contribute to the Joint Venture the Waneta Expansion Rights Amount on the earlier of the date that such amount is received by the Trust under paragraph 4.3 and the date of a default by the Trust hereunder, such agreement to be secured by an assignment of the amounts receivable by the Trust under paragraph 4.3,
- (iii) if as a result of its structure a Joint Venture is not required to pay property tax which would otherwise have been payable if the parties to the Joint Venture had jointly owned the real property used by that Joint Venture, the Province and the Trust will cause the Joint Venture to pay grants, in a total amount to be set out in the Joint Venture Agreement, with 50% of such grants being paid to the Regional District which would otherwise have received property taxes from the Joint Venture and 50% of such grants being paid to the Trust for its use in accordance with the Act,
- (iv) that all assets which relate to the Power Project to be carried on by that Joint Venture will be held in the name of CPC, which will dedicate all rights to the use and enjoyment of such assets to the Joint Venture and which will, if requested to do so by the Trust after all indebtedness incurred by all Joint Ventures in respect of the construction of the Power Projects has been repaid and security therefor has been discharged, transfer to the Trust Subsidiary legal title to the Trust Subsidiary's proportionate share of such assets,
- (v) the Trust (or Trust Subsidiary) and CPC may enter into an agreement with one or more third parties to provide for the ownership by such third party(ies) of an interest in that Joint Venture,
- (vi) the Trust will cause the Trust Subsidiary to comply with the provisions thereof,
- (vii) the financing (based on equal obligations of CPC and the Trust with respect to equity, debt and working capital for each Power Project which may require CPC to make non-interest bearing, secured loans to the Trust, payable on the earlier of the date such amount is received

by the Trust under paragraph 4.3 and the date of a default by the Trust hereunder) and construction of the Power Project,

- (viii) the management committee formed thereunder will only authorize the commencement of the Power Project if such commencement has been approved by the respective boards of directors of CPC and the Trust and such Power Project would meet conditions precedent as would be set by a reasonable commercial lender for the financing of such Power Project, including conditions in respect of debt servicing, return on equity, permits, approvals, construction agreements, contracts for the sale or distribution of electricity and similar matters,
 - (ix) profits from the Power Project will be shared equally as between CPC and the Trust, subject to CPC being fully responsible for the 15% "carried interest" obligation to Cominco Ltd. pursuant to the Power Asset Sale and Development Agreement,
 - (x) management of the Joint Venture by a management committee, consisting of no greater than six members with equal numbers of nominees from both CPC and the Trust, with full authority except for certain matters which will require supermajority or joint venturer approval,
 - (xi) neither party in the Joint Venture, nor the Joint Venture itself, will sell, transfer or otherwise dispose of, or encumber, its interest in the Joint Venture or the Power Project without the consent of the other party, not to be unreasonably withheld or delayed,
 - (xii) the Trust will not sell, assign or otherwise dispose of or encumber the shares of the Trust Subsidiary without the consent of the Province, not to be unreasonably withheld or delayed,
 - (xiii) rights of first refusal with respect to the transfer of interests in the Joint Venture, the Power Project or the Trust Subsidiary,
 - (xiv) the Trust will not permit the Trust Subsidiary to conduct any business or activity unrelated to the business of the Joint Venture,
 - (xv) remedies for non-performance consistent with those in similar transactions, including the right in certain circumstances for the non-defaulting party to buy the interest of the defaulting party, and
 - (xvi) such other terms as are determined in accordance with paragraph 4.2;
- (k) "Keenleyside Powerplant Project" means the project described in Section B of the Application for Energy Project Certificate submitted by CPC and dated February, 1995;

- (l) "MOU" means the document entitled "Memorandum of Understanding Columbia Basin Accord" dated March 19, 1995;
- (m) "Net Cash Flow" means net earnings after taxes adjusted by:
 - (i) adding non-cash expense items including depreciation and amortization,
 - (ii) adding losses and deducting gains on disposal of fixed assets to the extent included in the determination of net earnings,
 - (iii) adding unrealized losses and deducting unrealized gains on foreign exchange to the extent included in the determination of net earnings,
 - (iv) adding net decreases (deducting net increases) in the non-cash or non-cash equivalent components of working capital, including without limitation accounts receivable and work in progress, inventories, prepaid expenses, and accounts payable and accrued liabilities,
 - (v) adding interest and fees paid or incurred for or in connection with funds borrowed for Capital Expenditures for a Project after the Start-up of that Power Project,
 - (vi) deducting principal repayments in respect of debt obligations for a Power Project which were incurred prior to the Start-up of that Power Project, and
 - (vii) adding all other sources of cash and cash equivalents except funds borrowed for Capital Expenditures;
- (n) "Net Cash Flow of the Trust" means an amount equal to:
 - (i) the aggregate of the Net Cash Flow of each Trust Subsidiary which is party to a Joint Venture, calculated in respect of each Power Project from and after the Start-up of that Power Project,
 - (ii) plus the aggregate of all payments of any kind from a Trust Subsidiary which is party to a Joint Venture to the Trust, to the extent that such payments have been deducted in computing the Net Cash Flow of such Trust Subsidiary,
 - (iii) plus the net proceeds to the Trust from the sale of shares of a Trust Subsidiary which is party to a Joint Venture,
 - (iv) plus the aggregate of all loans from the Province to the Trust under paragraph 6.3, and

- (v) less the aggregate of all principal repayments from the Trust to the Province under paragraph 6.4;
- (o) "Power Asset Sale and Development Agreement" means the power asset sale and development agreement dated May 18, 1994 between the Province and Cominco Ltd., the benefit of which were assigned by the Province to, and the burden of which was assumed by, CPC;
- (p) "Power Projects" means:
 - (i) the Keenleyside Powerplant Project,
 - (ii) the Waneta Expansion,
 - (iii) the Brilliant Expansion, and
 - (iv) power generation, transmission or distribution projects related to the Waneta Expansion or the Brilliant Expansion,

and if CPC and the Trust resolve not to commence any of the foregoing because such Power Project would not meet conditions precedent as would be set by a reasonable commercial lender for the financing of such Power Project, including conditions in respect of debt servicing, return on equity, permits, approvals, construction agreements, contracts for the sale or distribution of electricity and similar matters, such other power generation, transmission or distribution projects in the Region as CPC and the Trust may, from time to time, agree upon after negotiating in good faith, and if there are any disputes with respect to the choice of such projects, either party may by notice to the other party refer the matter to mediation with the assistance of the Vancouver Centre for Commercial Disputes and the parties will continue to negotiate in good faith with the assistance of the mediator(s) until such time as the mediator(s) advises that there is no reasonable possibility of the parties reaching a negotiated resolution;

- (q) "Prime" means the prime rate announced as such by the Royal Bank of Canada from time to time as its reference rate for Canadian dollar loans in Canada;
- (r) "Region" has the meaning assigned to the term "region" in the Act;
- (s) "Regional Allocation" has the meaning assigned to the term "regional allocation" in the Act;
- (t) "Start-up" of a Power Project means:
 - (i) in the case of a power generation project, including without limitation the Keenleyside Powerplant Project, the Waneta Expansion and the Brilliant Expansion, the date on which all of its planned generating units are

commissioned and available to produce energy for commercial purposes for a Joint Venture, and

- (ii) in the case of a power transmission or distribution project the date on which the project is available to transmit or distribute energy for commercial purposes for a Joint Venture;
- (u) "Treasury Board" has the meaning set out therefor in the *Financial Administration Act*;
- (v) "Treaty" means the Columbia River Treaty;
- (w) "Trust" means the Columbia Basin Trust established under the Act;
- (x) "Trust Subsidiary" means a wholly-owned subsidiary of the Trust;
- (y) "Waneta Expansion" has the meaning set out for that term in Article 1.1.57, of the Power Asset Sale and Development Agreement;
- (z) "Waneta Expansion Right" has the meaning set out in Article 1.1.59 of the Power Asset Sale and Development Agreement; and
- (aa) "Waneta Expansion Rights Amount" means the book value of the Waneta Expansion Rights on the date of the Joint Venture Agreement relating to the Waneta Expansion;

2. REPRESENTATIONS AND WARRANTIES OF THE TRUST

Corporate Capacity and Power

2.1 The Trust represents and warrants to the Province that:

- (a) it is a corporation duly organized and validly existing under the Act and has the power to enter into this Agreement and to carry out the transactions contemplated by this Agreement and all necessary proceedings have been taken and done to authorize the execution and delivery of this Agreement by the Trust and this Agreement has been legally and properly executed by the Trust and is legally binding upon and enforceable against the Trust in accordance with its terms; and
- (b) the completion of the transactions contemplated hereby will not constitute a breach by the Trust of any statute, bylaw or regulation or of its constating documents or of any contract or agreement to which it is a party or by which it is bound or which would result in the creation of any lien, encumbrance or other charge on any of its assets or undertakings.

Reliance and Continuation

- 2.2 All representations, warranties, covenants and agreements made herein and all certificates or other documents delivered by or on behalf of the Trust are material and shall conclusively be deemed to have been relied upon by the Province, notwithstanding any prior or subsequent investigation by the Province.

Further Representations

- 2.3 All statements contained in any certificate or other document delivered by or on behalf of the Trust to the Province under this Agreement or in connection with any of the transactions contemplated hereby shall be deemed to be representations and warranties by the Trust under this Agreement.

3. REPRESENTATIONS AND WARRANTIES OF THE PROVINCE

Corporate Capacity and Power

- 3.1 The Province represents and warrants to the Trust that it has the power to enter into this Agreement and to carry out the transactions contemplated by this Agreement and all necessary proceedings have been taken and done to authorize the execution and delivery of this Agreement by the Province and this Agreement has been legally and properly executed by the Province and is legally binding upon and enforceable against the Province in accordance with its terms, subject to compliance with applicable laws from time to time including without limitation the *Financial Administration Act*.

Reliance and Continuation

- 3.2 All representations, warranties, covenants and agreements made herein and all certificates or other documents delivered by or on behalf of the Province are material and shall conclusively be deemed to have been relied upon by the Trust, notwithstanding any prior or subsequent investigation by the Trust.

Further Representations

- 3.3 All statements contained in any certificate or other document delivered by or on behalf of the Province to the Trust under this Agreement or in connection with any of the transactions contemplated hereby shall be deemed to be representations and warranties by the Province under this Agreement.

4. COVENANTS OF THE PROVINCE

Joint Venture Agreement

- 4.1 The Province will cause CPC to enter into a Joint Venture Agreement in respect of each Power Project that the Province and the Trust decide to proceed with.

- 4.2 The Province and the Trust will in good faith negotiate the terms of the Joint Venture Agreements, and if there are any disputes with respect to such terms, either party may by notice to the other party refer the disputed term(s) to mediation with the assistance of the Vancouver Centre for Commercial Disputes and the parties will continue to negotiate in good faith with the assistance of the mediator(s) until such time as the mediator(s) advises that there is no reasonable possibility of the parties reaching a negotiated resolution.

Power Project Construction Financing

- 4.3 Subject to paragraph 4.5, the Province will invest in the Trust, as part of the Regional Allocation and as a capital contribution for the purpose of investing in Trust Subsidiaries to pay capital costs of the Power Projects, \$250,000,000 plus 1/2 of the Expansion Rights Amount, as follows:

- (a) if a lump sum payment of at least U.S.\$180,000,000 on account of the downstream power benefits accruing to the Province under the Treaty is received by the Province on or before March 31, 1996, by payments of \$25,000,000 on April 1st of each of the years 1996 through 2005 inclusive plus additional payments of:

- (i) if 1/2 of the Expansion Rights Amount is greater than \$25,000,000:

A. an amount equal to 1/2 of the Expansion Rights Amount less \$25,000,000 on April 1, 2004, and

B. \$25,000,000 on April 1, 2005, and

- (ii) if 1/2 of the Expansion Rights Amount is less than \$25,000,000, an amount equal to 1/2 of the Expansion Rights Amount on April 1, 2005; and

- (b) otherwise, by payments of \$50,000,000 on April 1st of each of the years 2001 through 2005 inclusive plus an additional payment on April 1, 2000 equal to 1/2 of the Expansion Rights Amount.

- 4.4 Subject to paragraph 4.5, the Province will invest in CPC, as an equity payment for shares for the purpose of paying capital costs of the Power Projects, \$250,000,000 less 1/2 of the Expansion Rights Amount, as follows:

- (a) if a lump sum payment of at least U.S.\$180,000,000 on account of the downstream power benefits accruing to Canada under the Treaty is received by the Province on or before March 31, 1996, by payments of \$25,000,000 (or less in the case of the final payment) on April 1st of each year commencing with 1996 and continuing until such amount is fully paid; and

- (b) otherwise, by payments of \$50,000,000 (or less in the case of the final payment) on April 1st of each year commencing with 1996 and continuing until such amount is fully paid.
- 4.5 All payments by the Province under paragraphs 4.3 and 4.4 will be paid into segregated trust accounts (one for CPC and one for the Trust) with an institutional trustee pursuant to an agreement which will contain, among other things, the following terms:
- (a) the trustee will invest and keep invested all such payments so received only in such investments as a trustee is authorized to make under section 15 of the *Trustee Act* and will add all income and other revenues earned from such investments to the capital held in such segregated account;
 - (b) the trustee will not release any of such funds until it has received from CPC or the Trust as the case may be a certificate, in a form reasonably acceptable to the Province, certifying that such amounts are required to meet equity requirements of a Power Project;
 - (c) if the trustee receives a notice from the Province (a copy of which the trustee will promptly forward to the Trust and CPC) stating that an event of default as set out in paragraph 7.1 has occurred, the trustee will not release such funds until the Province and the Trust jointly direct it to do so or until ordered to do so by an order of a court of competent jurisdiction.
- 4.6 The Province may provide guarantees in support of financing for one or more Power Projects in accordance with section 56 of the *Financial Administration Act* or any other law which may at any future time be in force respecting the giving of guarantees by the Province, on such terms as the Minister of Finance and Corporate Relations may approve, including without limitation:
- (a) a prohibition on the assignment of such guarantee; and
 - (b) a provision that such guarantee will terminate upon any change of ownership of any of the shares of the Trust Subsidiary.

Regional Benefit Program Payment

- 4.7 The Province will pay the Trust not later than April 1, 1996 \$45,000,000 for purposes consistent with section 4 of the Act.

Operating Expense and Development Program Payments

- 4.8 The Province will pay the Trust, for purposes of paying operating expenses incurred or paid by the Trust and for purposes consistent with section 4 of the Act:
- (a) within 30 days of the date of this Agreement, the sum of \$300,000;

- (b) within 90 days of the date of this Agreement, the sum of \$1,700,000; and
- (c) on April 1st of each of the years 1996 through 2010 inclusive, the sum of \$2,000,000.

Expropriation Compensation

- 4.9 In the event any property, right or benefit of the Trust is expropriated or otherwise taken by or under the authority of general or specific legislation and awarded to any other party by the Province or by the Province and Canada jointly and the law under which such property, right or benefit is expropriated or otherwise taken does not provide for compensation, then at the request of the Trust two representatives of each of the Province and the Trust will meet within 30 days of such request and will negotiate in good faith (with the assistance of a mediator if requested by either party) appropriate actions which may be taken, which may but will not necessarily include financial compensation, to fairly compensate the Trust for its loss resulting from such expropriation or taking.

CPC Business Restricted

- 4.10 Except with respect to agreements already in effect between CPC and Cominco Ltd., the Province will cause CPC not, without the consent of the Trust, to:
- (a) carry on any business or incur any indebtedness unrelated to the Power Projects except through subsidiaries of CPC; or
 - (b) guarantee the indebtedness or obligations of any such subsidiary or agree to indemnify the subsidiary or any creditor of the subsidiary.

5. COVENANTS OF THE TRUST

Covenants

- 5.1 The Trust will:
- (a) observe and comply with any statute, rule or regulation of any government or branch or agency thereof applicable to the Trust;
 - (b) maintain its corporate existence and carry on and conduct its activities in a proper manner in accordance with the Act and keep or cause to be kept proper books of account in accordance with GAAP consistently applied;
 - (c) furnish and give to the Province notice that there has occurred and is continuing an event of default within the meaning of paragraph 7.1 and specifying the same;
 - (d) punctually pay all taxes, rates and assessments required to be paid by it or on any of its undertaking;

- (e) use the funds received from the trustee under paragraph 4.5 only for the Power Projects;
- (f) not carry on any business or incur any indebtedness except through Trust Subsidiaries and will not guarantee the indebtedness or obligations of any Trust Subsidiary or agree to indemnify the Trust Subsidiary or any creditor of the Trust Subsidiary without the consent of the Province; and
- (g) enter into the Joint Venture Agreement.

6. OTHER COVENANTS

Construction of Power Projects

- 6.1 The Trust and the Province will cause the Joint Ventures to undertake the Power Projects in accordance with the terms of the Joint Venture Agreements. Subject to paragraph 1.1 (k)(viii), the Keenleyside Powerplant Project will be commenced first.

Net Cash Flow Equalization

- 6.2 The Trust will by June 30th in each year after the first Start-up of a Power Project deliver to the Province a certificate of an officer of the Trust containing a detailed calculation of the Net Cash Flow of the Trust from and after the first Start-up of a Power Project up to March 31st of that year, together with an opinion of the Trust's auditor appointed under section 27 of the Act that such detailed calculation presents fairly the Net Cash Flow of the Trust to such date. For greater certainty, if a corporation which was a Trust Subsidiary ceases to be a Trust Subsidiary, for the purposes of determining the Net Cash Flow of the Trust, the Net Cash Flow of such corporation will be calculated only up to the day that such corporation ceased to be a Trust Subsidiary.
- 6.3 The Province will within 60 days after receiving the statement of the Trust under paragraph 6.2, loan to the Trust the amount, if any, by which the Net Cash Flow of the Trust reported in such statement is less than zero and the Trust will cause such funds to be made available to the Joint Ventures as operating funds, except that the Province will not be obliged to make such a loan if after doing so the total amount owing by the Trust to the Province under this paragraph 6.3, after taking into account all repayments under paragraph 6.4, would exceed \$25,000,000.
- 6.4 The Trust will within 60 days after delivering the statement of the Trust under paragraph 6.2, repay to the Province on account of the loans made under paragraph 6.3 the lesser of:
- (a) the amount, if any, by which the Net Cash Flow of the Trust reported in such statement is greater than zero; and
 - (b) the amount, if any, by which the total of amounts loaned by the Province to the Trust under paragraph 6.3, together with interest thereon at Prime

calculated semi-annually not in advance, is greater than the total of amounts repaid by the Trust to the Province under this paragraph 6.4 to such date.

- 6.5 The Trust will provide, as security for the indebtedness of the Trust to the Province under paragraph 6.3, a charge on the shares of and amounts receivable from Trust Subsidiaries which are parties to Joint Ventures, in such form and at such times as required by the Province.
- 6.6 All amounts outstanding under paragraph 6.3 will become immediately due and payable upon the occurrence of any event of default as set out in paragraph 7.1.

Columbia Basin Management Program

- 6.7 The Province and the Trust will endeavour to establish a process for the coordination of the activities now being conducted by governments, industry, interest groups, First Nations and the public, to ensure that development in the Region meets the needs of the present without compromising the ability of future generations to meet their needs, for the purposes of:
- (a) improving, enhancing or protecting the air, water and land in the region;
 - (b) cleaning up and preventing the pollution of the Columbia River and its tributaries;
 - (c) restoring the productivity of the natural environment of the Region including wildlife habitat and conservation of natural areas;
 - (d) rebuilding of salmon stocks in the Region; and
 - (e) monitoring and reporting on the state of the Columbia River and its tributaries.
- 6.8 In furtherance of the covenants in paragraph 6.7, the Province and the Trust will:
- (a) promptly deliver to each other from time to time information respecting such activities, subject to the exceptions set out in Division 2 of the *Freedom of Information and Protection of Privacy Act*;
 - (b) provide each other with a reasonable opportunity to comment on any significant proposed decisions to be made with respect to such activities;
 - (c) make all reasonable efforts to include the federal government and First Nations in such process; and
 - (d) bear its own costs in connection therewith.

Acquisition of Distribution System

- 6.9 The Province and the Trust will jointly prepare a report on the feasibility of the Trust having first option to acquire the British Columbia Hydro and Power Corporation distribution system in the Region in the event it is divested in the future.

Water Management and Other Matters

- 6.10 The Province and the Trust will make best efforts to develop, by September 1, 1995, for decision by the Province and the Trust a set of options regarding how to involve the Trust in the following:
- (a) the future management of the Fish and Wildlife Compensation Fund;
 - (b) the future operations of BC Hydro debris clean-up and water access;
 - (c) possible Trust representation on the board of directors of BC Hydro;
 - (d) possible Trust participation with the Permanent Engineering Board;
 - (e) Trust participation in the process concerning any renewal of the Treaty prior to 2014 including a public hearing to be held by the Trust; and
 - (f) monies which may be transferred to the Trust in respect of the Trust's involvement in such matters as the management of the Fish and Wildlife Compensation Fund,

and such options will be presented jointly by the Province and the Trust to a 1995 Columbia Symposium to be held jointly by the Province and the Trust prior to November 15, 1995. If the Province and the Trust do not so agree on a set of options, each of the Province and the Trust may present options to the 1995 Columbia Symposium for discussion.

7. DEFAULT AND REMEDIES

Events of Default

- 7.1 Any of the following events will constitute an event of default whether any such event be voluntary, involuntary or result from the operation of law or any judgment or order of any court or administration or government body:
- (a) the Trust fails to observe, perform or comply with any material provision of this Agreement or any Joint Venture Agreement on the part of the Trust to be observed, performed or complied with and has not rectified such failure, or, if such failure is capable of being rectified, is not diligently proceeding to rectify such failure within 7 days of notice thereof from the Province or such failure remains unrectified for a period of more than thirty days after such notice;

- (b) the Trust fails to observe, perform or comply with any material provision of the Act on the part of the Trust to be observed, performed or complied with and has not rectified such failure, or, if such failure is capable of being rectified, is not diligently proceeding to rectify such failure within 7 days of notice thereof from the Province or such failure remains unrectified for a period of more than thirty days after such notice;
- (c) any material representation or warranty made by the Trust in this Agreement is untrue or incorrect;
- (d) there is any action or proceeding, pending or threatened against the Trust or a Trust Subsidiary which would if successful, have a material adverse effect upon the ability of the Trust to perform its obligations under this Agreement or any agreement referred to in this Agreement to which the Trust is a party unless the Trust or Trust Subsidiary is diligently and in good faith defending such action or proceeding;
- (e) judgment or judgments for the payment of money are rendered by a court of competent jurisdiction against the Trust or one or more Trust Subsidiaries which are party to a Joint Venture in an aggregate amount which if paid would have a material adverse effect upon the ability of the Trust or a Trust Subsidiary to perform its obligations under this Agreement or any agreement referred to in this Agreement to which the Trust or a Trust Subsidiary is a party;
- (f) the Trust:
 - (i) becomes insolvent,
 - (ii) commits an act of bankruptcy,
 - (iii) makes a general assignment for the benefit of its creditors,
 - (iv) makes a proposal under the *Bankruptcy and Insolvency Act* (Canada),
or
 - (v) acknowledges its insolvency,
- (g) a bankruptcy petition is filed or presented against the Trust and is not discharged within 30 days; and
- (h) a receiver or receiver-manager is appointed in respect of any property or asset of the Trust and is not discharged within 30 days.

Remedies

7.2 Notwithstanding any other provision of this Agreement, upon the occurrence of any Event of Default and at any time thereafter the Province may, in its discretion

exercised by giving notice in writing to the Trust, withhold the payment of any amount payable under this Agreement and may also terminate this Agreement.

Remedies Non-Exclusive

- 7.3 The rights, powers and remedies conferred on the Province under this Agreement or any statute or law are not intended to be exclusive and each remedy shall be cumulative and in addition to and not in substitution for every other remedy existing or available to the Province.
- 7.4 The exercise of any one or more remedies available to the Province will not preclude the simultaneous or later exercise by the Province of any other right, power or remedy.

Delay

- 7.5 No failure or delay on the part of either party to complain of an act or failure of the other party or to declare such other party in default, irrespective of how long such act or failure to act shall continue, will constitute a waiver by such party of its rights hereunder.

8. INTERPRETATION

First Nations Treaty Negotiations

- 8.1 This Agreement is without prejudice to First Nations treaty negotiations.

Governing Law

- 8.2 This Agreement will be construed in accordance with the laws of the Province of British Columbia.

General Interpretation

- 8.3 In this Agreement:
- (a) "person" includes a corporation, firm or association and wherever the singular or masculine is used it will be construed as if the plural or the feminine or the neuter, as the case may be, had been used where the context or the parties so require;
 - (b) a reference to a statute, whether or not that statute has been defined, means a statute of the Province of British Columbia unless otherwise stated and includes all amendments to it, the regulations made under it and any enactment passed in substitution therefor or replacement thereof;
 - (c) unless the context otherwise indicates, any reference to "this Agreement" means this instrument and all of the Schedules attached to it and any

reference to any paragraph or subparagraph by number is a reference to the appropriate paragraph or subparagraph in this Agreement;

- (d) the headings or captions are inserted for convenience only and in no way define, limit, alter or enlarge the scope or meaning of any provision of this Agreement;
- (e) the recitals do not form a part of, and are not to be considered in the interpretation of, this Agreement; and
- (f) accounting terms not otherwise defined will have the meanings assigned thereto under GAAP consistently applied.

Severability

8.4 If any provision of this Agreement or the application thereof to any person or circumstance is invalid or unenforceable to any extent, the remainder of this Agreement and the application of such provision to any other person or circumstance will not be affected or impaired thereby and will be enforceable to the extent permitted by law.

9. GENERAL

Public Announcement

9.1 Either party may make public announcements regarding the details of this Agreement as it seems fit, provided each such public announcement has first been approved by the other party, or in the case of a joint public announcement, has been approved by both parties.

Confidentiality

9.2 Each of the parties will treat as confidential and will not, without the prior written consent of the other party, publish, release or disclose or permit to be published, released or disclosed before or after the termination of this Agreement, any information supplied to, obtained by, or which comes to the knowledge of the party as a result of this Agreement except insofar as such publication, release or disclosure is necessary to enable the party to fulfil its obligations under this Agreement or is otherwise required by any law of Canada or the Province of British Columbia.

Notice

9.3 Any notice, document, statement, report, demand or payment desired or required to be given or made pursuant to this Agreement will be in writing and may be given or made if delivered personally to the party to whom it is to be given or made, sent by telecopier or mailed in Canada with postage prepaid, addressed as follows,

If to the Province:

Minister of Employment and Investment
Parliament Buildings
Victoria, B.C.
V8V 1X4

and if to the Trust:

Columbia Basin Trust
c/o Regional District of Central Kootenay
601 Vernon Street
Nelson, B.C.
V1L 4E9

Receipt of Notice

9.4 Any such notice, document, statement, report, demand or payment so mailed will be deemed to be given to and received by the addressee on the fourth business day after the mailing of the same or if so telecopied on the day of telecopying except if postal or telephone services in Canada are impaired any such notice, document, statement, report, demand or payment will not be deemed to be given to and received by the addressee until given by an unimpaired means set above.

Changes to Address for Notice

9.5 Either party may, from time to time, advise the other by notice in writing of any change of address of the party giving such notice and from and after the giving of such notice the address therein specified will, for purposes of this paragraph, be deemed to be the address of the party giving such notice.

Time

9.6 Time will be of the essence of this Agreement.

Entire Agreement

9.7 There is no representation, warranty, guarantee, indemnity, condition or agreement or any collateral representation, warranty, guarantee, indemnity, condition or agreement applicable to, binding upon or enforceable against one party by the other save for those expressed in this Agreement and any agreement made or security to be granted pursuant to this Agreement.

Discretion

9.8 Wherever in this Agreement any option or discretion is conferred upon the Province or the Province is authorized or empowered to do, perform or consent to any act, matter or thing, such option or discretion may be exercised or such act, matter or

thing may be done, performed or consented to on behalf of the Province by the Deputy Minister of Employment and Investment or any person designated or authorized by that person so to exercise such option or discretion or do, perform or consent to such act, matter or thing.

Currency

9.9 All dollar amounts expressed in this Agreement refer to lawful currency of Canada unless otherwise indicated.

Waiver

9.10 No consent or waiver, expressed or implied by either party to or of any breach or default by the other party in the performance by the other party of its obligations hereunder shall be deemed or construed to be a consent or waiver to or of any other breach or default in the performance by such party hereunder.

Appropriation

9.11 Notwithstanding any other provision of the Agreement the payment of money by the Province under this Agreement is subject to:

- (a) there being sufficient monies available in an appropriation, as defined in the *Financial Administration Act*, to enable the Province, in any fiscal year when any payment of money by the Province is required under this Agreement, to make that payment; and
- (b) Treasury Board not having controlled or limited, pursuant to the *Financial Administration Act*, expenditure under any appropriation referred to in (a) above.


Enurement

9.12 This Agreement will enure to the benefit of and be binding upon the Province and its assigns and the Trust and its successors. The Trust may not assign any of its right, title and interest in this Agreement without the written consent of the Province.

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

SIGNED on behalf of HER MAJESTY THE)
QUEEN IN RIGHT OF THE PROVINCE)
OF BRITISH COLUMBIA, represented by)
the Minister of Employment and Investment,)
in the presence of:)


The Honourable Glen Clark


(Witness)

and:)

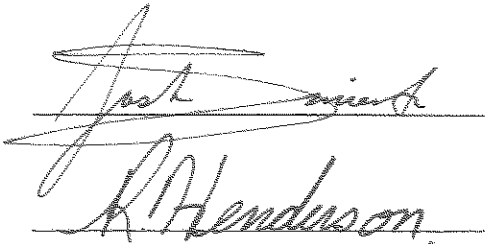
represented by the Minister of Finance and)
Corporate Relations, in the presence of:)


The Honourable Elizabeth Cull


(Witness)

THE CORPORATE SEAL of)
COLUMBIA BASIN TRUST was hereunto)
affixed in the presence of:)

C/S


R. Henderson

