

THIS AGREEMENT made as of this 3rd day of December, 1991.

BETWEEN:

CORMORANT COMMUNITY ASSOCIATION INC.,
(hereinafter referred to as the "Association")

OF THE FIRST PART,

— and —

MANITOBA HYDRO-ELECTRIC BOARD,
(hereinafter referred to as "Hydro")

OF THE SECOND PART,

— and —

**HER MAJESTY THE QUEEN IN RIGHT OF THE PROVINCE OF MANITOBA
AS REPRESENTED BY THE MINISTER OF NORTHERN AFFAIRS,**
(hereinafter referred to as "Manitoba")

OF THE THIRD PART.

WHEREAS Hydro built the Grand Rapids Hydro-Electric Project, as hereinafter defined, causing the continuing, substantial alteration of the water regime on local waterways, including Cormorant Lake;

AND WHEREAS the Government of Manitoba participated with Hydro in arranging for the management of impacts of the said Project on communities surrounding the waterways;

AND WHEREAS the operation of the project caused adverse affects on the land and resources of the Cormorant Community resulting in fundamental changes to the local way of life;

AND WHEREAS it is considered to be right and fair that Cormorant receive benefits which can contribute to the basis for the betterment of the Community;

AND WHEREAS the Association was incorporated under the provisions of *The Corporations Act* (Manitoba) as a corporation without share capital for the purpose of representing the interests of the Community of Cormorant with respect to those matters which are the subject of this agreement;

AND WHEREAS persons eligible to be the members of the Association are Community residents eligible to vote in respect of the election of the Community Council of Cormorant pursuant to the provisions of *The Northern Affairs Act* (Manitoba);

AND WHEREAS the Association has been involved in negotiations to resolve outstanding issues among Hydro, Manitoba and the Community, which negotiations have included the exchange of settlement offers and the mutual acceptance of settlement principles;

AND WHEREAS the negotiations between Hydro, Manitoba and the Association have reached a successful conclusion, including the mutually agreed identification of ways and means to resolve outstanding issues between them;

AND WHEREAS the parties hereto intend that this agreement shall not diminish any of the aboriginal rights of Community residents under the Constitution of Canada and/or, for those residents who are Treaty Indians, this agreement shall not diminish any existing Treaty rights;

AND WHEREAS the Association has held a meeting of its members with its technical and legal advisors present;

AND WHEREAS the members of the Association have duly voted in favour of accepting this agreement;

NOW THEREFORE, THIS AGREEMENT WITNESSETH that, in consideration of the premises and mutual covenants herein contained, the sufficiency of which is hereby acknowledged, the parties hereto hereby agree as follows:

Article I – Interpretation

1.01 Definitions

In this Agreement, unless there is something in the context of the subject matter inconsistent therewith, the following words and expressions shall have the following meanings:

1. **"Adverse Effects"** – means those direct and indirect adverse effects on the Collective Rights and Interests of the Community, which are attributable in whole or in part to the Project and are caused by the change from the Pre-Project Water Regime to the Recurring Water Regime, whether caused prior to, at, or following the Effective Date and, without limiting the generality of the foregoing, related to:
 - a. reduced level and/or enjoyment of activity;
 - b. additional costs incurred related to such activity or activities; and
 - c. stress, anxiety and other social and psychological impacts arising from (a) and (b), above.

and shall not include Incremental Adverse Effects or Unanticipated Adverse Effects, as defined herein, or adverse effects attributable in whole or in part to a material breach, if any, by Hydro at any time of any material conditions contained in any temporary, interim, supplementary or final licence issued under *The Water Power Act* (Manitoba) or otherwise.

2. **"Collective Rights and Interests"** – means those individual and community rights and interests shared and enjoyed universally and in common, by Community Residents, which derive from belonging to the Community, including non-commercial access to, use, enjoyment and benefit of lands, resources and waterways.
3. **"Community"** – means the Community of Cormorant as established pursuant to *The Northern Affairs Act* (Manitoba).
4. **"Cormorant Resource Area"** – means the lands shown on Schedule A and includes the rivers and lakes within the area which area is now, or was, traditionally available to, and used and enjoyed by, Community residents as a source of food supply, income in kind and income.
5. **"Effective Date"** – means the date upon which the last party to this agreement has executed it.
6. **"Incremental Adverse Effects"** – means those direct and indirect adverse effects on the Collective Rights and Interests of the Community, which are attributable in whole or in part to the Project and are caused by a departure or deviation from the Recurring Water Regime. Incremental Adverse Effects shall not include any Adverse Effects or Unanticipated Adverse Effects, as defined herein and shall not be considered to exist with respect to the period prior to the Effective Date.
7. **"Pre-Project Water Regime"** – means the pre-1964 water levels and flows, including, without limiting the generality of the foregoing, the range, fluctuations and rate and timing of fluctuations of the Waterways of the Cormorant Resource Area.
8. **"Project"** – means the undertaking commonly known as the Grand Rapids Hydro-Electric Generating Station, including the Moose Lake Narrows Control Structure, and without limiting the generality of the foregoing, the duly licensed works and operations ancillary thereto.
9. **"Recurring Water Regime"** – means the water levels and flows, including, without limiting the generality of the foregoing, the range, fluctuations and rate and timing of fluctuations on the Waterways in the Cormorant Resource Area, which have occurred from 1965 to the Effective Date of this agreement provided that those water levels and flows have not occurred as a result of a breach of any temporary, interim or final license issued to Hydro under *The Water Power Act* (Manitoba).
10. **"Unanticipated Adverse Effects"** – means those direct and indirect adverse effects on the Collective Rights and Interests of the Community, which are attributable in whole or in part to the Project and are caused by the change from the Pre-Project Water Regime to the Recurring Water Regime, but are unknown and/or unanticipated and are not discernible with the ordinary exercise of due diligence by the Community at the Effective Date. Unanticipated Adverse Effects shall not include any Adverse Effects or Incremental Adverse Effects, as defined herein.
11. **"Waterway"** – means any river, stream, lake or wetland on which the water regime is controlled or modified by the Project.

1.02 Interpretation

In this Agreement:

1. Any reference to a statute shall include and shall be deemed to include a reference to such statute and to the regulations made pursuant thereto, together with all amendments made thereto and in force from time to time, which may be passed and which has the effect of supplementing, replacing or superseding a statute so referred to or the regulations made pursuant thereto, as the same may be amended from time to time;
2. Any reference to a person shall include and shall be deemed to be a reference to any person that is the successor to such person;
3. The terms "this agreement", "hereof", "herein", "hereunder" and similar expressions refer, for greater certainty, to this agreement and not to any particular article, section, subsection or other portion hereof;
4. Words importing the singular only shall include the plural and vice versa;
5. Words importing one gender only shall include both genders; and
6. The headings and the division of this agreement into articles, sections and subsections are for convenience of reference only and shall not affect the construction or interpretation of this agreement.

Article II – Settlement

2.0 Settlement Amount

Hydro hereby agrees to pay effective as of October 15, 1991, the sum of **ONE MILLION, ONE HUNDRED AND NINETY-EIGHT THOUSAND (\$1,198,000) DOLLARS** (hereinafter referred to as the "Settlement Amount") in full and final satisfaction of any outstanding responsibilities in relation to Adverse Effects for which Hydro and Manitoba may be liable, in accordance with, and subject to, the provisions hereof.

The said Settlement Amount has been paid in trust to Campbell, Marr, as lawyers for the Community as represented by the Association, on the conditions that:

1. The Settlement Amount is invested in such investments as the Association may direct and as are authorized by the Law Society of Manitoba for the investment of trust monies received by a solicitor;
2. The Settlement Amount and interest earned thereon are not to be released by Campbell, Marr unless and until the Agreement has been executed by all parties, except as provided for hereafter;
3. Ongoing negotiating expenditures of the Community, including the reasonable expenses of legal and technical advisors up to the Effective Date, shall be paid from the Settlement Amount, subject to the express written approval of Hydro prior to payment;
4. That within ten (10) days of the Effective Date Hydro shall receive a statement setting forth all receipts and disbursements to and from the settlement moneys held in trust;
5. That in the event a settlement is not concluded, that the Settlement Moneys and interest earned thereon, less any approved negotiating expenditures, shall be returned to Hydro forthwith upon demand, subject only to the expiration of the current term of any investments made in trust.

2.02 Purpose of Settlement Moneys

The parties acknowledge and agree that the payment by Manitoba Hydro will be used for the benefit of all residents of the Community who used, are using or will use, the Cormorant Resource Area by way of implementation of community projects of continuing benefit and will be used for the payment of reasonable consulting and legal costs related thereto.

2.03 Credits for Advances

Hydro shall receive credit for any advances paid to the Community in respect of this agreement as set out in Schedule "B" in the amount of FIFTY-FOUR THOUSAND SEVEN HUNDRED TWENTY-THREE DOLLARS AND TWENTY-NINE CENTS (\$54,723.29) which credit shall be deducted from the Implementation Account referred to in section 2.04(1) hereof.

2.04 Implementation Account

1. Campbell, Marr shall hold in trust for the Community as represented by the Association, on the conditions hereinbefore set out, out of the Settlement Amount the sum of ONE HUNDRED AND NINETY-THREE THOUSAND DOLLARS (\$193,000) (hereinafter referred to as the "Implementation Account"), less the credit referred to in Schedule B of FIFTY-FOUR THOUSAND SEVEN HUNDRED TWENTY-THREE DOLLARS and TWENTY NINE CENTS (\$54,723.29), for a net Implementation Account of ONE HUNDRED THIRTY-EIGHT THOUSAND TWO HUNDRED SEVENTY-SIX DOLLARS and SEVENTY-ONE CENTS (\$138,276.71) as of October 15, 1991.
2. The moneys in the Implementation Account, together with interest earned thereon, are to be used by the Association as follows:
 - a. to fund a Waterways clean-up program; and
 - b. to pay reasonable consulting, legal and administrative costs of the Community in respect of the negotiation, settlement and implementation of settlement measures, and other matters contemplated by this agreement including resource co-management.

2.05 Capital Account

1. Campbell, Marr shall hold in trust for the Community as represented by the Association, on the conditions hereinbefore set out, out of the Settlement Amount, an amount being the balance of the Settlement Amount, being the sum of ONE MILLION and FIVE THOUSAND DOLLARS (\$1,005,000) (hereinafter referred to as the "Capital Account").
2. The permitted uses of the Capital Account, together with interest earned thereon, shall be for the construction, installation and/or development of the following projects:
 - a. Cormorant Recreation Centre
 - b. Cormorant Satellite Communication System
 - c. Cormorant Beach Development
3. Permitted uses of the Capital Account shall also include engineering, project management, contract administration costs and ongoing operating costs related to the foregoing projects described in subsections 2.05 (2)(a), (b), and (c) and for related legal costs, if any.

2.06 Administration of the Implementation and Capital Accounts

1. In the event of surplus moneys in either the Implementation or Capital Account, those surplus moneys may be transferred from the Capital Account to the Implementation Account, and vice versa, provided that the intent of both Accounts are met.
2. All expenditures from the Implementation and Capital Accounts will be approved by the Directors of the Association
3. The Association will maintain a complete and accurate set of financial records for each of the Implementation Account and the Capital Account and will provide, annually, until all moneys are expended, a complete financial report of all expenditures, which will be made available to Community residents, Manitoba and Manitoba Hydro.
4. Manitoba and Manitoba Hydro may on 10 days notice to the Association, inspect the financial reports kept by the Association with respect to the Implementation and Capital Accounts.

2.07 Resource Co-Management

Manitoba and the Community Council of Cormorant (the "Council") are committed to the co-management of natural resources in the Cormorant Resource Area. Manitoba agrees to participate with the Council in a process of negotiation designed to result in a resource co-management agreement. That co-management agreement will provide for shared responsibility for the management, development planning, allocation and protection of resources, and the enforcement of resource use laws and policies through jointly developed and approved plans. It is anticipated that a co-management agreement will be negotiated within 12 months of the Effective Date.

2.08 Water and Sewer Services

Manitoba's existing water and sewer program for Northern Manitoba contemplates a basic level of service which shall be implemented, based on the following considerations:

1. community population; and
2. demonstration of need, including health and environmental requirements; and
3. Provincial policies and priorities

2.09

Manitoba proposes to undertake the following work on sewer and water service extensions under normal programming within 5 years of the Effective Date of this agreement, subject always to the appropriation of funds by the Legislative Assembly of Manitoba for these purposes:

1. Extend sewer and water services to the existing lots currently not serviced at the east end of Greenwood Drive (Area II) as shown in Schedule C.
2. Extend sewer and water services to the 15 lots on Fenner Street (Area III) as shown in Schedule C.

2.10

In addition to 2.09, Manitoba proposes to undertake the following work on sewer and water extensions under normal programming within 7 years of the Effective Date of this agreement, subject always to the appropriation of funds by the Legislative Assembly of Manitoba for these purposes:

1. Extend water distribution lines to 6 lots in Area IV on the south side adjacent to the CN Railway bridge as shown in Schedule C.
2. Extend sewer lines including a sewage treatment facility to service the south community Areas IV and V as shown in Schedule C.

2.11

Before starting the work referred to in 2.09 and 2.10, Manitoba shall give reasonable notice to the Community Council of Cormorant in order to facilitate Cormorant's participation under policies of the Department of Northern Affairs or other provincial employment policies which may be applicable.

2.12 Land

For purposes of the Cormorant Recreation Centre, Manitoba will transfer a parcel of unencumbered Crown land within the Community to the Association for a price of \$1.00, costs of survey and land transfer to be borne by Manitoba.

2.13 Minimizing Adverse Environmental Effects

It is acknowledged that Manitoba Hydro is reviewing and evaluating the operation of the Moose Lake Narrows Control Structure and the feasibility of alternative water control and operating concepts for minimizing adverse effects caused by the Project in the Moose Lake Resource Area. Hydro shall, as part of the review and evaluation, consult with the Cormorant Community on the operation of the Moose Lake Narrows Control Structure and on feasible alternative water control and operating concepts for minimizing Adverse Effects caused by the Project on lands and waterways in the Cormorant Resource Area. Hydro will use its best efforts to determine and implement a reasonable and feasible alternative water control and operating concept, (which concept it is acknowledged may be maintaining the existing operation of the Moose Lake Narrows Control Structure), taking into account the interests of Hydro, Manitoba, the Community, the Moose Lake Community, the Moose Lake Band and other affected parties.

2.14 Future Projects

Hydro and Manitoba agree to consult with the Mayor and Council of Cormorant about any future projects which may affect water levels and flows or lands traditionally used by residents of the Community in the Cormorant Resource Area.

Article III – Releases, Acknowledgements and Indemnities

3.01 Certification

The Association certifies that it has in all relevant respects been independently advised by legal counsel and consultants of its choice in relation to the negotiation, preparation and execution of this agreement.

3.02 Release in Favour of Hydro and Manitoba

In consideration of the payments and other good and valuable consideration provided for in this agreement, the receipt and sufficiency of which is acknowledged, the Association, on its own behalf and on behalf of Community residents, releases and forever discharges Hydro and Manitoba of and from any and all actions, causes of action, claims, demands, losses or damages of any nature or kind whatsoever, which the Association or Community residents now have or which the Association, its successors or assigns, or Community residents, their heirs, executors, administrators or assigns, hereafter can, shall or may have for or by reason of any cause, matter or thing whatsoever attributable to the past, present or future Adverse Effects and including, and without limiting the generality of the foregoing, any claims for breach of alleged fiduciary duties against Hydro and Manitoba, save and except those exceptions specifically set forth in Article 3.05.

3.03 Acknowledgement in Favour of Hydro

The association hereby acknowledges that upon payment of the Settlement Amount, the Association assumes absolute responsibility for the disbursement and management of the Settlement Amount in accordance with the provisions of this agreement and that neither Hydro nor Manitoba shall be responsible for the disbursement of moneys nor the effectiveness of any measure undertaken by the Association. The Association further acknowledges that there is no sanction nor warranty, either expressed or implied by either Hydro or Manitoba that the herein arrangements will result in obtaining successfully any of the development purposes of the Association.

3.04 Indemnities in Favour of Hydro and Manitoba

In consideration of the payments and other good and valuable consideration provided for in this agreement, the receipt and sufficiency of which is acknowledged, the Association and Community residents undertake and agree to indemnify Hydro and Manitoba and to save Hydro and Manitoba harmless in respect to any and all actions, causes of action, claims, demands, losses, damages or expenses of any nature or kind whatsoever in respect of the receipt, investment, management, disbursement, or application of the Settlement Amount by the Association, up to the amount of such Settlement Amount.

3.05 Exceptions to Covenants and Releases in Favour of Hydro and Manitoba

It is understood and agreed that, by the terms of this agreement, the Association and Community residents do not release Hydro or Manitoba from the following:

- a. Personal injury and death, past and future;
- b. Incremental Adverse Effects;
- c. Unanticipated Adverse Effects.

3.06 No Precedent and No Admission of Liability

1. It is expressly understood and agreed by the parties hereto that the terms and conditions contained in this agreement shall not constitute a precedent among the parties and that the parties have entered into this agreement without admission as to liability and on a without prejudice basis to this or any other dispute.
2. Neither the payment of the Settlement Amount nor the entering into of this agreement, shall be construed in any way as an admission of liability by Hydro and/or Manitoba.

Article IV – Representation and Warranty

4.01

The Association represents and warrants to Hydro and Manitoba (and acknowledges and confirms that Hydro and Manitoba are relying on such representations in connection with the completion of this agreement) that the Association has the power and authority to enter into this agreement and to perform its obligations hereunder.

Article V – Arbitration

5.01

If at any time a dispute, difference or question shall arise among the parties hereto concerning any question relating to this agreement, the rights or liabilities of any of the parties hereto, or any other dispute involving either the interpretations of this Agreement or anything contained herein, then if agreed to by all the parties to the dispute, difference or question, the matter shall be referred to arbitration, failing which the parties shall be entitled to pursue other remedies as they may have at law. In the event that the matter is submitted to arbitration, it shall be referred to a single arbitrator if one can be mutually agreed upon by the parties to the dispute, difference or question within seven (7) days of the notice of desire for arbitration being served. In the event that the parties to the dispute, difference or question cannot agree upon a single arbitrator then, after the expiry of such seven (7) day period, any one of the parties to the arbitration may apply to a Chief Justice of Manitoba to appoint the arbitrator to sit and hear the arbitration. The decision arrived at by the arbitrator shall be binding upon all the parties to the arbitration and no appeal shall lie therefrom. The provisions of this section shall be deemed to be a submission to arbitration within the provision of *The Arbitration Act* (Manitoba) and any statutory modification or re-enactment thereof, unless the parties agree to opt out of such legislation in part. Costs of any such arbitration shall be borne by Hydro or Manitoba, as the case requires.

Article VI – Provisions of General Application

6.01 Governing Law

This agreement and the rights, duties and obligations of the parties as herein set forth, shall be construed and governed by, and settled and determined in accordance with, the laws of the Province of Manitoba.

6.02 Entire Agreement

This agreement contains and constitutes the entire agreement among the parties hereto in respect of the subject matter hereof and supersedes any and all earlier agreements, whether written or oral. This agreement may be altered and amended only by further written agreement of the parties hereto.

6.03 Normal Programming

None of the moneys received by the Association under the terms of this agreement nor income generated from such moneys, shall reduce the entitlement of the Community Council of Cormorant to normal program funding available from Manitoba from time to time.

6.04 Waiver

No waiver by any party hereto or any breach of any of the covenants, provisos, conditions or stipulations hereunder contained, whether express or implied, or negative or positive in form, by any party hereto, shall have any effect or be binding upon such party unless the same shall be in writing under the authority of such party. Any waiver shall extend to the particular breach so waived and shall not limit or affect any of the parties hereto with respect to any other future breach.

6.05 Enurement and Assignment

This Agreement shall enure to the benefit of, and be binding upon, the parties hereto and their respective heirs, executors, administrators, successors and permitted assigns. For greater certainty, the Association shall not be entitled to assign this agreement without the permission of Hydro and Manitoba first being sought and obtained.

6.06 Time of Essence

Time shall be of the essence hereof.

6.07 Preamble

The preamble shall be an integral part hereof.

6.08 Instrument under Seal

This Agreement is intended to take effect as a document under seal.

IN WITNESS WHEREOF the parties hereto have caused the Agreement to be executed:

In the presence of:		Cormorant Community Association Inc.
<u>"Doreen Wishart"</u>	<u>"December 3/91"</u> DATE	Per: <u>"John Brightnose"</u> John Brightnose, President
<u>"Doreen Wishart"</u>	<u>"December 3/91"</u> DATE	Per: <u>"Verna Hunter"</u> Verna Hunter, Secretary
In the presence of:		Manitoba Hydro Electric Board
<u>"Ivan Myers"</u>	<u>"December 3/91"</u> DATE	Per: <u>"Darlene Hildebrand"</u>
<u>"Ivan Myers"</u>	<u>"December 3/91"</u> DATE	Per: <u>"R.B. Brennan"</u>
In the presence of:		Her Majesty the Queen in the Right of the Province of Manitoba as Represented by the Minister of Northern Affairs
<u>"Sarah Fenner"</u>	<u>"undated"</u> DATE	Per: <u>"Jim Downey"</u> Minister

Schedule B

Costs Paid on Behalf of the Community of Cormorant by Manitoba Hydro and Deducted from Principal Amount As Paid or Payable as at October 15, 1991:

1. Expenses of the Community of Cormorant	\$1,191.66
2. Expenses of E.E. Hobbs & Associates	49,092.21
3. Expenses of Campbell Marr	<u>4,439.42</u>
TOTAL	<u>\$54,723.29</u>