Dwyn Joshi
Brad Sorbier

Winnipeg

Legal Services Division • Division des services juridiques

INTER-OFFICE MEMORANDUM

TO:	**Clive Wightman** **Director of Community Services** Community Services 2nd Floor – 395 Main Street	**FROM:**	**Diane McMenemy Papst** Solicitor, Legal Services
		PHONE:	986-2286
FILE:	Our File No. **F.4/2010(1)**	**DATE:**	February 10, 2010

Re: Federal Funding Agreement
Her Majesty the Queen in Right of Canada
As Represented by The Minister of Western Economic Diversification
And The City of Winnipeg – $875,000.00 Federal FundingAssistance to support replacement of playground equipment in 17 parks
Project No.: 000008427
(April 01, 2010 – December 31, 2010)
Our File Number: F.4/2010(1) – Finance No.: 47-10 JAN.19/10 News Release

Attached hereto please find fully executed copy of Federal Funding Agreement for your records.

If you require anything further, please advise

Thank you.

D. McMenemy Papst

Diane McMenemy Papst
Solicitor

DMcMP/ma

Enclosure(s)(1)

PUBLIC WORKS DEPARTMENT
MAIL
FEB 22 2010
RECEIVED

TO: D Donke
FROM: G Foster
DATE: Feb 22/10
☐ For your attention take appropriate action
☑ For your information
☐ Please prepare a reply for _____ signature
☐ Please see/call me about this
☐ File
Other _____
PUBLIC WORKS DEPARTMENT
DIRECTOR'S OFFICE

THIS AGREEMENT made in duplicate

BETWEEN:

Her Majesty the Queen in Right of Canada
as represented by the Minister of Western Economic Diversification
(the "Minister")

- and -

THE CITY OF WINNIPEG
located at WINNIPEG, Manitoba
(the "Recipient")

WHEREAS:

A. The Minister is offering the Recipient a financial Contribution under the Recreational Infrastructure Canada - 2nd tranche for the Project described in this Agreement.

B. The Recipient wishes to accept the financial Contribution under the terms and conditions set out in this Agreement.

NOW THEREFORE, in consideration of the promises and payments made herein, the parties agree as follows:

1. DEFINITIONS

1.1 Unless otherwise defined herein, the following terms shall have the following meanings:

(a) "Agreement" means this agreement together with all schedules and attachments and all amendments made in writing between the parties.

(b) "Assisted Capital Costs" means those costs described in the Statement of Work.

(c) "Assisted Non-Capital Costs" means those costs described in the Statement of Work.

(d) "Cancellation Date" means the date set out in the Statement of Work, which is the latest date by when the Recipient shall demonstrate to the Minister that the Project has commenced, which is usually indicated by the Recipient incurring Project Costs.

(e) "Completion Date" means the date set out in the Statement of Work, by when the Recipient must finish work on the Project.

(f) "Contribution" means the conditional financial payment from the Minister to the Recipient, described in more detail and the amount of which is set out in the Statement of Work, which shall only be applied towards the Project Costs, which are assisted.

(g) "Non-Assisted Capital Costs" means those costs described in the Statement of Work.

(h) "Non-Assisted Non-Capital Costs" means those costs described in the Statement of Work.

(i) "Notice of Default" has the meaning ascribed to it in Section 6.2 of this Agreement.

(j) "Performance Indicators" means the indicators more particularly described in the Statement of Work that the parties shall use to measure the progress and success of the Project.

(k) "Project" means the project described in the Statement of Work.

(l) "Project Costs" means those costs described in the Statement of Work.

(m) "Stacking" means the maximum total funding toward the project, from federal, provincial and municipal government sources, expressed as a percentage of Total Project Costs as shown in the Statement of Work.

(n) "Statement of Work" means the document attached to this Agreement as Attachment "A".

(o) "Start Date" means the date set out in the Statement of Work, as the earliest date on which the Recipient can begin incurring Project Costs.

(p) "Final Client Reporting Date" means the date set out in the Statement of Work, which is the final date by when the Recipient shall have provided such information and reports as requested by the Minister, with respect to the attainment of the Performance Indicators.

(q) "Western Canada" means the provinces of British Columbia, Alberta, Saskatchewan and Manitoba.

(r) "Contingency Fee" means any payment or other compensation that is contingent upon or is calculated upon the basis of a degree of success in soliciting or obtaining the Contribution or negotiating the whole or any part of its terms."

2. THE PROJECT

2.1 The Recipient shall carry out the Project in a diligent and professional manner.

2.2 The Recipient shall not alter the scope of the Project as defined in the Statement of Work without prior written consent of the Minister.

2.3 This Agreement shall not be amended or assigned in whole or in part by the Recipient without the prior written consent of the Minister.

2.4 The Recipient shall implement or operate the Project in Western Canada.

3. THE CONTRIBUTION

3.1 Provided the Recipient is in compliance with its obligations under this Agreement, the Minister shall provide the Recipient with a non-repayable Contribution not exceeding $875,000, calculated as detailed in the Statement of Work. Disbursements not exceeding the amount of the Contribution will be made upon the Minister's receipt of the following from the Recipient, no later than six (6) months following the Completion Date:

(a) one or more claims for reimbursement of the Assisted Capital Costs and the Assisted Non-Capital Costs, which the Recipient has incurred and paid, it being understood that the claim must be accompanied by such vouchers, receipts and other documentation, including progress reports, as may be requested by the Minister; and

(b) any other material that the Minister requests.

3.2 Any payment made by the Minister under this Agreement is subject to there being an appropriation by Parliament for the fiscal year in which the payment is being made.

3.3 The Recreation Infrastructure Canada Program Terms and Conditions expire on March 31, 2011 and as such no costs incurred subsequent to that date will be assisted.

3.4 The maximum amount that the Minister shall pay under this Agreement is the amount of the Contribution.

3.5 The Minister shall not pay any portion of the Contribution towards any Project Costs that the Recipient incurs prior to the Start Date or after the Completion Date.

3.6 The Recipient shall make requests for payment of the required portions of the Contribution at least annually, as of the Start Date, but not more frequently than four times per year.

3.7 The Minister shall not pay any interest on the Contribution.

3.8 (a) For the purposes of this Agreement, total government assistance, including any tax credit related to the Project to which the Recipient is or will be entitled, shall not exceed the stacking limit indicated on the Statement of Work.

(b) The Recipient undertakes to inform the Minister promptly in writing of any reduction in Projects Costs or of any additional federal, provincial or municipal assistance that becomes available to the Project above the amounts set out in the Statement of Work. Should the stacking limit set out in the Statement of Work be exceeded, the Minister shall have the right to adjust the Contribution or to recover forthwith any excess assistance paid up to the total of the Contribution disbursed as a debt due Her Majesty the Queen in Right of Canada.

3.9 The Minister shall only make payments on Assisted Non-capital Costs incurred under this project for travel and hospitality within the guidelines provided by the Minister to the Recipient.

4. RECIPIENT'S REPRESENTATIONS AND COVENANTS

4.1 (a) The Recipient declares that any person who has been lobbying on its behalf to obtain the Contribution and who is required to be registered pursuant to the Lobbyists Registration Act was registered pursuant to such Act at the time the lobbying occurred.

(b) The Recipient represents and warrants to the Minister that it has not, nor has any other person, corporation, or organization, directly or indirectly paid or agreed to pay, and covenants that it and they shall not directly or indirectly pay, any person to solicit this Agreement or the Contribution, for a commission, Contingency Fee or any other consideration dependent on the execution of this Agreement or the payment of the Contribution or any portion thereof.

4.2 The Recipient shall preserve and keep available, for six years after completion of the Project:

(a) proper books of account recording project revenues and costs,

(b) accounts and records that are necessary in the circumstances to support the books of account; and

(c) adequate administrative documentation to support the Recipient's decisions made concerning the Project.

4.3 The Recipient shall, if requested by the Minister, permit any authorized representative of the Minister, or auditors engaged by the Minister or the Auditor General for Canada, reasonable access to its premises to do the following:

(a) inspect and assess the progress of the Project.

(b) examine the Recipient's books, accounts and any other records related to the Project and the Contribution, and to make copies thereof.

4.4 The Recipient shall provide the Minister with a list of all amounts owing in arrears to the federal government under any legislation or other contribution agreements and acknowledges that the Minister may offset the Contribution against any such amounts the Recipient owes in arrears to the federal government.

4.5 The Recipient shall not dispose of, or relinquish control over, any asset utilized in the Project, including intellectual property developed or acquired as a result of carrying out the Project, during the term of this Agreement, without the prior written consent of the Minister.

4.6 The Recipient shall obtain the prior written consent of the Minister to any change that, in the sole judgement of the Minister, may materially affect the ownership, management, or financing of the Recipient during the term of this Agreement.

4.7 The Recipient shall obtain appropriate insurance coverage for the Project and shall maintain such insurance coverage in full force and effect until the Project has been completed and shall provide evidence of such insurance coverage to the Minister, at the Minister's request.

4.8 The Recipient shall obtain all necessary licenses, permits, and approvals required for the Project by applicable legislation, regulations and by-laws.

4.9 The Recipient, if directed by the Minister, shall forthwith repay to the Minister any overpayments or unexpended balances of the Contribution, and such amounts shall constitute a debt due to Her Majesty the Queen in Right of Canada. These debts will be due upon notice to the Recipient and any amounts unpaid after 30 days from the day of notice will be subject to the same interest as would be calculated in an event of default as described in Section 6.5 of this Agreement.

4.10 The Recipient shall to the satisfaction of the Minister, ensure that all Project Costs are incurred in a manner that is transparent, competitive and consistent with value for money principles.

5. REPORTING

5.1 Project Reports, in a form satisfactory to the Minister, shall be submitted by the Recipient to the Minister on the following schedule:

(a) A progress report at the end of every quarter of the Minister's fiscal year ending March 31, until the Final Client Reporting Date as defined in Attachment "A" of this Agreement. The reports will be due within 2 weeks of the fiscal quarter ending March 31, June 30, September 30 and December 31.

(b) within 30 days of the Completion Date of the Project, a Project completion report which shall include, without limitation, the following:

i) a summary of milestones completed,

ii) the extent to which performance indicators were achieved, and

iii) a description of the benefits that have accrued to date.

(c) any financial statements or additional reports as may be requested by the Minister.

5.2 Following the Completion Date of the Projcct, the Recipient shall submit reports as required in accordance with the Project Measurement section of the Statement of Work.

6. DEFAULT

6.1 The following constitute events of default on behalf of the Recipient:

(a) submitting false or misleading information to the Minister or failing to disclose relevant information which may have a negative impact on the Recipient's financial position;

(b) failing to satisfy a term or condition of this Agreement;

(c) becoming bankrupt or insolvent, going into receivership or taking the benefit of any statute from time to time in force relating to bankrupt or insolvent debtors; or

(d) the Recipient is dissolved or ceases to carry on business.

6.2 If an event of default occurs, the Minister may inform the Recipient, by a notice dated and in writing (the "Notice of Default"), of one or more of the following:

(a) that the Minister's obligation to pay the Contribution to the Recipient is hereby terminated as a result of an event of default occurring;

(b) that the Recipient shall repay to the Minister, all or part of the Contribution forthwith and that such an amount is a debt due to Her Majesty the Queen in Right of Canada and may be recovered as such;

(c) the Recipient shall transfer any assets it has acquired through the proceeds of the Contribution to a third party, as directed by the Minister; and

(d) the Recipient shall use its best efforts to dispose, at fair market value as determined at the sole discretion of the Minister, of any assets it has acquired through the proceeds of the Contribution and shall provide the Minister with the proceeds of such disposal, as directed by the Minister.

6.3 Unless the Recipient satisfies the Minister, within two (2) weeks of the date of the Notice of Default, that either the event of default has not occurred or that it has fully remedied the event of default, the Recipient shall be fully bound by and comply with the terms of the Notice of Default.

6.4 The Recipient shall pay, in addition to any amount due as a result of an event of default, interest on such amount, calculated from the date of the Notice of Default until the date that the full amount payable has been received by the Minister.

6.5 In accordance with the *Interest and Administrative Charges Regulations* under the *Financial Administration Act*, the rate of interest on the amount due as a result of an event of default, shall be fixed at 3 percent above the minimum rate at which the Bank of Canada is prepared to make loans as at the date of the Notice of Default.

6.6 Section 6 of this Agreement shall survive the expiration or termination of this Agreement.

7. ENVIRONMENT

7.1 The Recipient represents that any environmental issues or concerns relating to the Project which are known or ought to be known to the Recipient have been disclosed to the Minister, and the Recipient shall inform the Minister of any environmental issues or concerns regarding the Project which arise during the term of this Agreement.

7.2 The Recipient shall obtain all certificates, consents, permits and approvals required for compliance with applicable legislation and shall comply with the requirements of such legislation and use its best efforts to resolve any environmental issues that may arise.

8. NOTICE

8.1 (a) Any notice or communication authorized or permitted with respect to this Agreement shall be effectively given if:

(i) delivered by hand;

(ii) sent by letter; or

(iii) sent by facsimile.

(b) Any notice that is delivered by hand shall be deemed to have been received on delivery. Any notice which has been mailed shall be deemed to have been received eight (8) calendar days after being mailed. Any notice sent by facsimile shall be deemed to have been received twenty-four (24) hours after the time that is printed on the dispatcher's confirmation slip.

8.2 (a) The Minister's address for notice shall be:

Director General, Operations
Manitoba Region
Department of Western Economic Diversification
250 - 240 Graham Avenue
Winnipeg, Manitoba R3C 0J7
FAX #: (204) 983-1280

(b) The Recipient's address for notice shall be:

Mr. Alex Robinson
Deputy CAO
THE CITY OF WINNIPEG
510 MAIN STREET

WINNIPEG, Manitoba R3B 1B9
FAX #: (204) 986-3350

(c) Either the Minister or the Recipient may change the address and other information stipulated above, provided that a written change of address notice is issued to the other party.

9. PUBLIC ANNOUNCEMENTS AND COMMUNICATIONS

9.1 The Recipient shall comply with the requirements contained in Attachment "B" concerning public announcements, placement of signs, official ceremonies, and publications including news releases and annual reports.

9.2 If applicable, in making any announcements of this Contribution, the Recipient shall comply with the spirit of the "Official Languages Act".

10. INDEMNITY

10.1 The Recipient shall indemnify and save harmless the Minister and the Minister's representatives, successors, assigns, servants and agents against and from all actions, suits, damages, losses, charges, expenses, claims and demands whatsoever (including necessary legal costs) which may hereafter be brought or made against the Minister or which the Minister may sustain, pay or incur as the result of or in connection with or arising out of any action of the Recipient.

10.2 The Minister's liability under this Agreement shall be limited in the aggregate to a sum equal to or less than the Contribution.

10.3 Section 10 of this Agreement shall survive the termination or expiration of this Agreement.

11. GENERAL

11.1 This Agreement is an agreement for the Contribution only. It does not create a partnership, agency, joint venture, or employer/employee relationship between the parties and the Recipient shall not represent itself as such, including in any agreement with a third party.

11.2 No member of the House of Commons of Canada or the Senate of Canada shall be admitted to any share or part of the Agreement or to any benefit to arise therefrom.

11.3 As a condition of receiving the Contribution, the Recipient shall comply with the "Conflict of Interest and Post-Employment Code for Public Office Holders" and the "Values and Ethics Code for the Public Service" at all times during the currency of the Agreement.

11.4 This Agreement and the attachments attached hereto contain the entire agreement between the parties with respect to the subject matter hereto and shall supersede all previous negotiations, representations and documents in relation hereto made by either of the parties.

11.5 Time is to be considered of the essence of this Agreement.

11.6 All information provided by the Recipient to the Minister will be treated in accordance with the "Access to Information Act" and the "Privacy Act". These laws govern, protect and limit the collection, use and disclosure of personal, financial and technical information by federal government departments and agencies. In addition to and notwithstanding the above, the Minister reserves the right to make information relating to this agreement available to the public, including providing limited information on a public website as part of a list of all projects funded by the Minister. The Recipient hereby represents that they have authority to consent and consents to the information being made available to the public.

This Agreement may be executed in counterparts, each of which when so executed shall be deemed to be an original and such counterparts together shall constitute one and the same instrument and shall be effective as of the formal date hereof.

IN WITNESS WHEREOF this Agreement has been executed by the parties by their duly authorized officers this 21st day of January, 2010.

Frame Guimond
For the Minister of
Western Economic Diversification

A/ Deputy

THE CITY OF WINNIPEG
MAYOR

Certified as to Contract Details:

Director of Community Services

M.A.C.
Deputy CITY CLERK

Certified as to form:

D. McMeagency Pass
for Acting City Solicitor/
Manager of Legal Services

F.4/2010(1)-DMcMP

ATTACHMENT "A"

Statement of Work

I PROJECT SCOPE

i) Description

The Recipient will replace playground equipment that is 25-50 years old in Kildonan Park, the Old Ex Park and 15 smaller neighborhood parks throughout Winnipeg. The new playground equipment will have a more challenging play structure with accessible design features for disabled children. Additional amenities at the neighborhood parks will include safety surfacing and access paths.

ii) Project Location

The Recipient shall carry out the Project in Throughout Winnipeg.

iii) Project Costs

PROJECT COSTS	Project Costs	WD Assistance	WD %
Assisted Capital			
Other Construction			
Removal of old playground equipment, installation of new playground equipment and construction of site amenities, including material and incremental labour	$2,625,000	$875,000	34%
Total Assisted Capital	$2,625,000	$875,000	34%
Total Assisted	**$2,625,000**	**$875,000**	**34%**
TOTAL PROJECT COSTS	**$2,625,000**	**$875,000**	**34%**

The above costs include only Project Costs, as set out above, incurred directly to carry out the Project and are subject to verification as direct amounts for which payments to third parties can be proven.

iv) Cashflow

The amounts to be paid by the Minister shall not exceed the following amounts in the Minister's fiscal years ending March 31:

Year	Amount
2011	$875,000

v) Special Conditions

Ongoing Conditions for the Term of the Agreement

N/A

Special Conditions for Specific Events or Timing

1) The Minister will not make any contribution towards project costs incurred by the Recipient after March 31, 2011.

2) In case of sale or other disposition of the project assets, or where projects are not materially

complete prior to March 31, 2011, the Minister reserves the right to cancel in whole or in part, and require repayment proportional to, the contribution made to the project.

3) The Minister shall not make any disbursements of the Contribution until the Recipient provides evidence, satisfactory to the Minister, of all sources of funding for the entire Project.

vi) Dates

a) Start Date - April 01, 2010

b) Completion Date - November 30, 2010

c) Cancellation Date - May 01, 2010

d) Final Client Reporting Date - December 31, 2010

vii) Stacking Limit and Funding

Stacking Limit	100 %
PROJECT FUNDING	
WD Non Repayable	$875,000
Other Municipal	
City of Winnipeg	$1,750,000
TOTAL PROJECT FUNDING	**$2,625,000**

II. PROJECT MEASUREMENT

This section describes the basis for measuring the progress, outcomes and success of the Project. Reporting by the Recipient shall reflect these parameters.

i) Timeline of Project Activity

a)	Removal and installation of playground equipment, and construction of site amenities	Nov 2010

ii) Performance Indicators

	Indicator	Baseline	Date	Target	Date
a)	# new and improved local infrastructure elements	0	Apr-2010	17	Nov-2010
b)	# person months created or maintained	0	Apr-2010	600	Nov-2010

iii) Methodology & Timing

The Recipient will provide quarterly reports to WD that outline the number of person months of employment created, the progress of the overall project and the impact of the project within the community. The progress report will be submitted at the end of every quarter of the Minister's fiscal year ending March 31, until the Final Client Reporting Date as defined in Attachment "A" of this Agreement. The reports will be due within 2 weeks of the fiscal quarter ending March 31, June 30, September 30 and December 31. The Recipient will also provide a final project report summarizing the total number of person months of employment created, the final outcome of the overall project and the impact of the project within the community. This report will be submitted to WD no later than the Final Client Reporting Date. The Recipient shall continue to provide information and reports with respect to the Performance Indicators, as requested by the Minister, until the Final Client Reporting Date.

ATTACHMENT "B"

COMMUNICATIONS PROTOCOL

For Community Adjust Fund (CAF) and Recreational Infrastructure Canada (RInC) Projects

Funding Announcement and/or Official Signing Ceremony

1. (a) The Recipient hereby consents to a public funding announcement and/or an official signing ceremony by, or on behalf of, the Minister in the form of a news release, or news conference, if recommended by the Minister.

   (b) The Minister shall inform the Recipient, in writing, of the date on which the public announcement is to be made and ensure the proposed date permits the participation of both parties, or their representatives, and the Recipient shall maintain the confidentiality of the Agreement until such date.

   (c) The Recipient shall advise the Minister, in writing, at least fourteen (14) days in advance of any official ceremony to be held in connection with the Project.

   (d) The Recipient hereby consents to the participation by the Minister, or a representative of the Minister, at any such official ceremony and to have the event take place on a day mutually agreed upon by the Recipient and the Minister. (Posting of the contribution on the WD website under the Proactive Disclosure1 initiative does not constitute a project funding announcement.)

Federal Funding Recognition

2. (a) The Recipient also consents to the placement of a bilingual sign that identifies the federal government's participation in the Project, on the project site at any time prior to the completion of the Project, if recommended by the Minister.

   (b) The Recipient shall, in all of its publications, public website, news releases and presentations regarding the Project, or making mention thereof, including in its annual reports, acknowledge, if recommended by the Minister, that the Project was supported and/or funded in part by Western Economic Diversification Canada.

   (c) Any use of Western Economic Diversification Canada's name, its Federal Identity Program (FIP) official government identifier with the Canadian flag logo, or the Canada wordmark, requires prior written approval of the Minister.

Project Milestones

3. (a) The Recipient shall provide the Minister with an opportunity to participate in milestone events and provide milestone information and proposed dates for milestone events at least 28 days in advance, thereby enabling the Minister to use the opportunity to promote the Recipients project and WD's role in it.

(b) The Recipient agrees to the implementation of appropriate communications activities, which the Minister or the Recipient may initiate in conjunction with the other, such as a feature story, an official opening, ceremonies, celebrations. The Minister and the Recipient shall cooperate in these activities. Examples of project milestones, for promotional purposes, include:

- Sod-turnings / Ribbon cuttings / Grand openings / Plaque unveilings
- Awards
- Completion of prototype and first product produced
- Penetration of new markets, significant sales, new contracts
- First shipment or launch of new product, new technology
- Completion/graduation of training by students or interns
- Launch of new program, tool or reference
- Research discovery
- Promotional/Media campaign

Success Stories/Photos

4. From time to time Recipients may be required to provide support and photos for the development of articles to be used in departmental publications and/or its public website. It is understood that, in accepting the funding, Recipients agree to provide support when called upon.

Proactive disclosure is an initiative of the Government of Canada whereby all grants and contributions greater than $25,000 are posted to departmental web sites 60 days following the financial quarter.

Visit http://www.wd.gc.ca/images/content/10036a-eng.pdf for guidelines on how to acknowledge WD's support.