

**In the Arbitration under the North American Free  
Trade Agreement and the UNCITRAL Arbitration Rules**

Between

DETROIT INTERNATIONAL BRIDGE COMPANY,

Claimant,

and

THE GOVERNMENT OF CANADA,

Respondent.

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**NOTICE OF ARBITRATION**

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April 29, 2011

## I

### DEMAND FOR ARBITRATION

1. Pursuant to Article 3 of the Arbitration Rules of the United Nations Commission on International Trade Law (“UNCITRAL Rules”) and Articles 1116(1), 1117(1) and 1120(1)(b) of the North American Free Trade Agreement (“NAFTA”), Claimant Detroit International Bridge Company (“DIBC” or “Claimant”), on its own behalf and on behalf of its enterprise The Canadian Transit Company (“CTC”), hereby demands and commences arbitration against respondent the Government of Canada (“Canada”).

2. This proceeding arises from a dispute between Claimant and Canada arising from Claimant’s ongoing investment in the Ambassador Bridge, a privately owned international toll bridge that spans the U.S.-Canadian boundary between the cities of Detroit, Michigan and Windsor, Ontario. Since the Ambassador Bridge was opened for service on November 11, 1929, Claimant has owned the bridge, including the associated toll-collection rights, in its entirety.<sup>1</sup> Claimant directly owns the relevant rights with respect to the U.S. side of the bridge, and DIBC’s wholly owned subsidiary CTC owns the relevant rights with respect to the Canadian side of the bridge.

3. The Ambassador Bridge includes a bridge span, customs and toll plazas, approach roads, duty-free shops and other associated facilities on both sides of the

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<sup>1</sup> The rights to construct, own and operate the United States half of the bridge were granted in 1921 to American Transit Company, which assigned those rights in 1927 to a company called Detroit International Bridge Company. That company, in turn, was merged into the present-day Detroit International Bridge Company (the Claimant in this proceeding) in 1973. For the sake of simplicity, this Request for Arbitration refers to the Claimant and its predecessors-in-interest collectively as “Claimant” or DIBC.

border. The Ambassador Bridge is the busiest crossing between the United States and Canada, facilitating more than 27% of annual trade between the two countries.

4. The Ambassador Bridge was designed, constructed, maintained and operated entirely with private funds of DIBC and its subsidiary CTC. In return for constructing and agreeing to own and operate the Ambassador Bridge, DIBC and CTC were granted a perpetual right to maintain the bridge and collect tolls from vehicles using the bridge. The bridge first opened for traffic in 1929, and from that time to the present day, DIBC has invested hundreds of millions of dollars in operating, maintaining and improving the Ambassador Bridge in reliance on these rights.

5. Canada, however, has arbitrarily and discriminatorily planned its road projects in a manner designed to undermine Claimant's investment by steering traffic away from the Ambassador Bridge and toward a planned new bridge (the "DRIC Bridge") located in the same traffic corridor as the Ambassador Bridge. The DRIC Bridge would be partly owned by Canada or its political subdivisions and would be financed, in whole or in part, by the Canadian government or by a sale of bonds to investors, who may include Canadian and third-country nationals.

6. As further set forth below, Canada has reneged on its commitments to upgrade the road to the Ambassador Bridge. Instead, it has designed a new highway (the "Windsor-Essex Parkway") that will improve the road to within 3.4 kilometers (2.1 miles) of the foot of the Ambassador Bridge and then turn west to connect only to the new DRIC customs plaza and Bridge. Canada has taken deliberate steps to divert traffic from the Ambassador Bridge to the DRIC Bridge, all without any legitimate or nondiscriminatory justification.

7. Canada has taken these inequitable and discriminatory steps, designed to undermine the profitability of DIBC's investment in the Ambassador Bridge, in whole or in part because (a) Canada or its political subdivisions would have a proprietary interest in the DRIC Bridge, unlike the Ambassador Bridge; (b) the DRIC Bridge, unlike the Ambassador Bridge, would not be wholly owned by United States investors; and (c) Canada is intentionally seeking to drive down the value of the Ambassador Bridge to facilitate a purchase of the bridge or in advance of an attempt to expropriate the Canadian half of the bridge.

8. In so doing, Canada has breached its obligations under NAFTA, including its obligations (a) to treat DIBC and its investment in a manner no less favorable than the treatment afforded to Canadian and third-country investors, and (b) to treat DIBC and its investment in a manner consistent with international law, including fair and equitable treatment and full protection and security.

9. For these reasons, as further set forth below, DIBC seeks a determination that Canada has breached its obligations under NAFTA and an award of damages and other appropriate relief.

## **II**

### **THE PARTIES AND THE INVESTMENT**

10. Claimant DIBC is a United States company, duly incorporated and existing under the laws of the state of Michigan. The principal place of business of DIBC is:

12225 Stephens Road  
Warren, Michigan 48089  
United States of America

11. The following are the agents, counsel and advocates for Claimant for purposes of this arbitration proceeding:

Donald Francis Donovan  
Carl Micarelli  
William H. Taft V  
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New York, New York 10022  
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The address of Claimant's counsel of record should be deemed Claimant's address for purposes of this proceeding, and all communications shall be served on Claimant through counsel.

12. DIBC owns and controls all of the stock of CTC, a Canadian company established by a Special Act of Parliament. The principal place of business of CTC is:

4285 Industrial Drive  
Windsor, Ontario N9C 3R9  
Canada

13. Canada is a sovereign state and a state party to NAFTA.

14. Under Article 1137(2) of NAFTA, delivery of notices and documents to the Government of Canada should be made to the following address:

Office of the Deputy Attorney General of Canada  
284 Wellington Street  
Ottawa, Ontario K1A 0H8  
Canada

15. Article 105 of NAFTA makes Canada responsible for the actions of its subnational governments, including provincial and municipal governments. The claim asserted herein involves actions taken by the federal government of Canada, the government of the Province of Ontario, the municipal government of the City of Windsor, Ontario, and numerous governmental agencies of each of them. Canada is responsible for governmental measures taken by these entities.

### III

#### THE AGREEMENT TO ARBITRATE

16. The text of the agreement to refer this dispute to arbitration is set forth in NAFTA. In Chapter Eleven of that treaty, Canada made an offer to submit to arbitration claims for breaches of a substantive obligation of the chapter. The Claimants have accepted Canada's offer, thus forming the agreement to arbitrate between the parties to the dispute.

18. Article 1120(1) of NAFTA states that:

Except as provided in Annex 1120.1, and provided that six months have elapsed since the events giving rise to a claim, a disputing investor may submit the claim to arbitration under:

(a) the ICSID Convention, provided that both the disputing Party and the Party of the investor are parties to the Convention;

(b) the Additional Facility Rules of ICSID, provided that either the disputing Party or the Party of the investor, but not both, is a party to the ICSID Convention; or

(c) the UNCITRAL Arbitration Rules.

17. NAFTA Article 1122(1) provides that “each [state] Party [to NAFTA] consents to the submission of a claim to arbitration in accordance with the procedures set out in this Agreement.” Further, NAFTA Article 1122(2) states that “the consent given by paragraph 1 and the submission by a disputing investor of a claim to arbitration shall satisfy the requirement of ... Article II of the New York Convention for an agreement in writing.”

18. The parties have attempted, without success, to settle the dispute through consultation and negotiation.

19. Each of the requirements for arbitration under NAFTA is satisfied here:
- First, NAFTA entered into force in 1994 and remains in force between the United States and Canada.
  - Second, more than six months has elapsed since the events giving rise to the claim, as set forth in this Request for Arbitration.
  - Third, on March 23, 2010, Claimant DIBC served Canada with a Notice of Intent to Submit a Claim to Arbitration Under Section B of Chapter 11 of the North American Free Trade Agreement (the “Notice of Intent”) specifying the name and address of the claimants; the provisions of NAFTA that have been breached; the issues and factual basis of the claims set forth in this Notice of Arbitration; and also the relief sought and the approximate amount of damages claimed. More than ninety days have elapsed since the service of the Notice of Intent.<sup>2</sup>
  - Fourth, Claimant DIBC is an enterprise organized under the laws of the State of Michigan in the United States of America, and therefore an investor of the United States under the definitions set out in Article 1139 of the NAFTA.
  - Fifth, Claimant DIBC and its enterprise CTC have provided the requisite consent to arbitration and waiver in the form contemplated by Article 1121. The consent and waiver are attached as Annex A.

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<sup>2</sup> On March 23, 2010 Claimant DIBC served Canada with a Notice of Arbitration and Statement of Claim setting forth, in substance, the claims contained in this Statement of Claim, and requested that Canada waive the requirement that more than ninety days elapse between the filing of the Notice of Intent to Submit a Claim to Arbitration and the filing of the Statement of Claim. Canada did not provide such a waiver.

- Finally, none of the exceptions to arbitration under Annex 1120.1, Article 1138, or Annex 1138.2 of NAFTA are applicable to the claims against Canada.

#### IV

##### RELATIONSHIP OUT OF WHICH THE DISPUTE ARISES

20. This dispute arises out of Canada's breaches of NAFTA. DIBC's investment was made pursuant to the reciprocal legislation described below.

#### V

##### NATURE OF CLAIM AND STATEMENT OF FACTS

###### A. The Rights Granted to Claimant and Its Investment.

21. In 1921, the United States Congress and the Canadian Parliament passed reciprocal legislation granting DIBC and CTC a perpetual right to operate an international toll bridge between Detroit, Michigan and Sandwich (now part of Windsor), Ontario.<sup>3</sup>

22. DIBC and its subsidiary CTC, which DIBC acquired in 1927, accepted and relied upon these rights by raising private funds and constructing the Ambassador Bridge. The Ambassador Bridge opened for traffic on November 11, 1929. Over the years, DIBC has invested hundreds of millions of dollars in maintaining, operating and improving the international crossing in reliance on the rights that were granted to it.

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<sup>3</sup> The reciprocal Canadian and U.S. legislation and its amendments consist of the following acts: Act of Mar. 4, 1921, 66th Cong., ch. 167, 41 Stat. 1439 (U.S.); Act of May 3, 1921, 11-12 Geo. V ch. 57 (Can.); Act of June 28, 1922, 12-13 Geo. V ch. 56 (Can.); Act of April 17, 1924, 68th Cong., ch. 125, 43 Stat. 103 (U.S.); Act of Mar. 3, 1925, 68th Cong., ch. 448, 43 Stat. 1128 (U.S.); Act of May 13, 1926, 69th Cong., ch. 292, 44 Stat. 535 (U.S.); Act of Mar. 31, 1927, 17 Geo. V ch. 81 (Can.).



**B. Canada's Commitments to Improve Infrastructure at the Windsor Side of the Ambassador Bridge**

23. Because it was constructed before the modern highway system was built, the Ambassador Bridge did not have direct freeway connections on either side of the border. Starting in 1999, Canada made a number of commitments towards improving infrastructure to establish an end-to-end solution to and from the highway systems in each country to and from the Ambassador Bridge in support of the Ambassador Bridge/Gateway project. These commitments were made against a backdrop of longstanding commitments by Canada to guarantee DIBC's rights in the Ambassador Bridge.

24. Beginning in 1998, the United States undertook an effort to improve road connections on the American side of the bridge. In 2003, the U.S. Congress authorized and appropriated, and the United States spent, more than US\$ 230 million for the "Ambassador Bridge/Gateway Project," a major road project to connect the Ambassador Bridge to the Interstate Highway System in the United States. Planning for the Ambassador Bridge/Gateway Project included accommodating a new span to the Ambassador Bridge (the "New Span"). The U.S. portion of the Gateway Project is nearing completion, resulting in direct connections between the Ambassador Bridge and highways I-75 and I-96.

25. In 1999, the Ontario Ministry of Transportation announced its support for an improved freeway connection between Ontario Highway 401 and the U.S. Interstate Highway System within the Windsor-Detroit area. The Ontario government and the Cities of Windsor and Sarnia supported the funding request put forward by MDOT for the Ambassador Bridge/Gateway Project creating an end-to-end solution. They stated at the time that the proposed Ambassador Bridge/Gateway Project (including the

direct connections and Ambassador Bridge New Span) “are of significant national importance to the Canadian side of the border.”

26. In September 2002, after the U.S. federal government had begun appropriating funds for the Ambassador Bridge/Gateway Project, the Canadian Government and the Government of Ontario signed a Memorandum of Understanding (the “2002 MoU”) in which they “jointly commit[ted]” to a five-year, C\$ 300 million “investment in the Windsor Gateway.” This Memorandum of Understanding established a Canada-Ontario Joint Management Committee to recommend specific targets for the investment funds, which were designated for “improvements to the existing border crossings and their approaches,” including the Ambassador Bridge. Part I of the 2002 MoU, entitled “Canada’s and Ontario’s Commitment,” stated that

Canada and Ontario shall continue to work with the City of Windsor on immediate improvements to assist in the management of traffic on the Highway 3/Huron Church Road Corridor [*i.e.*, the road to the Ambassador Bridge]. This includes, but is not limited to the eight hundred and eighty thousand dollars (\$880K) Investment announced on July 11, 2002 by Canada and Ontario.

27. The Canada-Ontario Joint Management Committee issued an Action Plan in November 2002. The Committee there proposed specific investments in “core infrastructure [that] would improve access to the existing crossings at the Ambassador Bridge and the Detroit-Windsor Truck Ferry” and recommended that the two governments “[w]ork with CTC/Ambassador Bridge ... to pursue the development of a dedicated truck route from Ojibway Parkway at EC Row Expressway to the Ambassador Bridge.” The Committee also stated that “[t]he governments of Canada and Ontario would provide technical assistance and support to CTC in their pursuit of the proposed investments” and that “CTC would be encouraged to expand its

Industrial Drive commercial vehicle customs plaza to accommodate primary and, possibly, secondary inspection.” This initiative, the Committee concluded, “would provide a secure, efficient truck route to the border crossing” that “would accommodate both the needs of industries that rely on cross-border trade, as well as the local tourist and business operations within the City of Windsor and surrounding areas.” The truck ferry improvements have been completed and the improved ferry service became operational in September 2010.

28. At a ceremony held on September 9, 2002, in connection with the first anniversary of the terrorist attacks of September 11, 2001, U.S. President George W. Bush and Canadian Prime Minister Jean Chrétien met at the Ambassador Bridge to pledge their support in expanding connectivity to the Ambassador Bridge and to maintain the Ambassador Bridge as the premier border crossing between the United States and Canada. In his address, U.S. President George W. Bush stated:

This bridge right here is a symbol of the close and unique relationship between our two nations. This single bridge carries more trade than any other border crossing on this continent. And that's saying a lot. This is a -- (applause) -- this is an active bridge. Thanks to the North American Free Trade Agreement, more than 500,000 people, and over a billion dollars worth of goods cross the U.S.- Canadian border every day.

In his address, Canadian Prime Minister Jean Chrétien stated:

I am delighted to be here with you, Mr. President, because it's a great occasion. A short distance from here is the Ambassador Bridge. It spans two great cities, Detroit and Windsor, two great peoples, and two great nations. More than a feat of architecture and construction, the bridge is a symbol of the most open bilateral relationship in the world, a relationship based on shared values of freedom and human dignity, a model to the world of civility and respect. (Applause). And, in the context of globalization, a guide to how nations can develop strong friendships while retaining distinct identities.

The U.S. President and Canadian Prime Minister released a joint press statement with the transcript of their speeches that included the following:

A secure and efficient border is key to our economic security.  
We must continue our efforts to involve the private sector as  
we proceed with modernizing our shared border.

30. By May 2003, Transport Canada (the Canadian federal transportation agency) secured funding for transportation infrastructure projects including the expansion of the EC Row Expressway (the Ambassador Bridge access road in Canada), improvements to Huron Church Road, and the extension of Highway 401, a major limited-access trunk road in Ontario, through Windsor to facilitate separate car and truck access to the Ambassador Bridge. This was communicated by the Canadian Transportation Minister to the U.S. Secretary of Transportation during their meeting in Washington, D.C.

31. Later the same month, Canada and Ontario publicly announced the adoption of a nine-point “Windsor Gateway Action Plan” (“2003 Canada-Ontario Action Plan”) based in substantial part on the recommendations of the Canada-Ontario Joint Management Committee. A May 27, 2003 news release, issued jointly by Infrastructure Canada and Transport Canada, announced that Canada and Ontario had agreed:

- to “[w]ork together with the City of Windsor and Town of LaSalle on improvements to Highway 3/Huron Church Road,” the road to the Ambassador Bridge;
- to “[w]ork together with .... the Canadian Transit Company (Ambassador Bridge) ... in their efforts to build connections to the border crossing, concurrent with the Bi-National Planning Process”; and

- to “work together with partner agencies to accelerate the Bi-National Planning Process, and work with all proponents of new border crossing capacity, including the Canadian Transit Company (Ambassador Bridge) ... in the context of this process”.

32. Canada appended to its press release a map showing the proposed truck-only road to the Ambassador Bridge that was incorporated into the 2003 Canada-Ontario Action Plan. The map showed that, as contemplated by the 2003 Canada-Ontario Action Plan, Highway 401 in Canada would be connected to the foot of the Ambassador Bridge.

**C. Canada's Decision to Renege on Its Promise to Upgrade Access to the Ambassador Bridge and to Steer Traffic to the Planned DRIC Bridge Instead.**

33. In reliance on Canada’s promises, Phase One of the Ambassador Bridge/Gateway Project in the United States has progressed rapidly, at a cost to the United States taxpayers of at least US\$ 230 million to date. In addition, Claimant has spent over US\$500 million of its own funds in connection with the Ambassador Bridge/Gateway Project and the New Span. Specifically, Claimant has reasonably relied on the promises made by Canada by using tens of millions of dollars of its own funds to make improvements related to the Ambassador Bridge/Gateway Project, including a redevelopment of the customs plaza on the U.S. side of the bridge to accommodate direct connection of the Ambassador Bridge with the U.S. Interstate Highway System and the Michigan trunk line and improvements to road connections, lighting, power, drainage and other facilities associated with the Ambassador Bridge, in anticipation of similar developments on the Canadian side of the bridge. Significant additional sums have been spent on land acquisition and design costs

associated with the New Span contemplated by the Ambassador Bridge/Gateway Project.

34. However, Canada has failed to observe the clear commitments that it made with respect to extending Highway 401 to the Ambassador Bridge. On November 12, 2008, Canada admitted in writing that rather than being a temporary delay, this failure reflected a decision by Canada to renege on its commitments with respect to improving the management of traffic to the Ambassador Bridge.

35. As eventually became clear, the primary reason Canada has reneged on its commitments to improve the connection of Highway 401 to the Ambassador Bridge is the desire of the Canadian federal government and the Province of Ontario to build their own entirely new bridge, known as the Detroit River International Crossing bridge (the “DRIC Bridge”). Canada’s focus in developing the Central Corridor crossing infrastructure was to develop a publicly owned bridge to take traffic from the Ambassador Bridge, drive down the value of the Ambassador Bridge, and facilitate a future acquisition of the Ambassador Bridge by Canada. As early as 2004, Andrew Shea, Policy Advisor for Transport Canada, wrote in internal correspondence that “regardless of where the new crossing is located, there will, implicitly, be public control of that crossing.” The DRIC Bridge is meant to take commercial and passenger traffic from the Ambassador Bridge and decrease the value of the Ambassador Bridge by diverting its toll revenues. On the Canadian side, the bridge will be less than two miles from the Ambassador Bridge; on the U.S. side, the two bridge plazas will nearly abut one another and will share the same highway connections that were built for the Ambassador Bridge. The Final Environmental Impact Statement submitted by the proponents of the DRIC Bridge estimated that,

when completed, up to 39% of passenger traffic and 75% of commercial traffic would be diverted from the Ambassador Bridge to the DRIC Bridge.

36. Unlike the Ambassador Bridge, which is wholly owned by DIBC, a privately owned U.S. company, Canada or its political subdivisions would own half of the new DRIC Bridge, with the other half belonging to public agencies in the United States. The current proposal is for the new DRIC Bridge to be privately financed by a bond issue to investors, including Canadian and third-country investors as well as U.S. investors, reverting to full public ownership after the bond issue is paid off.

37. Internal correspondence of Canadian officials confirms that Canada's objective is to use the DRIC Bridge – or the threat of the DRIC Bridge competing with the Ambassador Bridge – to drive down the value of Claimants' investment and facilitate a future acquisition, either through a purchase of the bridge or an attempted expropriation of the Canadian half of the bridge. In a 2004 email discussing the governance model for both the DRIC and the Ambassador Bridge crossings, Ghislain Blanchard, a senior Transport Canada official, described his preference for an "integrated approach" to governance, in which Canada would own an interest in both crossings. Mr. Blanchard noted that once "the new crossing is operational and capture[s] a substantial share of the market of the existing operators" Canada "might be in a much stronger position to negotiate a reasonable price [for the Ambassador Bridge]." He then went on to conclude that the prospect of undermining the value of the Ambassador Bridge franchise "suggest[s] a two-phase strategy, with the first phase being focused on getting a new crossing in place as soon as possible. In the second phase, the option of putting in place a more integrated approach could be examined."

#### **D. The Windsor-Essex Parkway**

38. The location selected for the DRIC Bridge, in the area known as the Central Corridor, was intentionally chosen to divert traffic away from the Ambassador Bridge. The planned DRIC Bridge will have a direct connection to Highway 401 like the connection Canada promised but never built for the Ambassador Bridge. The new connection from Highway 401 to the DRIC Bridge, known as the Windsor-Essex Parkway, is designed to divert as much as 75% of the Ambassador Bridge's commercial truck traffic and 39% of its passenger traffic, in order to ensure that the DRIC Bridge succeeds at the Ambassador Bridge's expense.

39. The new DRIC Bridge is designed for a location approximately 2.6 kilometers from the foot of the Ambassador Bridge on the Canadian side. Approximately nine kilometers of the planned twelve kilometers of the Windsor-Essex Parkway will follow the exact same route that would have been used for a direct connection to the Ambassador Bridge. The Windsor-Essex Parkway would only need to be extended another approximately three kilometers to reach the plaza of the Ambassador Bridge.

40. Like the first nine kilometers, these last three kilometers to the Ambassador Bridge would be sited along the Highway 3/Huron Church Road corridor, which is already heavily traveled by cars and trucks bound for the Ambassador Bridge. The City of Windsor has designated Huron Church Road as a high-capacity vehicular corridor, recognizing its importance as a gateway to Canada because it is the access road to the Ambassador Bridge, and has adopted design guidelines for the road similar to international crossings in other U.S.-Canada border cities. But instead of continuing the Windsor-Essex Parkway down its expected path along the corridor to



the Ambassador Bridge, Canada is planning to divert the new Parkway, impacting a natural area and species-at-risk, to the DRIC Bridge site.

41. In an effort to justify its decision to refuse to build a direct highway connection to the Ambassador Bridge, as it had previously promised to do, and instead build a highway connection to its competing publicly owned crossing, Canada alleged that the Ambassador Bridge connection would disrupt the Sandwich community in Windsor, Ontario. While the route to the Ambassador Bridge was already a heavily trafficked vehicular corridor, the Windsor-Essex Parkway now under construction will have impacts to the Ojibway Prairie Complex, Canada's largest remaining tall grass prairie complex and also impact eight species at risk. In addition, the construction of the Windsor-Essex Parkway and related toll-plaza for the DRIC Bridge will displace approximately 360 homes, 50 businesses, a church, a school, and other cultural institutions.

42. Canada's claims of alleged community disruption, as a reason for the planned site of the Windsor-Essex Parkway, are thus clearly a pretext to attempt to justify discrimination against the Ambassador Bridge and in favor of the DRIC Bridge, for the purpose of diverting toll revenues away from Claimant's investment and toward Canada's own competing project and driving down the value of Claimant's investment.

#### **E. Interference with Traffic on Huron Church Road**

43. In 1990, ownership of the Detroit Windsor Tunnel, a two-lane vehicle crossing in the Central Corridor, reverted to The City of Windsor, Ontario ("Windsor") following the expiration of a sixty-year lease agreement between Windsor and the Detroit & Canada Tunnel Corp. and the determination by the

Canadian Courts of the issue. Since 1990, Windsor has held a direct financial interest in the toll-franchise associated with the Detroit Windsor Tunnel.

44. Windsor has worked with the Canadian federal and Ontario provincial governments to promote the DRIC Bridge and the Detroit Windsor Tunnel and take traffic away from the Ambassador Bridge. Windsor has accomplished this by implementing measures that unfairly and unreasonably impeded traffic along the primary access route to the Ambassador Bridge on the Canadian side, Huron Church Road.

45. Huron Church Road is designated by the City of Windsor as a high capacity vehicular corridor playing an important role as a gateway to Canada being the access road to the Ambassador Bridge. Huron Church Road was constructed as and intended to be a limited access route to the Ambassador Bridge. Windsor intentionally destroyed this limited access route by granting unlimited curb cuts and driveway connections to Huron Church Road.

46. In addition, Windsor has installed and continues to operate seventeen unnecessary traffic lights along Huron Church Road to further discourage traffic from using the Ambassador Bridge.

47. The reason that Windsor has taken and is continuing to take these steps to discourage traffic from using the Ambassador Bridge is to encourage the use of its own competing toll crossing, the Detroit-Windsor Tunnel, for the time being, and ultimately to encourage use of Canada's planned DRIC Bridge. Through its ownership interest in these alternative crossings, Canada will derive a financial benefit from tolls collected from cars and trucks crossing its competing crossings, and Claimant will suffer an injury from that lost traffic. In addition, by diverting traffic

away from the Ambassador Bridge, Canada seeks to unfairly gain leverage over Claimant and drive down the value of Claimant's investment in the Ambassador Bridge, either to facilitate a purchase of the bridge or in advance of an attempt to expropriate the Canadian half of the bridge.

## VI

### POINTS AT ISSUE

48. This arbitration arises from the decisions by Canada, the Province of Ontario, and the City of Windsor (a) to locate the Windsor-Essex Parkway so as to bypass the Ambassador Bridge and steer traffic to the planned DRIC Bridge, (b) to fail to provide comparable improvements in road access to the Ambassador Bridge, because of its ownership by a United States investor; and (c) to take traffic measures with respect to Huron Church Road to divert traffic away from the Ambassador Bridge and toward the Detroit-Windsor Tunnel and the planned DRIC Bridge.

49. The points raised by this arbitration are (a) whether those measures are inconsistent with Canada's obligations under Chapter 11 of NAFTA, including national treatment under Article 1102, most-favored-nation treatment under Article 1103 and the minimum standard of treatment under Article 1105; and (b) if so, what is the appropriate amount of damages.

50. Articles 1102, 1103 and 1105 of NAFTA provide as follows:

#### **Article 1102: National Treatment**

1. Each Party shall accord to investors of another Party treatment no less favorable than that it accords, in like circumstances, to its own investors with respect to the establishment, acquisition, expansion, management, conduct, operation, and sale or other disposition of investments.
2. Each Party shall accord to investments of investors of another Party treatment no less favorable than that it accords,

in like circumstances, to investments of its own investors with respect to the establishment, acquisition, expansion, management, conduct, operation, and sale or other disposition of investments.

3. The treatment accorded by a Party under paragraphs 1 and 2 means, with respect to a state or province, treatment no less favorable than the most favorable treatment accorded, in like circumstances, by that state or province to investors, and to investments of investors, of the Party of which it forms a part.

#### **Article 1103: Most-Favored-Nation Treatment**

1. Each Party shall accord to investors of another Party treatment no less favorable than that it accords, in like circumstances, to investors of any other Party or of a non-Party with respect to the establishment, acquisition, expansion, management, conduct, operation, and sale or other disposition of investments.

2. Each Party shall accord to investments of investors of another Party treatment no less favorable than that it accords, in like circumstances, to investments of investors of any other Party or of a non-Party with respect to the establishment, acquisition, expansion, management, conduct, operation, and sale or other disposition of investments.

#### **Article 1105: Minimum Standard of Treatment**

1. Each Party shall accord to investments of investors of another Party treatment in accordance with international law, including fair and equitable treatment and full protection and security.

2. Without prejudice to paragraph 1 and notwithstanding Article 1108(7)(b), each Party shall accord to investors of another Party, and to investments of investors of another Party, non-discriminatory treatment with respect to measures it adopts or maintains relating to losses suffered by investments in its territory owing to armed conflict or civil strife.

3. Paragraph 2 does not apply to existing measures relating to subsidies or grants that would be inconsistent with Article 1102 but for Article 1108(7)(b).

51. DIBC reserves the right to bring additional and further claims under Chapter 11 of NAFTA, either by amendment of its claims in this arbitration or by commencement of a new arbitration.

## VII

### RELIEF REQUESTED

52. As a result of the measures taken by the Government of Canada described above, the Claimant respectfully requests an award:

- (a) Finding that Canada has breached its obligations under NAFTA;
- (b) Directing Canada to pay damages in an amount to be proved at the hearing but which the Claimant presently estimates to be in excess of US\$3.5 billion;
- (c) Directing Canada to pay interest to the Claimant on the sums awarded;
- (d) Directing Canada to pay the Claimant's costs associated with this proceeding, including professional fees and disbursements;
- (e) Directing Canada to pay all amounts awarded to the Claimant in U.S. dollars in the United States, without any deduction, withholding or setoff for taxes or expenses, and to pay Claimant's taxes on all sums awarded; and
- (f) Ordering such other and further relief as the Tribunal deems appropriate in the circumstances.

## VIII

### NUMBER AND APPOINTMENT OF ARBITRATORS

53. Article 1123 of NAFTA provides that "the Tribunal shall comprise three arbitrators, one arbitrator appointed by each of the disputing parties and the third, who

shall be the presiding arbitrator, appointed by agreement of the disputing parties.”  
Article 1124 of NAFTA provides that the Secretary-General of the International Centre for the Settlement of Investment Disputes shall act as the appointing authority in the event that a party fails to appoint an arbitrator or the disputing parties are unable to agree on a presiding arbitrator. Claimant DIBC will appoint its arbitrator as provided by the UNCITRAL Rules.

## IX

### PROPOSAL AS TO LANGUAGE AND PLACE OF ARBITRATION

54. Claimants propose that the site of the arbitration be Washington, D.C., and that it be conducted in the English language.

Respectfully submitted,

New York, April 28, 2011



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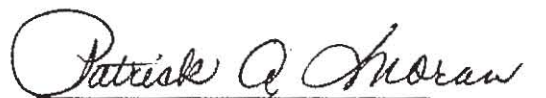
*Counsel for Claimant*

**ANNEX A  
WAIVER AND CONSENT**

Pursuant to Articles 1121.1 and 1121.2 of the North American Free Trade Agreement ("NAFTA"), Detroit International Bridge Company and The Canadian Transit Company each hereby consent to arbitration in accordance with the procedures set out in NAFTA, and waive their right to initiate or continue before any administrative tribunal or court under the law of any Party, or other dispute settlement procedures, any proceedings with respect to the measure of the disputing Party that is alleged in the foregoing Notice of Arbitration to be a breach referred to in Article 1116 or Article 1117, namely the decisions by Canada, the Province of Ontario, and the City of Windsor to locate the Windsor-Essex Parkway so as to bypass the Ambassador Bridge and steer traffic to the planned Detroit River International Crossing ("DRIC") Bridge, and to take traffic measures with respect to Huron Church Road to divert traffic away from the Ambassador Bridge and toward the Detroit-Windsor Tunnel and the planned DRIC Bridge, except for proceedings for injunctive, declaratory or other extraordinary relief, not involving the payment of damages, before an administrative tribunal or court under the law of the disputing Party. For the avoidance of doubt, this waiver does not and shall not be construed to extend to or include any of the claims included in the Complaint filed on or about March 22, 2010, in the action titled *Detroit International Bridge Company et al. v. The Government of Canada et al.*, in the United States District Court for the District of Columbia.


DETROIT INTERNATIONAL BRIDGE  
COMPANY

By:  
Name:  
Title:  
Date:

  
PATRICK A. MORAN  
SVP & CORP. COUNSEL  
4-28-11

THE CANADIAN TRANSIT COMPANY

By:  
Name:  
Title:  
Date:

  
PETER FARAN  
CFO  
4-28-11