

A PROVINCIAL COOPERATING AGREEMENT

THIS AGREEMENT made this _____ day of _____ 2007.

BETWEEN:

The Government of Manitoba,
as represented by the Minister of Conservation,

("Manitoba"),

- and -

Friends of Birds Hill Park Inc.,
a body corporate, incorporated pursuant to the laws of the Province of Manitoba,

("Cooperating Association").

WHEREAS the two parties desire to enter into a cooperative agreement to assist in achieving their common objectives in a spirit of mutual understanding and assistance, and more particularly in accordance with the terms and provisions agreed to in this Agreement.

NOW THEREFORE the parties agree as follows:

ARTICLE 1 – Interpretation

- 1.1 Unless the context otherwise requires:
- (a) "Agreement" means the Cooperating Agreement that is this document which embodies the entire cooperating agreement of the parties;
 - (b) "Cooperators" refers to the parties to this Agreement;
 - (c) "Department" refers to the Department of Conservation;
 - (d) "Birds Hill Provincial Park" means the area of the Province of Manitoba designated as the Birds Hill Provincial Park under the *Provincial Parks Designation Regulation* (M.R.37/97), as amended from time to time;

- (e) "Friends of Birds Hill Park Inc." means the Cooperating Association, also known as the Friends of Birds Hill Park Cooperating Association;
- (f) "Director" means the Director of Parks & Natural Areas Branch, Manitoba Conservation, or his authorized representative;
- (g) "Public" means all persons;
- (h) The masculine gender includes the feminine and neuter genders, and vice-versa; and
- (i) The singular form includes the plural form, and vice-versa.

ARTICLE 2 –Cooperating Association Objectives

- 2.1 The Cooperating Association's objectives are:
- (a) to enter into and maintain an ongoing Cooperating Agreement with Manitoba;
 - (b) to promote the protection, enjoyment and heritage appreciation of Birds Hill Provincial Park by enhancing the goals and activities of Manitoba Conservation;
 - (c) to promote public participation in the Cooperating Association as board members, members, and volunteers;
 - (d) to sponsor and support the projects and activities in Birds Hill Provincial Park which complement the program objectives of the Department including conservation, heritage appreciation, outdoor recreation and tourism;
 - (e) to enhance the visitors' experience through the Cooperating Association's activities and projects including products and services, which reflect and teach wise stewardship of Birds Hill Provincial Park;
 - (f) to create partnerships to facilitate or expedite common projects with groups, organizations, associations, businesses or government agencies who have common interest in Birds Hill Provincial Park and the Cooperating Association;
 - (g) for the purposes of furthering the objectives above, and only for such purposes and only to the extent permitted under the provisions of the Income Tax Act in respect of non-profit organizations:
 - i) to solicit, receive, acquire and hold donations, gifts and bequests, inheritances and legacies as well as annual drives, membership renewals and corporate and private sponsorships;
 - ii) to lease, purchase or otherwise acquire physical facilities to house the Cooperating Association and its offices (storage, etc.);
 - iii) to borrow funds and lease, mortgage, sell and otherwise dispose of property of the Cooperating Association; and
 - iv) to use the funds of the Cooperating Association only according to and in pursuit of these objects or other charitable objectives.

ARTICLE 3 – Manner of Operation

3.1 The Cooperating Association shall:

- (a) conform to the requirements of *The Corporations Act*, and any other applicable provincial legislation;
- (b) maintain active status as a non-share corporation; and
- (c) include as a term listed in the articles of incorporation, in box # 9, the following:

In the event of the dissolution or windup of the Corporation, all of its remaining assets, after payment of its liabilities, will be distributed to the Government of Manitoba, Department of Conservation, to be held in trust, with the express intent that they be used for the further development and maintenance of Birds Hill Provincial Park.

3.2 Board of Directors:

- (a) the Regional Parks Manager (Interlake Region), or designate, shall serve on the Cooperating Association's Board of Directors, but not as its Chair, and shall be the "Appointed Department Liaison" between the Cooperating Association and the Department;
- (b) the Appointed Department Liaison shall have no voting privileges;
- (c) the Treasurer and Chairperson of the Cooperating Association shall not be employees of the Department;
- (d) a majority of the Board of Directors of the Cooperating Association, shall consist of persons other than employees of the Department.
- (e) the Appointed Department Liaison shall attend a minimum of four meetings per year, plus the Cooperating Association's Annual General Meeting;

3.3 Quorum:

- (a) for any meeting held by the Board of Directors of the Cooperating Association, quorum shall not be met if the majority of persons present are employees of the Department.

3.4 Department Employees:

- (a) the Appointed Department Liaison, and employees of the Department, shall not negotiate or execute contracts or sign cheques on behalf of the Cooperating Association and shall not hire or dismiss employees of the Cooperating Association;
- (b) where circumstances require that the Department staff handle funds from the sale of Cooperating Association goods or services, these funds shall:
 - (i) be accounted for and promptly turned over to a representative of the Cooperating Association; or
 - (ii) be kept separate and apart from Manitoba's funds and stored in a secure location, and turned over to the Cooperating Association at the earliest opportunity, when no Cooperating Association representative is present to receive it.

- 3.5 Developing the Cooperating Association's Annual Activity Plan:
- (a) the Board of Directors of the Cooperating Association shall develop a plan, in a format that addresses the areas set out in Schedule "B", that outlines the proposed Services (defined below) for the coming year ("Annual Activity Plan.") The Annual Activity Plan must be submitted to the Appointed Department Liaison for approval, by March 1 of each year. Such approval shall not be unreasonably withheld.
 - (b) each approved Annual Activity Plan shall form part of this Agreement, and be attached as Schedule "D" to this Agreement.
 - (c) in order to assist the Cooperating Association in developing its Annual Activity Plan, the Appointed Department Liaison will endeavour to inform the Cooperating Association of any planned projects or Department resource commitments relevant to the interests of the Cooperating Association.
- 3.6 Ownership of all structures, materials and facilities constructed, erected or placed by the Cooperating Association in Birds Hill Provincial Park shall, upon the stated completion date, transfer to Manitoba free and clear of any encumbrance.
- 3.7 In order to facilitate the transfer of insurance responsibilities:
- (a) the Cooperating Association shall give Manitoba notice of the stated completion date of all structures, materials, and facilities constructed a minimum of one month prior to the stated completion date; and
 - (b) Manitoba will assume insurance coverage for the completed structure on the stated completion date.

ARTICLE 4 – Manitoba's Commitment

- 4.1 Manitoba will authorize the Cooperating Association to provide, and the Cooperating Association agrees to provide the activities, projects, products, and services ("Services"), as outlined in the approved Annual Activity Plan.
- 4.2 Manitoba grants to the Cooperating Association's objectives, to the extent permitted under the provisions of *The Charities Endorsement Act* (Manitoba), the necessary approval to solicit, receive, acquire and hold donations, gifts and bequests, inheritances and legacies, as well as annual drives, membership renewals and corporate and private sponsorships.
- 4.3 Manitoba may provide partial funding towards projects, as outlined in the approved Annual Activity Plan.
- 4.4 Manitoba may agree to build an approved project, as outlined in the approved Annual Activity Plan.

- 4.5 Manitoba grants to the Cooperating Association, its servants, agents and persons acting by or with the authority of the Cooperating Association, the right to enter Birds Hill Provincial Park in order to carry out the Services.
- 4.6 Manitoba shall provide to the Cooperating Association Birds Hill Provincial Park promotional merchandise worth up to a market value of TWO THOUSAND DOLLARS (\$2000) as determined by Manitoba, within ten (10) days of the signing of this Agreement, in order to assist the Cooperating Association with developing a merchandising program at Birds Hill Provincial Park.
- 4.7 Manitoba will use its best efforts:
- (a) to orient the Cooperating Association staff and volunteers to the Department's policies and the natural and cultural significance of Birds Hill Provincial Park;
 - (b) to provide, at the discretion of the Director, space and other facilities for sales or service outlets, inventory storage and office under separate occupancy agreements;
 - (c) to permit the Cooperating Association to review and comment on any plans which the Department has, or may have in the future, with respect to new facilities or services affecting the operation of the Cooperating Association; and
 - (d) to cooperate with the Cooperating Association in the identification, planning, and design of merchandise appropriate for sale by the Cooperating Association.

ARTICLE 5 – Sale of Goods and Services

- 5.1 The Cooperating Association agrees:
- (a) to take possession from Manitoba, within ten (10) days of the signing of this Agreement, Birds Hill Provincial Park promotional merchandise worth up to a market value of TWO THOUSAND DOLLARS (\$2000) as determined by Manitoba in order to develop a merchandising program at Birds Hill Provincial Park;
 - (b) to design, order, take possession of and sell merchandise, as outlined in the approved Annual Activity Plan;
 - (c) to reorder merchandise on an "as required" basis;
 - (d) to avoid situations of direct competition with local commercial business by minimizing duplication in the products and services sold by the Cooperating Association;
 - (e) that items and materials produced by the Cooperating Association for sale may be made available to local commercial business on a wholesale basis; and

- (f) to sell only those products and services, which have been reviewed and recommended by the Board of Directors of the Cooperating Association and the Appointed Department Liaison, and approved by the Department.
- 5.2 Manitoba retains copyright on the Birds Hill Provincial Park graphic(s) included in Schedule "A" of this Agreement.
- 5.3 Cooperating Association retains copyright on the Friends of Birds Hill Park graphic(s) included in Schedule "A" of this Agreement. Manitoba agrees not to use the Friends of Birds Hill Park graphic(s) without the consent of the Cooperating Association.
- 5.4 Under the terms of this Agreement, the Cooperating Association has the right to reproduce the Birds Hill Provincial Park graphic(s) on items and materials produced for sale that have received approval under 5.1(e), in accordance with the Merchandising Guidelines listed in Schedule "A" of this Agreement.
- 5.5 The Cooperating Association agrees to be bound by the terms of the Merchandising Guidelines listed in Schedule "A" of this Agreement, if it chooses to reproduce the Birds Hill Provincial Park graphic(s) on items and materials produced for sale.

ARTICLE 6 – Policy on Use of Revenue

- 6.1 The Cooperating Association will direct the net income derived from its products and services towards specific objectives, as defined in the approved Annual Activity Plan.

ARTICLE 7 – Guiding Principles for the Cooperators

- 7.1 The Cooperators, and persons of these parties, agree that they will bring to the Cooperating Association:
 - (a) no personal, political, or commercial agendas with the Province of Manitoba;
 - (b) no political action, in the name of the Cooperating Association;
 - (c) A willingness to share confidential information of all varieties keeping in mind that this is a privileged relationship for both (respect confidentiality; be open as possible about plans, strategies, policies, etc.);
 - (d) a willingness to work together towards the fulfillment of the program objectives of the Department which are resource protection, heritage appreciation, outdoor recreation, and tourism in order to enhance the quality of resident and visitor experiences; and
 - (e) a pledge to work together toward a common goal.

ARTICLE 8 – Financial Records

- 8.1 The Cooperating Association agrees:
- (a) to keep books of account and records which shall include records of gross revenue and disbursements, all in accordance with accepted principles and practices of business and accounting together with an annual hard copy summary of the Cooperating Association's activities during the given year, a copy of both are to be submitted to Manitoba within three months of the close of the fiscal year.
 - (b) to permit the Appointed Department Liaison, as the authorized representative of Manitoba to review the accounts and records of the Cooperating Association at any reasonable time; and
 - (c) to cause all such accounts and records to be preserved and kept available for review until the expiration of (7) years from the date of termination of this Agreement, or until the expiration of such lesser periods of time as agreed to in writing by the Cooperators.

ARTICLE 9 – Personnel

- 9.1 The Cooperating Association agrees:
- (a) that any employees and volunteers of the Cooperating Association shall not wear Department uniforms, or otherwise lead the public to conclude that they are employees of Manitoba Conservation and will prominently identify themselves as members of the Cooperating Association when undertaking activities under this Agreement; and
 - (b) to maintain standards of discipline, grooming and conduct among its employees and volunteers, and to take appropriate action, with any of its personnel that have been conducting themselves improperly while engaged in the business of the Cooperating Association in Birds Hill Provincial Park.

ARTICLE 10 – Indemnification

- 10.1 The Cooperating Association shall use due care in the performance of its obligations under this Agreement to ensure that no person is injured, no property is damaged or lost and no rights are infringed.
- 10.2 If the activities of the Cooperating Association are identified as "estimated light risk activities" (as those terms are defined in Schedule "C") in the approved Annual Activity Plan, Manitoba shall indemnify the Cooperating Association, and each volunteer member ("Member") of the Cooperating Association, from any action or proceeding brought against the Member, or the Cooperating Association, by a third party for any bodily injury or property damage alleged to have been suffered by such third party arising

out of the actions of the Cooperating Association, or a Member's service to the Cooperating Association, provided that the Cooperating Association, or the Member, acted in good faith, honestly, and without malicious intent.

- 10.3 If the activities of the Cooperating Association are identified as "estimated moderate risk activities" or "beyond estimated moderate risk activities" (as those terms are defined in Schedule "C"), in the approved Annual Activity Plan, the Cooperating Association, or its Members, shall be solely responsible for:
- (a) any injury to persons (including death), damage or loss to property or infringement of any rights caused by, or related to, the performance of this Agreement or the breach of any term or condition of this Agreement by the Cooperating Association, or the officers, employees or agents of the Cooperating Association; and
 - (b) any omission or wrongful or negligent act of the Cooperating Association, or of the officers, employees or agents of the Cooperating Association; and shall save harmless and indemnify Manitoba, its officers, employees and agents from and against all claims, liabilities with respect to clauses (a) and (b).
- 10.4 Manitoba shall not be liable for any injury to the Cooperating Association, or to any officers, employees or agents of the Cooperating Association, or for any damages to or loss of property of the Cooperating Association, or to any officers, employees or agents of the Cooperating Association, caused by or in any way related to the performance of this Agreement.
- 10.5 Subsection 10.4 does not apply if the injury, damage or loss was caused by the wrongful or negligent act of an officer or employee of Manitoba while acting within the scope of his or her employment.

ARTICLE 11 – Insurance

- 11.1 The Cooperating Association agrees that it shall consult with a licensed broker regarding insurance coverage that ought to be purchased and maintained by the Association. The responsibility for obtaining appropriate insurance coverage rests with the Association and its insurance advisor (s).
- 11.2 If the activities of the Cooperating Association are identified as "estimated light risk activities" in the approved Annual Activity Plan, the Cooperating Association is not required to purchase and maintain Commercial General Liability Insurance.
- 11.3 If the activities of the Cooperating Association are identified as "estimated moderate risk activities" in the approved Annual Activity Plan, the

Cooperating Association, at minimum, shall maintain the following insurance coverage:

- (a) Commercial General Liability Insurance in an amount not less than \$ 2.0 million per occurrence against bodily injury and property damage. Such insurance shall be endorsed to add Manitoba as an Additional Insured, and to provide for 30 days prior written notice to Manitoba in case of policy cancellation or significant reduction in coverage; and
- (b) If the activities of the Cooperating Association are deemed to present risks “beyond estimated moderate risk”, insurance requirements will be determined on an individual basis.

11.4 If the Cooperating Association undertakes to construct or erect any structure itself, it shall obtain All Risks Property Insurance (and Builder’s Risk Insurance if applicable) providing full replacement cost coverage for all property owned, acquired or constructed by the Cooperating Association.

11.5 Whenever the Cooperating Association’s (including special accounts and trust fund) assets include cash or negotiable securities in excess of \$50,000, the Cooperating Association shall obtain comprehensive crime insurance, including employee bonding coverage for a minimum amount of \$50,000 per occurrence, or such higher amounts as determined by the Cooperating Association and its insurance brokers(s).

11.6 The Cooperating Association shall provide Certificates of Insurance, satisfactory to Manitoba, as written evidence of the required insurance coverages, upon request by Manitoba.

ARTICLE 12 – Advertising

12.1 Any in park advertising, relating to the activities of the Cooperating Association shall be approved by the Appointed Department Liaison.

ARTICLE 13 – Accident Reporting

13.1 The Cooperating Association agrees to ensure that any accident in the Birds Hill Provincial Park incidental to the Cooperating Association’s activities are reported immediately to park personnel.

ARTICLE 14 – Funding

14.1 Subject to funding being available, the Department, if it deems it appropriate, may provide assistance to the Cooperating Association for:

- (a) the acquisition or development of items and materials for sale by the Cooperating Association; and
- (b) other specific projects or initiatives agreed to by the Cooperators from time to time.

ARTICLE 15 – Notice

- 15.1 Any notice or other communication to the Cooperating Association under this Agreement shall be in writing and shall be sent to the Cooperating Association, by registered mail, postage prepaid, to:

Attention: Lesley Anne Fuga
Friends of Birds Hill Park Inc.
Box 29, Grp 8, RR2
Dugald, MB R0E 0K0

- 15.2 Any notice or communication sent by registered mail shall be deemed to have been received by the Cooperating Association on the seventh (7th) business day following the date of the mailing.

- 15.3 Any notice or other communication to Manitoba under this Agreement shall be in writing and shall be delivered by registered mail, postage prepaid to:

Attention: Director, Parks and Natural Areas
200 Saulteaux Crescent
Winnipeg, MB R3J 3W3

- 15.4 Either of the Cooperators may provide notice of change of address to the other in writing and thereafter all notice shall be provided to the new address.

ARTICLE 16 – Disputes

- 16.1 In the event of a dispute regarding the interpretation or operation of this Agreement, the matter shall be referred to the Chair of the Cooperating Association and the Director of Parks and Natural Areas Branch whose joint decision shall be final and binding upon the Cooperators.

ARTICLE 17 – Acts and Regulations

- 17.1 The Cooperators agree that:

- (a) this Agreement is subject to any Provincial Acts or Regulations, whether now in force or hereinafter enacted or provided, and the mention herein of specific restriction conditions and stipulations shall not be construed as impairing the general powers of Manitoba to enforce such Acts or Regulations;
- (b) that all of the activities of the Cooperating Association hereunder shall be conducted in accordance with all applicable laws and regulations of the federal, provincial and municipal governments, including the need to obtain any approval, permits or licences;
- (c) no member of the Provincial Legislature, Department staff, nor the membership or the Board of the Cooperating Association shall receive any personal benefit whatsoever arising through any involvement with this Agreement.

ARTICLE 18 – Term

18.1 The Cooperators agree that this Agreement shall be for a period of four years commencing _____ and in force and effect until _____, subject to Article 19.

ARTICLE 19 – Termination

- 19.1 The Cooperators agree that:
- (a) either party may terminate the Agreement by giving the other party at least three (3) months prior written notice of intention to terminate;
 - (b) this Agreement will automatically terminate if at any time it is determined that the Cooperating Association has abandoned or otherwise lost its non-profit status;
 - (c) Manitoba may, in its sole discretion, immediately terminate this Agreement in writing if:
 - (i) in the opinion of Manitoba, the Services provided by the Cooperating Association are unsatisfactory, inadequate, or are improperly performed; or
 - (ii) in the opinion of Manitoba, the Cooperating Association has failed to comply with a term or condition of this Agreement;
 - (d) termination of this Agreement shall in no way prejudice the Cooperators' rights to recover monies due, nor prejudice any right or action, which the Cooperators may have with respect to a breach of any covenant or agreement herein contained;
 - (e) immediately upon termination of this Agreement, the Cooperating Association shall cease to perform any further Services, and shall provide to Manitoba any projects, supplies, materials, and work in progress relating to this Agreement.

- (f) immediately upon termination of this Agreement, the Cooperating Association shall transfer the monies held for projects to the Government of Manitoba, Department of Conservation, to be held in trust, with the express intent that the proceeds be used for the further development and maintenance of Birds Hill Provincial Park.

ARTICLE 20 – Autonomy

- 20.1 It is the intent of the Cooperators that a clearly evident and distinct separation shall be maintained at all times between that activities of the Cooperating Association and those of Manitoba and every effort shall be made to avoid the impression that the management and decision-making process of the Cooperating Association are directed by Manitoba.
- 20.2 This Agreement does not create the relationship of employer and employee, or of principal and agent, between employees or agents of the Cooperating Association and Manitoba.

ARTICLE 21 – Appropriations

- 21.1 Nothing herein contained shall be construed as binding the Government of Manitoba to the payment hereunder of any money in excess of any appropriation made by the Government of Manitoba, or administratively allocated, for the purposes of this Agreement for the fiscal year in which any commitment hereunder would come into force of payment, or to involve Manitoba in any contract or other obligation for further expenditure of money in excess of such appropriation or allocation.

ARTICLE 22 – Waivers

- 22.1 Unless a waiver is given in writing by Manitoba, the Government of Manitoba will not be deemed to have waived any breaches by the Cooperating Association of any of the covenants and agreements herein contained and a waiver relates only to the specific breach to which it refers.

ARTICLE 23 – Entire Agreement

- 23.1 It is agreed that this written instrument, including Schedules “A”, “B” and “C”, embodies the entire agreement of the Cooperators with regard to the matters dealt with herein, and that no understanding or agreement, verbal or otherwise, exists between the Cooperators, except as herein expressly set out.

ARTICLE 24 – Assignment

- 24.1 The Cooperating Association shall not assign or subcontract this Agreement without first having the Director's consent in writing.
- 24.2 The Director shall not assign or subcontract this Agreement without first having the consent of the Board of Directors of the Cooperating Association in writing.
- 24.3 In consideration of the mutual covenants contained in this Agreement, and for other good and valuable consideration, the receipt and sufficiency of which are acknowledged, this Agreement shall ensure to the benefit of and be binding upon the respective parties, and successors and assigns of the parties hereto.

IN WITNESS WHEREOF the parties hereto execute this document on the date first above written.

<p>SIGNED IN THE PRESENCE OF:</p> <hr/> <p>Witness</p>	<p>FOR THE GOVERNMENT OF MANITOBA:</p> <hr/> <p>Minister of Conservation or his delegate</p> <p>Date:</p> <hr/>
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 <hr/> <p>Witness</p>	<p>FOR THE COOPERATING ASSOCIATION:</p> <hr/> <p>Date:</p> <hr/>
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SCHEDULE "A"

Merchandising Guidelines

1. The Cooperating Association agrees that:
 - (a) A minimum of two quotes will be solicited for each merchandise item and that items will be purchase from firm(s) offering the lowest quote(s);
 - (b) Prices for merchandise sold under this Agreement, will be at fair market value;
 - (c) Only approved Birds Hill Provincial Park graphic(s) (attached as Figure 1) and the approved Cooperating Association graphic(s) (attached as Figure 2) will be used on items and materials approved and sold under this Agreement;
 - (d) The use and placement of the approved Birds Hill Provincial Park graphic(s) and or the Cooperating Association graphic(s) must be approved by the Appointed Department Liaison; and
 - (e) Only "cameral ready art" will be used for reproduction purposes. Photocopies, enlargements and reductions of the logo are not suitable for reproduction purposes.

Figure 1



Figure 2



SCHEDULE "C"

Policy

Estimated Light Risk Activities

- There is to be no selling of "home made" food or beverages.
- Souvenirs sold are to be commercially manufactured by others.
- One or two social events during the year may include a minor amount of food preparation.
- No alcoholic beverages are to be served.
- Larger gatherings are to be outside - not in buildings with fire hazard exposure, nor close to hazardous locations.
- Light Risk Activities mainly involve fund raising work, with no more than light physical requirements (could include trail development or clearing where work is done by hand without power equipment – e.g. heavy machinery or chain saws).

Estimated Moderate Risk Activities

- There is to be no trail development for motorized equipment.
- No alcoholic beverages are to be served.
- Some "home made" foods or beverages may be sold to the public.
- Estimated Moderate Risk Activities could include:
 - Significant hiking and equestrian trail development projects involving heavy machinery, such as chain saws.
 - Regularly held social events with significant food preparation – e.g. regular use of propane fired Barbeques.
 - Large social gatherings inside buildings.
 - Waterfront activities including fishing, and some limited watercraft use.
 - Activities along public highways.

Beyond Estimated Moderate Risk Activities

- Beyond Estimated Moderate Risk Activities could include:
 - Building or major repairs to snowmobile trails, ATV trails, or trails to be used for motorized equipment.
 - Social events serving alcoholic beverages.
 - Water activities involving a larger number of watercraft.
 - Activities that are higher risk such as skateboarding or roller hockey tournaments etc.