

*Agreement Between the
Government of the United States of America and the
Government of the United Mexican States
Concerning the Establishment of a
Border Environment Cooperation Commission and a
North American Development Bank*

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The Government of the United States of America and the Government of the United Mexican States (“*the Parties*”):

Convinced of the importance of the conservation, protection and enhancement of their environments and the essential role of cooperation in these areas in achieving sustainable development for the well-being of present and future generations;

Recognizing the bilateral nature of many transboundary environmental issues, and that such issues can be most effectively addressed jointly;

Acknowledging that the border region of the United States and Mexico is experiencing environmental problems that must be addressed in order to promote sustainable development;

Recognizing the need for environmental infrastructure in the border region, especially in the areas of water pollution, wastewater treatment, municipal solid waste, and related matters;

Affirming that, to the extent practicable, environmental infrastructure projects should be financed by the private sector, but that the urgency of the environmental problems in the border region requires that the Parties be prepared to assist in supporting these projects;

Affirming that, to the extent practicable, environmental infrastructure projects in the border region should be operated and maintained through user fees paid by polluters and those who benefit from the projects, and should be subject to local or private control;

Noting that the International Boundary and Water Commission, established pursuant to the Treaty between the United States and Mexico Relating to Utilization of Waters of the Colorado and Tijuana Rivers and of the Rio Grande, signed at Washington February 3, 1944, plays an important role in efforts to preserve the health and vitality of the river waters of the border region;

Recognizing that there is a need to establish a new organization to strengthen cooperation among interested parties and to facilitate the financing, construction, operation and maintenance of environmental infrastructure projects in the border region;

Affirming the desirability of encouraging increased investment in the environmental infrastructure in the border region, whether or not such investment is made under the auspices of this Agreement;

Convinced of the need to collaborate with states and localities, nongovernmental organizations, and other members of the public in the effort to address environmental problems in the border region;

Seeking to assist community adjustment and investment in the United States and Mexico;

Reaffirming the importance of the environmental goals and objectives embodied in the Agreement on Cooperation for the Protection and Improvement of the Environment in the Border Area, signed at La Paz, Baja California Sur, August 14, 1983; and

Wishing to follow upon the goals and objectives of the North American Free Trade Agreement, signed at Washington, Ottawa, and Mexico December 8, 11, 14, and 17, 1992, and the North American Agreement on Environmental Cooperation, signed at Mexico, Washington, and Ottawa September 8, 9, 12, and 14, 1993;

Have agreed as follows:

INTRODUCTORY ARTICLE

The Parties agree to establish the Border Environment Cooperation Commission and the North American Development Bank, which shall operate in accordance with the following provisions:

CHAPTER I • BORDER ENVIRONMENT COOPERATION COMMISSION

Article I • Purpose and Functions

Section 1. Purpose

- (a) The purpose of the Commission shall be to help preserve, protect and enhance the environment of the border region in order to advance the well-being of the people of the United States and Mexico.
- (b) In carrying out this purpose, the Commission shall cooperate as appropriate with the North American Development Bank and other national and international institutions, and with private sources supplying investment capital for environmental infrastructure projects in the border region.

Section 2. Functions

- (a) In carrying out this purpose, the Commission may do any or all of the following:
 - (1) with their concurrence, assist states and localities and other public entities and private investors in:
 - (A) coordinating environmental infrastructure projects in the border region;
 - (B) preparing, developing, implementing, and overseeing environmental infrastructure projects in the border region, including the design, siting and other technical aspects of such projects;
 - (C) analyzing the financial feasibility or the environmental aspects, or both, of environmental infrastructure projects in the border region;

- (D) evaluating social and economic benefits of environmental infrastructure projects in the border region; and
 - (E) organizing, developing and arranging public and private financing for environmental infrastructure projects in the border region;
- (2) certify, by a decision of the Board of Directors in accordance with Article II, Section 3 of this Chapter, environmental infrastructure projects in the border region to be submitted for financing to the North American Development Bank, or to other sources of financing that request such certification.
- (b) The Commission may carry out the functions in this section with respect to an environmental infrastructure project outside the border region upon a decision by the Board of Directors that the project would remedy a transboundary environmental or health problem.

Article II • Operations

Section 1. Use of Resources

The resources and facilities of the Commission shall be used exclusively to implement the purpose and functions enumerated in Article I of this Chapter.

Section 2. Requests for Assistance

- (a) The Commission may seek and accept requests from states and localities, other public entities and private investors for assistance in carrying out the activities enumerated in Article I of this Chapter.
- (b) Upon receipt of a request for assistance pursuant to paragraph (a) of this Section, the Commission may provide any and all such assistance as it deems appropriate. In providing such assistance, the Commission shall give preference to environmental infrastructure projects relating to water pollution, wastewater treatment, water conservation, municipal solid waste, and related matters.
- (c) In providing such assistance, the Commission shall consult, as appropriate, with the North American Development Bank.

Section 3. Applications for Certification

- (a) The Commission may accept applications from states and localities, other public entities and private investors for certification of environmental infrastructure projects in the border region with respect to which an applicant will be seeking financial assistance from the North American Development Bank or other sources of financing requesting such certification.
- (b) The Board of Directors may certify for such financing any project that meets or agrees to meet the technical, environmental, financial or other criteria applied, either generally or specifically, by the Commission to that project. To be eligible for certification, a project shall observe or be capable of observing the environmental and other laws of the place where it is to be located or executed.

- (c) For each project located in the border region and having significant environmental effects,
 - (1) an environmental assessment shall be presented as part of the application process, and the Board of Directors shall examine potential environmental benefits, environmental risks, and costs, as well as available alternatives and the environmental standards and objectives of the affected area; and
 - (2) the Board of Directors, in consultation with affected states and localities, shall determine that the project meets the necessary conditions to achieve a high level of environmental protection for the affected area.
- (d) In making certifications pursuant to this Section, the Board of Directors shall give preference to environmental infrastructure projects relating to water pollution, wastewater treatment, water conservation, municipal solid waste, and related matters.

Section 4. Relationship with the Public

The Commission shall establish procedures in English and Spanish:

- (a) ensuring, to the extent possible, public availability of documentary information on all projects for which a request for assistance or an application for certification is made;
- (b) for giving written notice of and providing members of the public reasonable opportunity to comment on any general guidelines which may be established by the Commission for environmental infrastructure projects for which it provides assistance, and on all applications for certification received by the Commission; and
- (c) whereby the Board of Directors could receive complaints from groups affected by projects that the Commission has assisted or certified and could obtain independent assessments as to whether the terms of this Chapter or the procedures established by the Board of Directors pursuant to this Chapter have been observed.

Section 5. Reimbursement, Fees and Charges

- (a) The Commission may arrange for reimbursement of the costs of furnishing assistance on terms which the Commission deems appropriate.
- (b) The Commission may establish reasonable fees or other charges for its assistance, including the processing of applications for certification.

Article III • Organization and Management

Section 1. Location of Offices

The Commission shall have its offices in the border region.

Section 2. Structure of the Commission

The Commission shall have a Board of Directors as specified in Chapter III, a General Manager, a Deputy General Manager, and such other officers and staff to perform such duties as the Commission may determine.

Section 3. General Manager

- (a) The Board of Directors shall appoint a General Manager and a Deputy General Manager. The General Manager, under the direction of the Board of Directors, shall conduct the business of the Commission and shall be chief of its staff. The General Manager or his or her designee shall be the legal representative of the Commission. The General Manager and the Deputy General Manager each ordinarily shall serve a nonrenewable term of five years. The Board of Directors may remove the General Manager or the Deputy General Manager at any time. The offices of General Manager and Deputy General Manager shall alternate between nationals of the Parties. The General Manager and the Deputy General Manager shall be nationals of different Parties at all times.
- (b) The General Manager shall exercise all the powers delegated to him or her by the Board of Directors. The General Manager may participate in meetings of the Board of Directors, but shall not vote at such meetings. Subject to the general control of the Board of Directors, the General Manager shall be responsible for the organization, appointment and dismissal of the officers and staff of the Commission.
- (c) The General Manager, officers and staff of the Commission, in the discharge of their offices, shall owe their duty entirely to the Commission and to no other authority. The Parties shall respect the international character of this duty and shall refrain from all attempts to influence any of them in the discharge of their duties.
- (d) In appointing the officers and staff, the General Manager shall, subject to the paramount importance of securing the highest standards of efficiency and technical competence, seek to achieve at each level a balanced proportion of nationals of each Party.
- (e) The General Manager shall submit to the Board of Directors for its approval an annual program and budget for the Commission.

Section 4. Relationship to the International Boundary and Water Commission

- (a) The Commission may enter into arrangements with the International Boundary and Water Commission ("IBWC") regarding facilities, personnel and services and arrangements for reimbursement of administrative and other expenses paid by one organization on behalf of the other.
- (b) Nothing in this Chapter shall make the Commission liable for the acts or obligations of the IBWC, or the IBWC liable for the acts or obligations of the Commission.
- (c) The Parties shall call upon the Commission and the IBWC to cooperate, as appropriate, with each other in planning, developing and carrying out border sanitation and other environmental activities.

Section 5. Funding

Each Party shall contribute an equal share of the budget of the Commission, subject to the availability of appropriated funds and in accordance with its domestic legal requirements. The Commission shall establish an account or accounts to receive such contributions from the Parties.

Section 6. Channel of Communication

Each Party shall designate an appropriate authority with which the Commission may communicate in connection with any matter arising under this Chapter.

Section 7. Annual Reports

- (a) The Commission shall submit to the Parties an annual report in English and Spanish on its operations. The report shall be prepared by the General Manager and shall be approved by the Board of Directors. The annual report shall include an audited statement of the Commission's accounts.
- (b) Copies of the annual report prepared under this section shall be made available to the public.

Section 8. Limitations on Disclosure

- (a) Notwithstanding any other provision of this Chapter, the Commission, including its officers and staff, shall not make public information with respect to which a Party has notified the Commission that public disclosure would impede its law enforcement.
- (b) The Commission shall establish regulations to protect from disclosure business or proprietary information and information the disclosure of which would violate personal privacy or the confidentiality of government decision-making.
- (c) A party that requests assistance or submits an application to the Commission may request that information contained therein be designated confidential by the Commission, and may request an advance determination from the Commission as to whether such information is entitled to confidentiality pursuant to subsection (b) above. If the Commission determines that such information is not entitled to confidentiality pursuant to subsection (b) above, the party may withdraw its request or application prior to further action by the Commission. Upon such withdrawal, the Commission shall not keep any copy of the information and shall not make public that it received such a request or application.

Article IV • Status, Immunities and Privileges

Section 1. Scope of Article

To enable the Commission to fulfill its purpose and the functions with which it is entrusted, the status, immunities and privileges set forth in this Article shall be accorded to the Commission in the territories of each Party.

Section 2. Legal Status

- (a) The Commission shall possess juridical personality and, in particular, full capacity:
 - (i) to contract;
 - (ii) to acquire and dispose of immovable and movable property; and
 - (iii) to institute legal proceedings.
- (b) The Commission may exercise such other powers as shall be necessary in furtherance of its purpose and functions, consistent with the provisions of this Chapter.

Section 3. Judicial Proceedings

The Commission, its property and its assets, wherever located, and by whomsoever held, shall enjoy the same immunity from suit and every form of judicial process as is enjoyed by foreign governments, except to the extent that the Commission may expressly waive its immunity for the purposes of any proceedings or by the terms of any contract.

Section 4. Immunity of Assets

Property and assets of the Commission, wheresoever located and by whomsoever held, shall be considered public international property and shall be immune from search, requisition, confiscation, expropriation or any other form of taking or foreclosure by executive or legislative action.

Section 5. Inviolability of Archives

The archives of the Commission shall be inviolable.

Section 6. Freedom of Assets from Restrictions

To the extent necessary to carry out the purpose and functions of the Commission and to conduct its operations in accordance with this Chapter, all property and other assets of the Commission shall be free from restrictions, regulations, controls and moratoria of any nature, except as may otherwise be provided in this Chapter.

Section 7. Privilege for Communications

The official communications of the Commission shall be accorded by each Party the same treatment that it accords to the official communications of the other Party.

Section 8. Personal Immunities and Privileges

The directors, General Manager, Deputy General Manager, officers and staff of the Commission shall have the following privileges and immunities:

- (a) immunity from legal process with respect to acts performed by them in their official capacity except when the Commission expressly waives this immunity;
- (b) when not local nationals, the same immunities from immigration restrictions, alien registration requirements and national service obligations and the same facilities as regards exchange provisions as are accorded by each Party to the

- representatives, officials, and employees of comparable rank of the other Party;
and
- (c) the same privileges in respect of traveling facilities as are accorded by each Party to representatives, officials, and employees of comparable rank of the other Party.

Section 9. Immunities from Taxation

- (a) The Commission, its property, other assets, income, and the operations it carries out pursuant to this Chapter shall be immune from all taxation and from all customs duties. The Commission shall also be immune from any obligation relating to the payment, withholding or collection of any tax or customs duty.
- (b) No tax shall be levied on or in respect of salaries and emoluments paid by the Commission to officers or staff of the Commission who are not local nationals of the country where the Commission has its principal office.

Section 10. Implementation

Each Party, in accordance with its juridical system, shall take such action as is necessary to make effective in its own territories the principles set forth in this Article, and shall inform the Commission of the action which it has taken on the matter.

Article V • Termination of Operations

- (a) The Parties, by mutual agreement, may terminate the operations of the Commission. A Party may withdraw from the Commission by delivering to the Commission at its principal office a written notice of its intention to do so. Such withdrawal shall become finally effective on the date specified in the notice but in no event less than six months after the notice is delivered to the Commission. However, at any time before the withdrawal becomes finally effective, the Party may notify the Commission in writing of the cancellation of its notice of intention to withdraw. The Commission shall terminate its operations on the effective date of any notice of withdrawal from the Commission.
- (b) After such termination of operations the Commission shall forthwith cease all activities, except those incident to the conservation, preservation, and realization of its assets and settlement of its obligations.

CHAPTER II • NORTH AMERICAN DEVELOPMENT BANK

Article I • Purposes and Functions

Section 1. Purposes

The purposes of the North American Development Bank shall be:

- (a) to provide financing for projects certified by the Board of Directors in accordance with Articles I and II of Chapter I, and, as the Board of Directors deems appropriate, to otherwise assist the Commission in fulfilling its purposes and functions;
- (b) to provide financing endorsed by the United States, as appropriate, for community adjustment and investment in support of the purposes of the North American Free Trade Agreement; and
- (c) to provide financing endorsed by Mexico, as appropriate, for community adjustment and investment in support of the purpose of the North American Free Trade Agreement.

Section 2. Functions

To implement its purposes, the Bank shall utilize its own capital resources, funds raised by it in financial markets, and other available resources and shall fulfill the following functions:

- (a) to promote the investment of public and private capital contributing to its purposes;
- (b) to encourage private investment in projects, enterprises, and activities contributing to its purposes, and to supplement private investment when private capital is not available on reasonable terms and conditions; and
- (c) to provide, under the direction of the Board of Directors, technical and other assistance for the financing and the implementation of the plans and projects.

In carrying out its functions, the Bank shall cooperate as appropriate with national and international institutions and with private sources supplying investment capital.

Article II • Capital of the Bank

Section 1. Authorized Capital

- (a) The authorized capital stock of the Bank initially shall be in the amount of \$3,000,000,000 in United States dollars and shall be divided into 300,000 shares having a par value of \$10,000 each, which shall be available for subscription by the Parties in accordance with Section 2 of this Article.
- (b) The authorized capital stock shall be divided into paid-in shares and callable shares. \$450,000,000 shall be paid-in shares, and \$2,550,000,000 shall be callable for the purposes specified in Section 3 (d) of this Article.

- (c) The authorized capital stock may be increased when the directors from the federal governments of the Parties on the Board of Directors by a unanimous vote deem it advisable, subject to the domestic legal requirements of the Parties.

Section 2. Subscription of Shares

- (a) Each Party shall subscribe to shares of the capital stock of the Bank. The number of shares to be subscribed by the Parties shall be those set forth in Annex A of this Agreement, which specifies the obligation of each Party as to both paid-in and callable capital.
- (b) Shares of capital stock subscribed by the Parties shall be issued at par, unless the Board of Directors decides in special circumstances to issue them on other terms.
- (c) The liability of the Parties on capital shares shall be limited to the unpaid portion of their issue price.
- (d) Shares of capital stock shall not be pledged or encumbered in any manner, and they shall be transferable only to the Bank.

Section 3. Payment of Subscriptions

Payment of the subscriptions to the capital stock of the Bank as set forth in Annex A shall be made as follows:

- (a) As soon as possible after this Agreement enters into force pursuant to Article I of Chapter IV, but no later than thirty days thereafter, each Party shall deposit with the Bank an Instrument of Subscription in which it agrees to pay in either Party's currency to the Bank the amount of paid-in capital set forth for it in Annex A, and to accept the obligations of callable shares ("Unqualified Subscription"). Payment of the paid-in capital shall be due according to a schedule to be established by the Board of Directors after entry into force of this Agreement.
- (b) Notwithstanding the provisions of paragraph (a) of this Section regarding Unqualified Subscriptions, as an exceptional case, a Party may deposit an Instrument of Subscription in which it agrees that payment of all installments of paid-in capital, and its obligations with respect to all callable shares, are subject to subsequent budgetary legislation ("Qualified Subscription"). In such an instrument, the Party shall undertake to seek to obtain the necessary legislation to pay the full amount of paid-in capital and to accept the full amount of corresponding obligations for callable shares, by the payment dates determined in accordance with paragraph (a) of this Section. Payment of an installment due after any such date shall be made within sixty days after the requisite legislation has been obtained.
- (c) If any Party which has made a Qualified Subscription has not obtained the legislation to make payment in full of any installment (or to accept obligations in respect of callable shares) by the dates determined in accordance with paragraph (a) of this Section, then a Party which has paid the corresponding installment on time and in full, may, after consultation with the Board of Directors, direct the Bank in writing to restrict commitments against that installment. That restriction shall not exceed the percentage which the unpaid portion of the installment, due from the Party that has made the Qualified Subscription, bears

to the entire amount of the installment to be paid by the Party, and shall be in effect only for the time that unpaid portion remains unpaid.

- (d) The callable portion of the subscription for capital shares of the Bank shall be subject to call only when required to meet the obligations of the Bank created under Article III, Section 2 (b) and (c) of this Chapter on borrowings of funds for inclusion in the Bank's capital resources or guarantees chargeable to such resources. In the event of such a call, payment shall be made in either Party's currency. Calls on unpaid subscriptions shall be uniform in percentage on all shares.

Section 4. Capital Resources

As used in this Chapter, the term "capital resources" of the Bank shall be deemed to include the following:

- (a) authorized capital, including both paid-in and callable shares, subscribed pursuant to Section 2 and 3 of this Article;
- (b) all funds raised by borrowings under the authority of Article V, Section 1 (a) of this Chapter to which the commitment set forth in Section 3 (d) of this Article is applicable;
- (c) all funds received in repayment of loans made with the resources indicated in paragraphs (a) and (b) of this section;
- (d) all income derived from loans made from the aforementioned funds or from guarantees to which the commitment set forth in Section 3(d) of this Article is applicable; and
- (e) all other income derived from any of the resources mentioned above.

Article III • General Operations

Section 1. Use of Resources

The resources and facilities of the Bank shall be used exclusively to implement the purposes and functions enumerated in Article I of this Chapter.

Section 2. Methods of Making or Guaranteeing Loans

Subject to the conditions stipulated in this Article, the Bank may make or guarantee loans to either Party, or any agency or political subdivision thereof, and to any entity in the territory of a Party, in any of the following ways:

- (a) by making or participating in direct loans with funds corresponding to the unimpaired paid-in capital and to its reserves and undistributed surplus;
- (b) by making or participating in direct loans with funds raised by the Bank in capital markets, or borrowed or acquired in any other manner, for inclusion in the capital resources of the Bank; and
- (c) by guaranteeing in whole or in part loans made to, or securities issued in connection with, projects.

Section 3. Grants

Subject to the conditions stipulated in this Article, the Bank shall make grants with funds corresponding to the Bank's unimpaired paid-in capital, reserves and undistributed surplus to either Party, or any agency or political subdivision thereof, and to any entity in the territory of a Party for purposes specified in Article I, Section 1(a) of this Chapter.

Section 4. Limitations on Operations

The total amount outstanding of loans and guarantees made by the Bank in its operations shall not at any time exceed the total amount of the unimpaired subscribed capital of the Bank, plus the unimpaired reserves and undistributed surplus included in the capital resources of the Bank, as defined in Article II, Section 4 of this Chapter, exclusive of income on the capital resources that is assigned by decision of the Board of Directors to reserves not available for loans or guarantees.

Section 5. Direct Loan and Grant Financing

In making grants or in making direct loans or participating in them, the Bank may provide financing in the currencies of the Parties to meet the costs and expenses related to the purposes of the grant or loan.

Section 6. Rules and Conditions for Making or Guaranteeing Loans

- (a) The Bank may make or guarantee loans, subject to the following rules and conditions:
 - (1) in considering a request for a loan or a guarantee, the Bank shall take into account the ability of the borrower to obtain the loan from private sources of financing on terms which, in the opinion of the Bank, are reasonable for the borrower, taking into account all pertinent factors;
 - (2) in making or guaranteeing a loan, the Bank shall pay due regard to prospects that the borrower and its guarantor, if any, will be in a position to meet their obligations under the loan contract;
 - (3) in the opinion of the Bank, the rate of interest, other charges and the schedule for repayment of principal are appropriate for the purposes or project in question; and
 - (4) in guaranteeing a loan made by other investors, the Bank shall receive suitable compensation for its risk.
- (b) In addition to the rules and conditions set forth in paragraph (a) of this Section, the following rules and conditions shall apply to loans or guarantees made pursuant to a certification from the Board of Directors in accordance with Articles I and II of Chapter I:
 - (1) the Bank management shall have submitted a detailed financial proposal to the Board of Directors, and the Board of Directors shall have certified the project relating to such proposal;
 - (2) in approving a loan or guarantee for a project, the Board of Directors shall find that the project is economically/financially sound, and pay due regard to the prospects that the project will generate sufficient revenues, by user

fees or otherwise, to be self-sustaining or that funds will be available from other sources to meet debt servicing obligations; and

- (3) loans made or guaranteed by the Bank shall be for financing specific projects.

Section 7. Optional Conditions for Making or Guaranteeing Loans

- (a) In the case of loans or guarantees of loans to nongovernmental entities, the Bank may, when it deems it advisable, require that the Party in whose territory the project is to be carried out, or a public institution or a similar agency of the Party acceptable to the Bank, guarantee the repayment of the principal and the payment of interest and other charges on the loan.
- (b) The Bank may attach such other conditions to the making of loans or guarantees as it deems appropriate.

Section 8. Use of Proceeds

- (a) The Bank shall impose no condition that the proceeds of a loan guaranteed or made, or a grant made, for the purposes specified in Article 1, Section 1(a) of this Chapter shall be spent in the territory of either Party.
- (b) The Bank shall take the necessary measures to ensure that the proceeds of any loan made, guaranteed, or participated in, or any grant made, by the Bank are used only for the purposes for which the loan was granted, or the grant was made, with due attention to considerations of economy and efficiency.

Section 9. Terms for Direct Loans

Direct loan contracts made by the Bank in conformity with Section 5 and 6 of this Article shall establish:

- (a) All the terms and conditions of each loan, including among others, provision for payment of principal, interest and other charges, maturities, and dates of payment; and
- (b) The currency or currencies in which payment shall be made to the Bank.

Section 10. Terms for Guarantees

- (a) In making any guarantee pursuant to Section 2(c) of this Article, the Bank shall charge a guarantee fee, at a rate determined by the Bank, payable periodically on the amount of the loan outstanding.
- (b) Guarantee contracts concluded by the Bank shall provide that the Bank may terminate its liability with respect to interest if, upon default by the borrower and by the guarantor, if any, the Bank offers to purchase, at par and interest accrued to a date designated in the offer, the bonds or other obligations guaranteed.
- (c) In issuing guarantees, the Bank shall have power to determine any other terms and conditions.

Section 11. Rules and Conditions for Making Grants

- (a) Before the Board of Directors may approve a grant (excluding technical assistance expenditures) for an environmental project in accordance with the purposes specified in Article 1, Section 1(a) of this Chapter, (i) the Bank management shall have submitted a detailed financial proposal to the Board of Directors, and (ii) the Board of Directors shall have certified the project relating to such proposal in accordance with Articles I and II of Chapter I.
- (b) The Bank may attach such other conditions to the making of grants for the purposes specified in Article 1, Section 1(a) of this Chapter as it deems appropriate.

Section 12. Relationship with Other Entities

- (a) The Bank may make arrangements or agreements with other entities, including multilateral development banks, regarding facilities, personnel and services and arrangements for reimbursement of administrative expenses paid by either entity on behalf of the other.
- (b) Nothing in this Agreement shall make the Bank liable for the acts or obligations of an entity referred to in paragraph (a) of this Section, or any such entity liable for the acts or obligations of the Bank.

Article IV• Community Adjustment and Investment Operations

Section 1. Community Adjustment and Investment Grants

- (a) Subject to the conditions stipulated in this Article and Article III of this Chapter, the Bank shall make grants to the United States or any agency or political subdivision thereof, and to any entity in the territory of the United States for purposes of community adjustment and investment specified in Article I, Section 1(b) of this Chapter.
- (b) Subject to the conditions stipulated in this Article and Article III of this Chapter, the Bank shall make grants to Mexico or any agency or political subdivision thereof, and to any entity in the territory of Mexico for purposes of community adjustment and investment specified in Article I, Section 1(c) of this Chapter.

Section 2. Rules and Conditions for Making Community Adjustment and Investment Grants

- (a) Notwithstanding Article VI of Chapter III, and subject to the limitations specified in Sections 5(a) and 5(b) of this Article, the Bank shall make grants for the purposes of community adjustment and investment specified in Article I, Section 1(b) of this Chapter pursuant to an endorsement by the United States.
- (b) Notwithstanding Article VI of Chapter III, and subject to the limitations specified in Sections 5(c) and 5(d) of this Article, the Bank shall make grants for the purposes of community adjustment and investment specified in Article I Section 1(c) of this Chapter pursuant to an endorsement by Mexico.

Section 3. Methods of Making Community Adjustment and Investment Loans

Section 2 of Article III of this Chapter shall apply to any loans made or guaranteed by the Bank for the purposes specified in Article 1, Sections 1(b) or 1(c) of this Chapter.

Section 4. Rules and Conditions for Making or Guaranteeing Community Adjustment and Investment Loans

In addition to the rules and conditions set forth in Section 6(a) of Article III of this Chapter and the optional rules and conditions set forth in Section 7 of Article III of this Chapter:

- (a) loans and guarantees made for the purposes of community adjustment and investment specified in Article I, Section 1(b) of this Chapter shall require an endorsement from the United States; and
- (b) loans and guarantees made for the purposes of community adjustment and investment specified in Article 1, Section 1(c) of this Chapter shall require an endorsement from Mexico.

Section 5. Limitations on Community Adjustment and Investment Operations

In addition to the limitations on operations set forth in Section 4 of Article III of this Chapter:

- (a) The total amount of loans, guarantees and grants provided for the purposes of community adjustment and investment specified in Article I, Section 1(b) of this Chapter, shall not exceed 10 percent of the sum of the paid-in capital actually paid to the Bank by the United States, and the amount of callable shares for which the United States has an unqualified subscription.
- (b) The total amount of grants made pursuant to Section 1(a) of this Article, plus 15 percent of the total amount of loans and guarantees made for the purposes of community adjustment and investment specified in Article 1 Section 1(b) of this Chapter, shall not exceed 10 percent of the paid-in capital actually paid to the Bank by the United States.
- (c) The total amount of loans, guarantees and grants provided for the purposes of community adjustment and investment specified in Article I, Section 1(c) of this Chapter, shall not exceed 10 percent of the sum of the paid-in capital actually paid to the Bank by Mexico, and the amount of callable shares for which Mexico has an unqualified subscription.
- (d) The total amount of grants made pursuant to Section 1(b) of this Article, plus 15 percent of the total amount of loans and guarantees made for the purposes of community adjustment and investment specified in Article 1, Section 1(c) of this Chapter, shall not exceed 10 percent of the paid-in capital actually paid to the Bank by Mexico.

Section 6. Applicability of Article III to Community Adjustment and Investment Operations

Sections 1, 2, 4, 5, 6(a), 7, 8(b), 9 and 10 of Article III of this Chapter shall apply to Bank operations for the purposes specified in Article I, Sections 1(b) and 1(c) of this Chapter.

Article V • Currencies

Section 1. Use of Currencies

- (a) The Parties may not maintain or impose restrictions of any kind upon the use by the Bank or by any recipient from the Bank, for payment in any country, of the following:
 - (1) currencies received by the Bank in payment of each Party's subscription to shares of the Bank's capital;
 - (2) currencies of the Parties purchased with the resources referred to in (1) of this paragraph;
 - (3) currencies obtained by borrowings, pursuant to the provisions of Article V, Section 1(a) of this Chapter, for inclusion in the capital resources of the Bank;
 - (4) currencies received by the Bank in payment on account of principal, interest, or other charges in respect of loans made from the funds referred to in (1), (2) or (3) of this paragraph; and currencies received in payment of commissions and fees on all guarantees made by the Bank; and
 - (5) currencies received from the Bank pursuant to Article V Section 4(c) of this Chapter, in distribution of net profits.
- (b) A Party's currency held by the Bank in its capital resources, which is not covered by paragraph (a) of this section, also may be used by the Bank or any recipient from the Bank for payments in any country without restriction of any kind.
- (c) The Parties may not place any restrictions on the holding and use by the Bank, for making amortization payments or anticipating payment of, or repurchasing part or all of the Bank's own obligations, of currencies received by the Bank in repayment of direct loans made from borrowed funds included in the capital resources of the Bank.

Section 2. Valuation of Currencies

- (a) The amount of a currency other than the U.S. dollar paid for purposes of Section 3(a), (b) or (d) of Article II of this Chapter or Section 3 of this Article to discharge a U.S. dollar-denominated obligation shall be that amount which will yield to the Bank the U.S. dollar amount of such obligation.
- (b) Whenever it shall become necessary under this Chapter to value any currency in terms of another currency, such valuation shall be determined by the Bank after consultation, if necessary, with the International Monetary Fund.

Section 3. Methods of Conserving Currencies

The Bank shall accept from either Party promissory notes or similar securities issued by the government of the Party, or by the depository designated by such Party, in lieu of any part of the currency of the Party representing the paid-in portion of its subscription to the Bank's authorized capital, provided such currency is not required by the Bank for the conduct of its operations. Such notes or securities shall be non-negotiable, non-interest-

bearing, and payable to the Bank at their par value on demand. On the same conditions, the Bank shall also accept such notes or securities in lieu of any part of the subscription of a Party with respect to which part the terms of the subscription do not require payment in cash.

Article VI • Miscellaneous Powers and Distribution of Profits

Section 1. Miscellaneous Powers of the Bank

In addition to the powers specified elsewhere in this Chapter, the Bank shall have the power to:

- (a) borrow funds and in that connection to furnish such collateral or other security therefor as the Bank shall determine, provided that, before making a sale of its obligations in the markets of a Party, the Bank shall have obtained the approval of that country and of the Party in whose currency the obligations are denominated;
- (b) invest funds not needed in its operations in such obligations as it may determine;
- (c) guarantee securities in its portfolio for the purpose of facilitating their sale; and
- (d) exercise such other powers as shall be necessary or desirable in furtherance of its purposes and functions, consistent with the provisions of this Chapter.

Section 2. Warning to be Placed on Securities

Every security issued or guaranteed by the Bank shall bear on its face a conspicuous statement to the effect that it is not an obligation of any government, unless it is in fact the obligation of a particular government, in which case it shall so state.

Section 3. Methods of Meeting the Losses of the Bank

- (a) In case of arrears or default on loans made, participated in, or guaranteed by the Bank, the Bank shall take such action as it deems appropriate. The Bank shall maintain appropriate provisions against possible losses.
- (b) Losses arising in the Bank's operations shall be charged first, to the provisions referred to in paragraph (a); second, to net income; third, against its general reserve and surpluses; and fourth, against the unimpaired paid-in capital.
- (c) Whenever necessary to meet contractual payments of interest, other charges, or amortization on the Bank's borrowings payable out of its capital resources, or to meet the Bank's liabilities with respect to similar payments on loans guaranteed by it chargeable to its capital resources, the Bank may call upon both Parties to pay an appropriate amount of their callable capital subscriptions, in accordance with Article II, Section 3 of this Chapter. Moreover, if the Bank believes that a default may be of long duration, it may call an additional part of such subscriptions not to exceed in any one year one percent of the total subscriptions of the Parties to the capital resources, for the following purposes:
 - (1) to redeem prior to maturity, or otherwise discharge its liability on, all or part of the outstanding principal of any loan guaranteed by it chargeable to its capital resources in respect of which the debtor is in default; and

- (2) to repurchase, or otherwise discharge its liability on, all or part of its own outstanding obligations payable out of its capital resources.

Section 4. Distribution or Transfer of Net Profits and Surplus

- (a) The Board of Directors may determine periodically what part of the net profits and of the surplus of the capital resources shall be distributed. Such distributions may be made only when the reserves have reached a level which the Board of Directors considers adequate.
- (b) The distributions referred to in paragraph (a) of this section shall be made from the capital resources in proportion to the payments on capital stock made by each Party.
- (c) Payments pursuant to paragraph (a) of this section shall be made in such manner and in such currency or currencies as the Board of Directors shall determine. If such payments are made to a Party in currencies other than its own, the transfer of such currencies and their use by the receiving country shall be without restriction by either Party.

Article VII • Organization and Management

Section 1. Structure of the Bank

The Bank shall have a Board of Directors as specified in Chapter III, a Managing Director, a Deputy Managing Director, and such other officers and staff as may be considered necessary.

Section 2. Decision-Making

All decisions of the Board of Directors shall be made as provided in Article VI of Chapter III.

Section 3. Managing Director and Staff

- (a) The Board of Directors shall appoint a Managing Director and a Deputy Managing Director of the Bank. The Managing Director, under the direction of the Board of Directors, shall conduct the business of the Bank and shall be chief of its staff. The Managing Director or his or her designee shall be the legal representative of the Bank. The Managing Director and Deputy Managing Director each ordinarily shall serve a nonrenewable term of five years. The Board of Directors may remove the Managing Director or the Deputy Managing Director at any time. The offices of the Managing Director and the Deputy Managing Director shall alternate between the nationals of the Parties. The Managing Director and the Deputy Managing Director shall be nationals of different Parties at all times.
- (b) The Managing Director, officers and staff of the Bank, in the discharge of their offices, shall owe their duty entirely to the Bank and to no other authority. The Parties shall respect the international character of this duty and shall refrain from all attempts to influence any of them in the discharge of their duties.

- (c) In appointing the officers and staff, the Managing Director shall, subject to the paramount importance of securing the highest standards of efficiency and technical competence, seek to achieve, at each level, a balance in the number of nationals from each Party.
- (d) The Bank, its officers and staff shall not interfere in the political affairs of either Party, nor shall they be influenced in their decisions by the political character of the Party or Parties concerned. Only economic/financial considerations shall be relevant to their decisions, and these considerations shall be weighed impartially in order to achieve the purposes and functions stated in Article I of this Chapter.

Section 4. Publication of Reports and Provision of Information

- (a) The Bank shall publish an annual report containing an audited statement of its accounts. It shall also transmit quarterly to the Parties a summary statement of its financial position and profit-and-loss statement showing the results of its operations.
- (b) The Bank may also publish such other reports as it deems desirable to inform the public of its activities and to carry out its purposes and functions.

Article VIII • Suspension and Termination of Operations

Section 1. Suspension of Operations

In an emergency the Board of Directors may suspend operations in respect of loans, guarantees and grants until such time as the Board of Directors may have an opportunity to consider the situation and take pertinent measures.

Section 2. Termination of Operations

- (a) The Parties, by mutual agreement, may terminate the operations of the Bank. A Party may withdraw from the Bank by delivering to the Bank at its principal office a written notice of its intention to do so. Such withdrawal shall become finally effective on the date specified in the notice but in no event less than six months after the notice is delivered to the Bank. However, at any time before the withdrawal becomes finally effective, the Party may notify the Bank in writing of the cancellation of its notice of intention to withdraw. The Bank shall terminate its operations on the effective date of any notice of withdrawal from the Bank.
- (b) After such termination of operations the Bank shall forthwith cease all activities, except those incident to the conservation, preservation, and realization of its assets and settlement of its obligations.

Section 3. Liability of the Parties and Payment of Claims

- (a) The liability of the Parties arising from their subscriptions to the capital stock of the Bank shall continue until all direct and contingent obligations shall have been discharged.
- (b) All creditors holding direct claims shall be paid out of the assets of the Bank and then out of payments to the Bank on unpaid or callable subscriptions. Before making any payments to creditors holding direct claims, the Board of Directors

shall make such arrangements as are necessary, in its judgment, to ensure a pro rata distribution among holders of direct and contingent claims.

Section 4. Distribution of Assets

- (a) No distribution of assets shall be made to either Party on account of their subscription to the capital stock of the Bank until all liabilities to creditors chargeable to such capital stock shall have been discharged or provided for.

Moreover, such distribution must be approved by a decision of the Board of Directors.

- (b) Any distribution of the assets of the Bank to the Parties shall be in proportion to payments on capital stock made by each Party and shall be effected at such times and under such conditions as the Bank shall deem fair and equitable. The shares of assets distributed need not be uniform as to type of assets. No Party shall be entitled to receive its shares in such a distribution of assets until it has settled all of its obligations to the Bank.
- (c) A Party receiving assets distributed pursuant to this Article shall enjoy the same rights with respect to such assets as the Bank enjoyed prior to their distribution.

Article IX • Status, Immunities and Privileges

Section 1. Scope of Article

To enable the Bank to fulfill its purposes and the functions with which it is entrusted, the status, immunities, and privileges set forth in this Article shall be accorded to the Bank in the territories of each Party.

Section 2. Legal Status

The Bank shall possess juridical personality and, in particular, full capacity:

- (a) to contract;
- (b) to acquire and dispose of immovable and movable property; and
- (c) to institute legal proceedings.

Section 3. Judicial Proceedings

Actions may be brought against the Bank only in a court of competent jurisdiction in the territories of a Party in which the Bank has an office, has appointed an agent for the purpose of accepting service or notice of process, or has issued or guaranteed securities.

No action shall be brought against the Bank by the Parties or persons acting for or deriving claims from the Parties. However, the Parties shall have recourse to such special procedures to settle controversies between the Bank and its Parties as may be prescribed in this Chapter, in the by-laws and regulations of the Bank or in contracts or other agreements entered into with the Bank.

Property and assets of the Bank shall, wheresoever located and by whomsoever held, be immune from all forms of seizure, attachment or execution before the delivery of final judgment against the Bank.

Section 4. Immunity of Assets

Property and assets of the Bank, wheresoever located and by whomsoever held, shall be considered public international property and shall be immune from search, requisition, confiscation, expropriation or any other form of taking or foreclosure by executive or legislative action.

Section 5. Inviolability of Archives

The archives of the Bank shall be inviolable.

Section 6. Freedom of Assets from Restrictions

To the extent necessary to carry out the purposes and functions of the Bank and to conduct its operations in accordance with this Chapter, all property and other assets of the Bank shall be free from restrictions, regulations, controls and moratoria of any nature, except as may otherwise be provided in this Chapter.

Section 7. Privilege for Communications

The official communications of the Bank shall be accorded by each Party the same treatment that it accords to the official communications of the other Party.

Section 8. Personal Immunities and Privileges

The directors, Managing Director, Deputy Managing Director, officers, and staff of the Bank shall have the following privileges and immunities:

- (a) immunity from legal process with respect to acts performed by them in their official capacity, except when the Bank expressly waives this immunity;
- (b) when not local nationals, the same immunities from immigration restrictions, alien registration requirements and national service obligations and the same facilities as regards exchange provisions as are accorded by the Parties to the representatives, officials, and employees of comparable rank of the other Party; and
- (c) the same privileges in respect of traveling facilities as are accorded by the Parties to representatives, officials, and employees of comparable rank of members of the other Party.

Section 9. Immunities from Taxation

- (a) The Bank, its property, other assets, income, and the operations it carries out pursuant to this Chapter shall be immune from all taxation and from all customs duties. The Bank shall also be immune from any obligation relating to the payment, withholding or collection of any tax or customs duty.
- (b) No tax shall be levied on or in respect of any salaries or emoluments paid by the Bank to directors, officers or staff of the Bank who are not local nationals of the country where the Bank has its principal office.

- (c) No tax of any kind shall be levied on any obligation or security issued by the Bank, including any dividend or interest thereon, by whomsoever held:
 - (1) which discriminates against such obligation or security solely because it is issued by the Bank; or
 - (2) if the sole jurisdictional basis for such taxation is the place or currency in which it is issued, made payable or paid, or the location of any office or place of business maintained by the Bank.
- (d) No tax of any kind shall be levied on any obligation or security guaranteed by the Bank, including any dividend or interest thereon, by whomsoever held:
 - (1) which discriminates against such obligation or security solely because it is guaranteed by the Bank; or
 - (2) if the sole jurisdictional basis for such taxation is the location of any office or place of business maintained by the Bank.

Section 10. Implementation

Each Party, in accordance with its juridical system, shall take such action as is necessary to make effective in its own territories the principles set forth in this Article, and shall inform the Bank of the action that it has taken on the matter.

Article X • General Provisions

Section 1. Principal Office

The principal office of the Bank shall be located in a place to be mutually agreed by the Parties so as to facilitate the operations of the Bank.

Section 2. Relations with Other Organizations

The Bank may enter into arrangements or agreements with other organizations with respect to the exchange of information or for other purposes consistent with this Chapter.

Section 3. Channel of Communication

Each Party shall designate an official entity for purposes of communication with the Bank on matters connected with this Chapter.

Section 4. Depositories

Each Party shall designate its central bank to serve as a depository in which the Bank may keep its holdings of such Party's currency and other assets of the Bank. However, with the agreement of the Bank, a Party may designate another institution for such purpose.

Section 5. Commencement of Operations

The Parties shall call the first meeting of the Board of Directors as soon as this Agreement enters into force under Article I of Chapter V of this Agreement.

CHAPTER III • BECC-NADB BOARD OF DIRECTORS

Article I • Board of Directors

All the powers of the Commission and the Bank shall be vested in the Board of Directors of the Border Environment Cooperation Commission and the North American Development Bank.

Article II • Board Members

The Board of Directors shall have the following ten, appointed directors:

- (1) the Secretary of the United States Department of the Treasury, or his/her delegate, who shall serve *ex officio*;
- (2) the Secretary of Finance and Public Credit of Mexico, or his/her delegate, who shall serve *ex officio*;
- (3) the Administrator of the Environmental Protection Agency of the United States, or his/her delegate, who shall serve *ex officio*;
- (4) the Secretary of the Environment and Natural Resources of Mexico, or his/her delegate, who shall serve *ex officio*;
- (5) the Secretary of the United States Department of State, or his/her delegate, who shall serve *ex officio*;
- (6) the Secretary of the Ministry of External Affairs of Mexico, or his/her delegate, who shall serve *ex officio*;
- (7) a representative of one of the U.S. border states, appointed by the United States in such manner as it may determine;
- (8) a representative of one of the Mexican border states, appointed by Mexico in such manner as it may determine;
- (9) a member of the United States public who is a resident of the border region, appointed by the United States in such manner as it may determine; and
- (10) a member of the Mexican public who is a resident of the border region, appointed by Mexico in such manner as it may determine.

Article III • Chairperson

Each of the Parties, on an alternating basis, shall select one of the directors as Chairperson of the Board of Directors for a one-year term.

Article IV • Powers Reserved to the Board

The Board of Directors may delegate to the General Manager of the Commission or the Managing Director of the Bank the authority to exercise any powers of the Board of Directors, except the power to:

- (a) certify environmental infrastructure projects in accordance with Article II, Section 3 of Chapter I;

- (b) approve financing by the Bank for purposes specified in Article 1 Section 1(a) of Chapter II;
- (c) approve the annual program, budget and report of the Commission and the Bank; and
- (d) determine the salary and terms of contract of service for the General Manager and Deputy General Manager of the Commission, and the Managing Director and Deputy Managing Director of the Bank.

Article V • Board Meetings

The Board of Directors shall meet publicly at least twice each calendar year. The Board of Directors shall determine the location of its meetings. One public meeting each year shall be designated the Annual Meeting of the Board of Directors. A quorum for any meeting of the Board of Directors shall be a majority of the directors appointed by each of the Parties.

Article VI • Voting

Subject to Section 1(c) of Article II in Chapter II, all decisions of the Board of Directors shall require the approval of a majority of the directors appointed by each Party; provided that, in the case of any decision relating to or affecting project certification or financing, such majority shall include the directors representing the U.S. Department of the Treasury, Secretaría de Hacienda y Crédito Público, the Environmental Protection Agency of the United States, and SEMARNAT in order to ensure appropriate consideration of financial, technical and environmental matters. A written record of such decisions shall be made public in English and Spanish.

Article VII • General

Section 1. Rules and Regulations

The Board of Directors may adopt such rules and regulations as may be necessary or appropriate to conduct the business of the Commission and the Bank.

Section 2. Compensation

Directors shall serve as such without compensation for their services from the Commission or the Bank.

Section 3. Committees

The Board of Directors may establish such committees for the Commission or the Bank as it deems advisable.

CHAPTER IV • ENTRY INTO FORCE, AMENDMENT AND INTERPRETATION

Article I • Entry into Force

This Agreement shall enter into force on January 1, 1994, immediately after entry into force of the North American Free Trade Agreement, on an exchange of written notifications certifying the completion of necessary legal procedures.

Article II • Amendment

The Parties may agree on any modification of or addition to this Agreement. When so agreed, and approved in accordance with the applicable legal procedures of each Party, a modification or addition shall constitute an integral part of this Agreement.

Article III • Interpretation and Consultation

Section 1. Interpretation

The Parties shall at all times endeavor to agree on the interpretation and application of this Agreement, and shall make every effort to resolve any matter that might affect the implementation of this Agreement.

Section 2. Consultation

Upon the written request of either Party or the Board of Directors in English and Spanish, the Parties shall consult regarding the interpretation or application of this Agreement. These consultations shall take place within 30 days after a written request for consultation.

CHAPTER V • DEFINITIONS AND OTHER ARRANGEMENTS

Article I • Relations to Other Agreements or Arrangements

- (a) Nothing in this Agreement shall prejudice other agreements or arrangements between the Parties, including those relating to conservation or the environment.
- (b) Nothing in this Agreement shall be construed to limit the right of any public entity or private person of a Party to seek investment capital or other sources of finance, or to propose, construct or operate an environmental infrastructure project in the border region without the assistance or certification of the Board of Directors.

Article II • Definitions

For purposes of this Agreement, it shall be understood that:

Bank means the North American Development Bank established pursuant to Chapter II of this Agreement;

Board of Directors means the Board of Directors of the Border Environment Cooperation Commission and the North American Development Bank established pursuant to Chapter III of this Agreement;

Border region means the area in the United States that is within 100 kilometers of the international border between the United States and Mexico, and the area in Mexico that is within 300 kilometers of the international border between the United States and Mexico;

Commission means the Border Environment Cooperation Commission established pursuant to Chapter I of this Agreement;

Environmental infrastructure project means a project that will prevent, control or reduce environmental pollutants or contaminants, improve the drinking water supply, or protect flora and fauna so as to improve human health, promote sustainable development, or contribute to a higher quality of life;

Mexico means the United Mexican States;

Mexican border states means Baja California, Chihuahua, Coahuila, Nuevo Leon, Sonora and Tamaulipas;

National means a natural person who is citizen or permanent resident of a Party, including:

- 1) with respect to Mexico, a national or a citizen according to Articles 30 and 34, respectively of the Mexican Constitution; and
- 2) with respect to the United States, "national of the United States" as defined in the existing provisions of the Immigration and Nationality Act.

Nongovernmental organization means any scientific, professional, business, non-profit or public interest organization or association which is neither affiliated with, nor under the direction of, a government;

North American Development Bank means the bank established by the Parties pursuant to Chapter II of this Agreement;

United States means the United States of America; and

U.S. border states means Arizona, California, New Mexico and Texas.

The English and Spanish versions of this Agreement are equally authentic.

ANNEX A

INITIAL SUBSCRIPTIONS TO THE AUTHORIZED CAPITAL STOCK OF THE BANK

(in shares of US\$10,000 each)

	Paid-in Capital Shares	Callable Shares	Total Subscription
United States	22,500	127,500	150,000
Mexico	22,500	127,500	150,000
TOTAL	45,000	255,000	300,000