

# CANADA – NOVA SCOTIA



## AGREEMENT ON THE TRANSFER OF FEDERAL PUBLIC TRANSIT FUNDS

**2006-2010**

This Agreement made as of November 3, 2006,

**BETWEEN:**            **HER MAJESTY IN RIGHT OF CANADA** (“Canada”),  
represented by the Minister of Transport, Infrastructure and  
Communities (“Federal Minister”)

**AND:**                 **HER MAJESTY IN RIGHT OF THE PROVINCE OF  
NOVA SCOTIA** (“Nova Scotia”), represented by the Minister  
of Service Nova Scotia and Municipal Relations (“Provincial  
Minister”).

## **PREAMBLE**

**WHEREAS** Canada and Nova Scotia wish to cooperate in making a transformative difference in the sustainability and future prosperity of municipalities and communities in Nova Scotia and for Canada's future.

**WHEREAS** this Agreement will engage governments and stakeholders in purposeful partnerships, foster sustainable cities and communities across Canada and enable all Canadians to achieve a higher quality of life and standard of living.

**WHEREAS** Canada and Nova Scotia have agreed to cooperate on a long-term vision of sustainability and which integrates four interdependent dimensions: economic, environmental, social and cultural.

**WHEREAS** this Agreement includes the specific provisions on the Funds for Public Transit to primarily support environmental sustainability objectives.

**AND WHEREAS** the Lieutenant Governor in Council by OIC number 0596 has authorized the Minister of Service Nova Scotia and Municipal Relations to enter into this Agreement on behalf of Nova Scotia.

## **PRINCIPLES**

The Government of Canada and the Government of Nova Scotia acknowledge that this Agreement has been negotiated with the regard to the following principles:

**Principle 1 – Respect for jurisdiction:** Canada recognizes and respects Nova Scotia's jurisdiction over municipal institutions and there is a desire to recognize Canada's contribution to municipalities and communities in Nova Scotia. Furthermore, the Parties recognize the merit of partnerships across all levels of government to support municipal infrastructure.

**Principle 2 – A flexible approach:** A need for a flexible approach is recognized regarding the intra-jurisdictional allocation, the delivery mechanism to be used by Nova Scotia to flow money to Eligible Recipients and the nature of the municipal involvement.

**Principle 3 – Equity between provinces and territories:** Canada will ensure that the inter-provincial allocation is based on a per capita basis.

**Principle 4 – Transparency:** A commitment to put in place an open and transparent governance process for the purposes of implementing this

agreement and selecting projects for funding.

**Principle 5 – Regular reporting to Canadians:** Canada will use federal mechanisms to report on outcomes. Nova Scotia will employ its own mechanism for reporting within its jurisdiction.

**NOW THEREFORE**, in accordance with the principles set out above, Canada and Nova Scotia hereby agree as follows.

## **1. INTERPRETATION**

### **1.1 Definitions**

A capitalized term has the meaning given to it in this section unless the context clearly dictates otherwise.

“**Agreement**” means this Canada – Nova Scotia Agreement on the Transfer of Federal Public Transit Funds.

“**Annual Expenditure Report**” means the annual report to be prepared and delivered by Nova Scotia to Canada, more particularly described in Schedule D.

“**Audit Report**” means an audit report prepared, at Nova Scotia’s cost, by the Nova Scotia auditor general or other Nova Scotia licensed auditor, more particularly described in Schedule D.

“**Base Amount**” means \$7,300,000, which represents the average annual capital spending on Public Transit Infrastructure in the period April 1, 2003, to March 31, 2006, in Nova Scotia.

“**Community Transit Funding Agreement**” means a contract between Nova Scotia and the Community Transit Organizations, which requires these organizations to meet the criteria of Nova Scotia’s Accessible Transportation Assistance Program (ATAP) and comply with all requirements and conditions set out in this Agreement.

“**Community Transit Organization**” means a not-for-profit accessible public transportation service funded by Nova Scotia’s Community Transportation Assistance Program (CTAP).

“**CUTA**” means the Canadian Urban Transit Association.

“**Eligible Costs**” means those costs described in Schedule B, incurred in respect of Eligible Projects.

“**Eligible Projects**” means Public Transit Infrastructure projects as defined in Schedule A.

“**Eligible Recipient**” means:

- (i) a Municipality or its duly authorized agent (including its wholly owned corporation such as a transit agency); and
- (ii) a Community Transit Organization.

Federal and Nova Scotia entities in the form of departments, corporations and agencies are not eligible recipients.

“**Eligible Recipient Requirement**” means those requirements described in Schedule C.

“**Federal Gas Tax Transfer Program**” means the Agreement on the Transfer of Federal Gas Tax Revenues under the New Deal for Cities and Communities 2005-2015 between Canada and the Province of Nova Scotia dated September 23, 2005.

“**Fiscal year**” means the period beginning April 1 of a year and ending March 31 of the following year.

“**Funds**” means the funds made available pursuant to this Agreement and includes any interest earned on the said Funds.

“**Infrastructure Programs**” means Canada’s infrastructure programs in existence at the time of the execution of this Agreement, including the Canada Strategic Infrastructure Fund, the Transfer of Federal Gas Tax Revenues, the Border Infrastructure Fund, the Municipal Rural Infrastructure Fund and the Infrastructure Canada Program.

“**Ministers**” means the federal Minister and the Nova Scotia Minister.

“**Municipality**” means a municipality in Nova Scotia incorporated or continued pursuant to the *Municipal Government Act*, and more specifically, a regional municipality, town, county or district municipality.

“**Outcomes Report**” means the report to be delivered by Nova Scotia to Canada and made available to the public, which reports on the outputs and outcomes of the use of the Funds, using the indicators set out in Schedule E.

“**Parties**” means Canada and Nova Scotia.

“**Public Transit Capital Budget**” means a plan that, at a minimum, identifies capital projects to be undertaken over a specified period of time and

includes the total cost of the tangible capital assets, the funding sources that will be used to finance the projects and a breakdown, by project, of planned expenditures by year.

“**Public Transit Infrastructure**” means tangible public transit capital assets in Nova Scotia primarily for public use or benefit owned by an Eligible Recipient that:

- (i) improve the quality of the environment and contribute to reduced greenhouse gas emissions, or reducing smog forming air emissions; and
- (ii) fall within the category of projects described in Schedule A.

“**PTF**” means the Public Transit Fund Transfer Payment Program, pursuant to which this Agreement is made.

“**TFA**” means a Transit Funding Agreement between Nova Scotia and an Eligible Recipient other than a Community Transit Organization.

“**Third Party**” means any person, other than a party to this Agreement, that participates in the implementation of an Eligible Project.

“**Transit Strategy**” means a plan that provides strategic direction for future development of transit services and could include descriptions of initiatives to address both conventional and specialized transit, establishes performance measures to allow the Eligible Recipient to assess how it is meeting its transit objectives and outlines capital and operating initiatives for meeting its objectives.

“**Transportation Demand Management**” means programs, services, tools, policies that enhance, promote and encourage commuter options and reduce traffic congestion, such as increased marketing efforts to position transit as an attractive, convenient and economic mode of transportation; and that improve convenience, safety, accessibility and service for transit users, etc.

## **1.2 Entire Agreement**

This Agreement supersedes and invalidates all other commitments, representations and warranties relating to the subject matter hereof which the Parties may have made either orally or in writing prior to the date hereof, and all of which will become null and void from the date this Agreement is signed.

### **1.3 Schedules**

The following schedules are attached to form part of this Agreement:

Schedule A – Eligible Project Categories

Schedule B – Eligible Costs

Schedule C – Eligible Recipient Requirements

Schedule D – Audit, Reporting and Evaluation

Schedule E – Outcome Indicators

Schedule F – Communications Protocol

### **1.4 Precedence**

In the event of a conflict, the part of this Agreement that precedes the signatures of the Parties will take precedence over the Schedules and the Guidelines.

### **1.5 Accounting Principles**

All accounting terms not otherwise defined herein have the meanings assigned to them; all calculations will be made and all financial data to be submitted will be prepared in accordance with the generally accepted accounting principles (GAAP) in effect in Canada and in Nova Scotia. GAAP will include, without limitation, those principles approved or recommended from time to time by the Canadian Institute of Chartered Accountants, or any successor institute, applied on a consistent basis.

## **2. PURPOSE**

The purpose of this Agreement is to provide a joint framework for the transfer of Funds to Nova Scotia for investment in Public Transit Infrastructure.

## **3. OUTCOMES**

Public Transit Funds will support the environmental objectives of reduced greenhouse gas (GHG) emissions, cleaner air, capacity building, inclusive accessible transportation, growth in transit ridership, and reduced traffic congestion.

#### **4. COMMITMENTS BY THE PARTIES**

##### **4.1 Commitments by the Government of Canada:**

Canada will commit to flowing the Public Transit Funds in accordance with this Agreement as follows:

<b>Fiscal Year</b>	<b>Canada's Contribution</b>
2006-2007	\$ 11,732,152

Provided there is no default under the terms of Section 9.2 of this Agreement, Canada's contribution will be one payment to Nova Scotia, once the Agreement has been signed.

##### **4.2 Nova Scotia Commitments**

Nova Scotia will:

- a) ensure that the funding under this Agreement provides additional revenues for Eligible Recipients rather than displacing other provincial Public Transit Infrastructure funding;
- b) ensure that over the period of April 1, 2006, to March 31, 2007, spending on Public Transit Infrastructure within Nova Scotia, exclusive of the Funds, will not be less than the Base Amount;
- c) not reduce, eliminate or clawback any capital Infrastructure funding which is currently being made available for Public Transit Infrastructure;
- d) require through TFAs that Eligible Recipients complete a Transit Strategy that includes Transportation Demand Management measures, where relevant, and make it available to the public by January 31, 2007;
- e) include the Eligible Recipient Requirements (Schedule C) in any Transit Funding Agreement (TFA) and any Community Transit Funding Agreement (CTFA), enforce all terms and conditions of the TFA and CTFA in a diligent and timely manner, and seek remedies

from non-compliant Eligible Recipients;

- f) require that, in the case that an Eligible Recipient wishes to utilize these funds for investments to enhance the security of its transit infrastructure, the Eligible Recipient must provide evidence that these investments satisfy the applicable conditions and requirements imposed by Transport Canada for such federally-funded security projects, including those established under Transport Canada's Passenger Rail and Mass Transit Security Contribution Program;

## **5. OVERSIGHT PARTNERSHIP COMMITTEE**

**5.1** The Oversight Partnership Committee as established under the Federal Gas Tax Transfer Program will monitor the overall strategic implementation of this Agreement.

**5.2** Public Transit Funds for Community Transit Organizations will be managed by Nova Scotia, with regular updates provided to the Oversight Partnership Committee. This report will form part of Nova Scotia's Annual Expenditure Report to Canada.

## **6. CONTRIBUTION PROVISIONS**

### **6.1 Appropriations**

A payment due by Canada hereunder is conditional on a legislated appropriation for the Public Transit Funds and for the Fiscal Year in which the payment is due.

### **6.2 Limit on Canada's Financial Commitments**

- (i) Eligible Recipients may use Funds to pay up to 100% of Eligible Costs of an Eligible Project. However, to the extent an Eligible Recipient is receiving money under an Infrastructure Program in respect of an Eligible Project to which the Eligible Recipient wishes to apply Funds, the maximum federal contribution limitation set out in any Infrastructure Program contribution agreement made in respect of that Eligible Project shall continue to apply.
- (ii) Without prior written approval of Canada, Nova Scotia may not use the payment of Funds to an Eligible Recipient as the Nova Scotia

contribution under contribution agreements under existing Infrastructure Programs.

**6.3 Disposal of Eligible Projects**

To the extent that Nova Scotia receives a repayment of all or a portion of a contribution pursuant to the operation of Paragraph 11 of Schedule C, Nova Scotia shall immediately pay the said amount to Canada.

**6.4 Contracting**

Nova Scotia agrees to require in TFAs that all contracts for the supply of services or materials to Eligible Projects will be awarded in a way that is transparent, competitive and consistent with value-for-money principles.

**7. ALLOCATION TO ELIGIBLE RECIPIENTS, DELIVERY MECHANISM AND USE OF FUNDS**

**7.1 Allocation to Eligible Recipients**

**Public Transit Funds Allocation for Fiscal 2006-2007**

<b>Service</b>	<b>1% Base Funding (\$)</b>	<b>Ridership</b>	<b>Ridership (%)</b>	<b>Ridership (\$)</b>	<b>Total</b>
Metro Transit (HRM)	117,321	16,520,365	95.64	10,771,807	10,889,128
Cape Breton Transit	117,321	356,427	2.06	232,015	349,336
Kings Transit	117,321	312,184	1.81	203,858	321,179
Community Transit Organizations	117,321	84,772	0.49	55,188	172,509
<b>Total</b>	<b>469,284</b>	<b>17,273,748</b>	<b>100</b>	<b>11,262,868</b>	<b>11,732,152</b>

Public Transit Funds will be allocated as follows:

- i) to the existing public transit systems of Metro Transit in Halifax Regional Municipality (HRM), Cape Breton Transit in Cape Breton Regional Municipality (CBRM), and Kings Transit in Kings County based on ridership figures as reported by the Canadian Urban Transit

Association (CUTA).

- ii) to Community Transit Organizations funded by Nova Scotia, based on province-wide ridership statistics reported to Service Nova Scotia and Municipal Relations for fiscal year 2004-2005.
- iii) base funding equivalent to 1% of Canada's Contribution will be provided to each of HRM, CBRM, and Kings Transit and for all of the Community Transit Organizations combined.

## **7.2 Trigger**

Transit Funding Agreements (TFAs) and Community Transit Funding Agreements (CTFAs) will detail the trigger to flow each Eligible Recipient's annual allocation, consistent with the following:

- (i) in the case of funding for HRM, CBRM and Kings Transit, signing of the Transit Funding Agreement (TFA) and submission to Nova Scotia of a Public Transit Capital Budget;
- (ii) in the case of funding for Community Transit Organizations, the Eligible Recipient shall meet the requirements of Nova Scotia's Accessible Transportation Assistance Program (ATAP), which is an application-based process and enter into a CTFA with Nova Scotia that will include Schedules A, B, C and F and any other requirements needed to implement the terms and conditions of this Agreement. The application will include components of a transit strategy, which will serve as a Transit Strategy.

## **7.3 Use of Funds**

- 7.31 Nova Scotia agrees that it shall record Canada's contribution into a separate and distinct report account, pending payment to Eligible Recipients in accordance with the terms of this Agreement
- 7.3.2 Nova Scotia agrees to pay Funds to Eligible Recipients solely for Eligible Project categories identified in Schedule A and solely in respect of Eligible Costs identified in Schedule B.
- 7.3.3 All administration costs of Nova Scotia in respect of the implementation and management of this Agreement shall be for the account of Nova Scotia provided that Funds may be used by Nova Scotia to pay the administrative costs incurred by Nova Scotia in the delivery of the Funds or in fulfilling the reporting and audit

requirements set below in Section 8, provided Nova Scotia submits in advance, for review and acceptance by Canada, a business case justifying such use of Funds.

- 7.3.4 Nova Scotia agrees that if Funds advanced to an Eligible Recipient are not paid by the Eligible Recipient in respect of Eligible Costs by March 31, 2010, Nova Scotia shall, unless otherwise agreed in writing in advance with Canada, recover the unspent Funds and reimburse Canada.

#### **7.4 Agreement with Eligible Recipient**

Nova Scotia agrees to include the Eligible Recipient Requirements in all Transit Funding Agreements (TFAs) and Community Transit Funding Agreements (CTFAs), and agrees to enforce all terms and conditions of the Transit Funding Agreements (TFAs) and Community Transit Funding Agreements (CTFAs), including the Eligible Recipient Requirements.

### **8. REPORTING, AUDITS AND EVALUATION**

#### **8.1 Reporting**

- 8.1.1 Nova Scotia will, at its cost, include this Agreement as part of its reporting requirements under the Federal Gas Tax Transfer Payment Program. Nova Scotia will include reporting on transit funding under this Agreement in the Annual Expenditure Report, Audit Report and the Outcomes Report under the Federal Gas Tax Transfer Payment Program.
- 8.1.2 Canada may incorporate all or any part or parts of the said reports into any report that Canada may prepare for its own purposes, including any reports that may be made public.

#### **8.2 Audits**

- 8.2.1 Nova Scotia agrees to ensure, through TFAs, that proper and accurate accounts and records, including invoices, statements, receipts and vouchers in respect of all Eligible Projects that receive Funds, are kept for at least three (3) years after termination of this Agreement and will, upon reasonable notice, make them available or cause the Eligible Recipient to make them available to Canada for inspection or audit.

- 8.2.2 Canada may request and Nova Scotia agrees to complete, at its cost, and provide to Canada an audit of any one or more individual Eligible Projects.
- 8.2.3 Nova Scotia will share with Canada the results of any compliance or performance audit that they may carry out beyond the Audit Report that examines the use of Funds to a specific extent.

### **8.3 Evaluation**

- 8.3.1 The Parties agree that the evaluation of this Agreement will be conducted as part of the evaluation agreed to under the Federal Gas Tax Transfer Payment Program. The Parties shall seek the input of Eligible Recipients, or representatives thereof, as the Parties deem appropriate.
- 8.3.2 At a minimum, the evaluation will address the issues related to achievement of the objectives of this Agreement, the use of funding, the effectiveness of the funding approach described in Sections 6 and 7 of this Agreement, and the effectiveness of the communications protocol described in Schedule F.
- 8.3.3 The Parties agree to cooperate with respect to the above noted evaluation, the costs of which will be shared equally by the Parties. Canada agrees to consult with Nova Scotia on the design of the evaluation framework.
- 8.3.4 In addition to the foregoing, the Parties agree that the evaluation of this Agreement will be included in the national evaluation as agreed to under the Federal Gas Tax Transfer Payment Program.

## **9. DISPUTE RESOLUTION, DEFAULT, REMEDIES AND INDEMNITY**

### **9.1 Dispute Resolution**

The Parties agree to keep each other informed of any disagreement or contentious issue. Disagreements or contentious issues that cannot be resolved at the bureaucratic level will be brought to the Oversight Partnership Committee for review, discussion and resolution. Any issue that cannot be resolved at the Oversight Partnership Committee will be submitted to Ministers for resolution.

## **9.2 Events of Default**

9.2.1 Canada may declare that an event of default has occurred if Nova Scotia has:

- a) not complied with any condition, undertaking or material term in the Agreement;
- b) failed to deliver an Annual Expenditure Report, Audit Report or Outcomes Report, when required by either Nova Scotia under this Agreement or an Eligible Recipient; or
- c) delivered an Annual Expenditure Report or Audit Report that disclosed non-compliance by either Nova Scotia or an Eligible Recipient.

Canada will not declare that an event of default has occurred unless it has consulted with Nova Scotia and given notice to it of the occurrence which, in Canada's opinion, constitutes an event of default.

Nova Scotia, within 30 days of receipt of the notice, shall either correct the condition or event or demonstrate, to the satisfaction of Canada, that it has taken such steps as are necessary to correct the condition.

9.2.2 Nova Scotia may declare an event of default has occurred if Canada has:

- a) not complied with any condition, undertaking, or material term in the Agreement; or
- b) failed to deliver to Nova Scotia, Public Transit Funds, as specified in Section 4 of this Agreement.

Nova Scotia will not declare that an event of default has occurred unless it has consulted with Canada and given notice to Canada of the occurrence which, in Nova Scotia's opinion, constitutes an event of default.

Canada will, within 30 days of receipt of the notice, either correct the condition or event or demonstrate to the satisfaction of Nova Scotia, that it has taken such steps as necessary to correct the condition.

### **9.3 Remedies**

If Canada declares that an event of default has occurred, after 30 days of declaration, it may immediately exercise one or more of the following remedies:

- i) In the case of a default under subsection 9.2.1 a) above, terminate or suspend its obligation to pay funds. If Canada suspends payment it may pay suspended funds if Canada is satisfied that the default has been cured.
- ii) In the case of any other default, suspend its obligation to pay Funds pending Canada's satisfaction that the default has been cured.
- iii) If Nova Scotia declares that an event of default has occurred, after 30 days of declaration, it may suspend or terminate its obligations under the terms of this agreement, and if suspended, Nova Scotia may resume its obligations when satisfied the default has been cured.

### **9.4 Indemnity**

Nova Scotia agrees at all times to indemnify and save harmless Canada and its officers, servants, employees or agents from and against all claims and demands, losses, costs, damages, actions, suits or other proceedings by whomsoever brought or prosecuted in any manner based upon or occasioned by any injury to persons, damage to or loss or destruction of property, economic loss or infringement of rights caused by or arising directly or indirectly from:

- a) all Eligible Projects;
- b) the performance of this Agreement or the breach of any term or condition of this Agreement by Nova Scotia, its officers, employees and agents, or by a Third Party, its officers, employees, or agents;
- c) the performance of a Transit Funding Agreement (TFA) or a Community Transit Funding Agreement (CTFA) or the breach of any term or condition of a Transit Funding Agreement (TFA) or Community Transit Funding Agreement (CTFA) by an Eligible Recipient, its officers, employees and agents, or by a Third Party, its officers, employees or agents;
- d) the design, construction, operation, maintenance and repair of any part of an Eligible Project; and

- e) any omission or other wilful or negligent act of Nova Scotia, an Eligible Recipient or a Third Party and their respective employees, officers or agents;

except to the extent to which such claims and demands, losses, costs, damages, actions, suits, or other proceedings relate to the act or negligence of an officer, employee, or agent of Canada in the performance of his or her duties.

## **10. TERM OF AGREEMENT**

This agreement shall commence on November 3, 2006 and shall expire on March 31, 2010.

## **11. COMMUNICATIONS**

The Parties hereby agree to follow the terms of the communications protocol set out in schedule F hereto.

## **12. MISCELLANEOUS**

### **12.1 Binding Obligations**

Each Party declares to the other that the signing and execution of this Agreement was duly and validly authorized, and that each has incurred a legal and valid obligation in accordance with the terms and conditions of the Agreement.

### **12.2 Survival**

The Parties' rights and obligations, set out in Sections 7, 8 and 9 and subsections 4.2(d), 6.2, 6.3, 12.3, 12.4 and 12.5 of this Agreement, will survive the expiry or early termination of this Agreement, and any other Section or Schedule which is required to give effect to the termination or to its consequences shall survive the termination or early termination of this Agreement.

### **12.3 Governing law**

This Agreement is governed by the laws applicable in Nova Scotia.

#### **12.4 Debts Due to Canada**

Any amount owed to Canada under this Agreement will constitute a debt due to Canada, which Nova Scotia will reimburse forthwith, on demand, to Canada.

#### **12.5 No Benefit**

No member of the House of Commons or of the Senate of Canada will be admitted to any share or part of any Contract made pursuant to this Agreement or to any benefit arising therefrom.

#### **12.6 No Agency**

It is understood, recognized and agreed that no provision of this Agreement and no action by the Parties will establish or be deemed to establish a partnership, joint venture, principal-agent relationship or employer-employee relationship in any way or for any purpose whatsoever between Canada and Nova Scotia, or between Canada, Nova Scotia and a Third Party.

#### **12.7 No Authority to Represent**

Nothing in this Agreement is to be construed as authorizing one Party to contract for or to incur any obligation on behalf of the other or to act as agent for the other. Nothing in this Agreement is to be construed as authorizing any Recipient or any Third Party to contract for or to incur any obligation on behalf of either Party or to act as agent for either Party, and Nova Scotia will take reasonable steps to ensure that all Transit Funding Agreements contain provisions to that effect.

#### **12.8 Counterpart Signature**

This Agreement may be signed in counterpart, and the signed copies will, when attached, constitute an original Agreement.

#### **12.9 Values and Ethics Code**

No person governed by the post-employment, ethics and conflict of interest guidelines of Canada will derive a direct benefit from this Agreement unless that person complies with the applicable provisions.

### **12.10 Severability**

If, for any reason, a provision of this Agreement that is not a fundamental term is found to be or becomes invalid or unenforceable, in whole or in part, it will be deemed to be severable and will be deleted from this Agreement, but all the other terms and conditions of this Agreement will continue to be valid and enforceable.

### **12.11 Waiver**

A Party may waive any right under this Agreement only in writing; and any tolerance or indulgence demonstrated by that Party will not constitute waiver of such right. Unless a waiver is executed in writing, that Party will be entitled to seek any remedy that it may have under this Agreement or under the law.

### **12.12 Lobbyists and Agent Fees**

Nova Scotia warrants that any person who lobbies or has lobbied on its behalf to obtain funding, or any benefit under this Agreement, and who is subject to the *Lobbyists Registration Act (Canada)*, is registered accordingly. Furthermore, Nova Scotia warrants that no remuneration based on a percentage of Canada's contribution will be paid to a lobbyist.

### **12.13 Amendments to the Agreement**

If Canada concludes an agreement for similar purposes with any other province or territory of Canada, and that agreement, taken as a whole, is materially different from this Agreement, Nova Scotia may ask Canada to agree to amend this Agreement so that, taken as a whole, it affords similar treatment to Nova Scotia as the other agreement affords to the other province or territory.

Additionally, this Agreement may be amended from time to time on written agreement of the Ministers.

### **12.14 Notice**

Any notice, information or document provided for under this Agreement will be effectively given if delivered or sent by letter, postage or other charges prepaid, or by facsimile or email. Any notice that is delivered will have been received on delivery; and any notice mailed will be deemed to have been received eight (8) calendar days after being mailed.

Any notice to Canada must be sent to:

Assistant Deputy Minister, Cities and Communities  
Infrastructure Canada  
90 Sparks Street  
Ottawa, ON K1P 5B4  
Facsimile: 613-941-7930  
E-mail: [laroche.yazmine@infrastructure.gc.ca](mailto:laroche.yazmine@infrastructure.gc.ca)

Any notice to Nova Scotia will be addressed to:

Nathan Gorall  
Service Nova Scotia and Municipal Relations  
PO Box 216  
Halifax, NS B3J 2M4  
Facsimile: 902-424-0821  
E-mail: [gorallne@gov.ns.ca](mailto:gorallne@gov.ns.ca)

Each Party may change the address that it has stipulated by notifying in writing the other Party of the new address.

**SIGNATURES**

This Agreement has been executed on behalf of Canada by the Minister of Transport, Infrastructure and Communities, and on behalf of Nova Scotia by the Minister of Service Nova Scotia and Municipal Relations.

GOVERNMENT OF CANADA

Original signed by:

GOVERNMENT OF NOVA SCOTIA

Original signed by:

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Minister of Transport, Infrastructure  
and Communities

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Minister of Service Nova Scotia and  
Municipal Relations

## **SCHEDULE A – Eligible Project Categories**

Public Transit Infrastructure capital investments include the following:

- i) rapid Transit Infrastructure: light rail, heavy rail additions, subways, transit stations, park and ride facilities, grade separated bus lanes and rail lines;
- ii) rolling Stock: buses (including hybrids, diesel, natural gas, and fuel cell buses), light and heavy rail cars, trolleys, ferries;
- iii) Intelligent Transport System (ITS): fare collection, passenger information, maintenance, propulsion and communications technologies, transit priority signalling, passenger and traffic information and transit operation systems, including technology that enhance safety and security of operations;
- iv) related Capital Infrastructure: transit queue-jumpers and High Occupancy Vehicle (HOV) lanes, storage and maintenance facilities, terminals; and
- v) accessible transit: rolling stock, fixed capital assets and systems.

## **SCHEDULE B – Eligible Costs**

### **Eligible Costs**

#### 1 Project Costs

Eligible costs, as specified in each TFA, will be all direct costs which are, in Canada's opinion, properly and reasonably incurred and paid by an Eligible Recipient under a contract for goods and services necessary for the implementation of an Eligible Project. Eligible costs may include only the following:

- a) the capital costs of acquiring, constructing or renovating a tangible capital asset and any debt financing charges related thereto;
- b) the fees paid to professionals, technical personnel, consultants and contractors specifically engaged to undertake the surveying, design, engineering, manufacturing or construction of a project infrastructure asset and related facilities and structures.
- c) the costs of environmental assessments, monitoring, and follow-up programs as required by the *Canadian Environmental Assessment Act*, or a Nova Scotia equivalent.

#### 2 Administration Costs

That portion of Funds representing interest earned may be used to pay for administration costs.

### **Ineligible Costs**

Costs related to the following items are ineligible costs:

- a) Eligible Project costs incurred before May 18, 2005;
- b) services or works that, in the opinion of Nova Scotia, are normally provided by the Eligible Recipient or a related party;
- c) salaries and other employment benefits of any employees of the Eligible Recipient;
- d) an Eligible Recipient's overhead costs, its direct or indirect operating or administrative costs, and, more specifically, its costs related to planning, engineering, architecture, supervision, management and other activities normally carried out by its applicant's staff;

- e) costs of feasibility and planning studies for individual Eligible Projects;
- f) taxes for which the Eligible Recipient is eligible for a tax rebate and all other costs eligible for rebates;
- g) costs of land or any interest therein, and related costs;
- h) cost of leasing of equipment by the Eligible Recipient;
- i) routine repair and maintenance costs;
- j) legal fees;
- k) administrative costs incurred as a result of implementing this Agreement, subject to 2 above and Section 7.3 of this Agreement; and
- l) audit and evaluation costs.

## **SCHEDULE C – Eligible Recipient Requirements**

Eligible Recipients shall:

1. (a) In the case of HRM, CBRM and Kings Transit, complete a Transit Strategy, that includes Transportation Demand Management measures, where relevant, and make them available to the public by January 31, 2007.
- (b) In the case of Community Transit Organizations, meet the requirements of Nova Scotia Accessible Transportation Assistance Program (ATAP), which is an application-based process. This application will include components of a transit strategy and serve as a Transit Strategy and will also comply with all Eligible Recipient Requirements in this Schedule.
2. for HRM, CBRM and Kings Transit, prior to March 31, 2010, adopt and use the accounting rules of the Public Sector Accounting Board.
3. ensure that Public Transit Funds result in net incremental spending on Public Transit Infrastructure over the life of the agreement.
4. permit Canada and Nova Scotia reasonable access to all records relating to all Eligible Projects that have received Funds.
5. be responsible for the complete, diligent and timely implementation and completion of the Eligible Project.
6. acknowledge that Nova Scotia may holdback Public Transit Funds if the Eligible Recipient is in default under the Funding Agreement.
7. comply, as necessary, with the Communications Protocol set out in Schedule F.
8. comply with all legislated environmental assessment requirements and agree that no funds will be committed to an Eligible Project until all required environmental assessment requirements have been satisfied and regulations required to operate a public transit service in Nova Scotia.

9. implement all mitigation measures identified in any environmental assessment of the Eligible Project.
10. if Public Transit Funds are paid by Nova Scotia to the Eligible Recipient in advance of the Eligible Recipient incurring and paying Eligible Costs, invest such Funds in accordance with Section 100 of the *Municipal Government Act*. Further, if such advanced funds are not paid by the Eligible Recipient in respect of Eligible Costs, within five years of the advance payment or by March 31, 2010, Nova Scotia shall take steps to recover the unspent Funds from the Eligible Recipient.
11. (a) subject to 11 (b) retain title to, and ownership of, the Public Transit Infrastructure resulting from the Eligible Project for at least ten (10) years after Project completion.
- (b) , if, at any time within ten (10) years from the date of completion of the Eligible Project, the Eligible Recipient sells, leases, encumbers or otherwise disposes of, directly or indirectly, any asset purchased, constructed, rehabilitated or improved, in whole or in part, with funds contributed by Canada under the terms of this Agreement, other than to Canada, Nova Scotia, a Municipal Local Government, Community Transit Organization, or a Crown corporation of Nova Scotia that is the latter's agent for the purpose of implementing this agreement, the Eligible Recipient shall repay Nova Scotia on demand, a proportionate amount of the funds contributed by Canada, as follows:

Where Eligible Project asset is sold, leased, encumbered or disposed of:	Repayment of contribution (in current dollars)
Within 2 Years after Eligible Project completion	100%
Between 2 and 5 Years after Eligible Project completion	55%
Between 5 and 10 Years after Eligible Project completion	10%
Rolling stock up to 10 years old	At book value, depreciated according to GAAP

12. (a) award and manage all contracts for the supply of services and/or material to the Eligible Project ("Contracts") in accordance with the Eligible Recipient's relevant policies and procedures, a copy of which

will be provided to Nova Scotia in advance of Nova Scotia making any payments to the Eligible Recipient. Procurement practices must meet the intent of Nova Scotia procurement policies.

- (b) award contracts in a manner that is transparent, competitive and consistent with value-for-money principles.
13. acknowledge that it may use Funds to pay up to 100% of Eligible Costs of an Eligible Project, provided that to the extent it is receiving money under an Infrastructure Program in respect of an Eligible Project to which the Eligible Recipient wishes to apply Funds, the maximum federal contribution limitation set out in any Infrastructure Program contribution agreement made in respect of that Eligible Project shall continue to apply and Funds paid to the Eligible Recipient shall be deemed to be a federal contribution under the said contribution agreement.
14. indemnify and save harmless Canada and Nova Scotia, their officers, servants, employees or agents from and against all claims and demands, losses, costs, damages, actions, suits, or other proceedings by whomsoever brought or prosecuted in any manner based upon, or occasioned by any injury to persons, damage to or loss or destruction of property, economic loss or infringement of rights caused by or arising directly or indirectly from:
- i. all Eligible Projects;
  - ii. the performance of this Agreement or the breach of any term or condition of this Agreement by the Parties, their officers, employees and agents, or by a Third Party and any of its officer, employees, servants or agents;
  - iii. the performance of a Transit Funding Agreement or the breach of any term or condition of the Transit Funding Agreement by the Parties, their officers, employees and agents, or by a Third Party and any of its officer, employees, servants or agents;
  - iv. the design, construction, operation, maintenance and repair of any part of an Eligible Project; and
  - v. any omission or other wilful or negligent act of the Parties, Eligible Recipient or Third Party and their respective employees, officers, servants or agents.
15. in the case where an Eligible Recipient wishes to utilize these funds for

investments to enhance the security of its infrastructure, the Eligible Recipient must provide evidence that these investments satisfy the applicable conditions and requirements imposed by Transport Canada for such federally funded security projects, including those established under Transport Canada's Passenger Rail and Mass Transit Security Contribution Program.

16. where projects result in emissions reductions that can earn offset credits (as per the Offsets System being proposed by the Government of Canada), the municipality shall attribute the appropriate share of the ownership to Canada (based Canada's contribution to the total project funding).

## **SCHEDULE D – Reporting and Audits**

### **1. Reporting**

#### **1.1 Annual Expenditure Report**

The Annual Expenditure Report will report on:

- the amounts received from Canada under this Agreement;
- the amounts paid to Eligible Recipients;
- amounts paid by Eligible Recipients in aggregate for Eligible Projects;
- amounts held at year end by Eligible Recipients in aggregate to be paid for Eligible Projects.

1.1.2 The Annual Expenditure Report will also indicate in a narrative the progress that Nova Scotia has made in meeting its commitments and contributions.

1.1.3 The Annual Expenditure Report will also include the following information:

A listing of all Eligible Projects that have been approved for funding, indicating the location, investment category, amount and identity of all sources of funding, nature of the investment and expected outcomes, as identified in Schedule E.

1.1.4 In the case of Eligible Recipients with a year end other than March 31, and with the prior approval of Nova Scotia, the Annual Report may include information in respect of Eligible Projects related to that Eligible Recipient to the year end of that Eligible Recipient.

#### **1.2 Outcomes Report**

The Outcomes Report will report on the cumulative investments made, including information on the degree to which these investments have actually contributed to the objectives of cleaner air and reduced GHG emissions, and will be part of the summative evaluation that will take place under the Federal Gas Tax Transfer Payment Program.

### **2. Audit Report**

The Audit Report, which includes the results of financial and compliance audits, will provide an opinion as to whether all of the information contained in the Annual Expenditure Report is complete and accurate, and whether Nova Scotia has complied with all material provisions of this Agreement.

### Annual Expenditure Report – Template Reporting Format for Funding Flows

	<b>Annual</b>	<b>Cumulative</b>
	<b>01/04/20xx – 31/03/20xy</b>	<b>Date of signing – 31/03/20xy</b>
Nova Scotia		
Opening balance of unspent public transit funding		<b>xxx</b>
Received from Canada	<b>xx</b>	<b>xxx</b>
Transferred to Eligible Recipients	<b>(xx)</b>	<b>(xxx)</b>
Closing balance of unspent public transit funding		<b>xxx</b>
Eligible Recipients in aggregate		
Opening balance of unspent public transit funding		<b>xxx</b>
Received from province	<b>xx</b>	<b>xxx</b>
Spent on eligible projects	<b>(xx)</b>	<b>(xxx)</b>
Closing balance of unspent public transit funding		<b>xxx</b>

## **SCHEDULE E – Outcome Indicators**

The impact of the use of the Funds will be measured through a set of core indicators linked to the following outcomes and outputs:

Outcomes:

- a) Cleaner Air: [To be determined]
- b) Lower GHGs: [To be determined]

Outputs:

Public Transit Infrastructure: [To be determined]

## **SCHEDULE F – Communications Protocol**

Canada and Nova Scotia agree that Canadians have a right to transparency and public accountability, which is best served by full information about the benefits of the Public Transit Fund.

This communications protocol establishes the principles and practices that will guide all announcements and events related to this Agreement, and to funding to Eligible Recipients under this Agreement. Communications activities may include, without limitation, major public events or announcements, or communications products such as speeches, press releases, websites, advertising, promotional material or signage.

### **The Parties agree that:**

1. a public event will mark the signing of this Agreement. This event will be developed by communications officials from Canada and Nova Scotia, and will provide for municipal involvement and media participation.
2. in addition to joint communications activities, Canada and Nova Scotia may include messaging in their own communications products and activities, regarding other initiatives and investments in cities and communities.

### **The Government of Canada agrees that:**

1. it will make periodic announcements, through public events, press releases and/or other mechanisms, of the transfer of federal public transit funds to Nova Scotia for allocation to municipalities within its jurisdiction.
2. it will make regular announcements, on a city, community or regional basis, of projects that have benefited from federal public transit funds. Key milestones may be marked by public events, press releases and/or other mechanisms.
3. it will report regularly to the public on the outcomes of the investments entered into under this Agreement, including through the Treasury Board Secretariat Canada's Annual Performance Report, and through the National Evaluation described in Section 8 of this Agreement.

### **Nova Scotia agrees that:**

1. all communications referring to projects funded under this Agreement will clearly acknowledge the contributions made by Canada.
2. all communications materials referring to the sharing of federal public transit

funds with Eligible Recipients will recognize this initiative through the use of the Canada word mark and of a tagline.

3. Nova Scotia's Transit Funding Agreements (TFAs) and Community Transit Funding Agreements (CTFAs) will include the provisions included this Protocol, particularly that:
  - a. all communications by the Eligible Recipient referring to projects funded under this Agreement will clearly recognize Canada's investments.
  - b. Eligible Recipients will ensure permanent signage at the location of projects receiving investments under this Agreement, prominently identifying the Government of Canada's investment and including the Canada word mark. Where there is no fixed location for signage, such as a transit vehicle, a prominent marker will recognize the Government of Canada's contribution. All signage/plaques will be located in such a way as to be clearly visible to users, visitors and/or passersby.

### **General**

1. The timing of public events shall be sufficient to allow for all orders of government to plan their involvement. Either Party shall provide a minimum of 21 days notice of an event or announcement.
2. The Parties agree that they and Eligible Recipients will each receive appropriate recognition in joint communications materials.
3. Joint communications material and signage will reflect Government of Canada communications policy, including the *Official Languages Act*, and federal-Nova Scotia identity graphics guidelines.

### **Assessment**

Communication results will be assessed as part of the evaluation process set out in Section 8.3.2 of the Agreement.