

CANADA – NUNAVUT

Canada



**AGREEMENT ON THE TRANSFER OF FEDERAL GAS TAX REVENUES
UNDER
THE NEW DEAL FOR CITIES AND COMMUNITIES
2005-2015**

This Agreement made as of August 3, 2005,

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

AND: THE GOVERNMENT OF NUNAVUT (“Territory” or “Nunavut”)
represented by the Minister of Community and
Government Services (“Territorial Minister”)

PREAMBLE

WHEREAS Canada and Nunavut wish to cooperate in making a transformative difference in the sustainability and future prosperity of cities and communities in Nunavut and for Canada's future.

WHEREAS The New Deal for Cities and Communities 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 Nunavut have agreed to cooperate under the New Deal for Cities and Communities which is based on a long-term vision of sustainability and which integrates four interdependent dimensions: economic, environmental, social and cultural.

WHEREAS the Government of Canada's Budget 2005 outlined an intent to provide provinces and territories an amount equivalent to a portion of the federal excise tax on gasoline.

WHEREAS this Agreement includes the specific provisions on the Gas Tax for Environmentally Sustainable Municipal Infrastructure to primarily support environmental sustainability objectives under a New Deal for Cities and Communities.

WHEREAS this Agreement reflects the scope of expected areas of cooperation under a New Deal for Cities and Communities and for which Canada and Nunavut may enter into separate agreements, including possible trilateral agreements, to support sustainability objectives.

AND WHEREAS the Nunavut Executive Council has authorized the Minister of Community and Government Services to enter into this Agreement on behalf of Nunavut.

PRINCIPLES

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

- a. **Principle 1 – Respect for jurisdiction:** Respect for the jurisdiction of Nunavut over municipal institutions. The desire to recognize Canada's contribution to cities and communities in Nunavut. The commitment of Canada and Nunavut to recognize the merit of partnerships across all levels of government to support the New Deal.

- b. **Principle 2 – A flexible approach:** A flexible approach regarding the intra-jurisdictional allocation and the delivery mechanism to be used by Nunavut to flow money to municipalities and the nature of municipal involvement and the nature of the territorial contribution.
- c. **Principle 3 – Equity between provinces and territories:** Ensuring that the inter-provincial/territorial allocation is as close as possible to a per-capita basis while respecting the need to have an adjustment for the smallest jurisdictions.
- d. **Principle 4 – Promote long-term solutions:** The principle that Canada is making a 5-year financial commitment with the gas tax but negotiating 10-year gas-tax agreements, with a clause for a review after four years.
- e. **Principle 5 – Transparency:** The commitment to put in place an open and transparent governance process for the purposes of implementing this Agreement and selecting projects for funding. This process will also include, among other things, a commitment to the development of performance indicators, evaluations and regular reporting.
- f. **Principle 6 – Regular reporting to Canadians:** Canada will use federal mechanisms to report on outcomes through the New Deal. Nunavut will employ its own mechanism for reporting within its jurisdiction.

NOW THEREFORE, in accordance with the principles set out above, Canada and Nunavut 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 – Nunavut agreement on the transfer of Funds.

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

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

“Base Amount” means the average annual amount budgeted by Nunavut for spending on Municipal Infrastructure as of Fiscal year 2005/2006, the said annual amount being equal to \$16 million.

“Capacity Building Projects” means projects and activities that strengthen the ability of Municipalities to develop and implement Integrated Community Sustainability Plans, as more particularly described in Schedule A.

“Capital Funding Agreement” means a multi-year capital funding agreement between Nunavut and a Tax Based Municipality for the construction of municipally owned infrastructure, duly authorized by the mayor of the Tax Based Municipality, the Minister of Community Government Services and the Nunavut Financial Management Board.

“Community Capital Plan” means a document created by a Municipality through a public process, with approval from locally elected officials, providing a detailed understanding of anticipated investments into tangible capital assets that are considered “priorities” along with a rationale for their priorities.

“ESMI (Environmentally Sustainable Municipal Infrastructure) Projects” means Municipal Infrastructure projects that:

- (i) Improve the quality of the environment and contribute to reduced greenhouse gas emissions, clean water, or clean air; and,
- (ii) Fall within the category of projects described in Schedule A hereto.

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

“Eligible Projects” means Capacity Building Projects and ESMI Projects.

“Eligible Recipient” means:

- (i) a Municipality or its duly authorized agent (including its wholly owned corporation);
- (ii) a non-municipal entity, on the condition that the Municipality where the proposed Eligible Project would be housed has

indicated support for the Eligible Project and the proposed Eligible Recipient through a formal resolution of the Municipality's council. A non-municipal entity includes:

- a. Territorial government,
- b. For-profit organizations (such as P3), or
- c. Non-governmental organizations, or
- d. Not-for-profit organizations.

A federal or territorial entity, whether in the form of department, corporation, or agency is not an Eligible Recipient except where that entity provides core municipal infrastructure within the jurisdiction of municipalities, and the Municipality has approved it as provided in subsection (ii) above.

"Eligible Recipient Requirement" means those requirements described in Schedule C hereto.

"Fiscal Year" means the period beginning April 1 of a year and ending March 31 of the following year.

"Funding Agreement" means an agreement made between Nunavut and an Eligible Recipient pursuant to which Funds are paid to the Eligible Recipient.

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

"GTF" means the Gas Tax Fund Transfer Payment Program, pursuant to which this Agreement is entered into.

"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 Border Infrastructure Fund, the Municipal Rural Infrastructure Fund and the Infrastructure Canada Program.

"Integrated Community Sustainability Plans" means a long-term plan, developed in consultation with a Municipality or group of Municipalities to realize sustainability objectives a Municipality has for the environmental, cultural, social and economic dimensions of its identity, as more particularly described in Schedule H hereto.

"Large Communities" means Non-Tax Based Municipalities having a population greater than 1000 people, which is subject to change by Nunavut from time to time.

“Medium Communities” means Non-Tax Based Municipalities having a population between 600 and 999 people, which is subject to change by Nunavut from time to time.

“Ministers” means the federal Minister and the Nunavut Minister.

“Municipality” means municipal governments in Nunavut incorporated under the *Cities, Town and Villages Act* RSNWT 1988, c.C.8 or the *Hamlets Act* RSNWT, 1988, c H-1.

“Municipal Infrastructure” means tangible capital assets in Nunavut primarily for public use or benefit owned by an Eligible Recipient or by the territory on behalf of the municipality.

“Non-Tax Based Municipality” means the area within the boundaries of a Municipality that is not a Municipal Taxing Authority.

“Municipal Taxing Authority” means a city, town or village established under the *Cities, Towns and Villages Act* R.S.N.W.T, 1988, c.C-8 or the *Hamlets Act*, R.S.N.W.T, 1988, c. H-1 that has been designated as a municipal taxing authority pursuant to s.108 of the *Property Assessment and Taxation Act* (Nunavut), R.S.N.W.T 1988, c.P-10.

“Nunavut Association of Municipalities (NAM)” means the association that represents Nunavut Communities, registered under the *Nunavut Societies Act*.

“Nunavut Community Infrastructure Advisory Committee (NCIAC)” means a committee comprised of representatives from the Nunavut Association of Municipalities and the Government of Nunavut who are responsible for developing the long range infrastructure plans for all community infrastructure requirements funded through the Nunavut Department of Community and Government Services.

“Nunavut Financial Management Board” means the committee of the Nunavut Cabinet with financial responsibility (analogous to the Treasury Board of Canada).

“New Deal” and **“New Deal for Cities and Communities”** refers to the federal initiative to enhance Government of Canada commitments to advancing local sustainability on four major themes: economic, environmental, social and cultural.

“Nunavummi Nangminiqaqtunik Ikajuti (NNI) Policy” means that which grants preference for Nunavut, Inuit and community based (local) businesses in contracting. The NNI is aimed at implementing the Government of Nunavut’s commitments under article 24 of the Nunavut Land Claim Agreement and supporting Nunavut based businesses.

“Outcomes Report” means the report to be delivered by Nunavut 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 Nunavut.

“Small Communities” means Non-Tax Based Municipalities having a population less than 599 people and subject to change by Nunavut from time to time.

“SIMS” means Infrastructure Canada’s Shared Information Management System for Infrastructure.

“Tax Based Municipality” means a Municipality that is a Municipal Taxing Authority.

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

1.2 Entire Agreement

Subject to Section 3.1 herein 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- Description of Eligible Project Categories

Schedule B- Eligible Costs

Schedule C- Eligible Recipient Requirements

Schedule D- Reporting and Audits

Schedule E- Outcome Indicators

Schedule F- Communications Protocol

Schedule G- Areas of Collaboration

Schedule H- Integrated Community Sustainability Plans

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.

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 Nunavut. 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:

- a) Provide a joint framework for the transfer of Funds to Nunavut for investment in environmentally sustainable municipal infrastructure.
- b) Confirm the Parties commitment to the areas of further co-operation as set out in Schedule G, which may, following further agreement, be formalized through additional agreements parallel to this Agreement or appended as separate schedules hereto.

3 COMMITMENTS BY THE PARTIES

3.1 Commitments by the Government of Canada:

Canada:

- a) Will honour any existing funding agreement with the Nunavut in respect of Infrastructure Programs, in accordance with its terms.

- b) Will ensure that the funding under this Agreement provides additional funding for Municipalities rather than displacing other federal infrastructure funding; and intends to renew and extend the Canada Strategic Infrastructure Fund, the Border Infrastructure Fund and the Municipal Rural Infrastructure Fund, as they expire.
- c) Will discuss with Nunavut other proposals from Nunavut regarding the New Deal.
- d) Will encourage inter-municipal collaborations on Eligible Projects.

3.2 Nunavut Commitments

Nunavut agrees that it will:

- a) Ensure that over the period of April 1, 2005 to March 31, 2010 its average annual capital spending on Municipal Infrastructure within Nunavut will not be less than the Base Amount;
- b) Not reduce, eliminate or clawback any Municipal Infrastructure funding which is currently being made available to Eligible Recipients by Nunavut;
- c) Ensure that each Municipality complete, prior to the fourth (4th) year of this Agreement, a Community Capital Plan that meets the definition of the Community Capital Plan within this Agreement;
- d) Include the Eligible Recipient Requirements in any Funding Agreement and enforce all terms and conditions of Funding Agreements in a diligent and timely manner and seek remedies from non-compliant Eligible Recipients;
- e) Over the life of the Agreement, ensure the development and initiation of Integrated Community Sustainability Plans, at the level appropriate to Nunavut. By the end of the Agreement, these Integrated Community Sustainability Plans will be used to guide the NCIAC and the municipal infrastructure planning process in Nunavut;
- f) Ensure that prior to March 31, 2010, all Municipalities have adopted and use generally accepted accounting principles (GAAP) in effect in Canada and in Nunavut. 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;
- g) Ensure that Municipalities contributions include net incremental

infrastructure investments, a commitment not to reduce or clawback any capital infrastructure funding which is currently being made available for infrastructure, and commitments to complete Integrated Community Sustainability Plans and make them available to the public;

- h) Put into effect processes by which Municipalities are given a greater voice in territorial decision making on issues affecting Municipalities; and
- i) Improve the efficiency of the delivery of territorial programs and services to Municipalities.

4 COMMITTEES

4.1 Oversight Committee

Upon execution of this Agreement, the Ministers shall establish an Oversight Committee to be Co-Chaired by two members – one of whom is to be appointed by the Federal Minister, and designated as Federal Co-Chairperson, and one of whom is to be appointed by the Territorial Minister, and designated as a Territorial Co-Chairperson.

The Oversight Committee:

- a) shall monitor the overall strategic implementation of this Agreement.
- b) shall coordinate the development of a plan for the next phases of the New Deal for Nunavut including:
 - i) developing further elements of the New Deal for Nunavut cities and communities;
 - ii) encouraging inter-governmental cooperation in priority setting and program delivery;
 - iii) responding to sustainability planning outcomes; and
 - iv) consulting with the Nunavut Community Infrastructure Advisory Committee (NCIAC), on i) to iii) above.
- c) may request, as appropriate, Nunavut Municipalities through the NCIAC, to collaborate on matters as set out in this Agreement under section 6.2.

The Oversight Committee may seek advice from the NCIAC or any other

committee that it may choose to establish to operate as a technical or management committee and establish rules and procedures with respect to its meetings and those of any sub-committee it may create or currently exist, including rules for the conduct of meetings.

4.2 Nunavut Community Infrastructure Advisory Committee

Acting as a technical sub-committee to the Oversight Committee, the NCIAC, Co-chaired by a representative of Nunavut and a representative of the Nunavut Association of Municipalities (NAM) shall:

- a) consult with Municipalities and develop infrastructure plans in accordance with the NCIAC's terms of reference;
- b) draw upon the advice and services of technical experts in establishing criteria, priorities and requirements;
- c) recommend ranking and funding criteria for infrastructure projects to be funded under this Agreement to the Nunavut Financial Management Board (FMB);
- d) provide advice to the Oversight Committee as required by that body; and
- e) recommend priority projects to receive Funds for Non-Tax Based Municipalities and community Capacity Building Projects to the Nunavut FMB, in which priorities from previous and on-going applications are taken into consideration.

By January 3, 2006, the NCIAC shall develop, and submit to the Oversight Committee for approval, ranking and funding criteria defining how Eligible Projects will be selected and priorities established for those projects.

5 CONTRIBUTION PROVISIONS

5.1 Allocation to Nunavut

Canada's total contribution to Nunavut is as follows:

| Fiscal year | Canada's Contribution |
|--------------------|------------------------------|
|--------------------|------------------------------|

| | |
|-----------|-----------------|
| 2005-2006 | \$ 4.5 million |
| 2006-2007 | \$ 4.5 million |
| 2007-2008 | \$ 6.0 million |
| 2008-2009 | \$ 7.5 million |
| 2009-2010 | \$ 15.0 million |
| TOTAL | \$ 37.5 million |

5.2 Payment

Provided there is no default under the terms of section 8.2 of this Agreement, and the NCIAC has developed and submitted to the Oversight Committee ranking and funding criteria as set out in section 4.2(c) and the NCIAC has developed and the Oversight Committee has approved, guidelines for the Capacity Building Fund, as set out in section 6.2.3, Canada's contribution will be paid in equal semi annual payments as follows:

- 5.2.1 The first payment will be made not later than July 1st of each Fiscal Year set out above in subsection 5.1.
- 5.2.2 The second semi annual payment will be made not later than November 1 of each Fiscal Year.

Provided there is no default under the terms of section 8.2 of this Agreement and the NCIAC has developed and submitted to the Oversight Committee ranking and funding criteria as set out in section 4.2(c) and the NCIAC has developed and the Oversight Committee has approved , guidelines for the Capacity Building Fund as set out in section 6.2.3, payment for the first Fiscal Year of this Agreement shall be made in full by January 3, 2006.

5.3 Appropriations

A payment due by Canada hereunder is conditional on a legislated appropriation for the GTF for the Fiscal Year in which the payment is due and, in the case of payments due in the first Fiscal Year under this Agreement, legislated appropriation pursuant to the *Budget Implementation Act, 2005*.

5.4 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 funding agreement made in respect of that Eligible Project shall continue to apply.
- (ii) Without prior written approval of Canada, Nunavut may not use the payment of Funds received from Canada under this Agreement as Nunavut's contribution under other contribution agreements under existing Infrastructure Programs.

5.5 Disposal of Eligible Projects

To the extent that Nunavut receives a repayment of all or a portion of a contribution pursuant to the operation of Paragraph 12 of Schedule C, Nunavut shall immediately pay the said amount to Canada.

5.6 Contracting

All Contracts will be awarded and managed in accordance with the Government of Nunavut's Nunavummi Nangminiqatunik Ikajuuti (NNI) Policy.

Nunavut agrees that all contracts will be awarded in a way that is transparent, competitive, and consistent with value for money principles.

6 ALLOCATION TO ELIGIBLE RECIPIENTS, DELIVERY MECHANISM AND USE OF FUNDS

6.1 Allocation to Eligible Recipients

6.1.1 Tax Based Municipal Fund (15%)

Subject to additional Funds allocated under the provisions of Section 6.1.4 (b), Tax Based Municipalities will be allocated directly by Nunavut 15% of the Funds annually for Eligible Projects based on the Capital Funding Agreement as negotiated between Nunavut and the Municipality and approved by the Nunavut FMB.

6.1.2 Non-Tax Based Communities Fund (57.9%) including:

- a) Small Communities: 19.3% of the Funds will be allocated annually for

Eligible Projects approved by the Nunavut FMB and recommended by the NCIAC.

- b) Medium Communities: 19.3% of the Funds will be allocated annually for Eligible Projects approved by the Nunavut FMB and recommended the NCIAC.
- c) Large Communities: 19.3% of the Funds will be allocated annually for Eligible Projects approved by the Nunavut FMB and recommended by the NCIAC.

6.1.3 Capacity Building Fund (2.1%)

A total of 2.1% of the Funds will be allocated for Capacity Building Projects approved by the Nunavut FMB in a manner that is consistent with criteria as identified in Schedule A and approved in the priority order determined by the NCIAC.

6.1.4 Remaining Territorial Fund (25%)

- a) Non-Tax Based Municipalities will receive up to an additional 25% of the Funds for urgent, high priority Eligible Projects as approved by Nunavut FMB. During this process, the Nunavut FMB will take into consideration recommendations put forth by the NCIAC.
- b) If, during the term of this Agreement, a Non-Tax Based Municipality becomes a Tax Based Municipality, the 25% available under 6.1.4 (a) may be reduced and the amount available under section 6.1.1 increased by the same amount.

6.2 Delivery Mechanism

6.2.1 Non-Taxed Based Municipalities

Non-Taxed Based Municipalities will be required to submit an application to acquire funds through the Non-Tax Based Communities Fund and the Remaining Territorial Fund. The Nunavut FMB shall consider the recommendations and priorities proposed by the NCIAC, advice of the Oversight Committee, and available Funds in making the final determination of those Eligible Projects to be funded.

The NCIAC will ensure that over the life of the Agreement the Remaining Territorial Fund will be disbursed in an equitable and transparent fashion.

6.2.2 Tax Based Municipalities

The Nunavut FMB shall consider the application of each Tax Based Municipality and will approve a Capital Funding Agreement for each which contains a range of Eligible Projects. The Municipality will make the final decision of which of these Eligible Projects the Tax Based Municipal Fund will be used for.

Nunavut will ensure that over the life of the Agreement the Tax Based Fund will be disbursed in an equitable and transparent fashion.

6.2.3 Community Capacity Building

The NCIAC shall consider the application of each Municipality for the Community Capacity Building Fund and will approve Eligible Projects that meet NCIAC criteria established by that body. The Capacity Building Fund will be dispersed to Capacity Building Projects based on a guidelines defining how the Capacity Building Fund will be administered to Eligible Recipients. These guidelines will be established by the NCIAC and submitted to the Oversight Committee for approval by November 1, 2005.

The NCIAC will ensure that over the life of the Agreement the Non-Tax Based Fund will be disbursed in an equitable and transparent fashion.

6.3 Use of Funds

Nunavut agrees that it shall record Canada's contribution into a separate and distinct account, pending payment to Eligible Recipients in accordance with the terms of this Agreement.

Nunavut agrees to pay Funds to Eligible Recipients solely for Eligible Projects identified in Schedule A and solely in respect of Eligible Costs identified in Schedule B.

All administration costs of Nunavut in respect of the implementation and management of this Agreement shall be for the account of Nunavut provided that Funds may be used by Nunavut to pay the administrative costs incurred by Nunavut in the delivery of the Funds or in fulfilling the reporting and audit requirements set below in section 7 provided Nunavut submits, in advance, for review and acceptance by Canada, a business case justifying such use of Funds.

6.4 Agreement with Eligible Recipient

Nunavut shall not advance Funds to Eligible Recipients until the Eligible Recipient has entered into a Funding Agreement and Nunavut agrees to include, in all Funding Agreements, the Eligible Recipient Requirements and

agrees to enforce all terms and conditions of the Funding Agreements, including the Eligible Recipient Requirements. Provided that, to the extent Nunavut is an Eligible Recipient, Nunavut shall not be required to execute a Funding Agreement but agrees to be bound by all of the Eligible Recipient Requirements set out in Schedule C, Part B.

7. REPORTING, AUDITS AND EVALUATION

7.1 Reporting

7.1.1 Nunavut will, at its cost:

- a) Prepare and deliver to Canada no later than September 30 of each Fiscal Year, in respect of the prior Fiscal Year, an Annual Expenditure Report and make its best efforts to provide an interim, unaudited version of the Annual Expenditure Report by June 30 of each Fiscal Year; and
- b) Prepare, publish and disseminate to the public, by no later than September 30, 2009, and periodically thereafter, an Outcomes Report.

7.1.2 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.

7.2 Audits

7.2.1 Annual Expenditure Reports will be accompanied by an Audit Report.

7.2.2 Nunavut agrees to ensure 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.

7.2.3 Canada may request and Nunavut agrees to complete, at its cost, and provide to Canada an audit of any one or more individual Eligible Projects.

7.2.4 Nunavut 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.

7.3 Evaluation

- 7.3.1 No later than March 31, 2009, Canada and Nunavut shall complete a joint formative evaluation of the program set out in this Agreement, the results of which will be made public. The Parties shall seek the input of Eligible Recipients, or representatives thereof, as the Parties deem appropriate.
- 7.3.2 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 5 and 6 of this Agreement, and the effectiveness of the communications protocol described in Schedule F.
- 7.3.3 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 Nunavut on the design of the evaluation framework.
- 7.3.4 In addition to the foregoing, no later than June 30, 2009, Canada will, at its cost, complete a national evaluation, incorporating the results of the joint bilateral evaluations described above. Canada will share the results of this national evaluation with the Nunavut, prior to its completion.

8 DISPUTE RESOLUTION, DEFAULT, REMEDIES AND INDEMNITY

8.1 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 Committee for review, discussion and resolution. Any issue that cannot be resolved at the Oversight Committee will be submitted to Ministers for resolution.

8.2 Events of Default

Canada may declare that an event of default has occurred if Nunavut has:

- A) Not complied with any condition, undertaking or material term in the Agreement; or

- B) Failed to deliver an Annual Expenditure Report, Audit Report or the Outcomes Report, when required by either Nunavut under this Agreement or an Eligible Recipient.
- C) Delivered an Annual Expenditure Report or Audit Report that disclosed non-compliance by either Nunavut or an Eligible Recipient.

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

Nunavut, 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.

8.3 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 8.2 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.

8.4 Indemnity

Nunavut agrees at all times to indemnify and save harmless Canada, its officers, servants, employees or agents, from and against all claims and demands, loss, 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 Nunavut, its officers, employees and agents, or by a third party, its officers, employees, or agents;
- c) The performance of a Funding Agreement or the breach of any term or condition of a Funding Agreement 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 Nunavut or an Eligible Recipient or 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.

9 TERM OF AGREEMENT AND RENEWAL

9.1 Term

This Agreement shall commence on August 3, 2005 and shall expire on August 3, 2015. Either Party may terminate this Agreement on two (2) years written notice.

9.2 Review

Following the completion of the evaluation described in Subsection 7.3.1 above, the Parties may elect to amend the Agreement, as appropriate.

10 COMMUNICATIONS

The Parties hereby agree to follow the terms of the Communications Protocol set out in Schedule F hereto.

11 MISCELLANEOUS

11.1 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.

11.2 Survival

The Parties' rights and obligations set out in Sections 2, 5.4, 5.5, 7, 8.3, 8.4, 10 and 11.4, will survive the expiry or early termination of this Agreement.

11.3 Governing law

This Agreement is governed by the laws applicable in Nunavut.

11.4 Debts Due to Canada

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

11.5 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.

11.6 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 Nunavut or between Canada, Nunavut and a Third Party.

11.7 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 Nunavut will take reasonable steps to ensure that all Funding Agreements contain provisions to that effect.

11.8 Counterpart Signature

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

11.9 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.

11.10 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.

11.11 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.

11.12 Lobbyists and Agent Fees

Nunavut 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 Nunavut warrants that no remuneration based on a percentage of Canada's contribution will be paid to a lobbyist.

11.13 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, Nunavut may ask Canada to agree to amend this Agreement so that, taken as a whole, it affords similar treatment to Nunavut 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.

11.14 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 (Ontario)
K1P 5B4

Facsimile: 613-952-4978

Any notice to Nunavut will be addressed to:

Deputy Minister, Community and Government Services

Government of Nunavut
P.O. Box 1000 – Station 700
Iqaluit (Nunavut)
X0A 0H0

Facsimile: 867-975-5305

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 State (Infrastructure and Communities), and on behalf of Nunavut by the Minister of Community and Government Services.

GOVERNMENT OF CANADA
Original signed by:

GOVERNMENT OF NUNAVUT
Original signed by:

Minister of State (Infrastructure and
Communities)

Minister of Community and Government
Services Nunavut

Witnessed By:
Original signed by:

President, Nunavut Association of
Municipalities

SCHEDULE A - Eligible Project Categories

- 1) ESMI Projects include the following:
 - a) Water, e.g.:

Drinking water supply; drinking water purification and treatment systems; drinking water distribution systems; water metering systems.
 - b) Wastewater, e.g.:

Wastewater systems including sanitary and combined sewer systems; and separate storm water systems.
 - c) Solid waste, e.g.:

Waste diversion; material recovery facilities; organics management; collection depots; waste disposal landfills; thermal treatment and landfill gas recuperation.
- 2) Capacity Building including the following activities:
 - a) Collaboration: building partnerships and strategic alliances; participation; and consultation and outreach;
 - b) Knowledge: use of new technology; research; and monitoring and evaluation;
 - c) Integration: planning, policy development and implementation (e.g., environmental management systems, life cycle assessment).

SCHEDULE B - Eligible Costs

Eligible Costs

1 Project Costs

Eligible costs, as specified in each Funding Agreement, 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 territorial equivalent; and
- d) The costs related to strengthening the ability of Municipalities to develop Integrated Community Sustainability Plans.

1.1 Employee and Equipment Costs

In the case of Eligible Recipients that are remote Municipalities the out of pocket costs (not overhead) related to employees or equipment may be included in its eligible costs under the following conditions:

- a) The Eligible Recipient has determined that it is not economically feasible to tender a contract;
- b) Employees or equipment are employed directly in respect of the work that would have been the subject of the contract; and
- c) The arrangement is approved in advance and in writing by Nunavut.

1.2 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 April 1, 2005;
- b) Services or works that, in the opinion of Nunavut, are normally provided by the Eligible Recipient or a related party;
- c) Salaries and other employment benefits of any employees of the community applicant except as indicated in section 1.1;
- 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 Municipality except as indicated in section 1.1 above;
- i) Routine repair and maintenance costs;
- j) Legal fees;
- k) Administrative costs incurred as a result of implementing this Agreement, subject to 1.2 above; and
- l) Audit and evaluation costs.

SCHEDULE C - Eligible Recipient Requirements

Eligible Recipients shall:

1. Complete, prior to the fourth year (4th) of this Agreement, a Community Capital Plan.
2. Over the life of the Agreement, develop an Integrated Community Sustainability Plan, either by itself or as part of some higher level of agglomeration.
3. Prior to March 31, 2010, adopt and use the accounting rules of the GAAP.
4. Ensure that the Funds will result in net incremental capital spending on Municipal Infrastructure.
5. Permit Canada reasonable access to all records relating to all Eligible Projects that have received Funds.
6. Be responsible for the complete, diligent and timely implementation and completion of the Eligible Project.
7. Acknowledge that Funds may be held back if the Eligible Recipient is in default under the Funding Agreement.
8. Comply, as necessary, with the Communications Protocol set out in Schedule F.
9. Comply with all legislated environmental assessment requirements and agree that all environmental assessment requirements will be satisfied prior to commencement of site construction of an Eligible Project.
10. Implement all mitigation measures identified in any environmental assessment of the Eligible Project.
11. If Funds are paid to the Eligible Recipient in advance of the Eligible Recipient incurring and paying Eligible Costs, invest such Funds in accordance with all applicable laws of Nunavut. Further, if such advanced funds are not paid by the Eligible Recipient in respect of Eligible Costs, within five (5) years of the advance payment, further payment of Funds shall be withheld to the Eligible Recipient.
12. (a) Retain title to, and ownership of, the Municipal 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 constructed, rehabilitated or improved, in whole or in part, with funds contributed by Canada under the terms of this Agreement, other than to Canada, Nunavut, a Municipality, or a Crown corporation of Nunavut that is the latter's agent for the purpose of implementing this agreement, the Eligible Recipient shall repay Nunavut 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% |

- (c) Eligible Recipient agrees to advise Nunavut in writing 120 days in advance and at any time during the ten (10) years following the completion of an Eligible Project if any asset constructed, rehabilitated or improved in whole or in part with Funds is sold, discharged or alienated in any way other than to Canada.

13. Awarding of Contracts:

- (a) All contracts will be awarded and managed in accordance with the Government of Nunavut's NNI Policy; and
- (b) The Eligible Recipients agree that contracts will be awarded in a manner that is transparent, competitive, and consistent with value for money principles.

14. The Eligible Recipient acknowledges 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 funding 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 funding agreement.

B. Nunavut as an Eligible Recipient shall:

1. Prior to March 31, 2010, adopt and use the accounting rules of the GAAP.
2. Ensure that the Funds will result in net incremental capital spending on Municipal Infrastructure and provincial spending in Unincorporated Communities.
3. Permit Canada reasonable access to all records relating to all Eligible Projects that have received Funds.
4. Be responsible for the complete, diligent and timely implementation and completion of the Eligible Project.
5. 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.
6. Implement all mitigation measures identified in any environmental assessment of the Eligible Project.
7. (a) Retain title to, and ownership of, the Municipal 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 constructed, rehabilitated or improved, in whole or in part, with funds contributed by Canada under the terms of this Agreement, other than to Canada, a Local Government, or a Crown corporation of Nunavut that is the latter's agent for the purpose of implementing this agreement, the Eligible Recipient shall repay Canada on demand (as per section 5.5 of this Agreement), 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% |

- (c) Nunavut agrees to advise Canada in writing 120 days in advance and at any time during the ten (10) years following the completion of an Eligible Project if

any asset constructed, rehabilitated or improved in whole or in part with Funds is sold, discharged or alienated in any way other than to Canada.

8. Awarding of Contracts:

- (a) All contracts will be awarded and managed in accordance with the Government of Nunavut's NNI Policy; and
- (b) The contracts will be awarded in a manner that is transparent, competitive, and consistent with value for money principles.

Nunavut acknowledges 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 Nunavut shall be deemed to be a federal contribution under the said contribution

Schedule D - REPORTING AND AUDITS

1. Reporting

1.1 Annual Expenditure Report

- 1.1.1 The Annual Expenditure Report will report on the amounts:
- Received from Canada under this Agreement
 - Paid to Eligible Recipients
 - Received from Canada for future payments to Eligible Recipients
 - Paid by Eligible Recipients in aggregate for Eligible Projects
 - 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 Nunavut has made in meeting its commitments and contributions under this Agreement.
- 1.1.3 The Annual Expenditure Report will also include 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. Nunavut will use SIMSI for reporting.
- 1.1.4 In the case of Eligible Recipients with a year-end other than March 31, and with the prior approval of Nunavut, 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

By year 4 of this Agreement, Nunavut will provide an Outcomes Report to report on the cumulative investments made, including information on the degree to which these investments have actually contributed to the objectives of cleaner air, cleaner water and reduced GHG emissions.

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 Nunavut has complied with all material provisions of this Agreement.

Schedule D, Continued

Annual Expenditure Report – Template Reporting Format for Funding Flows

| | Annual | Cumulative |
|---|------------------------------------|---|
| | 01/04/20xx – 31/03/20xy | Date of signing – 31/03/20xy |
| Nunavut | | |
| Opening balance of unspent funding | | xxx |
| Received from Canada | xx | xxx |
| Transferred to Eligible Recipients | (xx) | (xxx) |
| Closing balance of unspent funding | | xxx |
| Eligible Recipients in Aggregate | | |
| Opening balance of unspent funding | | xxx |
| Received from territory | xx | xxx |
| Spent on eligible projects | (xx) | (xxx) |
| Closing balance of unspent funding | | xxx |

SCHEDULE E - Outcome Indicators

The New Deal for Cities and Communities is about achieving cleaner air, cleaner water and lowering green house gas emissions. The Parties, in collaboration with the NCIAC, will agree to indicators to measure results and outcomes before December 31, 2005 and will ensure information on these are included in the Outcomes Report.

SCHEDULE F - Communications Protocol

Canada and Nunavut agree that Canadians have a right to transparency and public accountability, which is best-served by full information about the benefits of the New Deal for Cities and Communities.

This Communications Protocol establishes the principles and practices that will guide all announcements and events related to this Agreement, funding to Eligible Recipients under this Agreement and the New Deal. 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 agrees that:

1. A public event will mark the signing of this Agreement. This event will be developed by communications officials from Canada and Nunavut and will provide for municipal involvement and media participation.
2. In addition to joint communications activities, Canada and Nunavut may include messaging in their own communications products and activities, around their commitment to the New Deal and 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 gas tax revenues to Nunavut 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 gas tax 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 7 of this Agreement.

Nunavut 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 gas tax revenues with Eligible Recipients will recognize that this initiative forms part of the New Deal through the use of the Canada wordmark and of a tagline.
3. Nunavut's Funding Agreements will include the provisions included in 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 wordmark. Where there is no appropriate fixed location for signage, a sign will be placed in an appropriate alternative location in the community to 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-provincial/territorial identity graphics guidelines.

Assessment

Communication results will be assessed as part of the evaluation process set out in Section 7.3.2 of the Agreement.

SCHEDULE G – Areas of Collaboration

Further areas of collaboration include:

1. Community Energy Systems, e.g.:
 - a. Cogeneration or combined heat and power projects (where heat and power are produced through a single process);
 - b. District heating and cooling projects where heat (or cooling) is distributed to more than one building;
 - c. Alternative energy projects such as wind or water generation of power.
2. Transit under Bill C-48
3. Active transportation infrastructure (e.g.: bike lanes), local roads, bridges and tunnels that enhance sustainability outcomes.
4. Culture
5. Technical innovation/telecommunications (e.g.: broadband)
6. Training Related to Community Labour Market Needs

SCHEDULE H – Integrated community Sustainability Plans

By March 31, 2006 Canada and Nunavut will have worked out a template on Integrated Community Sustainability Plans, such Integrated Community Sustainability Plans to incorporate all Community Capital Plans.