

CANADA – NOVA SCOTIA

Canada 


NOVA SCOTIA
NOUVELLE-ÉCOSSE

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

This Agreement made as of September 23, 2005,

BETWEEN: **HER MAJESTY IN RIGHT OF CANADA,**
 (“Canada”) represented by the Minister of State
 (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”) and
 the Minister of Intergovernmental Affairs

PREAMBLE

WHEREAS Canada and Nova Scotia wish to cooperate in making a transformative difference in the sustainability and future prosperity of Municipalities in Nova Scotia 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 Nova Scotia 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 Nova Scotia may enter into separate agreements, including possible tripartite agreements, to support sustainability objectives.

WHEREAS the Gas Tax Transfer is consistent with the Nova Scotia objectives of partnering to promote effective local government and healthy and vibrant Nova Scotia communities.

WHEREAS Canada and Nova Scotia have cooperated in establishing this Agreement respecting the jurisdiction of all Parties.

AND WHEREAS the Lieutenant Governor in Council by OIC 2005-382 has authorized the Minister of Intergovernmental Affairs and 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:

- a. **Principle 1 – Respect for jurisdiction:** Respect for the jurisdiction of Nova Scotia over municipal institutions. The desire to recognize Canada's contribution to Municipalities in Nova Scotia. The commitment of Canada and Nova Scotia 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 Nova Scotia to flow money to Municipalities and the nature of municipal involvement and the nature of the provincial contribution.
- c. **Principle 3 – Equity between provinces and territories:** Ensuring that the inter-provincial 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 two governments recognize the importance of this Agreement to achieving this vision and the shared vision of long-term, stable and predictable funding for Environmentally Sustainable Municipal Infrastructure.
- 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. 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 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.

“**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 Investment Plan**” means a document created by a Municipality through a public process, providing a detailed understanding of anticipated investments into tangible capital assets, including Environmentally Sustainable Infrastructure, that are considered “priorities” (along with a rationale).

“**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 a Municipality.

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

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

“**Environmentally Sustainable Municipal Infrastructure (ESMI) 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.

“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.

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

“Halifax Regional Municipality (HRM) Base Amount” is \$58 million dollars which represents a three year average (2001/02, 2002/03, and 2003/04) of capital asset acquisitions taken from the HRM financial statements less capital projects that were funded partially or totally by senior governments.

“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 community members, that provides direction for the community to realize sustainability objectives it has for the environmental, cultural, social and economic dimensions of its identity, as more particularly described in Schedule H hereto.

“Ministers” means the Federal Minister and the Provincial Minister.

“Municipal 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 capital projects, the funding sources that will be used to finance the projects and a breakdown, by project, of planned expenditures by year.

“Municipal Funding Agreements” means separate Agreements between the Province and each Eligible Recipient that describes the terms and conditions of receiving Funds, more particularly described in Schedule I hereto.

“Municipal Infrastructure” means tangible capital assets in Nova Scotia primarily for public use or benefit owned by an Eligible Recipient.

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

“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.

“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.

“Provincial Base Amount” is \$9.3 million dollars which represents a three year (2001/02, 2002/03, and 2003/04) average of funds spent on municipal infrastructure by Nova Scotia and includes money allocated through the Provincial Capital Assistance Program and the Canada Nova Scotia Infrastructure Program.

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

“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

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- Reporting and Audits
- Schedule E- Outcome Indicators
- Schedule F- Communications Protocol
- Schedule G- Areas of Collaboration
- Schedule H- Integrated Community Sustainability Plans
- Schedule I- Municipal Funding Agreement

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 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

2.1 Purpose of the Agreement

The purpose of this Agreement is to:

- a) provide a joint framework for the transfer of Funds to Nova Scotia for investment in environmentally sustainable municipal infrastructure;
- b) support Eligible Projects in Nova Scotia Municipalities that will lead to the federal and provincial desired outcomes of cleaner air, cleaner water and lower greenhouse gas emissions;

- c) build on Nova Scotia's commitment to partner with Municipalities to promote effective local government and healthy and vibrant communities by assisting its Municipalities to develop Environmentally Sustainable Municipal Infrastructure;
- d) confirm that the Parties will continue working together for the purpose of addressing, in partnership, other challenges facing Nova Scotia's communities.

3 RESPONSIBILITIES

3.1 Federal Responsibilities

The Government of Canada will:

- a) honour any existing contribution agreement with Nova Scotia in respect of Infrastructure Programs, in accordance with its terms;
- b) ensure that the funding under this Agreement provides additional revenues 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) discuss with Nova Scotia other proposals from Nova Scotia regarding the New Deal;
- d) invest Gas Tax funding to First Nations on Reserve communities in Nova Scotia to address their infrastructure priorities;
- e) encourage inter-municipal and municipal-First Nations reserve collaborations on Eligible Projects

3.2 Provincial Responsibilities

The Government of Nova Scotia will:

- a) ensure that over the period of April 1, 2005, to March 31, 2010, its average annual capital spending on Municipal Infrastructure will not be less than the Provincial Base Amount;
- b) ensure that the funding under this Agreement provides additional revenues for Municipalities rather than displacing other provincial infrastructure funding;

- c) jointly sign with each Municipality a Municipal Funding Agreement, that describes the terms and conditions for federal funding, including the use of such funds, substantially in the form as set out in the attached Schedule I;
- d) include the Eligible Recipient Requirements in Municipal Funding Agreements and enforce all terms and conditions of Funding Agreements in a diligent and timely manner and seek remedies from non-compliant Eligible Recipients;
- e) ensure that each municipality complete, prior to the fourth year of this Agreement, a Capital Investment Plan;
- f) over the life of the Agreement, require through Municipal Funding Agreements the development of Integrated Community Sustainability Plans, either by a Municipality or at a regional level;
- g) require that all Municipalities adopt and use the accounting rules of the Public Sector Accounting Board;
- h) require through Municipal Funding Agreements that Municipalities' contributions over the period of April 1, 2005 to March 31, 2010 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;
- i) enforce penalties through Municipal Funding Agreements if a Municipality is non-compliant with the agreement's terms and conditions. Penalties may include withholding of payment, reduction of payments, return of payment and/or non-renewal of the Municipal Funding Agreement;
- j) share information on existing and emerging provincial programs or initiatives that are consistent with the New Deal for Cities and Communities;
- k) support the development of a 'toolbox' for Municipalities – such as guides on capital planning, integrated sustainable planning, debt management, regional co-operation, required accountability reporting;
- l) assist with the preparation of outcome measures;

- m) explore other mutually agreed upon commitments that promote the long-term sustainability of Municipalities.

4 GOVERNANCE

4.1 Establishment and Duties

Upon execution of this Agreement, the Ministers shall promptly establish an Oversight Partnership 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 Provincial Minister, and designated as provincial co-chairperson.

In addition to the co-chairs, the Partnership Committee will consist of two representatives appointed by the Union of Nova Scotia Municipalities and an additional representative appointed by each of the provincial and federal government Ministers.

The Committee shall monitor the overall strategic implementation of the Gas Tax Agreement and collaborate on other aspects of shared objectives of the New Deal for Cities and Communities. This committee can provide a forum to support a focused approach to the management of municipal infrastructure programming in Nova Scotia.

The Committee shall, within twelve months of the signing of this Agreement, develop a methodology for the measurement of incremental spending on municipal infrastructure for Nova Scotia communities other than the HRM.

As a part of the New Deal for Cities and Communities, other means to support the sustainability of municipalities in Nova Scotia will be explored through such mechanisms as tripartite agreements between the three levels of government. An example is a consideration of a tripartite agreement with Halifax Regional Municipality, which may include elements such as building stronger neighbourhoods, immigration, and integrated harbour planning and transportation as described in Schedule G.

5 CONTRIBUTION PROVISIONS

5.1 Allocation

Canada's total contribution to Nova Scotia is as follows:

Fiscal year	Canada's Contribution
2005-2006	\$ 17,419,000
2006-2007	\$ 17,419,000
2007-2008	\$ 23,225,000
2008-2009	\$ 29,032,000
2009-2010	\$ 58,064,000
TOTAL	\$145,159,000

5.2 Payment

Provided there is no default under the terms of section 8.2 of this Agreement, Canada's contribution will be paid in equal semi annual payments as follows:

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

In respect of the first Fiscal Year of this Agreement, the first payment shall be made following the execution of this Agreement.

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.

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

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.

5.5 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 13 of Schedule C, Nova Scotia shall immediately pay the said amount to Canada.

5.6 Contracting

Nova Scotia will require through Municipal Funding Agreements 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.

6 ALLOCATION TO MUNICIPALITIES, DELIVERY MECHANISM AND USE OF FUNDS

6.1 Allocation to Municipalities

The Gas Tax Transfer will flow to Municipalities based upon the formula recommended by the Union of Nova Scotia Municipalities to the Minister of Service Nova Scotia and Municipal Relations.

More specifically, the allocation formula shall include the following components:

1. number of dwelling units in each Municipality (25% of the allocation)
2. population in each Municipality (25% of the allocation)
3. expenditures by each Municipality (50% of the allocation)

The formula to calculate Gas Tax Funds for Municipalities is as follows:

Twenty-five percent of:

The population of the Municipality divided by the population of the Province times Canada's annual contribution

Plus:

Twenty-five percent of:
The number of dwelling units in the Municipality divided by the total number of dwelling units in the Province times Canada's annual contribution

Plus:
Fifty percent of:
The five year rolling average of standard expenditures of the Municipality divided by the five year rolling average of standard expenditures for all Municipalities in the Province times Canada's annual contribution.

Dwelling units shall be based on the definition of dwelling units in the *Municipal Grants Act* Section 2(c) and shall be the number of dwelling units recorded on the filed assessment roll.

Population shall be based on the latest census data available as compiled by Statistics Canada.

Expenditures shall be based on Standard Expenditures as defined in the *Municipal Grants Act* Section 12(2) and calculated on a five year rolling average basis.

This Agreement allows for an amendment of the definition of expenditures after year two.

The Funding Formula on which Funds are based may be amended at the request of the Union of Nova Scotia Municipalities after two years. A change in this Section does not alter any other term of this agreement.

6.2 Trigger

Municipal Funding Agreements will detail the trigger to flow each Municipality's annual allocation consistent with the following:

- a) Year One: signing of the Municipal Funding Agreement and submission of a Municipal Capital Budget.
- b) Year Two: submission of a three year capital budget and required Annual Expenditure Report, and full compliance with the Municipal Funding Agreement.
- c) Year Three: submission of an updated three year capital budget, required Annual Expenditure Report, and full compliance with the Municipal Funding Agreement.

- d) Year Four: submission of a completed Capital Investment Plan, required Annual Expenditure Report, required Outcome Measures and full compliance with the Municipal Funding Agreement.
- e) Year Five: submission of an updated Capital Investment Plan, required Annual Expenditure Report, required Integrated Community Sustainability Plan and full compliance with the Municipal Funding Agreement.

6.3 Use of Funds

Nova Scotia 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.

Nova Scotia 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 Nova Scotia in respect of the implementation and management of this Agreement shall be for the account of Nova Scotia.

6.4 Agreement with Eligible Recipient

Nova Scotia agrees to include, in all Municipal Funding Agreements, the Eligible Recipient Requirements and agrees to enforce all terms and conditions of the Funding Agreements, including the Eligible Recipient Requirements.

7 REPORTING, AUDITS AND EVALUATION

7.1 Reporting

7.1.1 Nova Scotia 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 30th, 2009, and periodically thereafter if required by Canada, 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 Nova Scotia agrees to require through Municipal Funding Agreements 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 applicable Eligible Recipient to make them available to Canada for inspection or audit.
- 7.2.3 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. Municipal Funding Agreements will require Municipalities to pay for these audit costs.
- 7.2.4 Nova Scotia will share with Canada the results of any compliance or performance audit that it 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 Nova Scotia 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 be shared equally by the Parties. Canada agrees to consult with Nova Scotia 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 Nova Scotia, prior to its completion.

8.0 DISPUTE RESOLUTION, DEFAULT AND REMEDIES

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

8.2 Events of Default

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

- I. Not complied with any condition, undertaking or material term in the Agreement; or
- II. Failed to deliver an Annual Expenditure Report, Audit Report or the Outcomes Report, when required. If an Eligible Recipient does not comply with the Municipal Funding Agreement by submitting its Annual Expenditure Report or Audit Report within the prescribed timeframe this will not affect the proportionate flow of Funds from Canada for compliant Eligible Recipients.
- III. 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 Nova Scotia of the occurrence, which in Canada's opinion constitutes an event of default.

Nova Scotia will, within 30 days of receipt of the notice, 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.

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

- I. Not complied with any condition, undertaking or material term in the Agreement; or
- II. Failed to deliver to Nova Scotia, federal gas tax revenues, as specified in Section 5.1 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 are necessary to correct the situation.

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 I. above, suspend or terminate 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.

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.

8.4 Indemnity

Nova Scotia 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 Nova Scotia, its officers, employees and agents, or by a third party, its officers, employees, or agents;
- c) the performance of a Municipal Funding Agreement or the breach of any term or condition of a Municipal 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 Nova Scotia 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 September 23, 2005, and shall expire on March 31, 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 6, 7 and 10 and Sub-Sections 3.2 (c), (d), (e), (f), (h) and (i), 5.4, 5.5, 8.3, 8.4, 10, 11.3, 11.4, 11.5, and 11.12 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.

11.3 Governing law

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

11.4 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.

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 Nova Scotia or between Canada, Nova Scotia 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 Nova Scotia will take reasonable steps to ensure that all Municipal 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

Nova Scotia warrants that any person who lobbies or has lobbied on Nova Scotia's 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.

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, Nova Scotia may require 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.

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 e-mail. 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

Email: laroche.yazmine@infrastructure.gc.ca

Any notice to Nova Scotia will be sent to:

Deputy Minister, Service Nova Scotia and Municipal Relations
1505 Barrington Street
Maritime Centre, 14 North
PO Box 216
Halifax (Nova Scotia)
B3J 2M4

Facsimile: 902-424-0581

Email: keefeg@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 State (Infrastructure and Communities), and on behalf of Nova Scotia by the Minister of Intergovernmental Affairs and the Minister of Service Nova Scotia and Municipal Relations.

GOVERNMENT OF CANADA
Original signed by:

GOVERNMENT OF NOVA SCOTIA
Original signed by:

Minister of State (Infrastructure and Communities)

Minister of Intergovernmental Affairs

Minister of Service Nova Scotia and Municipal Relations

WITNESSED BY:

Charles Crosby
President, Union of Nova Scotia Municipalities

SCHEDULE A- Eligible Project Categories

1) ESMI Projects include the following:

a) Public transit, e.g.:

- i) Rapid Transit:** tangible capital assets and rolling stock (includes light rail, heavy rail additions, subways, ferries, transit stations, park and ride facilities, grade separated bus lanes and rail lines);
- ii) Transit Buses:** bus rolling stock, transit bus stations;
- iii) Intelligent Transport System (ITS) and Transit Priority Capital Investments;**
- iv) ITS technologies** to improve transit priority signalling, passenger and traffic information and transit operations;
- v) Capital investments,** such as transit queue-jumpers and High Occupancy Vehicle (HOV) lanes.

b) Water, e.g.:

Drinking water supply; drinking water purification and treatment systems; drinking water distribution systems; water metering systems.

c) Wastewater, e.g.:

Wastewater systems including sanitary sewer systems; and separate storm water systems.

d) Solid waste, e.g.:

Waste diversion; material recovery facilities; organics management; collection depots; waste disposal landfills; thermal treatment and landfill gas recuperation.

e) Community Energy Systems, e.g.:

- i) Cogeneration or combined heat and power projects** (where heat and power are produced through a single process);
- ii) District heating and cooling projects** where heat (or cooling) is distributed to more than one building.

f) Active transportation infrastructure (e.g, bike lanes), local roads, bridges and tunnels for Municipalities that enhance sustainability outcomes.

2) Capacity Building includes the following activities:

- i)** Collaboration: building partnerships and strategic alliances; participation; and consultation and outreach;
- ii)** Knowledge: use of new technology; research; and monitoring and evaluation;
- iii)** 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 Municipal 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 Nova Scotia 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 Municipalities having a population less than 75,000 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 Nova Scotia.

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 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 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 fifth year of this Agreement, a Capital Investment Plan;
2. Over the life of the Agreement, where the Eligible Recipient is a Municipality, develop an Integrated Community Sustainability Plan, either by itself or as part of some higher level of agglomeration;
3. Adopt and use the accounting rules of the Public Sector Accounting Board;
4. Ensure that the Funds will result in net incremental capital spending on Municipal Infrastructure over the period of April 1, 2005, to March 31, 2010;
5. In the case of Halifax Regional Municipality will ensure that its average annual capital spending on municipal infrastructure over the period of April 1, 2005, to March 31, 2010 will not be less than the HRM Base Amount;
6. Permit Canada reasonable access to all records relating to all Eligible Projects that have received Funds;
7. Be responsible for the complete, diligent and timely implementation and completion of the Eligible Project;
8. Acknowledge that Nova Scotia may holdback Funds if the Eligible Recipient is in default under the Municipal Funding Agreement;
9. Comply, as necessary, with the communications protocol set out in Schedule F;
10. 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;
11. Implement all mitigation measures identified in any environmental assessment of the Eligible Project;
12. If 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*;
13. (a) Retain title to, and ownership of, the Municipal Infrastructure resulting from the Eligible Project for at least ten (10) years after Project

completion unless the recipient sells the asset to Canada, Nova Scotia, or another Municipality;

- (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, Nova Scotia, or a Municipality, 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%

- 14. a) Award and manage all contracts for the supply of services, including construction, and material to the Eligible Project (“Contracts”) in accordance with the Eligible Recipient’s relevant policies and procedures. In the event that an Eligible Recipient does not have a relevant policy and procedure then the Provincial policies and procedures will be followed; and
 - b) Award Contracts in a manner that is transparent, competitive, and consistent with value for money principles.
15. The Eligible Recipient will be required to 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.
16. Indemnify and save harmless Canada and Nova Scotia, their 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:

- i) all Eligible Projects;
- ii) the performance of this Agreement or the breach of any term or condition of the Funding Agreement by the Eligible Parties, its officers, employees and agents or by a third party, and any of its officer, employees, servants or agents;
- iii) the performance of a Funding Agreement or the breach of any term or condition of the Funding Agreement by the Eligible Recipient, its 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 wilful or negligent act of the Eligible Recipient or third party and their respective employees, officers, servants or agents.

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;
 - the amounts paid to Eligible Recipients;
 - the amounts received from Canada for future payments to Eligible Recipients;
 - amounts paid by Eligible Recipients in aggregate for Eligible Projects; and,
 - 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

- 1.2.1 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, cleaner water and reduced GHG emissions.

2. Audit Report

- 2.1 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

	Annual	Cumulative
	01/04/20xx – 31/03/20xy	Date of signing – 31/03/20xy
Nova Scotia		
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 province	xx	xxx
Spent on eligible projects	(xx)	(xxx)
Closing balance of unspent funding		xxx

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
- b) Cleaner Water
- c) Lower GHGs

Outputs:

- a) Community Energy Systems
- b) Public Transit Infrastructure
- c) Water Infrastructure
- d) Wastewater Infrastructure
- e) Solid waste
- f) Local Roads and Bridges
- g) Capacity Building

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 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 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, 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 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 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.

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 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. Nova Scotia's Municipal 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 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-provincial 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

TRIPARTITE AGREEMENT

To encourage healthy and vibrant communities, the Parties recognize the need to collaborate further in areas that affect Nova Scotians' quality of life. It is the intent of the Parties to actively explore the creation of a Tripartite Agreement with the Halifax Regional Municipality (HRM). HRM is Nova Scotia's capital city and the largest and most urban Municipality in the province and is an economic engine for provincial growth.

A Tripartite Agreement will enhance existing coordination in service delivery and policy coordination and will support sustainability in areas where all levels of government have shared responsibilities or interests.

Specific areas of collaboration that merit further exploration include those noted below. A priority emphasis will be placed on the first item, reflecting the significant opportunities that would arise from further collaboration in this area.

Integrated Transportation and Harbour Planning – A strategic opportunity exists to optimize the potential of the Halifax Harbour and to better integrate overall transportation planning within HRM. The Harbour, with its' regional and national linkages, is vital to the economy of Nova Scotia and Atlantic Canada. Each level of government has a role to play in providing a coordinated approach to planning, infrastructure development, supporting the private sector led Gateway Council Initiative, and creating integrated transportation links within the region and beyond.

Strong Neighbourhoods - Some neighbourhoods in HRM have developed at a different rate than others, and some are confronted with a number of challenges including a shortage of affordable housing and underemployment. All levels of government are committed to coordinating resources to ensure that they are strategically allocated to support a shared vision. All levels of government are committed to delivering services that specifically meet the needs of these neighbourhoods.

Immigration - Immigrants enrich the social, cultural and economic life of Nova Scotia. HRM is intent on creating a welcoming community and the province is now engaged in a new immigration strategy. It is appropriate that Canada, Nova Scotia and HRM coordinate their efforts to attract, integrate and retain immigrants to enhance HRM's economy, cultural diversity and creative capabilities.

Entering into a formal Tripartite Agreement will require further discussion. While it will require further approvals from each level of government, it reflects a mutual understanding to pursue enhanced collaboration.

SCHEDULE H – Integrated Community Sustainability Plans

Integrated Community Sustainability plans are plans that will support the development of sustainable healthy and vibrant communities. In Nova Scotia, integrated community sustainability plans will build on, and enhance existing planning instruments such as municipal planning strategies and land use bylaws. Integrated Community Sustainability Plans will:

- a) integrate economic, environmental, social and cultural sustainability objectives;
- b) be reasonably consistent with statements of provincial interest adopted by the Province under the *Municipal Government Act*;
- c) be prepared with public participation,
- d) maximize the benefits of any infrastructure that will be produced under this Agreement; and,
- e) demonstrate, where appropriate, that there has been collaboration with other Municipalities to achieve sustainability objectives and may be adopted by two or more Municipalities.

SCHEDULE I – Municipal Funding Agreement (See Samples)