

# HALIFAX

P.O. Box 1749  
Halifax, Nova Scotia  
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**Item No. 14.1.6**  
**Halifax Regional Council**  
**November 22, 2016**

**TO:** Mayor Savage and Members of Halifax Regional Council

**SUBMITTED BY:** Original Signed by   
\_\_\_\_\_  
Jacques Dubé, Chief Administrative Officer

Original Signed by   
\_\_\_\_\_  
Jane Fraser, Acting Deputy Chief Administrative Officer

**DATE:** October 17, 2016

**SUBJECT:** Provincial Contribution Agreement: Bus Replacement Project – Building Canada Fund

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## **ORIGIN**

August 5, 2014 – Council approval for the Building Canada Fund project submissions.

July 19, 2016 – Council approval for the Federal Bus Replacement Project Contribution Agreement.

## **LEGISLATIVE AUTHORITY**

HRM Charter Section 74 – permits HRM to enter into agreements with the Province or Government of Canada to provide or administer municipal services.

Administrative Order #58, section 16(1) provides that revenue generating agreements for the municipality must be approved by Council when HRM is receiving more than \$500,000.

## **RECOMMENDATION**

It is recommended that Halifax Regional Council authorize the Mayor and Municipal Clerk to sign the attached Contribution Agreement with the Provincial Minister of Municipal Affairs, to receive funding for a number of bus replacements under the Building Canada Fund.

## **BACKGROUND**

The 2013 federal budget announced a Building Canada Fund that would deliver \$53 billion over 10 years for public infrastructure that supported federal priorities of productivity, economic growth and job creation. Nova Scotia was scheduled to receive \$426 million over ten years under the Provincial/Territorial Infrastructure Component (PTIC). In August 2014 Council approved a number of projects for Building Canada applications under three categories: water and wastewater, transit, and urban core investment. Staff prepared applications for each of the projects under each category and shared them with the

Provincial Department of Municipal Affairs. To date funding approval has been secured for:

- Aerotech Wastewater Treatment Facility - \$14 million in federal and provincial funding
- Upgraded Water Transmission Mains in Bedford, Port Wallace and Lucasville - \$10.1 million in federal and provincial funding

As these two projects belong to Halifax Water, federal and provincial Contribution Agreements were signed by the chair of the Halifax Water board.

## **DISCUSSION**

On May 24, 2016 HRM staff were informed that funding was approved for a number of conventional and Access-A-Bus replacements. HRM will receive \$3.67 million over 2 years from federal and provincial sources, to be used to replace 10 conventional buses and 6 Access-A-Buses. These new buses help support Halifax Transit's goal of replacing buses at their most efficient economic replacement point of 14 years. New buses also reduce greenhouse gas emissions and maintenance costs, and improve operational reliability.

In July 2016 the Federal Contribution Agreement, formalizing the federal portion of funds, was approved by Council. The attached Contribution Agreement formalizes the Provincial share of funding. The purpose of the Agreement is to establish the terms and conditions whereby Nova Scotia will pay one-third of eligible costs, up to a maximum of \$1,833,333. The Agreement has been reviewed by HRM Legal Services.

The funding received through this agreement flows from the Building Canada Fund. The Building Canada Fund could be used to offset municipal funding for already-approved capital projects, such as the bus purchases covered in the attached agreement. The Building Canada agreement is separate from the new Public Transit Infrastructure Fund (PTIF) announced in the federal 2016 budget. PTIF requires municipalities to match federal funds on new or expanded projects. Council submitted number of incremental projects for funding consideration under PTIF in June 2016. These projects were all approved by the Prime Minister and Premier on August 16, 2016.

The federal government is developing Phase 2 of the PTIF, in consultation with several stakeholders including the Federation of Canadian Municipalities. Details are expected to be announced by the 2017 federal budget. Once project eligibility and funding criteria are announced staff will bring a report with potential projects to Council for consideration.

## **FINANCIAL IMPLICATIONS**

The provincial funds supplement Halifax Transit's capital budget for 2016-17 and 2017-18, up to a maximum of \$1,833,333 over the two years.

## **RISK CONSIDERATION**

There are no significant risks associated with the recommendations in this report as the noted funding does not require HRM to expend additional or unbudgeted funds related to this agreement. Staff are currently working on ensuring Transit's long run capital plan aligns with phase 2 of the federal infrastructure plan given HRM's fiscal constraints.

**COMMUNITY ENGAGEMENT**

N/A

**ENVIRONMENTAL IMPLICATIONS**

N/A

**ALTERNATIVES**

Council could choose not to approve the acceptance of the provincial Contribution Agreement. This is not recommended as the funds will support additional bus replacements for Halifax Transit, which helps to reduce average life of the fleet and subsequent repair and maintenance costs.

**ATTACHMENTS**

Appendix 1      New Building Canada Fund: Provincial-Territorial Infrastructure Component Contribution Agreement for the Halifax Regional Municipality Transit Bus Replacement Project

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A copy of this report can be obtained online at <http://www.halifax.ca/council/agendasc/cagenda.php> then choose the appropriate meeting date, or by contacting the Office of the Municipal Clerk at 902.490.4210, or Fax 902.490.4208.

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Original Signed

**NEW BUILDING CANADA FUND**  
**PROVINCIAL – TERRITORIAL INFRASTRUCTURE COMPONENT**  
**NATIONAL AND REGIONAL PROJECTS**  
**CONTRIBUTION AGREEMENT**

made as of the \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_.

**BETWEEN:**            **HER MAJESTY THE QUEEN IN RIGHT OF Nova Scotia**, as represented by the Minister of Municipal Affairs (“Nova Scotia”)

**AND:**                **HALIFAX REGIONAL MUNICIPALITY**, in the Province of Nova Scotia (the “Recipient”)

individually referred to as a “Party” and collectively referred to as the “Parties”.

**WHEREAS** Nova Scotia as represented by the Minister of Municipal Affairs has been authorized to administer the provincial portion of the Program entitled the New Building Canada Fund – Provincial – Territorial Infrastructure Component – National and Regional Projects (hereinafter “PTIC – NRP” or “Program”), on behalf of Nova Scotia, to provide for funding of public infrastructure;

**AND WHEREAS** the Recipient has submitted to Nova Scotia and Canada a proposal for the funding of a Project which qualifies for support under the PTIC – NRP;

**AND WHEREAS** the Recipient is responsible to carry out the Project and Nova Scotia wishes to provide financial support for the Project and its objectives;

**NOW THEREFORE**, in accordance with the mutual covenants and agreements herein, the Parties hereby agree as follows:

## **1. INTERPRETATION**

### **1.1 DEFINITIONS**

In addition to the terms and conditions defined in the recitals and elsewhere in this Agreement, a capitalized term has the meaning given to it in this Subsection:

“**Agreement**” means this funding agreement and all schedules, as may be amended from time to time.

“**Agreement End Date**” means March 31, 2024

“**Asset**” means any real or personal property or immovable or movable asset acquired, purchased, constructed, rehabilitated or improved, in whole or in part, with funds contributed by Nova Scotia, under the terms and conditions of this Agreement.

“**Asset Disposal Period**” means the period commencing from the Effective Date and ending five (5) years after the Project Closure Date.

“**Contract**” means an agreement between the Recipient and a Third Party whereby the latter agrees to supply a product or service to a Project in return for financial consideration.

“**Declaration of Completion**” means a declaration in the form as described in Section 7.6 of this Agreement.

“**Effective Date**” means the date of last signature of this Agreement.

“**Eligible Expenditures**” means those costs incurred and paid by the Recipient which are eligible for reimbursement by Nova Scotia as set out in Schedule A (Eligible and Ineligible Expenditures).

**“Fiscal Year”** means the period beginning April 1<sup>st</sup> of a year and ending March 31<sup>st</sup> of the following year.

**“Oversight Committee”** means the committee as established pursuant to Section 5 of this Agreement.

**“Project”** means an individual infrastructure project as described in Schedule B (Statement of Work).

**“Project Approval Date”** means the date the Project was approved as described in Schedule B (Statement of Work), which is the date indicated by Canada in writing to the Recipient following Canada’s approval in principle of that Project.

**“Project Closure Date”** means eighteen (18) months after the Substantial Completion Date for a Project and no later than three (3) months prior to the Agreement End Date.

**“Progress Report”** means the report(s) required to be submitted by the Recipient throughout the project to update Nova Scotia, pursuant to subsection 7.2, showing construction activity and financial estimates of work done towards the completion of the project as outlined in Schedule B (Statement of Work).

**“Recipient”** has the meaning as assigned in the preamble of this Agreement.

**“Substantial Completion Date”** means the date as shown on an executed Declaration of Completion submitted by the recipient for a project, marking the date on which that project can be used for the purpose for which it was intended as described in Schedule B (Statement of Work).

**“Third Party”** means any person or legal entity, other than a Party, who participates in the implementation of a Project by means of a Contract.

**“Total Financial Assistance”** means total Project funding from all sources, including funding from federal, provincial, territorial, and municipal sources, private sources and In-Kind Contributions.

## **1.2 ENTIRE AGREEMENT**

This Agreement comprises the entire agreement between the Parties. No prior document, negotiation, provision, undertaking or agreement in relation to the subject of the Agreement has legal effect, unless incorporated by reference into this Agreement. No representation or warranty express, implied or otherwise, is made by Nova Scotia to the Recipient except as expressly set out in this Agreement.

## **1.3 DURATION OF AGREEMENT**

This Agreement will be effective as of the Effective Date and will terminate on the Agreement End Date, subject to early termination in accordance with this Agreement.

## **1.4 SCHEDULES**

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

Schedule A – Eligible and Ineligible Expenditures

Schedule B – Statement of Work

Schedule C – Statement of Financial Contribution

Schedule D – Communications Protocol

## **2. PURPOSE OF AGREEMENT**

The purpose of this Agreement is to establish the terms and conditions upon which Nova Scotia will contribute funding to the Recipient for the Project.

## **3. OBLIGATION OF THE PARTIES**

### **3.1 CONTRIBUTION BY NOVA SCOTIA**

- a) Nova Scotia agrees to pay a contribution to the Recipient for the Project in an amount outlined in Schedule C (Statement of Financial Contribution) in respect of that Project.

- b) A contribution by Nova Scotia for the Project will be payable in accordance with the terms and conditions of this Agreement and the Fiscal Year breakdown in Schedule C (Statement of Financial Contribution) for that Project.
- c) The maximum provincial funding to the Project, will not exceed one-third (33.33%) of the total Eligible Expenditures for the Project unless otherwise agreed to in writing by Nova Scotia.
- d) Payments made during the Project will not exceed 90% of the Contribution. Projects are subject to a financial holdback of 10% until the Project is completed to the satisfaction of Nova Scotia.
- e) The Parties acknowledge that Nova Scotia's role in respect of the Project is limited to making a financial contribution to the Recipient and that Nova Scotia will have no involvement in the implementation of that Project or its operation. Nova Scotia is neither a decision-maker nor an administrator to the Project.

### **3.2 COMMITMENTS BY THE RECIPIENT**

- a) The Recipient will complete each Project in a diligent and timely manner as per applicable standards, within the costs and deadlines specified in this Agreement and in accordance with the terms and conditions of this Agreement.
- b) The Recipient will be responsible for all costs of the Project including cost overruns, if any.
- c) The Recipient will inform Nova Scotia promptly of the Total Financial Assistance received or due for each Project.
- d) The Recipient will repay to Nova Scotia any and all disallowed costs, surpluses, unexpended contributions, and overpayments made under and according to the terms and conditions of this Agreement.
- e) The Recipient will ensure the ongoing operation, maintenance, and repair of any Asset, as per appropriate standards determined by Canada, during the Asset Disposal Period.
- f) Nova Scotia may request that the Recipient declare to Nova Scotia any amounts owing to the Province, under legislation or contribution agreements, which constitute an overdue debt. The Recipient recognizes that any such amount owing is a debt due to the Province and may be set-off by Nova Scotia in accordance with Subsection 16.3 (Debts Due to the Province and Repayable Contributions).
- g) The Recipient will inform Nova Scotia immediately of any fact or event that will compromise wholly or in part the Project.
- h) The Recipient will inform Nova Scotia promptly of any planned changes to the Project. The Recipient agrees that any changes to that Project will require Nova Scotia's consent, which may be subject to terms and conditions and that the Parties will execute a corresponding amendment to the Agreement.
- i) The Recipient will ensure that prior to the commencement of the Project and throughout this Agreement, it shall have in place the appropriate insurance policies set out in Section 6.3. (Insurance).

### **3.3 APPROPRIATIONS AND FUNDING LEVELS**

Notwithstanding Nova Scotia's obligation to make any payment under this Agreement, this obligation does not arise if, at the time when a payment under this Agreement becomes due, the Legislative Assembly of Nova Scotia has not passed an appropriation that is sufficient and constitutes lawful authority for making the payment. Nova Scotia may reduce or terminate any payment under this Agreement in response to the reduction of appropriations or departmental funding levels in respect of transfer payments, the program under which this Agreement was made or otherwise, as evidenced by any appropriation act or Nova Scotia's main or supplementary estimates expenditures. Nova Scotia will not be liable for any direct, indirect, consequential, exemplary or punitive damages, regardless of the form of action, whether in contract, tort or otherwise, arising from any such reduction or termination of funding.

### **3.4 FISCAL YEAR BUDGETING**

- a) The contribution amounts payable by Nova Scotia for each Fiscal Year of the Project are set out in Schedule C (Statement of Financial Contribution) for the Project.
- b) If the actual amount payable by Nova Scotia in respect of any Fiscal Year of a Project differs from the estimated amount in Schedule C (Statement of Financial Contribution) of that Project, the Recipient shall request in a timely manner that Nova Scotia re-allocate the difference between the two amounts to a subsequent Fiscal Year of that Project. Subject to Subsection 3.3 (Appropriations and Funding Levels) and provided the Recipient has made the request, Nova Scotia agrees to make reasonable efforts to accommodate the Recipient's request. The Recipient acknowledges that requests for re-allocation of a Project's funding will require appropriation adjustments or provincial Legislative Assembly approvals.
- c) In the event that any requested re-allocation of a Project's funding is not approved, the amount of Nova Scotia's contribution payable pursuant to subsection 3.1 (Contribution by Nova Scotia) in respect of that Project may be reduced by the amount of the requested re-allocation. If the contribution payable by Nova Scotia pursuant to subsection 3.1 (Contribution by Nova Scotia) is so reduced, the Parties agree to review the effects of such reduction on the overall implementation of that Project and to adjust the terms and conditions of this Agreement as appropriate.

### **3.5 CHANGES IN PROJECT COSTS AND FUNDING**

If, at any time during the term of this Agreement, one or all of the Parties determines that it will not be possible to complete the Project unless the Recipient expends amounts in excess of the funding available to it, the Party will immediately notify the other Party of that determination and Nova Scotia may suspend its funding obligation. The Recipient will, within thirty (30) business days of a request from Nova Scotia, provide a summary of the measures that it proposes to remedy the shortfall. If Nova Scotia is not satisfied that the measures proposed will be adequate to remedy the shortfall, then Nova Scotia may exercise one of the remedies listed at Subsection 12.3 (Remedies on Default).

### **3.6 CONDITION PRECEDENT**

- a) Condition(s)

The Recipient agrees that the Province has no obligation to make payments to the Recipient in respect of the Project unless and until it demonstrates, to Nova Scotia's satisfaction, that the conditions precedent with respect to the Project, if any, as outlined in Schedule B (Statement of Work) has been satisfied.

- b) Remedy

In the event that the Recipient is unable to meet the conditions set out in Schedule B (Statement of Work) in respect of the Project, Nova Scotia may terminate its obligations under the Agreement as it applies to the Project. Nova Scotia will not be liable for any direct, indirect, consequential, exemplary or punitive damages, regardless of the form of action, whether in contract, tort or otherwise, arising from the termination of such obligations.

### **3.7 CONDITION SUBSEQUENT**

In the event that the Recipient fails to meet the condition subsequent with respect to the Project, if any, as outlined in Schedule B (Statement of Work), the Recipient undertakes to reimburse the Province, on demand, a proportionate amount of the funds so contributed by the Province.

### **3.8 ENVIRONMENTAL ASSESSMENT AND ABORIGINAL CONSULTATION**

Nova Scotia's funding for a Project is conditional upon Nova Scotia being satisfied that its obligations under the *Canada Environmental Assessment Act, 2012 (CEAA 2012)* and any Aboriginal Consultation requirements are met.

### **3.9 DISPOSAL OF ASSETS**

- a) The Recipient will retain title to and ownership of the Asset for the Asset Disposal Period.

- b) The Recipient undertakes to notify Nova Scotia in writing, one hundred eighty (180) business days in advance if, at any time during the Asset Disposal Period, the Recipient proposes to sell, lease, encumber, use in a manner other than as described in their request for funding under the Program or in the Agreement, or otherwise dispose of, directly or indirectly, any Asset, other than to Canada, the Province of Nova Scotia, a Crown Corporation, or a wholly-publicly owned entity and, upon disposition, undertakes to reimburse Nova Scotia, at Nova Scotia's discretion, any funds received from Nova Scotia for the Project.

#### **4. RECIPIENT REPRESENTATIONS AND WARRANTIES**

The Recipient represents and warrants to Nova Scotia that:

- a) the Recipient has the capacity and authority to enter into this Agreement and to carry out the Project as listed in Schedule B (Statement of Work);
- b) the Recipient has the requisite power to own the Assets;
- c) this Agreement constitutes a legally binding obligation of the Recipient, enforceable against it in accordance with its terms and conditions;
- d) all information submitted to Nova Scotia as set out in this Agreement is true, accurate, and was prepared in good faith to the best of its ability, skill, and judgment; any person or legal entity that the Recipient has hired, for payment, to speak to or correspond with any employee or other person representing Nova Scotia on the Recipient's behalf, concerning any matter relating to the contribution under this Agreement or any benefit hereunder and who is required to be registered pursuant to the federal *Lobbying Act*, is registered pursuant to that *Act*, and that the Recipient has not and will not make a payment or other compensation to any person or legal entity that is contingent upon or is calculated upon the contribution under this Agreement or negotiating the whole or any part of the terms and conditions of this Agreement;
- e) there are no actions, suits, investigations or other proceedings pending or, to the knowledge of the Recipient, threatened and there is no order, judgment or decree of any court or governmental agency which could materially and adversely affect the Recipient's ability to carry out the activities contemplated by this Agreement. The Recipient will inform Nova Scotia immediately if any such action or proceedings are threatened or brought during the term of this Agreement; and,
- f) the Recipient is in good standing under the laws of Nova Scotia.

#### **5. OVERSIGHT COMMITTEE**

Unless otherwise agreed to in writing, the Parties will establish an Oversight Committee comprising of a Provincial co-chair and a co-chair from the Recipient or use an already existing committee if agreed by all voting members, established between the Parties for the Program, to monitor this Agreement. The Oversight Committee will:

- a) monitor the progress of the Projects;
- b) act as a forum to resolve potential issues and address concerns;
- c) monitor compliance with the terms and conditions of this Agreement;
- d) review and as necessary, recommend to the Parties amendments to the Agreement; and,
- e) attend to any other function required by this Agreement or, in relation to this Agreement, as mutually directed by the Parties.

#### **6. CONTRACT PROCEDURES**

##### **6.1 AWARDING OF CONTRACTS**

- a) The Recipient agrees that an appropriate tendering process will be followed in all circumstances where more than one supplier of goods and services is available. The Recipient shall ensure that all tendering practices and transactions represent fair market value and are transparent, open, competitive, accountable, and meet the intent of the Province of Nova Scotia's Procurement Policy, including compliance with the Agreement on Internal Trade between the Federal, Provincial and Territorial governments if applicable.

- b) If Nova Scotia determines that the Recipient has awarded a Contract in a manner that is not in compliance with the foregoing, upon notification to the Recipients, Nova Scotia may consider the expenditures associated with the Contract to be ineligible.
- c) Where a tender is awarded to other than the lowest bidder, the Recipient shall provide a report if requested by Nova Scotia, including a complete account of the facts, along with rationale for rejecting the lowest bidder, and a resolution by the Recipient's Council or Board choosing the successful bid.
- d) Any untendered costs may be deemed ineligible for cost-sharing unless approved in writing by Nova Scotia prior to the cost being incurred.
- e) Notwithstanding paragraph 6.1(c), Nova Scotia may in its absolute discretion require a report on any cost or expense incurred by the Recipient, whether tendered or not. The Recipient shall provide such details and information as Nova Scotia may reasonably require.

## **6.2 CONTRACT PROVISIONS**

The Recipient will ensure that all Contracts are consistent with, and incorporate, the relevant provisions of this Agreement. More specifically but without limiting the generality of the foregoing, the Recipient agrees to include terms and conditions in all Contracts to ensure that:

- a) the Third Party will keep proper and accurate financial accounts and records, including but not limited to its contracts, invoices, statements, receipts, and vouchers, in respect of each Project it participates in for at least six (6) years after the respective Project Closure Date and that the Recipient and Nova Scotia has the contractual right to a them;
- b) Nova Scotia, or its designates, shall be permitted, at all reasonable times, to inspect the terms of the contract and any records and accounts respecting the Project;
- c) all applicable laws, including labour, environmental and human rights legislation shall be complied with; and
- d) the Third Party shall be solely responsible for and shall save harmless and indemnify Nova Scotia and its Ministers, officers, employees and agents from and against all claims, liabilities and demands of any kind with respect to any injury to persons (including, without limitation, death), damage to or loss or destruction of property, economic loss or infringement of rights caused by or arising directly or indirectly from:
  - (i) the Project;
  - (ii) the performance of the contract or the breach of any term or condition of the contract by the Third Party or its officers, employees or agents;
  - (iii) the on-going operation, maintenance and contract or the breach of any term of condition of the contract by the Third Party or its officers, employees or agents; and/or
  - iv) any omission or any willful or negligent act of the Third Party or its officers, employees or agents.

## **6.3 INSURANCE**

The Recipient shall maintain adequate all-risk insurance coverage on all buildings, structures, machinery and equipment and public liability insurance of not less than two million dollars (\$2,000,000) during the term of construction and not less than eighteen (18) months thereafter. Upon request by Nova Scotia, the Recipient shall provide proof of such insurance in a form acceptable to Nova Scotia.

# **7. CLAIMS AND PAYMENTS**

## **7.1 PAYMENT CONDITIONS**

Nova Scotia will not:

- a) pay any claims in respect of the Project submitted after the Project Closure Date, unless otherwise accepted in writing by Nova Scotia;
- b) pay interest for failing to make a payment under this Agreement; and,

- c) pay any claims for the Project until the requirements regarding the *Canadian Environmental Assessment Act, 2012* and aboriginal consultation, if identified in respect of the Project are, in Nova Scotia's opinion, satisfied to the extent possible at the date the claim is submitted to the Province.

## **7.2 PROGRESS CLAIMS**

- a) After Eligible Costs have been incurred and paid by the Recipient, payments from the Program, if any, will be disbursed upon satisfactory receipt of a completed interim claim in a format as prescribed by Nova Scotia. Each progress claim must include an attestation by the Project Manager and Senior Municipal Official designated in writing by the Recipient as to the accuracy of the information submitted in support of the claim.
- b) An interim claim must be accompanied by a claim details form, including cheque date and number, supplier name and invoice number, particulars and cheque amount.
- c) Where reasonable, claims should be submitted as soon as possible after the Eligible cost is incurred. At the latest, Claims must be received by March 31<sup>st</sup> of the year following the fiscal year in which the Eligible Cost is incurred and, in all circumstances, no later than the Project Closure Date.
- d) The Recipient shall comply with Generally Accepted Accounting Principles (GAAP), in effect and applied in Nova Scotia, for the purpose of financial reporting on this project and to provide accurate and timely Progress Reports on a quarterly basis or as otherwise requested by Nova Scotia.

## **7.3 FINAL CLAIM**

The Recipient will submit a final claim to Nova Scotia for the project no later than the Project Closure Date of that project. Prior to the release of the final payment by Nova Scotia, a completed Declaration of Completion for that project must be received by Nova Scotia in accordance with section 7.6 (Declaration of Completion).

## **7.4 FINAL ADJUSTMENTS**

Upon receipt of the final claim for the Project, but before issuing the final payment for the Project, the Parties will jointly carry out a final reconciliation of all claims and payments in respect of the Project and make any adjustments required in the circumstances.

## **7.5 RETENTION OF CONTRIBUTION**

Payments made during the Project will not exceed 90% of the Contribution. The Project is subject to a financial holdback of 10% until the Project is completed to the satisfaction of Nova Scotia.

## **7.6 DECLARATION OF COMPLETION**

The Recipient shall provide to Nova Scotia a copy of the completed Declaration of Completion document as submitted to the Government of Canada for this project no later than the Project Closure Date

# **8. REPORTING**

## **8.1 PROGRESS REPORT**

- a) The Recipient will provide regular progress updates to Nova Scotia at a timing and frequency determined by Nova Scotia. The first progress report under this Agreement must cover the period from the Project Approval Date.
- b) Each progress report will include, at a minimum, the following information:
  - (i) A summary of the Project's progress; and,
  - (ii) An update on Project issues/risks, if any, and mitigation measures

## **8.2 FINAL REPORT**

The Recipient shall provide a copy of the final report as submitted to the Government of Canada for this project no later than the Project Closure Date.

## **9. AUDIT**

- a) Nova Scotia may require additional assurances in the form of an independent audit opinion, carried out at the Ultimate Recipient's expense and conducted by an accredited and independent auditor in accordance with the Canadian Auditing Standards to confirm that expenditures claimed to the Nova Scotia for reimbursement were Eligible Expenditures.
- b) Nova Scotia reserves the right to undertake, at any time, any other audit in relation to a Project at its expense.
- c) The Recipient agrees to ensure that prompt and timely corrective action is taken in response to any audit findings and recommendations conducted in accordance with this Agreement. A report on follow-up actions taken to address recommendations and results of the audits will be submitted to Nova Scotia by the Recipient in a timely manner.
- d) The Recipient will keep proper and accurate financial accounts and records, including but not limited to its Contracts, invoices, statements, receipts, and vouchers, in respect of a Project for at least six (6) years after its Construction Completion Date.

## **10. EVALUATION**

The Recipient agrees to provide all information related to the Project to Nova Scotia during and following the termination of this Agreement and the termination of the *Canada-Nova Scotia New Building Canada Fund National and Regional Projects Agreement* in order for Nova Scotia to conduct an evaluation of the performance of the Program.

## **11. ACCESS**

The Recipient will provide Nova Scotia and its designated representatives with reasonable and timely access to each Project sites, facilities, and any documentation for the purposes of audit, inspection, monitoring, evaluation, and ensuring compliance with this Agreement.

## **12. COMMUNICATIONS**

- a) The Parties will comply with Schedule D (Communications Protocol).
- b) The Recipient acknowledges that the following may be made publicly available by Nova Scotia:
  - i. the name of the Parties, the amount awarded by Nova Scotia, and the general nature of the Project; and,
  - ii. any evaluation or audit report and other reviews related to this Agreement.

## **13. DISPUTE RESOLUTION**

The Parties will keep each other informed of any issue that could be contentious by exchanging information:

- a) if a contentious issue arises, the Committee will examine it and will, in good faith and reasonably, attempt to resolve potential disputes as soon as possible and in any event within thirty (30) business days of its receipt of notice of such contentious issue;

- b) where the Committee cannot agree on a resolution, the matter will be referred to each Party's signatory of this Agreement for resolution. The Parties will provide a decision within ninety (90) business days of the referral from the Committee;
- c) where the Parties' signatories cannot agree on a resolution, the Parties may explore any alternative dispute resolution mechanisms available to them to resolve the issue; and,
- d) any payments related to the issue in dispute will be suspended, together with the obligations related to such issue, pending resolution.

The Parties agree that nothing in this Section will affect, alter or modify the rights of Nova Scotia to terminate this Agreement.

## **14. DEFAULT**

### **14.1 EVENTS OF DEFAULT**

The following events constitute Events of Default under this Agreement:

- a) the Recipient has not complied with one or more of the terms and conditions of this Agreement;
- b) the Recipient has not completed the Project in accordance with the terms and conditions of this Agreement;
- c) the Recipient has submitted false or misleading information to Nova Scotia or made a false or misleading representation to Nova Scotia in respect of the Project or in this Agreement, except for an error in good faith, demonstration of which is incumbent on the Recipient, to Nova Scotia's satisfaction;
- d) the Recipient has neglected or failed to pay Nova Scotia any amount due in accordance with this Agreement.
- e) the Recipient becomes insolvent, commits an act of bankruptcy, takes the benefit of any statute relating to bankrupt and insolvent debtors or goes into receivership or bankruptcy; and,
- f) the Recipient is wound up or dissolved.

### **14.2 DECLARATION OF DEFAULT**

- a) Nova Scotia may declare a default if:
  - i. one or more of the Events of Default occurs;
  - ii. Nova Scotia gave notice to the Recipient of the event which in Nova Scotia's opinion constitutes an Event of Default; and,
  - iii. the Recipient has failed, within thirty (30) business days of receipt of the notice, either to remedy the Event of Default or to notify and demonstrate, to the satisfaction of Nova Scotia, that it has taken such steps as are necessary to remedy the Event of Default.
- b) Notwithstanding Paragraph 12.2 a) (Declaration of Default), the occurrence of any of the Events of Default listed at Paragraphs 12.1 e) (Events of Default) or 12.1 f) (Events of Default) will automatically trigger a default under this Agreement, without any further notice to the Recipient.

### **14.3 REMEDIES ON DEFAULT**

In the event Nova Scotia declares a default under Subsection 12.2 (Declaration of Default), Nova Scotia may exercise one or more of the following remedies, without limiting any remedy available to it at law:

- a) suspend any obligation by Nova Scotia to contribute or continue to contribute funding to the Project, including any obligation to pay an amount owing prior to the date of such suspension;
- b) terminate any obligation of Nova Scotia to contribute or continue to contribute funding to the Project, including any obligation to pay any amount owing prior to the date of such termination;

- c) require the Recipient to reimburse Nova Scotia all or part of the contribution paid by Nova Scotia to the Recipient for the respective Project;
- d) terminate the Agreement.

## **15. LIMITATION OF LIABILITY**

Nova Scotia, its officers, servants, employees or agents will not be held liable for any injury, including death to any person or for any loss or damage to property of the Recipient or any obligation of the Recipient or anyone else, incurred or suffered by the Recipient, its officers, servants, employees or agents arising directly or indirectly from this Agreement, the Projects or the entering into by the Recipient or its respective officers, servants, employees or agents of a loan, capital lease or other long term obligation in relation to the Project.

## **16. INDEMNIFICATION**

The Recipient will at all times indemnify and save harmless Nova Scotia, its officers, servants, employees, or agents, from and against all actions, whether in contract, tort or otherwise, claims and demands, losses, costs, damages, 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, in connection with or arising directly or indirectly from this Agreement, the Project or the entering into by the Recipient or its respective officers, servants, employees or agents of a loan, capital lease or other long term obligation in relation to the Project, except to the extent to which such actions, claims, demands, losses, costs, damages, suits or other proceedings relate to the negligence or breach of the Agreement by an officer, servant, employee or agent of Nova Scotia in the performance of his or her duties.

## **17. ASSETS**

### **17.1 DISPOSAL OF ASSETS**

- a) Unless otherwise agreed to by the Parties, the Recipient will retain title to and ownership of an Asset for the Asset Disposal Period.
- b) The Recipient undertakes to notify Nova Scotia in writing, one hundred eighty (180) business days in advance if, at any time during the Asset Disposal Period, the Recipient proposes to sell, lease, encumber, use in a manner other than as described in their request for funding under the Program or in the Agreement, or otherwise dispose of, directly or indirectly, any Asset, other than to Canada, the Province of Nova Scotia, a Crown Corporation, or a wholly-publicly owned entity and, upon disposition, undertakes to reimburse Nova Scotia, at Nova Scotia's discretion, any funds received from Nova Scotia for that Project.

## **18. GENERAL**

### **18.1 SURVIVAL**

The Parties' rights and obligations which, by their nature, extend beyond the termination of this Agreement, will survive any termination of this Agreement.

### **18.2 ACCOUNTING PRINCIPLES**

All accounting terms will 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 GAAP in effect in Canada.

### **18.3 DEBTS DUE TO THE PROVINCE AND REPAYABLE CONTRIBUTIONS**

- a) Any amount owed to Nova Scotia under this Agreement by the Recipient will constitute a debt due to the Province, which the Recipient will reimburse Nova Scotia forthwith on demand.

- b) In addition to the foregoing, the Recipient acknowledges and agrees that any such debt is a debt due to Her Majesty in right of the Province of Nova Scotia or the Minister of Finance may deduct or set off the amount of such debt out of any sums of money that may be due or payable to the Recipient by Her Majesty in right of the Province or a Crown corporation.

#### **18.4 INTEREST ON DEBTS DUE**

Debts due to Nova Scotia will accrue interest.

#### **18.5 CONFLICT OF INTEREST**

No current or former public servant or public office holder to whom any post-employment, ethics and conflict of interest legislation, guidelines, codes or policies of Nova Scotia applies will derive direct benefit from this Agreement unless the provision or receipt of such benefits is in compliance with such legislation, guidelines, policies or codes. The Recipient will promptly inform Nova Scotia should it become aware of the existence of any such situation.

#### **18.6 NO AGENCY, PARTNERSHIP, JOINT VENTURE, ETC.**

- a) 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 Nova Scotia and the Recipient or between Nova Scotia and a Third Party.
- b) The Recipient will not represent itself, including in any Contract, as a partner, employee or agent of the Province.

#### **18.7 NO AUTHORITY TO REPRESENT**

Nothing in this Agreement is to be construed as authorizing any person, including a Third Party, to contract for or to incur any obligation on behalf of Nova Scotia or to act as an agent for Nova Scotia. The Recipient will take the necessary action to ensure that any Contract contains a provision to that effect.

#### **18.8 ASSIGNMENT**

The Recipient will not transfer or assign its rights or obligations under this Agreement without the prior written consent of Nova Scotia. Any attempt by the Recipient to assign any of the rights, duties or obligations of this Agreement without the Nova Scotia's express written consent is void.

#### **18.9 SEVERABILITY**

If for any reason a provision of this Agreement that is not a fundamental term of this Agreement between the Parties is found to be or becomes invalid or unenforceable, in whole or in part, and if both Parties agree, 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.

#### **18.10 AMENDMENTS**

This Agreement, which includes its schedules, can only be amended in writing by the Parties.

#### **18.11 WAIVER**

A Party may waive any of its rights under this Agreement only in writing. Any tolerance or indulgence demonstrated by the Party will not constitute a waiver.

**18.12 NOTICE**

Any notice provided under this Agreement may be delivered in person, sent by mail or facsimile, addressed to:  
for Nova Scotia:

Aileen Waller-Hebb, Director of Grants and Programs  
Department of Municipal Affairs  
Maritime Centre 14 North  
1505 Barrington Street  
Halifax, Nova Scotia  
B3J 2M4

or to such other address or facsimile number or addressed to such other person as the Province may, from time to time, designate in writing to the Recipient; and for the Recipient:

John Traves, A/Chief Administrative Officer  
Halifax Regional Municipality  
PO Box 1749, 1841 Argyle Street  
Halifax, Nova Scotia  
B3J 3A5

or to such other address or facsimile number or addressed to such other person as the Recipient may, from time to time, designate in writing to Nova Scotia.

Such notice will be deemed to have been received, if sent by mail, when receipt is acknowledged by the other Party; by facsimile, when transmitted and receipt is confirmed; and in person, when delivered.

**18.13 COMPLIANCE WITH LAWS**

The Recipient will comply with all applicable laws and regulations and all requirements of regulatory bodies having jurisdiction over the subject matter of a Project.

**18.14 GOVERNING LAW**

This Agreement shall be interpreted and applied exclusively in accordance with the laws of Nova Scotia and the applicable federal laws of Canada. The courts of Nova Scotia shall have exclusive jurisdiction.

**18.15 SUCCESSORS AND ASSIGNS**

This Agreement is binding upon the Parties and their respective successors and assigns.

**18.16 INTELLECTUAL PROPERTY**

All intellectual property that arises in the course of a Project will vest in the Recipient.

## SIGNATURES

The Parties have executed this Agreement through authorized representatives on the date stated opposite each respective Party's signature.

### HER MAJESTY THE QUEEN IN RIGHT OF NOVA SCOTIA

Date: \_\_\_\_\_

\_\_\_\_\_  
The Honourable Zach Churchill  
Minister of Municipal Affairs

### HALIFAX REGIONAL MUNICIPALITY

Date: \_\_\_\_\_

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

## **SCHEDULE A – ELIGIBLE AND INELIGIBLE EXPENDITURES**

### **A.1 ELIGIBLE EXPENDITURES**

Eligible Expenditures will include only the following:

- a) the capital costs of acquiring, constructing or renovating a tangible asset, as defined and determined according to Generally Accepted Accounting Principles in Canada;
- b) expenditures directly associated with joint communication activities (press releases, press conferences, translation, etc.) related to funding recognition as set out in Schedule D (Communications Protocol);
- c) all planning (including plans and specifications) and assessment costs specified in the agreement such as the costs of environmental planning, surveying, engineering, architectural supervision, testing and management consulting services for the Project. Nova Scotia will contribute no more than fifteen percent (15%) of its contribution to a Project to this cost;
- d) the costs of engineering and environmental reviews, including environmental assessments as defined in the Canadian Environmental Assessment Act 2012 and the costs of remedial activities, mitigation measures and follow-up identified in any environmental assessment;
- e) costs of Aboriginal consultation;
- f) the Recipient audit and evaluation costs as specified in the Agreement;
- g) the incremental costs of the Recipient's employees may be included as Eligible Expenditures under the following conditions:
  - the Recipient is able to demonstrate that it is not economically feasible to tender a Contract and clearly demonstrate that there is value for money in using internal employees;
  - the employee or equipment is engaged directly in respect of the work that would have been the subject of the Contract; and
  - the arrangement is approved in advance and in writing by Nova Scotia.
- h) leasing of equipment related to the construction of the Project; and,
- i) other costs that, in the opinion of Nova Scotia, are considered to be direct and necessary for the successful implementation of the Project and have been approved by Nova Scotia in writing prior to being incurred.

Eligible Expenditures in respect of the Project can begin to accrue effective as of its Project Approval Date. However, all Eligible Expenditures outlined above can be reimbursed to the Recipient only following the Effective Date of the Agreement.

### **A.2 INELIGIBLE EXPENDITURES**

The following are expenditures that are not eligible:

- a) expenditures incurred before the Project Approval Date;
- b) expenditures incurred after the Project Closure Date with the exception of expenditures related to audit and evaluation requirements pursuant to the Agreement;
- c) the expenditures related to developing a business case or proposal for funding;
- d) the expenditures related to purchasing land, buildings and associated real estate and other fees;
- e) financing charges and interest payments on loans;
- f) leasing land, buildings, equipment and other facilities, except those specified as Eligible Expenditures in A.1.i) above;
- g) furnishings and non-fixed assets which are not essential for the operation of the Project.
- h) general repairs and maintenance of a Project and related structures, unless they are part of a larger capital expansion project;
- i) services or works normally provided by the Recipient, incurred in the course of implementation of the Project, except those specified as eligible expenditures;

- j) the expenditures related to any goods and services which are received through donations or in-kind contributions;
- k) any overhead expenditures, including salaries and other employment benefits of any employees of the Recipient, direct or indirect operating or administrative expenditures of Recipients, and more specifically expenditures related to planning, engineering, architecture, supervision, management and other activities normally carried out by staff except in accordance with subsections 1(c) and 1(g) in the Eligible Expenditures above;
- l) taxes for which the Recipient is eligible for a tax rebate and all other expenditures eligible for rebates; and,
- m) legal fees.

**SCHEDULE B – STATEMENT OF WORK**

**Recipient:** Halifax Regional Municipality

**Project Name:** Bus Replacement Bundle

**Project Number:** 05-14-0184

**Project Description:**

The Project involves the renewal of the Halifax Transit Fleet through the purchase of ten conventional 40-foot accessible low floor buses as replacements for older buses and six Access A Bus vehicles. The conventional buses to be replaced are those with high floor and non-accessible buses. The new accessibility features included are low floor with kneeling, wheelchair ramp, flip seats and wheelchair positions and bicycle racks.

**Condition Precedent:** N/A

**Condition Subsequent:** N/A

**Project Approval Date:** May 24, 2016

**SCHEDULE C - STATEMENT OF FINANCIAL CONTRIBUTION**

**Recipient:** Halifax Regional Municipality

**Project Name:** Bus Replacement Bundle

**Project Number:** 05-14-0184

**Contribution by Nova Scotia:**

Nova Scotia agree to pay a contribution to the Recipient of not more than 33.33 percent (33.33%) of the total Eligible Expenditures for the Project up to a maximum of **\$ 1,833,333**.

<b>Total Estimated Costs:</b>	<b>\$ 5,592,000</b>	<b>Total Shareable Costs:</b>	<b>\$ 5,500,000</b>
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**Project Cash Flow**

<b>Estimated Expenditures</b>	<b>Forecast</b>		
<b>Estimated Contribution by Nova Scotia</b>	<b>Forecast of Estimated Contribution by Nova Scotia by Fiscal Year*</b>		
	<b>2016/17</b>	<b>2017/18</b>	<b>2018/19</b>
<b>\$ 1,833,333</b>	<b>\$ 750,000</b>	<b>\$ 1,083,333</b>	<b>\$ 0</b>

\*Note: Unexpended commitments may carry forward to the subsequent fiscal year(s) subject to the other terms and conditions of the Contribution Agreement.

## **SCHEDULE D – COMMUNICATIONS PROTOCOL**

### **D.1 PURPOSE**

This Communications Protocol outlines the roles and responsibilities of each of the Parties with respect to communications activities related to the funded Project(s).

This Communications Protocol will guide all communications activity planning, development and implementation with a view to ensuring efficient, structured, continuous and coordinated communications to the Canadian public.

The provisions of this Communications Protocol apply to all communications activities related to any New Building Canada Fund funding, including allocations; and any Project funded under this Agreement. Such communications activities may include, but are not limited to, public or media events, news releases, reports, web and social media products or postings, blogs, project signs, digital signs, publications, success stories and vignettes, photo compilations, videos, advertising campaigns, awareness campaigns, editorials, and multi-media products.

### **D.2 GUIDING PRINCIPLES**

The Parties recognize the importance of managing the delivery of coherent communications activities based on the principle of transparent and open discussion and collaboration.

Communications activities undertaken through this Protocol should ensure that Canadians are informed of infrastructure investments made to help improve their quality of life and that they receive consistent information about Project and their benefits from each Party.

The activities undertaken jointly by Canada, Nova Scotia and the Recipient should recognize the funding of all contributors to the Project.

### **D.3 GOVERNANCE**

At Nova Scotia's request the Parties will form a communications committee that will be responsible for preparing a project communications plan and to oversee its implementation.

### **D.4 PROGRAM COMMUNICATIONS**

Nova Scotia retains the right to meet its obligations to communicate information to Canadians about the New Building Canada Fund and the use of funding through its own communications products and activities.

Nova Scotia may also include general program messaging and an overview of a Project as an example in their own communications products and activities. The Party undertaking these activities will recognize the funding of the Parties.

The Parties agree that they will not unreasonably restrict the other Parties from using, for their own purposes, public communications products related to the New Building Canada Fund that were prepared by Canada, Nova Scotia and if web-based, from linking to it.

### **D.5 OPERATIONAL COMMUNICATIONS**

The Recipient is solely responsible for operational communications with respect to the Project, including but not limited to, calls for tender, construction, and public safety notices. Operational communications as described above are not subject to the federal official language policy.

The Parties will share information promptly with each other should significant media inquiries be received or of emerging media or stakeholder issues relating to a Project arise.

### **D.6 MEDIA EVENTS AND ANNOUNCEMENT FOR ELIGIBLE PROJECT**

Media events include, but are not limited to, news conferences, public announcements, official events or ceremonies, and news releases.

Canada, Nova Scotia and the Recipient agree to have regular media events about the funding and status of the Project. Key milestones may be marked by public events, news releases and/or other mechanisms.

Either of the Parties may request a media event.

Media events related to the Project will not occur without the prior knowledge and agreement of the Parties.

The requestor of a media event will provide at least 15 business days' notice to the other Party of its intention to undertake such an event. The event will take place at a mutually agreed date and location.

The Party undertaking these activities will provide the opportunity for the other Parties to participate through a designated representative and will recognize the funding of all contributors. Canada, Nova Scotia and the Recipient will choose their own designated representative.

The conduct of all joint media events and products will follow the *Table of Precedence for Canada* as outlined at <http://www.pch.gc.ca/eng/1359384273319/1359384663213>.

All joint communications material related to media events must be approved by Nova Scotia and recognize the funding of all Parties.

All joint communications material must reflect Canada's policy on official languages and the federal identity program.

#### **D.7 COMMUNICATIONS COSTS**

The eligibility of costs related to communication activities will be subject to Schedule A (Eligible and Ineligible Expenditures).

#### **D.8 DISPUTES, MONITORING AND COMPLIANCE**

The Oversight Committee, or communications subcommittee if formed, will monitor the Parties' compliance with this Schedule, and may, at its discretion, advise the Parties of issues and required adjustments. Should there be any disagreement or contentious issues, Section 13 (Dispute Resolution) of the Agreement will be followed.

#### **D.9 COMMUNICATING SUCCESS STORIES**

The Recipient agrees to collaborate with Nova Scotia, and facilitate communications for the purposes of gathering necessary information to support the development of communications activities and products including but not limited to Project success stories, vignettes, and multi-media products.

#### **D.10 ADVERTISING CAMPAIGNS**

Recognizing that advertising can be an effective means of communicating with the public, the Parties may, at their own cost, organize an advertising or public information campaign related to the New Building Canada Fund or funded Project. However, such a campaign must respect the provisions of this Agreement. In the event of such a campaign, Nova Scotia agrees to inform the other parties of its intention, and to inform them no less than 21 business days prior to the campaign launch.