

CANADA
BRITISH COLUMBIA
THE UNION OF BRITISH COLUMBIA
MUNICIPALITIES

The logo for Canada, featuring the word "Canada" in a serif font with a small Canadian flag to the right.

The logo for British Columbia, featuring the provincial coat of arms above the words "BRITISH COLUMBIA" in a serif font.



AGREEMENT ON THE TRANSFER OF FUNDS FOR
PUBLIC TRANSIT

2006-2010

This Agreement made as of March 31, 2006,

- BETWEEN:** **HER MAJESTY THE QUEEN IN RIGHT OF CANADA**
("Canada"), represented by the Minister of Transport,
Infrastructure and Communities ("Federal Minister")
- AND:** **HER MAJESTY THE QUEEN IN RIGHT OF THE**
PROVINCE OF BRITISH COLUMBIA ("British
Columbia"), represented by the Minister of Community
Services ("Provincial Minister")
- AND:** **UNION OF BRITISH COLUMBIA MUNICIPALITIES**
("UBCM"), established under the *Union of British Columbia*
Municipalities Incorporation Act SBC 1959, c.106,
represented by the President ("President of UBCM").

PREAMBLE

WHEREAS Canada, British Columbia and the local governments of British Columbia, as represented by the UBCM, wish to cooperate in making a transformative difference in the sustainability and future prosperity of cities and communities in British Columbia and for Canada's future.

WHEREAS Canada, British Columbia and the local governments of British Columbia, as represented by the UBCM, have agreed to cooperate towards a long-term vision of sustainability for local governments which integrates four interdependent dimensions: economic, environmental, social and cultural.

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

PRINCIPLES

The Government of Canada, the Government of British Columbia and the Union of British Columbia Municipalities acknowledge that this Agreement has been negotiated with regard to the following principles:

Principle 1 – Respect for jurisdiction: Canada, British Columbia and the UBCM respect the roles of all orders of government and recognize the merit of partnerships to support British Columbia local governments.

Principle 2 – A flexible approach: In recognition of the diversity of Canadian provinces and territories, First Nations, regions, cities and communities, Canada, British Columbia and UBCM have agreed to a funding allocation formula and delivery mechanism that meets the specific needs of British Columbia local governments.

Principle 3 – Equity between provinces and territories: Canada is committed to treating provinces, territories and First Nations equitably.

Principle 4 – Transparency: Canada, British Columbia and UBCM will report regularly to Canadians on the outcomes achieved with Public Transit Funds using agreed upon performance measures.

Principle 5 – Regular reporting to Canadians: Canada will use federal mechanisms to report on outcomes achieved with federal Public Transit Funds. British Columbia and UBCM will ensure that outcomes achieved in British Columbia are reported using existing reporting mechanisms, where appropriate.

NOW THEREFORE, in accordance with the principles set out above, Canada, British Columbia and the UBCM 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 – British Columbia – UBCM Agreement on the Transfer of Funds for Public Transit.

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

“**Audit Report**” means an audit report, prepared at UBCM’s expense, by a licensed auditor more particularly described in Schedule D.

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

“**Eligible Projects**” means Public Transit Infrastructure projects.

“**Eligible Recipient**” means:

- (i) a Local Government;
- (ii) British Columbia Transit, as continued under the *British Columbia Transit Act*, RSBC 1996, c.38 (BC Transit); or
- (iii) the Greater Vancouver Transportation Authority, as established under the *Greater Vancouver Transportation Authority Act* SBC 1998, c.30 (GVTA).

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

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

“**Funding Agreement**” means an agreement made between UBCM and an Eligible Recipient pursuant to which Funds are paid to the Eligible Recipient, which includes the provisions contained in Schedule C.

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

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

“**Local Government**” means a municipality as defined in the *Community Charter*, a regional district as defined in the *Local Government Act*, and the City of Vancouver as established under the *Vancouver Charter*.

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

“**Outcomes Report**” means the report to be delivered by UBCM to Canada and British Columbia 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, British Columbia and the UBCM.

“**President**” means the President of the UBCM.

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

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

“**Public Transit Funds**” means the funds made available through the Public Transit Fund Transfer Payment Program, pursuant to which this Agreement is entered into.

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

“**Transit Strategy**” means a plan or plans that provide strategic direction for future development of transit services for:

- (i) one or more public transit systems, or
- (ii) one or more geographic areas without existing public transit services,

that could include descriptions of initiatives to address both conventional and specialized transit, establish performance measures to allow for an assessment of how transit objectives are met, and outline capital and operating initiatives for meeting objectives.

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

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 and form part of this Agreement:

Schedule A – Eligible Project Categories

Schedule B – Eligible Costs

Schedule C – Eligible Recipient Requirements

Schedule D – Audit, Reporting and Evaluation

Schedule E – Outcome Indicators

Schedule F – Communications Protocol

1.4 Precedence

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

1.5 Accounting Principles

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

2. PURPOSE

The purpose of this Agreement is to provide a joint framework for the transfer of Funds to Eligible Recipients within British Columbia for investment in Public Transit Infrastructure.

3. OUTCOMES

Federal Public Transit Funds will support the environmental objectives of reduced greenhouse gas (GHG) emissions, reduced smog-forming air emissions and increased public transit ridership.

4. COMMITMENTS BY THE PARTIES

4.1 Commitments of the Government of Canada

Canada will:

- (a) provide the Public Transit Funds in accordance with this Agreement;
- (b) honour any existing contribution agreement with British Columbia in respect of Infrastructure Programs, in accordance with its terms; and
- (c) ensure that the funding under this Agreement provides additional funds for Local Governments, rather than displacing other federal infrastructure funding.

4.2 Commitments of the Government of British Columbia

British Columbia will:

- a) ensure that Public Transit Funds result in net incremental spending on Public Transit Infrastructure over the term of this Agreement; and
- b) not reduce, eliminate or clawback any Public Transit Infrastructure funding which is currently being made available to Eligible

Recipients by British Columbia.

4.3 Commitments of the Union of British Columbia Municipalities

UBCM will:

- a) sign a Funding Agreement with each Eligible Recipient prior to the transfer of Funds from the UBCM and enforce all terms and conditions of these Funding Agreements.
- b) Ensure, through the Funding Agreement, that:
 - a. Funds result in net incremental spending on Public Transit Infrastructure over the term of the Agreement;
 - b. if required by Schedule C, the Eligible Recipient completes a Transit Strategy that includes Transportation Demand Management measures, if applicable, and makes it available to the public by November 1, 2006;
 - c. in the case that an Eligible Recipient wishes to utilize Funds for investments to enhance the security of its transit infrastructure, the Eligible Recipient provides evidence to the Partnership Committee that these investments satisfy the applicable conditions and requirements imposed by Transport Canada for such federally funded security projects, including those established under Transport Canada's Passenger Rail and Mass Transit Security Contribution Program.

5. PARTNERSHIP COMMITTEE

The Partnership Committee, as established under the Canada – British Columbia – UBCM Agreement on the Transfer of Federal Gas Tax Revenues signed on September 19, 2005, shall monitor the overall strategic implementation of this Agreement and shall:

- a) approve a methodology for measuring the incrementality of Public Transit Funds by September 19, 2006;
- b) approve a template for Funding Agreements with Eligible Recipients required under this Agreement;
- c) establish principles for reallocation of funding if required under Section 7.1(c); and
- d) determine whether publicly available documents relating to one or more public transit systems or proposed public transit systems constitute a Transit Strategy.

6. CONTRIBUTION PROVISIONS

6.1 Allocation to British Columbia

Canada's total contribution to the UBCM for Public Transit Infrastructure projects for the benefit of Local Governments in British Columbia is \$52,543,010.

6.2 Payment

Provided there is no default under the terms of Section 9.2, Canada's contribution will be paid in one payment to the UBCM, once the Agreement has been signed and funding is available.

6.3 Appropriations

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

6.4 Limit on Canada's Financial Commitments

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 an 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.

6.5 Disposal of Eligible Projects

To the extent that the UBCM receives a repayment of all or a portion of a contribution pursuant to the operation of Paragraph 11 of Schedule C, the UBCM shall immediately pay the said amount to Canada or redirect the amount for Eligible Projects consistent with Section 7.3.

6.6 Contracting

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

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

7.1 Allocation to Eligible Recipients

Public Transit Funds will be allocated as follows:

- (a) A fund of up to \$ 1.5 million will be established to be allocated to support additional Public Transit Infrastructure, primarily in communities without existing public transit service, with allocations from that fund made by UBCM after consultation with British Columbia; and
- (b) the remainder will be allocated to existing public transit systems such that each system is allocated \$17,500 plus a proportion of the amount remaining based on the system's proportionate share of total public transit ridership in British Columbia. Allocation of the Funds under this paragraph is as set out in the following table:

Public Transit System Participants	Ridership	Allocation
Greater Vancouver Transportation Authority	156,840,000	\$40,331,588
BC Transit and the Victoria Regional Transit Commission	19,980,404	\$ 5,153,255
BC Transit, the City of Abbotsford and the District of Mission	1,376,755	\$ 371,381
BC Transit and the Alberni-Clayoquot Regional District	21,113	\$ 22,927
BC Transit and the City of Campbell River	385,934	\$ 116,701
BC Transit and the Regional District of Central Kootenay	101,804	\$ 43,668
BC Transit and the City of Chilliwack	388,894	\$ 117,461
BC Transit and the Regional District of Comox-Strathcona	342,791	\$ 105,611
BC Transit and the Cowichan Valley Regional District	247,597	\$ 81,142
BC Transit and the City of Cranbrook	145,740	\$ 54,961
BC Transit and the City of Dawson Creek	112,843	\$ 46,505
BC Transit, the City of Duncan and the District of North Cowichan	6,365	\$ 19,136
BC Transit and the City of Fort St. John	129,268	\$ 50,727
BC Transit and the City of Kamloops	2,750,098	\$ 724,384
BC Transit, the City of Kelowna, the Regional District of Central Okanagan and the District of Lake Country	3,081,768	\$ 809,636
BC Transit and the District of Kent	23,933	\$ 23,652
BC Transit and the City of Kimberley	10,574	\$ 20,218
BC Transit and the District of Kitimat	186,699	\$ 65,489
BC Transit and the Regional District of Kitimat-Stikine	9,342	\$ 19,901
BC Transit and the Regional District of Kootenay Boundary	340,780	\$ 105,094
BC Transit and the Regional District of Nanaimo	2,335,823	\$ 617,899

Public Transit System Participants	Ridership	Allocation
BC Transit and the City of Nelson	207,224	\$ 70,765
BC Transit and the North Okanagan Regional District	32,296	\$ 25,801
BC Transit and the Regional District of Okanagan-Similkameen	8,014	\$ 19,560
BC Transit and the District of 100 Mile House	8,468	\$ 19,677
BC Transit and the Town of Osoyoos	1,693	\$ 17,935
BC Transit and the City of Penticton	321,113	\$ 100,039
BC Transit and the City of Port Alberni	225,317	\$ 75,415
BC Transit and the District of Port Edward	31,032	\$ 25,476
BC Transit, the City of Powell River and the Powell River Regional District	141,314	\$ 53,823
BC Transit and the City of Prince George	966,945	\$ 266,043
BC Transit and the City of Prince Rupert	354,873	\$ 108,716
BC Transit and the Town of Princeton	6,749	\$ 19,235
BC Transit and the City of Quesnel	50,775	\$ 30,551
BC Transit and the City of Revelstoke	20,527	\$ 22,776
BC Transit and the City of Salmon Arm	65,693	\$ 34,386
BC Transit and the Town of Smithers	11,389	\$ 20,427
BC Transit and the District of Squamish	152,286	\$ 56,644
BC Transit and the Squamish-Lillooet Regional District	52,611	\$ 31,023
BC Transit and the District of Summerland	17,826	\$ 22,082
BC Transit and the Sunshine Coast Regional District	431,453	\$ 128,401
BC Transit and the City of Terrace	180,100	\$ 63,793
BC Transit and the Thompson-Nicola Regional District	3,772	\$ 18,470
BC Transit, the City of Vernon and the District of Coldstream	327,895	\$ 101,782
BC Transit and the Resort Municipality of Whistler	2,937,557	\$ 772,568
BC Transit and the City of Williams Lake	73,086	\$ 36,286
TOTAL	195,448,533	\$ 51,043,010

- (c) If, by November 30, 2007, any portion of Funds allocated under this Section is not included in a Funding Agreement under Section 7.2, that portion of the funding may be reallocated to other Eligible Recipients in accordance with principles established by the Partnership Committee.
- (d) The UBCM agrees that if Funds advanced by the UBCM to an Eligible Recipient are not paid by the Eligible Recipient in respect of Eligible Costs by March 31, 2010, the UBCM shall, unless otherwise agreed in writing in advance with Canada and British Columbia, recover the unspent Funds and reimburse Canada when requested. Such unspent Funds shall constitute a debt to Canada.

7.2 Delivery Mechanism

Eligible Recipients for funding allocated under Section 7.1(a) are BC Transit and the Local Government in which the public transit system is, or will be, located. Except for the Victoria Regional Transit Commission system, the Eligible Recipients for each of the public transit systems set out in Section 7.1(b) are limited to one or more of the participants identified in relation to that system. For the Victoria Regional Transit Commission system, Eligible Recipients are: BC Transit, the City of Colwood, the City of Langford, the City of Victoria, the District of Central Saanich, the Township of Esquimalt, the District of Highlands, the District of Metchosin, the District of North Sannich, the District of Oak Bay, the District of Saanich, the District of Sooke, the Town of Sidney and the Town of View Royal.

The UBCM will enter into a Funding Agreement with an Eligible Recipient in relation to all or part of the funding allocated under Section 7.1. For certainty, a Funding Agreement may include funding in relation to one or more individual public transit systems, but in circumstances where more than one system is included in a single Funding Agreement, the Funding Agreement must respect the funding allocations for each public transit system set out in Section 7.1.

A Funding Agreement must include a listing of Eligible Projects to which funding made available under the Funding Agreement will be applied. In the case of the Victoria Regional Transit Commission system, the listing of Eligible Projects must be approved by the Victoria Regional Transit Commission and by BC Transit. For all other public transit systems with more than one participant, the listing of Eligible Projects must be approved by all of the participants in the system.

Subject to having received the applicable funds from Canada, the UBCM will distribute funds directly to an Eligible Recipient within 30 days of the execution of the Funding Agreement between the Eligible Recipient and the UBCM. If the applicable funding has not been received by UBCM prior to the commencement of a Funding Agreement, UBCM will distribute funds within 30 days of receipt of the applicable funds from Canada.

7.3 Use of Funds

UBCM 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.

UBCM 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 UBCM in respect of the implementation and management of this Agreement shall be for the account of UBCM, provided that the Funds may be used by UBCM to pay the administrative costs incurred by UBCM in the delivery of the Funds or in fulfilling the reporting and audit requirements set out in Section 8. UBCM shall submit, in advance, for review by the Partnership Committee and acceptance by the Federal Minister, a business case justifying such use of Funds.

7.4 Agreement with Eligible Recipient

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

8. REPORTING, AUDITS AND EVALUATION

8.1 Reporting

8.1.1 UBCM will, at its cost, include this Agreement as part of its reporting requirements under the Canada – British Columbia – UBCM Agreement on the Transfer of Federal Gas Tax Revenues, signed on September 19, 2005. UBCM will include reporting on Public Transit Funds under this Agreement in the Annual Expenditure Report and the Outcomes Report under the Canada – British Columbia – UBCM Agreement on the Transfer of Federal Gas Tax Revenues, signed on September 19, 2005.

8.1.2 Canada may incorporate all or any part or parts of the said reports into any report that Canada may prepare for its own purposes, including any reports that may be made public.

8.2 Audits

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

8.2.2 Upon request by Canada, UBCM agrees to complete, at its cost, and provide to Canada an audit of any one or more individual Eligible Projects.

- 8.2.3 UBCM will share with Canada the results of any compliance or performance audit that they may carry out, beyond the Audit Report, which examines the use of Funds to a specific extent.

8.3 Evaluation

- 8.3.1 The Parties agree that the evaluation of this Agreement will be conducted as part of the evaluation agreed to under the Canada – British Columbia – UBCM Agreement on the Transfer of Federal Gas Tax Revenues, signed on September 19, 2005. The Parties shall seek the input of Eligible Recipients, or representatives thereof, as the Parties deem appropriate.
- 8.3.2 At a minimum, the evaluation will address the issues related to the achievement of the objectives of this Agreement, the use of Funds, the effectiveness of the funding approach described in Section 7, and the effectiveness of the communications protocol described in Schedule F.
- 8.3.3 The Parties agree to cooperate with respect to the above noted evaluation, the costs of which will be shared equally by the Parties. Canada agrees to consult with British Columbia and UBCM on the design of the evaluation framework.
- 8.3.4 In addition to the foregoing, the Parties agree that the evaluation of this Agreement will be included in the national evaluation as agreed to under the Canada – British Columbia – UBCM Agreement on the Transfer of Federal Gas Tax Revenues, signed on September 19, 2005.

9. DISPUTE RESOLUTION, DEFAULT, REMEDIES AND INDEMNITY

9.1 Dispute Resolution

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

9.2 Events of Default

- 9.2.1 Canada may declare that an event of default has occurred if British Columbia or the UBCM has:

- a) not complied with any condition, undertaking or material term in the Agreement; or
- b) defaulted under the Canada – British Columbia – UBCM Agreement on the Transfer of Federal Gas Tax Revenues signed on September 19, 2005.

9.2.2 Canada may declare that an event of default has occurred if the UBCM has:

- a) failed to deliver an Annual Expenditure Report, Audit Report or Outcomes Report, when required; or
- b) delivered an Annual Expenditure Report or Audit Report that disclosed non-compliance by either the UBCM or an Eligible Recipient.

Canada will not declare that an event of default has occurred unless it has consulted with British Columbia and/or UBCM, as appropriate, and given notice of the occurrence which, in Canada's opinion, constitutes an event of default to the appropriate Party.

British Columbia and/or UBCM, as applicable, within 30 days of receipt of the notice, shall either correct the condition or event, or demonstrate to the satisfaction of Canada that it has taken such steps as are necessary to correct the condition.

9.2.3 The UBCM may declare an event of default has occurred if Canada has:

- a) not complied with any condition, undertaking or material term in the Agreement;
- b) failed to deliver Public Transit Funds to the UBCM, as specified in Sections 6.1 to 6.3 of this Agreement; or
- c) defaulted under the Canada – British Columbia – UBCM Agreement on the Transfer of Federal Gas Tax Revenues, signed September 19, 2005.

The UBCM 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 UBCM'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 the UBCM that it has taken such steps as are necessary to correct the situation.

9.3 Remedies

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

- i) in the case of a default under subsection 9.2.1 above, terminate or suspend its obligation to pay funds. If Canada suspends payment, it may pay suspended funds if Canada is satisfied that the default has been cured; and
- ii) in the case of any other default, suspend its obligation to pay Funds pending Canada's satisfaction that the default has been cured.

9.3.2 If the UBCM 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, the UBCM may resume its obligations when satisfied the default has been cured.

9.4 Indemnity

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

- a) all Eligible Projects;
- b) the performance of this Agreement or the breach of any term or condition of this Agreement by the UBCM, its officers, employees and agents, or by a Third Party, its officers, employees or agents;
- c) the performance of a Funding Agreement or the breach of any term or condition of a Funding Agreement by an Eligible Recipient, its officers, employees and agents, or by a Third Party, its officers, employees or agents;
- d) the design, construction, operation, maintenance and repair of any part of an Eligible Project; and
- e) any omission or other wilful or negligent act of the UBCM, an Eligible Recipient or a Third Party and their respective employees, officers or agents

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

10. TERM OF AGREEMENT

This Agreement shall commence on March 31, 2006 and shall expire on March 31, 2010.

11. COMMUNICATIONS

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

12. MISCELLANEOUS

12.1 Binding Obligations

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

12.2 Survival

The Parties' rights and obligations, set out in Sections 2, 6.4, 6.5, 7.1 (d), 8, 9 and 11, will survive the expiry or early termination of this Agreement and any other Section or Schedule which is required to give effect to the termination or to its consequences shall survive the termination or early termination of this Agreement.

12.3 Governing law

This Agreement is governed by the laws applicable in British Columbia.

12.4 Debts Due to Canada

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

12.5 No Benefit

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

12.6 No Agency

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

12.7 No Authority to Represent

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

12.8 Counterpart Signature

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

12.9 Values and Ethics Code

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

12.10 Severability

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

12.11 Waiver

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

12.12 Lobbyists and Agent Fees

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

12.13 Amendments to the Agreement

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

12.14 Notice

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

Any notice to Canada must be sent to:

Assistant Deputy Minister, Cities and Communities
Office of Infrastructure Canada
90 Sparks Street
Ottawa, Ontario
K1P 5B4
Fax: 613-952-4978
Email: laroche.yazmine@infrastructure.gc.ca

Any notice to British Columbia will be addressed to:

Assistant Deputy Minister, Local Government Department

Ministry of Community Services
PO Box 9490 Stn Prov Gov
Victoria, British Columbia
V8W 9N7

Any notice to the UBCM will be addressed to:

Executive Director
Union of British Columbia Municipalities
60 - 10551 Shellbridge Way
Richmond, British Columbia
V6X 2W9

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

SIGNATURES

This Agreement has been executed on behalf of Canada by the Minister of Transport, Infrastructure and Communities, on behalf of British Columbia by the Minister of Community Services, and on behalf of the UBCM by the President.

GOVERNMENT OF CANADA
Original signed by:

GOVERNMENT OF BRITISH COLUMBIA
Original signed by:

Minister of Transport, Infrastructure and
Communities

Minister of Community Services

UNION OF BRITISH COLUMBIA
MUNICIPALITIES
Original signed by:

President

SCHEDULE A – Eligible Project Categories

Public Transit Infrastructure Eligible Project Categories are:

- developments or improvements to public transit systems (rapid transit, buses, bus ways, sea-buses, commuter rail, ferries, street cars, cycling and pedestrian infrastructure, etc.);
- road system improvements that encourage a reduction in car dependency (express bus lanes, HOV lanes, park and ride, bike paths, queue, etc.);
- public transit innovative technologies that support environmental sustainability; and
- paths and trails designed for commuting.

SCHEDULE B – Eligible Costs

Eligible Costs

1 Project Costs

Eligible Costs will be all direct costs which are, in the Parties' 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; and
- c) the costs of environmental assessments, monitoring and follow-up programs, as required by the *Canadian Environmental Assessment Act* or a Provincial equivalent.

2 Administration Costs

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

Ineligible Costs

Costs related to the following items are ineligible costs:

- a) Eligible Project costs incurred before May 18, 2005, or after March 31, 2010;
- b) services or works that, in the opinion of the Parties, are normally provided by the Eligible Recipient or a related party;
- c) salaries and other employment benefits of any employees of the Eligible Recipient;
- d) An Eligible Recipient's overhead costs, its direct or indirect operating or administrative costs and, more specifically, its costs related to planning, engineering, architecture, supervision, management and other activities normally carried out by its 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) costs of leasing of equipment by the Eligible Recipient;
- i) routine repair and maintenance costs;
- j) legal fees;
- k) administrative costs incurred as a result of implementing this Agreement, subject to 2 above; and
- l) audit and evaluation costs.

SCHEDULE C – Eligible Recipient Requirements

Eligible Recipients will:

1. unless a Transit Strategy for the public transit system for which the Eligible Recipient is receiving Funds is publicly available, make such a Transit Strategy available to the public by November 1, 2006. If the public transit system being funded under the Funding Agreement has an annual ridership of over 1,000,000, the Transit Strategy must include Transportation Demand Management measures.
2. ensure that the Public Transit Funds will result in net incremental capital spending on Public Transit Infrastructure.
3. permit Canada reasonable access to all records relating to all Eligible Projects that have received Funds.
4. be responsible for the complete, diligent and timely implementation and completion of the Eligible Project.
5. comply, as necessary, with the Communications Protocol set out in Schedule F.
6. 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.
7. implement all mitigation measures identified in any environmental assessment of the Eligible Project.
8. be responsible for any Public Transit Funds that are paid by the UBCM to the Eligible Recipient in advance of the Eligible Recipient incurring and paying Eligible Costs, and invest such Funds in accordance with British Columbia law and the Eligible Recipients' investment policies.
9. spend all Funds received from the UBCM by March 31, 2010. Unless otherwise agreed in writing in advance with the UBCM, any Funds which have not been spent on Eligible Costs by March 31, 2010, shall be deemed to constitute a debt to the UBCM and the UBCM shall take steps to recover the unspent Funds.
10.
 - (a) retain title to, and ownership of, the Public Transit Infrastructure resulting from the Eligible Project for at least ten (10) years after Project completion.
 - (b) except as provided for in paragraph (c), 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, the Eligible Recipient shall repay the UBCM, on demand, a proportionate amount of the Funds contributed by Canada, as follows:

Where Eligible Project asset is sold, leased, encumbered or disposed of:	Repayment of contribution (in current dollars)
Within 2 Years after Eligible Project completion	100%
Between 2 and 5 Years after Eligible Project completion	55%
Between 5 and 10 Years after Eligible Project completion	10%

(c) the repayment provision under paragraph (b) does not apply if the asset disposal is to:

- (i) Canada, British Columbia, a Local Government or a Crown corporation of British Columbia that is the latter’s agent for the purpose of implementing this Agreement; or
- (ii) a person who operates a public transit service on behalf of the Eligible Recipient, so long as the funded asset is used to operate a transit service primarily for public use or benefit.

The Eligible Recipient agrees to notify the UBCM in writing as soon as practicable of any transaction triggering the above mentioned payment

- 11. (a) award and manage all contracts for the supply of services and/or material to the Eligible Project (“Contracts”) in accordance with the Eligible Recipient’s relevant policies and procedures;
- (b) award contracts in a manner that is transparent, competitive and consistent with value-for-money principles.
- 12. acknowledge that it may use Funds to pay up to 100% of Eligible Costs of an Eligible Project, provided that to the extent it is receiving money under an Infrastructure Program in respect of an Eligible Project to which the Eligible Recipient wishes to apply Funds, the maximum federal contribution limitation set out in any Infrastructure Program contribution agreement made in respect of that Eligible Project shall continue to apply, and Funds paid to the Eligible Recipient shall be deemed to be a federal contribution under the said contribution agreement.
- 13. indemnify and save harmless Canada and the UBCM, their officers, servants,

employees or agents from and against all claims and demands, losses, costs, damages, actions, suits or other proceedings by whomsoever brought or prosecuted in any manner based upon, or occasioned by, any injury to persons, damage to or loss or destruction of property, economic loss or infringement of rights caused by or arising directly or indirectly from:

- i) all Eligible Projects;
- ii) the performance of this Agreement or the breach of any term or condition of this Agreement by the Parties, their officers, employees and agents, or by a Third Party and any of its officer, employees, servants or agents;
- iii) the performance of a Funding Agreement or the breach of any term or condition of the Funding Agreement by the Parties to the Funding Agreement, their officers, employees and agents, or by a Third Party and any of its officer, employees, servants or agents;
- iv) the design, construction, operation, maintenance and repair of any part of an Eligible Project; and
- v) any omission or other wilful or negligent act of an Eligible Recipient or Third Party and their respective employees, officers, servants or agents;

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

- 14. In the case where an Eligible Recipient wishes to utilize Funds for investments to enhance the security of its infrastructure, the Eligible Recipient must provide evidence that these investments satisfy the applicable conditions and requirements imposed by Transport Canada for such federally funded security projects, including those established under Transport Canada's Passenger Rail and Mass Transit Security Contribution Program.
- 15. Where projects result in emissions reductions that can earn offset credits (as per the Offsets System being proposed by the Government of Canada), the Eligible Recipient shall attribute the appropriate share of the ownership to Canada (based on Canada's contribution to the total project funding).

SCHEDULE D – Reporting and Audits

1. Reporting

1.1.1 Annual Expenditure Report

1.1.2 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;
- amounts held at year end by Eligible Recipients in aggregate to be paid for Eligible Projects.

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

1.1.4 The Annual Expenditure Report will also include

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

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

1.2 Outcomes Report

The Outcomes Report will report on the cumulative investments made, including information on the degree to which these investments have actually contributed to the objectives of reduced GHG emissions, reduced smog-forming air emissions or increased public transit ridership.

2. Audit Report

The Audit Report, which includes the results of financial and compliance audits, will provide an opinion as to whether all of the information contained in the Annual Expenditure Report is complete and accurate, and whether the UBCM 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
UBCM		
Opening balance of unspent Public Transit Funds		xxx
Received from Canada	xx	xxx
Transferred to Eligible Recipients	(xx)	(xxx)
Closing balance of unspent Public Transit Funds		xxx
Eligible Recipients in aggregate		
Opening balance of unspent Public Transit Funds		xxx
Received from UBCM	xx	xxx
Spent on eligible projects	(xx)	(xxx)
Closing balance of unspent Public Transit Funds		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 to be developed by the Partnership Committee as soon as possible:

Outcomes:

- a) Smog-forming air emissions: *[DETERMINE INDICATOR]*
- b) Lower GHG emissions: *[DETERMINE INDICATOR]*
- c) Increased public transit ridership: *[DETERMINE INDICATOR]*

Outputs:

Public Transit Infrastructure: *[DETERMINE INDICATOR]*

SCHEDULE F – Communications Protocol

Canada, British Columbia and the UBCM agree that Canadians have a right to transparency and public accountability, which is best served by full information about the benefits of the Public Transit Funds.

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

The Parties agree that:

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

The Government of Canada agrees that:

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

British Columbia and UBCM agree that:

1. all communications referring to projects funded under this Agreement will clearly acknowledge the contributions made by Canada.

2. all communications materials referring to the sharing of federal Public Transit Funds with Eligible Recipients will recognize this initiative through the use of the Canada word mark and of a tagline.
3. Funding Agreements will include a requirement to comply with 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 word mark. Where there is no fixed location for signage, such as a transit vehicle, a prominent marker will recognize the Government of Canada's contribution. All signage/plaques will be located in such a way as to be clearly visible to users, visitors and/or passersby.

General

1. The timing of public events shall be sufficient to allow for all orders of government to plan their involvement. A Party shall provide a minimum of 21 days notice of an event or announcement to all other Parties.
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. Costs related to announcements and signage in the French language will be the responsibility of Canada.

Assessment

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