

HALIFAX

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Item No. 14.1.2
Halifax Regional Council
January 24, 2017

TO: Mayor Savage and Members of Halifax Regional Council

Original Signed by 

SUBMITTED BY:

Jacques Dubé, Chief Administrative Officer

Original Signed by 

Jane Fraser, Acting Deputy Chief Administrative Officer

DATE: November 29, 2016

SUBJECT: Provincial Contribution Agreement: Clean Water & Wastewater Fund

ORIGIN

June 21, 2016 – Halifax Regional Council approval for federal infrastructure funding applications.

August 16, 2016 release by the Government of Canada of federal-provincial bilateral agreements on infrastructure and list of approved projects and funding.

November 8, 2016 - Halifax Regional Council approval to authorize a sole source award and reimbursement of an amount up to \$800,000 to the Halifax Regional Water Commission for the preliminary and detailed design and cost estimation for central water services to the Fall River Village Centre Designation (Map 1 & 2 of the staff report dated September 30, 2016);

November 22, 2016 – Halifax Regional Council approval to authorize a sole source award and reimbursement to the Halifax Regional Water Commission in the amount of \$75,000 for the preliminary design of a revised scope of work for the Herring Cove Water Servicing Project Phase 2B.

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 the Fall River Water Servicing Project.

BACKGROUND

In Spring 2016, the federal government announced Phase 1 of its long term infrastructure plan. Funding streams included public transit, water & wastewater, affordable housing, and protecting infrastructure from the effects of climate change. The proposed Fall River water service extension was eligible for the Clean Water & Wastewater Fund (CWWF) category. Under this program, cost sharing is 50% Federal, 25% Provincial and 25% Municipal.

On June 21, 2016, Council approved a list of projects to submit to the CWWF category for funding consideration. Seven projects, totaling \$66.05 million were submitted, including the proposed Fall River water service extension and the Herring Cove Servicing Phase 2B. As these two projects fall outside the service boundary HRM is responsible for the project construction costs. The other five projects fall under the responsibility of Halifax Water.

DISCUSSION

On August 16, 2016, the Prime Minister and Premier announced the infrastructure funding agreement for Nova Scotia, including a list of all projects approved for funding. These included:

- The Fall River central water service extension project, with \$3,962,870 from the Federal government and \$1,981,435 from the Provincial government.
- The Herring Cove water servicing Phase 2B, with \$2,280,976 from the Federal government and \$1,140,488 from the Provincial government.

The deadline for receiving the funding and implementing the projects is March 31, 2018.

The attached Contribution Agreement formalizes the Federal and Provincial shares of funding and establishes all terms and conditions. For the Fall River project, the Agreement establishes a combined Federal and Provincial contribution of \$5,944,305. This is the amount requested in HRM's funding application, and on November 8, 2016, Council approved a budget and project plan that contracts Halifax Water to undertake the design and construction of the Fall River project as planned. It is recommended that Council approve this agreement.

HRM has also received a draft contribution agreement for the Herring Cove project. However this project received significantly less federal and provincial funding than was requested. Council discussed this issue and approved an interim solution on November 22, 2016, which was to contract with Halifax Water to undertake preliminary design of a revised scope of work. Once a revised project scope is established, HRM may submit a revised application to the Provincial and Federal government and amend the Contribution Agreement accordingly. It is recommended that Council delay the approval of the Herring Cove contribution agreement until the amended scope is available.

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 estimated \$7.9 million cost of the water extension project will be covered 75% by Federal and Provincial funding, and 25% by a Local Improvement Charge (LIC).

The HRM costs associated with considering expansions to the Water Service Area Boundary and new Local Improvement Charges (LIC) can be accommodated within the current and proposed operating budget for Planning and Development.

RISK CONSIDERATION

The Federal Infrastructure program requires projects to be completed by March 31, 2018. As a significant amount of work is needed before construction can begin, there is a risk that the project could have difficulty in meeting the infrastructure program deadline.

Financial risks associated with project costs being higher than expected may be mitigated by reducing project limits, contingent upon the Federal and Provincial Governments approving the change in project scope. In addition the Municipality may also mitigate escalating costs by agreeing to contribute funds on behalf of residents who may connect in the future.

COMMUNITY ENGAGEMENT

N/A

ENVIRONMENTAL IMPLICATIONS

N/A

ALTERNATIVES

Council could choose not to approve the acceptance of the Fall River Contribution Agreement. This is not recommended as the funds will support a priority project requested by HRM which will bring safe, potable water to the community.

ATTACHMENTS

Appendix 1 Clean Water & Wastewater Fund Contribution Agreement: Fall River

A copy of this report can be obtained online at <http://www.halifax.ca/council/agendas/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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CLEAN WATER AND WASTEWATER FUND (CWWF)
CONTRIBUTION AGREEMENT

2016-17 to 2018-19

BETWEEN: **HER MAJESTY THE QUEEN IN RIGHT OF NOVA SCOTIA**, as represented by the Minister of Municipal Affairs (the "Province")

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 the Government of Canada announced in Budget 2016 an investment of \$120 billion in infrastructure over 10 years, including \$60 billion in new funding for public transit, green infrastructure, and social infrastructure, to better meet the needs of Canadians and to better position Canada's economy for the future;

WHEREAS the Government of Canada proposes to provide to all Provinces and Territories \$11.9 billion from this plan of which \$2.0 billion will be used for investments in water and wastewater projects;

WHEREAS the Minister of Infrastructure, Communities and Intergovernmental Affairs for Canada ("Canada") is responsible for the program entitled the "Clean Water and Wastewater Fund" ("CWWF") and has entered into a bi-lateral agreement with the Province, dated August 16, 2016 (the "CWWF Agreement"), in order to provide financial support to the Province for Projects approved under the CWWF;

AND WHEREAS pursuant to the CWWF Agreement, Canada and Nova Scotia have arranged that Nova Scotia shall be the contracting party to provide funds originating from both Canada and Nova Scotia to recipients;

WHEREAS the Recipient has applied and been approved by Canada and the Province for funding under the CWWF program for the Project as more particularly described in Schedule B (Statement of Work);

AND WHEREAS the Parties are desirous of entering into this Agreement in order to set out the terms and conditions of the Project funding;

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 Section.

"Agreement" means this agreement and all its schedules, as may be amended from time to time.

"Agreement End Date" means October 31, 2018.

"Asset" means any real or personal property or immovable or movable asset, acquired, constructed, rehabilitated or improved, in whole or in part, with funds provided by Canada and the Province under the terms and conditions of this Agreement.

"Communications Activities" include, but are not limited to, public or media events or

ceremonies including key milestone events, news releases, reports, web and social media products or postings, blogs, news conferences, public notices, physical and digital signs, publications, success stories and vignettes, photos, videos, multi-media content, advertising campaigns, awareness campaigns, editorials, multi-media products and all related communication materials.

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

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

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

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

“Eligible Expenditures” means those costs of a Project incurred and eligible for payment by Canada and the Province as set out in Schedule A (Eligible and Ineligible Expenditures).

“Fiscal Year” means from April 1st of a calendar year to March 31st of the next calendar year.

“Ineligible Expenditures” means those costs of a Project incurred and ineligible for payment by Canada and the Province as set out in Schedule A (Eligible and Ineligible Expenditures).

“Joint Communications” are events, news releases, and signage that relate to the promotion of the Program and/or Projects and are collaboratively developed and approved by Canada, the Province and the Recipient, and are not operational in nature.

“Oversight Committee” means the committee established under the CWWF Agreement to monitor the delivery of the CWWF.

“Program” means the Clean Water and Wastewater Fund.

“Project” means the project as set out in Schedule B (Statement of Work) and as approved by Canada and the Province.

“Project Approval Date” is August 16, 2016.

“Project Incrementality” means the condition set out in Section 3.1(e) which the Project must comply with in order to be approved for and receive funding under the CWWF and this Agreement.

“Project End Date” means the date by which the Project is due to be completed as described 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 Substantial Completion, as shown in Schedule F (Declaration of Substantial 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 a party which enters into a Contract with the Recipient in relation to the Project.

“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 in relation to the subject of the Agreement. No prior document, negotiation, provision, undertaking or agreement has legal effect, unless incorporated by reference into this Agreement. No representation or warranty express, implied or otherwise, is made by the Province 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 – Reporting Requirements

Schedule E – Communications Protocol

Schedule F – Declaration of Substantial Completion

Schedule G – Attestation for Project Incrementality

2. PURPOSE OF THE AGREEMENT

The purpose of this Agreement is to establish the terms and conditions whereby the Province will provide funding to the Recipient for the Project.

3. OBLIGATION OF THE PARTIES

3.1 CONTRIBUTION BY THE PROVINCE

- a) The Province 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 the Province for a 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).
- c) The maximum combined federal and provincial funding to the Project, will not exceed seventy-five percent (75%) of the total Eligible Expenditures for the Project. Funding from all federal sources will not exceed 50% of the total approved Eligible Expenditures for the project.
- d) Payments made during the Project will not exceed 90% of the Contribution. All projects are subject to a financial holdback of 10% until the Project is completed to the satisfaction of both Canada and the Province.
- e) The Province will request all funding paid out to a Recipient be repaid if the Project is deemed by Canada to not meet the Project Incrementality condition.
- f) The Parties acknowledge that Canada and the Province's role in a Project is limited to making a financial contribution to the Recipient for that Project and that neither Canada nor the Province will have any involvement in the implementation of that Project or its operation. Canada and the Province are neither decision-makers nor administrators to a Project.

3.2 CHANGES IN PROJECT COSTS AND FUNDING

The Province will be responsible to oversee and administer any Project amendments submitted by the Recipient in regards to the scope, timing and location of a Project provided that:

- a) Any federal or provincial funding paid for Eligible Expenditures incurred and paid for a Project will be returned to Nova Scotia should the Project be cancelled;
- b) The Recipient will inform the Province promptly of any planned changes to a Project. The Recipient agrees that any changes to that Project will require the Province's written consent; and,
- c) 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 a 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 both Canada and the Province may suspend its funding obligation. The Recipient will, within thirty (30) business days of a request from the Province, provide a summary of the measures that it proposes to remedy the shortfall. If the Province is not satisfied that the measures proposed will be adequate to remedy the shortfall, then the Province may exercise one of the remedies listed at section 12.3 (Remedies of Default).

3.3 APPROPRIATIONS AND FUNDING LEVELS

Notwithstanding the Canada or the Province'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 Parliament of Canada or the Legislative Assembly of Nova Scotia has not passed an appropriation that is sufficient and constitutes lawful authority for making the payment. Canada or the Province 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 Canada or the Province's main or supplementary estimates expenditures. Neither Canada nor the Province will 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 COMMITMENTS BY THE RECIPIENT

- a) The Recipient will complete the Project in a diligent and timely manner, within the costs and deadlines specified in this Agreement and in accordance with the terms and conditions of this Agreement. The Recipient will be responsible for all costs of the Project including cost over runs, if any.
- b) The Applicant shall use or engage qualified project management for the duration of the Project. Only with the written approval of the Province may an Applicant manage the Project with its own staff.
- c) The Recipient acknowledges that funding that may be received from the Province for the Project is not intended to replace or displace existing sources of funding for Recipient expenditures on the Project. As such, over the term of this Agreement, the Recipient will ensure that the Eligible Expenditures on the Project complies with the condition of Project Incrementality.
- d) The Recipient will ensure that it has provided proof, in a manner acceptable to Canada and the Province, that the Project complies with the condition of Project Incrementality and the Recipient shall sign a Schedule G (Attestation for Project Incrementality) to be submitted with the final claim form.
- e) The Recipient will ensure that the Project will be completed by March 31, 2018 and will provide to the Province a duly executed Schedule F (Declaration of Substantial Completion) to be submitted with the final claim form.
- f) The Recipient will be responsible for any costs associated with a Project that are found to be in non-compliance with the definition of Project Incrementality, as well as any costs of a withdrawn or cancelled Project and agrees to repay the Province any and all such disallowed costs, surpluses, unexpended contributions, and overpayments made under and according to the terms and conditions of this Agreement.
- g) The Recipient will be responsible for ensuring the implementation, operation, maintenance, and repair of the Assets and infrastructure investment that is the subject of this Agreement, in accordance with appropriate standards, for its full lifecycle.
- h) The Recipient will inform the Province immediately of any fact or event that may compromise wholly, or in part, a Project.

- i) The Recipient will ensure that prior to the commencement of the Project and throughout the term of this Agreement, it shall have in place the insurance policies set out in Section 5.3 (Insurance).

4. FISCAL YEAR BUDGETING

- a) The estimated contribution amounts payable by the Province to the Recipient for each Fiscal Year of the Project are set out in Schedule C (Statement of Financial Contribution).
- b) If the actual amount payable by the Province 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 the Province 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, the Province 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 Canada and the Province's contribution payable pursuant to subsection 3.1 (Contribution by the Province) in respect of that Project may be reduced by the amount of the requested re-allocation. If the contribution payable by the Province pursuant to subsection 3.1 (Contribution by the Province) 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.

5. CONTRACT PROCEDURES

5.1 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's procurement policy, including compliance with the Agreement on Internal Trade between the Federal, Provincial and Territorial governments.
- b) If the Province determines that the Recipient has awarded a Contract in a manner that is not in compliance with the foregoing, upon notification to the Recipients, the Province 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 including complete an account of the facts, 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 the Province prior to the cost being incurred.
- e) The Province may in its absolute discretion require a report on any cost or expense incurred by the applicant, whether tendered or not. The Recipient shall provide such details and information as the Province may reasonably require.

5.2 CONTRACT PROVISIONS

All contracts entered into by the Recipient with a Third Party for the implementation of the Project shall include the following provisions:

- 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 Substantial Completion Date and that the Province has the contractual right to audit such accounts and records;
- b) all applicable labour, environmental, and human rights legislation is respected; and

- c) the Province, Canada, the Auditor General of Canada, and their designated representatives, to the extent permitted by law, will at all times be permitted to inspect the terms and conditions of a Contract and any records and accounts respecting each Project and will have free access to each Project site and to any documentation relevant for the purpose of audit.
- d) The Third Party shall be solely responsible for and shall save harmless and indemnify Canada, Nova Scotia and their 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 or 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.

5.3 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 the Province, the Recipient shall provide proof of such insurance in a form acceptable to the Province.

6. CLAIMS AND PAYMENTS

6.1 PAYMENT CONDITIONS

The Province will not:

- a) pay any claims in respect of the Project submitted after June 30, 2018, unless otherwise accepted in writing by the Province;
- 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.

6.2 PROGRESS CLAIM

- 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 the Province. 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 31st of the year following the fiscal year in which the eligible cost is incurred and, in all circumstances, no later than June 30, 2018.
- 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 the Province.

6.3 FINAL CLAIM

The Recipient will submit a final claim to the Province for the project no later than June 30, 2018. Prior to the release of the final payment by the Province, all reporting requirements must be met as outlined in Schedule D (Reporting Requirements).

6.4 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.

6.5 PROJECT DEADLINE

The Project must be Substantially Complete by no later than March 31, 2018, and all claims for payment must be submitted to the Province for payment no later than June 30, 2018.

6.6 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 the Province.

6.7 DECLARATION OF SUBSTANTIAL COMPLETION

- a) The Declaration of Substantial Completion must be signed by an authorized official as deemed acceptable by the Province.
- b) The Declaration of Substantial Completion must be submitted to the Province when the Project can be used for the purpose for which it was intended but no later than June 30, 2018.

7. REPORTING

- a) The Recipient will provide regular progress updates and an outcomes progress report, as per Schedule D (Reporting Requirements), to the Province at a timing and frequency determined by the Province and at minimum on a semi-annual basis. The first progress report under this Agreement must cover the period from the Project Approval Date.
- b) The Recipient will submit, in a format acceptable to the Province, no later than June 30, 2018:
 - i. a final project report in accordance with Schedule D (Reporting Requirements); and
 - ii. a final outcomes report on the completed Project in accordance with Schedule D (Reporting Requirements).

8. AUDIT

- a) The Province may require additional assurances in the form of an independent audit opinion, carried out at the 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 Province for reimbursement were Eligible Expenditures.
- b) The Province reserves the right to undertake, at any time, any other audit in relation to a Project at its expense. The Province will conduct a program compliance audit which will include a financial component and the Recipient agrees to comply with requests for project information in an open and timely manner.
- 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 the Province 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 Substantial Completion Date.

9. EVALUATION

The Recipient agrees to provide all information related to the Project to the Province during and following the termination or expiry of the Agreement in order for Canada to conduct an evaluation of the performance of the CWWF.

10. ACCESS

The Recipient will provide the Province 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.

11. COMMUNICATION

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

12. DEFAULT

12.1 EVENTS OF DEFAULT

The following each constitute an “Event 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 submitted false or misleading information to the Province or made a false or misleading representation to the Province in respect of a Project or in this Agreement, except for an error in good faith, demonstration of which is incumbent on the Recipient, to the Province’s satisfaction.

12.2 DEFAULT

The Province will not declare that an Event of Default has occurred unless the Province has given notice to the Recipient of the event which in the Province’s opinion constitutes an Event of Default and the Recipient has failed, within thirty (30) business days of receipt of the notice, either to remedy the Event of Default or to demonstrate, to the satisfaction of the Province, that it has taken such steps as are necessary to remedy the Event of Default, and has notified the Province of the rectification.

12.3 REMEDIES ON DEFAULT

On the occurrence of an Event of Default under this Agreement, the Province may exercise one or more of the following remedies, without limiting any other remedy available to it at law:

- a) suspend or terminate any obligation of the Province to contribute or continue to contribute funding to a Project to which the Event of Default relates, including any obligation to pay any amount owing prior to the date of such suspension or termination;
- b) require the Recipient to reimburse the Province all or part of the contribution paid by the Province to the Recipient for the respective Project.

13. INDEMNIFICATION

The Recipient will at all times indemnify and save harmless Canada and the Province, 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, or a 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 Canada and the Province in the performance of his or her duties.

14. DISPOSAL OF ASSETS

- a) Unless otherwise agreed to by Canada and the Province, the Recipient shall retain title to and ownership of an Asset for five (5) years after the Agreement End Date. At any time or times during this five (5) year period, the Province may require written confirmation from the Recipient, to the satisfaction of the Province, that the Asset is and continues to be retained by the Recipient.
- b) If at any time within five (5) years from the Agreement End Date, the Recipient sells, leases, or otherwise disposes of, directly or indirectly, any Asset purchased, acquired, constructed, rehabilitated or renovated, in whole or in part, under this Agreement, other than to Canada, the Province, a local government, or with Canada's and the Province's consent, the Recipient may be required to reimburse Canada, via the Province, and the Province any funds received from the Province under this Agreement for the Project.

15. ENVIRONMENTAL ASSESSMENT

Canada's and the Province's funding for a Project is conditional upon Canada and the Province being satisfied that the responsibility of the federal authority or the responsible authority under the *Canadian Environmental Assessment Act, 2012 (CEAA, 2012)*.

16. ABORIGINAL CONSULTATION

Canada's and the Province's funding for a Project is conditional upon Canada and the Province being satisfied that its obligations with respect to the legal duty to consult, and if applicable, accommodate Aboriginal groups are met.

17. GENERAL

17.1 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 Public Sector Accounting Standards (GAAP) in effect in Canada.

17.2 SURVIVAL

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

17.3 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 either Canada or the Province 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 the Province should it become aware of the existence of any such situation.

17.4 NO AGENCY, PARTNERSHIP, JOINT VENTURE

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

17.5 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 a Party or to act as an agent for a Party. The Recipient will take the necessary action to ensure that any Contract contains a provision to that effect.

17.6 INTEREST ON DEBTS DUE

Debts due to Canada and the Province will accrue interest.

17.7 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.

17.8 ASSIGNMENT

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

17.9 AMENDMENTS

This Agreement may only be amended by the execution of a written Amending Agreement between the Parties, in a form satisfactory to the Province.

17.10 WAIVER

Either 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.

17.11 NOTICE

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

Aileen Waller-Hebb, Director of Grants and Programs
Department of Municipal Affairs
Maritime Centre, 14 North
1505 Barrington Street
PO Box 216
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:

Mr. Jacques Dubé, Chief Administrative Officer
Halifax Regional Municipality
PO Box 1749, 1841 Argyle St.
Halifax, NS B3J 3A5

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.

17.12 COMPLIANCE WITH LAWS

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

17.13 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.

17.14 SUCCESSORS AND ASSIGNS

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

IN WITNESS WHEREOF the Parties hereto have executed this Agreement as of the Effective Date.

SIGNED, SEALED AND DELIVERED
In the presence of:

Original Signed

Date: Nov. 17, 2016

GOVERNMENT OF NOVA SCOTIA
as represented by the Minister of
Municipal Affairs

Original Signed

Honourable Zach Churchill

Date: Nov. 17, 2016

SIGNED, SEALED AND DELIVERED

In the presence of:

HALIFAX REGIONAL MUNICIPALITY

Date: _____

Authorized Representative

Date: _____

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.
- 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) the expenditures for Project-related signage, lighting, Project markings and utility adjustments;
- f) costs of Aboriginal consultation;
- g) the Recipient audit and evaluation costs as specified in the Agreement;
- h) 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.
- i) leasing of equipment related to the construction of the Project;
- j) 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;
- k) project soft costs as described above in A.1(c) can begin to accrue effective as of April 1, 2016; and,
- l) other eligible expenditures in respect of the project can begin to accrue effective as of the Project Approval Date. However, all eligible expenditures outlined above can be reimbursed to the recipient only following the Effective Date of this Agreement.

A.2 *INELIGIBLE EXPENDITURES*

The following are expenditures that are not eligible:

- a) expenditures incurred before the Project Approval Date with the exception as noted in A.1(k) above;
- b) expenditures incurred after the Project End Date with the exception of expenditures related to audit and evaluation requirements pursuant to the Agreement;
- c) the maximum federal funding to a project from all federal sources, will not exceed one half (50%) of the total Eligible Expenditures for that project;
- d) the expenditures related to developing a business case or proposal for funding;
- e) the expenditures related to purchasing land, buildings and associated real estate and other fees;
- f) financing charges and interest payments on loans;
- g) leasing land, buildings, equipment and other facilities, except those specified as Eligible Expenditures in A.1(i) above;
- h) furnishings and non-fixed assets which are not essential for the operation of the Project.

- i) general repairs and maintenance of a Project and related structures, unless they are part of a larger capital expansion project;
- j) services or works normally provided by the Recipient, incurred in the course of implementation of the Project, except those specified as eligible expenditures;
- k) the expenditures related to any goods and services which are received through donations or in-kind contributions;
- l) 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 subsection A.1(h) above;
- m) taxes for which the Recipient is eligible for a tax rebate and all other expenditures eligible for rebates; and,
- n) legal fees.

SCHEDULE B – STATEMENT OF WORK

Recipient: **Halifax Regional Municipality**

Project Name: **Fall River Water Servicing**

Project Number: **05-16-0045**

Project Description:

Installation of approx. 3.5 km of central water services from Windsor Junction Rd to Fall River Centre via Fall River Rd.

Project Approval Date: **August 16, 2016**

Project End Date: **March 31, 2018**

SCHEDULE C - STATEMENT OF FINANCIAL CONTRIBUTION

Recipient: Halifax Regional Municipality

Project Name: Fall River Water Servicing

Project Number: 05-16-0045

Contribution by Canada and the Province:

Canada and Nova Scotia agree to pay a contribution to the Recipient of not more than seventy-five percent (75%) of the total Eligible Expenditures for the Project up to a maximum of \$5,944,304.

Project Cash Flow

Total Estimated Costs:	\$7,925,739	Total Shareable Costs:	\$7,925,739
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Estimated Expenditures	Forecast	
	Forecast of Estimated Contribution by Nova Scotia by Fiscal Year*	
Estimated Contribution by Canada and Nova Scotia	2016/17	2017/18
	\$2,887,235	\$3,057,069

*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 – REPORTING REQUIREMENTS

D.1 PROJECT PROGRESS REPORT

The Recipient will provide a progress report on the status of the Project, on a form provided by the Province. The information to be collected will include the dates around design, tender, award, construction start, anticipated completion date, any identified risks, financial information on claimed amount and anticipated claim amount. The Recipient will provide regular progress updates and an outcomes progress report to the Province at a timing and frequency determined by the Province and at minimum on a semi-annual basis.

D.2 OUTCOMES PROGRESS REPORT

- a) The Recipient will provide relevant baseline data for the performance indicators identified below within three (3) months of the date of signature on this Agreement by the Minister of Municipal Affairs.
- b) The Recipient will be required to provide aggregated results on progress on outcomes based on relevant performance indicators identified and chosen from the lists below, D.2 c), and from the application submitted.
- c) The performance indicators for CWWF are as follows:

Outcome	CWWF Performance Indicator
Improved reliability	Average % decrease in unplanned service interruptions per month (not related to weather)
	Average % decrease in volume of water leakage and/or infiltration that can be attributed to funded investments
Improved efficiency	Total estimated kilowatt-hours saved as a result of funded investments
	Average Life Cycle Cost of applicable water treatment systems after construction
Improved rehabilitation	Average Life Cycle Cost of applicable wastewater treatment and stormwater systems after construction
	Percentage of assets that have increased their physical condition rating (as per reporting guideline) as a result of funding
	Average number of years of useful life remaining on applicable wastewater treatment and collection components, extended as a result of funded investments
	Average number of years of useful life remaining on applicable storm water components, extended as a result of funded investments
Funded plans are being implemented	Average number of years of useful life remaining on applicable water treatment and distribution components, extended as a result of funded investments
	Number of funded water treatment plans and studies that have resulted in identified capital projects that are either included in capital planning documents with associated funding or that are in the process of being implemented
Safer drinking water	Number of funded wastewater plans and studies that have resulted in identified capital projects that are either included in capital planning documents with associated funding or that are in the process of being implemented
	Number of water treatment facilities that have improved water quality as a result of funded investments
	Number of drinking water systems that have eliminated a boil water advisory as a result of funded investments
	Number of water treatment systems that have met or exceeded applicable regulations and guidelines as a result of funding

Cleaner wastewater and stormwater	Number of applicable wastewater systems by treatment level (no treatment, Primary, Secondary, Tertiary) after end of construction
	Number of systems that have improved the quality of wastewater effluent or storm water discharge as a result of funded investments
	Number of wastewater systems that have met or exceeded applicable regulations and guidelines as a result of funding
Projects are incremental	Total value of capital expenditures for water and wastewater system projects for 2016
	Total value of capital expenditures for water and wastewater system projects for 2017

D.3 FINAL PROJECT REPORT

The Recipient will provide a final project report to the Province no later than June 30, 2018. The final project report will include the following:

- a) All information required under section D.1 (Project Progress Report) of this Schedule;
- b) An executed Schedule F (Declaration of Substantial Completion) of the Agreement, and an executed Schedule G (Attestation for Project Incrementality)

D.4 FINAL OUTCOMES REPORT

The Recipient will provide a final outcomes report to the Province no later than June 30, 2018. The final outcomes report will include aggregated results on outcomes based on performance indicators identified in section D.2 c) of this Schedule against the baseline data provided in section D.2 a) of this Schedule.

SCHEDULE E – COMMUNICATIONS PROTOCOL

E.1 Purpose

- a) This Communications Protocol outlines the roles and responsibilities of each of Canada and the Province, as well as those of the Recipient, with respect to Communications Activities related to Projects.
- b) This Communications Protocol will guide all Communications Activity planning, development and implementation with a view to ensuring efficient, structured, continuous, consistent and coordinated communications to the Canadian public.
- c) The provisions of this Communications Protocol apply to all Communications Activities related to this Agreement.

E.2 Guiding Principles

- a) Communications Activities undertaken through this Communications 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 funded Projects and their benefits.
- b) The Communications Activities undertaken to recognize federal funding will take into account the financial value and duration of the Project(s) and the feasibility of mounting joint Communications Activities.
- c) The Province is responsible for communicating the requirements and responsibilities outlined in this Communications Protocol to Recipients and for ensuring their compliance.
- d) The Province will communicate to Recipients any deficiencies and/or corrective actions identified by Canada, the Province or by the Oversight Committee.

E.3 Joint Communications

- a) Canada, the Province and the Recipient will have Joint Communications about the funding and status of the Project(s).
- b) Joint Communications related to Projects funded under this Agreement should not occur without the prior knowledge and agreement of Canada, the Province and the Recipient.
- c) All Joint Communications material will be approved by Canada and will recognize Canada's contribution under Schedule A (Program Details) and/or the Total Financial Assistance received for the Project(s).
- d) Canada, the Province or the Recipient may request Joint Communications. The requestor will provide at least 15 business days' notice to Canada, the Province or the Recipient. If the Communications Activity is an event, it will take place at a mutually agreed date and location.
- e) The requestor of the Joint Communications will provide the opportunity for Canada, the Province or the Recipient to choose to participate and choose their own designated representative (in the case of an event).
- f) Canada has an obligation to communicate in English and French. Communications products related to events must be bilingual and include the Canada word mark and other Parties' logos. In such cases, Canada will provide the translation services and final approval on products.
- g) The conduct of all Joint Communications will follow the *Table of Precedence for Canada* as applicable.

E.4 Individual Communications

- a) Notwithstanding Section C.3 of this Communications Protocol (Joint Communications), Canada retains the right to meet its obligations to communicate information to Canadians about the Agreement and the use of funds through its own Communications Activities.
- b) Canada and the Province may include general Program messaging and Project examples in their own Communications Activities. Canada, Nova Scotia and the Recipient will not unreasonably restrict the use of, for their own purposes, Communications Activities related to Projects funded through the Agreement and if web- or social-media based, from linking to it.

E.5 Operational Communications

The Province and the Recipient are solely responsible for operational communications with respect to Projects, including but not limited to: calls for tender, contract awards, and construction and public safety notices. Operational communications as described above are not subject to the *Official Languages Act* of Canada.

E.6 Media Relations

Canada and the Province will share information promptly with the other Party should significant media inquiries be received or emerging media or stakeholder issues arise to a Project or the overall fund.

E.7 Signage

- a) Canada, the Province and the Recipient may each have signage recognizing their funding contribution to the Projects.
- b) Unless otherwise agreed by Canada and the Province, the Recipient will produce and install a sign to recognize federal and provincial funding at each Project site in accordance with current federal signage guidelines. The federal sign design, content, and installation guidelines will be provided by Canada.
- c) Where the Recipient decides to install a permanent plaque or other suitable marker with respect to the Projects, it will recognize the federal and provincial contribution and be approved by Canada.
- d) The Province agrees to inform Canada of sign installations.
- e) If erected, signage recognizing the federal and provincial contribution will be installed at the Project site(s) thirty (30) days prior to the start of construction, be visible for the duration of the Project, and remain in place until thirty (30) days after construction is completed and the infrastructure is fully operational or opened for public use.
- f) If erected, signage recognizing the federal and provincial contribution will be at least equivalent in size and prominence to Project signage for contributions by other orders of government and be installed in a prominent and visible location that takes into consideration pedestrian and traffic safety and visibility.
- g) The Recipient is responsible for the production and installation of Project signage, including costs, or as otherwise agreed upon.
- h) In the case of Projects where the deliverable is a document, such as but not limited to plans, reports, studies, strategies, training material, webinars, and workshops, it will clearly recognize Canada's contribution under Schedule A (Terms and Conditions) and/or the Total Financial Assistance received for the Project(s).

E.8 Communicating With Recipients

The Province agrees to facilitate, as required, communications between Canada and the Recipient for Communications Activities.

E.9 Advertising Campaigns

Recognizing that advertising can be an effective means of communicating with the public, Canada and the Province may, at their own cost, organize an advertising or public information campaign related to this Agreement or eligible Projects. However, such a campaign will respect the provisions of this Agreement. In the event of such a campaign, Canada, the Province or the Recipient will inform the other of its intention no less than twenty-one (21) working days prior to the campaign launch.

SCHEDULE F - DECLARATION OF SUBSTANTIAL COMPLETION

In the matter of the Agreement between the Government of Nova Scotia, as represented by the Minister of Municipal Affairs, and the **Halifax Regional Municipality**, the Recipient, dated _____, pursuant to the Clean Water and Wastewater Fund Agreement (the "Agreement"):

I, _____, hold the position of _____ for the
(Name) (Title)

Halifax Regional Municipality, in the Province of Nova Scotia and, as such, have knowledge of the matters set forth in this declaration and believe this declaration to be true and correct.

I declare to the best of my knowledge and belief that the Project identified as **05-16-0045 – Fall River Water Servicing**, as approved on August 16, 2016 has reached Substantial Completion as defined in the Agreement on the _____ day of _____, 20____ (the "Substantial Completion Date").

All terms and conditions of the Agreement that are required to be met as of the date of this declaration have been met.

Declared at _____, in Nova Scotia

this _____ day of _____, 20____.

(Signature)

(Please Print Name)

SCHEDULE G - ATTESTATION FOR PROJECT INCREMENTALITY

In the matter of the Agreement between the Government of Nova Scotia, as represented by the Minister of Municipal Affairs, and the **Halifax Regional Municipality**, the Recipient, dated _____, pursuant to the Clean Water and Wastewater Fund Agreement (the "Agreement"):

I, _____, hold the position of _____ for the
(Name) (Title)

Halifax Regional Municipality, in the Province of Nova Scotia, and as such, have knowledge of the matters set forth in this declaration and believe this declaration to be true and correct.

The Project identified as **05-16-0045**, titled **Fall River Water Servicing** meets the Federal Government's requirement of Project Incrementality under the Clean Water and Wastewater Fund (CWWF).

I solemnly swear that (select all that apply):

- the Project would not otherwise have been undertaken in 2016-17 or 2017/18, or
 the Project would not have been undertaken without federal funding.

This condition has been met as of the date of this declaration.

Declared at _____, in Nova Scotia
(Municipality)
this _____ day of _____, 2016.

(Signature)

(Print Name)