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CITY OF KELOWNA

MEMORANDUM

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**Date:** July 16, 2009  
**File No.:** 0230-20  
**To:** City Manager  
**From:** Director, Regional Services  
**Subject:** Gas Tax Funding Agreement

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**RECOMMENDATION:**

THAT Council receive the report of the Director, Regional Services dated July 16, 2009.

AND THAT the Mayor and City Clerk be authorized to execute a funding agreement between the Union of BC Municipalities and the City of Kelowna to implement transit capital projects approved for the Central Okanagan.

**BACKGROUND:**

Between 2003 and 2005, the City oversaw the preparation of the Central Okanagan Smart Transit Plan. This work created the vision of a bus-rapid transit (BRT) system that will operate between the District of West Kelowna and the City of Kelowna.

In 2006, a capital investment plan was prepared for the purpose of applying for funding for transit improvements through federal gas taxes revenues. The Union of BC Municipalities (UBCM), the agency that disperses federal gas tax funding in BC, subsequently approved approximately \$10.5 million for a number of transit projects within Kelowna, West Kelowna and the Westbank First Nation. These were primarily transit exchanges and BRT stations along the proposed BRT route between the Westbank town centre and UBC Okanagan in Kelowna. The subject funding agreement allows the City and other local jurisdictions to take advantage of these funds to implement the intended projects.

Attached is the funding agreement which includes a description of the projects in Schedule B (page 13).

The funding agreement between the UBCM and the City of Kelowna sets out the conditions for the funding that has been approved. The City of Kelowna will act as the project manager on behalf of the Eligible Recipients for the use of the funds at the local level. Eligible projects can have started after April 21<sup>st</sup>, 2008 and must be completed by September 30<sup>th</sup>, 2013.

The status of work completed or in progress is:

- Mission Aquatic Transit exchange improvements are substantially completed
- Up to Six BRT stations being constructed along Hwy 97 in Kelowna during 2009
- Preliminary planning ongoing for the Rutland Town Centre transit exchange.

**INTERNAL CIRCULATION TO:**

Director, Finance Services

City Clerk

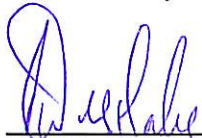
**FINANCIAL/BUDGETARY CONSIDERATIONS:**

The 2008 and 2009 Financial Plan included projects that were funding from this source of funding. Additional projects will be brought forward in future year Financial Plans that will have this as a funding source.

Considerations that were not applicable to this report:

- LEGAL/STATUTORY AUTHORITY
- LEGAL/STATUTORY PROCEDURAL REQUIREMENTS
- EXISTING POLICY
- PERSONNEL IMPLICATIONS
- TECHNICAL REQUIREMENTS
- EXTERNAL AGENCY/PUBLIC COMMENTS
- COMMUNICATIONS CONSIDERATIONS
- ALTERNATE RECOMMENDATION

Submitted by:



Ron Westlake, P.Eng.  
Director, Regional Services

Approved for Inclusion:



Attachment: Regionally Significant Project, Tier 1 and 2 Strategic Priorities Funds Agreement for Transfer of Federal Gas Tax Revenues



REGIONALLY SIGNIFICANT PROJECT, TIER 1 AND 2 STRATEGIC PRIORITIES  
FUND AND/OR INNOVATIONS FUND FUNDING AGREEMENT UNDER THE  
AGREEMENT ON THE TRANSFER OF FEDERAL GAS TAX REVENUES

This Agreement made as of \_\_\_\_\_, 2009,

BETWEEN:

THE CITY OF KELOWNA (the Recipient)

AND:

The UNION OF BRITISH COLUMBIA MUNICIPALITIES as continued by section 2 of the *Union of British Columbia Municipalities Act SBC 2006, c.18*, as represented by the President (UBCM).

WHEREAS:

- A. Her Majesty the Queen in Right of Canada (Canada), Her Majesty the Queen in Right of the Province of British Columbia (British Columbia) and the Union of British Columbia Municipalities (UBCM) entered into the Agreement on the Transfer of Federal Gas Tax Revenues (Gas Tax Agreement) on September 19, 2005.
- B. The Gas Tax Agreement provides for a Tier 1 and 2 Strategic Priorities Fund and an Innovations Fund.
- C. The Partnership Committee has determined that a portion of the Tier 1 and 2 Strategic Priorities Fund be set aside and made available for Tier 2 regions for Regionally Significant Projects and that the remainder will be known as General Strategic Priorities Fund.
- D. The Management Committee has approved funding of the Eligible Projects set out in Schedule B from the Innovations Fund, the General Strategic Priorities Fund, and/or the funding set aside for Regionally Significant Projects.
- E. The Gas Tax Agreement requires that the UBCM enter into a Funding Agreement with each Eligible Recipient prior to the transfer of Gas Tax Funds from the UBCM to the Eligible Recipient and to enforce all terms and conditions of that Agreement.

NOW THEREFORE, in consideration of the mutual promises herein, the Recipient and the UBCM agree as follows:

1. INTERPRETATION

1.1 Definitions

A capitalized term has the meaning given to it in this section or in section 1.1 of the Gas Tax Agreement, unless the context clearly dictates otherwise. If there is a conflict between the meaning of a term in this section and section 1.1 of the Gas Tax Agreement, the meaning in this section will prevail.

"Agreement" means this agreement between the Recipient and the UBCM.

"Chief Financial Officer" means the officer assigned financial administration responsibility under section 149 of the *Community Charter*.

"Eligible Costs" means those costs described in Schedule A, incurred in respect of Eligible Projects.

"Eligible Project" means an Environmentally Sustainable Municipal Infrastructure Project or a Capacity Building Project specifically described in Schedule B.

"Eligible Recipient" has the same meaning as in the Gas Tax Agreement.

"Environmentally Sustainable Municipal Infrastructure Project" means a project that results in a tangible capital asset in British Columbia primarily for public use or benefit and owned by an Eligible Recipient that:

- (i) improves the quality of the environment and contributes to reduced greenhouse gas emissions, clean water, or clean air, and
- (ii) falls within the category of projects described in Schedule A to the Gas Tax Agreement.

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

"Gas Tax Agreement" means the Canada – British Columbia – UBCM Agreement on the Transfer of Federal Gas Tax Revenues made as of September 19, 2005.

"Infrastructure Programs" means Canada's infrastructure programs in existence at the time of the execution of the Gas Tax Agreement, including the Canada Strategic Infrastructure Fund, the Border Infrastructure Fund, the Municipal Rural Infrastructure Fund and the Infrastructure Canada Program.

"Management Committee" means the management committee established under the Gas Tax Agreement.

"Partnership Committee" means the Partnership Committee established under the Gas Tax Agreement.

"Party" means the Recipient or the UBCM.

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

## 1.2 Schedules

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

Schedule A – Eligible and Ineligible Costs  
Schedule B – Eligible Projects

## 1.3 Accounting Principles

All accounting terms not otherwise defined therein 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. COMMITMENTS AND ACKNOWLEDGEMENTS OF THE RECIPIENT**

### **2.1 Eligible Project Approved for Funding and Changes to that Project**

- (a) The Eligible Project approved for funding is as described in Schedule B and funding under this Agreement is subject to completion of that Eligible Project. Funding under this Agreement will not be made available to the Recipient for an Eligible Project where the scope or Eligible Costs of the Eligible Project are different than that described in Schedule B, unless the Recipient has obtained prior written approval for the change from the Management Committee.
- (b) Management Committee shall not consider cost overruns on Eligible Projects other than in exceptional circumstances where:
  - (i) the Recipient informs the Management Committee as soon as it becomes aware that a cost overrun is probable;
  - (ii) the Management Committee approves the inclusion of the cost overrun as justifiable; and
  - (iii) Funds are available to cover the cost overrun.

### **2.2 Project Management and Requirement to Commence and Complete Project**

- (a) The Recipient will act in a project management capacity on behalf of the Eligible Recipients, and will be responsible to complete the Eligible Project. Upon completion, the Recipient will be responsible for the tangible capital assets resulting from the Eligible Project which are located within the City of Kelowna, and the Regional District of Central Okanagan will be responsible for the tangible capital assets resulting from the Eligible Project that are within the District of West Kelowna.
- (b) The Recipient will implement the Eligible Project in a diligent and timely manner, and has commenced or will commence carrying out the Eligible Project on or about the 21<sup>st</sup> day of April, 2008, or a later date approved in advance by the Management Committee, (the Commencement Date) and will complete the Eligible Project no later than the 30<sup>th</sup> day of September, 2013, or a later date approved in advance by the Management Committee (the Completion Date).
- (b) Upon request by UBCM, the Recipient will provide evidence to UBCM that the Recipient has commenced the Eligible Project.
- (c) If, after the Commencement Date, and in the judgment of the Management Committee, the Recipient fails to demonstrate that the Eligible Project has commenced, this Agreement may be terminated at the option of the Management Committee, effective immediately.

### 2.3 Undertaking the Eligible Project

The Recipient will:

- (a) award and manage all contracts for the supply of services and/or materials to the Eligible Project in accordance with the Recipient's relevant policies and procedures;
- (b) award contracts for the supply of services and/or materials to the Eligible Projects in a manner that is transparent, competitive, and consistent with value for money principles
- (c) 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; and
- (d) implement any mitigation measures identified in any environmental assessment of the Eligible Project.

### 2.4 Provisions relating specifically to Eligible Projects that are Environmentally Sustainable Municipal Infrastructure Projects

The Recipient agrees that:

- (a) in order to ensure completion of the Eligible Project as identified in this Agreement, the Eligible Project is subject to site visits at any time during construction and for a period of three years after its completion, and for this purpose, the Recipient will permit any member of the Management Committee, or its designate, at any reasonable time, to have access to the Eligible Project site;
- (b) upon completion of the Eligible Project, the Recipient or any other party to whom is assigned the ongoing responsibility for the Eligible Project shall take over full responsibility for the Eligible Project's operation, maintenance and repair;
- (c) except as provided for in paragraph (d), if, at any time within ten years from the date of completion of an Eligible Project, an 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 made available under this Agreement, the 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%
Rolling stock up to 10 years old	At book value depreciated according to GAAP

- (d) the repayment provision under paragraph (c) does not apply if the asset disposal is to Canada, British Columbia, a Local Government or a Crown corporation of British Columbia that is the latter's agent for the purposes of implementing this Funding Agreement or to another Eligible Recipient; and



- (e) it will notify the UBCM in writing as soon as practicable of any transaction triggering the above mentioned repayment.

## 2.5 Communications

The Recipient will ensure that:

- (a) all communications referring to projects funded under this Agreement clearly recognize Canada's investment and use the Canada word mark and a tagline;
- (b) permanent signage is placed in the location of projects funded under this Agreement, prominently identifying 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 Canada's contribution. All signage/plaques will be located in such a way as to be clearly visible to users, visitors and/or passersby;
- (c) a minimum of 21 days notice of an event or announcement in relation to a project funded under this Agreement is given to Canada, British Columbia and UBCM, in order that all orders of government may plan their involvement;
- (d) Canada, British Columbia and UBCM will each receive appropriate recognition in joint communications materials; and
- (e) joint communications material and signage will reflect Canada's communications policy, including the *Official Languages Act*, and federal-provincial identity graphics guidelines. Costs related to announcement and signage in the French language will be the responsibility of Canada.

## 2.6 Record Keeping, Reporting, and Audit

The Recipient will:

- (a) maintain proper and accurate accounts and records, including invoices, statements, receipts and vouchers in respect of all Eligible Projects that receive Funds and ensure that such records are kept for at least three years after termination of this Agreement and, upon reasonable notice, make them available to Canada or UBCM;
- (b) permit an audit of an Eligible Project and fully cooperate with any auditor retained by the UBCM for such purpose; and
- (c) provide to the UBCM, no later than July 1 of each year, a written report clearly setting out the following information for the previous fiscal year, and cumulatively from the date of this Agreement:
  - (i) the amount received from UBCM under this Agreement;
  - (ii) the aggregate amount of Funds paid for Eligible Costs of Eligible Projects under this Agreement;
  - (iii) the amount, if any, held at year end to be paid for Eligible Costs of Eligible Projects under this Agreement;
  - (iv) for each Eligible Project:
    - (A) the location;
    - (B) the investment category;
    - (C) the amount and identity of all sources of funding;
    - (D) the progress made towards its completion;
    - (E) the nature of the investment;
    - (F) the outcomes and outputs expected and achieved, stated in accordance with the indicators established by the Partnership Committee and provided in writing to the Recipient by UBCM; and
  - (v) a declaration from the Chief Financial Officer that to the best of that officer's knowledge:

- (A) all funds paid under this Agreement have been expended for Eligible Costs of Eligible Projects;
- (B) each Eligible Project funded will result in net incremental spending on infrastructure in accordance with the methodology for measuring incrementality approved by the Partnership Committee; and
- (C) the Recipient's financial statements were prepared following accounting rules of the Public Sector Accounting Board; and
- (d) if requested, provide to UBCM additional information that may be required in order for UBCM to fulfill its reporting, audit and evaluation requirements under the Gas Tax Agreement, including information with respect to use of Funds, incremental spending, Eligible Projects, outputs and outcomes of the investment, and related communications activities.

## 2.7 Indemnity

The Recipient will 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:

- (a) all Eligible Projects;
- (b) the performance of this Agreement or the breach of any term or condition of this Agreement by the Recipient, its officers, employees, and agents, or by a Third Party and any of its officer, employees, servants or agents;
- (c) the design, construction, operation, maintenance and repair of any part of an Eligible Project; and
- (d) any omission or other willful or negligent act of the 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.

## 3. CONTRIBUTION PROVISIONS AND PAYMENTS TO RECIPIENTS

### 3.1 Maximum Payment

- (a) UBCM will make a financial contribution from the Regionally Significant Projects Fund and the General Strategic Priorities Fund to the Recipient for the Bus Rapid Transit as described in Schedule B, that will not exceed the lesser of 100% of the Eligible Costs of that Eligible Project and \$10,530,000, representing \$4,848,000 from the Regionally Significant Projects Fund and \$5,682,000 from the General Strategic Priorities Fund.
- (b) The Recipient acknowledges that Eligible Costs are limited to net costs to the Eligible Recipients, that is, net of other grants and other external contributions. The Eligible Recipients acknowledges that any otherwise Eligible Costs that have



received funding from any other federal, provincial or Third Party source will not be reimbursed under this Agreement, and the Eligible Recipients agree to promptly notify UBCM in writing of any such funding received.

- (c) Any amount paid to the Recipient under this Agreement in excess of the maximum contribution set out in paragraph (a), must be repaid by the Recipient to UBCM.

### 3.2 Other Federal Funding

The Recipient acknowledges that it may use Funds to pay up to 100% of Eligible Costs of an Eligible Project, provided that to the extent it is receiving money under an Infrastructure Program in respect of an Eligible Project, the maximum federal contribution limitation set out in any Infrastructure Program contribution agreement made in respect of an Eligible Project shall continue to apply and Funds paid to the Recipient for Eligible Costs of the Eligible Project shall be deemed to be a federal contribution under the said contribution agreement.

### 3.3 Payments of Funds to the Recipient

- (a) Subject to paragraphs (d) and (e), and provided the Recipient is not in default of this Agreement, the UBCM will pay an amount validly claimed by the Recipient under paragraph (b) or (c) within 30 days of the verification of that claim.
- (b) Recipients may submit, on the form supplied by the UBCM, a claim or claims for payment of the contribution amount specified under section 3.1(a) at any time between the Commencement Date and six months after the Completion Date, but may only submit one claim for each Eligible Project each calendar quarter.
- (c) In order to be validly included in a claim for payment, amounts must be:
  - (i) Eligible Costs of an Eligible Project identified in Schedule B,
  - (ii) paid by the Recipient prior to the date of the claim,
  - (iii) not subject to reimbursement to the Recipient through any other grant, rebate or external contribution program or arrangement,
  - (iv) not included in a previous claim for payment under this Agreement, and
  - (v) when added to amounts included in all previous claims for payment under this Agreement, is less than the maximum contribution amount set out for that Eligible Project in section 3.1(a), or, if the claim is made prior to the completion of the project, 85% of that amount.
- (d) The UBCM may not pay a claim of the Recipient if the Recipient was required to file an annual report under a Community Works Fund Agreement and that report has not been filed.
- (e) The UBCM is not required to pay a claim of the Recipient if Funds received by UBCM from Canada under the Gas Tax Agreement are insufficient to make the payment.

### 3.4 Repayment Provisions

Whenever the Recipient is obliged to pay monies to the UBCM, under section 2.4(c) or 3.1(c) or any other provision of this Agreement:

- (a) it shall forthwith provide to the UBCM the required payment together with a full accounting, certified under the Chief Financial Officer's signature, of what monies

- the Recipient believes are owing to the UBCM, and the circumstances giving rise to the obligation to pay;
- (b) the Recipient shall, at the request of the UBCM, make available to the UBCM and its auditors all accounts and records and documents relating to the repayment; and
  - (c) the repayment shall constitute a debt to the UBCM and, unless repaid by the Recipient to UBCM, the UBCM may take steps to recover the unspent Funds, including deducting the debt from amount otherwise owing to the Recipient under this Agreement.

#### **4. DISPUTE RESOLUTION, DEFAULT AND REMEDIES**

##### **4.1 Dispute Resolution**

- (a) The UBCM and the Recipient are committed to working together and making all efforts to reach agreement on fulfillment of the terms and conditions of this Agreement and the UBCM's obligations to Canada and British Columbia under the Gas Tax Agreement. This includes early and ongoing communications and information sharing.
- (b) In the event of an unresolved dispute between the two parties regarding the terms and conditions of this Agreement, either party may refer the dispute to the dispute resolution process to be developed by the Partnership Committee.

##### **4.2 Default and Remedies**

- (a) If the Recipient fails to observe or comply with any of the terms or conditions set out in this Agreement, the UBCM, upon recommendation of the Management Committee, may, at its discretion exercisable by written notice to the Recipient, reduce, suspend or terminate any further payment.
- (b) On receipt of a default notice under this section, the Recipient must, within 30 days of receipt of such notice, remedy the default, or demonstrate to the satisfaction of the UBCM that it has taken sufficient actions as necessary to commence curing the default or must proceed to dispute resolution.
- (c) If and so long as the Recipient remains in default of this Agreement after notice, pursuant to this section has been given, the UBCM's obligation to make any further payments pursuant to section 3.3 of this Agreement are suspended.

#### **5. MISCELLANEOUS**

##### **5.1 Term**

This Agreement shall commence of the date that it is fully executed by both of the Parties and shall expire on March 31, 2015.

##### **5.2 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 this Agreement.

### **5.3 Survival**

The rights and obligations, set out in Sections 2.2, 2.4, 2.5, 2.6, 2.7, 3.3, and 3.4 will survive the expiry or early termination of this Agreement and any other section which is required to give effect to the termination or to its consequences shall survive the termination or early termination of this Agreement.

### **5.4 Governing law**

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

### **5.5 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 the UBCM and the Recipient, or between the UBCM, the Recipient and a Third Party.

### **5.6 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 Canada, British Columbia or UBCM or to act as agent for Canada, British Columbia or UBCM.

### **5.7 Counterpart Signature**

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

### **5.8 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.

### **5.9 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.

### **5.10 No Assignment**

This Agreement is not assignable by the Recipient and the Recipient shall not assign, pledge, or otherwise transfer any entitlement to Funds under this Agreement to any person and shall upon receipt of Funds hereunder pay and expend such Funds thereafter only in accordance with the terms and conditions of this Agreement.

#### 5.11 Joint Projects

Despite section 5.10, where the tangible capital asset resulting from the Eligible Project is, or will be, owned in whole or in part by an Eligible Recipient other than the Recipient, the Recipient may, upon prior written approval of the Management Committee, assign the obligations under this Agreement in relation to that Eligible Project to the owner of the asset.

#### 5.12 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.

#### 5.13 Amendments

This Agreement may be amended from time to time on written agreement of the Parties.

#### 5.14 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 calendar days after being mailed. Any notice, information or document sent by facsimile or email will be deemed validly received when so transmitted.

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

Facsimile: 604-270-9116  
Email: [ubcm@civicnet.bc.ca](mailto:ubcm@civicnet.bc.ca)

Any notice to the Recipient will be addressed to:

The Corporate Officer at the place designated as the local government office.

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

## SIGNATURES

This Agreement has been executed on behalf of the City of Kelowna, by the Mayor and duly authorized Corporate Officer pursuant to a resolution of Council, and on behalf of the Union of British Columbia Municipalities, by the President and its Corporate Officer.

CITY OF KELOWNA

UNION OF BRITISH COLUMBIA  
MUNICIPALITIES

\_\_\_\_\_  
Mayor

\_\_\_\_\_  
President

\_\_\_\_\_  
Corporate Officer

\_\_\_\_\_  
Corporate Officer

## SCHEDULE A – Eligible and Ineligible Costs

### 1. Eligible Costs

#### 1.1 Eligible 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.

#### 1.2 Eligible Costs in relation to a Recipient's Employees and Equipment

Except for those costs specifically set out as ineligible under section 2(c), the incremental costs of the Recipient's employees or equipment may be included in its Eligible Cost under the following conditions:

- (a) the Recipient has determined that it is not economically feasible to tender a Contract;
- (b) employees or equipment are employed directly in respect of the work that would have been the subject of the Contract; and
- (c) the arrangement is approved in advance and in writing by the Management Committee.

### 2 Ineligible Costs

Costs related to the following items are ineligible costs:

- (a) Eligible Project costs incurred before the date on which an application for funding for the Eligible Project was made;
- (b) services or works that, in the opinion of the Parties, are normally provided by the Eligible Recipient or a related party;
- (c) 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;
- (d) costs of feasibility and planning studies for individual Eligible Projects;
- (e) taxes for which the Eligible Recipient is eligible for a tax rebate and all other costs eligible for rebates;
- (f) costs of land or any interest therein, and related costs;
- (g) routine repair and maintenance costs;
- (h) legal fees;
- (i) audit and evaluation costs;
- (j) except as specified under section 1.2 above, salaries and other employment benefits of any employees of the Eligible Recipient;
- (k) except as specified under section 1.2 above, costs of leasing of equipment by the Eligible Recipient; and
- (l) administrative costs incurred as a result of implementing this Agreement.



## SCHEDULE B – Eligible Project

The following is the Eligible Project for purposes of this Agreement:

### Project Title: Bus Rapid Transit Project

Within the City of Kelowna:

- Construct Bus Rapid Transit stations along Highway 97, Highway 33 and Rutland Road North complete with all necessary elements which may include but not necessarily be limited to roadway pull-outs, platforms, bus shelters and ancillary furniture, equipment, signage, lighting and landscaping.
- Construct a transit exchange at the Mission Aquatic Centre, complete with all necessary elements which may include but not necessarily be limited to roadway pull-outs, platforms, bus shelters and ancillary furniture, equipment, signage, lighting and landscaping.
- Construct a transit exchange in the vicinity of the Orchard Park Shopping Centre complete with all necessary elements which may include but not necessarily be limited to roadway pull-outs, platforms, bus shelters and ancillary furniture, signage, lighting and landscaping.
- Construct a transit exchange in the vicinity of the Rutland Town Centre, complete with all necessary elements which may include but not necessarily be limited to roadway pull-outs, platforms, bus shelters and ancillary furniture, signage, lighting and landscaping.
- Construct a **pedestrian overpass** over Highway 97 in the vicinity of the Parkinson recreation complex, including on-off ramps, access trails and walks, benches, signage, lighting and landscaping.

Within the District of West Kelowna:

- Construct Bus Rapid Transit Stations along Highway 97 or parallel route(s), linking Queensway Town Centre with the Westside and Westbank Town Centres, complete with all necessary elements which may include but not necessarily be limited to roadway pull-outs, platforms, bus shelters and ancillary furniture, equipment, signage, lighting and landscaping.
- Construct a transit exchange and park and ride facility in the vicinity of the intersection of Westlake Road and Stevens Road (Stevens Exchange), complete with all necessary elements which may include but not necessarily be limited to roadway pull-outs, platforms, bus shelters and ancillary furniture, signage, lighting and landscaping
- Construct transit exchanges between Westside Rd and Westbank (Westside and Westbank Exchanges) where necessary complete with all necessary elements which may include but not necessarily be limited to roadway pull-outs, platforms, bus shelters and ancillary furniture, signage, lighting and landscaping