

THE CORPORATION OF THE CITY OF PETERBOROUGH

BY-LAW NUMBER 07-005

BEING A BY-LAW TO AUTHORIZE THE MAYOR AND CLERK TO SIGN A LETTER OF AGREEMENT BETWEEN THE PROVINCE OF ONTARIO REPRESENTED BY THE MINISTER OF TRANSPORTATION FOR THE PROVINCE OF ONTARIO AND THE CITY OF PETERBOROUGH TO FACILITATE PROVINCIAL FUNDING TO THE CITY UNDER THE DEDICATED GAS TAX FUNDS FOR PUBLIC TRANSPORTATION PROGRAM.

THE CORPORATION OF THE CITY OF PETERBOROUGH BY THE COUNCIL THEREOF HEREBY ENACTS AS FOLLOWS:

1. That the Mayor and Clerk be and they are hereby authorized to execute an agreement with the Province of Ontario, represented by the Minister of Transportation, attached hereby as Schedule "A", and to affix the Seal of the Corporation thereto.

By-law read a first, second and third time this 15th day of January, 2007

(Sgd.) D. Paul Ayotte, Mayor

(Sgd.) Nancy Wright-Laking, City Clerk

PROVINCIAL TRANSIT EXPANSION FUNDING AGREEMENT

FUNDING AGREEMENT RELATED TO PROVINCIAL TRANSIT EXPANSION FUNDING

THIS AGREEMENT made in triplicate as of the _____ day of _____, 2006.

B E T W E E N:

HER MAJESTY THE QUEEN IN RIGHT OF THE PROVINCE OF ONTARIO,
represented by the Minister of Transportation for the Province of Ontario

referred to herein as the
“Ministry”

A N D: The Corporation of the City of Peterborough

referred to herein as the
“Recipient”

WHEREAS the Government of Ontario is investing in Ontario’s Infrastructure (“Infrastructure” has the meaning given to it in section 1 of Schedule “A” (General Terms and Conditions));

AND WHEREAS the purpose of the provincial transit expansion funding (the “Program”) is to support the expansion of inter-regional transit Infrastructure within Ontario;

AND WHEREAS Ontario’s objectives for the Program include working with municipalities to build strong communities with clean and healthy environments, solving inter-regional and region-wide congestion and growth pressures, positioning inter-regional transit as an attractive and financially viable alternative to automobile use, and encouraging balanced, integrated planning and investment decision-making between highway and transit modes;

AND WHEREAS the Ministry is administering the Program;

AND WHEREAS the Recipient has submitted an Expression of Interest (“Expression of Interest” has the meaning given to it in section 1 of Schedule “A” (General Terms and Conditions)) for the Project (“Project” has the meaning given to it in section 1 of Schedule “A” (General Terms and Conditions)) which has been accepted for financial assistance by the Ministry;

AND WHEREAS this Agreement defines the terms and conditions of a financial contribution to assist with the Project;

NOW THEREFORE in consideration of the mutual covenants and agreements herein contained and other good and valuable consideration (the receipt and sufficiency of which is hereby acknowledged), the parties covenant and agree as follows:

This Agreement, including:

- Schedule “A” - General Terms and Conditions;
- Schedule “B” - Description of the Project;
- Schedule “C” - Financial Assistance;

Schedule "D" - Additional Provisions;
Schedule "E"- Communications Requirements
Attachment 1 – Visual Identity Signage; and
Schedule "F"- Performance Measurement

constitutes the entire agreement between the parties with respect to the subject matter contained in this Agreement and supersedes all prior oral or written representations and agreements.

IN WITNESS WHEREOF, the Ministry and the Recipient have respectively executed and delivered this Agreement as of the date set out above.

**HER MAJESTY THE QUEEN IN RIGHT OF
THE PROVINCE OF ONTARIO**, represented
by the Minister of Transportation for the
Province of Ontario

by:

Name:

Title:

The Corporation of the City of Peterborough

by:

Name: Sylvia Sutherland

Title: Mayor

Name: Nancy Wright-Laking

Title: City Clerk
I/we have authority to bind the Recipient

**SCHEDULE “A” GENERAL TERMS AND CONDITIONS
TO AN AGREEMENT RELATED TO THE FUNDING OF PROVINCIAL TRANSIT
EXPANSION BETWEEN THE MINISTER OF TRANSPORTATION FOR THE
PROVINCE OF ONTARIO AND THE CITY OF PETERBOROUGH**

**ARTICLE I
DEFINITIONS AND INTERPRETATION**

1. **Definitions.** When used in this Agreement (including the cover and execution pages and all of the schedules), the following terms shall have the meanings ascribed to them below:

“**90% of Maximum Financial Assistance**” means the amount set out in Schedule “C” (Financial Assistance) hereto.

“**Adjust the Financial Assistance**” means adjust the amount of the Financial Assistance on the Project or the amount of financial assistance for any other project(s) of the Recipient under the Program, or any other provincial program(s) (either current or future), and/or require repayment of some or all of the Financial Assistance of the Project in an amount to be determined by the Ministry and within the period specified by the Ministry.

“**Agreement**” means this Program agreement, including the cover and execution pages and all of the schedules hereto, and all amendments made hereto in accordance with the provisions hereof.

“**Allowable Financial Assistance**” has the meaning given to it in section 45 (Allowable Financial Assistance) of this Schedule “A” (General Terms and Conditions).

“**Asset**” means any Infrastructure or land or any interest in land for which Financial Assistance is provided pursuant to this Agreement.

“**Budget**” means the Project costs set out in Schedule “B” (Description of the Project).

“**Business Day**” means any day on which Government of Ontario offices generally are open for business in the Province of Ontario.

“**Communications Requirements**” means the communications requirements set out in Schedule “E” (Communications Requirements) hereto, or as directed by the Ministry from time to time.

“Consultant” means any consultant, engineer, contractor, project manager, architect or other service provider, as the case may be, retained by the Recipient to undertake any part of the work related to the Project.

“Crown Agency” means a crown agency as defined in the *Crown Agency Act* (Ontario).

“Eligible Cost” has the meaning given to it in section 9 (Eligible Costs) of this Schedule “A” (General Terms and Conditions).

“End of Financial Assistance Date” means March 31, 2007.

“Environmental Contaminant” means any hazardous or toxic substance or material including, without limitation, products of waste, contaminants, pollutants, dangerous substances, noxious substances, toxic substances, hazardous wastes and flammable, explosive or improperly handled friable materials.

“Environmental Laws” means all applicable federal, provincial or municipal laws, regulations, by-laws, orders, rules, policies or guidelines respecting the protection of the natural environment, public or occupational health or safety, and the manufacture, importation, handling, transportation, storage, disposal and treatment of Environmental Contaminants and includes, without limitation, the *Environmental Protection Act* (Ontario), the *Ontario Water Resources Act*, the *Environmental Assessment Act* (Ontario), the *Canadian Environmental Protection Act, 1999*, the *Canadian Environmental Assessment Act*, the *Fisheries Act* (Canada) and the *Navigable Waters Protection Act* (Canada).

“Event of Default” has the meaning given to it in section 68 (Event of Default) of this Schedule “A” (General Terms and Conditions).

“Expiration Date” means March 31, 2009.

“Expression of Interest” refers to the response provided to the Ministry’s request for expression of interest issued in December 2001.

“Final Report” has the meaning given to it in section 41 (Final Report) of this Schedule “A” (General Terms and Conditions).

“Final Report Date” means October 31, 2008.

“Financial Assistance” means the funds to be advanced by the Ministry to the Recipient pursuant to this Agreement.

“Generally Accepted Accounting Principles” means Canadian Generally Accepted Accounting Principles as adopted by the Canadian Institute of Chartered Accountants applicable as at the date on which such calculation is made or required to be made in accordance with Generally Accepted Accounting Principles.

“Generally Accepted Auditing Standards” means Canadian Generally Accepted Auditing Standards as adopted by the Canadian Institute of Chartered Accountants applicable as at the date on which such record is kept or required to be kept in accordance with Generally Accepted Auditing Standards.

“Ineligible Costs” has the meaning given to it in section 12 (Ineligible Costs) of this Schedule “A” (General Terms and Conditions).

“Infrastructure” means publicly or privately owned fixed capital assets in Ontario for public use or benefit. For the purpose of this Agreement, Transit Vehicles (as defined in this section 1 of Schedule “A” (General Terms and Conditions)) shall be deemed fixed capital assets.

“Licensed Marks” has the meaning given to it in section 61 (Licensed Marks) of this Schedule “A” (General Terms and Conditions).

“Mandatory Other Funds” means ninety-five percent (95%) of the Total Other Funds.

“Maximum Financial Assistance” means the amount set out in Schedule “C” (Financial Assistance).

“Ministry” has the meaning given to it on the first page of this Agreement.

“Municipality” means a municipality as defined in the *Municipal Act, 2001* (Ontario) and also includes local services boards as defined in the *Northern Services Boards Act* (Ontario) and other appropriate local authorities in unorganized areas.

“Payment Certifier” means a payment certifier as defined in the *Construction Lien Act* (Ontario).

“Procurement Policies” means the Ontario Government policies and directives in effect from time to time respecting the procurement of equipment, services and supplies, including construction, applicable to Ontario Government ministries and Crown Agencies and the Broader Public Sector (as defined from time to time in the procurement policies).

“Program” has the meaning given to it on the first page of this Agreement.

“Progress Report” has the meaning given to it in section 40 (Progress Reports) of this Schedule “A” (General Terms and Conditions).

“Project” means the Deployment of Transit Priority at Signalized Intersections.

“Provincial Share” means the amount set out in Schedule “C” (Financial Assistance).

“Public Transportation” means any service for which a fare is charged for transporting the public by vehicles operated by or on behalf of a municipality or local board thereof, or under an agreement between a municipality and a person, firm or corporation and includes special transportation facilities for the physically disabled, but does not include transportation by special purpose facilities such as school buses or ambulances.

“Public Transportation Vehicle” means a streetcar, a bus or a trolley bus used for Public Transportation.

“Rapid Transit Vehicle” means a subway car or light rail car used for Public Transportation.

“Recipient” has the meaning given to it on the first page of this Agreement.

“Reserve Lands” means a reserve as defined in the *Indian Act* (Canada).

“Schedule “B”” means Schedule “B” (Description of Project).

“Schedule “E” means Schedule “E” (Communications Requirements)” including Attachment 1 (Visual Identity Signage) to Schedule “E”.

“Sub-project” refers to any of the sub-projects that are described in Schedule “B” (Description of the Project).

“Sub-project Attachments” means the sub-project attachments to Schedule “B” (Description of the Project) which describe each Sub-project.

“Sub-project Milestones” means the key Sub-project tasks and timelines described in Schedule “B” (Description of the Project).

“Sub-project Schedule” means the Sub-project schedule(s) set out in Schedule “B” (Description of the Project).

“Substantially Performed” has the meaning set out in and shall be determined in accordance with subsection 2(1) of the *Construction Lien Act* (Ontario).

“Total Eligible Costs” means the amount set out in Schedule “C” (Financial Assistance) hereto.

“Total Project Costs” means the total of the Eligible Costs and Ineligible Costs incurred from April 1, 2002 to March 31, 2007, including the costs that are reimbursed by the Financial Assistance up to \$133,000 as set out under section 3 (Table B1 summary of costs related to the Project) of Schedule “B” (Description of the Project).

“Total Sub-project Costs” means the aggregate of the costs of the components for each Sub-project incurred between April 1, 2002 to March 31, 2007, including the costs that are reimbursed by the Financial Assistance as set out under section 5 (Table B3 summary of costs related to the Sub-project components) of the Sub-project Attachments.

“Trade Agreements” means the Agreement on Internal Trade and the Agreement on the Opening of Public Procurement for Ontario and Quebec, and all amendments to those agreements.

“Transit Vehicle” means either a Public Transportation Vehicle or Rapid Transit Vehicle.

2. **Herein, etc.** The words “herein”, “hereof” and “hereunder” and other words of similar import refer to this Agreement as a whole and not to any particular schedule, article, section, paragraph or other subdivision of this Agreement.
3. **Currency.** Any reference to currency is to Canadian currency and any amount advanced, paid or calculated is to be advanced, paid or calculated in Canadian currency.
4. **Statutes.** Any reference to a statute is to such statute and to the regulations made pursuant to such statute as such statute and regulations may at any time be amended or modified and in effect and to any statute or regulations that may be passed that have the effect of supplementing or superseding such statute or regulations.
5. **Gender, singular, etc.** Words importing the masculine gender include the feminine or neuter gender and words in the singular include the plural, and vice versa.

ARTICLE II TERM OF AGREEMENT

6. **Term.** Subject to any extension or termination of this Agreement or the survival of any of the provisions of this Agreement pursuant to the provisions contained herein, this Agreement shall be in effect from the date set out on the first page of this Agreement, up to and including the Expiration Date.
7. **End of Financial Assistance Date.** Notwithstanding anything else in this Agreement and no matter what the state of completion of the Project, the Ministry shall not be obligated to provide Financial Assistance under this Agreement after the End of Financial Assistance Date.
8. **Change to End of Financial Assistance Date.** Subject to prior Cabinet approval, upon request from the Recipient in writing within nine (9) months of the following dates, the Ministry may, at its sole discretion, change the End of Financial Assistance Date, Final Report Date and Expiration Date.

ARTICLE III ELIGIBLE COSTS

9. **Eligible Costs.** In order for a cost or expenditure to be eligible for Financial Assistance (an “**Eligible Cost**”) pursuant to this Agreement, the cost or expenditure must:
 - (a) be reasonable;
 - (b) be directly related to and necessary for the due implementation of the Project described in Schedule “B” (Description of the Project). For greater certainty, where Schedule “B” (Description of the Project) identifies any item that is specifically excluded from the description of the Project under this Agreement, the costs associated with such item are not eligible;
 - (c) be specifically identified in the Budget;
 - (d) have been incurred after April 1, 2002 and no later than March 31, 2007, except where otherwise expressly approved by the Ministry in writing; and
 - (e) be able to be documented at arms length through paid invoices or receipts.
10. **Retention of receipts.** The Recipient shall retain all evidence (such as invoices, receipts, etc.) of payment related to Eligible Costs and such supporting documentation must be made available to the Ministry or any third party or both, as the Ministry may direct in writing from time to time, when requested and maintained by the Recipient for audit purposes.

11. **Possible Eligible Costs.** Without limitation and provided that the criteria of section 9 (Eligible Costs) of this Schedule “A” (General Terms and Conditions) are met, Eligible Costs are as follows:
- (a) costs related to the purchase of land and any interest in land;
 - (b) capital costs (as defined by Generally Accepted Accounting Principles) of acquiring, constructing or renovating the Asset or any part of the Asset, including all applicable taxes but excluding any tax rebates for which the Recipient is eligible and except as specifically excluded by section 12 (Ineligible Costs) below;
 - (c) Project planning and management costs;
 - (d) professional fees of arm’s length Consultants (including, but not limited to, design, engineering and legal);
 - (e) transportation and delivery costs;
 - (f) installation and renovation costs;
 - (g) specialized training costs (e.g. training on new equipment);
 - (h) architectural, engineering and heritage studies related to the Project;
 - (i) risk assessment and technical studies;
 - (j) communications costs insofar as they relate to the Communications Requirements and only to the extent allowed by the Communications Requirements;
 - (k) official opening ceremony costs insofar as they relate to the Communications Requirements and only to the extent allowed by the Communications Requirements;
 - (l) off-site services costs as they may be approved by the Ministry and provided that they are necessary for the Project’s completion, are reasonable in nature and in distance and are for the Project’s principal use;
 - (m) the cost of insurance required pursuant to this Agreement; and
 - (n) the capital cost (as defined by Generally Accepted Accounting Principles) of special purpose equipment necessary for the operation of the Asset.

12. **Ineligible Costs.** Notwithstanding anything else contained herein, the following costs and expenditures are not eligible ("**Ineligible Costs**") for Financial Assistance pursuant to this Agreement:
- (a) costs of developing the business case for the purposes of applying for Financial Assistance in relation to the Project under this Agreement;
 - (b) costs related to the operation and maintenance of any capital assets;
 - (c) costs associated with obtaining necessary approvals, licenses or permits where the Recipient is the entity providing the approval, license or permit;
 - (d) costs associated with leasing land, buildings, equipment (except equipment described in section 11(n) (Possible Eligible Costs) of this Schedule "A" (General Terms and Conditions)) or other facilities; save and except for cost associated with leasing land and buildings required to perform the work necessary to complete the Project and for which prior approval in writing has been received from the Ministry;
 - (e) costs associated with general feasibility or general planning studies unless they form part of the Project and have received prior approval in writing from the Ministry;
 - (f) costs associated with fundraising campaigns, capital project financing or operating leases;
 - (g) costs associated with services or work normally provided by the Recipient as part of its operating budget or any agency of the Recipient;
 - (h) the salaries and other employment benefits of any employees, overhead costs as well as other direct or indirect operating or administrative costs of the Recipient and more specifically these costs as related to planning, engineering, architecture, supervision, management and other services provided by the Recipient's permanent staff;
 - (i) contributions or commitments in kind;
 - (j) costs associated with furniture, fixtures, decorations, fitting-up supplies, and the like;
 - (k) costs associated with Recipient travel;
 - (l) costs deemed ineligible under section 13 (Deemed ineligible) of this Schedule "A" (General Terms and Conditions); and

- (m) any other costs as determined by the Ministry from time to time and in its sole discretion.
13. **Deemed ineligible.** The Recipient acknowledges that the Ministry's fiscal year ends on March 31 in each year, and that should an Eligible Cost not be submitted by the Recipient for payment of Financial Assistance before March 31 of the year following the fiscal year in which it was incurred, such Eligible Cost shall be deemed ineligible for Financial Assistance.
14. **Clarification.** For clarity, the Recipient hereby expressly acknowledges that the inclusion of an item in the Budget does not necessarily mean that such item is an Eligible Cost. Where there is a conflict between the Budget and this Article III (Eligible Costs), the provisions of this Article III (Eligible Costs) shall prevail.

ARTICLE IV

FINANCIAL ASSISTANCE

15. **Use of Financial Assistance.** The Financial Assistance is intended for and shall be used only for Eligible Costs.
16. **Basis of pay-out of Financial Assistance.** The Financial Assistance will be provided by the Ministry to the Recipient on the basis set out in Schedule "C" (Financial Assistance).
17. **Under-spending of the Provincial Share of the Total Project Costs.** Within the Project, any under-spending of the Provincial Share of the Total Project Costs allocated to a Sub-project may be reallocated to any other Sub-project within the Project, subject to the Ministry's prior written approval.
18. **Funds advanced.** If the Ministry, in its sole discretion and only in exceptional circumstances, provides Financial Assistance prior to the Ministry receiving evidence that the associated Eligible Costs have already been paid by the Recipient, then such Financial Assistance, including all interest earned thereon, remains the property of the Ministry and must be held by the Recipient in an interest bearing account pending payment of Eligible Costs. Without limitation, any payment of Financial Assistance that is made to the Recipient without the requirement of the Recipient first providing the Ministry with either a Progress Report or a Final Report must meet the requirements of this section 18 (Funds advanced).
19. **Maximum Financial Assistance.** The total amount of Financial Assistance provided to the Recipient shall in any event be no greater than the Maximum Financial Assistance.

20. **Excess funds.** Where actual costs are lower or appear likely to be lower than the Total Eligible Costs, or where other funding is secured from any other government sources such that the funds available to the Recipient for the Project, including the Financial Assistance, exceed the Maximum Financial Assistance, the Recipient shall immediately notify the Ministry and the Ministry may, in its sole discretion, Adjust the Financial Assistance.
21. **Interdependent projects.** Where implementation of the Project is dependent on completion of a project by others and the interdependent project is not completed by others in whole or in part, the Ministry may, in its sole discretion, Adjust the Financial Assistance.
22. **Recipient not carrying out Project.** The Recipient shall immediately notify the Ministry if it does not intend to carry out the Project in whole or in part as specified in Schedule "B" (Description of the Project) in which case the Ministry may, in its sole discretion, Adjust the Financial Assistance.
23. **New information.** In the event of new information, errors, omissions or other circumstances affecting the determination of the amount of Financial Assistance under this Agreement, the Ministry may, in its sole discretion, Adjust the Financial Assistance.
24. **GST.** The Financial Assistance is based on the net amount of goods and services tax to be paid by the Recipient pursuant to the *Excise Tax Act* (Canada) net of any applicable rebates.
25. **Withholding payment.** The Ministry may, in its sole discretion, withhold payment of Financial Assistance where the Recipient is in default in obtaining any necessary permits, approvals or licenses applicable to the Project, is in default of compliance with any provisions of this Agreement or any applicable legislation, the Recipient owes the Ontario Government money under any other project or program funded by the Ontario Government, or if, following joint reviews by the Recipient and the Ministry, the Ministry is not satisfied that there is adequate evidence of progress being made.
26. **Insufficient funds provided by the Legislature.** If, in the opinion of the Ministry, the Legislative Assembly of Ontario does not provide sufficient funds to continue the Financial Assistance for any provincial fiscal year during which this Agreement is in effect, the Ministry may terminate this Agreement in accordance with the terms specified in section 72 (Termination without cause) of this Schedule "A" (General Terms and Conditions).

**ARTICLE V
PROJECT AWARD, MANAGEMENT AND COMPLETION**

27. **Recipient fully responsible.** The Recipient shall be fully responsible for the undertaking, implementation and completion of the Project, retain any and all Consultants reasonably required to undertake a project of the size, scope and complexity of the Project, and ensure that the Project is completed on or before 2007 unless otherwise agreed to by the Ministry in writing. Where implementation of the Project is dependent on completion of a project by others, the Recipient shall be fully responsible for obtaining any assurances that it may require from others in relation to the implementation of the Project by the Recipient.
28. **Ministry not responsible for implementation.** The Ministry shall not be responsible in any way whatsoever for the undertaking, implementation and completion of the Project or any interdependent project of others.
29. **Ministry not responsible for costs.** The Ministry shall not be responsible for any costs associated with the operation, maintenance and repair of the Project nor any claims arising from the tender and bidding process.
30. **Behaviour of Recipient.** The Recipient shall carry out the Project in an economical and businesslike manner, in accordance with this Agreement and, in particular but without limitation, in accordance with the Budget and the Sub-project Schedule subject to any reasonable changes that the Ministry may agree to or require from time to time in writing.
31. **Competitive process.** The Recipient shall acquire all equipment, services and supplies required for the Project through a competitive process that ensures the best value for funds expended. For equipment, services and supplies the estimated cost of which exceeds twenty five thousand dollars (\$25,000) the Recipient shall obtain at least three (3) written quotes unless:
- (a) the expertise the Recipient is purchasing is specialized and is not readily available; or
 - (b) the Recipient has recently researched the market for a similar purchase and knows prevailing market costs for the equipment, services or supplies purchased.
32. **Competitive tender.** All portions of the construction component of the Project (including materials and equipment) shall be competitively and openly tendered to competent contractors capable of completing the construction component of the Project, and the contract will be awarded to the lowest qualified bidder or, where the bid price is not the sole specified selection criterion, the highest ranked bidder.

33. **Procurement Policies and Trade Agreements.** If the Recipient is subject to the Procurement Policies, the Trade Agreements or both, it shall comply with the requirements of the Procurement Policies and the Trade Agreements as applicable. In the event of any conflict between the requirements of sections 31 (Competitive Process) and 32 (Competitive Tender) of this Schedule “A” (General Terms and Conditions) and the Procurement Policies or the Trade Agreements, the requirements of the Procurement Policies or the Trade Agreements shall apply.
34. **Long-term capital management plan.** The Recipient shall prepare and update annually thereafter a long-term capital asset management plan which outlines how the Recipient intends to meet its financial and other commitments for maintaining the Asset on an ongoing basis, including plans to recover the full operating costs through service charges where appropriate. Upon request, the Recipient shall provide to the Ministry a copy of the current long-term capital management plan.

ARTICLE VI RECORDS AND AUDIT

35. **Separate records.** The Recipient shall maintain separate records and documentation for the Project and keep all records and documentation for seven (7) years after the final settlement of accounts referred to in section 42 (Final claims) of this Schedule “A” (General Terms and Conditions). The Recipient shall maintain all records and documentation relating to the Project including, but not limited to, work authorizations, invoices, time sheets, payroll records, estimates and actual cost of the activities carried out pursuant to this Agreement, together with tenders and proposals, final measurements, payment certificates, change orders, correspondence, memoranda, contracts and amendments thereto which shall be maintained in accordance with Generally Accepted Accounting Principles and the Generally Accepted Auditing Standards.
36. **Provide records to Ministry.** The Recipient shall make available and provide, upon request, at the Recipient’s expense (including but not limited to photocopying, electronic media, transportation and postage, associated staff time, information retrieval and other office expenses) all records and documentation (including invoice summaries and certified statement of final costs) of the Recipient and its auditors, contractors, project managers and consultants relating to the Project or any other project(s) of the Recipient under the Program, or any other provincial program(s), for the purposes of cost reviews, audits and settlement, as deemed by the Ministry, of the Project or any other project(s) of the Recipient under the Program, or any other provincial program(s); such material to be provided to the Ministry and other ministries of the Province of Ontario as may be

required from time to time, all in a form and manner satisfactory to the Ministry and other ministries of the Province of Ontario, as applicable.

37. **External auditor.** The Ministry may require the assistance of an external auditor to carry out an audit in accordance with Generally Accepted Auditing Standards of the material referred to in sections 35 (Separate records) and 36 (Provide records to Ministry) of this Schedule "A" (General Terms and Conditions). If so, the Recipient shall, upon request and at the Recipient's expense, retain an external auditor acceptable to the Ministry. The Recipient shall ensure that any auditor who conducts an audit pursuant to this section 37 (External auditor) or otherwise, provides a copy of the audit report to the Ministry for its consideration at the same time that the audit report is given to the Recipient.
38. **Information.** The Recipient shall supply, upon request, such information in respect of the Project and its results, including without limitation all contracts and agreements related to the Project and all plans and specifications related to the Project, as the Ministry, external auditor or Provincial Auditor, including their agents and employees, may require. The Ministry, external auditor and Provincial Auditor, including their agents and employees, shall be allowed access to the Recipient's premises and staff and to the site to: (i) inspect the progress and monitor the Project; (ii) perform cost reviews and audits on the Project; and (iii) confirm the results of the Project in terms of achieving the objectives of the Program, including resolving any infrastructure problems that cause an immediate and serious problem for human health or the environment.
39. **Information condition precedent for payment.** If, in the opinion of the Ministry, any of the information requirements of this Article VI (Records and Audit) are not met, the Ministry may, in its sole discretion, require the information as a condition precedent to any payment in relation to the Project or any other project(s) of the Recipient under the Program or any other provincial program(s) (either current or future). In addition, the Ministry may, in its sole discretion, Adjust the Financial Assistance.

ARTICLE VII REPORTING REQUIREMENTS

40. **Progress Reports.** The Recipient shall submit progress reports (a "**Progress Report**") for the Project to the Ministry from time to time as required by Schedule "C" (Financial Assistance) hereto, or as requested by the Ministry and the Recipient shall follow such administrative procedures as are specified from time to time by the Ministry. Upon request by the Ministry, the Recipient shall meet with Ministry staff to discuss the reports and status of the Project. All Progress Reports shall be in a form satisfactory to the Ministry and shall include:

- (a) a detailed description of the progress of the Project to the date of the report;
 - (b) particulars of how the Communications Requirements have been implemented or applied;
 - (c) an interim unaudited financial statement showing Project expenditures and revenue certified by the chief financial officer of the Recipient;
 - (d) a certificate by a Payment Certifier or the chief financial officer of the Recipient certifying the percentage of the Project completed;
 - (e) an invoice summary, in the form(s) prescribed by the Ministry;
 - (f) when requested, all original invoices and receipts for the Project;
 - (g) details of any variance from the Project, the Budget and/or the Sub-project Schedule; and
 - (h) any other information respecting the Project that may be requested by the Ministry.
41. **Final Report.** Within three (3) months of the Project becoming Substantially Performed and no later than the Final Report Date or such longer period as is specified in writing by the Ministry, the Recipient shall submit a final report (the "**Final Report**") for the Project to the Ministry and the Recipient shall follow such administrative procedures as are specified from time to time by the Ministry. The Final Report shall be in a form satisfactory to the Ministry and shall include:
- (a) a detailed description of the Project as completed, including photographs;
 - (b) particulars of how the Communications Requirements have been implemented or applied;
 - (c) a final unaudited financial statement showing Project expenditures and revenue certified by the chief financial officer of the Recipient;
 - (d) a certificate by a Payment Certifier or the chief financial officer of the Recipient certifying that the Project has been Substantially Performed;
 - (e) an invoice summary, as prescribed by the Ministry;
 - (f) when requested, all original invoices and receipts for the Project;

- (g) details of any variance from the Project, the Budget and/or the Sub-project Schedule;
 - (h) details of how the objectives of the Program, as set out below, have been met:
 - (i) solving inter-regional and region-wide congestion and growth pressures;
 - (ii) positioning inter-regional transit as an attractive and financially viable alternative to automobile use;
 - (iii) achieving a significant automobile-to-transit modal shift in key commuter transportation markets, to achieve tangible regional environmental, economic and quality of life benefits;
 - (iv) encouraging balanced, integrated planning and investment decision-making between highway and transit modes; and
 - (v) integrating transportation Infrastructure planning with land use development strategies have been met; and
 - (i) any other information respecting the Project as may be requested by the Ministry, including audited financial statements.
42. **Final claims.** Upon receipt of the Final Report, the Ministry shall not be obligated to consider any further claims in relation to the Project.
43. **Fiscal year-end report.** Within thirty (30) days of March 31 of each year in which Eligible Costs are incurred, the Recipient shall provide to the Ministry an accounting of all Eligible Costs incurred in the twelve (12) months up until March 31.
44. **Subsequent report.** Within eighteen (18) months and no earlier than twelve (12) months from the Project becoming Substantially Performed, the Recipient shall provide to the Ministry a report indicating how the Project's objectives identified in paragraph 41(h) (Final Report) of this Schedule "A" (General Terms and Conditions) and in Schedule "F" (Performance Measurement) have been met.

ARTICLE VIII OVERPAYMENT

45. **Allowable Financial Assistance.** Funds advanced to the Recipient prior to settlement in accordance with section 42 (Final claims) of this Schedule "A" (General Terms and Conditions) shall not be construed as a final determination of

the amount of Financial Assistance applicable to the Project. Upon conducting a cost review or audit of the Project, the Ministry will determine the final amount of Financial Assistance on the Project (the “**Allowable Financial Assistance**”). The Recipient agrees to repay to the Ministry, upon receipt of a written demand and within the period specified by the Ministry, that portion of the total of the funds advanced that exceeds the Allowable Financial Assistance applicable to the Project, as determined by the Ministry, as well as any funds used for a purpose other than that stated in the terms of this Agreement, as determined by the Ministry.

46. **Deduction of overpayment.** The Ministry may deduct any overpayment of Financial Assistance pursuant to section 45 (Allowable Financial Assistance) of this Schedule “A” (General Terms and Conditions) made on the Project from financial assistance payable on any other project(s) of the Recipient under the Program or other provincial initiative(s) (either current or future). Any overpayment made on any other project(s) of the Recipient under the Program or other provincial program(s) (either current or future) may in turn be deducted from Financial Assistance owing on the Project.
47. **Interest on overpayment.** The Ministry reserves the right to demand interest on any overpayment of Financial Assistance owing by the Recipient under the terms of this Agreement at the rate established for the purposes of section 10 of the *Financial Administration Act* (Ontario), as amended. The Recipient shall pay the amount of interest owing upon receipt of a written demand and within the period specified by the Ministry.

ARTICLE IX INSURANCE AND BONDING

48. **Insurance.** The Recipient agrees to put in effect and maintain or cause to be put in effect and maintained for the period during which this Agreement is in effect, with insurers acceptable to the Ministry, all the necessary insurance that would be considered appropriate for a prudent Recipient of this type undertaking a project similar to the Project, including, without limitation:
- (a) Comprehensive General Liability Insurance, to an inclusive limit of not less than five million dollars (\$5,000,000) per occurrence for property damage, bodily injury and personal injury, and including, at least, the following policy endorsements:
 - (i) Her Majesty the Queen in right of Ontario as an additional insured for the purposes of the Project only;
 - (ii) Cross Liability;

- (iii) Contractual Liability;
 - (iv) Independent Contractors;
 - (v) Products and Completed Operations;
 - (vi) Employer's Liability and Voluntary Compensation;
 - (vii) Thirty (30) days written notice of cancellation;
 - (viii) Tenants Legal Liability (if applicable); and
 - (ix) Non owned automobile coverage with blanket contractual and physical damage coverage for Hired Automobiles.
- (b) Property Insurance to a limit commensurate to the full replacement cost value of the Asset on an "All Risks" basis (including earthquake and flood coverage where the Asset is located in the designated Ontario earthquake zone). The policy must include the following:
- (i) Replacement Cost Value;
 - (ii) Stated Amount Co-Insurance; and
 - (iii) Waiver of Subrogation.
- (c) Professional/Consultants Errors & Omissions Liability Insurance, insuring liability for errors and omissions in the performance or failure to perform professional services contemplated in this Agreement, in the amount of not less than two million dollars (\$2,000,000) per claim and in the annual aggregate.
49. **Certificate of insurance.** Prior to any scheduled payment of Financial Assistance pursuant to this Agreement and throughout the term of this Agreement the Recipient shall provide the Ministry with a valid certificate of insurance which references the Project, confirms the above requirements and identifies major exclusions in the policy. The Recipient shall provide the Ministry a copy of the policy and any renewal or replacement certificates as may be necessary or required by the Ministry or both. Notwithstanding section 48 (Insurance) of this Schedule "A" (General Terms and Conditions) and the above and subject to any other remedy of the Ministry under this Agreement, where Financial Assistance is provided in accordance with section 18 (Funds advanced) of this Schedule "A" (General Terms and Conditions), a certificate of insurance must be provided by the

Recipient no later than sixty (60) days after the date that the advance was made, failing which the Ministry may Adjust the Financial Assistance.

50. **Bonding.** The Recipient shall put in effect and maintain in full force and effect or cause to be put into effect and maintained in full force and effect during the term of this Agreement:
- (a) a performance bond in the amount of fifty percent (50%) of the contract price for any construction contract related to the Project and which is for an amount greater than two hundred thousand dollars (\$200,000) covering the performance of that construction contract and the correction of any deficiencies; and
 - (b) a labour and material payment bond in the amount of fifty percent (50%) of the contract price for any construction contract related to the Project and which is for an amount greater than two hundred thousand dollars (\$200,000) covering the payment for labour, material or both.

ARTICLE X INDEMNITY

51. **Ministry not liable.** In no event shall the Ministry be liable for:
- (a) any bodily injury, death or property damage to the Recipient, its employees, agents, or Consultants or for any claim, demand or action by any third party against the Recipient, its employees, agents, or Consultants, arising out of or in any way related to this Agreement or the Project; or
 - (b) any incidental, indirect, special or consequential damages, or any loss of use, revenue or profit to the Recipient, its employees, agents, or Consultants arising out of or in any way related to this Agreement or the Project.
52. **Recipient to indemnify.** The Recipient agrees to indemnify and hold harmless Her Majesty the Queen in right of Ontario, Her directors, officers, employees and agents from and against all suits, judgments, claims, demands, expenses, actions, causes of action and losses (including, without limitation, reasonable legal expenses and any claim for lien made pursuant to the *Construction Lien Act* (Ontario)) and for any and all liability for damages to property and injury to persons (including death) howsoever caused (except if caused by the Ministry's own negligence or willful misconduct), as a result of any claim, demand or action arising out of or in any way related to this Agreement or the Project.
53. **Further indemnity.** The Recipient further agrees to indemnify and hold harmless Her Majesty the Queen in right of Ontario, Her directors, officers, employees and

agents, for any incidental, indirect, special or consequential damages, or any loss of use, revenue or profit, by any person, entity or organization including the Ministry, arising out of or in any way related to this Agreement or the Project (except if caused by the Ministry's own negligence or willful misconduct).

ARTICLE XI TRANSFER OF ASSET

54. **Transfer of ownership.** The Recipient shall not transfer the ownership of all or part of the Asset established with the Financial Assistance. Any transfer of ownership in contravention of this provision gives the Ministry the right to Adjust the Financial Assistance.
55. **Exception.** Section 54 (Transfer of ownership) of this Schedule "A" (General Terms and Conditions) does not apply to a transfer of ownership to a Municipality, public utility commission or local services board provided that: (i) the Recipient obtains the prior written consent of the Ministry; and (ii) the Recipient, makes arrangements satisfactory to the Ministry regarding the obligation to repay the Ministry referred to in section 54 (Transfer of ownership) of this Schedule "A" (General Terms and Conditions). Any transfer of ownership by the Recipient in contravention of this provision does not relieve the Recipient of its obligation under section 54 (Transfer of ownership) of this Schedule "A" (General Terms and Conditions) to repay the Ministry for some or all of the Financial Assistance in the amount determined by the Ministry and within the period specified by the Ministry.
56. **Lease, etc.** The Recipient shall not lease, license the use of, mortgage, charge or encumber the Asset or any part thereof, without the prior written consent of the Ministry, except for the lease or licensing of retail premises to concessionaires for the sale of services and products customarily offered for sale in facilities such as the Asset provided that such retail premises do not in the aggregate exceed ten percent (10%) of the floor area of the Asset.
57. **Deduction from Financial Assistance.** The Ministry may deduct the amount of Financial Assistance to be repaid under section 54 (Transfer of ownership) of this Schedule "A" (General Terms and Conditions) from financial assistance payable on any other project(s) of the Recipient under the Program or any other provincial program(s) (either current or future).

ARTICLE XII CONFLICT OF INTEREST AND CONFIDENTIALITY

58. **No conflict of interest.** The Recipient and its Consultants and any of their respective advisors, partners, directors, officers, employees, agents and volunteers shall not engage in any activity or provide any services where such

activity or the provision of such services creates a conflict of interest (actually or potentially in the sole opinion of the Ministry) with the terms and conditions set out in this Agreement. The Recipient acknowledges and agrees that it shall be a conflict of interest for it to use confidential information of the Crown relevant to the Project or otherwise where the Ministry has not specifically authorized such use.

59. **Disclose potential conflict of interest.** The Recipient shall disclose to the Ministry without delay any actual or potential situation that may be reasonably interpreted as either a conflict of interest or a potential conflict of interest.
60. **Freedom of Information and Protection of Privacy Act.** The Recipient acknowledges that the Ministry is bound by the provisions of the *Freedom of Information and Protection of Privacy Act* (Ontario) and regulations thereunder.

ARTICLE XIII COMMUNICATIONS AND RECOGNITION

61. **Licensed Marks.** The Recipient acknowledges that Her Majesty the Queen in right of the Province of Ontario is or will be the owner of certain distinguishing marks comprised of designs, trademarks and official marks which have come or will come to be associated with the Province of Ontario (all such current and future marks, being the “**Licensed Marks**”).
62. **Acknowledgement in advertising and publicity.** The Recipient agrees to acknowledge the Financial Assistance of the Government of Ontario to the Project in all advertising and publicity relating to the Project and in any construction signs and in any temporary or permanent tributes to Project donors by adhering to the Communications Requirements.
63. **Use of Licensed Marks.** In consideration of receiving the Financial Assistance, the Recipient agrees to use the Licensed Marks as follows:
 - (a) the Recipient agrees to strictly use the Licensed Marks only as prescribed by the Communications Requirements and further as prescribed from time to time by the Ministry and not to use any other mark or trademark in combination with any of the Licensed Marks without the prior written approval of the Ministry. The Recipient agrees that it will not alter, modify, dilute or otherwise misuse the Licensed Marks;
 - (b) the Recipient agrees to submit to the Ministry copies of any advertisements or promotional materials containing the Licensed Marks for the Ministry’s approval prior to any use thereof and to remove therefrom either any

reference to the Licensed Marks or any element which the Ministry may from time to time upon reasonable notice designate;

- (c) the Recipient agrees that it will not state or imply, directly or indirectly, that the Recipient or the Recipient's activities, other than those permitted by this Agreement, are supported, endorsed, or sponsored by the Ministry and upon the direction of the Ministry shall issue express disclaimers to that effect; and
 - (d) the Recipient agrees to promptly inform the Ministry of any suspected infringement of any Licensed Marks by a third party.
64. **Cease using Licensed Marks.** Whether or not the Recipient is in breach of this Agreement, forthwith upon any receipt by the Recipient of a written direction from the Ministry, the Recipient shall cease using the Licensed Marks, and without limiting the generality of the foregoing, will remove all signage and remove from circulation any use or reference to the Licensed Marks.
65. **Indemnity.** The Recipient hereby indemnifies the Ministry against any and all claims for death, illness, personal injury, property damage, improper business practices, or loss of any kind where such claims are in whole or in part premised upon the Recipient's use of the Licensed Marks.

ARTICLE XIV COVENANTS, REPRESENTATIONS AND WARRANTIES

66. **Covenants, representations and warranties.** The Recipient covenants, represents and warrants to the Ministry that:
- (a) it is conducting its business in compliance with all applicable federal, provincial and municipal laws, and all rules, regulations, by-laws, notices, orders and approvals;
 - (b) it has authority and any necessary approval to enter into this Agreement and to carry out its terms and, where applicable, has passed any required by-law or band council resolution;
 - (c) it has or will apply for all permits, approvals, and licenses which are required in order to carry out the Project including, but not limited to, any approvals lawfully required under the *Planning Act* (Ontario), the *Building Code Act* (Ontario), the *Highway Traffic Act* (Ontario), the *Public Transportation and Highway Improvement Act* (Ontario), the *Bridges Act* (Ontario) and the Environmental Laws;

- (d) it validly exists as a legal entity with full power to perform and observe all the terms and conditions of this Agreement;
- (e) it is now and will continue to be compliant with all Environmental Laws;
- (f) no construction, including, without limitation, site excavation, with respect to the Project occurred prior to April 1, 2002;
- (g) provided the Recipient is not a Municipality or a Crown Agency, it
 - (i) is not a non-resident of Canada within the meaning of the *Income Tax Act* (Canada);
 - (ii) is either a corporation, a partnership or a sole proprietorship validly in existence; and
 - (iii) is registered and qualified to do business wherever necessary to carry out the Project;
- (h) if the Recipient is a Municipality or a Crown Agency, it has the requisite legislative authority to carry out the Project;
- (i) it has the experience, financial means and ability to carry out the Project;
- (j) it will provide or arrange for funds totaling at least as much as the Mandatory Other Funds to be used for the Project;
- (k) other than the Financial Assistance being provided pursuant to this Agreement, the Recipient has not and will not use any capital funding received from Her Majesty the Queen in right of Ontario or a Crown Agency towards any aspect of the Project; and
- (l) all information provided by the Recipient for and during the Program remains true, correct and complete in every respect except as set out to the contrary in this Agreement. Without limitation, Project, Budget, Sub-project Milestones, Other Funds, Total Other Funds and Alternative Funds are as set out in this Agreement and not as set out in the application material.

67. ***Representations and warranties true condition precedent for payment.*** Upon request, the Recipient shall provide the Ministry with proof of the matters referred to in this Article XIV (Covenants, Representations and Warranties). It is a condition precedent to any payment under this Agreement that the representations and warranties under this Article XIV (Covenants, Representations and Warranties) are true at the time of payment and that the Recipient is not in default

of compliance with any terms of this Agreement. Where this is not the case, the Ministry may, in its sole discretion, Adjust the Financial Assistance.

ARTICLE XV DEFAULT, ENFORCEMENT AND TERMINATION

68. **Event of Default.** Each and every one of the following events is an “**Event of Default**”:
- (a) if in the opinion of the Ministry, the Recipient fails to conform or comply with any term or covenant contained in this Agreement to be performed or complied with by the Recipient;
 - (b) if in the opinion of the Ministry any representation or warranty made by the Recipient in this Agreement or any certificate delivered to the Ministry pursuant hereto shall be materially untrue in any respect;
 - (c) if an order is made or an effective resolution passed for the winding up, or liquidation or dissolution of the Recipient or the Recipient is otherwise dissolved or ceases to carry on its operation;
 - (d) if the Recipient ceases to have the status of a Municipality or band of Indians under the *Indian Act* (Canada);
 - (e) if the Recipient uses any of the Financial Assistance for a purpose not authorized by this Agreement without the prior written consent of the Ministry;
 - (f) if the Recipient admits in writing its inability to pay its debts generally as they become due, voluntarily suspends transactions of its usual business, becomes insolvent, bankrupt, makes an assignment for the benefit of its creditors, or a receiver or manager, court appointed or otherwise, is appointed for its assets or if the Recipient takes the benefit of any statute from time to time in force relating to bankrupt or insolvent debtors;
 - (g) if in the opinion of the Ministry a material adverse change occurs such that the viability of the Recipient as a going concern is threatened;
 - (h) if in the opinion of the Ministry the Recipient ceases to operate;
 - (i) if in the opinion of the Ministry the Recipient has failed to proceed diligently with the Project or abandons the Project in whole or in part, or the Recipient is otherwise in default in carrying out any of the terms, conditions or obligations of this Agreement, except where such failure is due to causes which, in the opinion of the Ministry are beyond the control of the Recipient;

- (j) if the Recipient has transferred all or part of the Asset, contrary to section 54 (Transfer of ownership) of this Schedule "A" (General Terms and Conditions);
 - (k) if the Recipient has submitted false or misleading information to the Ministry;
or
 - (l) the Recipient and/or any of its Consultants and/or any of their respective advisors, partners, directors, officers, employees, agents and volunteers has breached the requirements of Article XII (Conflict of Interest and Confidentiality).
69. **Waiver.** The Ministry may, at any time, waive any Event of Default which may have occurred provided that no such waiver shall extend to, or be taken in any manner whatsoever to affect, any subsequent Event of Default or the right to remedies resulting therefrom, and that no such waiver shall be, or shall be deemed to constitute, a waiver of such Event of Default unless such waiver is in writing from the Ministry.
70. **Remedies on default.** Notwithstanding any other rights which the Ministry may have under this Agreement, if an Event of Default has occurred, the Ministry shall have the following remedies provided only that in the case of an Event of Default which, in the opinion of the Ministry in its sole discretion, is curable, the Ministry has first given written notice of the Event of Default to the Recipient and the Recipient has failed to correct the Event of Default within ten (10) Business Days or such longer period of time as the Ministry may consent to in writing:
- (a) The Ministry shall have no further obligation to provide any Financial Assistance for the Project;
 - (b) The Ministry may, at its option, terminate this Agreement and may, in its sole discretion, Adjust the Financial Assistance. The total amount of Financial Assistance shall be immediately due and payable by the Recipient and bear interest at the rate established under section 10 of the *Financial Administration Act* (Ontario), as amended; and
 - (c) The Ministry may avail itself of any of its legal remedies which it may deem appropriate.
71. **Additional remedies.** In addition to the remedies described in section 70 (Remedies on default) of this Schedule "A" (General Terms and Conditions), the Ministry may commence such legal action or proceedings as it, in its sole discretion, may deem expedient, without any additional notice under this Agreement. The rights and remedies of the Ministry hereunder are cumulative and

in addition to, and not in substitution for, all other rights or remedies otherwise available to the Ministry.

72. **Termination without cause.** Notwithstanding anything else contained herein, the Ministry reserves the right to terminate this Agreement without cause upon such conditions as the Ministry may require, with a minimum of seven (7) days written notice to the Recipient. If the Ministry terminates this Agreement prior to the Expiration Date, the Ministry, subject to all of the Ministry's rights under this Agreement, including, without limitation, the Ministry's right to Adjust the Financial Assistance, shall only be responsible for the payment of Financial Assistance on the portion of the Project completed and Eligible Costs already incurred and paid at the time of such termination provided that the Recipient provides a report to the Ministry that meets the requirements of a Progress Report. Such report must be received by the Ministry within three (3) months of notice of termination being given to the Recipient pursuant to this section 72 (Termination without cause) of this Schedule "A" (General Terms and Conditions).

ARTICLE XVI NOTICE

73. **Notice.** Any demand, notice or communication to be made or given hereunder shall be in writing and may be made or given by personal delivery or mailed by first class registered mail, postage prepaid or by transmittal by facsimile, telecopy or other electronic means of communication addressed to the respective parties and at the addresses set out in Schedule "D" (Additional Provisions) attached hereto or to such other person, address or facsimile number or telecopy number as either party may from time to time provide the other in accordance with this section 73 (Notice) of this Schedule "A" (General Terms and Conditions) and Schedule "D" (Additional Provisions). Any demand, notice or communication made or given by personal delivery shall be conclusively deemed to have been given on the day of actual delivery thereof. Any demand, notice or communication made or given by facsimile or other electronic means of communication, if made or given at a time when it would be received by the Recipient during its normal business hours on a Business Day, shall be deemed to be received at the time it is sent; otherwise, such electronic communication shall be deemed to be received on the first (1st) Business Day following the transmittal thereof. Any demand, notice or communication mailed by registered mail shall be deemed to have been received on the third (3rd) Business Day following the day on which it was mailed.
74. **Representatives.** The individuals identified pursuant to section 73 (Notice) of this Schedule "A" (General Terms and Conditions) will, in the first instance, act as the Ministry's or the Recipient's, as the case may be, representative for the purpose of implementing this Agreement.

ARTICLE XVII MISCELLANEOUS

75. **Terms binding.** The Recipient shall take reasonable measures to ensure that its officers, directors, partners, employees, agents and Consultants shall be bound to observe all the terms and conditions of this Agreement, including, but not limited to all covenants, representations and warranties set out herein. The Recipient shall include in any contract terms and conditions similar to and not less favourable to the Ministry than the terms and conditions of this Agreement to the extent that they are applicable to the work subcontracted, including but not limited to the requirements of section 38 (Information) of this Schedule "A" (General Terms and Conditions).
76. **Time of the essence.** In the performance and observance of the terms and conditions of this Agreement, time is of the essence and no extension or variation of this Agreement shall operate as a waiver of this provision.
77. **Successors and assigns.** This Agreement shall enure to the benefit of and be binding upon the parties hereto and their respective heirs, executors, administrators, successors and permitted assigns.
78. **Severability.** The validity or enforceability of any provision of this Agreement shall not affect the validity or enforceability of any other provisions hereof and such invalid or unenforceable provisions shall be deemed to be severable.
79. **No waiver.** The failure by the Ministry to insist in one or more instances on performance by the Recipient of any of the terms or conditions of this Agreement shall not be construed as a waiver of the Ministry's right to require further performance of any such terms or conditions, and the obligations of the Recipient with respect to such performance shall continue in full force and effect.
80. **Division of Agreement.** The division of this Agreement into schedules, articles, sections, clauses, paragraphs and the insertion of headings are for the convenience of reference only and shall not affect the construction or interpretation of this Agreement.
81. **Governing law.** This Agreement shall be governed by and construed in accordance with the laws of the Province of Ontario and the laws of Canada applicable in Ontario.
82. **Survival.** Articles IV (Financial Assistance), VI (Records and Audit), VII (Reporting Requirements), VIII (Overpayment), X (Indemnity), XI (Transfer of Asset), XII (Conflict of Interest and Confidentiality), XIII (Communications and Recognition), XIV (Covenants, Representations and Warranties), XV (Default,

Enforcement and Termination) and XVII (Miscellaneous) and section 34 (Long-term capital management plan) of this Schedule "A" (General Terms and Conditions) shall survive the expiration or early termination of this Agreement until March 31, 2027.

83. **No assignment.** This Agreement shall not be assigned by the Recipient.
84. **No amendment.** This Agreement shall not be varied, except by a document in writing, dated and signed on behalf of the Ministry and the Recipient.
85. **Interest.** The Ministry reserves the right to demand interest on any repayment of Financial Assistance owing by the Recipient under the terms of this Agreement at the rate established under section 10 of the *Financial Administration Act*, as amended. The Recipient shall pay the amount of interest owing upon receipt of a written demand and within the period specified by the Ministry.
86. **Ministry and Recipient independent.** Nothing in this Agreement shall be deemed to constitute the Recipient an employee, servant, agent, partner of or in joint venture with the Ministry for any purpose whatsoever.
87. **Recipient cannot represent the Ministry.** The provision of Financial Assistance to the Recipient pursuant to this Agreement is for the sole purpose of, and is limited to, carrying out the Project. The Recipient warrants and agrees that under no circumstances shall it enter into any contract or commitment in the name of or on behalf of the Ministry and the Recipient acknowledges that it is not by the terms of this Agreement or otherwise, granted any right or authority to assume or create any obligation or responsibility, express or implied, on behalf of or in the name of the Ministry or to bind the Ministry in any manner whatsoever other than as specifically provided in this Agreement.
88. **Consultants.** The Ministry acknowledges that, in connection with carrying out the Project, the Recipient may engage one or more Consultants. The Ministry acknowledges and agrees that the Recipient shall have the sole authority and responsibility for such employees, agents or Consultants, including their hiring and termination. The Recipient acknowledges and agrees that the Recipient shall be responsible for all acts and actions of the Recipient's employees, agents and Consultants and that all such acts and actions shall be treated as actions of the Recipient for the purposes of this Agreement.
89. **Cooperation.** The Ministry and the Recipient agree to cooperate with one another and will be frank, candid and timely when dealing with one another and will endeavor to facilitate the implementation of this Agreement.

90. ***Joint and several.*** Where the Recipient is made up of two or more entities, each such entity shall be jointly and severally liable (each completely and individually liable) to the Ministry for the fulfillment of the obligations of the Recipient under this Agreement.

- END OF GENERAL TERMS AND CONDITIONS -

**SCHEDULE “B” DESCRIPTION OF THE PROJECT
TO AN AGREEMENT RELATED TO THE FUNDING OF PROVINCIAL TRANSIT
EXPANSION BETWEEN THE MINISTER OF TRANSPORTATION FOR THE
PROVINCE OF ONTARIO AND THE CITY OF PETERBOROUGH**

1. **Project.** Deployment of Transit Priority at Signalized Intersections as a module under the City of Peterborough’s Integrated Traffic Management System (ITMS) utilizing Intelligent transportation Technologies (ITS).

2. **Overall Project management.**
Project Manager: Mr. J.N. Kimble, Manager Transportation City of Peterborough with Technical Support / Project Development: Mr. Peter Malin, Transportation Services Co-Ordinator, City of Peterborough

3. **Table B1 summary of costs related to the Project.**

Table B1

Sub-project component	Total Sub-project Costs	Ineligible Costs	Eligible Costs	Provincial Share of Eligible Costs	Recipient & Other Funds share of Total Project Costs (66.67%)
Sub-project 1	\$412,300	\$000	\$412,300	\$133,000	\$279,300
total	\$412,300	\$000	\$412,300	\$133,000	\$279,300

4. Table B2 Project cash flow summary.

The total annual cash flow costs estimates associated with the Project are as follows:

Table B2

contribution	Project costs			total
	2004/2005	2005/2006	2006/2007	
provincial	\$52,600	\$17,700	\$62,700	\$133,000
Recipient & others	\$110,400	\$37,300	\$131,600	\$279,300
total	\$163,000	\$55,000	\$194,300	\$412,300

**SCHEDULE “B” – ATTACHMENT 1
TRANSIT SIGNAL PRIORITY PROJECT. SUB-PROJECT
TO AN AGREEMENT RELATED TO THE FUNDING OF PROVINCIAL TRANSIT
EXPANSION BETWEEN THE MINISTER OF TRANSPORTATION FOR THE
PROVINCE OF ONTARIO AND THE CITY OF PETERBOROUGH**

**ARTICLE I
DESCRIPTION**

1. ***Objectives.*** To supply and install Traffic Signal Priority at 50 signalized intersections.
2. ***Technical quality and innovative features.*** TSP tied to Central TCS with logic included at central.

**ARTICLE II
MANAGEMENT**

3. ***Sub-project management.*** Identical to overall Project management utilizing same project team and resources.
4. ***Financial sustainability.*** Project to reduce delay for transit vehicles while delivering passenger service trips.
5. ***Table B3 summary of costs related to the Sub-project components.***

Table B3

major Sub-project component	Sub-project costs	Ineligible Costs	Eligible Costs	Provincial share of Eligible		Recipient & Other Funds share of Total Sub-project Costs
Component 1 Purchase/Install TSP hardware 30 intersections, 14 bus emitters	\$163,000	\$000	\$163,000	\$52,600		\$110,400
Component 2 Purchase/Install TSP hardware 3 intersections, 26 bus emitters	\$55,000	\$000	\$55,000	\$17,700		\$37,300
Component 3 Purchase/Install TSP hardware 17 intersections Add 4 way control at 20 of above intersections	\$99,100	\$000	\$99,100	\$32,000		\$67,100
Component 4 Upgrade traffic signal control units at 34 intersections(20% of controller supply/install proportioned to TSP	\$95,200	\$000	\$95,200	\$30,700		\$64,500
total	\$412,300	\$000	\$412,300	\$133,000		\$279,300

**ARTICLE III
SUB-PROJECT MILESTONES**

**City of Peterborough
Transit Signal Priority (TSP) Project**

6. Schedule.

Project start date: June 01, 2004
Project completion date: March 31, 2007

Table B4

Sub-project Milestones	approval(s)	estimated time frame	performance measures	Sub-project costs (\$)
Sub-project Milestone 1: Purchase/ Install TSP hardware 30 intersections, 14 bus emitters	City Council 2004	Complete purchase and staged installation by <u>March 2005</u>	N/A	\$163,000
Sub-project Milestone 2: Purchase/Install TSP hardware 3 intersections, 26 bus emitters	City Council 2004	Complete purchase, staged installation and bus retrofit by <u>March 2006</u>	N/A	\$55,000
Sub-project Milestone 3: Purchase/Install TSP hardware 17 intersections Add 4 way control modules at 20 of above intersections	City Council 2004	Completes Hardware purchase and installation of all TSP components for 50 intersections by <u>March 2007</u>	N/A	\$99,100
Sub-project Milestone 4: Upgrade traffic signal control units at 34 intersections (20% of controller	City Council 2004	Completes remainder of component supply, install and testing by	System on-line with travel time savings and schedule time savings to be	\$95,200

Sub-project Milestones	approval(s)	estimated time frame	performance measures	Sub-project costs (\$)
supply/install proportioned to TSP		March 2007	recorded	
Total Sub-project Costs		March 2007		\$412,300

(1) This amount must be reported in section 5 (Table B3 summary of costs related to this Sub-project components) of Schedule “B” – Attachment 1 for the appropriate Sub-project) under the total row in the Sub-project costs column.

Note: It must be noted that the projected expenditures and estimated time frames as forecasted under the heading “Sub-project Milestones” are preliminary and based upon best available knowledge as of the date this Agreement is made. Although these projected expenditures and estimated time frames are subject to minor changes, they will be managed over the life of the Sub-project so as to not exceed the estimated Total Sub-project Costs of \$412,300 or the associated Provincial contribution of \$133,000.

ARTICLE IV
CASH FLOW

7. Table B5 Sub-project cash flow summary. The annual cash flow costs estimates associated with the Sub-project are as follows:

Table B5

contribution	Sub-project costs			total
	2004/2005	2005/2006	2006/2007	
provincial	\$ 52,600	\$17,700	\$ 62,700	\$133,000
Recipient & others	\$110,400	\$37,300	\$131,600	\$279,300
total	\$163,000	\$55,000	\$194,300	\$412,300

**SCHEDULE “C” FINANCIAL ASSISTANCE
TO AN AGREEMENT RELATED TO THE FUNDING OF PROVINCIAL TRANSIT
EXPANSION BETWEEN THE MINISTER OF TRANSPORTATION FOR THE
PROVINCE OF ONTARIO AND THE CITY OF PETERBOROUGH**

Total Eligible Costs: \$412,300.00.

Provincial Share: 32.26%.

Maximum Financial Assistance: \$133,000.00.

90% of Maximum Financial Assistance: \$119,700.00.

It is a condition precedent to any payment of Financial Assistance under this Agreement that the Recipient has provided evidence satisfactory to the Ministry, in the Ministry’s sole discretion, that any permits, approvals, and licenses required under section 66(c) (Covenants, representations and warranties) of Schedule “A” (General Terms and Conditions) have been obtained, the Ministry has received the certificate of insurance as required by section 49 (Certificate of Insurance) of Schedule “A” (General Terms and Conditions).

Subject to the provisions of this Agreement, and in particular but without limitation section 19 (Maximum Financial Assistance) of Schedule “A”(General Terms and Conditions) and the condition precedent set out above having been fulfilled by the Recipient, the Ministry may provide the Financial Assistance to the Recipient as follows:

- (a) Following receipt and approval by the Ministry of the Recipient’s first (1st) Progress Report detailing the progress and status of the Project and substantiating that not less than thirty percent (30%) of the Project has been completed, the Ministry will provide Financial Assistance in the amount equal to the Provincial Share of what the Ministry deems Eligible Costs identified in the Progress Report. Such report must contain the information required in a Progress Report as set out in section 40 (Progress Reports) of Schedule “A” (General Terms and Conditions).
- (b) Following receipt and approval by the Ministry of the Recipient’s second (2nd) Progress Report detailing the progress and status of the Project and substantiating that not less than sixty percent (60%) of the Project has been completed, the Ministry will provide Financial Assistance in the amount equal to the Provincial Share of what the Ministry deems Eligible Costs identified in the Progress Report. Such report must contain the information required in a Progress Report as set out in section 40 (Progress Reports) of Schedule “A” (General Terms and Conditions).

- (c) Following receipt and approval by the Ministry of the Recipient's third (3rd) Progress Report detailing the progress and status of the Project and substantiating that not less than ninety percent (90%) of the Project has been completed, the Ministry will provide Financial Assistance in the amount equal to the Provincial Share of what the Ministry deems Eligible Costs identified in the Progress Report. Such report must contain the information required in a Progress Report as set out in section 40 (Progress Reports) of Schedule "A" (General Terms and Conditions).
- (d) In no event will the total of the Financial Assistance provided pursuant to (a), (b) and (c) above exceed 90% of Maximum Financial Assistance.
- (e) Following receipt and approval by the Ministry of the Recipient's Final Report detailing the progress and status of the Project and substantiating that the Project has been Substantially Performed, the Ministry will provide Financial Assistance in the amount equal to the Provincial Share of what the Ministry deems Eligible Costs identified in the Final Report. Such report must contain the information required in the Final Report as set out in section 41 (Final Report) of Schedule "A" (General Terms and Conditions).

Upon written request from the Recipient, the Ministry may, in writing and at its sole discretion, allow the Recipient to use the Financial Assistance provided towards specific Sub-project costs for other Sub-project costs, as long as the Maximum Financial Assistance is not exceeded.

**SCHEDULE “D” ADDITIONAL PROVISIONS
TO AN AGREEMENT RELATED TO THE FUNDING OF PROVINCIAL TRANSIT
EXPANSION BETWEEN THE MINISTER OF TRANSPORTATION FOR THE
PROVINCE OF ONTARIO AND THE CITY OF PETERBOROUGH**

The Ministry and the Recipient agree to the following additional provisions:

1. Further to section 73 (Notice) of Schedule “A” (General Terms and Conditions) hereto, notice shall be given at the following addresses, unless otherwise agreed to by the Urban and Rural Infrastructure Policy Branch Director for the Ministry and the Recipient in writing:

- (a) If to the Ministry:

Ministry of Transportation
Urban and Rural Infrastructure Policy Branch
2nd Floor, Building “B”
1201 Wilson Avenue
Toronto, Ontario
M3M 1J8

Attention: Director

Fax: 416-235-3573

- (b) If to the Recipient:

The Corporation of The City of Peterborough
500 George St. N.
Peterborough, Ontario
K9H 3R9

Fax: 705-742-3741

Attention: Manager Transportation

2. Other provisions: None noted

**SCHEDULE “E” COMMUNICATIONS REQUIREMENTS
TO AN AGREEMENT RELATED TO THE FUNDING OF PROVINCIAL TRANSIT
EXPANSION BETWEEN THE MINISTER OF TRANSPORTATION FOR THE
PROVINCE OF ONTARIO AND THE CITY OF PETERBOROUGH**

1. ***Purpose of Schedule***

This Schedule describes the Recipient’s responsibilities and financial obligations involved in producing, installing and maintaining signs and plaques as well as in arranging announcements and ceremonies for the Project.

2. ***General Principles***

The Recipient will work with the Ministry’s officials and other partners to undertake communication activities ensuring equal recognition of all parties making a significant financial contribution to the Project.

All ceremonies, events, signs and plaques will follow these Communications Requirements and any other requirements that may be specified by the Ministry.

All parties making a significant financial contribution to the Project shall receive equal recognition and prominence when logos, symbols, flags and other types of identification are incorporated into announcements, ceremonies, signs and plaques unless the Ministry provides otherwise.

All announcements, events and ceremonies will be organized jointly with equal participation from all parties making a significant financial contribution to the Project.

Both official languages will be used for public information, signs and plaques in accordance with the French language services standards for Ontario.

3. ***Signs and Plaques***

The Recipient must comply with the Ontario style guide when designing all signs and plaques as set out below:

- Ontario’s style guide and digital templates in a variety of formats are available from Ontario’s password-protected Partner Centre on its Web site at www.pir.gov.on.ca. For Passwords, please complete the *Join Form* on the main page of the Partner Centre. For more information, please contact the Ontario Standards Advisor by phone at 416-325-0424, fax at 416-325-8440 or e-mail at Standards.Advisor@pir.gov.on.ca.

The Recipient will ensure that proofs of all Ontario's capital project signs and plaques are reviewed by the Ministry before installation.

4. *Responsibilities*

The Recipient is responsible for erecting Ontario capital project signs indicating all Ministry Financial Assistance, municipal contribution and other parties making a significant contribution toward the Project at all sites, facilities, etc. where the Financial Assistance is being used.

The Recipient shall erect signs and install plaques as directed by this Schedule "E" (Communications Requirements). The relevant standards and procedures are outlined in the following paragraphs.

5. *External Project Signs (Temporary)*

- External Project Signs (at least 120cm high by 240cm wide / four feet high by eight feet wide) are required where the Maximum Financial Assistance exceeds fifty thousand dollar (\$50,000) the Project is underway and where the duration of the Project is longer than three (3) months. Larger signs (240cm high by 480cm / eight feet high by sixteen feet wide) are required where the Maximum Financial Assistance exceeds two million five hundred thousand dollar (\$2,500,000) where the Project is underway and where the duration of the Project is longer than one year.
- External Project signs shall follow the approved design and guidelines outlined in the Ontario style guide. These guidelines provide specifications such as the required positioning of government logos and those of its public and/or private-sector partners, as appropriate.
- Both official languages will be used for public information, signs and plaques when required by Ontario's French language services standards for Ontario projects.
- The Recipient will submit proofs via e-mail of the external project signs to the Ontario Standards Advisor for approval.
- The Recipient will oversee the manufacture of the sign and ensure that the selected location of the sign does not restrict accessibility, pose any hazard or interfere with facilities and services (e.g. electrical systems, drainage, and the like).
- The Recipient shall ensure that the Project signs are erected in prominent locations at the Project site as soon as possible after the execution of this Agreement and no later than thirty (30) days after the start of construction. Erected signs should be maintained for up to sixty (60) days following Project completion. The Recipient will arrange for sign removal and re-cycling following the 60-day period.
- Signs should be freestanding, securely assembled and erected, away from other distracting signs. No other sign, including those of design and/or engineering firms

and/or contractors involved with the Project, should be attached to the Project sign.

- The Recipient is responsible for sending to the Ontario Standards Advisor, within thirty (30) days of receipt of the Ministry's approval of design proofs, a photograph (digital or otherwise) which portrays the erected sign in relation to the Project.
- Where the Maximum Financial Assistance does not exceed fifty thousand dollar (\$50,000), the Recipient may, at its option, install a sign (following the requirements of this Schedule "E" (Communications Requirements)) and the costs associated with so doing will be an Eligible Cost in accordance with this Schedule "E" (Communications Requirements).

6. *Plaques (Permanent)*

- Upon completion of a Project where the Maximum Financial Assistance exceeds five hundred thousand dollar (\$500,000), the Recipient will install a permanent plaque.
- Permanent plaques may follow the design outlined in the Ontario style guide or use a style suited to the building, provided all governments and partner logos are included.
- Costs for plaques shall be part of the Project's Eligible Costs in accordance with this Schedule "E" (Communications Requirements).
- The Recipient will submit proofs of the plaques to the Ministry for approval.
- Both official languages will be used for public information, signs and plaques when required by Ontario's French language services standards for Ontario projects.
- Upon completion of a Project where the Maximum Financial Assistance does not exceed five hundred thousand dollar (\$500,000), the Recipient may, at its option, install a permanent plaque (following the requirements of this Schedule "E" (Communications Requirements)) and the costs associated with so doing will be an Eligible Cost in accordance with this Schedule "E" (Communications Requirements).

7. *Visual Identity Signage*

The Recipient will install and maintain the exterior and interior visual identity signage as supplied by the Ministry on Transit Vehicles that received provincial financial support through the Program. A sample of the visual identity signage has been attached as information (see Attachment 1 to this Schedule "E" (Communications Requirements)).

External visual identity signage must be located immediately to the left of the front passenger entrance doors of the vehicle. Internal visual identity signage should be

placed on an interior wall in a location and height that will be convenient for passengers to read.

8. *Eligible Costs*

External Project Signs (Temporary)

Small sign:

120 cm high by 240 cm wide/4 feet high by 8 feet wide

production –	\$1,250
installation –	<u>\$1,000</u>
total	\$2,250

Large sign:

240 cm high by 480 cm wide/8 feet high by 16 feet wide

production –	\$2,250
installation –	<u>\$2,000</u>
total	\$4,250

Plaques (Permanent)

71 cm high x 45.7 cm wide/ 28 inches high by 18 inches wide

Cast bronze	\$2,500 for one colour
Cast aluminum	\$2,000 for up to three colours
Engraved acrylic	\$1,500 for up to three colours

9. *Announcements and Ceremonies*

All governments must be equally represented at events.

When asked by elected representatives or designated officials from the Ministry the Recipient will coordinate a mutually agreeable venue, date and time for the event in light of the availability of the all government participants from all levels of government.

The Recipient may invite other elected officials and members of council. The Recipient should also invite local interested parties, such as contractors, architects, labour groups, and community leaders.

After the participants, date and location have been determined, the Recipient should send out invitations to all guests.

When appropriate, the Recipient should invite the general public by posting notices in public areas, such as post office and libraries or by placing public service announcements in the local media.

All written communications (invitations, public service announcements, posters, and the like) must indicate that the Project received Financial Assistance from Ontario.

The Recipient could arrange for light refreshments to be served after the event, for example coffee, tea, juice and donuts.

The Recipient will have an opportunity to provide input into the agenda, media advisory, news release and the like, and will receive final copies in advance of the event.

Depending on the size of the event site, a specially designed program backdrop, banner and/or lectern sign will be provided to the Recipient. Provincial and municipal flags should also be on display at all events.

10. ***Responsibilities***

The Recipient will:

- make all local arrangements for venue (e.g., podium, flags as appropriate, seating for speakers, shovels for ground-breaking ceremonies or ribbon for opening ceremonies and the like) if required;
- produce invitation and guest list and distribute invitations;
- display Project material (could include information on other provincial transit expansion funding projects carried out by the Recipient);
- choose a master of ceremonies, if required;
- arrange for refreshments if desired; and,
- arrange for a public address system if appropriate.

11. **Eligible Costs**

The Ministry will fund a portion of a recommended event (sod turning, plaque unveiling, ribbon-cutting, official opening) in accordance with this Agreement. In order for a cost to be considered an Eligible Cost for the purposes of this Schedule “E” (Communications Requirements), the Ministry must pre-approve the budget related to the event. No more than seven hundred fifty dollars (\$750) of Eligible Costs will be considered by the Ministry.

Only costs associated with events recommended by the Ministry will be considered Eligible Costs.

The Project may be of such regional or provincial significance that it warrants a major event (such determination to be made by the Ministry, in its sole discretion). If this is the case, specific Project budget above seven hundred fifty dollars (\$750) in Eligible Costs may be permitted with the prior written approval of the Ministry.

For the purposes of announcements and ceremonies, Eligible Costs include the following:

- Printing and mailing invitations;
- Refreshments*;
- Draping for plaque unveiling;
- Project material for display and/or media kit;
- Temporary signage; and
- Rentals such as:
 - flagpoles;
 - stage;
 - chairs;
 - podium; and
 - PA system.

*Only light refreshments such as coffee, tea, donuts, muffins will be considered Eligible Costs.

The cost of certain items such as alcoholic beverages, china, tents, waiters, guest mileage or transportation, wine glasses, lamps, tea wagons, plants, photographers and gifts are not Eligible Costs.

**SCHEDULE “E” - ATTACHMENT 1 VISUAL IDENTITY SIGNAGE
TO AN AGREEMENT RELATED TO THE FUNDING OF PROVINCIAL TRANSIT
EXPANSION BETWEEN THE MINISTER OF TRANSPORTATION FOR THE
PROVINCE OF ONTARIO AND THE CITY OF PETERBOROUGH**

The following are the visual identity signage that shall be installed and maintained by the Recipient as per section 7 of Schedule “E” (Communications requirements).

Exterior Recognition Stickers – approximate size 3” X 8”



Interior Recognition Stickers – approximate size 4” X 12”



**SCHEDULE “F” PERFORMANCE MEASUREMENT
TO AN AGREEMENT RELATED TO THE FUNDING OF PROVINCIAL TRANSIT
EXPANSION BETWEEN THE MINISTER OF TRANSPORTATION FOR THE
PROVINCE OF ONTARIO AND THE CITY OF PETERBOROUGH**

1. **Definitions.** For the purposes of this Schedule “F”, the Ministry and the Recipient agree to the following definitions:

“**Performance Measure**” means an attribute of the Project, described in Table I.3.1 of section 3 to this Schedule “F” (Performance Measurement), that must be measured to determine whether a corresponding Performance Target (as defined in this Schedule “F” (Performance Measurement)) is met.

“**Performance Indicator**” means the quantification or qualification, described in Table I.3.1 of section 3 to this Schedule “F” (Performance Measurement), as applicable, of a Performance Measure.

“**Performance Target**” means the specific quantitative or qualitative goal, described in Table I.3.1 of section 3 to this Schedule “F” (Performance Measurement), against which a Performance Indicator will be compared and which may be adjusted by the Minister from time to time to take into account unforeseen circumstances.

2. **Performance Indicators.** As part of the information to be provided under the reporting requirements identified in section 44 (Subsequent report) of Schedule “A” (General Terms and Conditions), the Recipient shall collect the data required under Table I.3.1 of section 3 to this Schedule “F” (Performance Measurement) to determine and report on the Performance Indicator for each of the Performance Measures.
3. **Performance Measurement Components.** The following table describes the performance measures, performance indicators and performance targets referred to in other sections of this Schedule “F” (Performance Measurement):

Table I.3.1: Performance Measurement Components

Performance Measure	Performance Indicator	Performance Target
Operational transit signal priority by signalized location	Reduced transit delay	Increase on-time service compliance by 10% through select before/after travel time measurement and analysis

4. **Performance measurement plan.** The Recipient shall submit to the Ministry for approval a performance measurement plan describing the data the Recipient shall collect and the frequency of such collection to determine and report on the Performance Indicator for each of the Performance Measures.
5. **Sufficiency of data under the plan.** The performance measurement plan provided by the Recipient under Section 3 of this Schedule “F” (Performance Measurement) shall provide sufficient data and other information regarding the Performance Indicator for each Performance Measure to allow the Recipient and the Ministry to determine if the corresponding Performance Target has been met.
6. **Additional information.** From time to time, at the request of the Ministry, the Recipient shall provide any other information respecting the Performance Measures, Performance Indicators and Performance Targets as the Ministry may require.
7. **Deduction or set-off from financial assistance.** If the Performance Targets are not achieved, in the opinion of the Ministry, the Ministry may, at its sole discretion and in accordance with Ministry policies, deduct or set off 0 to 5% of the financial assistance from any other project(s) of the Recipient under the Program or any other provincial program’s (either current or future), and such amount of financial assistance shall be deemed to be a debt to the Crown under the *Financial Administration Act*, R.S.O. 1990, c. F.12, as amended.