



## REPORT

**TO:** Mayor & Council  
**FROM:** Jason Kabel, Manager of Community Services  
**DATE:** December 2, 2015  
**RE:** 2015/16 Provincial Dedicated Gas Tax Program

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### Background

For the past several years the Town of Fort Frances has benefited from the Ministry of Transportation's (MTO) 'Dedicated Gas Tax Funds Program' by receiving annual funding to subsidize public transportation offered by the Town through Handi-van & Dial-a-ride services.

The Town of Fort Frances received \$67,300.67 in 2014 through the program. In 2016, the Community Services Division is budgeting \$68,000 to be received from the Provincial Gas Tax Program.

Attached is email notification from the province that the Ministry has sent the hard copy Gas Tax package by regular mail to the municipal head of Council. The package requests the following:

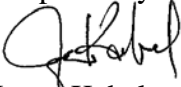
*Please return two fully signed copies of the Letter of Agreement, and a copy of the authorizing municipal by-law to the Ministry by January 29, 2016.*

*The 2015 Reporting Forms are to be returned to the Ministry by February 26, 2016.*

### Recommendation

The Community Services Executive Committee recommends to Mayor & Council to authorize two (2) Town signatories (Mayor and Treasurer) to fully execute the Letter of Agreement with the Ministry of Transportation and endorse a supporting municipal by-law for submission to the MTO by January 29, 2016.

Respectfully Submitted,

  
Jason Kabel

<p><b>Council approval of this report will</b> authorize full execution of the Letter of Agreement with the Ministry of Transportation and endorse a supporting municipal by-law for submission to the MTO by January 29, 2016.</p>
---



"De Bartolo, Rita (MTO)"  
<Rita.DeBartolo@ontario.ca>

11/13/2015 11:09 AM


To "De Bartolo, Rita (MTO)" <Rita.DeBartolo@ontario.ca>

cc "Adamkowski, Suzanne (MTO)"  
<Suzanne.Adamkowski@ontario.ca>, "Garces, Olga (MTO)"  
<Olga.Garces@ontario.ca>, "Dowling, Kevin (MTO)"

bcc

Subject 2015/16 Provincial Dedicated Gas Tax Program

History:

 This message has been replied to and forwarded.

6 attachments



2015 Guidelines.pdf



MT-O-16E.PDF



MT-O-17E.PDF



MT-O-18E.PDF



Canadian Content for Transit Vehicle Procurement Policy Document (Amende....pdf)



Attachments to Policy Document.doc

The 2015/16 Provincial Dedicated Gas Tax program was announced on Thursday, November 12, 2015

The Gas Tax package was forwarded by regular mail to your municipal head of council on Thursday, November 12, 2015. The package includes the Letter of Agreement (four copies), program guidelines, and reporting forms.

Please return two fully signed copies of the Letter of Agreement, and a copy of the authorizing municipal by-law to the Ministry **by January 29, 2016.**

The 2015 Reporting Forms are to be returned to the Ministry **by February 26, 2016.** Please provide these materials to:

Ministry of Transportation  
Policy and Planning Division  
Division Services and Program Management Office  
27<sup>th</sup> Floor, Suite 2702  
777 Bay Street,  
Toronto, Ontario  
M7A 2J8  
c/o Rita De Bartolo

Attached are the electronic versions of the 2015/16 program guidelines, forms, and Canadian Content Policy for your reference.

### **New Items**

Reporting forms MT-O-17 and MT-O18 have changed slightly. We are no longer requesting your ridership figures on the forms and have asked for more information on

transit vehicle purchases. Please take a moment to review the changes;

In the guidelines there is an amendment to the disposal of asset requirements for transit vehicles on page 10, consistent with the requirements under the previous Ontario Bus Replacement Program (OBRP); and

Also in the guidelines is the addition of the requirement for municipalities to affix Ontario Trillium decals, as outlined in Appendix C, to any transit vehicle that has been funded through the Gas Tax program, which is consistent with the requirements under the previous OBRP.

### **Reminders**

The guidelines are available in French. If you wish to receive the guidelines in French, please contact me.

If you are considering procuring new buses, Metrolinx's Transit Procurement Initiative (TPI) has an established procurement program that is mandated to facilitate joint procurements on behalf of Ontario's transit systems. It allows transit service providers to achieve savings through economies of scale and acquire additional benefits. To date, TPI has helped municipal agencies procure over 900 buses across Ontario. Currently, there are standing contracts for 8-metre specialized buses, 12 and 18-metre conventional transit buses that were procured through a competitive process. For more information, please contact Yolanda da Silva, Acting Manager TPI, at 416-202-5604 or [Yolanda.daSilva@metrolinx.com](mailto:Yolanda.daSilva@metrolinx.com).

If you have any questions regarding the Gas Tax package or the process/timing for the Letter of Agreement, authorizing by-law, and 2015 reporting forms, please do not hesitate to contact me or Frank Campagna, Division Services and Program Management Office at (416) 585-7151.

Rita De Bartolo  
Team Leader  
Division Services & Program Management Office  
Policy and Planning Division  
Ministry of Transportation  
27th Floor, Suite 2702  
777 Bay Street  
Toronto, ON  
M7A 2J8  
Telephone (416) 585-7141  
Fax (416) 585-7132

## **SAMPLE FORM: CANADIAN CONTENT DECLARATION & CONSENT FORM**

*The [Transit Operator/Entity] requires all manufacturers to indicate the level of Canadian content in their submissions, determined in accordance with Schedule • to this [Procurement Document]. In this regard, manufacturers are advised that the [Transit Operator/Entity] requires a declaration from all manufacturers setting out and certifying the level of Canadian content. As well, the [Transit Operator/Entity] requires the manufacturers consent to the disclosure and verification of the information certified in the declaration and, if the manufacturer is awarded the contract, to the audit of these levels during the contract term by or on behalf of the [Transit Operator/Entity].*

*This declaration and consent must be submitted in order to be considered for evaluation*

### **Declaration – Canadian Content Level**

*On behalf of [Legal Name of Manufacturer], I/we certify that the Canadian content of the transit vehicles, as set out and determined in accordance with Schedule • to this procurement document, is accurate to the best of my/our knowledge.*

*Dated at            this            day of            20            .*

---

*(An authorized signing officer with the authority to bind the manufacturer)*

---

*(Print Name)*

---

*(Title)*

---

*(Phone Number)*

---

*(Fax Number)*

*The manufacturer acknowledges that the [Transit Operator/Entity] relies upon this declaration to evaluate submissions and to enter into any contract resulting from this submission. This declaration may be verified or audited in such manner as [theEntity,] the Transit Operator, the Ministry of Transportation or the Auditor General, or any of their designates, may reasonably require. Should such verification or audit disclose a material inaccuracy of the information certified in this declaration, the [Transit Operator/Entity] shall have the right to disqualify the manufacturer or terminate any contract awarded to the manufacturer pursuant to this procurement process.*

### **Consent to Disclosure, Verification & Audit**

*I/We consent to the [Transit Operator/Entity] releasing the information certified in this declaration to the Ministry of Transportation, as well as any other information necessary for the purpose of verifying the continuing accuracy of the level of Canadian content certified in this declaration.*

*I/We also consent to [Entity], the Transit Operator, the Ministry of Transportation, and the Auditor General, or any of their designates verifying and auditing the level of Canadian content of the transit vehicles determined in accordance with Schedule ● to this procurement document, during the term of any contract awarded by the [Transit Operator/Entity] pursuant to this procurement document to [Legal Name of Manufacturer] and for seven (7) years after such term.*

*Dated at                      this                      day of                      20                      .*

---

*(An authorized signing officer with the authority to bind the manufacturer)*

---

*(Print Name)*

---

*(Title)*

---

*(Phone Number)*

---

*(Fax Number)*

### **SAMPLE FORM : CANADIAN CONTENT**

Name of Manufacturer:

Submission No.:

*The manufacturer must set out below the level of Canadian content for all costs included in the transit vehicle:*

Item	Category of Item	Percentage of Total Vehicle Cost (A)	Percentage of Canadian Content for Item (B)	Total Percentage Canadian Content (A*B%)
1				
2				
3				
4				
5				
6				
7				
8				
9				
10				
<b>Total Percentage of Canadian Content of Vehicle:</b>				

**\*Note:** Manufacturers will be required to submit this form, along with the declaration form, during the initial submission and the successful manufacturer must submit this form upon final delivery of the transit vehicle(s).



**MINISTRY OF TRANSPORTATION**

**Dedicated Gas Tax Funds For  
Public Transportation Program**

**2015/2016 Guidelines and Requirements**

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# **DEDICATED GAS TAX FUNDS FOR PUBLIC TRANSPORTATION PROGRAM**

## **2015/2016 GUIDELINES & REQUIREMENTS**

### **1. DEFINITIONS**

When used in these guidelines and requirements, the words set out below that import the singular include the plural and vice versa:

“baseline spending” means a municipality’s spending level, which equals the average municipal own spending on public transportation for the years 2001 to 2003 and includes a rate of 2% per year for inflation. For new transit systems that were not operational from 2001 to 2003, the baseline will be determined at the Ministry’s discretion until the municipality has three years of operation, whereby the first three years of municipal spending will be averaged and a rate of 2% per year for inflation will be applied.

“Canadian Content Policy” means the Canadian Content for Transit Vehicle Procurement Policy, attached to these guidelines and requirements as Appendix B: Canadian Content Policy, which the Ministry may amend from time to time.

“dedicated gas tax funds” means the money provided by the Ministry to a municipality to be used strictly towards eligible expenditures that are reasonable, in the opinion of the Ministry, and related directly to the provision of public transportation services, and “dedicated gas tax funding” has the same meaning.

“dedicated gas tax funds reserve account” means an interest bearing account set up by a municipality, under its name and in a Canadian financial institution, where dedicated gas tax funds are deposited and tracked separately from any other funds.

“DFPTA” means the *Dedicated Funding for Public Transportation Act, 2013*, S.O. 2013, c. 2, Sched. 3.

“eligible expenditures” means expenditures made by a municipality in direct support of public transportation operating or capital costs in accordance with Article 3 of these guidelines and requirements.

“guidelines and requirements” means these guidelines and requirements entitled “Dedicated Gas Tax Funds for Public Transportation Program – 2015/2016 Guidelines and Requirements”, including Appendices A and B to these guidelines and requirements, which the Ministry may amend from time to time.

“host municipality” means a host municipality as defined in Section 4.2.

“indemnified parties” means Her Majesty the Queen in right of Ontario, Her ministers, agents, appointees and employees.

“letter of agreement” means an agreement entered into between the Ministry and a municipality, including a host municipality, that sets out the terms and conditions under which the Ministry agrees to provide dedicated gas tax funds to the municipality, including those under these guidelines and requirements, and any amendments to the letter of agreement.

“losses” means liabilities, costs, damages and expenses (including legal, expert and consulting fees).

“major refurbishment” means: (a) for a subway car, light rail car, streetcar or trolley bus, the refurbishment where the life cycle is extended for a minimum of six years beyond the designed life cycle set out by the manufacturer; and (b) for a bus thirty feet in length or over, the refurbishment where, when the bus reaches a minimum age of nine years, the life cycle of the bus is extended for a minimum of six years.

“Ministry” and “Minister”, respectively, means the Ministry of Transportation, which is responsible for the administration of the Program and the Minister responsible for the Ministry.

“municipal own spending on public transportation” means the funds, including those received from total operating revenue and local public donations, that a municipality contributes towards public transportation expenditures, including funds it contributes for operating and capital expenditures.

“personnel” includes the advisors, appointees, directors, officers, employees, agents, partners, affiliates, volunteers or subcontractors of a municipality.

“proceeding” means any cause of action, action, claim, demand, lawsuit and other proceeding.

“Program” means the Dedicated Gas Tax Funds for Public Transportation Program set up by the Ministry to provide municipalities with dedicated gas tax funds subject to, and in accordance with, these guidelines and requirements.

“PRESTO” means the fare payment system for which Metrolinx is responsible.

“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 as defined in the *Municipal Affairs Act*, R.S.O. 1990, c. M. 46, as amended, or under an agreement between a municipality or local board, 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” refers to a streetcar, bus, subway car, light rail car or trolley bus used for public transportation.

“reporting forms” means the following forms attached as Appendix A (Reporting Forms) to these guidelines and requirements: 1) Dedicated Gas Tax Funds for Public Transportation 2015 Reporting Form (i.e. form MT-O-16); 2) Dedicated Gas Tax Program – Transit 2015

Conventional Transit Reporting Form (i.e. form MT-O-17); and 3) Dedicated Gas Tax Program – Transit 2015 Specialized Transit Reporting Form (i.e., form MT-O-18).

“subcontractor” means any contractor of a municipality or any of its subcontractors at any tier of subcontracting.

## **2. INTRODUCTION**

The Province has a vision for a stronger Ontario built around strong communities, a vibrant economy and healthier, more liveable cities with increased access to public transportation, reduced commute times and cleaner air for all Ontarians. By providing a portion of the gas tax for public transportation, the Province assists municipalities to become more self-sustaining in that regard.

As of October 2004, the Province provided 1 cent/litre of gas tax funds to Ontario municipalities, increasing as of October 2005 to 1.5 cents/litre, and, since October 2006, has consistently provided 2 cents/litre annually.

As of 2013 and pursuant to the *Dedicated Funding for Public Transportation Act, 2013* (“DFPTA”), a portion of the provincial gasoline tax revenue is dedicated to the provision of grants to municipalities for public transportation, including those pursuant to the Program. The portion of the gas tax that is dedicated in each fiscal year is an amount determined using a formula set out in the DFPTA.

Except for the interim six-month program to bridge the gap between the end of the 2012/13 Program year and the beginning of the 2014/15 Program year, prior to the passage of the DFPTA and for the first nine years, the Program has run from October to September. Starting with the 2014/15 Program year, the Program runs from April to March, with municipal allocations being available in late September at the earliest.

The 2015/16 Program runs from April 1, 2015 to March 31, 2016. The new allocation of funding for the Program for 95 public transit systems representing 130 municipalities will amount to approximately \$332.9 million.

The Program is an important element of the ongoing relationship between the Province and Ontario municipalities. Municipalities receiving dedicated gas tax funds must meet the requirements set out in these guidelines and requirements.

## **3. GENERAL ELIGIBILITY REQUIREMENTS AND CONDITIONS**

The purpose of the Program is to provide dedicated gas tax funds to Ontario municipalities to ensure that local public transportation services continue, and to increase overall ridership through the expansion of public transportation capital infrastructure and levels of service. To be eligible to receive dedicated gas tax funds, a municipality must contribute financially towards their public transportation services.

For 2015/16 and unless otherwise approved in writing by the Ministry, only municipalities that have submitted their 2014 annual data survey to the Canadian Urban Transit Association (CUTA), and their 2014 Gas Tax reporting forms to the Ministry, will be eligible to receive dedicated gas tax funds.

Subject to the provision of a municipal by-law indicating its intent to provide public transportation services, a municipality that is not currently providing public transportation services, but decides to begin providing such services, may be eligible for funding. Notification, prior to October 1, 2015, of the municipality's intent to provide public transportation services and specific commitment to annually fund such public transportation services is required. After the new public transportation services have been implemented and at the Ministry's sole discretion, dedicated gas tax funding may then be available.

A municipality receiving dedicated gas tax funds must ensure that all funds received and any related interest are used exclusively towards the provision of public transportation services, and, unless otherwise approved in writing by the Ministry, disbursement of dedicated gas tax funds and any related interest must be net of any rebate, credit or refund, for which it has received, will receive, or is eligible to receive.

All public transportation services and public transportation vehicles must be fully accessible in accordance with the requirements set out under the following statutes and regulations, as may be amended from time to time: the *Accessibility for Ontarians with Disabilities Act, 2005*, S.O. 2005, c. 11 and the *Integrated Accessibility Standards*, O. Reg. 191/11 made under that *Act*; the *Highway Traffic Act*, R.S.O. 1990, c. H.8 and the *Accessible Vehicles*, R.R.O. 1990, Reg. 629 made under that *Act*; and the *Public Vehicles Act*, R.S.O. 1990, c. P. 54. In addition to the above, the acquisition of public transportation vehicles must comply with the Canadian Content Policy requirements.

Unless the Ministry otherwise approves in writing, in 2015/16, gas tax revenues and any related interest can only be used to support municipal public transportation expenditures above a municipality's baseline spending and not to reduce or replace current levels of municipal public transportation funding. External audit and financial reporting costs are not eligible expenditures to which dedicated gas tax funding can be applied or the Ministry may reimburse.

**(a) Requirements for All Dedicated Gas Tax Funds Received in 2015/16 and Beyond**

- Dedicated gas tax funds and any related interest will need to be spent on:
  - Public transportation capital expenditures that promote increased transit ridership, and are above a municipality's baseline spending;
  - Public transportation operating expenditures that are above a municipality's baseline spending;
  - Capital expenditures for the replacement of any public transportation vehicles that are above a municipality's baseline spending;
  - Capital expenditures that provide improvements to public transportation

security and passenger safety, and are above a municipality's baseline spending; and

- Major refurbishment on any fully accessible, or to be made fully accessible, public transportation vehicle, and are above a municipality's baseline spending.
- o For municipalities that provide only specialized transit, transit initiatives that may not initially result in ridership growth but will provide increased accessibility can be considered as eligible expenditures if approved in writing by the Ministry prior to implementation.

**(b) Additional Requirements for the following Municipalities: Regions of Durham and York, the Cities of Brampton, Burlington, Hamilton, Mississauga, Ottawa and Toronto, and the Town of Oakville.**

Prior to the release of any dedicated gas tax funds, the municipalities listed under (b) above will, in addition to any other requirements in this Article 3, be required to:

- o Participate in PRESTO and, as participants, will be required to meet their financial obligations for that system.

**(c) Additional Requirements for GTA Municipalities: Regions of Durham, Halton, Peel and York, and Cities of Hamilton and Toronto.**

Prior to the release of any dedicated gas tax funds, the municipalities listed under (c) above will, in addition to any other requirements in this Article 3, be required to:

- o Demonstrate that they have met their responsibility for the payment of the growth and expansion capital costs of Metrolinx pursuant to the *Amendment to Greater Toronto Services Board By-law No. 40*, O. Reg. 446/04, made under the *Metrolinx Act, 2006*, S.O. 2006, c. 16, as amended.

The eligibility requirements for dedicated gas tax funds will be determined in accordance with these guidelines, including the Canadian Content Policy. The eligibility for any dedicated gas tax funds is at the sole discretion of the Ministry. Where a municipality relies on receiving dedicated gas tax funds for expenditure, a municipality should consider consulting with Ministry staff when in doubt as to whether such expenditure is eligible for dedicated gas tax funds prior to making or committing to make it.

## **4. GENERAL PROGRAM ALLOCATION METHODOLOGY AND PAYMENT PROCESS**

### **4.1 General Program Allocation Methodologies**

Based on consultation with municipalities, public transportation operators and stakeholders, the Province recognizes the varying needs of public transportation in Ontario municipalities,

including those related to large established public transportation systems and communities with different growth rates and levels of public transportation service. Consistent with the above, the Province has established an allocation formula based on a combination of ridership and population. This formula balances the needs of large established public transportation systems, the growth needs of rapidly growing municipalities, and the needs of smaller municipalities that provide public transportation services.

The Province is implementing an allocation based on 70% transit ridership and 30% municipal population. Fully implemented, 70% of \$332.9 million (up to \$233.0 million) may be distributed to municipalities on the basis of their public transportation ridership levels. Thirty percent (30%) of \$332.9 million (up to \$99.9 million) may be distributed on the basis of population levels. Public transportation ridership will include the totals of both conventional and specialized public transportation services.

Both ridership and population figures are updated and revised annually for use in the calculation of dedicated gas tax funds.

CUTA annually collects and reproduces, on behalf of the Ministry, transit ridership data in its Ontario Urban Transit Fact Book and its Ontario Specialized Transit Services Fact Book (the "CUTA Fact Books"). The Ministry used the 2014 ridership data from the 2014 CUTA Fact Books for the above calculation. Where a municipality's ridership data have not been collected nor reproduced in the 2014 CUTA Fact Books, the Ministry used the 2014 transit ridership data received from the municipality.

The 2015/16 gas tax allocations were calculated using 2014 population estimates derived from the 2011 census data.

Dedicated gas tax funds provided to each municipality in 2015/16 are not to exceed, based on the 2014 municipal public transportation spending data set out in the CUTA Fact Books, 75% of municipal own spending on public transportation. The Ministry may re-allocate, in support of increasing public transportation ridership, any amounts of moneys dedicated for, but that remains undistributed through, the Program.

The Ministry may undertake an annual review of the dedicated gas tax allocation methodology and eligibility requirements to ensure these funds support the desired outcome of increased public transportation ridership. Municipal public transportation spending will be reviewed on an annual basis to determine if the limits of the dedicated gas tax funds need to be applied where the gas tax allocation may exceed 75% of municipal own spending on public transportation.

## **4.2 Payment Process**

The Minister will advise each municipality that provides public transportation services of the amount of dedicated gas tax funds it is eligible to receive. The Minister will send a letter of agreement to each of these municipalities. The letter of agreement will set out the terms and

conditions upon which the dedicated gas tax funds will be released to the municipality, and by which the municipality will have to agree to be bound.

The Ministry may, on a quarterly basis (or other basis, as the Ministry may decide from time to time), make payments of dedicated gas tax funds only after receipt of the following documents: i) the letter of agreement, provided by the Ministry to the municipality, signed by the head of the municipal council and chief financial officer/treasurer; and ii) a copy of the municipal by-law(s) permitting the municipality to enter into the letter of agreement and any municipal signing officer to execute it.

In addition, the Ministry may withhold payment of dedicated gas tax funds until the reporting requirements under Section 8.4 are met.

Any amount of dedicated gas tax funds provided to the municipality under the Program will be subject to the remedies set out under Article 7. In addition, any dedicated gas tax funds the Ministry provides to a municipality and any related interest, including those kept by the municipality in a dedicated gas tax funds reserve account, will have to be used by the municipality exclusively towards public transportation services and in accordance with the requirements set out in these guidelines and requirements, including those related to eligibility and related conditions, as well as comply with the acquisition and disposition, accountability, records, audit and reporting, and liability and indemnity requirements. The above will apply to dedicated gas tax funds received during the term of a letter of agreement, and will survive such term.

If a municipality agrees to provide public transportation services (a “host municipality”) for another municipality, the Ministry, at its sole discretion, may only provide the host municipality with dedicated gas tax funds. Prior to the Ministry making any payment of dedicated gas tax funds to the host municipality, the host municipality and the municipality/municipalities on whose behalf the host municipality is providing transportation services will be required to provide the Ministry with copies of their respective by-laws designating the host municipality as a public transportation service provider for the municipality or authorizing the host municipality to provide public transportation services to the municipality/municipalities. The host municipality will be required to enter into a dedicated gas tax funds letter of agreement with the Ministry and be in compliance with the terms and conditions set out in these guidelines and requirements.

## **5. DEDICATED GAS TAX FUNDS RESERVE ACCOUNT AND INTEREST**

### **5.1 Dedicated Gas Tax Funds Reserve Account**

Dedicated gas tax funds must be used only towards public transportation service eligible expenditures. If the Ministry provides dedicated gas tax funds to a municipality before the municipality’s immediate need for the funds, the municipality will be required to keep the funds, and all interest earned on such funds, in a dedicated gas tax funds reserve account. Dedicated gas tax funds received, and any related interest earned on such funds, must be reported annually, using the reporting forms, on a cash basis.

## **5.2 Interest**

Interest must accrue on funds carried over the course of the Program reporting period in a dedicated gas tax funds reserve account. A municipality must calculate interest on its average annual balance of funds. The interest must also be reported annually, using the reporting forms, and can only be applied towards public transportation service eligible expenditures.

## **6. ACQUISITION OF GOODS OR SERVICES, AND DISPOSAL OF ASSETS**

If a municipality acquires goods, including supplies, materials, vehicles, equipment or services with dedicated gas tax funds, it must do so through a process that promotes the best value (with due regard for economy, efficiency and effectiveness) for the dedicated gas tax funds it spends.

The municipality must report, in writing, to the Ministry any funds accrued from the sale, lease or disposal of assets purchased with dedicated gas tax funds, and return such funds to a dedicated gas tax funds reserve account (see Article 5), with the exception that funds accrued from the sale, lease or disposal of transit buses beyond their useful economic life (12 years for conventional and 5 years for specialized), will not be required to be returned to a dedicated reserve account.

## **7. ADJUSTMENT, WITHHOLDING AND REPAYMENT OF DEDICATED GAS TAX FUNDS AND OTHER REMEDIES**

If, in the opinion of the Ministry, a municipality: i) fails to comply with any term, condition or obligation set out in a letter of agreement, including these guidelines and requirements; ii) uses any of the dedicated gas tax funds or any related interest for a purpose not authorized without the prior written consent of the Ministry; iii) provides erroneous or misleading information; iv) fails to provide information, including requested audit information and required reports, to the Ministry for any reason whatsoever; or v) is unable to provide or acquire or has discontinued the provision or acquisition of any service or asset for which dedicated gas tax funds have been provided, or it is not reasonable for the municipality to continue to provide or acquire any service or asset for which such funds have been provided ("event of default"), the Ministry may, unless the Ministry provides the municipality with written notice of an opportunity to correct the event of default, take one or more of the following actions: i) immediately terminate the letter of agreement; ii) suspend dedicated gas tax funding for such period as the Ministry determines appropriate; iii) reduce the amount of any dedicated gas tax funds; and iv) initiate any action the Ministry considers necessary to ensure the successful provision or acquisition by the municipality of any service or asset provided or acquired with dedicated gas tax funds in accordance with the terms of the letter of agreement.

Where the Ministry gives the municipality an opportunity to correct an event of default by giving it notice of the particulars of the event of default and the date by which the municipality is required to remedy it, and: i) the municipality does not remedy the event of default by the



date specified in the notice; ii) it becomes apparent to the Ministry that the municipality cannot completely remedy the event of default by the date specified in the notice; or iii) the municipality is not taking the steps to remedy the event of default in a way that is satisfactory to the Ministry, the Ministry may initiate any of the remedies for event of default available to it under this Article.

Upon termination of the letter of agreement pursuant to this Article, the Ministry may take one or more of the following actions: i) cancel all further dedicated gas tax payments; ii) demand the repayment of any dedicated gas tax funds remaining in the possession or under control of the municipality; and, iii) demand the repayment of an amount equal to any dedicated gas tax funds or any related interest that the municipality used for purposes not agreed upon by the Ministry. In regards to paragraph iii) above, the Minister may not demand repayment of an aggregate amount greater than the dedicated gas tax funds that were received by the municipality.

Upon the Minister providing a municipality a written demand for repayment of dedicated gas tax funds, the amount of the demand shall constitute a debt due to the Crown of the Province of Ontario and may be recovered as such under applicable law, including, without limitation, the *Financial Administration Act*, R.S.O. 1990, c. F.12, as amended, ("FAA"). In addition to any remedy the Crown may have under the FAA, the Ministry may decide to withhold or adjust the amount of any current or future dedicated gas tax funding, or any other funding program, that may be provided to the municipality in an amount equal to such debt or have the amount of such debt deducted from financial assistance payable on any other project(s) of the municipality under any other initiative in which the Ministry is involved (either current or future).

If a municipality: i) has failed to comply (a "failure") with any term, condition or obligation under any other agreement with Her Majesty the Queen in right of Ontario or one of Her agencies; ii) has been provided with notice of such failure in accordance with the requirements of such agreement; iii) has, if applicable, failed to rectify such failure in accordance with the requirements of such other agreement; and iv) such failure is continuing, the Ministry may suspend the payment of dedicated gas tax funds for such period as the Ministry determines appropriate.

If a municipality fails to comply with any term of a letter of agreement, including these guidelines and requirements, the municipality could only rely on a waiver of the Ministry if the waiver was in writing. A waiver must refer to the specific failure to comply and will not have the effect of waiving any subsequent failures to comply.

Any decision made by the Minister regarding funding under the Program is final.

## **8. ACCOUNTABILITY, RECORDS, AUDIT AND REPORTING REQUIREMENTS**

### **8.1 Accountability**

A municipality receiving dedicated gas tax funds must use such funds, and any interest earned on such funds, exclusively towards public transportation service eligible expenditures and in accordance with these guidelines and requirements. The municipality will not be allowed to

use dedicated gas tax funds and related interest to offset other municipal expenditures.

The municipality will also be required to provide such further assurances as the Ministry may request from time to time with respect to any matter to which a letter of agreement, including these guidelines and requirements, pertains, and will otherwise do or cause to be done all acts or things necessary to implement and carry into effect the terms and conditions of these documents to their full extent.

## **8.2 Records**

A municipality receiving dedicated gas tax funds must keep and maintain separate records and documentation related to any dedicated gas tax funds and any related interest, including invoices and any other financially-related documents relating to the provision or acquisition of public transportation services for which dedicated gas tax funds and any related interest have been used. The records and documentation must be kept and maintained in accordance with generally accepted accounting principles. Records containing confidential information must be kept in accordance with all applicable legislation. No provision of these guidelines and requirements shall be construed so as to give the Ministry any control whatsoever over the municipality's records.

## **8.3 Audit**

A municipality receiving dedicated gas tax funds may be subject to audit. The Ministry may, at its sole discretion, audit or have audited by any third party, any records and documentation of the municipality related to any public transportation services provided or acquired with dedicated gas tax funds and any related interest, and such funds. Such audit may require the Ministry, at the municipality's expense (except as provided in the Canadian Content Policy), to retain external auditors. In addition, the Auditor General may, pursuant to the *Auditor General Act*, R.S.O. 1990, c. A. 35, as amended, audit the accounts and records of the municipality relating to any expenditure of dedicated gas tax funds.

To assist in respect of the rights set out above, a municipality will be required to disclose any information requested by the Ministry, its authorized representatives or an independent auditor identified by the Ministry, and will do so in the form requested by the Ministry, its authorized representatives or an independent auditor.

In addition to any adjustments the Ministry may make to dedicated gas tax funding under these guidelines and requirements, the Ministry may, upon recommendation in an audit report, adjust future dedicated gas tax fund payments or other payments the Province may make to the municipality under any other program.

## **8.4 Reporting**

Accuracy in the calculation and reporting of municipal transit ridership and dedicated gas tax funds and any related interest is paramount. When calculating ridership, municipalities must use one of the acceptable best practices identified in the 2008 Ontario Ridership Data

Collection Review Report, published jointly by CUTA and iTrans Consultants (retained by CUTA).

A municipality will be accountable to use dedicated gas tax funds and any related interest towards public transportation expenditures that meet the Program eligibility requirements. Each municipality will be required to report on how dedicated gas tax funds and any related interest are spent on an annual basis, including the provision of its Canadian Content Policy declaration form(s), in accordance with the Canadian Content Policy, for any public transportation vehicle funded with dedicated gas tax funds.

For the purpose of the above reporting, municipalities will be required to use the reporting forms that have been developed in consultation with municipal public transportation stakeholders, and submit these reporting forms to the Ministry prior to February 26, 2016.

## **9. COMMUNICATIONS**

Unless otherwise approved in writing by the Ministry, a municipality receiving dedicated gas tax funds will be required to acknowledge the support of the Ministry in a form and manner as directed by the Ministry.

A municipality will be required to give a minimum of thirty (30) days written notice to the Ministry regarding any planned local dedicated gas tax funding communication or recognition event, or both. The municipality will also be required to provide the Ministry with detailed information regarding such communication or event, or both.

The Ministry and a municipality receiving dedicated gas tax funds will, at all times, remain independent of each other and will not represent themselves to be the agent, joint venturer, partner or employee of the other. Neither the municipality nor the Ministry will be allowed to make representations or take actions that could establish or imply any apparent relationship of agency, joint venture, partnership or employment. In addition, neither the municipality nor the Ministry will be bound in any manner whatsoever by any agreements, warranties or representations made by any of them to any other person or entity, with respect to any other action of the other.

If the municipality publishes any material of any kind, written or oral, relating to public transportation services provided or acquired with dedicated gas tax funds, the municipality will indicate in the material that the views expressed in the material are the views of the municipality and do not necessarily reflect those of the Ministry.

A municipality receiving gas tax funding must comply with the requirements for the installation and maintenance of visual identity signage set out in Appendix C.

## **10. CONFLICT OF INTEREST**

A municipality and its contractors and any of their respective personnel must use dedicated

gas tax funds and provide and acquire services and assets with such funds without an actual, potential or perceived conflict of interest.

A conflict of interest includes any circumstances where a municipality or any person with the capacity to influence the municipality's decisions has outside commitments, relationships or financial interests that could, or could be seen to, interfere with the municipality's objective, unbiased and impartial judgment relating to the provision or acquisition of services or assets provided or acquired with dedicated gas tax funds or the use of such funds, or both.

A municipality will disclose to the Ministry, without delay, any situation that a reasonable person would interpret as an actual, potential or perceived conflict of interest, and comply with any terms and conditions that the Ministry may prescribe as a result of the disclosure.

## **11. FREEDOM OF INFORMATION AND PROTECTION OF PRIVACY ACT**

All applications submitted to the Ministry are subject to the *Freedom of Information and Protection of Privacy Act*, R.S.O. 1990, c. F. 31, as amended ("FOIPPA"). The FOIPPA provides every person with a right of access to information in the custody or under the control of the Ministry, subject to a limited set of exemptions.

Municipalities are advised that the names of municipalities receiving dedicated gas tax funds, the amount of funds provided, and the purpose for which dedicated gas tax funds are provided, is information the Ministry makes available to the public.

## **12. LIABILITIES AND INDEMNITIES**

A municipality receiving dedicated gas tax funds must agree that it is responsible for anything that may arise, directly or indirectly, in connection with the Program, including, without limitation, the provision and acquisition of services and assets with dedicated gas tax funds. The Ministry's involvement under the Program is for the sole purpose of, and is limited to, the provision of dedicated gas tax funds.

Furthermore, a municipality receiving dedicated gas tax funds must agree to indemnify and hold harmless the indemnified parties from and against any and all losses and proceedings, by whomever made, sustained, incurred, brought or prosecuted, in any way arising out of, or in connection with, anything done or omitted to be done by the municipality or any municipality on behalf of which the municipality receives dedicated gas tax funds, or any of their respective personnel, or otherwise arising out of or in connection with the Program or otherwise in connection with the letter of agreement, unless solely caused by the negligence or willful misconduct of the Ministry.

In the event of any proceeding against any indemnified parties and any negotiations for its settlement, a municipality will, at its expense and to the extent requested by the Ministry, participate in or conduct the defence of the proceeding and negotiations. The Ministry may elect to participate in or conduct the defence of any proceeding by providing notice to the

municipality of such election without prejudice to any other rights or remedies of the Ministry under the letter of agreement, at law or in equity. Each of the municipality and the Ministry participating in the defence will do so by actively participating with the other's counsel. The municipality will not enter into a settlement of any proceeding against any indemnified parties unless the municipality has obtained the prior written approval of the Ministry. If the municipality is requested by the Ministry to participate in or conduct the defence of any proceeding, the Ministry will co-operate with and assist the municipality to the fullest extent possible in the proceeding and any related settlement negotiations. If the Ministry conducts the defence of any proceedings, the municipality will co-operate with and assist the municipality to the fullest extent possible in the proceedings and any related settlement negotiations.

A municipality receiving dedicated gas tax funds is responsible for its own insurance and must carry, at its own expense, and require the same from its subcontractors and any municipality on behalf of which it receives dedicated gas tax funds, all the necessary and appropriate insurance that a prudent municipality in similar circumstances would maintain in order to protect itself and the Ministry and support the indemnification, as set out above, provided to the Ministry. For greater certainty, the municipality is not covered by the Province of Ontario's insurance program and no protection will be afforded to the municipality by the Government of Ontario for any losses or proceedings that may arise out of the Program or letter of agreement.

For greater certainty, the rights and remedies of the Ministry under a letter of agreement are cumulative and are in addition to, and not in substitution for, any of its rights and remedies provided by law or in equity.

### **13. COMPLIANCE WITH THE LAW**

A municipality receiving dedicated gas tax funds must comply with all federal and provincial laws and regulations, all municipal by-laws, and any other orders, rules and by-laws applicable to any aspect of the services or assets provided or acquired with the dedicated gas tax funds.

For greater clarity, by receiving dedicated gas tax funds, a municipality may become subject to legislation applicable to organizations that receive funding from the Government of Ontario, including the *Auditor General Act*, as amended.

### **14. WHERE TO APPLY AND REQUEST OR PROVIDE INFORMATION**

Any questions regarding the Program are to be directed to the Ministry Division Services and Program Management Office at (416) 585-7129.

All forms, agreements and supporting documentation must be forwarded to the following address:

**Ministry of Transportation  
Division Services and Program Management Office  
27<sup>th</sup> Floor, Suite #2702  
777 Bay Street  
Toronto, ON  
M7A 2J8**

## **APPENDIX A: REPORTING FORMS**

## **APPENDIX B: CANADIAN CONTENT POLICY**



## ***APPENDIX C: VISUAL IDENTITY SIGNAGE REQUIREMENTS***

### ***1. Purpose of Schedule***

This Appendix describes the municipality's responsibilities and obligations involved in installing and maintaining visual identity signage under the Program.

### ***2. Visual Identity Signage***

The municipality will install and maintain the exterior and interior visual identity signage on transit vehicles for which dedicated gas tax funds were provided. This is to include replacement buses that have been supported through the Program. A sample of the visual identity signage, that will be provided by the Ministry, has been attached as information.

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.

#### **Ontario Gas Tax Program — Visual Identity Signage**

Recognition stickers approximate size — 10" x 3.4". Sample image found below is not to scale.



# **CANADIAN CONTENT POLICY PROCUREMENT DOCUMENT AND AGREEMENT PROVISIONS FORM SAMPLE WORDING**

Transit operators receiving provincial funding for the acquisition of transit vehicles and entities must comply with the Canadian content policy (the “policy”). To comply with the policy, transit operators, or an entity on behalf of a transit operator, must ensure manufacturers, from whom transit vehicles are acquired, meet the specified Canadian content requirements set out in the policy.

The following sample wording for procurement document provisions is provided to assist transit operators in implementing and complying with the policy. However, the responsibility for implementing and complying with the policy remains with each transit operator regardless of whether or not it chooses, or requires an entity, to use the sample wording provided in this document. As the form and content of each transit operator’s and entity’s procurement document will differ, modifications to the sample wording provided below should be made to suit the needs of each transit operator and entity, and each transit operator and entity should obtain any necessary independent legal and procurement advice it may require in that regard.

The Ministry shall not incur any liability whatsoever, expressed or implied, resulting from a transit operator or entity having used all or some of the sample wording provided or from implementing the policy.

## **1. SAMPLE PROCUREMENT DOCUMENTS PROVISIONS**

### **1.1 Definition**

The procurement document may define the term “Canadian Content”.

#### ***Sample Wording***

*“Canadian content” means the Canadian content of the transit vehicle determined in accordance with Schedule • to this procurement document.*

### **1.2 Evaluation of Submissions**

The procurement document should explain how the policy will impact the evaluation of submissions and the selection of the successful manufacturer.

#### ***Sample Wording***

*This procurement document is subject to the Ontario Government’s Canadian Content Policy for the procurement of transit vehicles, attached as Schedule • to this procurement*

*document. Under the terms of this policy, unless the transit vehicles are exempt from this requirement or this requirement is waived in accordance with the policy, only submissions with a minimum 25% Canadian content, determined in accordance with the policy may be considered for evaluation. Where the transit vehicles are exempt or a waiver has been provided, the policy provides that the submission with the highest percentage of Canadian content, as determined in accordance with the policy, will be given a 5% price preference in the evaluation of submissions for any transit vehicle(s). The 5% price preference will be applied for evaluation purposes only, and will not represent an effective reduction in the price submitted by the manufacturer.*

### **1.3 Evaluation of Level of Canadian Content**

The procurement document should have provisions specifying how the requirement for Canadian content in a manufacturer's submission will be evaluated.

Unless the procurement is for exempt vehicles or the Canadian content requirement is waived in accordance with the policy, there is no requirement for weighting of Canadian content under the policy; only those manufacturers meeting this threshold will be evaluated.

For procurements of exempt transit vehicles or where a waiver has been provided, a 5% price preference will be given to the manufacturer with the highest level of Canadian content.

#### **Sample Wording**

*Manufacturers should refer to Schedule ● in order to calculate the Canadian content of their submissions. Unless the procurement is for exempt vehicles or the minimum level of 25% Canadian content requirement is waived in accordance with Schedule ●, to be considered for evaluation, manufacturer's submission must meet the 25% minimum level of Canadian content determined in accordance with Schedule ●.*

*For the procurement of exempt transit vehicles or where a waiver has been provided in accordance with Schedule ●, a 5% price preference will be given to the manufacturer with the highest level of Canadian content.*

*For example, a transit operator, receives three submissions for a transit vehicle that has been exempted from achieving the 25% Canadian content requirement:*

- *Manufacturer #1 submits \$250,000 and attests to achieving a Canadian content level of 22%.*
- *Manufacturer #2 submits \$270,000 and attests to achieving a Canadian content level of 23%.*
- *Manufacturer #3 submits \$260,00 and attests to achieving a Canadian content level of 19%.*

*During the evaluation, manufacturer #2 will have its submission evaluated as 5% less during*

*that phase of the evaluations, reducing the price for the offer to \$256,500.*

## **2. Canadian Content Declaration & Consent Forms**

Manufacturers should be advised that a Canadian content declaration and consent form, provided by the transit operators or entity to the manufacturers as part of the procurement document, must be included with the form of offer they submit in response to the procurement document. As required by the policy, the declaration and consent form should:

- certify the level of Canadian content of the transit vehicles described in the manufacturer's submission, calculated in accordance with the policy; and
- provide the manufacturer's consent to the disclosure, verification and audit of the information forming the basis of the declaration, both before the contract award and, for the successful manufacturer, during and after the term of the contract.

Manufacturers should also be advised that the successful manufacturer must demonstrate, upon final delivery of the transit vehicle(s), how it complied with the Canadian content policy requirement, and provide a written declaration, certifying the percentage of Canadian content of the transit vehicle(s), calculated in accordance with this policy.

The sample declaration and consent form included in Appendix A to this attachment, assumes that the specific levels of Canadian content are included in the form itself. However, transit operators, and entities, may choose to require that the level of Canadian content be provided in other documentation associated with the procurement document, such as the manufacturer's submission or the form of offer (see Appendix B for sample language).

## **3. Agreement Provisions**

A transit operator or entity, as applicable, should include provisions, similar to those in the procurement document, in any agreement with the selected manufacturer that capture/confirm the selected manufacturer's ongoing obligations related to the Canadian content policy.

In addition, the agreement with the selected manufacturer should include provisions that provide the transit operator with adequate remedies if the manufacturer defaults in its obligations relating to the required level of Canadian content. As each transit operator or entity will need to determine what remedies best address the needs of its particular circumstances, no sample clauses are provided. That said, remedies could include termination for breach of a provision of the contract (which would normally include terms and conditions set out in the agreement, and other documents) relating to the manufacturer's obligations concerning the required level of Canadian content.

A transit operator or entity may also wish to limit its own liability for breach of the manufacturer's Canadian content obligations, and request an indemnity from the manufacturer for any liability the transit operator or entity might incur in that regard.