

AN AGREEMENT RESPECTING  
TRANSFER OF INTER-TERRITORIAL HIGHWAYS PROGRAM FROM THE  
GOVERNMENT OF CANADA TO THE GOVERNMENT OF THE YUKON

This Transfer Agreement made as of this 17 day of July, 1990

BETWEEN:

The Government of Canada, represented herein by the Minister of Indian Affairs and Northern Development, (hereinafter referred to as "Canada"),

AND:

The Government of the Yukon Territory represented herein by the Minister of Community and Transportation Services (hereinafter referred to as "the Yukon".)

WHEREAS Canada desires to transfer and the Yukon desires to accept responsibility for reconstruction of existing Inter-Territorial Highways in the Yukon, as more particularly described herein;

AND WHEREAS the parties intend that this transfer shall be consistent with comprehensive land claims agreements in effect or subsequently ratified by Canada and the Yukon;

NOW THEREFORE the parties hereto mutually covenant and agree as follows:

1. DEFINITIONS

In this Transfer Agreement, the following words shall have the following meanings:

- 1.1 "ASSOCIATED INFRASTRUCTURE" means the ferries at Dawson City and Ross River, a bridge forming part of an Inter-Territorial Highway, and any equipment, structure or construction incidental to or supporting the highway, bridge or ferry;
- 1.2 "FORMULA FINANCING AGREEMENT" means the Memorandum of Agreement dated the 10<sup>th</sup> day of May, 1985 between the Government of Canada and the Government of the Yukon, or by any successor agreement governing the financial arrangements between Canada and the Yukon, that may replace the Formula Financing Agreement;

- 1.3 "GROSS EXPENDITURE BASE" has the meaning assigned to it in the Formula Financing Agreement;
- 1.4 "INTER-TERRITORIAL HIGHWAYS", shall mean those existing highways that cross the boundaries of the Yukon Territory and connect to provincial/territorial/state highways in British Columbia, Alaska and the Northwest Territories more particularly described in the attached Schedule "A" forming part hereof, and shall be deemed to include land, including the right-of-way, used or surveyed for use as a public highway;
- 1.5 "P-L ESCALATOR" means the provincial/local escalator as defined in the Formula Financing Agreement;
- 1.6 "TRANSFER DATE" means that date subsequent to April 1, 1990 to be agreed upon by Canada and the Yukon as the formal date of transfer of assets and responsibilities as contemplated herein;
- 1.7 "RECONSTRUCTION" shall mean:
- a) work performed on an Inter-Territorial Highway or Associated Infrastructure to bring the Inter-Territorial Highway or the Associated Infrastructure to the design standard and retain the highway at that standard,
  - b) the major repair, upgrading and replacement of bridge structures on an Inter-Territorial Highway,
  - c) the future replacement of ferry vessels and renovation, improvement, modification and major upgrading of existing vessels at the crossings at Ross River and Dawson;
  - d) dredging of rivers at the ferry crossings listed in subparagraph c) above.

## 2. RESPONSIBILITIES

The Yukon shall assume the following responsibilities for reconstruction of Inter-Territorial Highways upon ratification of this Transfer Agreement and transfer of agreed funding:

- a) the establishment, development and approval of criteria and standards for highway design and categorization;
- b) development and approval of a Five-Year Capital Program and establishment of priorities for reconstruction;

- c) program planning which includes such activities as preliminary engineering, design and preparation of plans and specifications for reconstruction;
- d) implementation of projects, including such activities as tendering and construction management, arising from programs for reconstruction;
- e) all of the foregoing responsibilities with respect to ferry services;
- f) funding for:
  - i) reconstruction of Inter-Territorial Highways listed in Schedule "A";
  - ii) the major repair, upgrading, and replacement of Associated Infrastructure;
  - iii) dredging of rivers at the ferry crossings at Ross River and Dawson.

### 3. FINANCIAL PROVISIONS

#### 3.1 Base Funding Adjustment

In consideration of the responsibilities to be transferred from Canada to the Yukon by this agreement, Canada agrees to provide base funding adjustments under the Formula Financing Agreement, as follows:

- a) the sum of eight million, four hundred eighty-five thousand dollars (\$8,485,000), escalated by the 1989/90 provincial-local expenditure escalator, will be added to the Yukon 1990/91 Gross Expenditure Base before the Gross Expenditure Base has been escalated by the 1990/91 annual population-adjusted gross expenditure escalator in the same manner as set out in the Formula Financing Agreement.
- b) the sum of one hundred and fifteen thousand dollars (\$115,000), escalated by the 1989/90 provincial-local expenditure escalator and the 1990/91 annual population-adjusted gross expenditure escalator, will be added to the Yukon 1991/92 Gross Expenditure Base before the Gross Expenditure Base has been escalated by the 1991/92 annual population-adjusted gross expenditure escalator in the same manner as set out in the Formula Financing Agreement.

- c) a further sum, to be determined in accordance with the terms of an agreement to be entered into between Canada and the Yukon collateral to this and other program transfer agreements respecting indirect costs concerning departmental overhead and central agency contributions.
- 3.2 The parties agree that if the Formula Financing Agreement is not renewed, the application of the base funding adjustment provisions shall be dealt with in and governed by the provisions of any subsequent financial agreement between Canada and the Yukon that may replace the Formula Financing Agreement.
- 3.3 Funding for new federal initiatives and unforeseen events that create new responsibilities for the Yukon with respect to Inter-Territorial Roads will be addressed through provisions contained in the Formula Financing Agreement;
- 3.4 Nothing in this Agreement shall preclude the Yukon from being eligible for participation in any federal programs applicable to roads, inclusive of their financial benefits, which may be available in accordance with Program criteria, from time to time.
- 3.5 If the successor agreement to the Formula Financing Agreement between Canada and Yukon contains a guarantee for a minimum or floor grant for fiscal years 1990-1991 and 1991-1992, amounts transferred for the fiscal years 1990-1991 and 1991-1992 pursuant to the Agreement herein, shall be added to the 1989-1990 Gross Expenditure Base for the purpose of calculating the floor grants for the respective fiscal years.

#### 4. TRANSFER OF HIGHWAYS PROGRAM ASSETS

The Parties agree that the Yukon has the administration, control and beneficial use of the highways described in Schedule "A". If a Court of competent jurisdiction determines that the Yukon does not have the administration, control or beneficial use of such property, Canada undertakes in the case of those highways described in Schedule "A" which are within the Yukon to seek an Order-in-Council to transfer such administration, control and beneficial use.

The parties agree that Canada's obligations pursuant to this provision in respect of that portion of the South Klondike Highway in British Columbia are satisfied by the terms of an Agreement, dated February 4, 1988 between Her Majesty the Queen in Right of Canada and Her Majesty the Queen in Right of the Province of British Columbia in respect of the South Klondike Highway ("the Canada/B.C. Agreement") and the terms of an Agreement executed

February 4, 1988 between Her Majesty the Queen in Right of Canada and the Government of the Yukon in respect of the South Klondike Highway ("the Canada/Yukon Agreement"). Canada undertakes to attempt to renew the Canada/B.C. Agreement upon expiry of the term of that Agreement and if that Agreement is renewed, Canada and the Yukon shall renew the Canada/Yukon Agreement.

5. FILES AND RECORDS

Canada agrees to provide the Yukon, all files, records, computer tapes and any other data storage media which pertain to the Inter-Territorial Roads being transferred subject to the provisions of the Public Archives Act, R.S.C., 1985, c.P-27 and the Privacy Act, R.S.C. 1985, c.P-21.

6. HUMAN RESOURCES

6.1 The parties agree and acknowledge there are no employees of Canada affected by this transfer.

7. INDEMNIFICATION

7.1 The Yukon shall indemnify and save harmless Canada from and against and be responsible for all liabilities, claims, demands, actions, suits or other legal proceedings (collectively referred to as "claims" hereafter) by whomsoever made or brought against Canada by reason or arising from:

a) any acts or omissions of the Yukon after the Transfer Date as a result of the entry into this Agreement and the transfer contemplated herein; and

b) the use, occupation, possession, control and operation of the various buildings, facilities and other structures and their maintenance after the Transfer Date.

7.2 The Yukon shall pay to Canada the amount of any loss or damage which may be suffered or sustained by Canada by reason of or arising out of any of the matters or things referred to in clause 7.1.

7.3 Canada shall indemnify and save harmless the Yukon from and against and be responsible for all liabilities, claims, demands, actions, suits or other legal proceedings (collectively referred to as claims hereafter) by whomsoever made or brought against the Yukon by reason of or arising from:

- a) any acts or omissions of Canada prior to the Transfer Date in respect to the operation and administration of the Inter-Territorial Highways Program prior to the Transfer Date;
  - b) the use, occupation, possession, control and operation of the various buildings, facilities and other structures and their maintenance prior to the transfer date.
- 7.4 Canada shall pay to the Yukon the amount of any loss or damages which may be suffered or sustained by the Yukon by reason of or arising out of any of the matters or things referred to in clause 7.3.
- 7.5 Upon either party ("the Indemnified Party") receiving notice in writing of any claim, demand or proceeding ("Claim"), which would give that Party the right to make a claim against the other Party ("the Indemnifying Party") under Articles 7.1 or 7.3, the Indemnified Party shall promptly notify the Indemnifying Party in writing of the Claim.
- 7.6 The Indemnifying Party shall have the right, and obligation, to defend any such Claim and commence, continue and conclude any legal proceedings, appeals, hearings, arbitrations, negotiations or settlements ("Proceedings") as may be reasonably required for such purposes. The rights of the Indemnifying Party under this Article 7 shall be subject to:
- a) The Indemnifying Party keeping the Indemnified Party promptly advised of the details of the progress of any such Claim and the Proceedings;
  - b) The Indemnifying Party conducting the Proceedings on behalf of the Indemnified Party, prudently and with diligence;
  - c) The Indemnifying Party advising the Indemnified Party in writing of any proposed Claim settlement prior to concluding any such settlement;
  - d) In the event the Indemnified Party does not approve or concur in the conduct or carriage of the Proceedings by the Indemnifying Party, then the Indemnified Party may instruct the Indemnifying Party in writing to relinquish its rights to the conduct and carriage of all such Proceedings, whereupon the Indemnified Party shall assume full rights to, and full responsibility for, the Proceedings. The Indemnifying Party's liability under the indemnity hereunder shall not extend to any costs, expenses, damages or judgements incurred after the date

the responsibility for the Proceedings is assumed as contemplated herein and such indemnity, and the Indemnifying Party's obligations hereunder, shall thereupon terminate.

7.7. The Indemnified Party shall cooperate with the Indemnifying Party to the fullest extent in respect of the Proceedings, including keeping the Indemnifying Party promptly and fully informed of any matters relating to any such Claims. The Indemnified Party shall have the right to be closely consulted by the Indemnifying Party in respect of the Proceedings and the Indemnified Party counsel may participate in the Proceedings, subject always to the Indemnifying Party having the ultimate conduct of the Proceedings.

7.8. The indemnity of the Indemnifying Party under this Article 7 shall extend to and include all costs, expenses (including all legal fees and disbursements as between a solicitor and his own client and including all reasonable and customary internal manpower and overhead costs), damages or judgements incurred or sustained by the Indemnified Party as a result of the Proceedings described in this Article.

7.9 The Yukon agrees that, where it has assumed possession or control of property or equipment prior to the Transfer Date, its obligations pursuant to clause 7.1 in respect of the property or equipment shall commence upon the date of its assumption of possession or control and that Canada's obligations pursuant to clause 7.3 in respect of the equipment or property shall cease as of the same date.

## 8. GENERAL

### 8.1 Members of the House of Commons

No Member of the House of Commons of Canada shall be admitted to any share or part of this Agreement or to any benefit not enjoyed by any other member of the public which may arise therefrom.

### 8.2 Execution of Ancillary Documents

- a) The parties agree that, at the request of Canada, the Yukon will execute and deliver to Canada any instrument or document or will do anything that may be necessary to carry out its obligations under this Agreement or to complete any transaction contemplated by this Agreement.
- b) The parties agree that, at the request of the Yukon, Canada will execute and deliver to the Yukon any

instrument or document or will do anything that may be necessary to carry out its obligations under this Agreement or to complete any transaction contemplated by this agreement.

8.3 Entire Agreement

This Agreement constitutes the entire agreement among the parties pertaining to the subject matter hereof, and supersedes all prior and contemporaneous agreements, understandings, negotiations and discussions, oral or written, of the parties, and there are no warranties, representations or agreements among the parties pertaining to the subject matter hereof, except as specifically set forth herein.

8.4 Appropriation

Notwithstanding any other clause in this Agreement respecting the payment of any money by Canada, payment hereunder is subject to there being an appropriation for the fiscal year in which any payment provided for herein would become due, as provided for in section 40 of the Financial Administration Act, R.S.C. 1985, c. F-11.

8.5 Applicable Law

This Agreement shall be construed and interpreted in accordance with the laws of the Yukon Territory and the laws of Canada applicable therein.

8.6 Amendments and Waivers

No supplement, modification or waiver or termination of this Agreement shall be binding unless executed in writing by the party to be bound thereby. No waiver of any of the provisions hereof shall be deemed or constitute a waiver of any other provision nor shall such waiver constitute a continuing waiver, unless expressly provided.

8.7 Headings

Headings used in this Agreement are for convenience only and shall not be considered in the interpretation of this Agreement.

8.8 Time

Time shall be of the essence of this Agreement and the transactions contemplated herein.



8.9 Execution in Counterpart

This Agreement and any amendments may be executed in counterpart and when each party has executed a counterpart, all counterparts taken together shall constitute one agreement.

8.10 Coming into Force

Except as otherwise provided herein, this Agreement shall come into force on April 1, 1990.

8.11 Notices

Any notice given pursuant to this Agreement shall be made in writing and shall be effectively given and sent by registered mail, telegram, telex or other similar means of electronic communication to the appropriate address set out below:

If to Canada:

The Senior Assistant Deputy Minister  
Indian Affairs & Northern Development  
Les Terrasses de la Chaudière  
10 Wellington Street, North Tower  
OTTAWA, Ontario K1A 0H4

If to the Yukon:

The Deputy Minister  
Department of Community  
and Transport Services  
Government of the Yukon Territory  
WHITEHORSE, Yukon Territory  
Y1A 2C6

Such notice shall be deemed to have been received fifteen days after mailing if sent by registered mail, and the following business day if sent by electronic communications.

IN WITNESS HEREOF the parties hereto have executed this Transfer Agreement the day and year first above written.

Signed, sealed and delivered  
by Canada

Jean Beland

Witness

J. Sid

Minister of Indian Affairs  
and Northern Development

Signed, sealed and delivered  
by the Yukon

[Signature]

Witness

Maurice Syblow

Minister of Community and  
Transportation Services

SCHEDULE "A"

INTER-TERRITORIAL HIGHWAYS WITHIN THE YUKON

	<u>Description</u>	<u>Geometric Design Standard</u>
1.	South Klondike Alaska/B.C. Border to Junction of the Alaska Highway	RAU 90
2.	Dempster Junction of the North Klondike to the Yukon/ N.W.T. Border	RAU 80
3.	North Canol (including Ross River Foot-bridge) Junction of the Robert Campbell Highway to the Yukon/N.W.T. Border	RCU 80
4.	Nahanni Range Junction of the Robert Campbell Highway to the Yukon/N.W.T. Border	RLU 80
5.	Top of the World Dawson City side of the Yukon River to the Yukon/ Alaska Border	RCU 80

RAU 90: Rural Arterial Undivided 90 km/hr. design speed.  
RAU 80: Rural Arterial Undivided 80 km/hr. design speed.  
RCU 80: Rural Collector Undivided 80 km/hr. design speed.  
RLU 80: Rural Local Undivided 80 km/hr. design speed.