

Ministry of Agriculture,
Food and Rural Affairs

Ministère de l'Agriculture,
de l'Alimentation et
des Affaires rurales

4th Floor
1 Stone Road West
Guelph, Ontario N1G 4Y2
Tel: 1-866-306-7827
Fax: 519 826-4336

4^e étage
1 Stone Road West
Guelph (Ontario) N1G 4Y2
Tél. : 1-866-306-7827
Téléc. : 519 826-4336

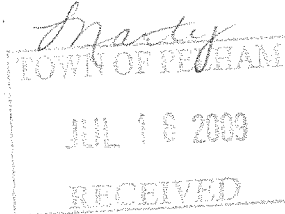


Ontario

Rural Community Development Branch

July 14, 2009

Martin Yamich
Chief Administrative Officer
Town of Pelham
P.O. Box 400
20 Pelham Town Square
Fonthill, Ontario
L0S 1E0



Our File: 23169

Dear Martin Yamich:

Please find enclosed a duly executed copy of your Funding Agreement for Intake 1 of the Building Canada Fund – Communities Component (BCF-CC) which sets out the terms and conditions of federal and provincial funding.

If you have any questions, please do not hesitate to call me at 519-826-6604 or e-mail me at barbara.maknoni@ontario.ca.

Sincerely,

Barbara Maknoni
Project Analyst

enclosure



Pick Ontario Freshness
Cueillez la fraîcheur de l'Ontario



BUILDING CANADA FUND – COMMUNITIES COMPONENT (BCF-CC)

CONTRIBUTION AGREEMENT FOR INFRASTRUCTURE PROJECTS

Ministry of Energy and Infrastructure and Ministry of Agriculture, Food and Rural Affairs
File Number: 23169

THIS AGREEMENT made in quadruplicate as of the 2 day of July, 2009.

B E T W E E N: **HER MAJESTY THE QUEEN IN RIGHT OF ONTARIO**
as represented by the Deputy Premier and Minister of Energy and
Infrastructure,

and the

Minister of Agriculture, Food and Rural Affairs (referred to herein as
"OMAFRA" in the latter case)

A N D: **THE CORPORATION OF THE TOWN OF PELHAM**

(referred to herein as the "Recipient")

WHEREAS the Parties recognize that investments in public infrastructure are fundamental to the quality of life of Ontarians and necessary to ensure continued economic growth;

AND WHEREAS the purpose of the Building Canada Fund – Communities Component (BCF-CC) is to improve and renew public infrastructure in Ontario's communities with populations of less than 100,000 people;

AND WHEREAS investments under the BCF-CC focus on projects in smaller communities to advance federal and provincial objectives of economic growth, cleaner environment, and strong and prosperous communities;

AND WHEREAS the BCF-CC supports projects that address local needs;

AND WHEREAS Recipients under the BCF-CC may choose to apply for funding for Projects in the categories of drinking water, wastewater, public transit, Core National Highway System, green energy, disaster mitigation, solid waste management, brownfield remediation and redevelopment, culture, sport, connectivity and broadband, local roads, shortline railways, short-sea shipping, regional and local airports, tourism as well as collaborative projects;

AND WHEREAS this Agreement defines the terms and conditions of a financial contribution from Canada and Ontario to assist with the Project under BCF-CC which is being administered by the Government of Ontario;

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

SCHEDULE "A"
GENERAL TERMS AND CONDITIONS

SECTION 1
DEFINITIONS AND INTERPRETATION

1.1 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 unless the subject matter or context is inconsistent therewith:

"Act" means the *Freedom of Information and Protection of Privacy Act*, R.S.O. 1990, c. F.31, as amended.

"Adjust the Financial Assistance" means adjust or terminate the Financial Assistance on the Project or the amount of financial assistance for any other of the Recipient's project(s) under the BCF-CC, or any other provincial program(s) or initiative(s) (either current or future), and/or require repayment for some or all of the Financial Assistance for the Project in an amount to be determined by OMAFRA and within the period specified by OMAFRA.

"Agreement" means this 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 8.1 of this Agreement.

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

"Claim Report" has the meaning given to it in Section 6.2 of this Agreement.

"Claims Submission" has the meaning given to it in Section 6.2 of this Agreement.

"Communication Requirements" means the communication requirements set out in Schedule "G" hereto, or as directed by OMAFRA 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.

"Contract" means a contract between a Recipient and a third party at arm's length whereby the latter agrees to provide a product or service to the Project in return for financial consideration that may be claimed as an Eligible Cost.

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

"Eligible Costs" means the costs so described in Schedule "C".

"End of Financial Assistance Date" means March 31, 2017.

"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

"Joint Secretariat" means the Joint Secretariat referred to in Section 4.5 of the Canada – Ontario Building Canada Fund Communities Component Agreement 2007 – 2017 made as of August 26, 2008, between Her Majesty in Right of Canada, as represented by the Minister of Transport, Infrastructure and Communities, and Her Majesty in Right of the Province of Ontario, as represented by the Minister of Energy and Infrastructure (the "Canada – Ontario BCFCC Agreement");

"Licensed Marks" has the meaning given to it in Section 13 of Schedule "A" to this Agreement.

"Local Government" means a "municipality" as defined in the *Municipal Act, 2001* (Ontario) and includes a local board of a municipality and a board, commission or other local authority exercising any power with respect to municipal affairs or purposes in an unorganized township, but excludes municipalities having a population in excess of 100,000 people.

"Maximum Financial Assistance" has the meaning set out in Section 4.5 and Schedule "D" hereto.

"Ontario Maximum Financial Assistance" has the meaning set out in Schedule "D" hereto.

"Oversight Committee" means the committee established pursuant to Subsection 4.1 of the Canada – Ontario BCF-CC Agreement, responsible for administering and managing the Canada – Ontario BCF-CC Agreement, established pursuant to Subsection 4.1 of the same;

"Payment Certifier" means a payment certifier as defined in subsection 1(1) of the *Construction Lien Act* (Ontario).

"Progress Report" has the meaning given to it in Section 6.2 of this Agreement.

"Project" means the project described in Schedule "B" hereto.

"Project Completion Date" means March 31, 2016.

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

"Senior Government" means the Government of Ontario and the Federal Government collectively.

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

"Third Party" means any person other than the Senior Government or a Recipient that participates in the implementation of a Project.

"Total Eligible Costs" has the meaning set out in Schedule "D" hereto.

1.2 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.

1.3 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.

SECTION 4 FINANCIAL ASSISTANCE

- 4.1 Use of Financial Assistance.** The Financial Assistance is intended for and shall be used only for Eligible Costs.
- 4.2 Basis of payout of Financial Assistance.** The Financial Assistance will be provided by OMAFRA to the Recipient on the basis set out in Schedule "D".
- 4.3 Semi-Annual Reporting.** The Recipient is required to submit semi-annual Expenditure Reports to OMAFRA pursuant to Section 6.1 prior to OMAFRA releasing any Financial Assistance.
- 4.4 Funds advanced.** If Financial Assistance is provided to the Recipient by OMAFRA prior to OMAFRA receiving evidence that the associated Eligible Costs have already been paid by the Recipient, then such Financial Assistance, including all interest earned thereon, shall be deemed to remain the property of OMAFRA and must be held by the Recipient in trust for OMAFRA 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 OMAFRA with either a Progress Report or a Final Report must meet the requirements of this Section.
- 4.5 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 figure set out in Schedule "F" hereto.
- 4.6 Excess funds.** Where actual costs are lower or appear likely to be lower than the total eligible expenditures, or where additional funding is secured from other government sources such that the funds available to the Recipient for the Project (other than the Financial Assistance) exceed the Maximum Financial Assistance, the Recipient shall immediately notify OMAFRA. OMAFRA may, in its sole discretion, adjust the Financial Assistance on the Project.
- 4.7 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, OMAFRA may, in its sole discretion, adjust the Financial Assistance for the Project.
- 4.8 Recipient not carrying out Project.** The Recipient shall immediately notify OMAFRA if it does not intend to carry out the Project in whole or in part as specified in Schedule "B" in which case OMAFRA may, in its sole discretion, adjust the Financial Assistance for the Project.
- 4.9 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, OMAFRA may, in its sole discretion, adjust the Financial Assistance for the Project.
- 4.10 Alternatives to Project.** If the Recipient becomes aware of any alternatives to the Project that are more cost effective (for example, an area/joint servicing scheme), the Recipient shall immediately notify OMAFRA, in which case OMAFRA may, in its sole

- 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.

5.6 Competitive tender. Except as otherwise approved in writing by OMAFRA, all portions of the construction component of the Project (including materials and equipment) shall be competitively and openly tendered, in the opinion of OMAFRA, to competent contractors capable of completing the construction component of the Project, and the Contract must be awarded to the lowest qualified bidder or, where the bid price is not the sole specified selection criterion, the highest ranked bidder.

5.7 Trade Agreements. If the Recipient is subject to any provincial or federal trade agreements to which Ontario is a party, the Recipient shall comply with the applicable requirements of such trade agreements. In particular, and without limitation, if the Recipient is subject to Annex 502.4 of the Agreement on Internal Trade, the Recipient shall comply with all of the applicable requirements of that Annex. In the event of any conflict between the requirements of Sections 5.5 and 5.6 of this Agreement and the requirements of this Section 5.7, the requirements referenced in this Section 5.7 shall apply.

5.8 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 Infrastructure on an ongoing basis, including plans to recover the full operating costs through service charges where appropriate. Upon request, the Recipient shall provide to OMAFRA a copy of its then current long-term capital management plan.

5.9 Final claims. The Recipient shall submit its final claims with the required documentation for approval, cost reviews, audits and settlement within three (3) months of completion of the Project and no later than the Final Report Date or such later date as is specified in writing by OMAFRA. Upon completion of the cost reviews, audits and settlement, OMAFRA shall not be obligated to consider any further claims in relation to the Project. The Recipient shall also submit, upon request by OMAFRA, the required documentation for approval, cost reviews and audits on an interim basis.

5.10 Commencement of Project. The Recipient shall begin the Project within six (6) months of the date of this Agreement, failing which this Agreement may be terminated pursuant to Section 15 unless otherwise approved by the Oversight Committee.

5.11 Contracts. The Recipient shall ensure that all Contracts:

- a) are consistent with this Agreement;
- b) do not conflict with this Agreement;
- c) incorporate the relevant provisions of this Agreement to the fullest extent possible;
- d) conform to all policies and procedures issued by the Senior Government for the

- c) a description of the type of work performed for each invoice; and
- d) when requested, all original invoices and receipts for the Project.

6.3 Final Report. Within three months of the Project becoming Substantially Performed and no later than the Final Report Date or such later date as is specified in writing by OMAFRA, the Recipient shall submit a final report (the "Final Report") for the Project to OMAFRA in a form satisfactory to OMAFRA and the Recipient shall follow such administrative procedures as are specified from time to time by OMAFRA. The Final Report shall include:

- a) a detailed description of the Project as completed, including photographs;
- b) particulars of how the Communication Requirements have been implemented or applied;
- c) a final unaudited financial statement showing Project expenditures and revenue, prepared by a qualified person;
- 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, in the form prescribed by OMAFRA;
- f) a final cost summary in the form appended as Schedule K hereto;
- g) when requested, all original invoices and receipts for the Project;
- h) details of any variance from the Project;
- i) details of the benefits and outcomes of the Project; and
- j) any other information respecting the Project that may be requested by OMAFRA, including, but not limited to, audited financial statements.

Upon receipt of the Final Report, OMAFRA shall not be obligated to consider any further claims in relation to the Project.

SECTION 7 RECORDS AND AUDIT

7.1 Separate records. The Recipient shall maintain separate records and documentation for the Project and keep all records and documentation for six (6) years after the final settlement of accounts referred to in Section 5.9 of this Agreement. Upon request, the Recipient shall submit to OMAFRA and any member of the Oversight Committee 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.

SECTION 8 OVERPAYMENT

- 8.1 Allowable Financial Assistance.** Funds advanced to the Recipient prior to settlement in accordance with Section 5.9 of this Agreement shall not be construed as a final determination of the amount of Financial Assistance applicable to the Project. Upon conducting a final cost review or audit of the Project, OMAFRA will determine the final amount of Financial Assistance on the Project (the "Allowable Financial Assistance"). The Recipient agrees to repay to OMAFRA, upon receipt of a written demand and within the period specified by OMAFRA, that portion of the total of the funds advanced that exceeds the Allowable Financial Assistance applicable to the Project, as determined by OMAFRA, as well as any funds used for a purpose other than that stated in the terms of this Agreement, as determined by OMAFRA.
- 8.2 Deduction of overpayment.** OMAFRA may deduct any overpayment of Financial Assistance pursuant to Section 8.1 made on the Project from financial assistance payable on any other project(s) of the Recipient under the BCF-CC or any other provincial program(s) (either current or future). Any overpayment made on any other project(s) of the Recipient under the BCF-CC or any other provincial program(s) (either current or future) may in turn be deducted from Financial Assistance payable on the Project.
- 8.3 Interest on overpayment.** OMAFRA reserves the right to demand interest on any overpayment of Financial Assistance owing by the Recipient under the terms of this Agreement at the then current interest rate charged by the Government of Ontario on accounts receivable. The Recipient shall pay the amount of interest owing upon receipt of a written demand and within the period specified by OMAFRA.

SECTION 9 INSURANCE AND BONDING

- 9.1 Insurance.** The Recipient represents and warrants that it has, and shall maintain in full force and effect for the term of the Agreement, at its own cost and expense, with insurers having a secure A.M. Best rating of B+ or greater, or the equivalent, all the necessary and appropriate insurance that a prudent person carrying out a project similar to the Project would maintain, including commercial general liability insurance on an occurrence basis for third party bodily injury, personal injury and property damage, to an inclusive limit of not less than five million dollars (\$5,000,000.00) per occurrence. The commercial general liability insurance policy shall include the following:
- (i) the Indemnified Parties as additional insureds with respect to liability arising in the course of performance of the Recipient's obligations under, or otherwise in connection with, the Agreement;
 - (ii) a cross liability clause;
 - (iii) contractual liability coverage; and
 - (vii) a 30 day written notice of cancellation, termination or material change.
- 9.2 Proof of Insurance.** The Recipient shall provide OMAFRA with certificates of insurance, or other proof as may be requested by OMAFRA, that confirms the insurance coverage

party, and any of its officers, employees, servants or agents; (b) the ongoing operation, maintenance and repair of the infrastructure resulting from the Project; or (c) any omission or other wilful or negligent act of the Recipient, a third party, their respective employees, officers, servants or agents.

SECTION 11 TRANSFER AND OPERATION OF INFRASTRUCTURE

11.1 *Transfer of ownership.* Unless otherwise agreed to by the Senior Government, the Recipient will retain title to, and ownership of, the Infrastructure resulting from the Project for at least ten (10) years after the Project's completion.

11.2 *Repayment.* In the event that at any time within ten (10) years from the date of completion of the Project, the Recipient sells, leases, encumbers or otherwise disposes of, directly or indirectly, any asset constructed, rehabilitated or improved, in whole or in part, with the Financial Assistance contributed under the terms of this Agreement, other than to Canada, Ontario, a Local Government, or a Crown corporation of Ontario that is the latter's agent for the purpose of implementing this Agreement, the Recipient hereby undertakes to repay the Senior Government, on demand, a proportionate amount of the Financial Assistance, as follows:

Where Project asset is sold, leased, encumbered or disposed of:	Repayment of contribution (in current dollars)
Within 2 Years after Project completion	100%
Between 2 and 5 Years after Project completion	55%
Between 5 and 10 Years after Project completion	10%
10 Years after Project completion	0%

11.3 *Notice.* At any time during the ten (10) years following the date of completion of the Project, the Recipient agrees to notify OMAFRA in writing of any transaction triggering the above-mentioned repayment, at least one hundred eighty (180) days in advance.

11.4 *Deduction from Financial Assistance.* OMAFRA may deduct the amount of Financial Assistance to be repaid under Section 11.2 from Financial Assistance payable on any other project(s) of the Recipient under the BCF-CC or any other provincial program(s) (either current or future).

11.5 *Revenue from Assets.* The Recipient must identify to OMAFRA when a Project asset generates revenues that exceed its costs, including operating costs, alternative financing partnerships or public private partnerships costs and provisions for future life cycle costs and where the intent of revenue generation was not identified in the application. The Recipient must pay OMAFRA, upon request, that proportion of excess, that is the same percentage proportion as Canada's and Ontario's contribution was to the total cost of the Asset. This obligation will apply only to the first ten (10) complete Fiscal Years following the completion date of the Project.

11.6 *Infrastructure Operation.* The Infrastructure established with the Financial Assistance from OMAFRA shall be used, maintained and operated for a period of at least one half of the expected useful life of the asset after the completion of the Project as set out in Schedule "F". Any contravention of this provision shall give OMAFRA the right to adjust the Financial Assistance.

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 BCF-CC Joint Secretariat and upon the direction of the BCF-CC Joint Secretariat express disclaimers to that effect; and
- d) the Recipient agrees to promptly inform the BCF-CC Joint Secretariat of any suspected infringement of any Licensed Marks by a third party.

13.4 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 BCF-CC Joint Secretariat, 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.

13.5 Indemnity. The Recipient hereby indemnifies the Indemnified Parties 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.

SECTION 14 COVENANTS, REPRESENTATIONS AND WARRANTIES

14.1 Covenants, representations and warranties. The Recipient covenants, represents and warrants to the Government of Ontario that:

- a) it is conducting and shall conduct its business in compliance with all applicable federal, provincial and municipal laws, and all rules, regulations, by-laws, notices, orders and approvals;
- b) it is conducting and shall conduct its business in compliance with all federal requirements as outlined in Schedule "E;"
- c) it has authority and any necessary approval to enter into this Agreement and to carry out its terms;
- d) 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, 1992* (Ontario), the *Highway Traffic Act* (Ontario), the *Public Transportation and Highway Improvement Act* (Ontario), the *Bridges Act* (Ontario) and the Environmental Laws;
- e) it validly exists as a legal entity with full power to perform and observe all of the terms and conditions of this Agreement;
- f) where applicable, it has passed by-laws required to undertake the Project;
- g) it is now and will continue to be compliant with all Environmental Laws;
- h) it owns or has a long-term lease (inclusive of any renewals) for the lands on

liquidation or dissolution of the Recipient or the Recipient is otherwise dissolved or ceases to carry on its operation;

- d) if the Recipient uses any of the Financial Assistance for a purpose not authorized by this Agreement without the prior written consent of the Government of Ontario;
- e) 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 bankrupts or insolvent debtors;
- f) if in the opinion of the Government of Ontario a material adverse change occurs such that the viability of the Recipient as a going concern is threatened in the opinion of the Government of Ontario, acting reasonably;
- g) if in the opinion of the Government of Ontario the Recipient ceases to operate;
- h) if the Recipient fails to begin the Project within six (6) months after the date of this Agreement, or, in the opinion of the Government of Ontario, 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 Government of Ontario are beyond the control of the Recipient;
- i) if the Recipient has submitted false or misleading information to OMAFRA; or
- j) 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 Section 12 (Conflict of Interest and Confidentiality).

15.2 Waiver. OMAFRA 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 OMAFRA.

15.3 Remedies on default. Notwithstanding any other rights which the Government of Ontario may have under this Agreement, if an Event of Default has occurred, the Government of Ontario shall have the following remedies provided only that in the case of an Event of Default which, in the opinion of OMAFRA in its sole discretion, is curable, OMAFRA 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 30 days or such period of time as OMAFRA may consent to in writing:

- a) OMAFRA shall have no further obligation to provide any Financial Assistance for the Project;
- b) the Government of Ontario may, at its option, terminate this Agreement and OMAFRA may, in its sole discretion, adjust the Financial Assistance. The total

SECTION 17 MISCELLANEOUS

- 17.1 Terms binding.** The Recipient shall take all reasonable measures to ensure that its officers, directors, partners, employees, agents and the Consultant shall be bound to observe all of 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 all of its Contract(s) terms and conditions similar to and not less favourable to the Government of Ontario 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 7.4 of this Agreement.
- 17.2 Time is 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. The Government of Ontario shall not be liable for any liquidated damages as a result of working days extensions.
- 17.3 Successors and assigns.** This Agreement shall ensure to the benefit of and be binding upon the parties hereto and their respective heirs, executors, administrators, successors and permitted assigns.
- 17.4 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.
- 17.5 No waiver.** The failure by the Government of Ontario 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 Government of Ontario'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.
- 17.6 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.
- 17.7 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.
- 17.8 Survival.** The following schedules, sections and provisions of this Agreement shall survive the expiration or early termination hereof: Section 4 (Financial Assistance), Section 6 (Reporting Requirements), Section 7 (Records and Audit), Section 8 (Overpayment), Section 10 (Indemnity), Section 11 (Transfer and Operation of Infrastructure), Section 12 (Conflict of Interest and Confidentiality), Section 13 (Communications and Recognition), Section 14 (Covenants, Representations and Warranties), Section 15 (Default, Enforcement and Termination), Section 5.8 (Long-term capital management plan) and Section 17.11 (Interest) of Schedule "A"; Schedule "E"; Schedule "F" (useful life of Project Infrastructure); and Schedule "G" (the Recipient's obligation to maintain a permanent plaque in cases where it is necessary to install a permanent plaque).
- 17.9 No assignment.** This Agreement shall not be assigned by the Recipient. The Government of Ontario may assign this Agreement on written notice to the Recipient.

17.18 Priority. Where there is a conflict between one or more of the schedules of this Agreement, the following order of priority shall apply: Schedule "A", Schedule "C", Schedule "B" and all other schedules.

- END OF GENERAL TERMS AND CONDITIONS -

SCHEDULE "C"
ELIGIBLE AND INELIGIBLE COSTS

ELIGIBLE COSTS

- C.1.** Subject to Section C.2, Eligible Costs will be all direct costs which are in OMAFRA's opinion properly and reasonably incurred and paid by the Recipient for an eligible investment under a contract for goods or services necessary for the implementation of the Project. Eligible Costs will include only the following:
- a) the capital costs of acquiring, constructing or renovating a tangible capital asset, as defined and determined according to Generally Accepted Accounting Principles;
 - b) the costs of joint communication activities (press releases, press conferences, translation, etc.) and road signage recognition as described in Schedule "G";
 - c) all planning (including plans and specifications) and assessment costs such as the costs of environmental planning, surveying, engineering, architectural supervision, testing and management consulting services, to a maximum of 15% of total eligible costs or 15% of the federal contribution, whichever is less;
 - d) the costs of engineering and environmental reviews, including environmental assessments and follow-up programs as defined in the *Canadian Environmental Assessment Act* and the costs of remedial activities, mitigation measures and follow-up identified in any environmental assessment;
 - e) the costs of Project-related signage, lighting, Project markings and utility adjustments;
 - f) costs of First Nations consultation process;
 - g) the costs of developing and implementing innovative techniques for carrying out the Project;
 - h) Recipient audit and evaluation costs as specified in this Agreement;
 - i) other costs that, in the sole opinion of OMAFRA, are considered to be direct and necessary for the successful implementation of the Project and have been approved in writing prior to being incurred; and
 - j) for Collaborative Projects the costs of planning, developing, and implementing:
 - (i) studies, strategies, or systems related to infrastructure integrated asset management, which may include software acquisition and implementation;
 - (ii) studies, strategies, or systems related to infrastructure demand management;
 - (iii) feasibility studies for specific infrastructure Projects which at the time of the study are not being actively considered for funding under the BCF-CC;

SCHEDULE "D"
FINANCIAL ASSISTANCE

Total Eligible Costs:	\$2,557,717
Federal Maximum Financial Assistance:	\$852,572
Ontario Maximum Financial Assistance:	\$852,572
Maximum Financial Assistance:	\$1,705,144

OMAFRA will hold back 10% of the Maximum Financial Assistance, the release of which shall be contingent on submission of the Recipient's Final Report detailing the progress and status of the Project and substantiating that the Project has been Substantially Performed. Such report must contain the information required in the Final Report as set out in Section 6.3 of Schedule "A" of this Agreement. OMAFRA is not obligated to pay interest on the holdback or any other payments under this Agreement.

MINISTRY COLLABORATES WITH CLIENT ON AN APPROPRIATE PROJECT SCHEDULE

Section 13 (Communication and Recognition) of this Agreement, with appropriate changes, in relation to the Federal Licensed Marks.

6. No member of the House of Commons or of the Senate of Canada shall be admitted to any share or part of any contract, agreement or commission made pursuant to this Agreement or to any benefit arising therefrom.
7. Notwithstanding any provisions of this Agreement, all obligations of Canada incurred by virtue of this Agreement shall be subject to the *Financial Administration Act* (Canada).
8. All of the provisions of this Schedule "E" shall survive the expiration or early termination of this Agreement.
9. Pursuant to the requirements of the *Canadian Environmental Assessment Act*, the Recipient will follow the general environmental mitigation measures outlined in the document entitled "Screening under the Canadian Environmental Assessment Act" and any Project-specific environmental mitigation measures as communicated to the Recipient by the Federal Government.
10. The Recipient acknowledges and agrees that the Federal Government may, in its sole discretion, exercise OMAFRA's right to monitor the Project, perform audits and/or gather data pursuant to the terms and conditions of this Agreement.
11. The Recipient warrants that:
 - a) it has not, nor has any person on its behalf, paid or provided or agree to pay or provide, to any person, directly or indirectly, a commission, contingency fee or any other consideration (whether monetary or otherwise) that is dependant upon the execution of the Agreement or the person arranging a meeting with any Public Office Holder as defined in the *Lobbying Act*;
 - b) it will not, during the term of this Agreement, pay or provide or agree to pay or provide to any person, directly or indirectly, a commission, contingency fee or any other consideration (whether monetary or otherwise) that is dependant upon the person arranging a meeting with any Public Office Holder;
 - c) any person who, for consideration, directly or indirectly, communicated with or arranged a meeting with any Public Office Holder, in respect of any aspect of this Agreement, prior to the execution of the Agreement, was in compliance with all requirements of the Act;
 - d) any person who, for consideration, directly or indirectly, during the term of this Agreement and in respect of any aspect of this Agreement, communicates with or arranges a meeting with any Public office Holder will be in compliance with all requirements of the Act; and
 - e) at all relevant time the Recipient has been, is and will remain in compliance with the Act.

SCHEDULE "G"

COMMUNICATIONS REQUIREMENTS

Unless specified otherwise in Schedule "F", for the purposes of this Schedule "G" the Recipient shall follow these communications requirements.

Purpose of Schedule

This Schedule describes the Recipient's responsibilities and financial obligations involved in the joint communications activities and products for the Project to recognize the contributions of the Government of Canada, the Government of Ontario and the Recipient.

General Principles

The Recipient agrees to work with BCF-CC officials and other partners to undertake communication activities for the Project in an open, effective and proactive manner, ensuring equal recognition of all parties making a significant financial contribution to the Project.

All parties making a significant financial contribution to the Project will receive equal recognition and prominence when logos, symbols, flags and other types of identification are incorporated into events, signs and plaques unless the BCF-CC Joint Secretariat specifies otherwise.

All events, signs and plaques will follow these Communications Requirements and any other requirements that may be specified by the BCF-CC Joint Secretariat from time to time.

Both official languages will be used for public information, signs and plaques in accordance with the *Official Languages Act*.

The Recipient may produce information kits, brochures, public reports and Web pages providing information on the Project and Agreement for private-sector interest groups, contractors and members of the public. The Recipient will consult with the Governments of Canada and Ontario in preparing the content and look of all such material. All communications referencing the Governments of Canada and Ontario must be approved.

Events

The Recipient agrees that all Project-related milestone events, such as groundbreaking and ribbon-cutting ceremonies, will be organized in cooperation with the Governments of Canada and Ontario and any other parties making a significant financial contribution to the Project.

The Recipient will coordinate a mutually agreeable venue, date and time for the event in light of the availability of all participants. Unless agreed to in advance, no event should take place without at least fifteen (15) working days' notice to all Parties.

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 as early as possible, and in consultation with the Governments of Canada and Ontario, prior to the event.

- chairs
- podium
- PA system

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.

For the purposes of signage, Eligible Costs include the following:

- Maximum costs of \$2,250 for a small sign and \$4,250 for a large sign
- Maximum costs of \$2,500 for a permanent plaque

**SCHEDULE "I"
PROGRESS REPORT****Building Canada Fund – Communities Component (BCF-CC)
Fonds chantiers Canada-Ontario Le volet Collectivités (FCC-VC)****Progress Report
Rapport sur l'état d'avancement des travaux****Report # / Rapport n° _____ of / de _____ File # / Dossier n° _____**

Project Start Date / Date de début du projet : _____

Project End Date / Date de fin du projet : _____

Recipient Name / Nom de la bénéficiaire : _____

Estimated % of Project Completion / Estimation du pourcentage des travaux réalisés : ____%

Description of Activities During this Period / Description des activités pendant cette période:

Communications Requirements / Besoins en matière de communication :

Issues / Points à souligner :

Signature / Signature: _____ Date / Date: _____

SCHEDULE "K" FINAL REPORT



Building Canada Fund - Communities Component (BCF-CC) Fonds chantiers Canada-Ontario Le volet Collectivités (FCC-VC)

FINAL REPORT/RAPPORT FINALE

Part 1 - Project Information / Partie 1 - Information sur le projet

Recipient/Bénéficiaire
File Number/Numéro de dossier
Project Name/Nom du projet
Eligible Project Cost/Coût admissible du projet \$
Total Project Cost/Coût total du projet \$

Authorized Official / Responsable autorisé(e)

Name/Nom	Date/Date
Title/Titre	
<p>I certify that the named project has been completed in accordance with the Building Canada Fund - Communities Component Contribution Agreement and that, where applicable, all identified environmental mitigation measures have been satisfactorily addressed and that supporting invoices and records are available for audit, if required.</p> <p>J'affirme par la présente que le projet nommé a été terminé conformément à l'accord Fonds chantiers Canada-Ontario Le volet Collectivités municipal et que, le cas échéant, toutes les mesures d'atténuation environnementales nommées ont été adressées de façon acceptables et que les factures et documents d'appui sont disponibles à des fins de vérification.</p>	
Signature/Signature	

Part 2 - Final Report Information/Partie 2 - Information du rapport final

Breakdown of Project Costs (Categories as per Schedule 2 of Application) / Répartition des coûts du projet (Catégories selon l'annexe 2 de la demande)			
Engineering/Design Costs / Ingénierie	\$	GROSS PROJECT TOTAL / PROJET BRUT TOTAL	\$
Environmental Assessment Costs / Coût de l'évaluation environnementale	\$	Less G.S.T. Rebate / Moins remboursement de la T.P.S.	\$
Project Management / Gestion de projet	\$	NET PROJECT TOTAL / PROJET NET TOTAL	\$
Construction	\$	Project Start Date / Date du début du projet	
Miscellaneous / Divers	\$	Project Completion Date / Date de la fin du projet	
	P.S.T. / T.V.P.	\$	
	G.S.T. / T.P.S.	\$	
continue at top of right side - part 2 / suite de la partie 2, en haut à droite			

*NOTE: If the actual costs are 20% less or greater than the estimated costs for any of the above categories, please attach an explanation of the variance for each.

*REMARQUE : Si le coût actuel est de 20 % supérieur ou inférieur au coût estimé pour une des catégories ci-dessus, veuillez inclure une explication de l'écart pour chacun des coûts.