



The Corporation of The  
**TOWN OF PELHAM**

FROM THE OFFICE OF THE TOWN CLERK

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October 7, 2009

Mr. Dino Radocchia  
Provincial Co-Chair  
Canada Ontario Infrastructure Secretariat  
Ministry of Agriculture, Food & Rural Affairs  
4<sup>th</sup> Floor, 1 Stone Road West  
GUELPH On N1G 4Y2

Dear Mr. Radocchia:

SUBJECT: **Infrastructure Stimulus Fund**

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As per your letter of August 26, 2009, enclosed herein please find the following documents:

- (1) four copies of the BCF-CC Contribution Agreement – duly signed and sealed by the Mayor and Clerk
- (2) copy of Schedule "H" – Expenditure and Job Creation Report template, attached to each copy of the Contribution Agreement
- (3) certified copy of By-law #3056 (2009)
- (4) Certificate of Insurance in the amount of \$5,000,000

Trusting this is to your satisfaction.

Yours very truly,

(Mrs.) Cheryl Miclette, AMCT  
Town Clerk

Enclosures

**INFRASTRUCTURE STIMULUS FUND**

**CONTRIBUTION AGREEMENT**

Ministry of Energy and Infrastructure and Ministry of Agriculture, Food and Rural Affairs

**THIS AGREEMENT** made in quadruplicate as of the \_\_\_\_ day of \_\_\_\_\_, 2009.

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

and the

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

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

(referred to herein as the "Recipient")

**WHEREAS** the Government of Canada has established a \$4 billion Infrastructure Stimulus Fund (ISF) under Canada's Economic Plan to mitigate against the impacts of the global economic recession by increasing the total amount of construction activity to projects that can start and be substantially completed in fiscal years 2009-2010 and 2010-2011;

**AND WHEREAS** the Government of Ontario also recognizes the impacts of the global economic recession on the Province of Ontario and is actively mitigating against those impacts by increasing the total amount of construction activity to projects that can start and be substantially completed in fiscal years 2009-2010 and 2010-2011;

**AND WHEREAS** the purpose of the Infrastructure Stimulus Fund Contribution Agreement ("Agreement") is directed at capital projects that involve moveable or non-moveable assets, constructed, rehabilitated, or improved, in whole or in part;

**AND WHEREAS** this Agreement defines the terms and conditions of a financial contribution from the Government of Canada and the Government of Ontario to assist with projects under ISF 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:

This Agreement, including:

- Schedule "A" - General Terms and Conditions
- Schedule "B" - Description of the Project(s)
- Schedule "C" - Eligible and Ineligible Costs
- Schedule "D" - Project Financial Assistance
- Schedule "E" - Government of Canada Requirements
- Schedule "F" - Additional Provisions
- Schedule "G" - Communications Requirements

**SCHEDULE "A"**  
**GENERAL TERMS AND CONDITIONS**

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**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:

**"Aboriginal Group(s)"** includes the Indian, Inuit and the Métis peoples of Canada or any other group that has legally been recognized as holding Aboriginal or treaty rights under section 35 of the *Constitution Act, 1982*.

**"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 ISF, 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 Infrastructure Stimulus Fund Contribution Agreement, including the cover and execution pages and all of the Schedules, 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 Schedule "A".

**"Asset"** means any moveable or non-moveable asset, constructed, rehabilitated, or improved, in whole or in part, with Financial Assistance contributed by the Government of Canada and the Government of Ontario under this Agreement.

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

**"Claim and Progress Statement"** has the meaning given to it in Section 6.3 of Schedule "A".

**"Claims Submission"** has the meaning given to it in Section 6.3 of Schedule "A".

**"Class of Asset"** means a

- a) Local Government Asset;
- b) Not-For-Profit Private Sector Asset;
- c) For-Profit Private Sector Asset; or
- d) Provincial Asset.

**"Communication Requirements"** means the communication requirements set out in Schedule "G", 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

**"Government of Ontario"** means Her Majesty the Queen in right of Ontario.

**"Infrastructure"** means publicly or privately owned capital assets in Ontario for public use or benefit.

**"Indemnified Parties"** means Her Majesty the Queen in right of Ontario, Her Ministers, directors, officers, agents, appointees and employees and Her Majesty the Queen in right of Canada, Her Ministers, directors, officers, agents, appointees and employees.

**"Ineligible Costs"** means the costs so described under Part C.2 of Schedule "C".

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

**"Local Government Asset"** means an asset that is owned, or will be owned, by a local or regional government established under the laws of Ontario.

**"Local Services Board"** means a Local Services Board established under the *Northern Services Boards Act*, R.S.O. 1990, c. L. 28, as amended.

**"Maximum Financial Assistance"** has the meaning set out in Section 4.6 and Schedule "D".

**"Not-For-Profit Private Sector Asset"** means an Asset that is owned, or will be owned, by a not-for-profit private sector entity.

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

**"Project"** means the project or projects as described in Schedule "B".

**"Project Completion Date"** means March 31, 2011.

**"Project Construction Start Date"** has the meaning given to it in Schedule "B".

**"Project Status Report"** has the meaning given to it in Section 6.1 of Schedule "A".

**"Provincial Asset"** means an Asset that is owned, or will be owned, by the Government of Ontario or by a public sector body that is established by or under Ontario statute or by or under regulation.

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

**"Solemn Declaration of Substantial Completion"** is referred to in Section 6.5 and Schedule "K".

**"Substantially Completed"** has the same meaning as and shall be determined in accordance with "substantially performed" in subsection 2(1) of the *Construction Lien Act*, R.S.O. 1990, c. C.30, as amended, and **"substantial completion"** shall have a corresponding meaning.

**"Term"** has the same meaning set out in Section 2.1.

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

Part C.1 of Schedule "C" will be determined in accordance with the policies and guidelines (if any) established by OMAFRA to administer the ISF. The final determination of the eligibility of any costs claimed is at the sole and absolute discretion of OMAFRA.

- 3.3 **Retention of Receipts.** The Recipient shall retain all accounts, documents and records of payments related to Eligible Costs including, without limitation, invoices and receipts, for audit purposes and such supporting documentation must be available to OMAFRA when requested and shall be retained until six (6) years after the Substantial Completion of the Project, any extension thereof or for such period as OMAFRA in its sole discretion may, in writing, direct.
- 3.4 **Ineligible Costs.** Notwithstanding anything else contained herein, the costs that are not eligible for Financial Assistance pursuant to this Agreement are set out in Part C.2 of Schedule "C" ("Ineligible Costs").
- 3.5 **Deemed Ineligible.** The Recipient acknowledges that the Government of Ontario's Fiscal Year ends on March 31 in each year, and that should a cost not be submitted by the Recipient for payment of Financial Assistance before March 31 of the year following the Fiscal Year in which it was incurred, such cost may be deemed, at OMAFRA's sole and absolute discretion, ineligible for Financial Assistance.

#### SECTION 4 FINANCIAL ASSISTANCE

- 4.1 **Use of Financial Assistance.** The Financial Assistance is intended for and shall be used only for Eligible Costs incurred by the Recipient.
- 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 **Reporting.** The Recipient is required to submit Project Status Reports and Expenditure and Job Creation Reports to OMAFRA pursuant to Section 6.1 and Section 6.2 of Schedule "A" prior to OMAFRA releasing any Financial Assistance.
- 4.4 **Financial Assistance Advanced.** Based on submitted Expenditure and Job Creation Report projections demonstrating that Eligible Costs will be incurred in 2009-10, OMAFRA may provide to the Recipient up to 25% of Eligible Costs expected to be incurred in 2009-10 prior to OMAFRA receiving evidence that the associated Eligible Costs have already been incurred by the Recipient (the "advance payment(s)"). The Recipient is required to submit invoices demonstrating full use of the advanced payments in subsequent Claim and Progress Statements to OMAFRA. Further Eligible Costs incurred in 2009-10 will only be reimbursed following the Recipient's submission of invoices to OMAFRA and showing the full use of the advanced payment. If the Recipient is unable to provide invoices by March 31, 2010 demonstrating full-use of the advanced payment, the Government of Ontario retains the right to demand repayment of any unused Financial Assistance.

Based on submitted Expenditure and Job Creation Report projections demonstrating that Eligible Costs will be incurred in 2010-11, OMAFRA may provide to the Recipient up to 25% of Eligible Costs expected to be incurred in 2010-11 prior to OMAFRA receiving evidence that the associated Eligible Costs have already been incurred by the Recipient

becomes aware of any alternative means of completing either the Project's objective or the Project itself that are more cost effective, the Recipient will be notified and OMAFRA may, in its sole and absolute discretion, Adjust the Financial Assistance.

- 4.12 Transfer of Financial Assistance between Projects.** The Recipient shall not transfer Financial Assistance assigned to one Project to another Project listed in Schedule B hereto without the express written consent of OMAFRA.
- 4.13 Goods and Services Tax.** The Financial Assistance is based on the net amount of Goods and Services Tax to be paid by the Recipient pursuant to the *Excise Tax Act*, R.S.C. 1985, c. E-15, as amended, net of any applicable rebates. If and when the Harmonized Sales Tax is phased in within the Province of Ontario, the Financial Assistance will be based on the net amount of the Harmonized Sales Tax to be paid by the Recipient, net of any applicable rebates.
- 4.14 Withholding Payment.** OMAFRA may, in its sole and absolute discretion, withhold payment of Financial Assistance where the Recipient is in default in obtaining any necessary permits, approvals or licenses applicable to the Project or is in default of compliance with any provisions of this Agreement or any and all applicable federal, provincial or municipal laws, and all rules, regulations, by-laws, notices, orders, approvals, directives, protocols, policies and guidelines.
- 4.15 Financial Assistance upon Expiry.** Without limiting any rights OMAFRA has under this Agreement, at law or in equity, OMAFRA shall have the right to be repaid by the Recipient, in whole or in part, for Financial Assistance advanced and unspent by the Recipient for a Project that has not been completed by the Project Completion Date.
- 4.16 Limitation on Payment of Financial Assistance.** Notwithstanding section 4.4 of this Agreement, OMAFRA may choose not to advance any Financial Assistance to the Recipient until the Recipient provides the insurance certificate or other documents provided for in section 9 of Schedule "A".
- 4.17 Insufficient Funds Provided by the Legislature of Canada.** If, in the opinion of the Government of Ontario, the Legislative Assembly of Ontario or the Government of Canada does not provide sufficient funds to continue the Financial Assistance for any Fiscal Year during which this Agreement is in effect, the Government of Ontario may terminate this Agreement in accordance with the terms specified in Section 15.5 of Schedule "A".

## SECTION 5

### PROJECT AWARD, CONSULTATIONS WITH ABORIGINAL GROUP(S), MANAGEMENT AND COMPLETION

- 5.1 Recipient Fully Responsible.** The Recipient shall be fully responsible for the undertaking, implementation and completion of the Project and shall retain any and all Consultants reasonably required to undertake a project of the size, scope and complexity of the Project. Where implementation of the Project is dependent on completion of a project by others, the Recipient shall be fully responsible for obtaining any assurances that it may require from others in relation to the implementation of the Project by the Recipient.
- 5.2 Government of Ontario Not Responsible for Implementation.** The Government of

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, any documentation required for approval, cost reviews and audits.

**5.9 Commencement of Project.** The Recipient shall begin the Project within sixty (60) days of the Project construction start date, as per Schedule B, or such other period as OMAFRA may allow, failing which this Agreement may be terminated pursuant to Section 15.

**5.10 Contracts.** The Recipient shall ensure that all Contracts:

- a) are consistent and do not conflict with this Agreement;
- b) incorporate the relevant provisions of this Agreement to the fullest extent possible;
- c) be consistent with all policies and procedures the Government of Canada and/or the Government of Ontario may provide to the Recipient in relation the ISF;
- d) are awarded and managed:
  - (i) in a way that is transparent, competitive and consistent with value for money principles; and
  - (ii) in accordance with any policies and procedures the Government of Ontario may provide to the Recipient;
- e) require that the parties thereto comply with any and all applicable federal, provincial or municipal laws, and all rules, regulations, by-laws, notices, orders, approvals, directives, policies, protocols and guidelines; and
- f) authorize the Governments of Canada and Ontario of to collect, use and disclose information and data gathered by parties, perform audits and monitor the Project as they see fit.

## **SECTION 6 REPORTING REQUIREMENTS**

**6.1 Project Status Report.** The Recipient shall submit monthly Project Status Reports in the format prescribed by OMAFRA including such information as estimated percentage of project completion, tender call dates, tender award dates, forecast and actual construction start and end dates, and all other information respecting the progress of the Project that may be requested by OMAFRA or of which the Recipient becomes aware that may affect the Project's timely completion.

In addition, and without limitation by the communications requirements set out elsewhere in this Agreement, the Recipient shall also submit copies of all communications and public information materials related to the Project with the Project Status Reports.

**6.2 Expenditure and Job Creation Report.** The Recipient shall, at a minimum, submit to OMAFRA a quarterly Expenditure and Job Creation Report, as set out in Schedule "H" hereto and which may be amended by OMAFRA from time to time, for each Project

Recipient shall, upon request, retain an external auditor acceptable to OMAFRA at the Recipient's sole expense. The Recipient shall ensure that any auditor who conducts a financial or program review pursuant to this section of the Agreement or otherwise, provides a copy of the report to OMAFRA for its consideration at the same time that the report is given to the Recipient.

- 7.4 Auditor General of Canada.** The Auditor General of Canada, may, at the Auditor General of Canada's cost, conduct an audit with respect to the use of Financial Assistance under this Agreement. For the purposes of facilitating such inquiry, the Recipient shall release to OMAFRA upon request and in a timely manner, for the purpose of releasing to the Auditor General of Canada: all records held by the Recipient, or by agents or contractors of the Recipient, relating to this Agreement and/or the Financial Assistance; and such further information and explanations as the Auditor General, or anyone acting on behalf of the Auditor General may request relating to any part of this Agreement of the use of Financial Assistance.
- 7.5 Auditor General of Ontario.** The Auditor General of Ontario, may, at the Auditor General of Ontario's cost, conduct an audit with respect to the use of Financial Assistance under this Agreement. For the purposes of facilitating such inquiry, the Recipient shall release to OMAFRA upon request and in a timely manner, for the purpose of releasing to the Auditor General of Ontario: all records held by the Recipient, or by agents or Contractors of the Recipient, relating to this Agreement and/or the Financial Assistance; and such further information and explanations as the Auditor General, or anyone acting on behalf of the Auditor General may request relating to the Financial Assistance.
- 7.6 Information.** The Recipient shall supply to OMAFRA, upon request, such information in respect of the Project and its results including, without limitation, all Contracts and agreements related to the Project and all plans and specifications related to the Project, as OMAFRA may require. The Government of Canada and the Government of Ontario, their respective agents and employees, including the Auditor General's Office, shall be allowed access to the Recipient's premises and staff and to the Project site at all reasonable times to (i) inspect the progress and monitor the Project; (ii) perform cost reviews and audits on the Project; and (iii) complete any other auditing or monitoring that may be reasonably required in relation to the Project.
- 7.7 Information Condition Precedent for Payment.** If, in the opinion of OMAFRA, any of the information requirements of this Section 7 are not met, OMAFRA may, in its sole and absolute discretion, require the information as a condition precedent to any payment in relation to the Project(s) of the Recipient under the ISF, or any other provincial program(s) (either current or future). In addition, OMAFRA may, in its sole and absolute discretion, Adjust the Financial Assistance for the Project.

## **SECTION 8 OVERPAYMENT AND FAILURE TO SUBSTANTIALLY COMPLETE CONTRACT WITHIN TIMELINES**

- 8.1 Allowable Financial Assistance.** Financial Assistance paid to the Recipient prior to the submission of a Final Report in accordance with Section 5.9 of Schedule "A" 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



coverage as provided for in Section 9.1 of Schedule "A". Upon the request of OMAFRA, the Recipient shall make available to OMAFRA a copy of each insurance policy.

**9.3 Bonding.** The Recipient shall put in effect and maintain in full force and effect or cause to be put into effect and maintained in full force and effect during the term of this Agreement.

- a) a performance bond in the amount of 100% of the Contract price for any construction Contract related to the Project and which is for an amount greater than \$150,000.00 covering the performance of that construction Contract and the correction of any deficiencies; and
- b) a labour and material payment bond in the amount of 50% of the Contract price for any construction Contract related to the Project and which is for an amount greater than \$150,000.00 covering the payment for labour, material or both.

**9.4 Alternatives, reduction or waiver.** Notwithstanding the requirements set out in Section 9.3, in the event that the Recipient provides a written business case to obtain approval to put into effect and maintain an alternative form of security or to reduce or eliminate the bonds for construction Contracts of \$350,000.00 or less, OMAFRA, in its sole discretion, may accept an alternative form of security, reduce or waive the bonding requirements in whole or in part.

## SECTION 10 INDEMNITY

**10.1 Indemnified Parties Not Liable.** In no event shall the Indemnified Parties be liable for:

- a) any bodily injury, death or property damage to the Recipient, its employees, agents, or Consultants or for any claim, demand or action by any third party against the Recipient, its employees, agents, or Consultants, arising out of or in any way related to the Canada-Ontario Infrastructure Stimulus Fund Agreement or this Agreement or the Project; or
- b) any incidental, indirect, special or consequential damages, or any loss of use, revenue or profit to the Recipient, its employees, agents, or Consultants arising out of or in any way related to the Canada-Ontario Infrastructure Stimulus Fund Agreement or this Agreement or the Project.

**10.2 Recipient to Indemnify.** Where the Recipient is a municipality, a not-for-profit private sector entity, a for-profit private sector entity or a Local Services Board, the Recipient agrees to indemnify and hold harmless the Indemnified Parties from and against all suits, judgments, claims, demands, expenses, actions, causes of action and losses (including, without limitation, reasonable legal expenses and any claim for lien made pursuant to the *Construction Lien Act*, R.S.O. 1990, c. C.30, as amended and for any and all liability for damages to property and injury to persons (including death) which the Indemnified Parties may incur, otherwise than by reason of their own negligence or wilful misconduct, as a result of or arising out of or in relation to: (a) the performance of this Agreement or any breach of the terms of this Agreement by the Recipient, its officers, servants, employees, agents and Consultants, or by a third 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

the application. Within the first five (5) complete Fiscal Years following the Substantial Completion of a Project, OMAFRA may, in its sole and absolute discretion, deem the amount of revenue from that Project that is proportional to the Government of Canada's and the Government of Ontario's Financial Assistance to the total cost of the Asset to be an overpayment of Financial Assistance (the "deemed overpayment"). The Recipient shall pay OMAFRA, upon request, the deemed overpayment,.

- 11.6 Asset Operation.** The Asset established with the Financial Assistance under this Agreement shall be used, maintained and operated for a period of at least one half of the expected useful life of the Asset after Substantial Completion of the Project as set out in Schedule "F". Any contravention of this provision shall give OMAFRA the right to recover a portion or all of the Financial Assistance to those Project(s) provided under this Agreement.

## SECTION 12 CONFLICT OF INTEREST AND CONFIDENTIALITY

- 12.1 No Conflict of Interest.** The Recipient and its Consultants and any of their respective advisors, partners, directors, officers, employees, agents, sub-contractors, and volunteers shall not engage in any activity or provide any services where such activity or the provision of such services creates a conflict of interest (actually or potentially, as determined in the sole and absolute opinion of OMAFRA) with the provision of services under this Agreement. The Recipient acknowledges and agrees that it shall be a conflict of interest for it to use confidential information of the Government of Ontario that is relevant to the Project or otherwise where OMAFRA has not expressly authorized such use in writing. For greater certainty, and without limiting the generality of the foregoing, a conflict of interest includes a situation where anyone associated with the Recipient is able to benefit financially from the Project or where such a person owns or has an interest in an organization that is carrying out work related to the Project.
- 12.2 Disclose Potential Conflict of Interest.** The Recipient shall disclose to OMAFRA without delay any actual or potential situation that may be reasonably interpreted as either a conflict of interest or a potential conflict of interest.
- 12.3 Freedom of Information and Protection of Privacy Act.** The Recipient acknowledges that the *Freedom of Information and Protection of Privacy Act*, R.S.O. 1990, c. F.31, as amended binds the Ontario Government.

## SECTION 13 RECOGNITION

- 13.1 Licensed Marks.** The Recipient acknowledges that the Governments of Canada and Ontario are, will be or may be the owner of certain distinguishing marks comprised of designs, trademarks and official marks which have come or will come to be associated with the ISF (all such current and future marks, being the "Licensed Marks").
- 13.2 Acknowledgement in Advertising and Publicity.** The Recipient agrees to acknowledge the Financial Assistance of the Governments of Canada and Ontario to the Project in all advertising and publicity relating to the Project and in any construction signs and in any temporary or permanent tributes to Project donors by adhering to the Communications Requirements as per Schedule "G".

order to carry out the Project;

- 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 which the Infrastructure is or will be located that expires no earlier than five (5) years following Project completion;
- i) provided that the Recipient is not a municipality or a Crown Agency,
  - A. it is not a non-resident of Canada within the meaning of the *Income Tax Act* (Canada);
  - B. is either a corporation, a partnership or a sole proprietorship validly in existence; and
  - C. is registered and qualified to do business wherever necessary to carry out the Project;
- j) it has the experience, financial health and ability to carry out this Project;
- k) if the Recipient is a municipality, local board or a Crown agency, it has the legislative authority to carry out the Project;
- l) all information provided during the ISF application process remains true, correct and complete in every respect except as set out to the contrary herein; and
- m) notify OMAFRA of all other sources of funding for each Project contained in Schedule "B" of this Agreement that may reduce the level of Financial Assistance the Recipient would be eligible to receive under this Agreement.

**14.2 Governance.** The Recipient represents, warrants and covenants that, it has, and shall maintain for the period during which this Agreement is in effect, by-laws or other legally necessary instruments to:

- a) establish the expected code of conduct and ethical responsibilities at all levels of the Recipient's organization;
- b) establish procedures to ensure the ongoing effective functioning of the Recipient;
- c) establish decision-making mechanisms;
- d) provide for the prudent and effective management of the Financial Assistance;
- e) establish procedures to enable the successful completion of the Project;
- f) establish procedures to enable the timely identification of risks to the completion

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 OMAFRA 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, sub-contractors and volunteers has breached the requirements of Section 12 of Schedule "A".

**15.2 Waiver.** OMAFRA may, in its sole and absolute discretion, at any time, waive any Event of Default which may have occurred provided that no such waiver extends 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 and absolute 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 Business 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 immediately or may, in its sole and absolute discretion, Adjust the Financial Assistance. The total amount of Financial Assistance paid to the Recipient to the date of termination shall be immediately due and payable by the Recipient and bear interest at the then-current interest rate charged by the Government of Ontario on accounts receivable; and
- c) the Government of Ontario may avail itself of any of its legal remedies that it may deem appropriate.

**15.4 Additional Remedies.** In addition to the remedies described in Section 15.3, the Government of Ontario may commence such legal action or proceedings as it, in its sole and absolute discretion, may deem expedient, without any additional notice under this Agreement. The rights and remedies of the Government of Ontario hereunder are cumulative and in addition to, and not in substitution for, all other rights or remedies otherwise available to the Government of Ontario.

**15.5 Termination Without Cause.** Notwithstanding anything else contained herein, the Government of Ontario reserves the right to terminate this Agreement without cause upon such conditions as the Government of Ontario may require, with a minimum of thirty (30) Business Days written notice to the Recipient. If the Government of Ontario terminates this Agreement prior to its Expiration Date, the Government of Ontario, subject to all of the Government of Ontario's rights under this Agreement, including,

- 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 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 and Failure to Substantially Complete Contract Within Timelines), Section 10 (Indemnity), Section 11 (Transfer and Operation of Infrastructure), Section 12 (Conflict of Interest and Confidentiality), Section 13 Recognition), Section 14 (Covenants, Representations and Warranties), Section 15 (Default, Enforcement and Termination), 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.** The Recipient shall not assign any aspect of this Agreement. The Government of Ontario may assign this Agreement on written notice to the Recipient.
- 17.10 No Amendment.** This Agreement shall not be varied or amended except by a document in writing, dated and signed on behalf of the Government of Ontario and the Recipient.
- 17.11 Interest.** OMAFRA reserves the right to demand interest on any repayment 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.
- 17.12 Government of Ontario and Recipient Independent.** Nothing in this Agreement shall be deemed to constitute the Recipient an employee, servant, agent, partner of or in joint venture with the Government of Ontario for any purpose whatsoever.
- 17.13 Recipient Cannot Represent Government of Canada or Government of Ontario.** The provision of Financial Assistance to the Recipient pursuant to this Agreement is for the sole purpose of, and is limited to, carrying out the Project. The Recipient warrants and agrees that under no circumstances shall it enter into any Contract or commitment in the name of or on behalf of the Governments of Canada and/or Ontario. The

**SCHEDULE "B"**  
**DESCRIPTION OF THE PROJECT(S)**

<b>FILE NUMBER</b>	<b>PROJECT TITLE</b>	<b>PROJECT DESCRIPTION</b>	<b>PROJECT CONSTRUCTION START DATE</b>	<b>ABORIGINAL CONSULTATION SCHEDULE L</b>
71	Fire Station #2 Replacement (Fenwick)	This project is to construct a new fire hall with improved parking, a "bunker gear" storage area; a dressing area; adequate ventilation; specialized equipment to wash the firefighters' bunker gear; and adequate training facilities. The Fire Hall will have state of the art building, communications, and other technology, the highest possible standards for energy conservation and sustainable design.	10/01/2009	L1

- c) land acquisition, leasing land, buildings, equipment and other facilities, real estate fees and related costs;
- d) financing charges, legal fees, and loan interest payments (including those related to easements (e.g. surveys));
- e) the value of any goods and services which are received through donations or in kind;
- f) employee wages and benefits, overhead costs as well as other direct or indirect operating, maintenance and administrative costs incurred by the Recipient for the Project, and more specifically costs relating to services delivered directly by permanent employees of the Recipient;
- g) meal, hospitality or incidental expenses of Consultants; and
- h) provincial sales tax, the GST and, if and when implemented the Harmonized Sales Tax for which the Recipient is eligible for a rebate, and any other costs eligible for rebates.

**SCHEDULE "E"**  
**GOVERNMENT OF CANADA REQUIREMENTS**

---

OMAFRA and the Recipient agree to the following Government of Canada Requirements:

1. The Recipient acknowledges and agrees that the amount of Financial Assistance being provided by OMAFRA is dependent on the Government of Ontario receiving funds for the Project from the Government of Canada. Should the Government of Ontario not receive the funds it expects to receive in relation to the Project from the Government of Canada, OMAFRA may, in its sole and absolute discretion, Adjust the Financial Assistance being provided to the Recipient pursuant to this Agreement (including, without limitation, requiring repayment of Financial Assistance already paid to the Recipient).
2. The Recipient shall indemnify and hold harmless the Government of Canada, its officers, servants, employees or agents, from and against all claims and demands, loss, damages, costs, expenses, actions, suits or other proceedings by whomsoever made, sustained, brought, prosecuted, threatened to be brought or prosecuted in any manner, based upon, occasioned by any injury to persons, damage to or loss or destruction of property, economic loss or infringement of rights caused by or arising directly or indirectly from:
  - a) the Project being funded by this Agreement;
  - b) the performance of this Agreement or the breach of any term or condition of this Agreement by the Recipient, its officers, employees and agents, or by a third party, its officers, employees or agents;
  - c) any omission or other willful or negligent act of the Recipient, its employees, officers or agents;

Except to the extent to which such claims and demands, losses costs, damages, actions, suits or other proceedings relate to the act or negligence of an officer, employee or agent of Canada in the performance of his or her duties.

3. The Recipient further agrees to indemnify and hold the Government of Canada, its directors, officers, employees and agents, for any incidental, indirect, special or consequential damages, or any loss of use, revenue or profit, which the Government of Canada, its directors, officers, employees and agents may incur, otherwise than by reason of their own negligence or wilful misconduct, as a result of or arising out of or in relation to any breach by the Recipient of the terms of this Agreement, or the Recipient's own negligence or wilful misconduct.
4. The Recipient acknowledges that the provisions of the *Access to Information Act* (Canada) and the *Privacy Act* (Canada) and regulations thereunder bind the Government of Canada.
5. The Recipient acknowledges that the Government of Canada is or will be the owner of certain distinguishing marks comprised of designs, trademarks and official marks in relation to ISF (the "Federal Licensed Marks") and the Recipient is subject to the requirements of Section 13 (Communication and Recognition) of this Agreement, with appropriate changes,



**SCHEDULE "F"**  
**ADDITIONAL PROVISIONS**

---

The Government of Ontario and the Recipient agree to the following additional provisions:

1. Further to Section 16 of Schedule "A", notice can be given at the following addresses:

(a) If to OMAFRA:

Ministry of Agriculture, Food and Rural Affairs  
1 Stone Road West, 4<sup>th</sup> Floor  
Guelph, Ontario  
N1G 4Y2

Phone: 1-888-466-2372  
Fax: (519) 826-4336  
E-Mail: bcf.cc@ontario.ca

Attention: Dino Radocchia, Manager

(b) If to the Recipient:

Town of Pelham  
Box 400, 20 Pelham Town Square  
Fonthill, ON  
L0S 1E0

Attention: Martin Yamich, Chief Administrative Office

2. Other provisions:

3. Other Reporting Requirements:

4. Useful Life of Project Infrastructure: [i.e., no. of years]

## *ISF Contribution Agreement*

All written communications (invitations, public service announcements, posters, etc.) must indicate that the Project received Financial Assistance from the Governments of Canada and Ontario under the ISF. The Governments of Canada and Ontario will assist the Recipient in developing an agenda, news release, etc. All parties will approve and receive final copies.

Federal, provincial and municipal flags should also be on display at all ISF events.

The Table of Precedence for Canada, as established by Canadian Heritage (<http://www.pch.gc.ca/pgm/ceem-cced/prtcl/precedence-eng.cfm>), or some other mutually acceptable protocol should be respected.

### **Signs and Plaques**

The Recipient agrees to produce and install temporary and permanent Project signage to communicate the nature of the Project and the involvement of the Governments of Canada and Ontario and the Recipient, as outlined in the ISF Style Guide.

Generally, the Recipient must ensure that the design, wording and specifications for signage are in accordance with federal and provincial visual identity guidelines, available on the ISF website at [www.BCFontario.ca](http://www.BCFontario.ca).

Temporary signs must be removed within 90 days of project completion.

### **Eligible Costs**

The Recipient will pay the costs of preparing and delivering communications activities and products, including the organization of special events and the production of signage. These costs are deemed to be Eligible Costs under the Agreement as specified below.

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

- Printing and mailing invitations
- Light refreshments, such as coffee, tea, juice, donuts, muffins, snacks
- Draping for plaque unveiling
- Project material for display and/or media kit
- Temporary signage
- Rentals such as:
  - flagpoles
  - stage
  - 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:

## SCHEDULE "H"

### EXPENDITURE AND JOB CREATION REPORT




Infrastructure Stimulus Fund (ISF)  
Le Fonds de stimulation de l'infrastructure (FSI)

#### EXPENDITURE AND JOB CREATION REPORT

Recipient Name: Town of Pelham.  
File Number: \_\_\_\_\_

Expenditure Forecast Table

Quarter	(April - June) Q1	(July - Sept.) Q2	(Oct. - Dec.) Q3	(Jan. - March) Q4
2009/10			75000	289500
2010/11	651375	488531	146594	

Jobs Created / Sustained Table

	Average Number of Temporary Jobs
Previous Quarter (show date ranges)	3
Current Quarter (show date ranges)	10

The goal is that at the end of the fiscal year a calculation could be made of the total number of jobs (person-years of employment) from each project.

Prepared By: Cari Pupo  
Phone Number: 905-895-2607 ext 327  
Email: cpupo@pelham.ca  
Date: October 9, 2009

#### NOTES:

- 1) Expenditures are only considered eligible after the announcement of the approval of the project.
- 2) Please complete the expenditure table based on actual and projected expenditures. Costs are to be identified in the quarter that have been or will be incurred (rather than when they are to be paid).
- 3) Please only include Net Eligible Expenditures – total eligible costs net GST.
- 4) Expenditure forecasts should not exceed total eligible costs as identified in Schedule D of the Contribution Agreement.
- 5) If the project cannot be completed within the timeframes of the program, please contact the Canada Ontario Infrastructure Secretariat.
- 6) Previously reported information is provided for you. Should the information have changed, please provide the revised expenditures along with an explanation of the change.
- 7) This information is required on a quarterly basis on or before the following dates: May 15, August 15, November 15 and February 15.
- 8) Temporary Jobs refers to all non-municipal employees who are working on this project (e.g. Construction workers, engineers, etc).
- 9) Average number of Temporary Jobs refers to the number of workers involved in the project over the time period. Example: if 5 construction workers were there for the entire quarter (13 weeks), and 20 additional construction workers were there for 6 weeks, the average number of workers for this quarter would be 15.

## SCHEDULE "J" FINAL REPORT



**Infrastructure Stimulus Fund (ISF)  
Le Fonds de stimulation de l'infrastructure (FSI)**

### 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/Cout admissible du projet \$
Total Project Cost/Cout 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 Infrastructure Stimulus Fund 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 du Fonds de stimulation de l'infrastructure municipal et que, le cas échéant, toutes les mesures d'atténuation environnementales nommées ont été adressées de façon acceptable 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)		
A. Engineering/Design Costs / Ingénierie	\$	GROSS PROJECT TOTAL / PROJET BRUT TOTAL
B. Environmental Assessment Costs / Coût de l'évaluation environnementale	\$	Less G.S.T. Rebate / Moins remboursement de la T.P.S.
C. Project Management / Gestion de projet	\$	NET PROJECT TOTAL / PROJET NET TOTAL
D. Construction	\$	Project Start Date / Date du début du projet
E. 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 actual 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.

**SCHEDULE "L"**  
**ABORIGINAL CONSULTATION PROTOCOL**

---

**PART L.1**

**1.0 Responsibilities of the Recipient**

1.1 The Recipient shall immediately notify Ontario:

- (i) of contact by any Aboriginal Groups regarding the Project; or
- (ii) if any Aboriginal archaeological resources are discovered in the course of the Project,

and in either case, Ontario may direct the Recipient to take such actions, including without limitation suspension of the Project, as Ontario may require. The Recipient shall comply with Ontario's direction.

1.2 The Recipient shall provide in any contracts with third parties for the Recipient's right and ability to respond to direction from Ontario as Ontario may provide in accordance with section 1.1.

**PART L.2.**

**1.0 Purpose**

The purpose of this Aboriginal Consultation Protocol is to set out the responsibilities of Ontario and the Recipient in relation to consultation with Aboriginal Groups on the Project, and to delegate procedural aspects of consultation from Ontario to the Recipient.

**1.1 Definitions**

For the purposes of this Schedule L.:

**"S. 35 Duty"** means any duty Ontario may have to consult and, where appropriate, accommodate Aboriginal Groups in relation to the Project flowing from Section 35 of the *Constitution Act, 1982*.

**2.0 Responsibilities of Ontario**

2.1 Ontario is responsible for:

- (i) determining the Aboriginal Groups to be consulted in relation to the Project, if any, and advising the Recipient of same;
- (ii) the preliminary and ongoing assessment of the depth of consultation required with the Aboriginal Groups;

to discuss the Project;

- (viii) if appropriate, providing reasonable financial assistance to Aboriginal Groups to permit effective participation in consultation processes for the Project;
- (x) considering comments provided by the Aboriginal Groups regarding the potential impacts of the Project on Aboriginal or treaty rights or asserted rights, including adverse impacts on hunting, trapping, fishing, plant harvesting or on burial grounds or archaeological sites of cultural significance to an Aboriginal Community, or on other interests, or any other concerns or issues regarding the Project;
- (xi) answering any questions to the extent of the Recipient's ability and receiving comments from the Aboriginal Groups, notifying Ontario of the nature of the questions or comments received and maintaining a chart showing the issues raised by the Aboriginal Groups and any responses the Recipient has provided;
- (xii) where an Aboriginal Community asks questions regarding the Project directly of Ontario, providing Ontario with the information reasonably necessary to answer the inquiry, upon Ontario's request;
- (xiii) subject to section 3.2 (xiv), where appropriate, discussing with the Aboriginal Groups potential accommodation, including mitigation of potential impacts on Aboriginal or treaty rights, asserted rights or associated interests regarding the Project and reporting to Ontario any comments or questions from the Aboriginal Groups that relate to potential accommodation or mitigation of potential impacts;
- (xiv) consulting with Ontario during all discussions with Aboriginal Groups regarding accommodation measures, if applicable, and presenting to Ontario for the purposes of section 2.1 (v) hereof, the results of such discussions prior to implementing any applicable accommodation measures; and
- (xv) complying with Ontario's direction to take any actions, including without limitation suspension of the Project, as Ontario may require.

3.3 The Recipient hereby acknowledges that, notwithstanding Section 3.1 above, Ontario, any provincial ministry having an approval role in relation to the Project, or any responsible regulatory body, official, or provincial decision-maker, may participate in the matters and processes enumerated therein as they deem necessary.

3.4 The Recipient will carry out the following functions in relation to record keeping, information sharing and reporting to Ontario:

- (i) provide to Ontario, upon request, complete and accurate copies of all documents provided to the Aboriginal Groups in relation to the Project;
- (ii) keep reasonable business records of all its activities in relation to consultation and provide Ontario with complete and accurate copies of such records upon request;
- (iii) provide Ontario with timely notice of any Recipient mailings to, or Recipient

**6.0 Notice and Contact**

6.1 All notices to Ontario pertaining to this Schedule shall be in writing and shall be given by facsimile or other means of electronic transmission or by hand or courier delivery. Any notice to Ontario shall be addressed as follows:

Ministry of Agriculture, Food and Rural Affairs  
1 Stone Road West, 4<sup>th</sup> Floor  
Guelph, Ontario  
N1G 4Y2

Phone: 1-888-466-2372  
Fax: (519) 826-4336  
Email: [bcf.cc@ontario.ca](mailto:bcf.cc@ontario.ca)

Attention: Dino Radocchia, Manager

## CERTIFICATE OF INSURANCE

TO: HER MAJESTY THE QUEEN IN RIGHT OF ONTARIO AS REPRESENTED BY THE MINISTER OF  
ENERGY & INFRASTRUCTURE AND MINISTER OF AGRICULTURE, FOOD & RURAL AFFAIRS

RE: WITH RESPECT TO THEIR INFRASTRUCTURE STIMULUS FUND CONTRIBUTION AGREEMENT WITH THE  
NAMED INSURED UNDER CANADA'S ECONOMIC PLAN – FIRE STATION #2 REPLACEMENT (FENWICK)

INSURANCE AS DESCRIBED HEREIN HAS BEEN ARRANGED ON BEHALF OF THE INSURED NAMED HEREIN UNDER THE FOLLOWING POLICY(IES); AND AS MORE FULLY DESCRIBED IN SAID POLICY(IES), AND ANY ENDORSEMENTS ATTACHED THERETO.

INSURED: CORPORATION OF THE TOWN OF PELHAM AND/OR TOWN OF PELHAM LIBRARY BOARD

INSURER	TYPE OF POLICY	POLICY N°	TERM		LIMITS OF LIABILITY
			EFFECTIVE DATE	EXPIRY DATE	
<b>SUBSCRIPTION POLICY</b>	COMMERCIAL GENERAL LIABILITY	CP99682	JAN. 1, 2009	JAN. 1, 2010	\$ 5,000,000. Inclusive bodily injury and property damage
<b>The Guarantee Company of North America</b>	AM Best Rating of A				
<b>Lombard General Insurance Company of Canada</b>	AM Best Rating of A				
<b>Temple Insurance Company</b>	AM Best Rating of A+				

ADDITIONAL INSURED:

Only with respect to the above and arising out of the Named Insureds operations is the following name added to the policy as an additional Insured. The addition of such Insured shall not increase the Limits of Liability as shown above.

**HER MAJESTY THE QUEEN IN RIGHT OF ONTARIO AND HER MAJESTY THE QUEEN IN RIGHT OF CANADA, HER MINISTERS, DIRECTORS, OFFICERS, AGENTS, APPOINTEES AND EMPLOYEES**

ADDITIONAL COVERAGE:

Blanket Contractual/ Tenant's Legal Liability/ Cross Liability/Thirty (30) Day Written Notice of Cancellation, Termination or Material Change

This Certificate is only a summary of the insurance provided under the Master Policy(ies) and constitutes a statement of the facts as of the date of issuance and are so represented only to the addressee.

DATE: October 6, 2009  
 NS

SIGNATURE:

*Noreen Shah*



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<sup>e</sup> étage  
1 Stone Road West  
Guelph (Ontario) N1G 4Y2  
Tél. : 1-866-306-7827  
Télec. : 519 826-4336

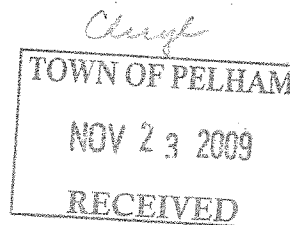
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**Rural Community Development Branch**

November 20, 2009

Cheryl Miclette, Town Clerk  
Town of Pelham  
Box 400, 20 Pelham Town Square  
Fonthill, ON L0S 1E0



Dear Ms. Miclette:

Please find enclosed a duly executed copy of your Funding Agreement for the Infrastructure Stimulus Fund (ISF) 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](mailto:Barbara.maknoni@ontario.ca)

Sincerely,

Barbara Maknoni  
Project Analyst

enclosure



Pick Ontario Freshness  
Cueillez la fraîcheur de l'Ontario



#3056

**INFRASTRUCTURE STIMULUS FUND**

**CONTRIBUTION AGREEMENT**

Ministry of Energy and Infrastructure and Ministry of Agriculture, Food and Rural Affairs

**THIS AGREEMENT** made in quadruplicate as of the 6 day of November, 2009.

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

and the

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

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

(referred to herein as the "Recipient")

**WHEREAS** the Government of Canada has established a \$4 billion Infrastructure Stimulus Fund (ISF) under Canada's Economic Plan to mitigate against the impacts of the global economic recession by increasing the total amount of construction activity to projects that can start and be substantially completed in fiscal years 2009-2010 and 2010-2011;

**AND WHEREAS** the Government of Ontario also recognizes the impacts of the global economic recession on the Province of Ontario and is actively mitigating against those impacts by increasing the total amount of construction activity to projects that can start and be substantially completed in fiscal years 2009-2010 and 2010-2011;

**AND WHEREAS** the purpose of the Infrastructure Stimulus Fund Contribution Agreement ("Agreement") is directed at capital projects that involve moveable or non-moveable assets, constructed, rehabilitated, or improved, in whole or in part;

**AND WHEREAS** this Agreement defines the terms and conditions of a financial contribution from the Government of Canada and the Government of Ontario to assist with projects under ISF 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:

This Agreement, including:

- Schedule "A" - General Terms and Conditions
- Schedule "B" - Description of the Project(s)
- Schedule "C" - Eligible and Ineligible Costs
- Schedule "D" - Project Financial Assistance
- Schedule "E" - Government of Canada Requirements
- Schedule "F" - Additional Provisions
- Schedule "G" - Communications Requirements

**SCHEDULE "A"**  
**GENERAL TERMS AND CONDITIONS**

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**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:

**"Aboriginal Group(s)"** includes the Indian, Inuit and the Métis peoples of Canada or any other group that has legally been recognized as holding Aboriginal or treaty rights under section 35 of the *Constitution Act, 1982*.

**"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 ISF, 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 Infrastructure Stimulus Fund Contribution Agreement, including the cover and execution pages and all of the Schedules, 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 Schedule "A".

**"Asset"** means any moveable or non-moveable asset, constructed, rehabilitated, or improved, in whole or in part, with Financial Assistance contributed by the Government of Canada and the Government of Ontario under this Agreement.

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

**"Claim and Progress Statement"** has the meaning given to it in Section 6.3 of Schedule "A".

**"Claims Submission"** has the meaning given to it in Section 6.3 of Schedule "A".

**"Class of Asset"** means a

- a) Local Government Asset;
- b) Not-For-Profit Private Sector Asset;
- c) For-Profit Private Sector Asset; or
- d) Provincial Asset.

**"Communication Requirements"** means the communication requirements set out in Schedule "G", 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

## *ISF Contribution Agreement*

**"Government of Ontario"** means Her Majesty the Queen in right of Ontario.

**"Infrastructure"** means publicly or privately owned capital assets in Ontario for public use or benefit.

**"Indemnified Parties"** means Her Majesty the Queen in right of Ontario, Her Ministers, directors, officers, agents, appointees and employees and Her Majesty the Queen in right of Canada, Her Ministers, directors, officers, agents, appointees and employees.

**"Ineligible Costs"** means the costs so described under Part C.2 of Schedule "C".

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

**"Local Government Asset"** means an asset that is owned, or will be owned, by a local or regional government established under the laws of Ontario.

**"Local Services Board"** means a Local Services Board established under the *Northern Services Boards Act*, R.S.O. 1990, c. L. 28, as amended.

**"Maximum Financial Assistance"** has the meaning set out in Section 4.6 and Schedule "D".

**"Not-For-Profit Private Sector Asset"** means an Asset that is owned, or will be owned, by a not-for-profit private sector entity.

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

**"Project"** means the project or projects as described in Schedule "B".

**"Project Completion Date"** means March 31, 2011.

**"Project Construction Start Date"** has the meaning given to it in Schedule "B".

**"Project Status Report"** has the meaning given to it in Section 6.1 of Schedule "A".

**"Provincial Asset"** means an Asset that is owned, or will be owned, by the Government of Ontario or by a public sector body that is established by or under Ontario statute or by or under regulation.

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

**"Solemn Declaration of Substantial Completion"** is referred to in Section 6.5 and Schedule "K".

**"Substantially Completed"** has the same meaning as and shall be determined in accordance with "substantially performed" in subsection 2(1) of the *Construction Lien Act*, R.S.O. 1990, c. C.30, as amended, and **"substantial completion"** shall have a corresponding meaning.

**"Term"** has the same meaning set out in Section 2.1.

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

Part C.1 of Schedule "C" will be determined in accordance with the policies and guidelines (if any) established by OMAFRA to administer the ISF. The final determination of the eligibility of any costs claimed is at the sole and absolute discretion of OMAFRA.

- 3.3 Retention of Receipts.** The Recipient shall retain all accounts, documents and records of payments related to Eligible Costs including, without limitation, invoices and receipts, for audit purposes and such supporting documentation must be available to OMAFRA when requested and shall be retained until six (6) years after the Substantial Completion of the Project, any extension thereof or for such period as OMAFRA in its sole discretion may, in writing, direct.
- 3.4 Ineligible Costs.** Notwithstanding anything else contained herein, the costs that are not eligible for Financial Assistance pursuant to this Agreement are set out in Part C.2 of Schedule "C" ("Ineligible Costs").
- 3.5 Deemed Ineligible.** The Recipient acknowledges that the Government of Ontario's Fiscal Year ends on March 31 in each year, and that should a cost not be submitted by the Recipient for payment of Financial Assistance before March 31 of the year following the Fiscal Year in which it was incurred, such cost may be deemed, at OMAFRA's sole and absolute discretion, ineligible for Financial Assistance.

#### SECTION 4 FINANCIAL ASSISTANCE

- 4.1 Use of Financial Assistance.** The Financial Assistance is intended for and shall be used only for Eligible Costs incurred by the Recipient.
- 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 Reporting.** The Recipient is required to submit Project Status Reports and Expenditure and Job Creation Reports to OMAFRA pursuant to Section 6.1 and Section 6.2 of Schedule "A" prior to OMAFRA releasing any Financial Assistance.
- 4.4 Financial Assistance Advanced.** Based on submitted Expenditure and Job Creation Report projections demonstrating that Eligible Costs will be incurred in 2009-10, OMAFRA may provide to the Recipient up to 25% of Eligible Costs expected to be incurred in 2009-10 prior to OMAFRA receiving evidence that the associated Eligible Costs have already been incurred by the Recipient (the "advance payment(s)"). The Recipient is required to submit invoices demonstrating full use of the advanced payments in subsequent Claim and Progress Statements to OMAFRA. Further Eligible Costs incurred in 2009-10 will only be reimbursed following the Recipient's submission of invoices to OMAFRA and showing the full use of the advanced payment. If the Recipient is unable to provide invoices by March 31, 2010 demonstrating full-use of the advanced payment, the Government of Ontario retains the right to demand repayment of any unused Financial Assistance.

Based on submitted Expenditure and Job Creation Report projections demonstrating that Eligible Costs will be incurred in 2010-11, OMAFRA may provide to the Recipient up to 25% of Eligible Costs expected to be incurred in 2010-11 prior to OMAFRA receiving evidence that the associated Eligible Costs have already been incurred by the Recipient

becomes aware of any alternative means of completing either the Project's objective or the Project itself that are more cost effective, the Recipient will be notified and OMAFRA may, in its sole and absolute discretion, Adjust the Financial Assistance.

- 4.12 *Transfer of Financial Assistance between Projects.*** The Recipient shall not transfer Financial Assistance assigned to one Project to another Project listed in Schedule B hereto without the express written consent of OMAFRA.
- 4.13 *Goods and Services Tax.*** The Financial Assistance is based on the net amount of Goods and Services Tax to be paid by the Recipient pursuant to the *Excise Tax Act*, R.S.C. 1985, c. E-15, as amended, net of any applicable rebates. If and when the Harmonized Sales Tax is phased in within the Province of Ontario, the Financial Assistance will be based on the net amount of the Harmonized Sales Tax to be paid by the Recipient, net of any applicable rebates.
- 4.14 *Withholding Payment.*** OMAFRA may, in its sole and absolute discretion, withhold payment of Financial Assistance where the Recipient is in default in obtaining any necessary permits, approvals or licenses applicable to the Project or is in default of compliance with any provisions of this Agreement or any and all applicable federal, provincial or municipal laws, and all rules, regulations, by-laws, notices, orders, approvals, directives, protocols, policies and guidelines.
- 4.15 *Financial Assistance upon Expiry.*** Without limiting any rights OMAFRA has under this Agreement, at law or in equity, OMAFRA shall have the right to be repaid by the Recipient, in whole or in part, for Financial Assistance advanced and unspent by the Recipient for a Project that has not been completed by the Project Completion Date.
- 4.16 *Limitation on Payment of Financial Assistance.*** Notwithstanding section 4.4 of this Agreement, OMAFRA may choose not to advance any Financial Assistance to the Recipient until the Recipient provides the insurance certificate or other documents provided for in section 9 of Schedule "A".
- 4.17 *Insufficient Funds Provided by the Legislature of Canada.*** If, in the opinion of the Government of Ontario, the Legislative Assembly of Ontario or the Government of Canada does not provide sufficient funds to continue the Financial Assistance for any Fiscal Year during which this Agreement is in effect, the Government of Ontario may terminate this Agreement in accordance with the terms specified in Section 15.5 of Schedule "A".

## **SECTION 5**

### **PROJECT AWARD, CONSULTATIONS WITH ABORIGINAL GROUP(S), MANAGEMENT AND COMPLETION**

- 5.1 *Recipient Fully Responsible.*** The Recipient shall be fully responsible for the undertaking, implementation and completion of the Project and shall retain any and all Consultants reasonably required to undertake a project of the size, scope and complexity of the Project. Where implementation of the Project is dependent on completion of a project by others, the Recipient shall be fully responsible for obtaining any assurances that it may require from others in relation to the implementation of the Project by the Recipient.
- 5.2 *Government of Ontario Not Responsible for Implementation.*** The Government of

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, any documentation required for approval, cost reviews and audits.

**5.9 Commencement of Project.** The Recipient shall begin the Project within sixty (60) days of the Project construction start date, as per Schedule B, or such other period as OMAFRA may allow, failing which this Agreement may be terminated pursuant to Section 15.

**5.10 Contracts.** The Recipient shall ensure that all Contracts:

- a) are consistent and do not conflict with this Agreement;
- b) incorporate the relevant provisions of this Agreement to the fullest extent possible;
- c) be consistent with all policies and procedures the Government of Canada and/or the Government of Ontario may provide to the Recipient in relation the ISF;
- d) are awarded and managed:
  - (i) in a way that is transparent, competitive and consistent with value for money principles; and
  - (ii) in accordance with any policies and procedures the Government of Ontario may provide to the Recipient;
- e) require that the parties thereto comply with any and all applicable federal, provincial or municipal laws, and all rules, regulations, by-laws, notices, orders, approvals, directives, policies, protocols and guidelines; and
- f) authorize the Governments of Canada and Ontario of to collect, use and disclose information and data gathered by parties, perform audits and monitor the Project as they see fit.

## SECTION 6 REPORTING REQUIREMENTS

**6.1 Project Status Report.** The Recipient shall submit monthly Project Status Reports in the format prescribed by OMAFRA including such information as estimated percentage of project completion, tender call dates, tender award dates, forecast and actual construction start and end dates, and all other information respecting the progress of the Project that may be requested by OMAFRA or of which the Recipient becomes aware that may affect the Project's timely completion.

In addition, and without limitation by the communications requirements set out else wherein this Agreement, the Recipient shall also submit copies of all communications and public information materials related to the Project with the Project Status Reports.

**6.2 Expenditure and Job Creation Report.** The Recipient shall, at a minimum, submit to OMAFRA a quarterly Expenditure and Job Creation Report, as set out in Schedule "H" hereto and which may be amended by OMAFRA from time to time, for each Project

## *ISF Contribution Agreement*

Recipient shall, upon request, retain an external auditor acceptable to OMAFRA at the Recipient's sole expense. The Recipient shall ensure that any auditor who conducts a financial or program review pursuant to this section of the Agreement or otherwise, provides a copy of the report to OMAFRA for its consideration at the same time that the report is given to the Recipient.

- 7.4 Auditor General of Canada.** The Auditor General of Canada, may, at the Auditor General of Canada's cost, conduct an audit with respect to the use of Financial Assistance under this Agreement. For the purposes of facilitating such inquiry, the Recipient shall release to OMAFRA upon request and in a timely manner, for the purpose of releasing to the Auditor General of Canada: all records held by the Recipient, or by agents or contractors of the Recipient, relating to this Agreement and/or the Financial Assistance; and such further information and explanations as the Auditor General, or anyone acting on behalf of the Auditor General may request relating to any part of this Agreement of the use of Financial Assistance.
- 7.5 Auditor General of Ontario.** The Auditor General of Ontario, may, at the Auditor General of Ontario's cost, conduct an audit with respect to the use of Financial Assistance under this Agreement. For the purposes of facilitating such inquiry, the Recipient shall release to OMAFRA upon request and in a timely manner, for the purpose of releasing to the Auditor General of Ontario: all records held by the Recipient, or by agents or Contractors of the Recipient, relating to this Agreement and/or the Financial Assistance; and such further information and explanations as the Auditor General, or anyone acting on behalf of the Auditor General may request relating to the Financial Assistance.
- 7.6 Information.** The Recipient shall supply to OMAFRA, upon request, such information in respect of the Project and its results including, without limitation, all Contracts and agreements related to the Project and all plans and specifications related to the Project, as OMAFRA may require. The Government of Canada and the Government of Ontario, their respective agents and employees, including the Auditor General's Office, shall be allowed access to the Recipient's premises and staff and to the Project site at all reasonable times to (i) inspect the progress and monitor the Project; (ii) perform cost reviews and audits on the Project; and (iii) complete any other auditing or monitoring that may be reasonably required in relation to the Project.
- 7.7 Information Condition Precedent for Payment.** If, in the opinion of OMAFRA, any of the information requirements of this Section 7 are not met, OMAFRA may, in its sole and absolute discretion, require the information as a condition precedent to any payment in relation to the Project(s) of the Recipient under the ISF, or any other provincial program(s) (either current or future). In addition, OMAFRA may, in its sole and absolute discretion, Adjust the Financial Assistance for the Project.

## **SECTION 8 OVERPAYMENT AND FAILURE TO SUBSTANTIALLY COMPLETE CONTRACT WITHIN TIMELINES**

- 8.1 Allowable Financial Assistance.** Financial Assistance paid to the Recipient prior to the submission of a Final Report in accordance with Section 5.9 of Schedule "A" 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



coverage as provided for in Section 9.1 of Schedule "A". Upon the request of OMAFRA, the Recipient shall make available to OMAFRA a copy of each insurance policy.

**9.3 Bonding.** The Recipient shall put in effect and maintain in full force and effect or cause to be put into effect and maintained in full force and effect during the term of this Agreement.

- a) a performance bond in the amount of 100% of the Contract price for any construction Contract related to the Project and which is for an amount greater than \$150,000.00 covering the performance of that construction Contract and the correction of any deficiencies; and
- b) a labour and material payment bond in the amount of 50% of the Contract price for any construction Contract related to the Project and which is for an amount greater than \$150,000.00 covering the payment for labour, material or both.

**9.4 Alternatives, reduction or waiver.** Notwithstanding the requirements set out in Section 9.3, in the event that the Recipient provides a written business case to obtain approval to put into effect and maintain an alternative form of security or to reduce or eliminate the bonds for construction Contracts of \$350,000.00 or less, OMAFRA, in its sole discretion, may accept an alternative form of security, reduce or waive the bonding requirements in whole or in part.

## SECTION 10 INDEMNITY

**10.1 Indemnified Parties Not Liable.** In no event shall the Indemnified Parties be liable for:

- a) any bodily injury, death or property damage to the Recipient, its employees, agents, or Consultants or for any claim, demand or action by any third party against the Recipient, its employees, agents, or Consultants, arising out of or in any way related to the Canada-Ontario Infrastructure Stimulus Fund Agreement or this Agreement or the Project; or
- b) any incidental, indirect, special or consequential damages, or any loss of use, revenue or profit to the Recipient, its employees, agents, or Consultants arising out of or in any way related to the Canada-Ontario Infrastructure Stimulus Fund Agreement or this Agreement or the Project.

**10.2 Recipient to Indemnify.** Where the Recipient is a municipality, a not-for-profit private sector entity, a for-profit private sector entity or a Local Services Board, the Recipient agrees to indemnify and hold harmless the Indemnified Parties from and against all suits, judgments, claims, demands, expenses, actions, causes of action and losses (including, without limitation, reasonable legal expenses and any claim for lien made pursuant to the *Construction Lien Act*, R.S.O. 1990, c. C.30, as amended and for any and all liability for damages to property and injury to persons (including death) which the Indemnified Parties may incur, otherwise than by reason of their own negligence or wilful misconduct, as a result of or arising out of or in relation to: (a) the performance of this Agreement or any breach of the terms of this Agreement by the Recipient, its officers, servants, employees, agents and Consultants, or by a third 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

the application. Within the first five (5) complete Fiscal Years following the Substantial Completion of a Project, OMAFRA may, in its sole and absolute discretion, deem the amount of revenue from that Project that is proportional to the Government of Canada's and the Government of Ontario's Financial Assistance to the total cost of the Asset to be an overpayment of Financial Assistance (the "deemed overpayment"). The Recipient shall pay OMAFRA, upon request, the deemed overpayment,.

- 11.6 Asset Operation.** The Asset established with the Financial Assistance under this Agreement shall be used, maintained and operated for a period of at least one half of the expected useful life of the Asset after Substantial Completion of the Project as set out in Schedule "F". Any contravention of this provision shall give OMAFRA the right to recover a portion or all of the Financial Assistance to those Project(s) provided under this Agreement.

## SECTION 12 CONFLICT OF INTEREST AND CONFIDENTIALITY

- 12.1 No Conflict of Interest.** The Recipient and its Consultants and any of their respective advisors, partners, directors, officers, employees, agents, sub-contractors, and volunteers shall not engage in any activity or provide any services where such activity or the provision of such services creates a conflict of interest (actually or potentially, as determined in the sole and absolute opinion of OMAFRA) with the provision of services under this Agreement. The Recipient acknowledges and agrees that it shall be a conflict of interest for it to use confidential information of the Government of Ontario that is relevant to the Project or otherwise where OMAFRA has not expressly authorized such use in writing. For greater certainty, and without limiting the generality of the foregoing, a conflict of interest includes a situation where anyone associated with the Recipient is able to benefit financially from the Project or where such a person owns or has an interest in an organization that is carrying out work related to the Project.
- 12.2 Disclose Potential Conflict of Interest.** The Recipient shall disclose to OMAFRA without delay any actual or potential situation that may be reasonably interpreted as either a conflict of interest or a potential conflict of interest.
- 12.3 Freedom of Information and Protection of Privacy Act.** The Recipient acknowledges that the *Freedom of Information and Protection of Privacy Act*, R.S.O. 1990, c. F.31, as amended binds the Ontario Government.

## SECTION 13 RECOGNITION

- 13.1 Licensed Marks.** The Recipient acknowledges that the Governments of Canada and Ontario are, will be or may be the owner of certain distinguishing marks comprised of designs, trademarks and official marks which have come or will come to be associated with the ISF (all such current and future marks, being the "Licensed Marks").
- 13.2 Acknowledgement in Advertising and Publicity.** The Recipient agrees to acknowledge the Financial Assistance of the Governments of Canada and Ontario to the Project in all advertising and publicity relating to the Project and in any construction signs and in any temporary or permanent tributes to Project donors by adhering to the Communications Requirements as per Schedule "G".

order to carry out the Project;

- 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 which the Infrastructure is or will be located that expires no earlier than five (5) years following Project completion;
- i) provided that the Recipient is not a municipality or a Crown Agency,
  - A. it is not a non-resident of Canada within the meaning of the *Income Tax Act* (Canada);
  - B. is either a corporation, a partnership or a sole proprietorship validly in existence; and
  - C. is registered and qualified to do business wherever necessary to carry out the Project;
- j) it has the experience, financial health and ability to carry out this Project;
- k) if the Recipient is a municipality, local board or a Crown agency, it has the legislative authority to carry out the Project;
- l) all information provided during the ISF application process remains true, correct and complete in every respect except as set out to the contrary herein; and
- m) notify OMAFRA of all other sources of funding for each Project contained in Schedule "B" of this Agreement that may reduce the level of Financial Assistance the Recipient would be eligible to receive under this Agreement.

**14.2 Governance.** The Recipient represents, warrants and covenants that, it has, and shall maintain for the period during which this Agreement is in effect, by-laws or other legally necessary instruments to:

- a) establish the expected code of conduct and ethical responsibilities at all levels of the Recipient's organization;
- b) establish procedures to ensure the ongoing effective functioning of the Recipient;
- c) establish decision-making mechanisms;
- d) provide for the prudent and effective management of the Financial Assistance;
- e) establish procedures to enable the successful completion of the Project;
- f) establish procedures to enable the timely identification of risks to the completion

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 OMAFRA 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, sub-contractors and volunteers has breached the requirements of Section 12 of Schedule "A".

**15.2 *Waiver.*** OMAFRA may, in its sole and absolute discretion, at any time, waive any Event of Default which may have occurred provided that no such waiver extends 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 and absolute 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 Business 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 immediately or may, in its sole and absolute discretion, Adjust the Financial Assistance. The total amount of Financial Assistance paid to the Recipient to the date of termination shall be immediately due and payable by the Recipient and bear interest at the then-current interest rate charged by the Government of Ontario on accounts receivable; and
- c) the Government of Ontario may avail itself of any of its legal remedies that it may deem appropriate.

**15.4 *Additional Remedies.*** In addition to the remedies described in Section 15.3, the Government of Ontario may commence such legal action or proceedings as it, in its sole and absolute discretion, may deem expedient, without any additional notice under this Agreement. The rights and remedies of the Government of Ontario hereunder are cumulative and in addition to, and not in substitution for, all other rights or remedies otherwise available to the Government of Ontario.

**15.5 *Termination Without Cause.*** Notwithstanding anything else contained herein, the Government of Ontario reserves the right to terminate this Agreement without cause upon such conditions as the Government of Ontario may require, with a minimum of thirty (30) Business Days written notice to the Recipient. If the Government of Ontario terminates this Agreement prior to its Expiration Date, the Government of Ontario, subject to all of the Government of Ontario's rights under this Agreement, including,

- 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 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 and Failure to Substantially Complete Contract Within Timelines), Section 10 (Indemnity), Section 11 (Transfer and Operation of Infrastructure), Section 12 (Conflict of Interest and Confidentiality), Section 13 Recognition), Section 14 (Covenants, Representations and Warranties), Section 15 (Default, Enforcement and Termination), 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.** The Recipient shall not assign any aspect of this Agreement. The Government of Ontario may assign this Agreement on written notice to the Recipient.
- 17.10 No Amendment.** This Agreement shall not be varied or amended except by a document in writing, dated and signed on behalf of the Government of Ontario and the Recipient.
- 17.11 Interest.** OMAFRA reserves the right to demand interest on any repayment 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.
- 17.12 Government of Ontario and Recipient Independent.** Nothing in this Agreement shall be deemed to constitute the Recipient an employee, servant, agent, partner of or in joint venture with the Government of Ontario for any purpose whatsoever.
- 17.13 Recipient Cannot Represent Government of Canada or Government of Ontario.** The provision of Financial Assistance to the Recipient pursuant to this Agreement is for the sole purpose of, and is limited to, carrying out the Project. The Recipient warrants and agrees that under no circumstances shall it enter into any Contract or commitment in the name of or on behalf of the Governments of Canada and/or Ontario. The

**SCHEDULE "B"**  
**DESCRIPTION OF THE PROJECT(S)**

<b>FILE NUMBER</b>	<b>PROJECT TITLE</b>	<b>PROJECT DESCRIPTION</b>	<b>PROJECT CONSTRUCTION START DATE</b>	<b>ABORIGINAL CONSULTATION SCHEDULE L</b>
71	Fire Station #2 Replacement (Fenwick)	This project is to construct a new fire hall with improved parking, a "bunker gear" storage area; a dressing area; adequate ventilation; specialized equipment to wash the firefighters' bunker gear; and adequate training facilities. The Fire Hall will have state of the art building, communications, and other technology, the highest possible standards for energy conservation and sustainable design.	10/01/2009	L1

- c) land acquisition, leasing land, buildings, equipment and other facilities, real estate fees and related costs;
- d) financing charges, legal fees, and loan interest payments (including those related to easements (e.g. surveys));
- e) the value of any goods and services which are received through donations or in kind;
- f) employee wages and benefits, overhead costs as well as other direct or indirect operating, maintenance and administrative costs incurred by the Recipient for the Project, and more specifically costs relating to services delivered directly by permanent employees of the Recipient;
- g) meal, hospitality or incidental expenses of Consultants; and
- h) provincial sales tax, the GST and, if and when implemented the Harmonized Sales Tax for which the Recipient is eligible for a rebate, and any other costs eligible for rebates.

**SCHEDULE "E"**  
**GOVERNMENT OF CANADA REQUIREMENTS**

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OMAFRA and the Recipient agree to the following Government of Canada Requirements:

1. The Recipient acknowledges and agrees that the amount of Financial Assistance being provided by OMAFRA is dependent on the Government of Ontario receiving funds for the Project from the Government of Canada. Should the Government of Ontario not receive the funds it expects to receive in relation to the Project from the Government of Canada, OMAFRA may, in its sole and absolute discretion, Adjust the Financial Assistance being provided to the Recipient pursuant to this Agreement (including, without limitation, requiring repayment of Financial Assistance already paid to the Recipient).
2. The Recipient shall indemnify and hold harmless the Government of Canada, its officers, servants, employees or agents, from and against all claims and demands, loss, damages, costs, expenses, actions, suits or other proceedings by whomsoever made, sustained, brought, prosecuted, threatened to be brought or prosecuted in any manner, based upon, occasioned by any injury to persons, damage to or loss or destruction of property, economic loss or infringement of rights caused by or arising directly or indirectly from:
  - a) the Project being funded by this Agreement;
  - b) the performance of this Agreement or the breach of any term or condition of this Agreement by the Recipient, its officers, employees and agents, or by a third party, its officers, employees or agents;
  - c) any omission or other willful or negligent act of the Recipient, its employees, officers or agents;

Except to the extent to which such claims and demands, losses costs, damages, actions, suits or other proceedings relate to the act or negligence of an officer, employee or agent of Canada in the performance of his or her duties.

3. The Recipient further agrees to indemnify and hold the Government of Canada, its directors, officers, employees and agents, for any incidental, indirect, special or consequential damages, or any loss of use, revenue or profit, which the Government of Canada, its directors, officers, employees and agents may incur, otherwise than by reason of their own negligence or wilful misconduct, as a result of or arising out of or in relation to any breach by the Recipient of the terms of this Agreement, or the Recipient's own negligence or wilful misconduct.
4. The Recipient acknowledges that the provisions of the *Access to Information Act* (Canada) and the *Privacy Act* (Canada) and regulations thereunder bind the Government of Canada.
5. The Recipient acknowledges that the Government of Canada is or will be the owner of certain distinguishing marks comprised of designs, trademarks and official marks in relation to ISF (the "Federal Licensed Marks") and the Recipient is subject to the requirements of Section 13 (Communication and Recognition) of this Agreement, with appropriate changes,



**SCHEDULE "F"**  
**ADDITIONAL PROVISIONS**

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The Government of Ontario and the Recipient agree to the following additional provisions:

1. Further to Section 16 of Schedule "A", notice can be given at the following addresses:

(a) If to OMAFRA:

Ministry of Agriculture, Food and Rural Affairs  
1 Stone Road West, 4<sup>th</sup> Floor  
Guelph, Ontario  
N1G 4Y2

Phone: 1-888-466-2372  
Fax: (519) 826-4336  
E-Mail: bcf.cc@ontario.ca

Attention: Dino Radocchia, Manager

(b) If to the Recipient:

Town of Pelham  
Box 400, 20 Pelham Town Square  
Fonthill, ON  
L0S 1E0

Attention: Martin Yamich, Chief Administrative Office

2. Other provisions:

3. Other Reporting Requirements:

4. Useful Life of Project Infrastructure: [i.e., no. of years]

All written communications (invitations, public service announcements, posters, etc.) must indicate that the Project received Financial Assistance from the Governments of Canada and Ontario under the ISF. The Governments of Canada and Ontario will assist the Recipient in developing an agenda, news release, etc. All parties will approve and receive final copies.

Federal, provincial and municipal flags should also be on display at all ISF events.

The Table of Precedence for Canada, as established by Canadian Heritage (<http://www.pch.gc.ca/pgm/ceem-cced/prtcl/precedence-eng.cfm>), or some other mutually acceptable protocol should be respected.

### **Signs and Plaques**

The Recipient agrees to produce and install temporary and permanent Project signage to communicate the nature of the Project and the involvement of the Governments of Canada and Ontario and the Recipient, as outlined in the ISF Style Guide.

Generally, the Recipient must ensure that the design, wording and specifications for signage are in accordance with federal and provincial visual identity guidelines, available on the ISF website at [www.BCFontario.ca](http://www.BCFontario.ca).

Temporary signs must be removed within 90 days of project completion.

### **Eligible Costs**

The Recipient will pay the costs of preparing and delivering communications activities and products, including the organization of special events and the production of signage. These costs are deemed to be Eligible Costs under the Agreement as specified below.

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

- Printing and mailing invitations
- Light refreshments, such as coffee, tea, juice, donuts, muffins, snacks
- Draping for plaque unveiling
- Project material for display and/or media kit
- Temporary signage
- Rentals such as:
  - flagpoles
  - stage
  - 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:

## SCHEDULE "H"

### EXPENDITURE AND JOB CREATION REPORT




Infrastructure Stimulus Fund (ISF)  
Le Fonds de stimulation de l'infrastructure (FSI)

#### EXPENDITURE AND JOB CREATION REPORT

Recipient Name: Town of Pelham.  
File Number: \_\_\_\_\_

Expenditure Forecast Table

Quarter	(April - June) Q1	(July - Sept.) Q2	(Oct - Dec.) Q3	(Jan - March) Q4
2009/10			75000	289500
2010/11	651375	488531	1465594	

Jobs Created / Sustained Table

	Average Number of Temporary Jobs
Previous Quarter (show date ranges)	3
Current Quarter (show date ranges)	10

The goal is that at the end of the fiscal year a calculation could be made of the total number of jobs (person-years of employment) from each project.

Prepared By: Cari Pupo  
Phone Number: 905-895-2607 ext 327  
Email: cpupo@pelham.ca  
Date: October 9, 2009

#### NOTES:

- 1) Expenditures are only considered eligible after the announcement of the approval of the project.
- 2) Please complete the expenditure table based on actual and projected expenditures. Costs are to be identified in the quarter that have been or will be incurred (rather than when they are to be paid).
- 3) Please only include **Net Eligible Expenditures** – total eligible costs net GST.
- 4) Expenditure forecasts should not exceed total eligible costs as identified in Schedule D of the Contribution Agreement.
- 5) If the project cannot be completed within the timeframes of the program, please contact the Canada Ontario Infrastructure Secretariat.
- 6) Previously reported information is provided for you. Should the information have changed, please provide the revised expenditures along with an explanation of the change.
- 7) This information is required on a quarterly basis on or before the following dates: May 15, August 15, November 15 and February 15.
- 8) Temporary Jobs refers to all non-municipal employees who are working on this project (e.g. Construction workers, engineers, etc).
- 9) Average number of Temporary Jobs refers to the number of workers involved in the project over the time period. Example: if 5 construction workers were there for the entire quarter (13 weeks), and 20 additional construction workers were there for 6 weeks, the average number of workers for this quarter would be 15.

## SCHEDULE "J" FINAL REPORT



### Infrastructure Stimulus Fund (ISF) Le Fonds de stimulation de l'infrastructure (FSI)

#### 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/Cout admissible du projet \$
Total Project Cost/Cout 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 Infrastructure Stimulus Fund 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 du Fonds de stimulation de l'infrastructure municipal et que, le cas échéant, toutes les mesures d'atténuation environnementales nommées ont été adressées de façon acceptable 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)		
	\$	
A. Engineering/Design Costs / Ingénierie	\$	GROSS PROJECT TOTAL / PROJET BRUT TOTAL
B. Environmental Assessment Costs / Coût de l'évaluation environnementale	\$	Less G.S.T. Rebate / Moins remboursement de la T.P.S.
C. Project Management / Gestion de projet	\$	NET PROJECT TOTAL / PROJET NET TOTAL
D. Construction	\$	Project Start Date / Date du début du projet
E. 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.

**SCHEDULE "L"**  
**ABORIGINAL CONSULTATION PROTOCOL**

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**PART L.1**

**1.0 Responsibilities of the Recipient**

1.1 The Recipient shall immediately notify Ontario:

- (i) of contact by any Aboriginal Groups regarding the Project; or
- (ii) if any Aboriginal archaeological resources are discovered in the course of the Project,

and in either case, Ontario may direct the Recipient to take such actions, including without limitation suspension of the Project, as Ontario may require. The Recipient shall comply with Ontario's direction.

1.2 The Recipient shall provide in any contracts with third parties for the Recipient's right and ability to respond to direction from Ontario as Ontario may provide in accordance with section 1.1.

**PART L.2.**

**1.0 Purpose**

The purpose of this Aboriginal Consultation Protocol is to set out the responsibilities of Ontario and the Recipient in relation to consultation with Aboriginal Groups on the Project, and to delegate procedural aspects of consultation from Ontario to the Recipient.

**1.1 Definitions**

For the purposes of this Schedule L.:

**"S. 35 Duty"** means any duty Ontario may have to consult and, where appropriate, accommodate Aboriginal Groups in relation to the Project flowing from Section 35 of the *Constitution Act, 1982*.

**2.0 Responsibilities of Ontario**

2.1 Ontario is responsible for:

- (i) determining the Aboriginal Groups to be consulted in relation to the Project, if any, and advising the Recipient of same;
- (ii) the preliminary and ongoing assessment of the depth of consultation required with the Aboriginal Groups;

to discuss the Project;

- (viii) if appropriate, providing reasonable financial assistance to Aboriginal Groups to permit effective participation in consultation processes for the Project;
- (x) considering comments provided by the Aboriginal Groups regarding the potential impacts of the Project on Aboriginal or treaty rights or asserted rights, including adverse impacts on hunting, trapping, fishing, plant harvesting or on burial grounds or archaeological sites of cultural significance to an Aboriginal Community, or on other interests, or any other concerns or issues regarding the Project;
- (xi) answering any questions to the extent of the Recipient's ability and receiving comments from the Aboriginal Groups, notifying Ontario of the nature of the questions or comments received and maintaining a chart showing the issues raised by the Aboriginal Groups and any responses the Recipient has provided;
- (xii) where an Aboriginal Community asks questions regarding the Project directly of Ontario, providing Ontario with the information reasonably necessary to answer the inquiry, upon Ontario's request;
- (xiii) subject to section 3.2 (xiv), where appropriate, discussing with the Aboriginal Groups potential accommodation, including mitigation of potential impacts on Aboriginal or treaty rights, asserted rights or associated interests regarding the Project and reporting to Ontario any comments or questions from the Aboriginal Groups that relate to potential accommodation or mitigation of potential impacts;
- (xiv) consulting with Ontario during all discussions with Aboriginal Groups regarding accommodation measures, if applicable, and presenting to Ontario for the purposes of section 2.1 (v) hereof, the results of such discussions prior to implementing any applicable accommodation measures; and
- (xv) complying with Ontario's direction to take any actions, including without limitation suspension of the Project, as Ontario may require.

3.3 The Recipient hereby acknowledges that, notwithstanding Section 3.1 above, Ontario, any provincial ministry having an approval role in relation to the Project, or any responsible regulatory body, official, or provincial decision-maker, may participate in the matters and processes enumerated therein as they deem necessary.

3.4 The Recipient will carry out the following functions in relation to record keeping, information sharing and reporting to Ontario:

- (i) provide to Ontario, upon request, complete and accurate copies of all documents provided to the Aboriginal Groups in relation to the Project;
- (ii) keep reasonable business records of all its activities in relation to consultation and provide Ontario with complete and accurate copies of such records upon request;
- (iii) provide Ontario with timely notice of any Recipient mailings to, or Recipient

**6.0 Notice and Contact**

6.1 All notices to Ontario pertaining to this Schedule shall be in writing and shall be given by facsimile or other means of electronic transmission or by hand or courier delivery. Any notice to Ontario shall be addressed as follows:

Ministry of Agriculture, Food and Rural Affairs  
1 Stone Road West, 4<sup>th</sup> Floor  
Guelph, Ontario  
N1G 4Y2

Phone: 1-888-466-2372  
Fax: (519) 826-4336  
Email: bcf.cc@ontario.ca

Attention: Dino Radocchia, Manager