

Ministry of Agriculture,
Food and Rural Affairs

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

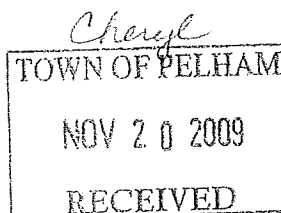
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Rural Community Development Branch

November 19, 2009



Our File: 27026

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

Dear Ms. Miclette:

Please find enclosed a duly executed copy of your Funding Agreement for Intake 2 of the Building Canada Fund – Communities Component (BCF-CC) which sets out the terms and conditions of federal and provincial funding.

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

Sincerely,

Barbara Maknoni
Project Analyst

enclosure



Pick Ontario Freshness
Cueillez la fraîcheur de l'Ontario



BL#3057

BUILDING CANADA FUND – COMMUNITIES COMPONENT (BCF-CC)

CONTRIBUTION AGREEMENT FOR INFRASTRUCTURE PROJECTS – INTAKE 2

Ministry of Energy and Infrastructure and Ministry of Agriculture, Food and Rural Affairs
File Number: 27026

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

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

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

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

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

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

AND WHEREAS the Government of Canada and the Government of Ontario entered into the Building Canada Fund Communities Component Agreement 2007-2017 (BCF-CCA), dated the

and by the Minister of Agriculture, Food and Rural Affairs
by:



Name: The Honourable Leona Dombrowsky

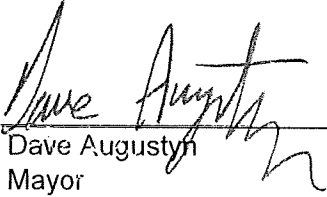
Title: Minister of Agriculture, Food and Rural Affairs

NOV 05 2009

Date

RECIPIENT'S NAME: THE CORPORATION OF THE TOWN OF PELHAM

by:



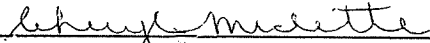
Name: Dave Augustyn

Title: Mayor

Sept 22, 09

Date

Corporate
Seal



Name: Cheryl Miclette

Title: Town Clerk

Sept 22, 09

Date

I/we have authority to bind the Recipient

C.48, as amended.

"Eligible Costs" means the costs so described in Part C.1 in Schedule "C".

"End of Financial Assistance Date" means March 31, 2011.

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

"Environmental Laws" means all applicable federal, provincial or municipal laws, regulations, by-laws, orders, rules, policies or guidelines respecting the protection of the natural environment, public or occupational health or safety, and the manufacture, importation, handling, transportation, storage, disposal and treatment of Environmental Contaminants and include, without limitation, the *Environmental Protection Act*, R.S.O. 1990, c. E. 19, as amended, the *Environmental Assessment Act*, R.S.O. 1990, c. E. 18, as amended, the *Ontario Water Resources Act*, R.S.O. 1990, c. O. 40, as amended the *Canadian Environmental Protection Act 1999*, S.C. 1999, c. 33, as amended, the *Canadian Environmental Assessment Act*, S.C. 1992, c. 37, as amended, the *Fisheries Act*, R.S.C. 1985, c. F-14, as amended and the *Navigable Waters Protection Act*, R.S.C. 1985, c. N-22, as amended.

"Event of Default" has the meaning given to it in Section 15.1 of this Agreement.

"Expenditure and Job Creation Report" has the meaning given to it in Section 6.2 of this Agreement.

"Expiration Date" means March 31, 2012.

"Federal Licensed Marks" has the meaning given to it in Section 5 of Schedule "E" to this Agreement.

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

"Final Report" has the meaning given to it in Section 6.4 of this Agreement.

"Final Report Date" means April 30, 2011.

"Financial Assistance" means the funds contributed by the Governments of Canada and Ontario to be advanced by OMAFRA to the Recipient pursuant to this Agreement.

"Fiscal Year" means the period beginning on April 1 of a year and ending on March 31 of the following year.

"Government of Canada" means Her Majesty the Queen in right of Canada.

"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.

pursuant to such statute as such statute and regulations may at any time be amended or modified and in effect and to any statute or regulations that may be passed that have the effect of supplementing or superseding such statute or regulations.

- 1.5 **Gender, singular, etc.** Words importing the masculine gender include the feminine or neuter gender and words in the singular include the plural, and vice versa.
- 1.6 **OMAFRA Approvals.** Any reference to, or requirement for, the approval of OMAFRA in this Agreement or in any schedule hereto shall be deemed to require the prior and express written approval of OMAFRA.

SECTION 2 TERM OF AGREEMENT

- 2.1 **Term.** Subject to any extension or termination of this Agreement or the survival of any of the provisions of this Agreement pursuant to the provisions contained herein, this Agreement shall be in effect from the date set out on the first page of this Agreement, up to and including the Expiration Date (the "Term").
- 2.2 **End of Financial Assistance Date.** Notwithstanding anything in this Agreement and regardless of the Project's state of completion, the Government of Ontario shall not be obligated to provide Financial Assistance under this Agreement after the End of Financial Assistance Date. The Recipient will be responsible for any financial obligations after that date related to the Project or this Agreement.
- 2.3 **Project Completion Date.** The Recipient shall complete the Project by the Project Completion Date. The Government of Ontario shall not be obligated to provide Financial Assistance under this Agreement for any costs incurred after the Project Completion Date. The Recipient will be responsible for any risks and obligations to complete the Project if the Recipient fails to complete the Project by the Project Completion Date. The Recipient will also be responsible for completing the Project as soon as possible after the Project Completion Date.

SECTION 3 ELIGIBLE COSTS

- 3.1 **Eligible Costs.** For a cost to be eligible for Financial Assistance pursuant to this Agreement (an "Eligible Cost"), the cost must be included in Schedule "C", Part C.1 except where otherwise expressly approved in writing by OMAFRA. For greater certainty, where Schedule "B" identifies a portion of the works that are specifically excluded from the description of the Project under this Agreement, the costs associated with that portion of the works are not eligible for any Financial Assistance.
- 3.2 **Discretion of OMAFRA.** Subject to Section 3.1, the eligibility of any costs not listed in Part C.1 of Schedule "C" will be determined in accordance with the policies and guidelines (if any) established by OMAFRA to administer the BCF-CC. 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 records of payments related to Eligible Costs including, without limitation, invoices and receipts, for audit purposes and

- 4.6 **Maximum Financial Assistance.** The total amount of Financial Assistance provided to the Recipient shall in any event be no greater than the Maximum Financial Assistance figure set out in Schedule "D" hereto.
- 4.7 **Excess Financial Assistance.** The Recipient shall immediately notify OMAFRA should the Project require less than the Total Eligible Costs to be Substantially Completed, or where additional funding is secured from other government sources such that the total funds available to the Recipient for the Project (other than the Financial Assistance) exceed the Maximum Financial Assistance. OMAFRA may, in its sole and absolute discretion, Adjust the Financial Assistance on the Project.
- 4.8 **Interdependent Projects.** Where implementation of a Project is dependent on completion of a project by others and others do not complete the interdependent project in whole or in part, OMAFRA may, in its sole and absolute discretion, Adjust the Financial Assistance for the Project.
- 4.9 **Recipient Not Carrying Out Project.** The Recipient shall immediately notify OMAFRA if it does not intend to carry out any Project in whole or in part as specified in Schedule "B" hereto in which case OMAFRA may, in its sole and absolute discretion, Adjust the Financial Assistance for the Project.
- 4.10 **New Information.** In the event of new information, errors, omissions or other circumstances affecting the determination of the amount of Financial Assistance under this Agreement, OMAFRA may, in its sole and absolute discretion, Adjust the Financial Assistance for the Project.
- 4.11 **Alternatives to Project.** If the Recipient becomes aware of any means of completing either the Project's objective or the Project itself that are more cost effective, the Recipient shall immediately notify OMAFRA, in which case OMAFRA may, in its sole and absolute discretion, Adjust the Financial Assistance. Likewise, if OMAFRA 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 **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.
- 4.13 **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 applicable federal, provincial or municipal laws, and all rules, regulations, by-laws, notices, orders, approvals directives, protocols, policies and guidelines.
- 4.14 **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, in whole or in part, for Financial Assistance advanced by OMAFRA and unspent by the Recipient

approval. The requirement for a competitive process for municipal Recipients, not-for-profit private sector Recipients, for-profit private sector Recipients or Local Services Board Recipients may be waived with prior written approval by OMAFRA if:

- a) the expertise and/or equipment the Recipient is purchasing is specialized and is not readily available; or
- b) the Recipient has recently researched the market for a similar purchase and knows prevailing market costs for the equipment, services or supplies purchased.

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

5.8 Final claims. The Recipient shall submit its final claims for all costs incurred by the End of Financial Assistance Date with the required documentation, including the Final Report as per Section 6.4 of this Agreement, for approval, cost reviews, audits (including any value for money audits OMAFRA may decide to undertake in its sole and absolute discretion) within 90 days following the Substantial Completion of the Project and no later than the Final Report Date or such later date as is specified in writing by OMAFRA. Upon completion of the final cost reviews, audits and settlement, OMAFRA shall not be obligated to consider any further claims in relation to the Project. The Recipient shall also submit, upon request by OMAFRA, the required documentation for approval, cost reviews and audits.

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", failing which this Agreement may be terminated pursuant to Section 15, unless otherwise approved by the Oversight Committee.

5.10 Contracts. The Recipient shall ensure that all Contracts:

- a) are consistent with this Agreement all policies issued by the Oversight Committee;
- b) do not conflict with this Agreement;
- c) incorporate the relevant provisions of this Agreement and any policies issued by the Oversight Committee to the fullest extent possible;
- d) be consistent with all policies and procedures issued by the Government of Canada and/or the Government of Ontario may provide to the Recipient for the BCF-CC;
- e) are awarded and managed:

not be obligated to consider any further claims in relation to the Project.

SECTION 7 RECORDS AND AUDIT

- 7.1 *Separate Records.*** The Recipient shall maintain separate records and documentation for the Project and keep all records and documentation for six (6) years after the submission of the final claims referred to in Section 5.9 of this Agreement or a longer period of time, as specified by OMAFRA in writing.
- 7.2 *Provide Records to OMAFRA.*** The Recipient shall provide to OMAFRA, upon request and at the Recipient's expense (including but not limited to photocopying, electronic media, transportation and postage, associated staff time, information retrieval and other office expenses), all records and documentation (including invoice summaries and certified statement of final costs) of the Recipient and its auditors, Consultants relating to the Project or any other project(s) of the Recipient under the -BCF-CC, or any other Government of Ontario program(s), for the purposes of cost reviews, audits (including any value for money audits that OMAFRA may decide to undertake in its sole and absolute discretion) and settlement, as may be required by OMAFRA, of the Project or any other project(s) of the Recipient under the BCF-CC, or any other Government of Ontario program(s). Such material shall be provided in a form and manner satisfactory to OMAFRA.
- 7.3 *External Auditor.*** OMAFRA may require the assistance of an external auditor to carry out a review of the material referred to in Sections 7.1 and 7.2 of this Agreement. If so, the 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.

started construction but for which progress is not to the satisfaction of Ontario.

SECTION 9 INSURANCE AND BONDING

9.1 Insurance. The Recipient represents and warrants that it has, and shall maintain in full force and effect for the term of the Agreement, at its own cost and expense, with insurers having a secure A.M. Best rating of B+ or greater, or the equivalent, all the necessary and appropriate insurance that a prudent person carrying out a project similar to the Project would maintain, including commercial general liability insurance on an occurrence basis for third party bodily injury, personal injury and property damage, to an inclusive limit of not less than five million dollars (\$5,000,000.00) per occurrence. The commercial general liability insurance policy shall include the following:

- (i) the Indemnified Parties as additional insureds with respect to liability arising in the course of performance of the Recipient's obligations under, or otherwise in connection with, the Agreement;
- (ii) a cross liability clause;
- (iii) contractual liability coverage; and
- (vii) a 30 day written notice of cancellation, termination or material change.

9.2 Proof of Insurance. The Recipient shall provide OMAFRA with certificates of insurance, or other proof as may be requested by OMAFRA, that confirms the insurance coverage as provided for in Section 9.1. 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

Financial Assistance, as follows:

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

- 11.3 Notice.** At any time during the ten (10) years following the date of completion of the Project, the Recipient agrees to notify OMAFRA in writing of any transaction triggering the above-mentioned repayment in Section 11.2 of this Agreement, at least one hundred eighty (180) Business Days in advance.
- 11.4 Deduction from Financial Assistance.** OMAFRA may, in its sole and absolute discretion deduct the amount of Financial Assistance to be repaid under Section 11.2 of the Agreement from Financial Assistance payable on any other Project(s) of the Recipient under the BCF-CC or any other Government of Ontario program(s) (either current or future) the Recipient receives funding from and provide that money to the Government of Canada and/or Ontario.
- 11.5 Revenue from Assets.** The Recipient must identify to OMAFRA when an Asset generates revenues in any given Fiscal Year that exceed its costs, including operating costs, alternative financing partnerships or public private partnerships costs and provisions for future life cycle costs and where the intent of revenue generation was not identified in the Recipient's application for BCF-CC. The Recipient must pay OMAFRA, upon request, that proportion of excess, that is the same percentage proportion as Canada's and Ontario's Financial Assistance contribution was to the total cost of the Asset. This obligation will apply only to the first ten (10) complete Fiscal Years following the completion date of the Project.
- 11.6 Asset Operation.** The Asset established with the Financial Assistance from OMAFRA shall be used, maintained and operated for a period of at least one half of the expected useful life of the asset after the 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 provided to those Project(s) 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, Consultants and volunteers shall not engage in any activity or provide any services where such activity or the provision of such services creates a conflict of interest (actually or potentially in the sole 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

limiting the generality of the foregoing, will remove all signage and remove from circulation any use or reference to the Licensed Marks.

SECTION 14 COVENANTS, REPRESENTATIONS AND WARRANTIES

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

- a) it is conducting and shall carry on its business in compliance with all applicable federal, provincial and municipal laws, and all rules, regulations, by-laws, notices, orders and approvals, directives, protocols, policies and guidelines;
- b) it is conducting and shall conduct its business in compliance with all federal requirements as outlined in Schedule "E";
- c) it has authority and any necessary approval to enter into this Agreement and to carry out its terms;
- d) it has or will apply for all permits, approvals, and licenses which are required in order to carry out the Project;
- 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 ten (10) 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 Local Government or a Crown Agency, it has the requisite legislative authority to carry out the Project;
- l) all information provided by the Recipient during the BCF-CC application process remains true, correct and complete in every respect except as set out to the

- c) if an order shall be made or an effective resolution passed for the winding up, or liquidation or dissolution of the Recipient or the Recipient is otherwise dissolved or ceases to carry on its operation;
- d) if the Recipient uses any of the Financial Assistance for a purpose not authorized by this Agreement without the prior written consent of OMAFRA;
- e) if the Recipient admits in writing its inability to pay its debts generally as they become due, voluntarily suspends transactions of its usual business, becomes insolvent, bankrupt, makes an assignment for the benefit of its creditors, or a receiver or manager, court appointed or otherwise, is appointed for its assets or if the Recipient takes the benefit of any statute from time to time in force relating to bankrupts or insolvent debtors;
- f) if in the opinion of OMAFRA a material adverse change occurs such that the viability of the Recipient as a going concern is threatened in the opinion of OMAFRA, acting reasonably;
- g) if in the opinion of OMAFRA the Recipient ceases to operate;
- h) if the Recipient fails to begin the Project within sixty (60) days after the date of Project construction start date, as per Schedule "B", or, in the opinion of OMAFRA, the Recipient has failed to proceed diligently with the Project or abandons the Project in whole or in part, or the Recipient is otherwise in default in carrying out any of the terms, conditions or obligations of this Agreement, except where such failure is due to causes which, in the opinion of 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, subcontractors, partners, directors, officers, employees, agents and volunteers has breached the requirements of Section 12.

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 shall extend to, or be taken in any manner whatsoever to affect, any subsequent Event of Default or the right to remedies resulting therefrom, and that no such waiver shall be, or shall be deemed to constitute, a waiver of such Event of Default unless such waiver is in writing from OMAFRA.

15.3 Remedies on default. Notwithstanding any other rights which the Government of Ontario may have under this Agreement, if an Event of Default has occurred, the Government of Ontario shall have the following remedies provided only that in the case of an Event of Default which, in the opinion of OMAFRA in its sole and absolute discretion, is curable, OMAFRA has first given written notice of the Event of Default to both the Oversight Committee and the Recipient and the Recipient has failed to correct the Event of Default within thirty (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

or communication mailed by registered mail shall be deemed to have been received three (3) Business Days following the day on which it was mailed.

- 16.2 Representatives.** The individuals identified pursuant to Schedule "F" will, in the first instance, act as the Government of Ontario's or the Recipient's, as the case may be, representative for the purpose of implementing this Agreement.

SECTION 17 MISCELLANEOUS

- 17.1 Terms Binding.** The Recipient shall take all reasonable measures to ensure that its officers, directors, partners, employees, agents, sub-contractors and Consultants shall be bound to observe all of the terms and conditions of this Agreement, including, but not limited to all covenants, representations and warranties set out herein. The Recipient shall include in all of its Contract(s) terms and conditions similar to and not less favourable to the Government of Ontario than the terms and conditions of this Agreement to the extent that they are applicable to the work subcontracted, including but not limited to the requirements of Section 7.4 of this Agreement.
- 17.2 Time Is of the Essence.** In the performance and observance of the terms and conditions of this Agreement, time is of the essence and no extension or variation of this Agreement shall operate as a waiver of this provision.
- 17.3 Successors and Assigns.** This Agreement shall ensure to the benefit of and be binding upon the parties hereto and their respective heirs, executors, administrators, successors and permitted assigns.
- 17.4 Severability.** The validity or enforceability of any provision of this Agreement shall not affect the validity or enforceability of any other provisions hereof and such invalid or unenforceable provisions shall be deemed to be severable.
- 17.5 No Waiver.** The failure by the Government of Ontario to insist in one or more instances on performance by the Recipient of any of the terms or conditions of this Agreement shall not be construed as a waiver of the Government of Ontario's right to require further performance of any such terms or conditions, and the obligations of the Recipient with respect to such performance shall continue in full force and effect.
- 17.6 Division of Agreement.** The division of this Agreement into schedules, articles, sections, clauses, paragraphs and the insertion of headings are for the convenience of reference only and shall not affect the construction or interpretation of this Agreement.
- 17.7 Governing Law.** This Agreement shall be governed by and construed in accordance with the laws 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 Perform 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

- 17.16 Cooperation.** The Government of Ontario and the Recipient agree to cooperate with one another and will be frank, candid and timely when dealing with one another and will endeavour to facilitate the implementation of this Agreement.
- 17.17 Data.** The Recipient agrees that the Government of Ontario may, in its sole discretion, gather and compile information and data required under this Agreement and disclose such information and data to the Federal Government.
- 17.18 Priority.** Where there is a conflict between one or more of the schedules of this Agreement, the following order of priority shall apply: Schedule "A", Schedule "C", Schedule "B" and all other schedules.
- 17.19 Entire Agreement.** The Agreement constitutes the entire Agreement between the Government of Ontario and the Recipient with respect to the subject matter contained in the Agreement and supersedes all prior oral or written representations and/or agreements.

- END OF GENERAL TERMS AND CONDITIONS -

SCHEDULE "C"
ELIGIBLE AND INELIGIBLE COSTS

ELIGIBLE COSTS

- C.1.** Subject to Section C.2, Eligible Costs will be all direct costs which are in OMAFRA's opinion properly and reasonably incurred and paid by the Recipient for Eligible Costs under a contract for goods or services necessary for the implementation of the Project. Eligible Costs will include only the following:
- a) the capital costs of acquiring, constructing or renovating a tangible capital Asset, as defined and determined by OMAFRA;
 - b) the costs of joint communication activities (press releases, press conferences, translation, etc.) and road signage recognition as described in Schedule "G";
 - c) all planning (including plans and specifications) and assessment costs such as the costs of environmental planning, surveying, engineering, architectural supervision, testing and management consulting services, to a maximum of 15% of total Eligible Costs or 15% of the federal contribution, whichever is less;
 - d) the costs of engineering and environmental reviews, including environmental assessments and follow-up programs as defined in the *Canadian Environmental Assessment Act* and the costs of remedial activities, mitigation measures and follow-up identified in any environmental assessment;
 - e) the costs of Project-related signage, lighting, Project markings and utility adjustments;
 - f) costs of consulting with Aboriginal Group(s), including the translation of documents into languages spoken by the interested Aboriginal Group(s);
 - g) the costs of developing and implementing innovative techniques for carrying out the Project, as determined by OMAFRA;
 - h) Recipient audit and evaluation costs as specified in this Agreement, with the exception of costs related to the retaining of an external auditor;
 - i) other costs that, in the sole opinion of OMAFRA, are considered to be direct and necessary for the successful implementation of the Project and have been approved in writing prior to being incurred; and
 - j) for collaborative (i.e., capacity building) projects the costs of planning, developing, and implementing as may be identified in Schedule B:
 - (i) studies, strategies, or systems related to infrastructure integrated asset management, which may include software acquisition and implementation;
 - (ii) studies, strategies, or systems related to infrastructure demand management;

SCHEDULE "D"
FINANCIAL ASSISTANCE

Total Eligible Costs:	\$5,518,899
Federal Maximum Financial Assistance:	\$1,839,633
Ontario Maximum Financial Assistance:	\$1,839,633
Maximum Financial Assistance:	\$3,679,266

OMAFRA will hold back 10% of the Maximum Financial Assistance, the release of which shall be contingent on submission of the Recipient's Final Report detailing the progress and status of the Project and substantiating that the Project has been Substantially Performed. Such report must contain the information required in the Final Report as set out in Section 6.4 of Schedule "A" of this Agreement. OMAFRA is not obligated to pay interest on the holdback or any other payments under this Agreement.

MINISTRY COLLABORATES WITH THE RECIPIENT ON AN APPROPRIATE PROJECT SCHEDULE

certain distinguishing marks comprised of designs, trademarks and official marks in relation to BCF-CC (the "Federal Licensed Marks") and the Recipient is subject to the requirements of Section 13 of Schedule "A" of this Agreement, with appropriate changes, in relation to the Federal Licensed Marks.

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

SCHEDULE "G"

COMMUNICATIONS REQUIREMENTS

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

Purpose of Schedule

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

General Principles

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

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

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

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

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

Events

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

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

The Recipient may invite other elected officials and members of council. The Recipient should also invite local interested parties, such as contractors, architects, labour groups, and community leaders as early as possible, and in consultation with the Governments of Canada and Ontario, prior to the event.

All written communications (invitations, public service announcements, posters, etc.) must



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

EXPENDITURE AND JOB CREATION REPORT

Recipient Name:

Town of Pelham.

File Number:

27026

Expenditure Forecast Table

Quarter	(April - June) Q1	(July - Sept.) Q2	(Oct. - Dec.) Q3	(Jan. - March) Q4
2009/10			437037	2027083
2010/11	1974999	931249	148531	

Jobs Created / Sustained Table

	Average Number of Temporary Jobs
Previous Quarter (show date ranges)	10
Current Quarter (show date ranges)	20

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 - 892-2607 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 "H"

EXPENDITURE AND JOB CREATION REPORT




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

EXPENDITURE AND JOB CREATION REPORT

Recipient Name: _____

File Number: _____

Expenditure Forecast Table

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

Jobs Created / Sustained Table

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

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: _____

Phone Number: _____

Email: _____

Date: _____

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

FINAL REPORT/RAPPORT FINALE

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

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

Authorized Official / Responsable autorisé(e)
Name/Nom

Date/Date

Title/Titre

I certify that the named project has been completed in accordance with the Building Canada Fund - Communities Component Contribution Agreement and that, where applicable, all identified environmental mitigation measures have been satisfactorily addressed and that supporting invoices and records are available for audit, if required.

J'affirme par la présente que le projet nommé a été terminé conformément à l'accord Fonds chantiers Canada-Ontario Le volet Collectivités municipal et que, le cas échéant, toutes les mesures d'atténuation environnementales nommées ont été adressées de façon acceptables et que les factures et documents d'appui sont disponibles à des fins de vérification.

Signature/Signature :

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

Breakdown of Project Costs (Catégories de coûts du projet (Catégories selon l'annexe 2 de la demande))

A. Engineering/Design Costs / Ingénierie	\$
B. Environmental Assessment Costs / Coût de l'évaluation environnementale	\$
C. Project Management / Gestion de projet	\$
D. Construction	\$
E. Miscellaneous / Divers	\$
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	

Breakdown of Project Costs (Catégories de coûts du projet (Catégories selon l'annexe 2 de la demande))

GROSS PROJECT TOTAL / PROJET BRUT TOTAL	\$
Less G.S.T. Rebate / Moins remboursement de la T.P.S.	\$
NET PROJECT TOTAL / PROJET NET TOTAL	\$
Project Start Date / Date du début du projet	
Project Completion Date / Date de la fin du projet	

*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 réel 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

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.