

**ONTARIO COMMUNITY INFRASTRUCTURE FUND – FORMULA-BASED COMPONENT**

**BETWEEN:**

**HER MAJESTY THE QUEEN IN RIGHT OF ONTARIO**  
as represented by the Minister of Agriculture, Food and Rural Affairs

(“Ontario”)

– and –

The Corporation of the Town of Pelham

(the “Recipient”)

**WHEREAS** the Government of Ontario has created the Ontario Community Infrastructure Fund to: (1) provide stable funding to help small communities address critical core infrastructure needs in relation to roads, bridges, water and wastewater; (2) further strengthen municipal asset management practices within small communities; and (3) help small communities use a broad range of financial tools to address critical infrastructure challenges and provide long-term support for rehabilitation and repair of core infrastructure for those in most need;

**AND WHEREAS** the Ontario Community Infrastructure Fund is composed of two (2) components: (1) the Application-Based Component; and (2) the Formula-Based Component;

**AND WHEREAS** the Formula-Based Component of the Ontario Community Infrastructure Fund is based on: (1) a municipality’s local fiscal circumstances and its total core infrastructure assets with a minimum grant of twenty-five thousand dollars (\$25,000.00), where the recipient is an eligible municipality; or (2) a grant of twenty-five thousand dollars (\$25,000.00), where the recipient is an eligible Local Services Board;

**AND WHEREAS** the Recipient is eligible to receive funding under the Formula-Based Component of the Ontario Community Infrastructure Fund;

**NOW THEREFORE**, in accordance with the principles set out above, the mutual covenants and agreements herein and for other good and valuable consideration, the receipt of sufficiency of which is expressly acknowledges, the Parties hereby agree as follows:

**SECTION 1**  
**INTERPRETATION**

**1.1 Definitions.** For the purposes of this Agreement, the following terms shall have the following meanings described below.

“**Aboriginal Group**” includes the Indian, Inuit and Métis peoples of Canada or any other group holding Aboriginal or treaty rights under section 35 of the *Constitution Act, 1982*.

**“Adjust the Funds”** means Ontario's right to adjust, without limitation, any Funds provided to the Recipient under this Agreement.

**“Agreement”** means this agreement between Ontario and the Recipient, including all Schedules attached hereto.

**“Annual Financial Report”** means the document set out under Part B.2 of Schedule “B” of this Agreement.

**“Arm's Length”** has the meaning given to it under the *Income Tax Act* (Canada) as in effect on the Effective Date of this Agreement.

**“Auditor General”** means the Auditor General of Ontario.

**“BPSAA”** means the *Broader Public Sector Accountability Act, 2010* (Ontario).

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

**“Communications Protocol”** means the protocol set out under Schedule “G” of this Agreement.

**“Conflict of Interest”** includes any and all circumstances where the Recipient or any person who has the capacity to influence the Recipient's decisions has outside commitments, relationships or financial interests that could, or could be seen to, interfere with the Recipient's objective, unbiased and impartial judgment relating to this Agreement.

**“Consultant”** means any person the Recipient retains to do work related to this Agreement.

**“Contract”** means a contract between the Recipient and a third party at Arm's Length whereby the latter agrees to provide a good or service in return for financial consideration that may be claimed as an Eligible Cost under this Agreement.

**“Effective Date”** means the date set out at Part C.1 of Schedule “C” of this Agreement.

**“Eligible Costs”** means the costs described in Part E.1 of Schedule “E” of this Agreement.

**“Event of Default”** has the meaning given to it in section 15 of this Agreement.

**“Expiration Date”** means the date set out in Part C.2 of Schedule “C” of this Agreement.

**“FIPPA”** means the *Freedom of Information and Protection of Privacy Act* (Ontario).

**“First Nation”** means a band, as defined under section 2(1) of the *Indian Act* (Canada).

**“Fiscal Year”** means the period beginning April 1<sup>st</sup> in any year and ending on March 31<sup>st</sup> of the following year.

**“Funds”** means the total amount of funding Ontario is providing in Canadian currency to the Recipient under this Agreement, subject to the terms and conditions of this Agreement.

**“Indemnified Party”** means Her Majesty the Queen in Right of Ontario, Her Ministers, directors, officers, agents, appointees and employees.

**“Ineligible Costs”** means the costs described under Part E.2 of Schedule “E” of this Agreement.

**“Local Services Board”** means a Local Services Board established under the *Northern Services Boards Act* (Ontario).

**“Minister”** means the Minister of Agriculture, Food and Rural Affairs.

**“Ontario”** means Her Majesty the Queen in Right of Ontario, as represented by the Minister of Agriculture, Food and Rural Affairs or any other Minister who may have authority to administer this Agreement, unless the context indicates otherwise.

**“Parties”** means Ontario and the Recipient.

**“Party”** means either Ontario or the Recipient, as the case may be.

**“Project”** means the project described in Part B.1 of Schedule “B” of this Agreement.

**“Project Report”** means the document set out under Part B.1 of Schedule “B” of this Agreement.

**“PSSDA”** means the *Public Sector Salary Disclosure Act, 1996* (Ontario).

**“Requirements of Law”** means all applicable statutes, codes, acts, ordinances, orders, approvals, decrees, injunctions, by-laws, rules, regulations, official plans, permits, licenses, authorizations, directions and agreements with all authorities that now or at any time hereafter may relate to the Recipient, the Project and this Agreement. Without limiting the generality of the foregoing, if the Recipient is subject to the *BPSAA*, the *PSSDA* or any other type of broader public sector accountability statutes, the *BPSAA*, the *PSSDA* and other type of broader public sector accountability statutes are deemed to be Requirements of Law.

**“Term”** means the period of time beginning on the Effective Date of this Agreement and ending on the Expiration Date or the termination of this Agreement, whichever is shorter.

**1.2 Reference To Statute Or Regulation.** Any reference to a statute is to such statute and to the regulations made 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 supplanting or superseding such statute or regulations.

**1.3 Singular/Plural And Gender Terms.** Each definition in this Agreement using a singular capitalized term or other word or phrase shall also apply to the plural form and such term, word or phrase and *vice versa*. All references to the masculine gender shall include reference to the feminine or neuter gender and vice versa in each case as the context may permit or require.

**1.4 Pronouns.** Each use in this Agreement of a neuter pronoun shall be deemed to include the masculine and feminine variations thereof and *vice versa* and a singular pronoun

shall be deemed to include a reference to the plural pronoun and *vice versa* in each case as the context may permit or require.

- 1.5 Sections And Other Headings.** The section and other headings contained in this Agreement are for reference purposes only and shall not affect the meaning or interpretation of this Agreement.
- 1.6 Recitals.** The recitals to this Agreement do not form a part of the Agreement.
- 1.7 Accounting Terms, Calculations And Submission Of Financial Data.** All accounting terms not defined in this Agreement shall have the meanings usually ascribed to them. All calculations will be made and all financial data to be submitted will be prepared in accordance with the applicable accepted accounting principles in effect in Ontario.

## SECTION 2 THE AGREEMENT

- 2.1 The Agreement.** The Agreement includes this document and the following Schedules attached to this document, as such Schedules may be amended from time to time in accordance with this Agreement.

### Schedule

- "A" Eligible Project Categories
- "B" Project Report and Annual Financial Report
- "C" Operational Requirements Under The Agreement
- "D" Financial Information For The Project
- "E" Eligible And Ineligible Costs
- "F" Aboriginal Consultation Requirements
- "G" Communications Protocol

- 2.2 Conflict.** In the event of a conflict between any of the documents that form part of this Agreement, the conflict shall be resolved in the following descending order:
- (a) This document; and
  - (b) The Schedules attached to this document.
- 2.3 Expiration Date Of Agreement.** This Agreement shall expire on the Expiration Date, unless amended or terminated prior to this date in accordance with this Agreement.

## SECTION 3 GENERAL ROLES AND RESPONSIBILITIES OF THE PARTIES UNDER THE AGREEMENT

- 3.1 Provision Of Funds.** Ontario agrees, subject to the terms and conditions of this Agreement to provide Funds up to the amount set out under Part D.1 of Schedule "D" of this Agreement to the Recipient in accordance with Part D.2 of Schedule "D" of this Agreement. The Recipient is solely responsible for securing any additional funding, if needed, to complete any Project to which the Funds being provided under this Agreement have been directed.

- 3.2 Ontario's Role Under Agreement Strictly Limited To Providing Funds.** The Recipient acknowledges and agrees that Ontario's role is strictly limited to providing Funds and that Ontario will have no other involvement in any Project to which Funds are directed or their subsequent maintenance and operation. Ontario is not a manager, decision-maker nor an advisor to the Recipient in relation to any Project to which Funds are directed. Notwithstanding the generality of the foregoing and without limitation, the fact that Ontario may conduct performance reviews and/or audits as provided for hereinafter or issues directions under the terms and conditions of this Agreement shall not be construed by the Recipient as Ontario having a management, decision-making or advisory role. The Recipient further agrees that the Recipient will not seek to include Ontario as a decision-maker, advisor or manager of any Project to which Funds are directed through recourse to a third party, court, tribunal or arbitrator.
- 3.4 Funds Limited To Specific Projects.** The Recipient shall only use the Funds being provided under this Agreement towards Projects that fall within the category of projects set out under Schedule "A" of this Agreement and those Projects have been set out under Part I of the Project Report, as set out under Part B.1 of Schedule "B" of this Agreement.
- 3.5 Recipient To Spend Funds By December 31 Of The Calendar Year.** The Recipient shall spend any Funds provided to it under this Agreement by December 31 of the calendar year in which the Funds was provided under this Agreement. Where the Recipient does not spend the Funds it was provided under this Agreement by December 31 of the calendar year in which the Funds were provided, Ontario may Adjust the Funds that Ontario is providing to the Recipient in the following year by the amount of the Funds that the Recipient did not spend by December 31 the previous calendar year, plus any interest that the Recipient earned on those Funds.
- 3.6 Responsibility For Project.** The Recipient acknowledges and agrees that the Recipient, as opposed to Ontario, is solely responsible for the undertaking, implementation, completion, operation and/or maintenance of any Project to which Funds are directed. The Recipient further agrees that the Recipient will not seek to hold Ontario responsible for the undertaking, implementation, completion, operation and/or maintenance of any Project to which Funds are directed through recourse to a third party, court, tribunal or arbitrator.
- 3.7 Asset Retention.** The Recipient shall comply with Part C.7 of Schedule "C" of this Agreement as it relates to the retention of any assets purchased, rehabilitated or built with Funds being provided under this Agreement.
- 3.8 Behavior Of Recipient.** The Recipient shall carry out any Project to which Funds are directed in an economical and business-like manner, in accordance with the terms and conditions of this Agreement, subject to any reasonable amendments Ontario may agree to or require from time to time in writing.
- 3.9 Ontario Not Responsible For Recipient Obtaining Permits Or Approvals.** For greater certainty, the Parties acknowledge and agree that the entering into this Agreement does not in any way obligate any regulatory authority established under an Act of the Ontario Legislature to issue any type of approval, license, permit or similar

authorization that the Recipient may need or want in relation to any Project to which Funding is directed or to meet any terms or conditions under this Agreement

- 3.10 Ontario May Impose Additional Conditions On The Recipient.** Ontario may impose, at any time, such additional terms or conditions on the Recipient in terms of the Recipient's operations that relate to the use of any Funds which Ontario, acting reasonably, considers appropriate for the proper expenditure and management of the Funds. For greater certainty, any additional terms or conditions Ontario may impose shall be supplements to the existing terms and conditions of this Agreement as opposed to amendments to the terms and conditions of this Agreement.

#### SECTION 4 FUNDS

- 4.1 Use Of Funds.** Any Funds being provided under this Agreement shall only be used for the payment of Eligible Costs.
- 4.2 Deposit Of Funds In Interest-Bearing Account At Canadian Financial Institution.** The Recipient shall deposit and retain any Funds being provided under this Agreement in an interest-bearing account in the name of the Recipient at a Canadian financial institution in Canada.
- 4.3 Interest Earned By Recipient.** The Recipient shall report to Ontario the amount of any interest earned on any Funds provided to the Recipient under this Agreement in accordance with Part B.2 of Schedule "B" of this Agreement. Ontario reserves the right to request the return of any interest that the Recipient earns on the Funds.
- 4.4 Cost Must Be An Eligible Cost.** For a cost to be considered an Eligible Cost and therefore eligible to be paid from the Funds being provided under this Agreement, the cost must be specifically set out under Part E.1 of Schedule "E" of this Agreement.
- 4.5 Ineligible Costs Shall Not Be Covered Under Agreement.** Any costs set out in Part E.2 of Schedule "E" of this Agreement are Ineligible Costs and shall not be eligible to be paid from the Funds being provided under this Agreement.
- 4.6 Ontario May Declare Costs To Be Eligible.** Despite section 4.4 of this Agreement, but subject to section 4.5 of this Agreement, costs not specifically set out in Part E.1 of Schedule "E" of this Agreement may be deemed in writing to be an Eligible Cost by Ontario, in its sole and absolute discretion on a case-by-case basis.
- 4.7 New Information.** In the event of new information, errors, omissions or other circumstances affecting the determination of the amount of any Funds being provided under this Agreement, Ontario may, in its sole and absolute discretion, Adjust the Funds being provided under this Agreement.
- 4.8 Repayment Of Funds.** The Recipient shall repay Funds to Ontario where:
- (a) The Recipient has used the Funds for a purpose not agreed to by Ontario;
  - (b) The Recipient still has Funds under its charge, management or control:

- (i) On January 1 of the following calendar year in which the Funds were provided, or
- (ii) Upon the expiry or termination of this Agreement; and
- (c) The Recipient receives an overpayment by Ontario and is notified by Ontario of said overpayment,

within fifteen (15) Business Days of receiving a written demand from Ontario.

- 4.9 *Insufficient Funds Provided By Legislature.*** If, in the opinion of the Minister, the Ontario Legislature does not provide sufficient funds to continue the Funds for any Fiscal Year which this Agreement is in effect, Ontario may immediately, without any liability, cost or penalty and without any prejudice to any other rights or remedies Ontario has under this Agreement or at law or equity, terminate this Agreement.
- 4.10 *Ontario May Adjust The Funds.*** Despite any other provision in this Agreement, Ontario may Adjust the Funds being provided under this Agreement.

## SECTION 5 PAYMENT UNDER AGREEMENT

- 5.1 *Eligibility Of Costs Or Expenses.*** In order for a cost or expense to be eligible to be paid from the Funds being provided under this Agreement, the cost or expense:
- (a) Must be reasonable;
  - (b) Must be directly related to the Project in which the Funds are directed;
  - (c) Must be an Eligible Cost;
  - (d) Must not be an Ineligible Cost; and
  - (e) Must, subject to sections 4.4 and 4.5 of this Agreement, have been incurred on or after the Effective Date of this Agreement for the first year and January 1 of each calendar year this Agreement is in effect and spent by December 31 of the same calendar year.
- 5.2 *Payment Of Funds.*** Subject to all terms and conditions of this Agreement, Ontario shall pay any Funds to the Recipient in accordance with Part D.2 of Schedule "D" of this Agreement.
- 5.3 *Conditions Precedent For Payment Of Funds.*** Despite section 5.2 and Part D.2 of Schedule "D" of this Agreement, Ontario may withhold the payment of any Funds to the Recipient until the Recipient has met the following further conditions precedent:
- (a) The Recipient has submitted to the Ministry of Municipal Affairs and Housing any outstanding Financial Information Returns by December 31 of each calendar year;
  - (b) The Recipient has submitted to the Ministry a copy of their asset management plan and any subsequent updates by December 31 of each calendar year
  - (c) The Recipient has:
    - (i) Where the Recipient has previously committed to making its asset management plan publically available under any other agreement it has entered into with Her Majesty the Queen in Right of Ontario, the Recipient has made its asset management plan public by:

- a. Posting its asset management plan on its website, if it has one, or
  - b. Made its asset management plan publicly available and has provided Ontario with information as to how it has made its asset management plan publicly available; or
- (ii) Where the Recipient has not previously committed to completing an asset management plan by December 31, 2014 under any other agreement it has entered into with Her Majesty the Queen in Right of Ontario, the Recipient has submitted a declaration certifying that the Recipient is committed to developing an asset management plan that includes all of the information and analysis described in *Building Together: Guide for Municipal Asset Management Plans*, by December 31, 2015;
- (d) The Recipient has provided evidence that the insurance required by section 8.1 of this Agreement has been obtained within ten (10) Business Days of Ontario's request;
- (e) The Recipient has provided Ontario with any requested information within ten (10) Business Days of Ontario's request; and
- (f) The Recipient has not or is not meeting any duty to consult with Aboriginal Groups requirements set out under this Agreement.

**5.4 Withholding Payment Of Funds.** Ontario may, in its sole and absolute discretion, withhold the payment of any Funds to the Recipient where:

- (a) Ontario is of the opinion that a Project in which the Funds are directed is not progressing in accordance with how other projects of a similar size and scope would progress under similar circumstances; and
- (b) Ontario is of the opinion that the Recipient is, without limitation, not in compliance with any other agreements that the Recipient has entered into with Her Majesty the Queen in Right of Ontario where Ontario may be providing financial assistance to the Recipient, directly or indirectly, under that agreement. Where Ontario withholds the payment of any Funds to the Recipient, the following shall apply:
  - (i) Ontario has complete and absolute discretion to determine whether the Recipient is in compliance with the terms or conditions of any other funding agreements, such as the Municipal Infrastructure Investment Initiative and the Small, Rural and Northern Municipal Infrastructure Fund, whereby the Recipient is receiving, directly or indirectly, funding from Ontario;
  - (ii) Ontario shall continue to withhold any payments of any Funds to the Recipient under this Agreement until the Recipient has come into compliance with the terms and conditions of any other agreement whereby the Recipient receives, directly or indirectly, funding from Ontario; and
  - (iii) Ontario agrees that it will act reasonably when applying this section 5.4 of the Agreement and shall promptly notify the Recipient of any determinations made by Ontario with respect to the application of this section 5.4 of the Agreement.



**SECTION 6**  
**RECIPIENT'S REPRESENTATIONS, WARRANTIES, COVENANTS, ACKNOWLEDGEMENTS AND AGREEMENTS**

**6.1 Recipient's Representations, Warranties And Covenants.** The Recipient represents, warrants and covenants that:

- (a) It validly exists as a legal entity, and will continue to exist for the Term of the Agreement, with full power to perform and observe all of the terms and conditions of this Agreement and that it will continue to validly exist until the Expiration Date of this Agreement;
- (b) It has the authority and any necessary approvals to enter into this Agreement and to carry out its terms and conditions and that it is not bound by any other agreement that would in any way interfere with Ontario's rights under this Agreement;
- (c) Where applicable, it has passed the requisite by-laws to undertake any Project in which Funds are directed;
- (d) It is conducting its business in accordance with all Requirements of Law and it shall continue to conduct its business in accordance with all Requirements of Law until the Expiration Date of this Agreement;
- (e) It has all permits, approvals, licenses, certificates or other similar documents that are required to carry out any Project to which Funds are directed or that it will apply for all permits, approvals, licenses, certificates or other similar documents before carrying out the Project; and
- (f) All information provided to Ontario in relation to any Funds being provided under this Agreement remains true, correct and complete as of the date this Agreement is signed in every material respect, except as set out to the contrary herein.

**6.2 Governance.** The Recipient represents, warrants and covenants that it has and shall maintain until the Expiration Date of this Agreement all legally necessary instruments to:

- (a) Establish a code of conduct and ethical responsibilities for the Recipient;
- (b) Establish procedures to ensure the ongoing effective functioning and continuance of the Recipient until the Expiration Date of this Agreement;
- (c) Establish decision-making mechanism;
- (d) Provide for the prudent and effective management of any Funds being provided under this Agreement;
- (e) Establish procedures to enable the timely identification of risks that would interfere with the Recipient meetings its obligations under this Agreement and strategies to address the identified risks;
- (f) Establish procedures to enable the preparation and delivery of all reports under this Agreement; and
- (g) Be responsible for other matters as the Recipient considers necessary to ensure that the Recipient carries out its obligations under this Agreement.

**6.3 Additional Covenants.** The Recipient undertakes to advise Ontario within five (5) Business Days of the occurrence during the Term of this Agreement of any actions, suits or other proceedings which could or would prevent compliance with the terms and conditions of this Agreement.

- 6.4 Recipient Shall Provide Proof Of Compliance Upon Ontario's Request.** The Recipient shall, upon receiving a written notice from Ontario, provide to Ontario with proof of the matters referred to in sections 6.1 to 6.3 of this Agreement within the time period set out in the notice. Despite section 5.2 and Part D.2 of Schedule "D" of this Agreement, and without limiting the generality of section 5.3 of this Agreement, Ontario may withhold the payment of any Funds under this Agreement until the Recipient provides Ontario with proof of its compliance with the matters referred to in sections 6.1 to 6.3 of this Agreement. Ontario may also, despite anything else in this Agreement and without limiting any remedies Ontario may have under this Agreement, at law or equity, Adjust the Funds if the Recipient is not in compliance with the matters referred to in sections 6.1 to 6.3 of this Agreement at any time during the Term of this Agreement.

## SECTION 7

### CONFLICT OF INTEREST AND CONFIDENTIALITY

- 7.1 No Conflicts Of Interest.** The Recipient shall ensure that any Person associated with the Project in whatever capacity carries out the administration of any Funds in all its aspects without an actual, potential or perceived Conflict of Interest.
- 7.2 Disclosure Of Conflict Of Interest Situations.** The Recipient shall:
- (a) Disclose to Ontario, without delay, any situation that a reasonable person would interpret as an actual, potential or perceived Conflict of Interest; and
  - (b) Comply with any terms and conditions that Ontario may impose as a result of the disclosure.
- 7.3 Ontario Bound By FIPPA.** The Recipient acknowledges that the provisions of the FIPPA and its regulations bind Ontario.

## SECTION 8

### INSURANCE

- 8.1 Recipient Shall Have Insurance.** The Recipient shall put in effect and maintain until the Expiration Date of this Agreement at its own expense all necessary insurance that would be considered appropriate by a reasonable for the types of Projects in which Funds are being directed, including Commercial General Liability Insurance, for third party bodily injury, personal injury and property damage to an inclusive limit of not less than the amount indicated in Part C.3 of Schedule "C" of this Agreement per occurrence with insurers with an A.M. Best rating of B+ or equivalent. The Recipient's Commercial General Liability Insurance policy shall include:
- (a) The Indemnified Party as an additional insured with respect to liability arising in the course of performance of the Recipient's obligations under, or otherwise in connection with, the Agreement;
  - (b) A cross-liability clause;
  - (c) Contractual Liability coverage;
  - (d) Products and Completed Operations Liability coverage;
  - (e) Employers Liability;
  - (f) Tenants Legal Liability (for premises/building leases only);

- (g) Non-Owned automobile coverage with blanket contractual and physical damage coverage for hired automobiles; and
- (h) A thirty (30) day written notice of cancellation, termination or material change clause.

**8.2 Ontario To Have Priority Right On Any Proceeds Of Insurance Policy.** The Recipient acknowledges and agrees that Ontario shall have a priority over any other Person, including the Recipient, to use or enjoy the benefits of the proceeds from the insurance required under section 8.1 of this Agreement to pay any claim, suits, judgments, demands, expenses, actions, causes of action and losses, including, without limitation, reasonable legal expenses and any claim for a lien made pursuant to the *Construction Lien Act* (Ontario) and for any and all liability for damages to property and injury to persons, including death, that may be brought against Ontario as a result of this Agreement.

## SECTION 9 LIMITATION OF LIABILITY AND INDEMNIFICATION

**9.1 Exclusion Of Liability.** In no event shall Ontario be liable for any general, compensatory, incidental, special or consequential damages, or any loss of use, revenue or profit by the Recipient or the Recipient's officers, servants, employees and agents arising out of or in any way related to this Agreement.

**9.2 Recipient To Indemnify Ontario.** The Recipient shall indemnify and hold harmless the Indemnified Party 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* (Ontario), and for any and all liability for damages to property and injury to persons, including death, which the Indemnified Party may incur, otherwise than by reason of their own gross 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, as a result of or arising out of or in relation to:

- (a) The performance of this Agreement or the breach of the terms of this Agreement by the Recipient, its officers, servants, employees and agents, or by a third party and any of its officers, employees servants or agents;
- (b) The ongoing operation, maintenance and repair of the Project; or
- (c) Any omission or other wilful or negligent act of the Recipient, a third party or their respective employees, officers, servants or agents.

**9.3 Further Indemnification Of Ontario.** The Recipient further agrees to indemnify and hold harmless the Indemnified Party from any general, compensatory, incidental, indirect, special or consequential damage or any loss of use, revenue or profit which the Indemnified Party may incur or related in any way to this Agreement or the Project in tort, contract or otherwise other than by reason of their own gross 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 and conditions of this Agreement by the Recipient, its officers, servants, agents, employees and Consultants or by a third party and any of its officers, servants, agents or

employees where the third party entered into a Contract with the Recipient in relation to the Project;

- (b) The ongoing operation, maintenance and repair of the Project; or
- (c) Any omission or negligent act or misconduct of the Recipient its officers, servants, agents, employees and Consultants or by a third party and any of its officers, servants, agents or employees where the third party entered into a Contract with the Recipient in relation to the Project.

**9.4 Recipient To Require Third Parties To Indemnify Ontario.** The Recipient shall use all reasonable efforts to ensure that all third parties that the Recipient enters into a Contract with indemnify and hold harmless the Indemnified Party 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* (Ontario), and for any and all liability for damages to property and injury to persons, including death, which the Indemnified Party 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, as a result of or arising out of or in relation to:

- (a) The performance of this Agreement or the breach of the terms of this Agreement by the Recipient, its officers, servants, employees and agents, or by a third party and any of its officers, employees servants or agents;
- (b) The ongoing operation, maintenance and repair of the Project; or
- (c) Any omission or other wilful or negligent act of the Recipient, a third party or their respective employees, officers, servants or agents.

The Recipient agrees to take and implement any reasonable direction from Ontario in relation to the enforcement or assertion of this section 9.4 of the Agreement as against any third party.

**9.5 Recipient To Limit Heads Of Damage As Against Ontario In Contracts With Third Parties.** The Recipient shall use commercially reasonable efforts to include in the Recipient's Contracts with any third party a provision that provides notwithstanding anything else, and in no event whatsoever, shall Ontario be liable to the third party for any incidental, indirect, special or consequential damage or any loss of use, revenue or profit which the Indemnified Party may incur as a result of anything under or related in any way to this Agreement or the Project in tort, contract or otherwise. The Recipient agrees to take and implement any reasonable direction from Ontario in relation to the enforcement of this section 9.5 of the Agreement as against any third party.

## SECTION 10 PROCUREMENT

**10.1 Ontario Not Responsible For Claims Under Tender/Bidding Process.** Without limiting the generality of section 9.1 of this Agreement, Ontario shall not be responsible for any claim arising from the tender and bidding process in relation to any Project in which Funds are directed.

**10.2 Competitive Procurement Process.** The Recipient shall acquire and manage its equipment, services and supplies, including any construction component, required for any Project in which Funds are directed through a transparent, competitive process that ensures the best value for any Funds expended. Without limiting the generality of the foregoing, where the Recipient is a municipal entity to which the *Municipal Act, 2001* (Ontario) is applicable, the Recipient shall follow its procurement policies as required under the *Municipal Act, 2001* (Ontario). Where the Recipient is a Local Services Board or any other entity not covered by the *Municipal Act, 2001* (Ontario), the Recipient shall ensure that for equipment, services and supplies, the estimated costs of which exceed twenty-five thousand dollars (\$25,000.00), the Recipient obtains at least three (3) written quotes unless Ontario gives prior written approval. The requirement for a competitive process under this section 10.2 of the Agreement may be waived with prior written approval by Ontario, if:

- (a) The equipment, services or supplies the Recipient is purchasing is specialized and is not readily available; or
- (b) The Recipient has researched the market for a similar purchase within the last two (2) years and knows prevailing market costs for the equipment, services or supplies purchased.

**10.3 BPSAA.** For the purposes of clarity, if the Recipient is subject to the BPSAA and there is a conflict between any of the requirements of this Agreement and the requirements of the BPSAA, the BPSAA shall apply.

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

- (a) Are consistent with this Agreement;
- (b) Do not conflict with this Agreement;
- (c) Incorporate the relevant provisions of this Agreement to the fullest extent possible;
- (d) Are managed in a way that is transparent, competitive and consistent with value for money principles
- (e) Require that any third parties thereto comply with all Requirements of Law; and
- (f) Authorize Ontario to collect, use and disclose in accordance with the Requirements of Law information and data gathered by the third party in connection with Project, perform audits of the third party and monitor the Project as Ontario sees fit.

**10.5 Costs Of Contracts Not Awarded In Compliance With This Section May Be Deemed Ineligible.** If Ontario determines that the Recipient has awarded a Contract in a manner that is not in compliance with this section 10 of the Agreement, Ontario may, upon written notification to the Recipient, deem the costs associated with the Contract as being ineligible for payment from the Funds.

**10.6 Goods And Services To Be Procured In Competitive Manner And At Price No Greater Than Fair Market Value.** Despite anything else contained in this section 10 of the Agreement, the Recipient shall ensure that all goods and services purchased with any Funds being provided under this Agreement are purchased or acquired at competitive prices that are no greater than fair market value after deducting trade discounts and/or any other discounts available to the Recipient.

**10.7 Recipient To Keep Records Of Contracts.** The Recipient shall keep and maintain proper and accurate accounts and records, including, but not limited to, all Contracts, invoices, statements, receipts and vouchers in relation to any Project in which Funds are directed for a period of at least seven (7) years after the Term of this Agreement.

**10.8 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 applicable requirements of Annex 502.4. In the event of any conflict between the requirements of any other provisions of this section 10 of the Agreement and the requirements of Annex 502.4, the requirements of Annex 502.4 shall apply to the extent of the conflict.

## SECTION 11 ABORIGINAL CONSULTATION

**11.1 Provision Of Funds Dependent Upon Ontario Meeting Its Duty To Consult Obligations.** The Recipient hereby acknowledges and agrees that the provision of any Funds under this Agreement is strictly conditional upon Ontario satisfying any obligation it may have to consult with and, if required, accommodate any Aboriginal Group with an interest in any Project in which Funds are directed in order for the Project to proceed.

**11.2 Recipient Ontario's Delegate For Purposes Of Consultation With Aboriginal Groups.** By entering into this Agreement, Ontario delegates the procedural aspects of any consultation obligations Ontario may have with any Aboriginal Group in relation to any Project in which Funds are directed to the Recipient as set out in Schedule "F" of this Agreement. The Recipient, by signing this Agreement, acknowledges that Ontario has delegated the procedural aspects of any consultation obligations Ontario may have with any Aboriginal Group in relation to any Project in which Funds are directed and accepts said delegation and agrees to act diligently as Ontario's delegate so as to preserve the Honour of the Crown in relation to any consultation obligations Ontario may have in relation to any Project in which Funds are directed.

**11.3 Recipient's Obligations In Relation To Consultations.** The Recipient shall:

- (a) Be responsible for consulting with any Aboriginal Group that has an interest in any Project in which Funds are directed on behalf of Ontario in accordance with Schedule "F" of this Agreement;
- (b) Take directions from Ontario in relation to consulting with any Aboriginal Group with an interest in any Project in which Funds are directed as well as any other directions Ontario may issue in relation to consultations, including suspending or terminating any Project in which Funds are directed; and
- (c) Provide a detailed description of any actions it took in relation to consultation with any Aboriginal Group with an interest in any Project in which Funds are directed in its Project Report, as set out under Part B.1 of Schedule "B" of this Agreement.

**11.4 Recipient Shall Not Start Construction On Project Until Recipient Provides Evidence To Ontario That Notice Of The Project Has Been Given To Identified Aboriginal Groups.** The Recipient shall not commence or allow any third party to

commence construction on any aspect of any Project in which Funds are directed for forty-five (45) Business Days, or such other time as Ontario may direct, after it has provided Ontario with written evidence that the Recipient has sent notice about any Project in which Funds are directed to the Aboriginal Groups identified in accordance with Schedule "F" of this Agreement.

## **SECTION 12 COMMUNICATIONS**

- 12.1 Recipient To Follow Communications Protocol.** The Recipient shall follow the Communications Protocol set out under Schedule "G" of this Agreement.

## **SECTION 13 REPORTS**

- 13.1 Project Report.** The Recipient shall submit a Project Report for every Project it proposes to direct Funds under this Agreement toward, as set out under Part B.1 of Schedule "B" of this Agreement, to Ontario by the date indicated in Part C.4 of Schedule "C" of this Agreement and in accordance with the requirements set out under Part B.1 of Schedule "B" of this Agreement during the Term of this Agreement. The Recipient shall follow such reasonable administrative procedures as Ontario may specify from time to time.
- 13.2 Annual Financial Report.** The Recipient shall submit an Annual Report, as set out under Part B.2 of Schedule "B" of this Agreement, to Ontario on the dates set out in Part C.5 of Schedule "C" of this Agreement and in accordance with the requirements set out under Part B.2 of Schedule "B" of this Agreement during the Term of this Agreement. The Recipient shall follow such reasonable administrative procedures as Ontario may specify from time to time.
- 13.3 Additional Reports Upon Request.** The Recipient shall, upon Ontario's request in writing, collect such information and provide such additional reports as Ontario may specify from time to time during the Term of this Agreement. The Recipient shall provide any additional reports within ten (10) Business Days of the request, unless the request provides otherwise.
- 13.4 Compliance Attestation.** The Recipient shall provide a compliance attestation in accordance with the following when any reports required under sections 13.1 to 13.3 of this Agreement is submitted:
- (a) Where the Recipient is a municipality, the compliance attestation shall be signed by the Recipient's Administrative Officer/Clerk or Treasurer.
  - (b) Where the Recipient is a LSB, the compliance attestation shall be signed by the Recipient's Chair or secretary.

**SECTION 14**  
**RECORDS, INSPECTION, AUDITS AND THE PROVISION OF INFORMATION**

**14.1 Recipient's Obligations Under Agreement.** The Recipient:

- (a) Shall keep and maintain all financial records, receipts, invoices and other financially-related documents relating to any Funds or otherwise in relation to any Project in which Funds are directed in a manner consistent with generally accepted accounting principles and clerical practices, and shall maintain such records and keep them available for review by Ontario for a period of seven (7) years from the Expiration Date of this Agreement; and
- (b) Shall maintain all non-financial documents and records relating to any Funds or otherwise to any Project in which Funds are directed, including any records it receives about the people it serves, in a confidential manner consistent with all Requirements of Law.

**14.2 Ontario May Inspect Recipient's Premises And Projects' Premises At Any Time.**

Ontario reserves the right to inspect the Recipient's premises and any premises of any Project in which Funds are directed at any time as it relates to the provision of any Funds under this Agreement. Without limiting the generality of the foregoing, the Recipient hereby authorizes Ontario, its employees and agents, including the Auditor General, to, upon twenty-four (24) hours' written notice and during normal business hours, enter the Recipient's premises to review the status of any Project in which Funds are directed and to copy any financial records, invoices and other financially-related documents, including all Contracts the Recipient has entered into in relation to any Project in which Funds are directed.

**14.3 Audits.** Ontario may, at its own expense, conduct audits of any Project in which Funds are directed. Ontario may require the assistance of an external auditor to carry out an audit. If so, Ontario shall be responsible for retaining the external auditor.

**14.4 Auditor General.** The Auditor General may, at the Auditor General's cost, conduct an audit with respect to the use of any Funds under this Agreement. For the purposes of facilitating such an audit, the Recipient shall release to Ontario upon request and in a timely manner, for the purpose of releasing to the Auditor General:

- (a) All records held by the Recipient, or by agents or contractors of the Recipient relating to this Agreement and/or the use of the Funds; and
- (b) 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 or the use of the Funds.

**14.5 Information.** The Recipient shall supply to Ontario, within ten (10) Business Days of receiving a written request, such information in respect of this Agreement or any Project in which Funds are directed as Ontario requests unless the request provides otherwise.

**14.6 Provision Of Information Is A True Condition Precedent.** If, in the opinion of Ontario, any of the information requirements of this Agreement are not met, Ontario may in its sole and absolute discretion, and despite section 5.2 and Part D.2 of Schedule "D" of this Agreement, require the information as a condition precedent to the payment of any Funds under this Agreement.



## SECTION 15

### DEFAULT AND TERMINATION

**15.1 Events Of Default.** Ontario may, acting in a reasonable manner, without liability, cost or penalty and without prejudice to any other rights or remedies of Ontario under this Agreement or at law or in equity, terminate this Agreement immediately upon giving written notice to the Recipient where:

- (a) In the opinion of Ontario:
  - (i) The Recipient has provided false or misleading information to Ontario;
  - (ii) The Recipient breaches a material term or condition of this Agreement, where materiality is to be determined by Ontario, in its sole and absolute discretion, acting reasonably;
  - (iii) The Recipient breaches a material term or condition of any other funding agreement it has with Ontario, where materiality is to be determined by Ontario, in its sole and absolute discretion, acting reasonably;
  - (iv) The Recipient is unable to continue with any Project in which Funds are directed or the Recipient is likely to discontinue any Project in which Funds are directed;
  - (v) A material adverse change occurs such that the viability of a Recipient as a going concern is threatened;
- (b) The Recipient makes an assignment, proposal, compromise, or arrangement for the benefit of creditors, or is petitioned into bankruptcy, or files for the appointment of a receiver; or
- (c) The Recipient ceases to operate.

**15.2 Remedies On Default.** Despite any other rights Ontario has under this Agreement, if an Event of Default has occurred, Ontario shall have the following remedies:

- (a) Ontario shall not have to provide any further Funds under this Agreement;
- (b) Ontario may, at its option, terminate this Agreement immediately after any notice period expires or may, in its sole and absolute discretion, Adjust the Funds, including a demand to return all Funds provided under this Agreement;
- (c) Ontario may avail itself of any of its legal remedies that it may deem appropriate.

**15.3 Additional Remedies.** In addition to the remedies described in section 15.2 of this Agreement, 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 Ontario hereunder are cumulative and in addition to, and not in substitution for, all other rights or remedies otherwise available to Ontario at law, equity or under statute.

**15.4 Waiver Of Event Of Default Must Be In Writing.** Ontario may, in its sole and absolute discretion, at any time, waive any above-mentioned 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 Ontario. Ontario may also impose conditions on any waiver it provides under this section 15.4 of the Agreement.

- 15.5 *Ontario's Discretion To Terminate Agreement.*** Despite anything else contained in this Agreement, Ontario may, without liability, cost or penalty and without prejudice to any other rights or remedies Ontario may have under this Agreement or at law or in equity terminate this Agreement at any time upon one hundred and eighty (180) days' notice to the Recipient, provided it acts reasonably in doing so.
- 15.6 *Termination Of Agreement For Circumstances Beyond The Control Of A Party.*** Neither Party shall be liable for damages caused by delay or failure to perform its obligations under this Agreement where such delay or failure is caused by an event beyond its reasonable control. Should the event last more than ninety (90) Business Days, this Agreement shall terminate and the process set out under section 15.5 of this Agreement shall be followed, with any necessary modifications.
- 15.7 *Date of Termination.*** In the event of termination pursuant to this section 15 of the Agreement, the effective date of termination shall be the last day of the notice period, the last day of any subsequent notice period or immediately, whichever applies.

## **SECTION 16 GENERAL PROVISIONS**

- 16.1 *Terms Binding.*** The Recipient shall take all reasonable measures to ensure that its officers, directors, partners, employees, agents, third party contractors shall be bound to observe all of the terms and conditions of this Agreement, including, but not limited to all of the covenants, representations and warranties set out herein.
- 16.2 *Representatives May Bind Parties.*** The Parties represent and warrant that their respective representatives have the authority to legally bind them to the extent permissible by the Requirements of Law.
- 16.3 *Further Assurances.*** The Parties agree to do or cause to be done all acts or things necessary to implement and carry into effect this Agreement to its full extent.
- 16.4 *Agreement Binding.*** This Agreement shall enure to the benefit of and be binding upon the Parties, their successors, executors, administrators, heirs and their permitted assigns.
- 16.5 *Waivers In Writing.*** If a Party fails to comply with any term of the Agreement, that Party may only rely on a waiver of the other Party if the other Party has provided a written waiver in accordance with the notice provisions set out in section 16.19 of this Agreement. Any waiver must refer to a specific failure to comply and shall not have the effect of waiving any subsequent failures to comply.
- 16.6 *Tolerance Of Indulgence Of Breach Not A Waiver.*** Any failure by Ontario to insist in one or more instances upon strict performance by the Recipient of any of the terms or conditions of this Agreement shall not be construed as a waiver by Ontario of its rights to require strict 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.

- 16.7 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.
- 16.8 Severability.** If any term or condition of this Agreement, or the application thereof to the Parties or to any persons or circumstances, is to any extent invalid or unenforceable, the remainder of the Agreement, and the application of such term or condition to the Parties, persons or circumstances other than those to which it is held invalid or unenforceable, shall not be affected thereby.
- 16.9 No Assignment Of Agreement.** The Recipient shall not assign this Agreement to any other person unless the Ontario agrees to the assignment in writing. Ontario may impose any terms or conditions.
- 16.10 No Amendment.** This Agreement shall not be varied or amended except by a document in writing, dated and signed on behalf of the Parties.
- 16.11 Joint Authorship Of Agreement.** The Parties shall be considered joint authors of this Agreement and no provision herein shall be interpreted against one Party by the other Party because of authorship. No Party shall seek to avoid a provision herein because of its authorship through recourse to a third party, court, tribunal or arbitrator.
- 16.12 Parties Independent.** The Recipient acknowledges that it is not an agent, joint venturer, partner or employee of Ontario and the Recipient shall not take any actions that could establish or imply such a relationship.
- 16.13 Recipient Cannot Represent Ontario.** The provision of any Funds to the Recipient pursuant to this Agreement is for the sole purpose of, and is limited to, allowing the Recipient to carry out the Project. The Recipient represents, warrants and agrees that under no circumstances shall it enter into any contract or commitment in the name of or on behalf of Ontario. The Recipient acknowledges and agrees that it is not by the terms and conditions of this Agreement or otherwise granted any right or authority to assume or to create any obligations or responsibility, express or implied, on behalf of or in the name of Ontario, to act as an agent of Ontario or to bind Ontario in any manner whatsoever other than as specifically provided under this Agreement.
- 16.14 Consultants.** Ontario acknowledges and recognizes that, in connection with the carrying out the Project, the Recipient may engage one or more Consultants. Ontario acknowledges and agrees that the Recipient shall have the sole authority and responsibility for such employees, agents or Consultants, including the hiring and termination. The Recipient acknowledges and agrees that the Recipient shall be responsible for all acts and actions of the Recipient's employees, agents and Consultants and that all such acts and actions shall be treated as actions of the Recipient for the purposes of this Agreement.
- 16.15 Lobbyists And Agent Fees.** The Recipient represents and warrants:
- (a) Any person hired by the Recipient to speak or correspond with any employee or other person representing Ontario concerning any matter relating to any Funds under this Agreement or any benefit hereunder is registered, if required to register, pursuant to the *Lobbyists Registration Act, 1998*;

- (b) It has not and will not make a payment or other compensation to any legal entity that is contingent upon or is calculated upon the provision of any Funds hereunder or negotiating the whole or any part of the terms and/or conditions of this Agreement; and
- (c) No money from the Government of Ontario was used to lobby or otherwise secure the provision of any Funds hereunder.

**16.16 *Debt Owning To Her Majesty The Queen In Right Of Ontario.*** Any payment that the Recipient is required to make under this Agreement shall constitute a debt due and owing to Her Majesty the Queen in Right of Ontario and the Recipient shall pay the amount to Ontario immediately upon written demand unless Ontario directs otherwise.

**16.17 *Her Majesty The Queen In Right Of Ontario May Charge Interest.*** Her Majesty the Queen in Right of Ontario may charge the Recipient interest on any monies owing by the Recipient at the then current interest rate charged by the Province of Ontario on accounts receivable.

**16.18 *Set-Off By Ontario.*** In the event that the Recipient is indebted to Her Majesty the Queen in Right of Ontario under this Agreement, Ontario may set-off that debt against any amounts payable to the Recipient by Her Majesty the Queen in Right of Ontario. This right of set-off is in addition to any rights of set-off it has under the *Financial Administration Act* (Ontario) or the *Financial Administration Act* (Canada).

**16.19 *Notice And Service Of Documents Under Agreement.*** Notices shall be in writing and shall be delivered by postage-prepaid mail, personal delivery, facsimile transmission or Email transmission and shall be addressed to Ontario and the Recipient respectively, as set out in Part C.6 of Schedule "C" of this Agreement.

Notice shall be deemed to have been received:

- (a) In the case of postage-prepaid mail, five (5) Business Days after such notice is mailed; or
- (b) In the case of personal delivery, facsimile transmission or Email transmission, one (1) Business Day after such notice is delivered to the other Party.

In the event of a postal disruption, notices shall be given by personal delivery, facsimile transmission or Email transmission. Unless the Parties expressly agree in writing to additional methods of notices, notices may only be provided by the method(s) contemplated in this section 16.19 of the Agreement.

The Parties agree that for the purposes of this section 16.19 of the Agreement, the name(s) of the individuals may be changed without amending the Agreement through the Party making the change providing written notice to the other Party of said change.

**16.20 *Governing Law.*** This Agreement and the rights, obligations and relations of the Parties shall be governed by and construed in accordance with the laws of the Province of Ontario and the applicable federal laws of Canada. Any actions or proceedings in connection with this Agreement shall be conducted in Ontario.

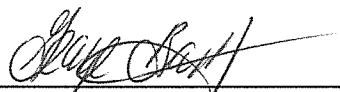
**16.21 Agreement Executed In Counterparts.** This Agreement may be executed in any number of counterparts, each of which shall be deemed an original, but all of which together, shall constitute one and the same agreement.

**16.22 Entire Agreement.** This Agreement, including its Schedules, embodies the entire Agreement between the Parties with respect to the subject matter contained in the Agreement and supersedes all prior oral or written representations or agreements. No prior document, discussion, negotiation, provision undertaking or agreement in relation to the subject matter of this Agreement has any legal effect. No representation or warranty, whether express, implied or otherwise, has been made by Ontario to the Recipient except as expressly set out in this Agreement.

**16.23 Survival.** The provisions of this Agreement that by their nature survive the expiration or early termination shall so survive. Without limiting the generality of the foregoing, the provisions that shall survive the termination or expiration of this Agreement for a period of seven (7) years from the Expiration Date or termination of this Agreement, whichever occurs first, include: sections 3 to 6, 9, 11 and 13 to 15; subsections 1.2 to 1.7, 2.2, 16.5, 16.6, 16.8, 16.10 to 16.12, and 16.16 to 16.23; Parts C.6 and C.7 of Schedule "C" of this Agreement and Schedules "E" and "F"; along with all applicable defined terms within section 1, all cross-referenced provisions within the foregoing sections, subsections and Schedules.

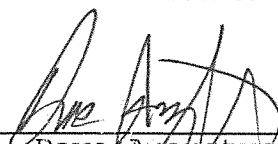
**IN WITNESS WHEREOF** the Parties have executed this Agreement on the dates set out below.

**HER MAJESTY THE QUEEN IN RIGHT OF ONTARIO,**  
as represented by the Minister of Agriculture, Food and Rural Affairs

  
Name: George Borovilos  
Title: Assistant Deputy Minister (A)  
Date: Jan. 13/2015

I have the authority to bind the Crown pursuant to delegated authority.

**THE CORPORATION OF THE TOWN OF PELHAM**

  
Name: Dave Augustyn  
Title: Mayor  
Date: December 15, 2014

AFFIX CORPORATE  
SEAL

  
Name: Nancy Bozzato  
Title: Clerk  
Date: December 15, 2014

I/We have the authority to bind the Recipient.

**SCHEDULE “A”  
ELIGIBLE PROJECT CATEGORIES**

Eligible Projects include:

The development and implementation of asset management plans (e.g. software, training, inspections) for core infrastructure assets

Capital projects and capital maintenance for the renewal, rehabilitation and replacement of core infrastructure assets which include:

- Roads
  - o Paved Roads
  - o Unpaved Roads
  - o Street lighting and sidewalks may be included as eligible items when part of a road project.
- Bridges and Culverts
- Water
  - o Water Treatment
  - o Water Distribution/Transmission
- Wastewater
  - o Wastewater Treatment & Disposal
  - o Sanitary Sewer Systems
  - o Storm Sewer Systems (Urban and Rural)
  - o Note: Routine upgrades or improvements to storm water infrastructure and drainage are ineligible; an eligible project must eliminate or significantly reduce the potential for serious damages to adjacent critical infrastructure (e.g. roads, bridges).

Funds are not to be used for growth-related expansion projects (e.g., new subdivision infrastructure).

A Recipient may choose to transfer its yearly allocation to another eligible Recipient in the furtherance of a joint project. A Recipient will only be allowed to transfer Funds if the following are in place:

- The participating Recipients will need to inform Ontario that they are undertaking a joint project and put formal agreements in place for the joint project that provide details on the shared funding arrangement and reason for the transfer of Funds.
- The Project being funded is listed as a priority in the asset management plans of all Recipients involved in the Project.

**SCHEDULE “B”**  
**PROJECT REPORT AND ANNUAL FINANCIAL REPORT**

**PART B.1 – PROJECT REPORT**

The Project Report shall indicate to the Ministry what Project the Recipient will use the Funds for. The Project Report contains two sections: (1) Proposed Project Reporting Table and (2) Annual Project Information Update. The Recipient must submit a separate Project Report for every Project proposed to utilize the Funds.

**PROPOSED PROJECT REPORTING TABLE**

Section A of the applicable Project Report must be submitted 45 Business Days prior to the start of any construction or no later than March 31<sup>st</sup> of each calendar year.

Should the Recipient require a revision in the Project set out in the Project Report; the Recipient shall revise the Project Report and submit an updated Project Report as soon as possible to the Ministry and prior to any construction being undertaken on the Project. The Recipient shall note that the Project has been changed from the original Project Report.

**ANNUAL PROJECT INFORMATION UPDATE**

Section B of the applicable Project Report must be submitted no later than December 31<sup>st</sup> of each calendar year.

There are two (2) Project Reports:

- Project Report A: Road Resurfacing or Asset Management Projects
- Project Report B: Other Eligible Projects

For Projects involving asset management or road resurfacing, use report “A”.

Road resurfacing is defined as a road Project where the land will not be disturbed, altered or affected through excavation (i.e., no increase in width, change in alignment, etc.) except for the removal of the current surface and the installation of a new surface.

For all other Projects use report “B”.

**PART B.2 – ANNUAL FINANCIAL REPORT**

The Recipient shall provide an annual financial update to the Ministry in the form prescribed no later than December 31<sup>st</sup> of each calendar year.

[

## PROJECT REPORTS

# **ONTARIO COMMUNITY INFRASTRUCTURE FUND – FORMULA COMPONENT PROJECT REPORT A – ROAD RESURFACING OR ASSET MANAGEMENT PROJECTS**



Municipality / LSB Name	2T				
Contact Name	2T	Title	2T		
Email	2T	Phone Number	2T	Date	2T

## **SECTION A: PROPOSED PROJECT REPORTING TABLE**

Section A must be filled out and submitted to the ministry 45 Business Days prior to the start of any construction or no later than March 31<sup>st</sup>. Once the project is completed or if your annual update is due Section B of this report should be completed. A separate report should be filled out for every project you are planning to utilize Formula Component Funds for. If plans change and a new project is selected to utilize program Funds, then an updated Project Report is required to be submitted to the Ministry.

### **PART 1: PROJECT DESCRIPTION INFORMATION**

For each project, ensure that the following table is filled out:

Project Category	<input type="checkbox"/> Road Resurfacing (does not include any changes to the road, strictly removal of current surface and replacement of the surface) <input type="checkbox"/> Asset Management <i>Choose only one category</i>			
Project Title	<i>Insert a project title (no more than 10 words please)</i>			
Project Description	<i>Insert a description of the project. Historic details are not necessary only what you plan on doing.</i>			
Project Location (include the entire site of work)	Street Address / Cross Roads	<i>Insert information here</i>	City / Town	<i>Insert information here</i>
	Longitude	<i>Insert information here</i>	Latitude	<i>Insert information here</i>
Estimated Total Project Cost	\$ <i>Insert dollar value</i>		Formula Funds Expected to be Utilized	\$ <i>Insert dollar value</i>
Proposed Start Date	<i>Insert date MM/DD/YYYY</i>		Proposed Completion Date	<i>Insert date MM/DD/YYYY</i>

## **SECTION B: ANNUAL PROJECT INFORMATION UPDATE**

This section must be filled out when the above project is completed or annually at a minimum and submitted to the ministry no later than December 31<sup>st</sup>.

### **PART 1: PROJECT ACTIVITIES**

#### **1. What is the current status of the above project?**

☐ In Progress - Ahead of Schedule  
 ☐ In Progress – On Schedule  
 ☐ In Progress – Behind Schedule  
 ☐ Completed  
 ☐ Not Proceeding

#### **2. Is there any variance between the project description noted above and the actual project completed or in progress?**

☐ No  
 ☐ Yes

If Yes, please describe:



PART 1: PROJECT ACTIVITIES			
<b>3. For Asset Management Projects – What area did you focus your asset management efforts on?</b>			
<input type="checkbox"/> State of local infrastructure (i.e., inventory of assets, valuation of assets, asset condition, etc.) <input type="checkbox"/> Desired levels of service (i.e., performance measures, targets, timeframes, etc.) <input type="checkbox"/> Asset management strategy (i.e., action plans, procurement methods, strategy risks, etc.) <input type="checkbox"/> Financing strategy (i.e., expenditure forecasts, historic comparative analysis, etc.)			
<b>4. For Road Resurfacing Projects - As detailed in your asset management plan (AMP), what was the priority of the project using this funding?</b>			
<input type="checkbox"/> Over due to be completed? <input type="checkbox"/> Due to be completed this year? <input type="checkbox"/> Due to be completed in the next year?		<input type="checkbox"/> Due to be completed in the next 2-5 years? <input type="checkbox"/> Due to be completed in the next 5+ years? <input type="checkbox"/> Was not detailed in plan, Please specify: _____	
<b>5. Please indicate which of the following benefits you have experienced or anticipate for your municipality as a result of the project. Provide details where possible.</b>			
	At project completion	Anticipated (1-2 years out)	Details
Asset Management Plan is now a comprehensive plan for all core infrastructure	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No	
Addressed urgent public health and safety issues.	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No	
Highest priority items in Asset Management Plan addressed earlier than planned.	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No	
Other? Please specify.	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No	

PART 2: FINANCIAL UPDATE FOR THE CURRENT CALENDAR YEAR	
Actual Total Project Costs	\$xxx
Actual Formula Funds Utilized on Eligible Project (from Section A)*	\$xxx
Closing Balance of Unspent Funds to Date	\$xxx

\*This dollar value is the amount to be identified in your Annual Financial Report

**NOTE:** Supporting documentation for any financial figures in this report shall be provided to OMAFRA upon request and should be retained as per Section 11.7 of the Contribution Agreement.

PART 3: DUTY TO CONSULT DECLARATION	
Please provide particulars as to how the requirements have been met under Schedule "F" of the Agreement.	
<b>Declaration required for all Projects:</b>	
Confirmation provided to the Province of Ontario indicating that there has been no communication from any Aboriginal	<input type="checkbox"/> Yes <input type="checkbox"/> No

Groups and that there were no items of cultural significance to aboriginal groups discovered with respect to this project.

PART 4: ATTESTATION

By inserting a name, title and date below, the Recipient warrants that:					
1. The information provided herein and in any document attached is accurate and complete; and					
2. It is in compliance with all of the terms and conditions of the Agreement.					
Name	2T	Title	2T	Date	2T

## ONTARIO COMMUNITY INFRASTRUCTURE FUND – FORMULA COMPONENT PROJECT REPORT B – OTHER ELIGIBLE PROJECTS



Municipality / LSB Name	2T				
Contact Name	2T	Title	2T		
Email	2T	Phone Number	2T	Date	2T

### SECTION A: PROPOSED PROJECT REPORTING TABLE

Section A must be filled out and submitted to the ministry 45 Business Days prior to the start of any construction or no later than March 31<sup>st</sup>. Once the project is completed or if your annual update is due Section B of this report should be completed. A separate report should be filled out for every project you are planning to utilize Formula Component Funds for. If plans change and a new project is selected to utilize program Funds, then an updated Project Report is required to be submitted to the Ministry.

#### PART 1: PROJECT DESCRIPTION INFORMATION

For each project, ensure that the following table is filled out:

Project Type	<input type="checkbox"/> Rehabilitation <input type="checkbox"/> Replacement <input type="checkbox"/> Renewal <i>Note : Expansion Projects are not eligible under OCIF</i>			
Project Category	<input type="checkbox"/> Water <input type="checkbox"/> Wastewater <input type="checkbox"/> Roads (other than resurfacing) <input type="checkbox"/> Bridges <i>Choose only one category</i>			
Project Title	<i>Insert a project title (no more than 10 words please)</i>			
Project Description	<i>Insert a description of the project. Historic details are not necessary only what you plan on doing.</i>			
Project Location (include the entire site of work)	Street Address / Cross Roads	<i>Insert information here</i>	City / Town	<i>Insert information here</i>
	Longitude	<i>Insert information here</i>	Latitude	<i>Insert information here</i>
Estimated Total Project Cost	\$ <i>Insert dollar value</i>		Formula Funds Expected to be Utilized	\$ <i>Insert dollar value</i>
Proposed Start Date	<i>Insert date MM/DD/YYYY</i>		Proposed Completion Date	<i>Insert date MM/DD/YYYY</i>

#### PART 2: DUTY TO CONSULT ASSESSMENT QUESTIONS

These questions are intended to aid the Ministry of Agriculture, Food and Rural Affairs in meeting the Crown's duty to consult Aboriginal Communities. Aboriginal Communities include the Indian, Inuit and Métis peoples of Canada and any other group having Aboriginal or treaty rights under section 35 of the *Constitution Act, 1982*. It is important to note that consultations are an ongoing process. It is possible that Aboriginal Communities have brought or may bring forward new information in response to notifications that could affect Ontario's consultation obligations. It is important that Ontario be made aware of any new information so it can remain responsive throughout the consultation process. Please note that the Duty to Consult is relevant to all parts of the province whether a project is on reserve or municipal owned lands.

Environment & Geography	Does the municipality/LSB own the land, building(s) or works	<i>Insert response here</i>
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PART 2: DUTY TO CONSULT ASSESSMENT QUESTIONS		
	upon which the proposed project will be constructed or renovated?	
	Is the proposed project land going to be disturbed, altered or affected through excavation, deforestation, etc.? Will the proposed project require in-water work? Will it affect a watercourse or watershed and, if so, to what extent? Will the proposed project affect birds / fowl or other animals and their habitat?	<i>Insert response here</i>
Regulatory decisions, approvals, licenses, authorizations, agreements, etc. by the federal or provincial government, including conservation authorities, municipal by-laws or orders or other such instruments.	List any regulatory decisions/approvals etc. made or anticipated in relation to the proposed project. Include the type of approval, e.g. Municipal Class EA – Schedule B or whatever is relevant.  Have any Aboriginal Communities been engaged in the decision/approval etc. process to date? If yes, please list the Aboriginal Communities and set out the nature of the consultation.	<i>Insert response here</i>
Known Assertions or Claims	Is the municipality aware of any historical or archaeological finds, etc. in the vicinity of the proposed project site?	<i>Insert response here</i>
	Is the municipality aware of any recent claims or assertions by Aboriginal Communities in connection with the proposed project site?	<i>Provide list of Aboriginal Communities, concerns, assertions or claims expressed and actions taken in response.</i>
	Has the municipality ever consulted Aboriginal Communities in the past about this or any of its infrastructure projects? Has any Aboriginal Community recently previously expressed a concern regarding other infrastructure projects the municipality has undertaken? If so, what was the concern and what was the outcome?	<i>Insert response here</i>

**SECTION B: ANNUAL PROJECT INFORMATION UPDATE**

This section must be filled out when the above project is completed or annually at a minimum and submitted to the ministry no later than December 31<sup>st</sup>.

PART 1: PROJECT ACTIVITIES			
<b>1. What is the current status of the above project?</b>			
<input type="checkbox"/> In Progress - Ahead of Schedule <input type="checkbox"/> In Progress – On Schedule <input type="checkbox"/> In Progress – Behind Schedule <input type="checkbox"/> Completed <input type="checkbox"/> Not Proceeding			
<b>2. Is there any variance between the project description noted above and the actual project completed or in progress?</b>			
<input type="checkbox"/> No <input type="checkbox"/> Yes If Yes, please describe:			
<b>3. As detailed in your asset management plan (AMP), what was the priority of the project using this funding?</b>			
<input type="checkbox"/> Over due to be completed? <input type="checkbox"/> Due to be completed this year? <input type="checkbox"/> Due to be completed in the next year?		<input type="checkbox"/> Due to be completed in the next 2-5 years? <input type="checkbox"/> Due to be completed in the next 5+ years? <input type="checkbox"/> Was not detailed in plan, Please specify: _____	
<b>4. Please indicate which of the following benefits you have experienced or anticipate for your municipality as a result of the project. Provide details where possible.</b>			
	At project completion	Anticipated (1-2 years out)	Details
Addressed urgent public health and safety issues.	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No	
Highest priority items in Asset Management Plan addressed earlier than planned.	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No	
Other? Please specify.	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No	

PART 2: FINANCIAL UPDATE FOR THE CURRENT CALENDAR YEAR	
Actual Total Project Costs	\$xxx
Actual Formula Funds Utilized on Eligible Project (from Section A)*	\$xxx
Closing Balance of Unspent Funds to Date	\$xxx

\*This dollar value is the amount to be identified in your Annual Financial Report

**NOTE:** Supporting documentation for any financial figures in this report shall be provided to OMAFRA upon request and should be retained as per Section 11.7 of the Contribution Agreement.

**PART 3: DUTY TO CONSULT DECLARATION**

Please provide particulars as to how the requirements have been met under Schedule "F" of the Agreement.

**Declaration required for all Projects:**

Confirmation provided to the Province of Ontario indicating that there has been no communication from any Aboriginal Groups and that there were no items of cultural significance to aboriginal groups discovered with respect to this project.	<input type="checkbox"/> Yes <input type="checkbox"/> No
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**Declaration required by Projects with additional Duty to Consult requirements as identified by Ontario**

<p>Notice about this project, as well as a full project description, was provided to identified Aboriginal communities making them aware of the opportunity to express comments and concerns with respect to the following:</p> <ul style="list-style-type: none"> <li>the project;</li> <li>adverse impacts on hunting, trapping, fishing and plant harvesting; and</li> <li>any burial grounds or archaeological sites of cultural significance.</li> </ul>	<input type="checkbox"/> Yes <input type="checkbox"/> No
The Province of Ontario was made aware of any issue(s) identified by any Aboriginal communities.	<input type="checkbox"/> Yes <input type="checkbox"/> No
A copy of any correspondence/information between the Recipient and any Aboriginal communities was forwarded to the Province of Ontario.	<input type="checkbox"/> Yes <input type="checkbox"/> No

**PART 4: ATTESTATION**

By inserting a name, title and date below, the Recipient warrants that:

- The information provided herein and in any document attached is accurate and complete; and
- It is in compliance with all of the terms and conditions of the Agreement.

Name	2T	Title	2T	Date	2T
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## ANNUAL FINANCIAL REPORT

## ONTARIO COMMUNITY INFRASTRUCTURE FUND - ANNUAL FINANCIAL REPORT



Recipient Name:	
Contact Name, Title:	
Email:	
Phone:	

**FUNDS RECEIVED FROM OCIF FORMULA COMPONENT**

(refer to Schedule "D" of your Agreement)

\$ -

**ADDITIONS TO THE FUNDING AMOUNT:**

Add: Any interest earned on the funds received:

\$ -

(As per section 4.3 of your Agreement, recipients are required to provide the amount, if any, of the interest earned on the funds provided. Recipients are responsible for the calculation of interest earned.)

Add: Any amount(s) received from another Recipient's OCIF Allocation:  
(Provide name of Municipality/Local Services Board and amount received)

Name of Municipality / LSB

1.		\$ -
2.		\$ -
3.		\$ -

TOTAL RECEIVED FROM OTHER RECIPIENTS:

\$ -

**TOTAL FUNDS REQUIRED TO BE USED FOR PERIOD:**

\$ -

**SUBTRACTIONS FROM THE FUNDED AMOUNT:**Subtract: Any OCIF allocation amount(s) transferred to another Municipality/LSB:  
(Provide name of Municipality/Local Services Board and amount transferred)

Name of Municipality / LSB

1.		\$ -
2.		\$ -
3.		\$ -

TOTAL TRANSFERRED TO OTHER RECIPIENTS:

\$ -

Subtract: Total formula funds utilized on eligible projects:

(Provide project name and total formula funds used for the project(s). Projects should match what was submitted in Section B - Part 2 Financial Update section of your required Project Report(s))

Project Name

1.		\$ -
2.		\$ -
3.		\$ -
4.		\$ -
5.		\$ -

TOTAL FUNDS USED ON ELIGIBLE PROJECTS:

\$ -

**TOTAL FUNDS TRANSFERRED OR SPENT:**

\$ -

**CLOSING BALANCE OF FUNDS\*:**

\$ -

\* As per section 3.5 of your Agreement, Ontario may adjust the amount provided in the following year by the amount of Funds not spent by December 31. If the balance of funds is greater than zero, you must ensure that you have provided an amount for interest earned above.

**ATTESTATION BY TREASURER/CLERK/CHIEF ADMINISTRATIVE OFFICER**

By inserting a name, title and date below, the Recipient warrants that:

1. The information provided herein and in any document attached is accurate and complete;
2. Any interest earned (as noted under Additions to the Funding Amount above) has been used for costs associated with eligible projects or has been remitted to the Ministry; and
3. The Recipient is in compliance with all of the terms and conditions of the Agreement.

Name		Date	
Title			

**SCHEDULE “C”  
OPERATIONAL REQUIREMENTS UNDER THE AGREEMENT**

**PART C.1 – EFFECTIVE DATE OF AGREEMENT**

**C.1.1 *Effective Date Of Agreement.*** This Agreement is effective as of the date that the Minister signs it.

**PART C.2 – EXPIRATION DATE**

**C.2.1 *Expiration Date Of Agreement.*** Unless this Agreement is terminated earlier, this Agreement shall expire on March 31, 2018.

**PART C.3 – INSURANCE REQUIREMENTS**

**C.3.1 *Insurance Requirements.*** The Recipient shall have no less than two million dollars (\$2,000,000.00) in general commercial liability insurance per occurrence.

**PART C.4 – SUBMISSION OF PROJECT REPORT**

**C.4.1 *Submission Of Project Report.*** The Recipient shall submit its Project Report in accordance with the following:

The Recipient shall submit section “A” of the applicable Project Report to Ontario 45 Business Days prior to the start of any construction or no later than March 31<sup>st</sup> of each calendar year.

The Recipient shall submit section “B” of the applicable Project Report to Ontario no later than December 31<sup>st</sup> of each calendar year.

**PART C.5 – SUBMISSION OF ANNUAL REPORT**

**C.5.1 *Submission Of Annual Report.*** The Recipient shall submit the Annual Financial Report and Part “B” of the Project Report for all applicable Projects to Ontario by December 31<sup>st</sup> of the year in which the Funds were received.



**PART C.6 – NOTICE AND CONTACT**

**C.6.1 Notice And Contact Information.** Notices under this Agreement shall be sent to the following persons at the following addresses:

<b>To Ontario:</b> Ministry of Agriculture, Food and Rural Affairs Rural Programs Branch 1 Stone Road West, 4NW Guelph, Ontario N1G 4Y2 Attention: Joel Locklin, Manager Telephone: 519-826-3791 Fax: 519-826-3398 Email: OCIF@ontario.ca	<b>To Recipient:</b> The Corporation of the Town of Pelham 20 Pelham Town Square, PO Box 400 Fonthill, Ontario L0S 1E0  Attention: Darren Ottaway Telephone: (905) 892-2607 Email: dottaway@pelham.ca
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**PART C.7 – ASSET RETENTION PERIOD**

**C.7.1 Recipient To Notify Ontario Before Disposal Of Assets Purchased With Funds Under Agreement.** The Recipient shall notify OMAFRA in writing of any disposal of assets purchased by the Funds at least one hundred and eighty (180) Business Days in advance of the disposition. The Recipient shall not dispose of any assets purchased, constructed, rehabilitated or improved by the Funds without the prior written consent of Ontario.

**C.7.2 Asset Retention Period.** The Recipient shall retain any asset purchased, rehabilitated or built with Funds under this Agreement for a period of five (5) years from the date that the Project is completed.

**SCHEDULE “D”**  
**FINANCIAL INFORMATION FOR THE PROJECT**

**PART D.1 – PROVISION OF FUNDS**

**D.1.1 Funds Provided By Ontario.** Subject to the terms and conditions of this Agreement, Ontario shall provide the Recipient with an amount up to the amount indicated in the table immediately below in Funds for Eligible Costs. Subject to sections 3.5 and 4.3 of this Agreement, the Recipient may also retain any interest earned upon those Funds

Funding Year	Annual Financial Assistance	Timeframe for Funds to be spent:
2015	\$ 112,713.00	January 1 - December 31, 2015
2016	\$ 112,713.00	January 1 - December 31, 2016
2017	\$ 112,713.00	January 1 - December 31, 2017

**PART D.2 – PAYMENT OF FUNDS**

**D.2.1 Payment of Funds.** Ontario shall pay, subject to the terms and conditions of the Agreement, to the Recipient the Funds in accordance with the following:

Annual Financial Assistance is equal to or under \$150,000.00

Funding Year	100% Payment Date Range
2015	January – March 2015
2016	January – March 2016
2017	January – March 2017

Annual Financial Assistance is over \$150,000.00

Funding Year	1 <sup>st</sup> Installment (25%)	2 <sup>nd</sup> Installment (50%)	3 <sup>rd</sup> Installment (25%)
2015	January – March 2015	April – June 2015	July to September 2015
2016	January – March 2016	April – June 2016	July to September 2016
2017	January – March 2017	April – June 2017	July to September 2017

**SCHEDULE “E”  
ELIGIBLE AND INELIGIBLE COSTS**

**PART E.1 – ELIGIBLE COSTS**

**E.1.1 Eligible Costs.** Subject to the terms and conditions of this Agreement and Part E.2 of this Schedule “E” of the Agreement, Eligible Costs shall only include all direct and incremental costs that are attributable to the development and implementation of the Project and are in Ontario’s sole and absolute discretion, properly and reasonably incurred as well as necessary for the Project. Eligible Costs must also be actual, verifiable cash outlays that are documented through invoices, receipts or other records that is acceptable to Ontario.

Without limiting the generality of the foregoing, Eligible Costs shall only include the following:

- (a) The capital costs of constructing, rehabilitating, replacing or improving, in whole or in part, a tangible core infrastructure asset;
- (b) Development and implementation of asset management plans (e.g. software, training and inspections);
- (c) All planning and assessment costs, such as the costs of environmental planning, surveying, engineering, architectural supervision, testing and management consulting services;
- (d) The costs for permits, approvals, licences and other authorizing documents, as well as inspections and other fees directly attributable to obtaining a permit, approval, licence or other authorizing document, provided those costs are directly attributable to the construction and implementation of Project,
- (e) The costs for consulting with an Aboriginal Group, including the Recipient’s legal fees, provided they are reasonable, on matters pertaining to the Project, including the translation of documents into languages spoken by the affected Aboriginal Group, but does not include any capacity-building funding unless specifically approved by Ontario in writing prior to being incurred;
- (f) The costs of developing and implementing innovative techniques for carrying out the Project;
- (g) The costs of Project-related signage, lighting, Project markings and utility adjustments;
- (h) The costs of joint communication activities, such as press releases, press conferences, translation and road signage recognition, as described in Schedule “G” of this Agreement; and
- (i) Other costs that are, in Ontario’s sole and absolute discretion, direct, incremental and necessary for the successful implementation of the Project, provided those costs have been approved by Ontario in writing prior to being incurred.

**PART E.2 – INELIGIBLE COSTS**

**E.2.1 *Ineligible Costs.*** The following costs are Ineligible Costs and are therefore ineligible to be paid from the Funds being provided under this Agreement:

- (a) Costs not incurred in accordance with section 5.1(e) of the Agreement;
- (b) Costs associated with the acquisition or leasing of:
  - (i) Land,
  - (ii) Buildings,
  - (iii) Equipment,
  - (iv) Other facilities, and
  - (v) Obtaining easements, including costs or expenses for surveys, and includes real estate fees and other related costs;
- (c) Financial charges, legal fees, other than those association with consultation with Aboriginal Groups (provided such legal fees are reasonable), loan and interest payments
- (d) The value of any goods and services which are received through donations or in kind;
- (e) 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, but without limiting the generality of the foregoing, costs relating to services delivered directly by permanent employees of the Recipient;
- (f) Meal, hospitality or incidental costs or expenses of Consultants
- (g) Costs associated with completing Expressions of Interest and/or applications for the Ontario Community Infrastructure Fund or the Building Canada Fund – Small Communities Fund; and
- (h) Costs of accommodation for any Aboriginal Group.

**E.2.2 *Harmonized Sales Tax.*** Any portion of the Harmonized Sales Tax that is refundable by the Canada Revenue Agency as an input tax credit or as a rebate shall be deemed to be an Ineligible Cost. Any portion of the Provincial Sales Tax that is refundable by the respective provincial tax authority shall be deemed to be an Ineligible Cost.

**E.2.3 *Costs Of Non-Arm's Length Parties.*** The costs or expenses of goods or services acquired from parties that are not Arm's Length from the Recipient must be valued at the cost of the supplying entity and shall not include any mark up for profit, return on investment or overhead costs and shall not exceed fair market value. Ontario may not consider the eligibility of any of these costs unless access is provided to the relevant records of the supplying entity.

**SCHEDULE “F”  
ABORIGINAL CONSULTATION REQUIREMENTS**

**PART F.1 – PURPOSE AND DEFINITIONS**

**F.1.1 Purpose.** This Schedule sets 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.

**F.1.2 Definitions.** For the purposes of this Schedule:

“**Section 35 Duty**” means any duty Ontario may have to consult and, if required, accommodate Aboriginal Groups in relation to the Project flowing from section 35 of the *Constitution Act, 1982*.

**PART F.2 – RESPONSIBILITIES OF ONTARIO**

**F.2.1 Ontario’s Responsibilities.** Ontario is responsible for:

- (a) Determining the Aboriginal Groups to be consulted in relation to the Project, if any, and advising the Recipient of same;
- (b) The preliminary and ongoing assessment of the depth of consultation required with the Aboriginal Groups;
- (c) Delegating, at its discretion, procedural aspects of consultation to the Recipient pursuant to this Schedule;
- (d) Directing the Recipient to take such actions, including without limitation suspension as well as termination of the Project, as Ontario may require;
- (e) Satisfying itself, where it is necessary to do so, that the consultation process in relation to the Project has been adequate and the Recipient is in compliance with this Schedule; and
- (f) Satisfying itself, where any Aboriginal or treaty rights and asserted rights of Aboriginal Groups require accommodation, that Aboriginal Groups are appropriately accommodated in relation to the Project.

**PART F.3 – RESPONSIBILITIES OF THE RECIPIENT**

**F.3.1 Recipient’s Responsibilities.** The Recipient is responsible for:

- (a) Giving notice to the Aboriginal Groups regarding the Project as directed by Ontario, if such notice has not already been given by the Recipient or Ontario;
- (b) Immediately notifying Ontario of contact by any Aboriginal Groups regarding the Project and advising of the details of the same;

- (d) Informing the Aboriginal Groups about the Project and providing to the Aboriginal Groups a full description of the Project unless such description has been previously provided to them;
- (e) Following up with the Aboriginal Groups in an appropriate manner to ensure that Aboriginal Groups are aware of the opportunity to express comments and concerns about the Project, including any concerns regarding adverse impacts on hunting, trapping, fishing, plant harvesting or on burial grounds or archaeological sites of cultural significance to the Aboriginal Groups, and immediately advising Ontario of the details of the same;
- (f) Informing the Aboriginal Groups of the regulatory and approval processes that apply to the Project of which the Recipient is aware after reasonable inquiry;
- (g) Maintaining the Aboriginal Groups on the Recipient's mailing lists of interested parties for environmental assessment and other purposes and providing to the Aboriginal Groups all notices and communications that the Recipient provides to interested parties and any notice of completion;
- (h) Making all reasonable efforts to build a positive relationship with the Aboriginal Groups in relation to the Project;
- (i) Providing the Aboriginal Groups with reasonable opportunities to meet with appropriate representatives of the Recipient and meeting with the Aboriginal Groups to discuss the Project, if requested;
- (j) If appropriate, providing reasonable financial assistance to Aboriginal Groups to permit effective participation in consultation processes for the Project, but only after consulting with Ontario;
- (k) 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 Group, or on other interests, or any other concerns or issues regarding the Project;
- (l) Answering any reasonable 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;
- (m) Where an Aboriginal Group asks questions regarding the Project directly of Ontario, providing Ontario with the information reasonably necessary to answer the inquiry, upon Ontario's request;
- (n) Subject to paragraph (o) below, 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;

- (o) Consulting regularly with Ontario during all discussions with Aboriginal Groups regarding accommodation measures, if applicable, and presenting to Ontario the results of such discussions prior to implementing any applicable accommodation measures;
- (p) Complying with Ontario's direction to take any actions, including without limitation, suspension or termination of the Project, as Ontario may require; and
- (q) Providing in any contracts with Third Parties for the Recipient's right and ability to respond to direction from Ontario as Ontario may provide.

**F.3.2 Acknowledgement By Recipient.** The Recipient hereby acknowledges that, notwithstanding section 11.2 of the Agreement, 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.

**F.3.3 Recipient Shall Keep Records And Share Information.** The Recipient shall carry out the following functions in relation to record keeping, information sharing and reporting to Ontario:

- (a) Provide to Ontario, upon request, complete and accurate copies of all documents provided to the Aboriginal Groups in relation to the Project;
- (b) 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;
- (c) Provide Ontario with timely notice of any Recipient mailings to, or Recipient meetings with, the representatives of any Aboriginal Group in relation to the Project;
- (d) Immediately notify Ontario of any contact by any Aboriginal Groups regarding the Project and provide copies to Ontario of any documentation received from Aboriginal Groups;
- (e) Advise Ontario in a timely manner of any potential adverse impact of the Project on Aboriginal or treaty rights or asserted rights of which it becomes aware;
- (f) Immediately notify Ontario if any Aboriginal archaeological resources are discovered in the course of the Project;
- (g) Provide Ontario with summary reports or briefings on all of its activities in relation to consultation with Aboriginal Groups, as may be requested by Ontario; and
- (h) If applicable, advise Ontario if the Recipient and an Aboriginal Group propose to enter into an agreement directed at mitigating or compensating for any impacts of the Project on Aboriginal or treaty rights or asserted rights.

**F.3.4 Recipient Shall Assist Ontario.** The Recipient shall, upon request lend assistance to Ontario by filing records and other appropriate evidence of the activities undertaken both by Ontario and by the Recipient in consulting with Aboriginal Groups in relation to the Project, attending any regulatory or other hearings, and making both written and oral submissions, as appropriate, regarding the fulfillment of Aboriginal consultation responsibilities by Ontario and by the Recipient, to the relevant regulatory or judicial decision-makers.

#### **PART F.4 – NO IMPLICIT ACKNOWLEDGEMENT**

**F.4.1 No Acknowledgment Of Duty To Consult Obligations.** Nothing in this Schedule shall be construed as an admission, acknowledgment, agreement or concession by Ontario or the Recipient, that a Section 35 Duty applies in relation to the Project, nor that any responsibility set out herein is, under the Constitution of Canada, necessarily a mandatory aspect or requirement of any Section 35 Duty, nor that a particular aspect of consultation referred to in subsection F.1.2 hereof is an aspect of the Section 35 Duty that could not have lawfully been delegated to the Recipient had the Parties so agreed.

#### **PART F.5 – GENERAL**

**F.5.1 No Substitution.** This Schedule shall be construed consistently with but does not substitute for any requirements or procedures in relation to Aboriginal consultation or the Section 35 Duty that may be imposed by a ministry, board, agency or other regulatory decision-maker acting pursuant to laws and regulations. Such decision-makers may have additional obligations or requirements. Nonetheless, the intent of Ontario is to promote coordination among provincial ministries, boards and agencies with roles in consulting with Aboriginal Groups so that the responsibilities outlined in this Agreement may be fulfilled efficiently and in a manner that avoids, to the extent possible, duplication of effort by Aboriginal Groups, the Recipient, Ontario, and provincial ministries, boards, agencies and other regulatory decision-makers.

#### **PART F.6 – NOTICE AND CONTACT**

**F.6.1 Notices In Relation To Schedule.** All notices to Ontario pertaining to this Schedule shall be in writing and shall be given sent to the person identified under Part 6.4 of Schedule C.



## **SCHEDULE "G"**

### **COMMUNICATIONS PROTOCOL**

This Communications Protocol (Protocol) outlines the respective responsibilities and the working relationship between the Parties to this Agreement as they relate to all communications by the Parties regarding funding received in relation to the Project.

#### **PURPOSE**

This Protocol applies to all communications activities related to any funding the Recipient receives under this Agreement. Communications activities may include, but are not limited to:

- Project signage
- Media events and announcements, including news conferences, public announcements, official events or ceremonies, news releases
- Printed materials
- Websites
- Photo compilations
- Award programs
- Awareness campaigns

#### **PROJECT SIGNAGE**

If the Recipient installs a sign at the site of a Project, the Recipient shall, at Ontario's request, provide acknowledgement of the provincial contribution to the Project. Sign design, content and installation guidelines will be provided by Ontario.

Where the Recipient decides to install a permanent plaque or other suitable marker with respect to a Project, it must recognize the provincial contribution to the Project and be approved by Ontario prior to installation.

The Recipient is responsible for the production and installation of Project signage, unless otherwise agreed upon in writing prior to the installation of the signage.

#### **MEDIA EVENTS**

The Recipient or Ontario may request a media event, announcement or recognition of key milestones related to Project.

In requesting a media event or an announcement, the Party requesting the event will provide at least twenty-one (21) Business Days' notice to the other Party of its intention to undertake such an event. The event will take place at a date and location that is mutually agreed to by the Parties. The Parties will have the opportunity to participate in such events through a designated representative. Each participant will choose its designated representative.

All joint communications material related to media events and announcements must be approved by Ontario and recognize the funding provided by Ontario.

Media events and announcements include but are not limited to:

- News conferences
- Public announcements
- Official events or ceremonies
- News releases

#### **PRINTED MATERIALS, WEBSITES, PHOTO COMPILATIONS, AWARD PROGRAMS, AWARENESS CAMPAIGNS**

The Recipient may include messaging in its own communications products and activities with regards to the Project. When undertaking such activities, the Recipient shall provide the opportunity for Ontario to participate and shall recognize the funding provided by Ontario.

#### **ISSUES MANAGEMENT**

The Recipient shall share information promptly with Ontario should significant emerging media, Project or stakeholder issues relating to a Project arise. Ontario will advise Recipients, when appropriate, about media inquiries concerning the Project.

#### **COMMUNICATING SUCCESS STORIES**

The Recipient agrees to communicate with Ontario for the purposes of collaborating on communications activities and products including but not limited to success stories and features relating to the Project.

The Recipient acknowledges and agrees that Ontario may publicize information about the Project. Ontario agrees it will use reasonable efforts to consult with the Recipient about Ontario's publication about the Project prior to making it.

#### **DISCLAIMER**

If the Recipient publishes any material of any kind relating to the Project or the Ontario Community Infrastructure Fund, the Recipient shall indicate in the material that the views expressed in the material are the views of the Recipient and do not necessarily reflect Ontario's views.