

**THE CORPORATION OF THE CITY OF PETERBOROUGH**

**BY-LAW NUMBER 09-053**

**BEING A BY-LAW TO AUTHORIZE THE EXECUTION OF AN AGREEMENT BETWEEN THE CORPORATION OF THE CITY OF PETERBOROUGH, THE MINISTRY OF ENERGY AND INFRASTRUCTURE AND THE MINISTRY OF AGRICULTURE, FOOD AND RURAL AFFAIRS**

THE CORPORATION OF THE CITY OF PETERBOROUGH BY THE COUNCIL THEREOF HEREBY ENACTS AS FOLLOWS:

1. That the Mayor and Clerk be and they are hereby authorized to execute an Agreement between The Corporation of the City of Peterborough, the Ministry of Energy and Infrastructure and the Ministry of Agriculture, Food and Rural Affairs for participation in the Building Canada Fund – Communities Component (BCF-CC) Intake 1 initiative, in the form attached as Schedule "A", and to affix the seal of the Corporation thereto.
2. That the Mayor and Clerk be designated as the signing officers for the Corporation of the City of Peterborough with respect to this agreement.

By-law read a first, second and third time this 4<sup>th</sup> day of May, 2009

(Sgd.) D. Paul Ayotte, Mayor

(Sgd.) John Kennedy, Deputy Clerk

**BUILDING CANADA FUND – COMMUNITIES COMPONENT (BCF-CC)**

**CONTRIBUTION AGREEMENT FOR INFRASTRUCTURE PROJECTS**

Ministry of Energy and Infrastructure and Ministry of Agriculture, Food and Rural Affairs  
File Number: 24723

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

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

and the

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

**A N D:**                **THE CORPORATION OF THE CITY OF PETERBOROUGH**

(referred to herein as the “Recipient”)

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

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

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

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

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

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

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



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

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**SECTION 1**  
**DEFINITIONS AND INTERPRETATION**

**1.1 Definitions.** When used in this Agreement (including the cover and execution pages and all of the schedules), the following terms shall have the meanings ascribed to them below unless the subject matter or context is inconsistent therewith:

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

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

**"Agreement"** means this agreement, including the cover and execution pages and all of the schedules hereto, and all amendments made hereto in accordance with the provisions hereof.

**"Allowable Financial Assistance"** has the meaning given to it in Section 8.1 of this Agreement.

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

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

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

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

**"Consultant"** means any consultant, engineer, contractor, project manager, architect or other service provider, as the case may be, retained by the Recipient to undertake any part of the work related to the Project.

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

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

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

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

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

handled friable materials.

**“Environmental Laws”** means all applicable federal, provincial or municipal laws, regulations, by-laws, orders, rules, policies or guidelines respecting the protection of the natural environment, public or occupational health or safety, and the manufacture, importation, handling, transportation, storage, disposal and treatment of Environmental Contaminants and include, without limitation, the *Environmental Protection Act* (Ontario), the *Environmental Assessment Act* (Ontario), the *Ontario Water Resources Act*, the *Canadian Environmental Protection Act 1999*, the *Canadian Environmental Assessment Act*, the *Fisheries Act* (Canada) and the *Navigable Waters Protection Act* (Canada).

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

**“Expenditure Report”** has the meaning given to it in Section 6.1 of this Agreement.

**“Expiration Date”** means March 31, 2017.

**“Federal Government”** means Her Majesty the Queen in right of Canada.

**“Federal Licensed Marks”** has the meaning given to it in Section 6 of Schedule “E” to this Agreement.

**“Federal Maximum Financial Assistance”** has the meaning set out in Schedule “D” hereto.

**“Final Report”** has the meaning given to it in Section 6.3 of this Agreement.

**“Final Report Date”** means May 31, 2016.

**“Financial Assistance”** means the funds contributed by the Senior Government to be advanced by OMAFRA to the Recipient pursuant to this Agreement.

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

**“Generally Accepted Accounting Principles”** means the *Canadian Generally Accepted Accounting Principles* as adopted by the Canadian Institute of Chartered Accountants, applicable as at the date on which such calculation is made or required to be made under the Agreement in accordance with Generally Accepted Accounting Principles.

**“Government of Ontario”** means Her Majesty the Queen in right of Ontario, as represented by the Deputy Premier and the Minister of Energy and Infrastructure and by the Minister of Agriculture, Food and Rural Affairs.

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

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

**“Ineligible Costs”** means the costs so described in Schedule “C”.

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

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

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

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

**“Ontario Maximum Financial Assistance”** has the meaning set out in Schedule “D” hereto.

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

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

**“Progress Report”** has the meaning given to it in Section 6.2 of this Agreement.

**“Project”** means the project described in Schedule “B” hereto.

**“Project Completion Date”** means March 31, 2016.

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

**“Senior Government”** means the Government of Ontario and the Federal Government collectively.

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

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

**“Total Eligible Costs”** has the meaning set out in Schedule “D” hereto.

**1.2 Herein, etc.** The words “herein”, “hereof” and “hereunder” and other words of similar import refer to this Agreement as a whole and not to any particular schedule, article, section, paragraph or other subdivision of this Agreement.

**1.3 Currency.** Any reference to currency is to Canadian currency and any amount advanced, paid or calculated is to be advanced, paid or calculated in Canadian currency.

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

## SECTION 2 TERM OF AGREEMENT

- 2.1 **Term.** Subject to any extension or termination of this Agreement or the survival of any of the provisions of this Agreement pursuant to the provisions contained herein, this Agreement shall be in effect from the date set out on the first page of this Agreement, up to and including the Expiration Date (the "Term").
- 2.2 **End of Financial Assistance Date.** Notwithstanding anything in this Agreement and regardless of the Project's state of completion, OMAFRA shall not be obligated to provide Financial Assistance under this Agreement after the End of Financial Assistance Date.

## SECTION 3 ELIGIBLE COSTS

- 3.1 **Eligible Costs.** In order for a cost to be eligible for Financial Assistance pursuant to this Agreement (an "Eligible Cost"), the cost must be included in Schedule "C", Part C.1, except where otherwise expressly approved in writing by OMAFRA. For greater certainty, where Schedule "B" identifies a portion of the works that are specifically excluded from the description of the Project under this Agreement, the costs associated with that portion of the works are not eligible.
- 3.2 **Discretion of OMAFRA.** Subject to Section 3.1, the eligibility of any items not listed in Schedule "C" to this Agreement will be determined in accordance with OMAFRA's policies and guidelines. The final determination of the eligibility of any items claimed is at the sole discretion of OMAFRA.
- 3.3 **Retention of Receipts.** The Recipient shall retain all records of payments related to Eligible Costs including, without limitation, invoices and receipts, for audit purposes and such supporting documentation must be available to OMAFRA when requested.
- 3.4 **Ineligible Costs.** Notwithstanding anything else contained herein, the costs that are not eligible for Financial Assistance pursuant to this Agreement are set out in Part C.2 of Schedule "C" ("Ineligible Costs").
- 3.5 **Deemed ineligible.** The Recipient acknowledges that OMAFRA's Fiscal Year ends on March 31 in each year, and that should a cost not be submitted by the Recipient for payment of Financial Assistance before March 31 of the year following the fiscal year in which it was incurred, such cost shall be deemed ineligible for Financial Assistance.

## SECTION 4 FINANCIAL ASSISTANCE

- 4.1 Use of Financial Assistance.** The Financial Assistance is intended for and shall be used only for Eligible Costs.
- 4.2 Basis of payout of Financial Assistance.** The Financial Assistance will be provided by OMAFRA to the Recipient on the basis set out in Schedule "D".
- 4.3 Semi-Annual Reporting.** The Recipient is required to submit semi-annual Expenditure Reports to OMAFRA pursuant to Section 6.1 prior to OMAFRA releasing any Financial Assistance.
- 4.4 Funds advanced.** If Financial Assistance is provided to the Recipient by OMAFRA prior to OMAFRA receiving evidence that the associated Eligible Costs have already been paid by the Recipient, then such Financial Assistance, including all interest earned thereon, shall be deemed to remain the property of OMAFRA and must be held by the Recipient in trust for OMAFRA in an interest bearing account pending payment of Eligible Costs. Without limitation, any payment of Financial Assistance that is made to the Recipient without the requirement of the Recipient first providing OMAFRA with either a Progress Report or a Final Report must meet the requirements of this Section.
- 4.5 Maximum Financial Assistance.** The total amount of Financial Assistance provided to the Recipient shall in any event be no greater than the Maximum Financial Assistance figure set out in Schedule "F" hereto.
- 4.6 Excess funds.** Where actual costs are lower or appear likely to be lower than the total eligible expenditures, or where additional funding is secured from other government sources such that the funds available to the Recipient for the Project (other than the Financial Assistance) exceed the Maximum Financial Assistance, the Recipient shall immediately notify OMAFRA. OMAFRA may, in its sole discretion, adjust the Financial Assistance on the Project.
- 4.7 Interdependent Projects.** Where implementation of the Project is dependent on completion of a project by others and the interdependent project is not completed by others in whole or in part, OMAFRA may, in its sole discretion, adjust the Financial Assistance for the Project.
- 4.8 Recipient not carrying out Project.** The Recipient shall immediately notify OMAFRA if it does not intend to carry out the Project in whole or in part as specified in Schedule "B" in which case OMAFRA may, in its sole discretion, adjust the Financial Assistance for the Project.
- 4.9 New Information.** In the event of new information, errors, omissions or other circumstances affecting the determination of the amount of Financial Assistance under this Agreement, OMAFRA may, in its sole discretion, adjust the Financial Assistance for the Project.
- 4.10 Alternatives to Project.** If the Recipient becomes aware of any alternatives to the Project that are more cost effective (for example, an area/joint servicing scheme), the Recipient shall immediately notify OMAFRA, in which case OMAFRA may, in its sole

discretion, adjust the Financial Assistance. Likewise, if OMAFRA becomes aware of any alternatives to the Project that are more cost effective, the Recipient will be notified and OMAFRA may, in its sole discretion, adjust the Financial Assistance.

- 4.11 **GST.** The Financial Assistance is based on the net amount of goods and services tax to be paid by the Recipient pursuant to the *Excise Tax Act* (Canada), net of any applicable rebates.
- 4.12 **Withholding payment.** OMAFRA may, in its sole discretion, withhold payment of Financial Assistance where the Recipient is in default in obtaining any necessary permits, approvals or licenses applicable to the Project or is in default of compliance with any provisions of this Agreement or any applicable legislation.
- 4.13 **Insufficient funds provided by the Legislature.** If, in the opinion of the Government of Ontario, the Legislative Assembly of Ontario does not provide sufficient funds to continue the Financial Assistance for any Fiscal Year during which this Agreement is in effect, the Government of Ontario may terminate this Agreement in accordance with the terms specified in Section 15.5 of this Agreement.

## SECTION 5 PROJECT AWARD, MANAGEMENT AND COMPLETION

- 5.1 **Recipient fully responsible.** The Recipient shall be fully responsible for the undertaking, implementation and completion of the Project and shall retain any and all Consultants reasonably required to undertake a project of the size, scope and complexity of the Project. Where implementation of the Project is dependent on completion of a project by others, the Recipient shall be fully responsible for obtaining any assurances that it may require from others in relation to the implementation of the Project by the Recipient.
- 5.2 **Government of Ontario not responsible for implementation.** The Government of Ontario shall not be responsible in any way whatsoever for the undertaking, implementation and completion of the Project or any interdependent project of others.
- 5.3 **Government of Ontario not responsible for costs, etc.** The Government of Ontario shall not be responsible for any costs associated with the operation, maintenance and repair of the Project nor for any claims, proceedings or judgments arising from the tender and bidding process.
- 5.4 **Behaviour of Recipient.** The Recipient shall at all times carry out the Project in an economical and businesslike manner, in accordance with this Agreement subject to any reasonable changes that OMAFRA may agree to or require from time to time in writing.
- 5.5 **Competitive process.** The Recipient shall acquire and manage all equipment, services and supplies required for the Project through a transparent, competitive process that ensures the best value for funds expended. Municipalities must follow their established procurement protocol as directed by the *Municipal Act*. All other Recipients must ensure that for equipment, services and supplies, the estimated cost of which exceeds \$25,000.00, the Recipient shall obtain at least three written quotes unless OMAFRA gives prior written approval. The requirement for a competitive process may be waived with prior written approval by OMAFRA if:

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

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

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

5.8 **Long-term capital management plan.** The Recipient shall prepare and update annually thereafter a long-term capital asset management plan which outlines how the Recipient intends to meet its financial and other commitments for maintaining the Infrastructure on an ongoing basis, including plans to recover the full operating costs through service charges where appropriate. Upon request, the Recipient shall provide to OMAFRA a copy of its then current long-term capital management plan.

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

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

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

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

BCF-CC;

- e) are awarded and managed:
  - (i) in a way that is transparent, competitive and consistent with value for money principles; and
  - (ii) in accordance with all applicable policies and procedures issued by the Government of Ontario;
- f) require that the parties thereto comply with all applicable legislation; and
- g) authorize the Government of Ontario and the Federal Government to collect, use and distribute information and data gathered by parties, perform audits and monitor the Project as they see fit.

## SECTION 6 REPORTING REQUIREMENTS

**6.1 Expenditure Report.** The Recipient shall submit semi-annual reports for the Project to OMAFRA on or before February 15<sup>th</sup> and August 15<sup>th</sup> of each Fiscal Year outlining the current expenditures and projections and the Recipient shall follow such administrative procedures as are specified from time to time by OMAFRA.

**6.2 Claims Submission.** All Claim Submissions shall include the following reports:

**1. Progress Report.** The Recipient shall provide OMAFRA with a report in the form set out in Schedule "I" ("Progress Report") that shall contain sufficient information to allow OMAFRA to assess the progress of the Project. The Progress Report shall include:

- a) a detailed description of the progress of the Project to the date of the report;
- b) particulars of how the Communication Requirements have been implemented or applied;
- c) a certificate by a Payment Certifier or the chief financial officer of the Recipient certifying the percentage of the Project completed;
- d) details of any variance from the Project; and
- e) any other information respecting the Project that may be requested by OMAFRA.

**2. Claim Report.** The Recipient shall provide OMAFRA with a report in the form set out in Schedule "J" ("Claim Report") on the invoices received and paid for the Project as at the date of the payment request which shall contain sufficient information to allow OMAFRA to assess the eligibility of that portion of the Project for which disbursement is being requested and the individual Project tasks and Milestones. The Claim Report shall include:

- a) an invoice summary, in the form prescribed by OMAFRA;
- b) a list of the vendors from which the invoices were received;

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

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

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

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

## SECTION 7 RECORDS AND AUDIT

**7.1 Separate records.** The Recipient shall maintain separate records and documentation for the Project and keep all records and documentation for six (6) years after the final settlement of accounts referred to in Section 5.9 of this Agreement. Upon request, the Recipient shall submit to OMAFRA and any member of the Oversight Committee all records and documentation relating to the Project including, but not limited to, work authorizations, invoices, time sheets, payroll records, estimates and actual cost of the activities carried out pursuant to this Agreement, together with tenders and proposals, final measurements, payment certificates, change orders, correspondence, memoranda, contracts and amendments thereto which shall be maintained in accordance with Generally Accepted Accounting Principles.

- 7.2 Provide records to OMAFRA.** The Recipient shall provide to OMAFRA and any member of the Oversight Committee, upon request and at the Recipient's expense (including but not limited to photocopying, electronic media, transportation and postage, associated staff time, information retrieval and other office expenses), all records and documentation (including invoice summaries and certified statement of final costs) of the Recipient and its auditors, contractors, project managers and Consultants relating to the Project or any other project(s) of the Recipient under the BCF-CC, or any other provincial program(s), for the purposes of cost reviews, audits and settlement, as may be required by OMAFRA, of the Project or any other project(s) of the Recipient under the BCF-CC, or any other provincial program(s). Such material shall be provided in a form and manner satisfactory to OMAFRA and the Oversight Committee, as applicable.
- 7.3 External auditor.** OMAFRA may require the assistance of an external auditor to carry out an audit of the material referred to in Sections 7.1 and 7.2 of this Agreement. If so, the Recipient shall, upon request, retain an external auditor acceptable to OMAFRA at the Recipient's sole expense. The Recipient shall ensure that any auditor who conducts an audit pursuant to this section of the Agreement or otherwise, provides a copy of the audit report to OMAFRA for its consideration at the same time that the audit report is given to the Recipient.
- 7.4 Auditor General of Canada.** The Auditor General of Canada, may, at the Auditor General's of Canada's cost, after consultation with Ontario, conduct an inquiry under the authority of Subsection 7.1 (1) of the *Auditor General Act* in relation to the use of funds under the agreement. For the purposes of facilitating such inquiry, the Recipient shall:
- a) be required to appoint Ontario as its agent for the purpose of any inquiry undertaken by the Auditor General of Canada with respect to the use of funds under this Agreement;
  - b) release to Ontario upon request and in a timely manner, for the purpose of releasing to the Auditor General of Canada: all records held by the Recipient, or by agents or contractors of the Recipient, relating to this Agreement and the use of funds; and such further information and explanations as the Auditor General, or anyone acting on behalf of the Auditor General may request relating to any part of this Agreement of the use of funds.
- 7.5 Information.** The Recipient shall supply to OMAFRA, upon request, such information in respect of the Project and its results including without limitation all contracts and agreements related to the Project and all plans and specifications related to the Project, as OMAFRA may require. The Government of Ontario and the Federal Government, their respective agents and employees, including the Ontario Provincial Auditor's Office, shall be allowed access to the Recipient's premises and staff and to the Project site at all reasonable times to (i) inspect the progress and monitor the Project; (ii) perform cost reviews and audits on the Project; and (iii) confirm the results of the Project in terms of resolving the infrastructure problems that cause an immediate and serious problem for human health or the environment.
- 7.6 Information condition precedent for payment.** If, in the opinion of OMAFRA, any of the information requirements of this Article are not met, OMAFRA may, in its sole discretion, require the information as a condition precedent to any payment in relation to the Project or any other project(s) of the Recipient under the BCF-CC, or any other provincial program(s) (either current or future). In addition, OMAFRA may, in its sole discretion, adjust the Financial Assistance for the Project.

## SECTION 8 OVERPAYMENT

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

## SECTION 9 INSURANCE AND BONDING

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

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

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

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

## **SECTION 10 INDEMNITY**

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

- a) any bodily injury, death or property damage to the Recipient, its employees, agents, or Consultants or for any claim, demand or action by any third party against the Recipient, its employees, agents, or Consultants, arising out of or in any way related to the Canada-Ontario Building Canada Fund Communities Component Agreement or this Agreement or the Project; nor
- b) any incidental, indirect, special or consequential damages, or any loss of use, revenue or profit to the Recipient, its employees, agents, or Consultants arising out of or in any way related to the Canada-Ontario Building Canada Fund Communities Component Agreement or this Agreement or the Project.

**10.2 Recipient to indemnify.** The Recipient agrees to indemnify and hold harmless the Indemnified Parties from and against all suits, judgments, claims, demands, expenses, actions, causes of action and losses (including, without limitation, reasonable legal expenses and any claim for lien made pursuant to the *Construction Lien Act* (Ontario) and for any and all liability for damages to property and injury to persons (including death) which the Indemnified Parties may incur, otherwise than by reason of their own negligence or wilful misconduct, as a result of or arising out of or in relation to: (a) the performance of this Agreement or any breach of the terms of this Agreement by the Recipient, its officers, servants, employees 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 infrastructure resulting from the Project; or (c) any omission or other wilful or negligent act of the Recipient, a third party, their respective employees, officers, servants or agents.

**10.3 Further Indemnity.** The Recipient further agrees to indemnify and hold harmless the Indemnified Parties, for any incidental, indirect, special or consequential damages, or any loss of use, revenue or profit, which the Indemnified Parties may incur, otherwise than by reason of their own negligence or wilful misconduct, as a result of or arising out of or in relation to: (a) the performance of this Agreement or any breach of the terms of this Agreement by the Recipient, its officers, servants, employees 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 infrastructure resulting from the Project; or (c) any omission or other wilful or negligent act of the Recipient, a third party, their respective employees, officers, servants or agents.

**SECTION 11  
TRANSFER AND OPERATION OF INFRASTRUCTURE**

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

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

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

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

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

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

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

## SECTION 12 CONFLICT OF INTEREST AND CONFIDENTIALITY

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

## SECTION 13 COMMUNICATION AND RECOGNITION

- 13.1 **Licensed Marks.** The Recipient acknowledges that Her Majesty the Queen in right of Canada and Her Majesty the Queen in right of Ontario are, will be or may be the owner of certain distinguishing marks comprised of designs, trademarks and official marks which have come or will come to be associated with BCF-CC (all such current and future marks, being the "Licensed Marks").
- 13.2 **Acknowledgement in advertising and publicity.** The Recipient agrees to acknowledge the Financial Assistance of the Senior Government to the Project in all advertising and publicity relating to the Project and in any construction signs and in any temporary or permanent tributes to Project donors by adhering to the Communications Requirements.
- 13.3 **Use of Licensed Marks.** In consideration of receiving the Financial Assistance, the Recipient agrees to use the Licensed Marks as follows:
- a) the Recipient agrees to strictly use the Licensed Marks only as prescribed by the Communications Requirements and not to use any other mark or trademark in combination with any of the Licensed Marks without the prior written approval of the BCF-CC Management Committee. The Recipient agrees that it will not alter, modify, dilute or otherwise misuse the Licensed Marks;
  - b) the Recipient agrees to submit to the BCF-CC Joint Secretariat copies of any advertisements or promotional materials containing the Licensed Marks for approval prior to any use thereof and to remove therefrom either any reference to the Licensed Marks or any element that the BCF-CC Joint Secretariat may from

time to time upon reasonable notice designate;

- c) the Recipient agrees that it will not state or imply, directly or indirectly, that the Recipient or the Recipient's activities, other than those permitted by this Agreement, are supported, endorsed, or sponsored by the BCF-CC Joint Secretariat and upon the direction of the BCF-CC Joint Secretariat express disclaimers to that effect; and
- d) the Recipient agrees to promptly inform the BCF-CC Joint Secretariat of any suspected infringement of any Licensed Marks by a third party.

**13.4 Cease using Licensed Marks.** Whether or not the Recipient is in breach of this Agreement, forthwith upon any receipt by the Recipient of a written direction from the BCF-CC Joint Secretariat, the Recipient shall cease using the Licensed Marks, and without limiting the generality of the foregoing, will remove all signage and remove from circulation any use or reference to the Licensed Marks.

**13.5 Indemnity.** The Recipient hereby indemnifies the Indemnified Parties against any and all claims for death, illness, personal injury, property damage, improper business practices, or loss of any kind where such claims are in whole or in part premised upon the Recipient's use of the Licensed Marks.

#### SECTION 14 COVENANTS, REPRESENTATIONS AND WARRANTIES

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

- a) it is conducting and shall conduct its business in compliance with all applicable federal, provincial and municipal laws, and all rules, regulations, by-laws, notices, orders and approvals;
- b) it is conducting and shall conduct its business in compliance with all federal requirements as outlined in Schedule "E;"
- c) it has authority and any necessary approval to enter into this Agreement and to carry out its terms;
- d) it has or will apply for all permits, approvals, and licenses which are required in order to carry out the Project including, but not limited to, any approvals lawfully required under the *Planning Act* (Ontario), the *Building Code Act, 1992* (Ontario), the *Highway Traffic Act* (Ontario), the *Public Transportation and Highway Improvement Act* (Ontario), the *Bridges Act* (Ontario) and the Environmental Laws;
- e) it validly exists as a legal entity with full power to perform and observe all of the terms and conditions of this Agreement;
- f) where applicable, it has passed by-laws required to undertake the Project;
- g) it is now and will continue to be compliant with all Environmental Laws;
- h) it owns or has a long-term lease (inclusive of any renewals) for the lands on

which the Infrastructure is or will be located that expires no earlier than ten (10) years following Project completion;

- i) provided that the Recipient is not a municipality or a Crown Agency,
  - A. it is not a non-resident of Canada within the meaning of the *Income Tax Act* (Canada);
  - B. is either a corporation, a partnership or a sole proprietorship validly in existence; and
  - C. is registered and qualified to do business wherever necessary to carry out the Project;
- j) it has the experience, financial health and ability to carry out this Project;
- k) if the Recipient is a Local Government or a Crown Agency, it has the requisite legislative authority to carry out the Project;
- l) other than the Financial Assistance being provided pursuant to this Agreement, the Recipient has not and will not use any funds received from Her Majesty the Queen in right of Ontario or a Crown Agency towards any aspect of the Project. Notwithstanding the foregoing, the Recipient may use funds received from the Northern Ontario Heritage Fund for the purposes of carrying out the Project; and
- m) all information provided during the BCF-CC application process remains true, correct and complete in every respect except as set out to the contrary herein.
- n) all Third Parties will be required to comply with all of the same.

**14.2 Representations and warranties true condition precedent for payment.** Upon request, the Recipient shall provide OMAFRA with proof of the matters referred to in this Article. It is a condition precedent to any payment under this Agreement that the representations and warranties under this Section are true at the time of payment and that the Recipient is not in default of compliance with any terms of this Agreement. Where this is not the case, OMAFRA may, in its sole discretion, adjust the Financial Assistance for the Project.

## SECTION 15 DEFAULT, ENFORCEMENT AND TERMINATION

**15.1 Event of Default.** Each and every one of the following events is an "Event of Default":

- a) if in the opinion of the Government of Ontario, the Recipient fails to conform or comply with any term or covenant contained in this Agreement to be performed or complied with by the Recipient;
- b) if in the opinion of the Government of Ontario any representation or warranty made by the Recipient in this Agreement or any certificate delivered to the Government of Ontario pursuant hereto shall be materially untrue in any respect;
- c) if an order shall be made or an effective resolution passed for the winding up, or

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

- d) if the Recipient uses any of the Financial Assistance for a purpose not authorized by this Agreement without the prior written consent of the Government of Ontario;
- e) if the Recipient admits in writing its inability to pay its debts generally as they become due, voluntarily suspends transactions of its usual business, becomes insolvent, bankrupt, makes an assignment for the benefit of its creditors, or a receiver or manager, court appointed or otherwise, is appointed for its assets or if the Recipient takes the benefit of any statute from time to time in force relating to bankrupts or insolvent debtors;
- f) if in the opinion of the Government of Ontario a material adverse change occurs such that the viability of the Recipient as a going concern is threatened in the opinion of the Government of Ontario, acting reasonably;
- g) if in the opinion of the Government of Ontario the Recipient ceases to operate;
- h) if the Recipient fails to begin the Project within six (6) months after the date of this Agreement, or, in the opinion of the Government of Ontario, the Recipient has failed to proceed diligently with the Project or abandons the Project in whole or in part, or the Recipient is otherwise in default in carrying out any of the terms, conditions or obligations of this Agreement, except where such failure is due to causes which, in the opinion of the Government of Ontario are beyond the control of the Recipient;
- i) if the Recipient has submitted false or misleading information to OMAFRA; or
- j) the Recipient and/or any of its Consultants and/or any of their respective advisors, partners, directors, officers, employees, agents and volunteers has breached the requirements of Section 12 (Conflict of Interest and Confidentiality).

**15.2 Waiver.** OMAFRA may, at any time, waive any Event of Default which may have occurred provided that no such waiver shall extend to, or be taken in any manner whatsoever to affect, any subsequent Event of Default or the right to remedies resulting therefrom, and that no such waiver shall be, or shall be deemed to constitute, a waiver of such Event of Default unless such waiver is in writing from OMAFRA.

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

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

amount of Financial Assistance shall be immediately due and payable by the Recipient and bear interest at the then-current interest rate charged by the Government of Ontario on accounts receivable; and

- c) the Government of Ontario may avail itself of any of its legal remedies that it may deem appropriate.

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

**15.5 Termination without cause.** Notwithstanding anything else contained herein, the Government of Ontario reserves the right to terminate this Agreement without cause upon such conditions as the Government of Ontario may require, with a minimum of seven (7) days written notice to the Recipient. If the Government of Ontario terminates this Agreement prior to its expiration, the Government of Ontario, subject to all of the Government of Ontario's rights under this Agreement, including, without limitation, OMAFRA's right to adjust the Financial Assistance prior to its expiration, shall only be responsible for the payment of Financial Assistance on the portion of the Project completed and Eligible Costs already incurred and paid at the time of such termination provided that the Recipient provides a report to OMAFRA that meets the requirements of a Progress Report. Such report must be received by OMAFRA within three (3) months of notice of termination being given to the Recipient pursuant to this Section.

## SECTION 16 NOTICE

**16.1 Notice.** Any demand, notice or communication to be made or given hereunder shall be in writing and may be made or given by personal delivery or mailed by first class registered mail, postage prepaid or by transmittal by facsimile, telecopy, email or other electronic means of communication addressed to the respective parties as follows at the addresses set out in Schedule "F" attached hereto or to such other person, address, facsimile number, telecopy number or email address as either party may from time to time notify the other in accordance with this Section. Any demand, notice or communication made or given by personal delivery shall be conclusively deemed to have been given on the day of actual delivery thereof. Any demand, notice or communication made or given by facsimile, email or other electronic means of communication, if made or given at a time when it would be received by the Recipient during its normal business hours on a Business Day, shall be deemed to be received at the time it is sent; otherwise, such electronic communication shall be deemed to be received on the first Business Day following the transmittal thereof. Any demand, notice or communication mailed by registered mail shall be deemed to have been received on the third Business Day following the day on which it was mailed.

**16.2 Representatives.** The individuals identified pursuant to Section 16.1 above will, in the first instance, act as the Government of Ontario's or the Recipient's, as the case may be, representative for the purpose of implementing this Agreement.

**SECTION 17  
MISCELLANEOUS**

- 17.1 Terms binding.** The Recipient shall take all reasonable measures to ensure that its officers, directors, partners, employees, agents and the Consultant shall be bound to observe all of the terms and conditions of this Agreement, including, but not limited to all covenants, representations and warranties set out herein. The Recipient shall include in all of its Contract(s) terms and conditions similar to and not less favourable to the Government of Ontario than the terms and conditions of this Agreement to the extent that they are applicable to the work subcontracted, including but not limited to the requirements of Section 7.4 of this Agreement.
- 17.2 Time is of the essence.** In the performance and observance of the terms and conditions of this Agreement, time is of the essence and no extension or variation of this Agreement shall operate as a waiver of this provision. The Government of Ontario shall not be liable for any liquidated damages as a result of working days extensions.
- 17.3 Successors and assigns.** This Agreement shall ensure to the benefit of and be binding upon the parties hereto and their respective heirs, executors, administrators, successors and permitted assigns.
- 17.4 Severability.** The validity or enforceability of any provision of this Agreement shall not affect the validity or enforceability of any other provisions hereof and such invalid or unenforceable provisions shall be deemed to be severable.
- 17.5 No waiver.** The failure by the Government of Ontario to insist in one or more instances on performance by the Recipient of any of the terms or conditions of this Agreement shall not be construed as a waiver of the Government of Ontario's right to require further performance of any such terms or conditions, and the obligations of the Recipient with respect to such performance shall continue in full force and effect.
- 17.6 Division of Agreement.** The division of this Agreement into schedules, articles, sections, clauses, paragraphs and the insertion of headings are for the convenience of reference only and shall not affect the construction or interpretation of this Agreement.
- 17.7 Governing law.** This Agreement shall be governed by and construed in accordance with the laws of the Province of Ontario and the laws of Canada applicable in Ontario.
- 17.8 Survival.** The following schedules, sections and provisions of this Agreement shall survive the expiration or early termination hereof: Section 4 (Financial Assistance), Section 6 (Reporting Requirements), Section 7 (Records and Audit), Section 8 (Overpayment), Section 10 (Indemnity), Section 11 (Transfer and Operation of Infrastructure), Section 12 (Conflict of Interest and Confidentiality), Section 13 (Communications and Recognition), Section 14 (Covenants, Representations and Warranties), Section 15 (Default, Enforcement and Termination), Section 5.8 (Long-term capital management plan) and Section 17.11 (Interest) of Schedule "A"; Schedule "E"; Schedule "F" (useful life of Project Infrastructure); and Schedule "G" (the Recipient's obligation to maintain a permanent plaque in cases where it is necessary to install a permanent plaque).
- 17.9 No assignment.** This Agreement shall not be assigned by the Recipient. The Government of Ontario may assign this Agreement on written notice to the Recipient.

- 17.10 No Amendment.** This Agreement shall not be varied or amended except by a document in writing, dated and signed on behalf of the Province and the Recipient.
- 17.11 Interest.** OMAFRA reserves the right to demand interest on any repayment of Financial Assistance owing by the Recipient under the terms of this Agreement at the then-current interest rate charged by the Government of Ontario on accounts receivable. The Recipient shall pay the amount of interest owing upon receipt of a written demand and within the period specified by OMAFRA.
- 17.12 Ministry and Recipient independent.** Nothing in this Agreement shall be deemed to constitute the Recipient an employee, servant, agent, partner or in joint venture with the Government of Ontario for any purpose whatsoever.
- 17.13 Recipient cannot represent the Senior Government.** The provision of Financial Assistance to the Recipient pursuant to this Agreement is for the sole purpose of, and is limited to, carrying out the Project. The Recipient warrants and agrees that under no circumstances shall it enter into any contract or commitment in the name of or on behalf of the Government of Ontario and/or the Federal Government. The Recipient acknowledges and agrees that it is not by the terms of this Agreement or otherwise, granted any right or authority to assume or create any obligation or responsibility, express or implied, on behalf of or in the name of the Government of Ontario and/or the Federal Government, to act as an agent of the Government of Ontario and/or the Federal Government, or to bind the Government of Ontario and/or the Federal Government in any manner whatsoever other than as specifically provided in this Agreement.
- 17.14 Consultants.** The Government of Ontario acknowledges that, in connection with carrying out the Project, the Recipient may engage one or more Consultants. The Government of Ontario acknowledges and agrees that the Recipient shall have the sole authority and responsibility for such employees, agents or Consultants, including their 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.
- 17.15 Lobbyists and Agent Fees.** The Recipient warrants that any person hired, for payment, or to speak or correspond with any employee or other person representing the Recipient, concerning any matter relating to the contribution under this Agreement or any benefit hereunder and who is required pursuant to the *Lobbying Act*, as amended, is registered pursuant to that Act. The Recipient also warrants that it has not and nor will it make a payment or other compensation to any legal entity that is contingent upon or is calculated upon the contribution hereunder or negotiating the whole or any part of the terms of this Agreement.
- 17.16 Cooperation.** The Government of Ontario and the Recipient agree to cooperate with one another and will be frank, candid and timely when dealing with one another and will endeavour to facilitate the implementation of this Agreement.
- 17.17 Data.** The Recipient agrees that the Government of Ontario may, in its sole discretion, gather and compile information and data required under this Agreement and disclose such information and data to the Federal Government.

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

**- END OF GENERAL TERMS AND CONDITIONS -**

**SCHEDULE "B"**  
**DESCRIPTION OF THE PROJECT**

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**BCF-CC FILE #24723**

**THE CORPORATION OF THE CITY OF PETERBOROUGH**

**WORK DESCRIPTION:**

The City of Peterborough proposes to rehabilitate Hunter Street Bridge, crossing the Otonabee River. The works include incorporating a new road design to integrate multi-modal transportation, and undertakes the preservation of a historic landmark.

**SCHEDULE "C"**  
**ELIGIBLE AND INELIGIBLE COSTS**

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**ELIGIBLE COSTS**

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

- (iv) training directly related to an eligible subcategory; and
- (v) provincial long-term infrastructure plans.

Collaborative Project costs may include incremental training, travel, salaries and other employee benefits of employees of the recipient directly engaged in these activities, as well as the costs of adapting methodologies and technologies, software acquisition and implementation, or other costs that are direct and necessary for the successful implementation of a Project and that have been approved in advance, and in writing, by the Oversight Committee.

## **C.2. INELIGIBLE COSTS**

The following costs are ineligible for Financial Assistance:

- a) costs incurred before February 13, 2009;
- b) costs incurred after the Project completion date;
- c) the cost of developing a business case or proposal for funding;
- d) the cost of purchasing land and associated real estate and other fees;
- e) financing charges and interest payments on loans;
- f) leasing land, buildings, equipment and other facilities;
- g) general repairs and maintenance of a Project work and related structures, unless they are part of a larger capital expansion Project;
- h) services or works normally provided by the Recipient, incurred in the course of implementation of the Project, except those specified as eligible costs;
- i) the cost of any goods and services received through donations or in kind;
- j) employee wages and benefits, overhead costs or other direct or indirect operating, maintenance and administrative costs incurred by the Recipient, and more specifically costs relating to services delivered directly by permanent employees of the Recipient, or of a Crown corporation or corporation owned and controlled by the Recipient except as per Section B.1 j) and k) above or in cases where the Recipient can demonstrate value for money and that the costs are incremental;
- k) provincial sales tax and Goods and Services Tax, for which the recipient is eligible for a rebate, and any other costs eligible for rebates;
- l) costs associated with that portion of the works identified in Schedule "B" as being specifically excluded from the Project; and
- m) legal fees.

**SCHEDULE "D"**  
**FINANCIAL ASSISTANCE**

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<b>Total Eligible Costs:</b>	\$13,343,000
Federal Maximum Financial Assistance:	\$4,447,666
Ontario Maximum Financial Assistance:	\$4,447,666
<b>Maximum Financial Assistance:</b>	<b>\$8,895,332</b>

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

**MINISTRY COLLABORATES WITH CLIENT ON AN APPROPRIATE PROJECT SCHEDULE**

**SCHEDULE "E"**  
**FEDERAL REQUIREMENTS**

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OMAFRA and the Recipient agree to the following Federal Requirements:

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

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

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

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

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

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

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

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

(a) If to OMAFRA:

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

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

Attention: Dino Radocchia, Manager

(b) If to the Recipient:

City of Peterborough  
500 George Street N.  
Peterborough, Ontario  
K9H 3R9

Phone: (705) 742-7771  
Fax: (705) 743-4138  
E-Mail: cityptbo@city.peterborough.on.ca

Attention: Linda Reed, Chief Administrative Officer

2. Other provisions:
3. Other Reporting Requirements:
4. Useful Life of Project Infrastructure: [i.e., no. of years]

## SCHEDULE "G" COMMUNICATIONS REQUIREMENTS

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

### Purpose of Schedule

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

### General Principles

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

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

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

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

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

### Events

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

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

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

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

Federal, provincial and municipal flags should also be on display at all BCF-CC events.

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

### **Signs and Plaques**

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

Generally, the Recipient must ensure that

- signage wording is in both official languages; the Government of Canada can provide French translation services;
- official designs and logos of the Governments of Canada and Ontario and the Recipient are used, are of the same size and occupy the same amount of space; and,
- any other message, as well as specifications on signage and timeframe for installation, are approved by the BCF-CC Joint Secretariat.

The Recipient must ensure that proofs of all Project signs and plaques are approved by the BCF-CC Joint Secretariat before installation.

A BCF-CC Style Guide and digital templates will be made available on the BCF-CC website at [www.BCFontario.ca](http://www.BCFontario.ca). For more information, please contact the BCF-CC Joint Secretariat at 1-888-466-2372.

### **Eligible Costs**

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

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

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

- chairs
- podium
- PA system

The cost of certain items such as alcoholic beverages, china, tents, waiters, guest mileage or transportation, wine glasses, lamps, tea wagons, plants, photographers and gifts are not Eligible Costs.

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

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

**SCHEDULE "H"  
EXPENDITURE REPORT**



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

**RECIPIENT EXPENDITURE REPORT**

Recipient Name: \_\_\_\_\_  
 File Number: \_\_\_\_\_  
 Contract Status: \_\_\_\_\_

Quarter	(April - June) Q1	(July - Sept.) Q2	(Oct. - Dec.) Q3	(Jan .- March) Q4
2009/10				
2010/11				
2011/12				
2012/13				
2013/14				
2014/15				
2015/16				

Prepared By: \_\_\_\_\_  
 Phone Number: \_\_\_\_\_  
 Report Date: \_\_\_\_\_

**NOTES:**

- 1) Please only include **Net Eligible Expenditures** -- total eligible costs net GST
- 2) If the project could not be completed within the timeframes of the program, please enter cost forecasts in the last quarter of the program
- 3) Previously reported information is provided for you. Should the information have changed, please provide the revised expenditures along with an explanation of the change

**SCHEDULE "I"  
PROGRESS REPORT**



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

**Progress Report  
Rapport sur l'état d'avancement des travaux**

**Report # / Rapport n° \_\_\_\_\_ of / de \_\_\_\_\_ File # / Dossier n° \_\_\_\_\_**

**Project Start Date / Date de début du projet : \_\_\_\_\_**

**Project End Date / Date de fin du projet : \_\_\_\_\_**

**Recipient Name / Nom de la bénéficiaire : \_\_\_\_\_**

**Estimated % of Project Completion / Estimation du pourcentage des travaux réalisés : \_\_\_\_\_%**

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

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**Communications Requirements / Besoins en matière de communication :**

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**Issues / Points à souligner :**

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**Signature / Signature: \_\_\_\_\_ Date / Date: \_\_\_\_\_**

**SCHEDULE "J"  
CLAIM REPORT**



**Building Canada Fund - Communities Component (BCF-CC) Claim Statement  
Demande de remboursement - Fonds chantiers Canada-Ontario Le volet Collectivités (FCC-VG)**

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

Project Claim # / No de la demande de remboursement pour le projet		Project Representative / Représentant(e) du projet		Authorized Official / Responsable autorisé(e)	
From / De		Telephone # / No de téléphone		Title / Titre	
To / À		FAX # / No de télécopieur		Date / Date	
Project # / No de projet		Project Name / Nom du projet		Signature / Signature	

I certify the costs are eligible costs and in compliance with the provincial legal agreement. / J'atteste que les dépenses déclarées sont des dépenses admissibles et conformes à l'entente de financement.

**Part 2 - New Invoices / Partie 2 - Nouvelles factures**

Invoice # / No de facture	Date / Date	Period of Invoices / Période visée par la facture		Vendor Name / Nom du fournisseur	Work Description / Description des travaux A. Engineering/Design; B. Environmental Assessment; C. Project Management; D. Construction/Materials; E. Miscellaneous.	Invoice Amount / Montant de la facture	GST Rebate / Remboursement de la TPS	Net Claim Amount / Montant net demandé	Paid / Payé (Yes/No) / (Oui/Non)	Cheque # / No de chèque
		From / De	To / À							
<b>TOTAL / TOTAL \$</b>										

**Part 3 - Confirmation of Payment of Invoice on Prior Claims**

Previous Claim # / No de demande antérieure	Invoice # / No de facture	Date Paid / Date de paiement	Cheque # / No de chèque

**Part 4 - Summary of Costs Incurred to Date**

Partie 4 - Sommaire des dépenses engagées à ce jour

Total of All Invoices Claimed for this project / Total de toutes les factures déclarées pour ce projet	\$
Total of all Invoices Claimed and Paid by the Recipient / Total de toutes les factures déclarées et payées par le bénéficiaire	\$
Total of all Invoices Claimed but not Paid by the Recipient / Total de toutes les factures déclarées mais non payées par le bénéficiaire	\$

**Part 5 - Provincial Use Only**

Partie 5 - Réserve l'administration provinciale

Total Project Cost / Coût total du projet	\$
Total Eligible Cost / Coût admissible total du projet	\$
Federal Funding / Financement fédéral	\$
Provincial Funding / Financement provincial	\$
Recipient Funding / Part Bénéficiaire	\$

**SCHEDULE "K"  
FINAL REPORT**



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

**FINAL REPORT/RAPPORT FINALE**

<b>Part 1 - Project Information / Partie 1 - Information sur le projet</b>	
Recipient/Bénéficiaire	
File Number/Numéro de dossier	
Project Name/Nom du projet	
Eligible Project Cost/Cost admissible du projet	
Total Project Cost/Cost total du projet	\$

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

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

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

\*NOTE: If the actual costs are 20% less or greater than the estimated costs for any of the above categories, please attach an explanation of the variance for each.  
\*REMARQUE: Si le coût actual est de 20 % supérieur ou inférieur au coût estimé pour une des catégories ci-dessus, veuillez inclure une explication de l'écart pour chacun des coûts.