

# **THE CORPORATION OF THE MUNICIPALITY OF TEMAGAMI**

**BY-LAW NO. 09-874**

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**Being a by-law to authorize the Mayor and CAO to sign a contribution agreement with the Minister of Energy and Infrastructure and with OMAFRA for Funding under the Building Canada Fund for the Temagami North Storm Water Management System.**

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**AND WHEREAS** under Section 8. (1) (a) and (b) of the Municipal Act, 2001, S.O., 2001, c.25, as amended, the powers of a municipality under this or any other Act shall be interpreted broadly so as to confer broad authority on the municipality to enable the municipality to govern its affairs as it considers appropriate and to enhance the municipality's ability to respond to municipal issues.


**WHEREAS** under Section 9 of the Municipal Act, 2001, S.O., 2001, c.25, as amended, a municipality has the capacity, rights, powers and privileges of a natural person for the purpose of exercising its authority under this or any other act;

**NOW THEREFORE the Council of the Corporation of the Municipality of Temagami hereby enacts as follows:**

1. That the Mayor and CAO are hereby authorized and directed to execute the agreement attached hereto as Schedule "A" to this bylaw.
2. This bylaw shall come into force and take effect upon final passing thereof.

BE TAKEN AS READ A FIRST time on this 16<sup>th</sup> day of September 2009.

READ A SECOND AND THIRD time and finally passed this 16<sup>th</sup> day of September 2009.

  
\_\_\_\_\_  
MAYOR

  
\_\_\_\_\_  
CAO/Clerk

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

**CONTRIBUTION AGREEMENT FOR INFRASTRUCTURE PROJECTS - INTAKE 2**

Ministry of Energy and Infrastructure and Ministry of Agriculture, Food and Rural Affairs  
File Number: 27615

**THIS AGREEMENT** made in quadruplicate as of the 9-7 day of Oct, 2009.

**BETWEEN:** **HER MAJESTY THE QUEEN IN RIGHT OF ONTARIO,**  
as represented by the Minister of Energy and Infrastructure

and the

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

**AND:** **THE CORPORATION OF THE MUNICIPALITY OF TEMAGAMI**

(referred to herein as the "Recipient")

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

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

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

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

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

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

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

26<sup>th</sup> day of August, 2008, setting out the rights, obligations and requirements with respect to investments under the BCF-CC;

**AND WHEREAS** the terms and conditions of the BCF-CCA have been amended since August 26, 2008;

**AND WHEREAS** the Government of Canada and the Government of Ontario entered into the Building Canada Fund Communities Component Amended Agreement 2007-2017 (BCF-CCA) dated the 14<sup>th</sup> day of August, 2009, setting out the rights, obligations and requirements with respect to investments under the BCF-CC;

**AND WHEREAS** in Budget 2009, the Government of Canada announced an increase of \$500 million in funding to the BCF-CC, to be allocated to the provinces, together with specific terms and conditions with respect to this increased funding;

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

This Agreement, including:

- Schedule "A" - General Terms and Conditions
- Schedule "B" - Description of the Project
- Schedule "C" - Eligible and Ineligible Costs
- Schedule "D" - Financial Assistance
- Schedule "E" - Government of Canada Requirements
- Schedule "F" - Additional Provisions
- Schedule "G" - Communications Requirements
- Schedule "H" - Expenditure and Job Creation Report
- Schedule "I" - Claim and Progress Statement
- Schedule "J" - Final Report
- Schedule "K" - Solemn Declaration of Substantial Completion
- Schedule "V" - Aboriginal Consultation Protocol

constitutes the entire agreement between the parties with respect to the subject matter contained in this Agreement and supersedes all prior oral or written representations and agreements.

**IN WITNESS WHEREOF**, the Government of Ontario and the Recipient have respectively executed and delivered this Agreement on the date set out above.

**HER MAJESTY THE QUEEN IN RIGHT OF ONTARIO**

as represented by the Minister of Energy and Infrastructure  
by:

\_\_\_\_\_  
Name: The Honourable George Smitherman  
Title: Deputy Premier and Minister of Energy and Infrastructure


\_\_\_\_\_  
Date

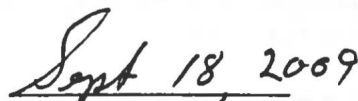
and by the Minister of Agriculture, Food and Rural Affairs  
by:

\_\_\_\_\_  
Name: The Honourable Leona Dombrowsky  
Title: Minister of Agriculture, Food and Rural Affairs

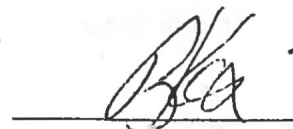
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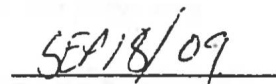
**RECIPIENT'S NAME: THE CORPORATION OF THE MUNICIPALITY OF TEMAGAMI**  
by:

  
\_\_\_\_\_  
Name: Ike Laba  
Title: Mayor

  
\_\_\_\_\_  
Date

Corporate  
Seal

  
\_\_\_\_\_  
Name: Brian Koski  
Title: Chief Administrative Officer/Clerk

  
\_\_\_\_\_  
Date

I/we have authority to bind the Recipient

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

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

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

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

**"Adjust the Financial Assistance"** means adjust or terminate the Financial Assistance on the Project or the amount of financial assistance for any other of the Recipient's project(s) under the 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 the Building Canada Fund -Communities Component Contribution Agreement for Infrastructure Projects-Intake 2, 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.

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

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

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

**"Claims Submission"** has the meaning given to it in Section 6.3 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*, R.S.O. 1990, c.

C.48, as amended.

**“Eligible Costs”** means the costs so described in Part C.1 in Schedule “C”.

**“End of Financial Assistance Date”** means March 31, 2011.

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

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

**“Event of Default”** has the meaning given to it in Section 15.1 of this Agreement.

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

**“Expiration Date”** means March 31, 2012.

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

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

**“Final Report”** has the meaning given to it in Section 6.4 of this Agreement.

**“Final Report Date”** means April 30, 2011.

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

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

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

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

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

**"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 Part C.2 of Schedule "C".

**"Joint Secretariat"** means the Joint Secretariat referred to in Section 4.5 of the BCF-CCA.

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

**"Local Government"** means a "municipality" as defined in the *Municipal Act, 2001* (Ontario) with a population of less than 100,000 people 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.

**"Maximum Financial Assistance"** has the meaning set out in Section 4.6 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 Section 4 of the BCF-CCA, responsible for administering and managing the BCF-CCA;

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

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

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

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

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

**"Solemn Declaration of Substantial Completion"** has meaning given to it in Schedule "K" of this Agreement.

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

**"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, the Government of Ontario shall not be obligated to provide Financial Assistance under this Agreement after the End of Financial Assistance Date. The Recipient will be responsible for any financial obligations after that date related to the Project or this Agreement.
- 2.3** *Project Completion Date.* The Recipient shall complete the Project by the Project Completion Date. The Government of Ontario shall not be obligated to provide Financial Assistance under this Agreement for any costs incurred after the Project Completion Date. The Recipient will be responsible for any risks and obligations to complete the Project if the Recipient fails to complete the Project by the Project Completion Date. The Recipient will also be responsible for completing the Project as soon as possible after the Project Completion Date.

## **SECTION 3 ELIGIBLE COSTS**

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



such supporting documentation must be available to OMAFRA when requested and shall be retained until 6 years after the Substantial Completion of the Project, any extension thereof or for such period as OMAFRA in its sole discretion may, in writing, direct.

- 3.4** *Ineligible Costs.* Notwithstanding anything else contained herein, the costs that are not eligible for Financial Assistance pursuant to this Agreement are set out in Part C.2 of Schedule "C" ("Ineligible Costs").
- 3.5** *Deemed Ineligible.* The Recipient acknowledges that the Government of Ontario's Fiscal Year ends on March 31 in each year, and that should a cost not be submitted by the Recipient for payment of Financial Assistance before March 31 of the year following the Fiscal Year in which it was incurred, such cost may be deemed, at OMAFRA's sole and absolute discretion, ineligible for Financial Assistance.

#### **SECTION 4 FINANCIAL ASSISTANCE**

- 4.1** *Use of Financial Assistance.* The Financial Assistance is intended for and shall be used only for Eligible Costs incurred by the Recipient.
- 4.2** *Basis of Payout of Financial Assistance.* The Financial Assistance will be provided by OMAFRA to the Recipient on the basis set out in Schedule "D".
- 4.3** *Reporting.* The Recipient is required to submit Project Status Reports and Expenditure and Job Creation Reports to OMAFRA pursuant to Section 6.1 and Section 6.2 prior to OMAFRA releasing any Financial Assistance.
- 4.4** *Financial Assistance 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. This includes, without limitation, any payment of Financial Assistance that is made to the Recipient without the requirement of the Recipient providing OMAFRA with a Claims and Progress Statement, a Final Report or such other documentation as OMAFRA in its sole and absolute discretion may require.
- 4.5** *Deposit of Financial Assistance In Canadian Financial Institution and Interest on Financial Assistance Advanced.* All Financial Assistance provided, including any advanced Financial Assistance as well as all interest earned thereon, shall be deemed to remain the property of the Government of Ontario and must be held by the Recipient for the Government of Ontario in an interest bearing account in the name of the Recipient at a Canadian financial institution, pending cash payment of Eligible Costs. The amount of interest earned (if any) shall be reported to OMAFRA. If the Recipient earns any interest on the advanced Financial Assistance:
- a) OMAFRA may deduct an amount equal to the interest from any other instalments of Financial Assistance; or
  - b) The Recipient shall pay an amount equal to the interest to OMAFRA if directed by OMAFRA.

- 4.6** *Maximum Financial Assistance.* The total amount of Financial Assistance provided to the Recipient shall in any event be no greater than the Maximum Financial Assistance figure set out in Schedule "D" hereto.
- 4.7** *Excess Financial Assistance.* The Recipient shall immediately notify OMAFRA should the Project require less than the Total Eligible Costs to be Substantially Completed, or where additional funding is secured from other government sources such that the total funds available to the Recipient for the Project (other than the Financial Assistance) exceed the Maximum Financial Assistance. OMAFRA may, in its sole and absolute discretion, Adjust the Financial Assistance on the Project.
- 4.8** *Interdependent Projects.* Where implementation of a Project is dependent on completion of a project by others and others do not complete the interdependent project in whole or in part, OMAFRA may, in its sole and absolute discretion, Adjust the Financial Assistance for the Project.
- 4.9** *Recipient Not Carrying Out Project.* The Recipient shall immediately notify OMAFRA if it does not intend to carry out any Project in whole or in part as specified in Schedule "B" hereto in which case OMAFRA may, in its sole and absolute discretion, Adjust the Financial Assistance for the Project.
- 4.10** *New Information.* In the event of new information, errors, omissions or other circumstances affecting the determination of the amount of Financial Assistance under this Agreement, OMAFRA may, in its sole and absolute discretion, Adjust the Financial Assistance for the Project.
- 4.11** *Alternatives to Project.* If the Recipient becomes aware of any means of completing either the Project's objective or the Project itself that are more cost effective, the Recipient shall immediately notify OMAFRA, in which case OMAFRA may, in its sole and absolute discretion, Adjust the Financial Assistance. Likewise, if OMAFRA becomes aware of any alternative means of completing either the Project's objective or the Project itself that are more cost effective, the Recipient will be notified and OMAFRA may, in its sole and absolute discretion, Adjust the Financial Assistance.
- 4.12** *Goods and Services Tax.* The Financial Assistance is based on the net amount of Goods and Services Tax to be paid by the Recipient pursuant to the *Excise Tax Act*, R.S.C. 1985, c. E-15, as amended, net of any applicable rebates. If and when the Harmonized Sales Tax is phased in within the Province of Ontario, the Financial Assistance will be based on the net amount of the Harmonized Sales Tax to be paid by the Recipient, net of any applicable rebates.
- 4.13** *Withholding Payment.* OMAFRA may, in its sole and absolute discretion, withhold payment of Financial Assistance where the Recipient is in default in obtaining any necessary permits, approvals or licenses applicable to the Project or is in default of compliance with any provisions of this Agreement or any applicable federal, provincial or municipal laws, and all rules, regulations, by-laws, notices, orders, approvals directives, protocols, policies and guidelines.
- 4.14** *Financial Assistance upon Expiry.* Without limiting any rights OMAFRA has under this Agreement, at law or in equity, OMAFRA shall have the right to be repaid, in whole or in part, for Financial Assistance advanced by OMAFRA and unspent by the Recipient

for a Project that has not been completed by the Project Completion Date.

- 4.15** *Limitation on Payment of Financial Assistance.* Notwithstanding Section 4.4 of this Agreement, OMAFRA may choose not to advance any Financial Assistance to the Recipient until the Recipient provides the insurance certificate or other documents provided for in Section 9 of this Agreement.
- 4.16** *Insufficient Funds Provided by the Legislature or Government of Canada.* If, in the opinion of the Government of Ontario, the Legislative Assembly of Ontario or the Government of Canada does not provide sufficient funds to continue the Financial Assistance for any Fiscal Year during which this Agreement is in effect, the Government of Ontario may terminate this Agreement in accordance with the terms specified in Section 15.5 of this Agreement.

## SECTION 5

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

- 5.1** *Recipient Fully Responsible.* The Recipient shall be fully responsible for the undertaking, implementation and completion of the Project and shall retain any and all Consultants reasonably required to undertake a project of the size, scope and complexity of the Project. Where implementation of the Project is dependent on completion of a project by others, the Recipient shall be fully responsible for obtaining any assurances that it may require from others in relation to the implementation of the Project by the Recipient.
- 5.2** *Government of Ontario not responsible for implementation.* The Government of 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 any tender and bidding process.
- 5.4** *Consultations with Aboriginal Group(s).* The Recipient agrees to be bound by the terms of the Aboriginal Consultation Protocol set out in Schedule "L".
- 5.5** *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.
- 5.6** *Competitive Process.* The Recipient shall acquire and manage its equipment, services and supplies, including any construction component, required for the Project through a transparent, competitive process that ensures the best value for the Financial Assistance expended. Where the Recipient is a municipal entity, the Recipient shall follow its procurement policies as required by the *Municipal Act, 2001*, 2001, S.O. c. 25, as amended or, for the City of Toronto, the *City of Toronto Act, 2006*, S.O. 2006, c. 11, Sched. A, as amended. Where the Recipient is a not-for-profit private sector entity, a for-profit private sector entity or a Local Services Board, the Recipient shall 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 for municipal Recipients, not-for-profit private sector Recipients, for-profit private sector Recipients or Local Services Board Recipients may be waived with prior written approval by OMAFRA if:

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

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

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

**5.9** *Commencement of Project.* The Recipient shall begin the Project within sixty (60) days of the Project construction start date, as per Schedule "B", failing which this Agreement may be terminated pursuant to Section 15, unless otherwise approved by the Oversight Committee.

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

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

- (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 the Government of Ontario may provide to the Recipient;
- f) require that the parties thereto comply with any and all applicable federal, provincial or municipal laws, and all rules, regulations, by-laws, notices, orders, approvals directives, protocols, policies and guidelines; and
- g) authorize the Governments of Canada and Ontario 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** *Project Status Report.* The Recipient shall submit monthly Project Status Reports in the format prescribed by OMAFRA including such information as estimated percentage of project completion, tender call dates, tender award dates, forecast and actual construction start and end dates, and all other information respecting the progress of the Project that may be requested by OMAFRA or of which the Recipient becomes aware that may affect the Project's timely completion.

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

- 6.2** *Expenditure and Job Creation Report.* The Recipient shall submit to OMAFRA a quarterly Expenditure and Job Creation Report, as set out in Schedule "H" hereto and which may be amended by OMAFRA from time to time on or before May 15, August 15, November 15 and February 15 for each Fiscal Year.

- 6.3** *Claims Submission.* Recipient Claim Submissions shall include, but are not limited to, the following report:

*Claim and Progress Statement.* The Recipient shall provide OMAFRA with a duly executed report in the form set out in Schedule "I" ("Claim and Progress Statement") that shall contain information to allow OMAFRA to assess the progress of the Project. OMAFRA may amend the Claims and Progress Statement from time to time, as well as the eligibility of that portion of the Project for which disbursement is being requested and the individual Project tasks and milestones.

- 6.4** *Final Report.* Within ninety (90) days of the Project becoming Substantially Completed 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" as set out by Schedule "J" and the "Solemn Declaration of Substantial Completion" as set out by Schedule "K") 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.

Upon acceptance of the Final Report and the processing of final claims, 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 submission of the final claims referred to in Section 5.9 of this Agreement or a longer period of time, as specified by OMAFRA in writing.
- 7.2** *Provide Records to OMAFRA.* The Recipient shall provide to OMAFRA, upon request and at the Recipient's expense (including but not limited to photocopying, electronic media, transportation and postage, associated staff time, information retrieval and other office expenses), all records and documentation (including invoice summaries and certified statement of final costs) of the Recipient and its auditors, Consultants relating to the Project or any other project(s) of the Recipient under the -BCF-CC, or any other Government of Ontario program(s), for the purposes of cost reviews, audits (including **any** value for money audits that OMAFRA may decide to undertake in its sole and absolute discretion) and settlement, as may be required by OMAFRA, of the Project or any other project(s) of the Recipient under the BCF-CC, or any other Government of Ontario program(s). Such material shall be provided in a form and manner satisfactory to OMAFRA.
- 7.3** *External Auditor.* OMAFRA may require the assistance of an external auditor to carry out a review of the material referred to in Sections 7.1 and 7.2 of this Agreement. If so, the Recipient shall, upon request, retain an external auditor acceptable to OMAFRA at the Recipient's sole expense. The Recipient shall ensure that any auditor who conducts a financial or program review pursuant to this section of the Agreement or otherwise, provides a copy of the report to OMAFRA for its consideration at the same time that the report is given to the Recipient.
- 7.4** *Auditor General of Canada.* The Auditor General of Canada, may, at the Auditor General of Canada's cost, conduct an audit with respect to the use of Financial Assistance under this Agreement. For the purposes of facilitating such inquiry, the Recipient shall release to OMAFRA upon request and in a timely manner, for the purpose of releasing to the Auditor General of Canada: all records held by the Recipient, or by agents or contractors of the Recipient, relating to this Agreement and/or the Financial Assistance; and such further information and explanations as the Auditor General, or anyone acting on behalf of the Auditor General may request relating to any part of this Agreement of the use of Financial Assistance.
- 7.5** *Auditor General of Ontario.* The Auditor General of Ontario, may, at the Auditor General of Ontario's cost, conduct an audit with respect to the use of Financial Assistance under this Agreement. For the purposes of facilitating such inquiry, the Recipient shall release to OMAFRA upon request and in a timely manner, for the purpose of releasing to the Auditor General of Ontario: all records held by the Recipient, or by agents or contractors of the Recipient, relating to this Agreement and/or the Financial Assistance; and such further information and explanations as the Auditor General, or anyone acting on behalf of the Auditor General may request relating to the Financial Assistance.

- 7.6** *Information.* The Recipient shall supply to OMAFRA, upon request, such information in respect of the Project and its results including without limitation all contracts and agreements related to the Project and all plans and specifications related to the Project, as OMAFRA may require. The Government of Ontario and the Government of Canada, their respective agents and employees, including the Auditor General's Office, shall be allowed access to the Recipient's premises and staff and to the Project site at all reasonable times to (i) inspect the progress and monitor the Project; (ii) perform cost reviews and audits on the Project; and (iii) complete any other auditing or monitoring that may be reasonably required in relation to the Project.
- 7.7** *Information Condition Precedent for Payment.* If, in the opinion of OMAFRA, any of the information requirements of this Article are not met, OMAFRA may, in its sole and absolute discretion, require the information as a condition precedent to any payment in relation to the Project 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 and absolute discretion, Adjust the Financial Assistance for the Project.

## **SECTION 8**

### **OVERPAYMENT AND FAILURE TO SUBSTANTIALLY PERFORM CONTRACT WITHIN TIMELINES**

- 8.1** *Allowable Financial Assistance.* Financial Assistance advanced to the Recipient prior to the submission of a Final Report 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"). For certainty, the Allowable Financial Assistance shall not exceed the Maximum 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 Financial Assistance advanced that exceeds the Allowable Financial Assistance applicable to the Project, as determined by OMAFRA, as well as any Financial Assistance 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 overpayments of Financial Assistance for the Project from financial assistance payable on any other Project(s) of the Recipient under the BCF-CC or any other Government of Ontario program(s) and/or Government of Canada program(s) that are delivered by the Government Ontario on behalf of the Government of Canada (either current or future). Any overpayment made on any other Project(s) of the Recipient under the BCF-CC or any other Government of Ontario 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.
- 8.4** *Recovery of Financial Assistance.* Where Eligible Costs committed to a Project have not been incurred, OMAFRA may withdraw any unspent Financial Assistance for the Project if it has not started construction on its scheduled start date or if a Project has

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

## **SECTION 9 INSURANCE AND BONDING**

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

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

**9.2** *Proof of Insurance.* The Recipient shall provide OMAFRA with certificates of insurance, or other proof as may be requested by OMAFRA, that confirms the insurance coverage as provided for in Section 9.1. Upon the request of OMAFRA, the Recipient shall make available to OMAFRA a copy of each insurance policy.

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

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

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

## **SECTION 10 INDEMNITY**



**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 BCF-CCA 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 BCF-CCA 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*, R.S.O. 1990, c. C.30, as amended and for any and all liability for damages to property and injury to persons (including death) which the Indemnified Parties may incur, otherwise than by reason of their own negligence or wilful misconduct, as a result of or arising out of or in relation to: (a) the performance of this Agreement or any breach of the terms of this Agreement by the Recipient, its officers, servants, employees 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 Governments of Canada and Ontario, the Recipient will retain title to, and ownership of, the Asset 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, other than to Canada, Ontario, a Local Government, or a Crown corporation of Ontario that is the Ontario's agent for the purpose of implementing this Agreement, the Recipient hereby undertakes to repay the Governments of Canada and Ontario, 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 in Section 11.2 of this Agreement, at least one hundred eighty (180) Business Days in advance.
- 11.4** *Deduction from Financial Assistance.* OMAFRA may, in its sole and absolute discretion deduct the amount of Financial Assistance to be repaid under Section 11.2 of the Agreement from Financial Assistance payable on any other Project(s) of the Recipient under the BCF-CC or any other Government of Ontario program(s) (either current or future) the Recipient receives funding from and provide that money to the Government of Canada and/or Ontario.
- 11.5** *Revenue from Assets.* The Recipient must identify to OMAFRA when an Asset generates revenues in any given Fiscal Year that exceed its costs, including operating costs, alternative financing partnerships or public private partnerships costs and provisions for future life cycle costs and where the intent of revenue generation was not identified in the Recipient's application for BCF-CC. The Recipient must pay OMAFRA, upon request, that proportion of excess, that is the same percentage proportion as Canada's and Ontario's Financial Assistance contribution was to the total cost of the Asset. This obligation will apply only to the first ten (10) complete Fiscal Years following the completion date of the Project.
- 11.6** *Asset Operation.* The Asset established with the Financial Assistance from OMAFRA shall be used, maintained and operated for a period of at least one half of the expected useful life of the asset after the Substantial Completion of the Project as set out in Schedule "F". Any contravention of this provision shall give OMAFRA the right to recover a portion or all of the Financial Assistance provided to those Project(s) under this Agreement.

## SECTION 12 CONFLICT OF INTEREST AND CONFIDENTIALITY

- 12.1** *No conflict of interest.* The Recipient and its Consultants and any of their respective advisors, partners, directors, officers, employees, agents, sub-contractors, Consultants and volunteers shall not engage in any activity or provide any services where such activity or the provision of such services creates a conflict of interest (actually or potentially in the sole and absolute opinion of OMAFRA) with the provision of services under this Agreement. The Recipient acknowledges and agrees that it shall be a conflict of interest for it to use confidential information of the Government of Ontario that is relevant to the Project or otherwise where OMAFRA has not expressly authorized such use in writing. For greater certainty, and without limiting the generality of the foregoing, a conflict of interest includes a situation where anyone associated with the Recipient is

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 OMAFR A without delay any actual or potential situation that may be reasonably interpreted as either a conflict of interest or a potential conflict of interest.
- 12.3** *Freedom of Information and Protection of Privacy Act.* The Recipient acknowledges that the *Freedom of Information and Protection of Privacy Act*, R.S.O. 1990, c. F.31, as amended binds the Ontario Government.

### **SECTION 13 RECOGNITION**

- 13.1** *Licensed Marks.* The Recipient acknowledges that the Governments of Canada and Ontario are, will be or may be the owner of certain distinguishing marks comprised of designs, trademarks and official marks which have come or will come to be associated with 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 Governments of Canada and Ontario to the Project in all advertising and publicity relating to the Project and in any construction signs and in any temporary or permanent tributes to Project donors by adhering to the Communications Requirements, as per Schedule G.
- 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 Oversight 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 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 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 Joint Secretariat and upon the direction of the Joint Secretariat express disclaimers to that effect; and
  - d) the Recipient agrees to promptly inform the 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 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.

#### **SECTION 14**

#### **COVENANTS, REPRESENTATIONS AND WARRANTIES**

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

- a) it is conducting and shall carry on its business in compliance with all applicable federal, provincial and municipal laws, and all rules, regulations, by-laws, notices, orders and approvals, directives, protocols, policies and guidelines;
- b) it is conducting and shall conduct its business in compliance with all federal requirements as outlined in Schedule "E";
- c) it has authority and any necessary approval to enter into this Agreement and to carry out its terms;
- d) it has or will apply for all permits, approvals, and licenses which are required in order to carry out the Project;
- e) it validly exists as a legal entity with full power to perform and observe all of the terms and conditions of this Agreement;
- f) where applicable, it has passed by-laws required to undertake the Project;
- g) it is now and will continue to be compliant with all Environmental Laws;
- h) it owns or has a long-term lease (inclusive of any renewals) for the lands on which the Infrastructure is or will be located that expires no earlier than ten (10) years following Project completion;
- i) provided that the Recipient is not a municipality or a Crown Agency,
  - A. it is not a non-resident of Canada within the meaning of the *Income Tax Act* (Canada);
  - B. is either a corporation, a partnership or a sole proprietorship validly in existence; and
  - C. is registered and qualified to do business wherever necessary to carry out the Project;
- j) it has the experience, financial health and ability to carry out this Project;
- k) if the Recipient is a Local Government or a Crown Agency, it has the requisite legislative authority to carry out the Project;
- l) all information provided by the Recipient during the BCF-CC application process remains true, correct and complete in every respect except as set out to the

contrary herein; and

- m) notify OMAFRA of all other sources of funding for each Project contained in Schedule "B" of this Agreement that may reduce the level of Financial Assistance the Recipient would be eligible to receive under this Agreement.

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

- a) establish the expected code of conduct and ethical responsibilities at all levels of the Recipient's organization;
- b) establish procedures to ensure the ongoing effective functioning of the Recipient;
- c) establish decision-making mechanisms;
- d) provide for the prudent and effective management of the Financial Assistance;
- e) establish procedures to enable the successful completion of the Project;
- f) establish procedures to enable the timely identification of risks to the completion of the Project and strategies to address the identified risks;
- g) establish procedures to enable the preparation and delivery of all reports required under this Agreement; and
- h) responsible for other matters as the Recipient considers necessary to ensure that the Recipient carries out its obligations under the Agreement.

**14.3 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 OMAFRA, 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 OMAFRA any representation or warranty made by the Recipient in this Agreement or any certificate delivered to OMAFRA 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 OMAFRA;
- e) if the Recipient admits in writing its inability to pay its debts generally as they become due, voluntarily suspends transactions of its usual business, becomes insolvent, bankrupt, makes an assignment for the benefit of its creditors, or a receiver or manager, court appointed or otherwise, is appointed for its assets or if the Recipient takes the benefit of any statute from time to time in force relating to bankrupts or insolvent debtors;
- f) if in the opinion of OMAFRA a material adverse change occurs such that the viability of the Recipient as a going concern is threatened in the opinion of OMAFRA, acting reasonably;
- g) if in the opinion of OMAFRA the Recipient ceases to operate;
- h) if the Recipient fails to begin the Project within sixty (60) days after the date of Project construction start date, as per Schedule "B", or, in the opinion of OMAFRA, the Recipient has failed to proceed diligently with the Project or abandons the Project in whole or in part, or the Recipient is otherwise in default in carrying out any of the terms, conditions or obligations of this Agreement, except where such failure is due to causes which, in the opinion of OMAFRA are beyond the control of the Recipient;
- i) if the Recipient has submitted false or misleading information to OMAFRA; or
- j) the Recipient and/or any of its Consultants and/or any of their respective advisors, subcontractors, partners, directors, officers, employees, agents and volunteers has breached the requirements of Section 12.

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

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

- a) OMAFRA shall have no further obligation to provide any Financial Assistance for

the Project;

- b) the Government of Ontario may, at its option, terminate this Agreement immediately and OMAFRA may, in its sole and absolute 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 thirty (30) Business Days written notice to the Recipient. If the Government of Ontario terminates this Agreement prior to its Expiration Date, the Government of Ontario, subject to all of the Government of Ontario's rights under this Agreement, including, 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 Claims and Progress Statement and OMAFRA has sufficient funds appropriated by the Legislative Assembly of Ontario.. Such report must be received by OMAFRA within ninety (90) Business Days 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 three (3) Business Days following the day on which it was mailed.

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

## SECTION 17 MISCELLANEOUS

- 17.1 Terms Binding.** The Recipient shall take all reasonable measures to ensure that its officers, directors, partners, employees, agents, sub-contractors and Consultants shall **be** bound to observe all of the terms and conditions of this Agreement, including, but not limited to all covenants, representations and warranties set out herein. The Recipient shall include in all of its Contract(s) terms and conditions similar to and not less favourable to the Government of Ontario than the terms and conditions of this Agreement to the extent that they are applicable to the work subcontracted, including but not limited to the requirements of Section 7.4 of this Agreement.
- 17.2 Time Is of the Essence.** In the performance and observance of the terms and conditions of this Agreement, time is of the essence and no extension or variation of this Agreement shall operate as a waiver of this provision.
- 17.3 Successors and Assigns.** This Agreement shall ensure to the benefit of and be binding upon the parties hereto and their respective heirs, executors, administrators, successors and permitted assigns.
- 17.4 Severability.** The validity or enforceability of any provision of this Agreement shall not affect the validity or enforceability of any other provisions hereof and such invalid or unenforceable provisions shall be deemed to be severable.
- 17.5 No Waiver.** The failure by the Government of Ontario to insist in one or more instances on performance by the Recipient of any of the terms or conditions of this Agreement shall not be construed as a waiver of the Government of Ontario's right to require further performance of any such terms or conditions, and the obligations of the Recipient with respect to such performance shall continue in full force and effect.
- 17.6 Division of Agreement.** The division of this Agreement into schedules, articles, sections, clauses, paragraphs and the insertion of headings are for the convenience of reference only and shall not affect the construction or interpretation of this Agreement.
- 17.7 Governing Law.** This Agreement shall be governed by and construed in accordance with the laws applicable in Ontario.
- 17.8 Survival.** The following schedules, sections and provisions of this Agreement shall survive the expiration or early termination hereof: Section 4 (Financial Assistance), Section 6 (Reporting Requirements), Section 7 (Records and Audit), Section 8 (Overpayment and Failure to Substantially Perform Contract Within Timelines), Section 10 (Indemnity), Section 11 (Transfer and Operation of Infrastructure), Section 12 (Conflict of Interest and Confidentiality), Section 13 (Recognition), Section 14 (Covenants, Representations and Warranties), Section 15 (Default, Enforcement and



Termination), and Section 17.11 (Interest) of Schedule "A"; Schedule "E"; Schedule "F" (Useful Life of Project Infrastructure); and Schedule "G" (the Recipient's obligation to maintain a permanent plaque in cases where it is necessary to install a permanent plaque).

- 17.9 No Assignment.** The Recipient shall not assign any aspect of this Agreement. The Government of Ontario may assign this Agreement on written notice to the Recipient.
- 17.10 No Amendment.** This Agreement shall not be varied or amended except by a document in writing, dated and signed on behalf of the Oversight Committee, OMAFRA, and the Recipient.
- 17.11 Interest.** OMAFRA reserves the right to demand interest on any repayment of Financial Assistance owing by the Recipient under the terms of this Agreement at the then-current interest rate charged by the Government of Ontario on accounts receivable. The Recipient shall pay the amount of interest owing upon receipt of a written demand and within the period specified by OMAFRA.
- 17.12 Government of Ontario and Recipient Independent.** Nothing in this Agreement shall be deemed to constitute the Recipient an employee, servant, agent, partner or in joint venture with the Government of Ontario for any purpose whatsoever.
- 17.13 Recipient Cannot Represent the Governments of Canada or Ontario.** The provision of Financial Assistance to the Recipient pursuant to this Agreement is for the sole purpose of, and is limited to, carrying out the Project. The Recipient warrants and agrees that under no circumstances shall it enter into any contract or commitment in the name of or on behalf of the Governments of Canada and/or Ontario. The 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 Governments of Canada and/or Ontario, to act as an agent of the Governments of Canada and/or Ontario, or to bind the Governments of Canada and/or Ontario 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.
- 17.19 Entire Agreement.** The Agreement constitutes the entire Agreement between the Government of Ontario and the Recipient with respect to the subject matter contained in the Agreement and supersedes all prior oral or written representations and/or agreements.

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

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

---

**BCF-CC FILE #27615      THE CORPORATION OF THE MUNICIPALITY OF TEMAGAMI**

**PROJECT CONSTRUCTION START DATE:** August 22, 2009

**WORK DESCRIPTION:**

The Municipality of Temagami proposes the renewal of the Storm Water Management System and Lagoon in Temagami. The project includes installing a french drain to alleviate infiltration by lowering the water table.

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

---

**ELIGIBLE COSTS**

**C.1.** Subject to Section C.2, Eligible Costs will be all direct costs which are in OMAFRA's opinion properly and reasonably incurred and paid by the Recipient for Eligible Costs under a contract for goods or services necessary for the implementation of the Project. Eligible Costs will include only the following:

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

- (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 prior to June 5, 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 value of any goods and services which are 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 C.1 j) above or in cases where the Recipient can demonstrate value for money and that the costs are incremental;
- k) costs associated with that portion of the works identified in Schedule "B" as being specifically excluded from the Project; and
- l) legal fees.

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

---

<b>Total Eligible Costs:</b>	<b>\$1,000,000</b>
<b>Federal Maximum Financial Assistance:</b>	<b>\$333,333</b>
<b>Ontario Maximum Financial Assistance:</b>	<b>\$333,333</b>
<b>Maximum Financial Assistance:</b>	<b>\$666,666</b>

---

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

**MINISTRY COLLABORATES WITH THE RECIPIENT ON AN APPROPRIATE PROJECT SCHEDULE**

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

---

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

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

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

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

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

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



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

---

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](mailto:bcf.cc@ontario.ca)

Attention: Dino Radocchia, Manager

(b) If to the Recipient:

Municipality of Temagami  
Box 220  
Welcome Centre, 7 Lakeshore Dr.  
Temagami, Ontario  
POH 2H0

Phone: (705) 569-3421  
Fax: (705)569-2834  
E-Mail: [twebster@eastgwillimbury.ca](mailto:twebster@eastgwillimbury.ca)

Attention: Brian Koski, Chief Administrative Officer/Clerk

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* (Canada).

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

#### **Events**

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

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

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

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

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 the design, wording and specifications for signage are in accordance with federal and provincial visual identity guidelines, available on the BCF-CC website at [www.BCFontario.ca](http://www.BCFontario.ca).

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

### **Eligible Costs Related to Communication Activities**

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 AND JOB CREATION REPORT

# Canada

# Ontario

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

#### EXPENDITURE AND JOB CREATION REPORT

Recipient Name:

File Number:

Municipality of Temagami  
27615

Expenditure Forecast Table

Quarter	(April - June) Q1	(July - Sept) Q2	(Oct - Dec.) Q3	(Jan-March) Q4
2009/10		25,000	50,000	*76,000
2010/11	350,000	100,000		

Jobs Created / Sustained Table

	Average Number of Temporary Jobs
Previous Quarter (show date ranges)	
Current Quarter (show date ranges) <sup>1</sup> 1-Sep-09 to 30-Sep-09	3

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

Prepared By:

Phone Number:

Email:

Date:

Brian Koski  
705-569-3421 ext 204  
brian@temagami.ca  
Sept. 18/09

**NOTES:**

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

# Canada



## Ontario

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## Part 8 - Confirmation of Payment of Invoice on Prior Claims (For use by LBSs)

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Note.  
FST should be included in the invoice amount.  
La TVP doit être comprise dans le montant de la facture.

**SCHEDULE "J"**  
**FINAL REPORT****Building Canada Fund - Communities Component (BCF-CC)**  
**Fonds chantiers Canada-Ontario Le volet Collectivités (FCC-VC)**

## FINAL REPORT/RAPPORT FINALE

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

File Number/Numéro de dossier

Project Name/Nom du projet

Eligible Project Cost/Cout admissible du projet

\$

Total Project Cost/Coût total du projet

\$

Authorized Official / Responsable autorisé  
Name/NomMtd)  
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, an identified environmental inflation measures have been satisfactorily addressed and that supporting invoices and records are available for audit, if required.

J'atteste par la présente que le projet nommé a été terminé conformément à un 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 et 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)

A Engineering/Design Costs / Ingénierie

\$

B Environmental Assessment Costs/

\$

Cost of revaluation environmental

\$

C. Project Management / Gestion de projet

\$

D Construction

\$

E Miscellaneous / Divers

\$

P.S.T.V.P.

\$

G.S.T./T.P.S.

\$

continue at top of right side - part 2 of suite de la partie 2, en haut à droite

Total selon l'annexe 2 de la demande

GROSS PROJECT TOTAL /

\$

PROJECT BRUT TOTAL

Less G.S.T. Rebate / Moins

\$

rembursement of the T.P.S.

\$

NET PROJECT TOTAL /

\$

PROJECT 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 budgeted cost for any of the above categories, please attach an explanation of the variance for each.

REMARQUE: Si le coût réel est de 20 % inférieur ou supérieur au coût estimé pour une des catégories ci-dessus, veuillez indiquer une explication de l'écart pour chacune des catégories.

**SCHEDULE "K"**  
**SOLEMN DECLARATION OF SUBSTANTIAL COMPLETION**

Canada



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

**SOLEMN DECLARATION OF SUBSTANTIAL COMPLETION**

In the matter of the Agreement entered into between, Her Majesty the Queen in right of Ontario, as represented by the Minister of Energy and Infrastructure and the Minister of Agriculture, Food and Rural Affairs, on \_\_\_\_\_, 2009.

I, a Registered (Engineer or Architect) in the \_\_\_\_\_  
 Province of Ontario, do solemnly declare as follows:

1. That I am the \_\_\_\_\_ (title, department, organization), and as such have knowledge of the matters set forth in this affidavit;
2. That the work identified as Project \_\_\_\_\_ in the above-mentioned Agreement \_\_\_\_\_ (has / has not) been substantially completed as described in Schedule A, dated on the day of \_\_\_\_\_ 20\_\_\_\_.
3. That the value (dollar amount) of substantially completed work on the Project, by March 31, 2011 is (dollars): \_\_\_\_\_
4. That the work:
  - a. was carried out by \_\_\_\_\_ (the prime contractor), between \_\_\_\_\_ (start date) and (completion date);
  - b. was supervised and inspected by qualified staff;
  - c. conforms with the plans, specifications and other documentation for the work, and
  - d. conforms with applicable environmental legislation, and appropriate mitigation measures have been implemented.

Declared at \_\_\_\_\_ (city), in the Province of Ontario this day of \_\_\_\_\_, 20\_\_.

(Signature)

\_\_\_\_\_

Name:

Title:

\_\_\_\_\_

Witness Name:

Title:

## SCHEDULE "L"

### ABORIGINAL CONSULTATION PROTOCOL

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#### 1 .0 Purpose

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

#### 1.1 Definitions

For the purposes of this Schedule "L":

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

#### 2 .0 Responsibilities of Ontario

2.1 Ontario is responsible for:

- (i) determining the Aboriginal Groups to be consulted in relation to the Project, if any, and advising the Recipient of same;
- (ii) the preliminary and ongoing assessment of the depth of consultation required with the Aboriginal Groups;
- (iii) at its discretion, delegating procedural aspects of consultation to the Recipient pursuant to this Agreement;
- (iv) directing the Recipient to take such actions, including without limitation suspension of the Project, as Ontario may require;
- (v) 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 Agreement; and
- (vi) 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.

#### 3 .0 Responsibilities of the Recipient

3.1 The Recipient hereby acknowledges that, for the purposes of any S. 35 Duty borne by Ontario, the Recipient is Ontario's delegate and in this capacity is responsible for carrying out the procedural aspects of consultation delegated to it by Ontario pursuant to this Agreement.



### 3.2 The Recipient is responsible for:

- (i) giving notice to the Aboriginal Groups regarding the Project, if such notice has not already been given by the Recipient or Ontario;
- (ii) 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;
- (iii) 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 Community;
- (iv) informing the Aboriginal Groups of the regulatory and approval processes that apply to the Project of which the Recipient is aware after reasonable inquiry;
- (v) 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;
- (vi) making all reasonable efforts to build a positive relationship with the Aboriginal Groups in relation to the Project;
- (vii) 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;
- (viii) if appropriate, providing reasonable financial assistance to Aboriginal Groups to permit effective participation in consultation processes for the Project;
- (x) considering comments provided by the Aboriginal Groups regarding the potential impacts of the Project on Aboriginal or treaty rights or asserted rights, including adverse impacts on hunting, trapping, fishing, plant harvesting or on burial grounds or archaeological sites of cultural significance to an Aboriginal Community, or on other interests, or any other concerns or issues regarding the Project;
- (xi) answering any questions to the extent of the Recipient's ability and receiving comments from the Aboriginal Groups, notifying Ontario of the nature of the questions or comments received and maintaining a chart showing the issues raised by the Aboriginal Groups and any responses the Recipient has provided;
- (xii) where an Aboriginal Community asks questions regarding the Project directly of Ontario, providing Ontario with the information reasonably necessary to answer the inquiry, upon Ontario's request;

- (xiii) subject to section 3.2 (xiv), where appropriate, discussing with the Aboriginal Groups potential accommodation, including mitigation of potential impacts on Aboriginal or treaty rights, asserted rights or associated interests regarding the Project and reporting to Ontario any comments or questions from the Aboriginal Groups that relate to potential accommodation or mitigation of potential impacts;
- (xiv) consulting with Ontario during all discussions with Aboriginal Groups regarding accommodation measures, if applicable, and presenting to Ontario for the purposes of section 2.1 (v) hereof, the results of such discussions prior to implementing any applicable accommodation measures; and
- (xv) complying with Ontario's direction to take any actions, including without limitation suspension of the Project, as Ontario may require.

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

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

- (i) provide to Ontario, upon request, complete and accurate copies of all documents provided to the Aboriginal Groups in relation to the Project;
- (ii) keep reasonable business records of all its activities in relation to consultation and provide Ontario with complete and accurate copies of such records upon request;
- (iii) provide Ontario with timely notice of any Recipient mailings to, or Recipient meetings with, the representatives of any Aboriginal Community in relation to the Project;
- (iv) 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;
- (v) 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;
- (vi) immediately notify Ontario if any Aboriginal archaeological resources are discovered in the course of the Project;
- (vii) 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
- (viii) if applicable, advise Ontario if the Recipient and an Aboriginal Community 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.

3.5 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.

#### **4 .0 No Implicit Acknowledgement**

4.1 Nothing in this Agreement shall be construed as an admission, acknowledgment, agreement or concession by Ontario or the Recipient, that a S. 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 S. 35 Duty, nor that a particular aspect of consultation referred to in Section 3.1 hereof is an aspect of the S. 35 Duty that could not have lawfully been delegated to the Recipient had the Parties so agreed.

#### **5 .0 General**

5.1 This Agreement shall be construed consistently with but does not substitute for any requirements or procedures in relation to Aboriginal consultation or the S. 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.

#### **6 .0 Notice and Contact**

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

Ministry of Agriculture, Food and Rural Affairs  
1 Stone Road West, 4<sup>th</sup> Floor  
Guelph, Ontario  
N1G4Y2

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

Attention: Dino Radocchia, Manager

File #  
27615