

**THE CORPORATION OF THE MUNICIPALITY OF POWASSAN**

**BY-LAW NO. 2011-31**

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Being a by-law to authorize a Contribution Agreement between the Corporation of the Municipality of Powassan and the Ministry of Agriculture, Food and Rural Affairs for the Ontario Small Waterworks Assistance Program Phase 3 (OSWAP -for sanitary sewer distribution system rehabilitation).

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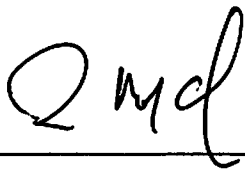
WHEREAS the Council of the Corporation of the Municipality of Powassan is desirous of entering into an agreement with the Ministry of Agriculture, Food and Rural Affairs for the Ontario Small Waterworks Assistance Program Phase 3 (OSWAP) funding,

NOW THEREFORE BE IT RESOLVED THAT THE COUNCIL OF THE CORPORATION OF THE MUNICIPALITY OF POWASSAN ENACTS AS FOLLOWS:

1. That the Mayor and Clerk-Treasurer be authorized to execute the contribution agreement, attached as Appendix "A" and forming part of this by-law.
2. That this By-law be effective upon adoption.

Read a first and second time in open council on August 16, 2011.

Read a third and final time in open Council on August 16, 2011 for the well being of the Municipality of Powassan.



\_\_\_\_\_  
Mayor



\_\_\_\_\_  
Clerk-Treasurer

**ONTARIO SMALL WATERWORKS ASSISTANCE PROGRAM PHASE THREE – INTAKE ONE**

THIS AGREEMENT has an Effective Date of May 18, 2011

**BETWEEN:**

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

**("Ontario")**

**– and –**

**THE CORPORATION OF THE MUNICIPALITY OF POWASSAN**

**(the "Recipient")**

**WHEREAS** the Government of Ontario is investing in infrastructure;

**AND WHEREAS** because of their size, many small communities, particularly in northern and rural Ontario, face challenges with the financial sustainability of their water and wastewater systems;

**AND WHEREAS** the Government of Ontario launched Phase III of the Program on August 15, 2010;

**AND WHEREAS** the Program will provide capital assistance to small municipalities and Local Service Boards to improve water conservation and efficiency in municipal residential water and wastewater systems;

**AND WHEREAS** there will be two intakes under Phase III of the Program – closing February 15, 2011 and February 15, 2012;

**AND WHEREAS** the Recipient applied for funding for its Project;

**AND WHEREAS** Ontario wishes to provide the Recipient with funding for its Project;

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

**SECTION 1  
DEFINITIONS**

For the purposes of this Agreement (including its recitals), the following terms shall have the meaning described below:

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

**"Adjust the Financial Assistance"** means Ontario's right to adjust, recover or terminate the Financial Assistance provided to the Recipient in respect of the Project under this Agreement.

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

**“Budget”** means the Recipient’s budget for the Project.

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

**“Claim Submission”** means a submission the Recipient makes to Ontario to be paid by Ontario in accordance with the terms and conditions of this Agreement.

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

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

**“Crown Agency”** means a Crown agency as defined in the *Crown Agency Act* (Ontario).

**“Effective Date”** means the date set out at the top of this Agreement, which is the earliest date on which Eligible Costs may be incurred.

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

**“End of Financial Assistance Date”** means the date set out in Part B.2 of Schedule “B” of this Agreement.

**“Event of Default”** has the meaning given to it in section 24.1 of this Agreement.

**“Expiration Date”** means August 31, 2015;

**“Final Report”** has the meaning given to it in section 21.4 of this Agreement.

**“Final Report Date”** means the date set out in Part I.1 of Schedule “I” of this Agreement.

**“Financial Assistance”** means the total amount of funding Ontario is providing to the Recipient under this Agreement.

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

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

**“Holdback”** means the amount of Financial Assistance Ontario holds back, as set out in section 10.3 of this Agreement, from each Claim Submission it receives from the Recipient.

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

**"Ineligible Costs"** means the costs described under Part D.2 of Schedule "D" of this Agreement.

**"Maximum Financial Assistance"** is the amount set out in Part B.1 of Schedule "B" of this Agreement.

**"Ontario"** means Her Majesty the Queen in Right of Ontario, as represented by the Minister of Agriculture, Food and Rural Affairs, or any other Minister who may have authority to administer this Agreement on behalf of the Minister of Agriculture, Food and Rural Affairs

**"Parties"** means Ontario and the Recipient.

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

**"Program"** means the Ontario Small Waterworks Assistance Program.

**"Progress Report"** means the report set out in Schedule "F" of this Agreement.

**"Project"** means the Project described in Part A.1 of Schedule "A" of this Agreement.

**"Project Completion Date"** means the date set out in Part A. 2 of Schedule "A" of this Agreement.

**"Projected Expenditure Report"** has the meaning given to it in section 21.3 of this Agreement.

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

**"Requirements of Law"** means all applicable statutes, codes, acts, ordinances, orders, approvals, decrees, injunctions, by-laws, rules, regulations, official plans, permits, licenses, authorizations, directions and agreements with all authorities that now or at any time hereafter may be applicable to this Agreement.

**"Reserve"** means a tract of land, the legal title to which is vested in Her Majesty the Queen in Right of Canada that has been set apart by Her Majesty the Queen in Right of Canada for the use and benefit of a First Nation and includes any designated lands (as defined in the *Indian Act*).

**"Substantially Completed"** has the same meaning as and shall be determined in accordance with "substantially performed" in section 2(1) of the *Construction Lien Act* (Ontario) and **"substantial completion"** shall have a corresponding meaning.

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

## **SECTION 2**

### **PURPOSE OF AGREEMENT**

**2.1 Purpose of Agreement.** The purpose of this Agreement is to establish the terms and conditions whereby Ontario will provide Financial Assistance to the Recipient to allow the Recipient to complete the Project, as described in Schedule "A" of this Agreement.

### SECTION 3 THE AGREEMENT

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

#### Schedule

"A"	Project Information
"B"	Project Financial Information
"C"	Aboriginal Consultation Requirements
"D"	Eligible and Ineligible Costs
"E"	Claim Submission Form
"F"	Progress Report
"G"	Projected Expenditure Report
"H"	Communications Requirements
"I"	Final Report

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

### SECTION 4 ONTARIO'S ROLES AND RESPONSIBILITIES UNDER AGREEMENT

- 4.1 Ontario To Provide Funding.** Ontario agrees, subject to the terms and conditions of this Agreement, to provide Financial Assistance to the Recipient.
- 4.2 Ontario's Financial Assistance.** Ontario shall provide up to the Maximum Financial Assistance, as set out in Part B.1 of Schedule "B" of this Agreement, towards the Eligible Costs for the Project. The Recipient is solely responsible for securing the remaining share of the Project's costs as well as any additional costs (if any) for the Project once the Financial Assistance being provided by Ontario has been spent.
- 4.3 Ontario's Role Under Agreement Is Limited to Providing Funding.** The Parties acknowledge that Ontario's role in the Project is limited to providing Financial Assistance to the Project and that Ontario will have no other involvement in the Project or its subsequent operation. Ontario is neither a decision-maker nor an advisor to the Project. Notwithstanding the generality of the foregoing and without limitation, the fact that Ontario is conducting performance reviews and/or audits as provided for hereinafter, or issuing any directions under the terms and conditions of this Agreement, these functions are not and will not be construed by the Parties as having a management role in the Project.

- 4.4 Ontario Not Responsible For Project.** Ontario shall not be responsible in any way whatsoever for the undertaking, implementation and/or completion of the Project or any interdependent projects of others.
- 4.5 Ontario Not Responsible For Costs of Operating Project.** Ontario shall not be responsible for any costs associated with the operation and maintenance.
- 4.6 Ontario May Impose Additional Conditions on the Recipient.** Ontario may impose, at any time, such additional terms or conditions on the Recipient in terms of the Recipient's operations that relate to the use of the Financial Assistance which Ontario, acting reasonably, considers appropriate for the proper expenditure and management of the Financial Assistance and the carrying out and completion of the Project and shall be entitled to impose such terms and conditions on any consent granted pursuant to this Agreement. For greater certainty, any additional conditions Ontario seeks to impose shall be supplements to the existing terms and conditions of this Agreement as opposed to amendments to the terms and conditions of this Agreement and shall not breach any contracts the Recipient already has in place.

## **SECTION 5**

### **RECIPIENT'S ROLES AND RESPONSIBILITIES UNDER AGREEMENT**

- 5.1 Recipient's Contribution to the Project.** The Recipient is responsible for and shall contribute the funding set out in Part B.1 of Schedule "B" of this Agreement. The Recipient is solely responsible for securing this amount of funding as well as any additional funding (if any) needed to complete the Project once Ontario's Financial Assistance has been spent.
- 5.2 Recipient Solely Responsible for Project.** The Recipient agrees that it is solely and fully responsible for the construction, operation, implementation and maintenance of the Project. The Recipient may discharge its responsibility, without relieving it of the responsibility, by contracting such services to third parties.
- 5.3 Recipient Must Corporately Exist Until Expiration Date.** The Recipient shall corporately exist until the Expiration Date of this Agreement.
- 5.4 Recipient's Covenants, Representations and Warranties.** The Recipient covenants, represents and warrants to Ontario that:
- (a) It is conducting and shall continue to conduct its business in compliance with all Requirements of Law;
  - (b) It has the authority and any necessary approval to enter into this Agreement and to carry out its terms and it is not in any other agreement that would in any way interfere with the rights of Ontario under this Agreement;
  - (c) It has or will apply for all permits, approvals, licences and/or certificates that are required in order to carry out the Project;
  - (d) It validly exists as a legal entity with full power to perform and observe all of the terms and conditions of this Agreement and that it will continue to validly exist until the Expiration Date of this Agreement;
  - (e) Where applicable, it has passed by-laws required to undertake the Project;
  - (f) It is not a non-resident of Canada within the meaning of the *Income Tax Act* (Canada);
  - (g) It is a corporation, a partnership or a sole proprietorship validly in existence;

- (h) It is registered and qualified to do business wherever necessary to carry out the Project;
- (i) It has the experience, financial health and ability to carry out this Project;
- (j) Other than the Financial Assistance being provided pursuant to this Agreement, the Recipient has not and will not use any funds received from Her Majesty the Queen in Right of Ontario, Her Majesty the Queen in Right of Canada, a Crown Agency or any other public body towards any aspect of the Project without first notifying Ontario about the funding; and
- (k) All information provided during the application process to Ontario remains true, correct and complete as of the date this Agreement is signed in every material respect except as set out to the contrary herein.

**5.5 Additional Covenants.** In addition to its other covenants and obligations under this Agreement, the Recipient undertakes to:

- (a) Take all necessary action to maintain itself in good standing with respect to all legal requirements necessary to carry on its business, hold property and to perform the Project and all obligations under this Agreement and to preserve its legal capacity during the Term; and
- (b) Advise Ontario forthwith of the occurrence during the Term of any actions, suits or other proceedings which could or would prevent compliance with this Agreement.

**5.6 Governance.** The Recipient represents, warrants and covenants that it has and shall maintain until the Expiration Date of this Agreement, by-laws or other legally necessary instruments to:

- (a) Establish the expected code of conduct and ethical responsibilities for the Recipient;
- (b) Establish procedures to ensure the ongoing effective functioning and continuance of the Recipient until the Expiration Date of this Agreement;
- (c) Establish decision-making mechanisms;
- (d) Provide for the prudent and effective management of the Financial Assistance;
- (e) Establish procedures to enable the successful completion of the Project, including the control of any third party the Recipient engages to manage any Contracts the Recipient awards to other Third Parties under this Agreement;
- (f) Establish procedures to enable the timely identification of risks to the completion of the Project and strategies to address the identified risk(s);
- (g) Establish procedures to enable the preparation and delivery of all reports under this Agreement;
- (h) Establish procedures to enable the proper monitoring of the Project;
- (i) Establish procedures to enforce all terms and conditions of its Contracts with Third Parties; and
- (j) Be responsible for other matters as the Recipient considers necessary to ensure that the Recipient carries out its obligations under the Agreement.

**5.7 Recipient Shall Provide Proof of Compliance Upon Ontario's Request For Payment Requirements.** Upon request, the Recipient shall provide Ontario with proof of the matters referred to in sections 5.4 to 5.6 of this Agreement. It is a true condition precedent to any payment under this Agreement that the representations and warranties under sections 5.4 to 5.6 of this Agreement 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, Ontario may, in its sole and absolute discretion, Adjust the Financial Assistance for the Project.

- 5.8 Behaviour of Recipient.** The Recipient shall carry out the Project in an economical and business-like manner, in accordance with the terms and conditions of this Agreement, subject to any reasonable amendments Ontario may agree to or require from time to time in writing.
- 5.9 Recipient Shall Complete Project.** 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 this 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 this Project by the Recipient.
- 5.10 Recipient Shall Complete Project by the Project Completion Date.** The Recipient shall complete the Project in accordance with the Project's description, as set out in Part A.1 of Schedule "A" of this Agreement, as soon as possible and in any event no later than the Project Completion Date, as set out in Part A.2 of Schedule "A" of this Agreement. The Recipient shall 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 Program Completion Date at its own expense.
- 5.11 Recipient Shall Notify Ontario if Project Is Not Being Implemented.** The Recipient shall immediately notify Ontario if it does not intend to carry out the Project in whole or any in part as specified in Part A.1 of Schedule "A" of this Agreement. Upon receiving notice, Ontario may, in its absolute and sole discretion, Adjust the Financial Assistance.
- 5.12 Recipient Shall Obtain Ontario's Written Consent to Change Project.** The Recipient shall not make any material scope changes to the Project without first obtaining the prior written consent of Ontario.

## SECTION 6

### CONDITIONS PRECEDENT TO BEGINNING CONSTRUCTION ON THE PROJECT

- 6.1 Recipient Shall Not Start Construction On Project Until Recipient Provides Evidence to Ontario that Notice of Project Has Been Given To Aboriginal Groups.** The Recipient shall not commence or allow any third party to commence construction on any aspect of the Project for forty-five (45) Business Days, or such other time as Ontario may direct, after it has provided Ontario with written evidence that the Recipient has sent notice of the Project to the Aboriginal Groups identified in accordance with Schedule "C" of this Agreement.

## SECTION 7

### FINANCIAL ASSISTANCE

- 7.1 Use of Financial Assistance.** The Financial Assistance provided under this Agreement is intended for and shall only be used for Eligible Costs incurred by the Recipient.
- 7.2 Interest Earned By Recipient.** The Recipient shall report to Ontario the amount of any interest earned (if any) on any Financial Assistance provided to the Recipient. The Recipient shall also follow any written directions it receives from Ontario in relation to the interest earned.



- 7.3 Cost Must Be An Eligible Cost.** For a cost to be considered an Eligible Cost and therefore covered by the Financial Assistance provided under this Agreement, the cost must be set out in Part D.1 of Schedule "D" of this Agreement, unless otherwise expressly approved by Ontario in writing prior to being incurred.
- 7.4 Ineligible Costs Will Not Be Covered Under Agreement.** Any costs identified in Part D.2 of Schedule "D" of this Agreement are Ineligible Costs and will not be covered by the Financial Assistance provided under this Agreement.
- 7.5 Ontario May Declare Costs to Be Eligible.** Subject to section 7.4 of this Agreement, costs not specifically listed in Part D.1 of Schedule "D" of this Agreement may be deemed to be Eligible Costs by Ontario in its sole and absolute discretion on a case-by-case basis.
- 7.6 Items Included In Project's Budget May Not Be An Eligible Cost.** Ontario is not responsible, notwithstanding an item being included in the Project's Budget, for paying any Financial Assistance unless the item is also an Eligible Cost. Where there is a conflict between what is included in the Budget and this section 7.6 of the Agreement, this section 7.6 of the Agreement shall prevail.
- 7.7 Ontario's Fiscal Year Is April 1 to March 31.** The Recipient acknowledges that Ontario's Fiscal Year begins April 1 of one year and ends on March 31 of the following year.
- 7.8 Deemed Ineligible Costs.** The Recipient acknowledges that the Ministry's Fiscal Year ends on March 31 of 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 costs shall be deemed to be ineligible for Financial Assistance.
- 7.9 Disbursal of Financial Assistance.** Ontario shall disburse the Financial Assistance upon receipt and approval by Ontario of the Claim Submission Form attached as Schedule "E" of this Agreement and the Progress Report attached as Schedule "F" of this Agreement.
- 7.10 Excess Financial Assistance.** The Recipient shall within fifteen (15) Business Days of becoming aware notify Ontario should the Project require less than the total anticipated Eligible Costs. Ontario may, in its sole and absolute discretion, reduce the Financial Assistance for the Project by the difference.
- 7.11 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, Ontario may, in its sole and absolute discretion, Adjust the Financial Assistance for the Project.
- 7.12 Alternatives to Project.** If the Recipient becomes aware of any means of completing the Project that are more cost effective, the Recipient shall within fifteen (15) Business Days of becoming aware notify Ontario. Ontario may, in its sole and absolute discretion, Adjust the Financial Assistance in accordance with section 7.10 of this Agreement. Likewise, if Ontario becomes aware of any alternative means the Recipient may be able to complete the Project that are more cost effective, the Recipient will be notified and Ontario may, in its sole and absolute discretion, Adjust the Financial Assistance in accordance with section 7.10 of this Agreement.

- 7.13 Harmonized Sales Tax.** The Financial Assistance being provided under this Agreement is based on the net amount of the Harmonized Sales Tax to be paid by the Recipient, net of any applicable rebates.
- 7.14 Ontario May Adjust the Financial Assistance.** Ontario may Adjust the Financial Assistance for the Project.
- 7.15 Ontario Shall Not Provide Financial Assistance After End of Financial Assistance Date.** Notwithstanding any other provision in this Agreement, and regardless of the Project's state of completion, Ontario shall not be obligated to provide Financial Assistance under this Agreement for any costs incurred after the End of Financial Assistance Date to the Recipient.
- 7.16 Recipient to Notify Ontario of Any Additional Sources of Funding For Project.** The Recipient shall notify Ontario within five (5) Business Days of receiving any additional sources of funding for the Project. Ontario may, in its sole and absolute discretion, Adjust the Financial Assistance to reflect the additional funding the Recipient receives for the Project.
- 7.17 Insufficient Funds Provided by the Legislature or Parliament.** If, in the opinion of Ontario, the Legislative Assembly of Ontario does not provide sufficient funds to continue the Financial Assistance for any Fiscal Year during which this Agreement is in effect, Ontario may immediately, without liability, cost or penalty and without prejudice to any other rights or remedies of Ontario under this Agreement or at law or in equity, terminate this Agreement.

## SECTION 8

### FINANCIAL ASSISTANCE ON EXPIRY OF AGREEMENT

- 8.1 Repayment of Financial Assistance on Expiry of Agreement For Uses Not Agreed to by Ontario.** Without limiting any rights Ontario may have under section 24 of this Agreement, the Recipient shall, upon the expiry of this Agreement, repay to Ontario an amount equal to any part of the Financial Assistance used by the Recipient for purposes not agreed upon by Ontario other than approved Eligible Costs upon Ontario's request.
- 8.2 Remaining Funds Upon Expiry.** Without limiting any rights Ontario may have under section 24 of this Agreement, the Recipient shall, upon expiry of the Agreement, return to Ontario any Financial Assistances remaining in its possession or under its control.

## SECTION 9

### PAYMENT

- 9.1 Recipient May Seek Reimbursement.** The Recipient may seek reimbursement by submitting a Claim Submission Form, as set out in Schedule "E" of this Agreement, in respect of Eligible Costs incurred for the purpose of completing the Project.
- 9.2 Ontario to Make Best Efforts to Pay Claims Within Forty-Five (45) Business Days.** Ontario agrees to use best efforts to pay the Recipient's completed submitted claims within forty-five (45) Business Days of receiving them.

## SECTION 10 PAYMENT TERMS

- 10.1 Recipient to Identify Signing Authority For Claim Submissions.** The Recipient shall provide Ontario within thirty (30) Business Days of signing this Agreement the name of an individual within the Recipient's corporation who will have the signing authority for submitting the Claim Submission Form, as set out in Schedule "E" of this Agreement, to Ontario under this Agreement. The Recipient shall promptly notify Ontario of any change to the person or persons who will have the signing authority for making Claim Submissions.
- 10.2 Ontario to Pay Ninety Percent (90%) of Its Contribution of Eligible Costs.** Subject to any other conditions in this Agreement, Ontario shall pay ninety percent (90%) of Ontario's portion of the Financial Assistance and hold the remaining ten percent (10%) of its payments back.
- 10.3 Payment of 10% Holdback.** Ontario shall release the ten percent (10%) holdback of Financial Assistance upon its approval of the Final Report. Ontario is not obligated to pay interest on the holdback or any other payments under this Agreement.
- 10.4 Eligibility of Costs.** In order for a cost or expense to be eligible for Financial Assistance pursuant to this Agreement,
- (a) The cost or expense must be reasonable;
  - (b) Be directly related to the Project as described in Part A.1 of Schedule "A" of this Agreement;
  - (c) Be specifically included within the Project's Budget;
  - (d) Subject to sections 7.3 and 7.4 of this Agreement, have been incurred on or after the Effective Date but no later than the End of Financial Assistance Date;
  - (e) A completed Claim Submission Form, as set out in Schedule "E" of this Agreement, including evidence of incurred expenses, such as copies of invoices, must be submitted to Ontario; and
  - (f) When requested, all original evidence (such as invoices, receipts, proofs of payment, etc.) of payment related to Eligible Costs, including in-kind contributions, and such supporting documentation must be submitted to Ontario.
- 10.5 Claims To Be Submitted Quarterly.** The Recipient shall submit its claims to Ontario on the quarterly dates of December 31, March 31, June 30 and September 30, unless Ontario agrees in writing to accept Claim Submissions on a different frequency basis.
- 10.6 Submission of Final Claims.** Notwithstanding section 7.8 of this Agreement, the Recipient shall submit its final claims with the required documentation for approval, cost reviews, audits and settlement by Final Report Date. Thereafter, Ontario shall not be obligated to consider any further claims in relation to the Project. The Recipient shall also submit, upon Ontario's request, the required documentation for approval, cost reviews and audits on an interim basis.
- 10.7 Withholding of Payment if Project is Not Progressing.** Ontario may, withhold payments of future Financial Assistance if Ontario, acting reasonably, is not satisfied that there is adequate evidence of progress being made to achieve the Project.

**10.8 Limitation on Payment of Financial Assistance.** Notwithstanding anything contained within this Agreement, Ontario may choose not to pay any Financial Assistance to the Recipient until the Recipient has provided evidence that the insurance required by section 18.1 of this Agreement and the letter of credit or bonds required by section 18.2 of this Agreement have been provided to Ontario. Ontario may also withhold paying any Financial Assistance to the Recipient if the Recipient fails to provide Ontario with evidence that the insurance required by section 18.1 of this Agreement and the letter of credit or bonds required by section 18.2 of this Agreement within twenty (20) Business Days of making a request for evidence and continue to withhold paying any Financial Assistance until the evidence has been provided to Ontario.

**10.9 Ontario May Withhold Payment From Recipient.** Ontario may withhold payment from the Recipient if the Recipient is, without limitation, not in compliance with any other funding agreements that it has where Ontario has provided funding, directly or indirectly, under that agreement. Where Ontario withholds payment from the Recipient, the following shall apply:

- (a) Ontario has complete and absolute discretion to determine whether the Recipient is in compliance with the terms or conditions of any other funding agreement whereby the Recipient receives funding from Ontario;
- (b) Ontario shall continue to withhold any payments to the Recipient until the Recipient has come into compliance with the terms and conditions of any other agreement whereby the Recipient receives funding from Ontario; and
- (c) Ontario agrees that it will act reasonably when applying this section 10.9 of the Agreement and shall promptly notify the Recipient of any determinations made by Ontario with respect to the application of this section 10.9 of the Agreement.

## **SECTION 11 OVERPAYMENT**

**11.1 Recipient Shall Repay Overpayments.** Any funds advanced to the Recipient prior to settlement under this Agreement shall not be construed as a final determination of the amount of Financial Assistance applicable to the Project. Upon conducting a final cost review or audit of the Project, Ontario will determine the final amount of Financial Assistance on the Project (the "Allowable Financial Assistance"). The Recipient agrees to repay to Ontario, upon receipt of a written demand and within the period specified by Ontario, that portion of the total of the funds advanced that exceeds the Allowable Financial Assistance applicable to the Project, as determined by Ontario in accordance with this Agreement, as well as any funds used for a purpose other than that stated in the terms of this Agreement.

## **SECTION 12 PROCUREMENT**

**12.1 Ontario Not Responsible For Claims Under Tender/Bidding Process.** Without limiting the generality of section 17 of this Agreement, Ontario shall not be responsible for any claim(s) as arising from the tender and bidding process for any part(s) of the Project.

**12.2 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 to which the *Municipal Act, 2001*, S.O. 2001, c. 25, as amended is applicable, the Recipient shall follow its procurement policies, as required under the *Municipal Act, 2001*, S.O. 2001, c. 25, as amended. Where the Recipient is a local services board established under the *Northern Services Boards Act*, R.S.O. 1990, c. L. 28, as amended or any other entity not covered by the *Municipal Act, 2001*, S.O. 2001, c. 25, as amended, the Recipient shall ensure that for equipment, services and supplies, the estimated costs of which exceeds twenty-five thousand dollars (\$25,000), the Recipient obtains at least three (3) written quotes unless the Ontario gives prior written approval. The requirement for a competitive process under this section 12.2 of the Agreement may be waived with prior written approval by Ontario if:

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

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

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

**12.4 Costs of Contracts Not Awarded In Compliance With This Section May Be Deemed Ineligible.** If Ontario determines that the Recipient has awarded a Contract in a manner that is not in compliance with this section 12 of the Agreement, Ontario may, upon written notification to the Recipient, deem the costs associated with the Contract as being Ineligible Costs.

**12.5 Re-Tendering of Non-Compliant Contract(s).** If the Recipient re-tenders a Contract or a request for proposal that Ontario has determined was not awarded in accordance with this section 12 of the Agreement, Ontario may consider the costs associated with the re-tendered or re-issued request for proposal Contract as Eligible Costs, except that Ontario shall not provide any Financial Assistance for any direct or indirect costs associated with said re-tendering of the Contract or re-issuing of the request for proposal.

**12.6 Goods and Services To Be Procured In Competitive Manner And At Price No Greater Than Fair Market Value.** The Recipient shall use commercially reasonable efforts to ensure that all goods and services purchased with Financial Assistance being provided under this Agreement are purchased or acquired at competitive prices that are no greater than fair market value after deducting trade discounts and/or any other discounts available to the Recipient.

**12.7 Contractors Shall Be Competent.** The Recipient shall use commercially reasonable efforts to ensure that when awarding any Contracts and/or hiring personnel for the Project that those Contracts and/or personnel hired for the Project result in competent contractors and/or personnel working on the Project.

**12.8 Recipient to Keep Records of Contracts.** The Recipient shall keep and maintain proper and accurate accounts and records, including, but not limited to, all Contracts, invoices, statements, receipts and vouchers in relation to the Project for a period of at least seven (7) years after the Project Completion Date.

**12.9 Trade Agreements.** If the Recipient is subject to any provincial or federal trade agreements to which the Government of 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 any other provisions in this section and the requirements of the Annex, the requirements of the Annex shall apply to the extent of the conflict.

### SECTION 13 LIMITATIONS ON TRANSFER/DISPOSAL OF ASSETS

**13.1 Recipient to Own One Hundred Percent (100%) Share of Assets.** The Recipient shall own one hundred percent (100%) of the assets funded under this Agreement unless Ontario agrees otherwise in writing.

**13.2 Prohibition of Transfer of Assets.** The Recipient shall not sell, transfer, encumber or otherwise dispose of its one hundred percent (100%) ownership share of the assets funded, directly or indirectly, by the Financial Assistance being provided under this Agreement until the date indicated in Part A.3 of Schedule "A" of this Agreement.

**13.3 Repayment.** In the event that at any time the Recipient sells, transfers, encumbers or otherwise disposes of, directly or indirectly, any assets funded, directly or indirectly, by the Financial Assistance being provided under this Agreement before the date indicated in Part A.3 of Schedule "A" of this Agreement, other than to Ontario, a municipality governed by the *Municipal Act, 2001*, S.O. 2001, c. 25, as amended or a Crown Agency, the Recipient hereby undertakes to repay Ontario, on demand, a proportionate amount of the Financial Assistance as follows:

Where Project Asset Is Sold, Transferred, Encumbered Or Otherwise Disposed Of	Repayment of Contribution (In current dollars)
Within two (2) years after Substantial Completion	100%
Between two (2) years and the date indicated in Part A.3 of Schedule "A"	55%
After the date Indicated in Part A.3 of Schedule "A"	0%

**13.4 Notice.** At any time before the date indicated in Part A.3 of Schedule "A" of this Agreement, the Recipient shall notify Ontario in writing of any transaction triggering section 13.3 of this Agreement at least one hundred and eighty (180) days in advance.

**13.5 Deduction From Financial Assistance.** Ontario may, in its sole and absolute discretion, deduct the amount of Financial Assistance to be repaid by the Recipient under section 13.3 of this Agreement from any financial assistance payable by Ontario to the Recipient on any other project the Recipient is receiving (either current or future).

- 13.6 Revenue From Assets.** The Recipient acknowledges that Ontario's Contribution to the Project is meant to accrue to the public benefit. The Recipient will notify Ontario in writing within ninety (90) days of the end of a Fiscal Year, if the Project is used in such a way that, in the Fiscal Year, revenues are generated from it which exceed full cost recovery as defined by the August 2007 Ontario Ministry of Environment document entitled "Toward Financially Sustainable Water and Wastewater Systems" or any other definition of full cost recovery as Ontario may provide. In such case Ontario may require the Recipient to repay to Ontario immediately upon demand a portion of those revenues, in the same proportion as Ontario's Contribution is to the total cost of the Project. This obligation applies for twenty-five (25) Fiscal Years following the Substantial Completion.
- 13.7 Project Operation.** The Recipient shall maintain and operate or cause to be maintained and operated the assets purchased with the Financial Assistance until, at a minimum, after the date indicated in Part A.3 of Schedule "A" of this Agreement. Any contravention of this section 13.7 of the Agreement shall give Ontario the right to recover a portion or all of the Financial Assistance provided under this Agreement.

## **SECTION 14**

### **ABORIGINAL CONSULTATION**

- 14.1 Provision of Financial Assistance Dependent Upon Ontario Meeting Its Duty to Consult Obligations.** The Recipient hereby acknowledges that the provision Financial Assistance for the Project is strictly conditional upon Ontario satisfying any obligation it may have to consult with, and where appropriate, accommodate any Aboriginal Group with an interest in the Project in order for the Project to proceed.
- 14.2 Recipient Ontario's Delegate for Purposes of Consultation With Aboriginal Groups.** By entering into this Agreement, Ontario formally delegates the procedural aspects of any consultation obligations it may have with any Aboriginal Group in relation to the Project to the Recipient as set out in Schedule "C" of this Agreement. The Recipient, by signing this Agreement, accepts Ontario's delegation and agrees to act as Ontario's delegate in relation to any consultation obligations Ontario may have in relation to the Project.
- 14.3 Recipient's Obligations In Relation to Consultations.** The Recipient shall:
- (a) Be responsible for consulting with any Aboriginal Group in relation to the Project on behalf of Ontario in accordance with Schedule "C" of this Agreement;
  - (b) Take directions from Ontario in relation to consulting with any Aboriginal Group as well as any other directions Ontario may issue in relation to consultations, including suspending the Project; and
  - (c) Provide a detailed description of any actions it took in relation to consultation with any Aboriginal Group in its Final Report.

## **SECTION 15**

### **COMPLIANCE WITH LAWS**

- 15.1 Compliance with Requirements of Law.** The Recipient shall comply with all Requirements of Law during the Term of this Agreement.

## **SECTION 16**

### **CONFLICT OF INTEREST AND CONFIDENTIALITY**

- 16.1 No Conflicts of Interest.** The Recipient shall ensure that any person associated with the Project in whatever capacity carries out the administration of the Financial Assistance for this Project in all its aspects without a conflict of interest.
- 16.2 Idem.** For the purposes of section 16.1 of this Agreement, a conflict of interest includes any situation in which a person affiliated with the Recipient with substantive decision-making authority regarding the Project, or any member of his or her family, benefits or could benefit by their authority to a greater material degree.
- 16.3 Disclosure of Conflict of Interest Situations.** The Recipient shall disclose to Ontario without delay any actual or potential situation that may be reasonably interpreted as either a conflict of interest or a potential conflict of interest.
- 16.4 Ontario Bound By the Freedom of Information and Protection of Privacy Act.** The Recipient acknowledges that the provisions of the *Freedom of Information and Protection of Privacy Act* and its regulations bind Ontario.

## **SECTION 17**

### **INDEMNITY AND LIMITATION OF LIABILITY**

- 17.1 Exclusion of Liability.** In no event shall Ontario be liable for any incidental, special or consequential damages, or any loss of use, revenue or profit by the Recipient or the Recipient's employees; agents or Consultants arising out of or in any way related to this Agreement.
- 17.2 Recipient to Indemnify Ontario.** The Recipient shall indemnify and hold harmless the Indemnified Party from and against all suits, judgments, claims, demands, expenses actions, causes of action and losses (including, without limitation, reasonable legal expenses and any claim for lien made pursuant to the *Construction Lien Act*, and for any and all liability for damages to property and injury to persons (including death)) which the Indemnified Party may incur, otherwise than by reason of their own negligence or wilful misconduct, as a result of or arising out of or in relation to any breach by the Recipient of the terms of this Agreement, or the Recipient's own negligence or wilful misconduct, as a result of or arising out of or in relation to:
- (a) The performance of this Agreement or the breach of the terms of this Agreement by the Recipient, its officers, servants, employees and agents, or by a third party and any of its officers, employees servants or agents;
  - (b) The ongoing operation, maintenance and repair of the Project; and
  - (c) Any omission or other wilful or negligent act of the Recipient, a third party or their respective employees, officers, servants or agents.
- 17.3 Recipient to Require Third Parties to Indemnify Ontario.** The Recipient shall use commercially reasonable efforts to ensure that all third parties it enters into a Contract with indemnify and hold harmless the Indemnified Party from and against all suits, judgments, claims, demands, expenses actions, causes of action and losses (including, without limitation, reasonable legal expenses and any claim for lien made pursuant to the *Construction Lien Act*, and for any and all liability for damages to property and injury to



persons (including death)) which the Indemnified Party may incur, otherwise than by reason of their own negligence or wilful misconduct, as a result of or arising out of or in relation to any breach by the Third Party of the terms of its Contract with the Recipient, or the third party's own negligence or wilful misconduct, as a result of or arising out of or in relation to:

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

**17.4 Recipient to Limit Heads of Damage As Against Ontario in Contracts With Third Parties.** The Recipient shall:

- (a) Use commercially reasonable efforts to include in its Contracts with any third party a provision that provides notwithstanding anything else, and in no event whatsoever, Ontario shall not be liable to the third party for indirect or consequential damages, damages for loss of profit, revenue, or reputation or other indirect damages arising out of anything under or related in any way to this Agreement in tort, contract or otherwise; and
- (b) Take direction from Ontario in relation to the enforcement of the provision required by paragraph (a) of this section 17.4 of the Agreement.

## **SECTION 18**

### **INSURANCE, BONDING AND/OR LETTER OF CREDIT**

**18.1 Recipient Shall Have Insurance.** The Recipient shall put in effect and maintain until the Expiry Date of this Agreement or until Ontario approves the Recipient's Final Report and releases the Holdback, whichever is shorter, at its own expense, with insurers acceptable to Ontario, all the necessary insurance that would be considered appropriate for a prudent Recipient of this type of undertaking a project similar to this Project, including Commercial General Liability Insurance, for third party bodily injury, personal injury and property damage to an inclusive limit of not less than the amount indicated in Part A.4 of Schedule "A" of this Agreement per occurrence and not less than amount indicated in Part A.4 of Schedule "A" of this Agreement for products and completed operations aggregate. The Recipient's Commercial General Liability Insurance policy shall include:

- (a) Her Majesty the Queen in Right of Ontario as an additional insured with respect to liability arising in the course of performance of the Recipient's obligations under, or otherwise in connection with, the Agreement;
- (b) A cross-liability clause;
- (c) Contractual Liability coverage;
- (d) Products and Completed Operations Liability coverage;
- (e) A valid WSIB Clearance Certificate, or Employers Liability and Voluntary Compensation, which ever applies;
- (f) Tenants Legal Liability (for premises/building leases only);
- (g) Non-Owned automobile coverage with blanket contractual and physical damage coverage for hired automobiles; and
- (h) A thirty (30) day written notice of cancellation, termination or material change clause.

**18.2 Performance Bond or Letter of Credit.** The Recipient shall:

- (a) Put into effect and maintain in full force and effect:
  - (i) A performance bond in the amount of fifty percent (50%) of the Contract price for any construction Contract related to the Project covering the performance of the construction Contract and the correction of any deficiencies, and
  - (ii) A labour and material payment bond in the amount of fifty percent (50%) of the Contract price for any construction Contract covering the payment for labour, material or both,

and the above bonds shall remain in place until the Expiry Date of this Agreement or until Ontario has approved the Final Report and released the Holdback, whichever is sooner; or

- (b) Put into effect and maintain in full force and effect an irrevocable standby letter of credit in the amount not less than the Maximum Financial Assistance, as set out in Part B.1 of Schedule "B" of this Agreement, issued by a Schedule 1 Canadian Bank in the name of the Recipient. The irrevocable standby letter of credit shall be maintained until the Expiry Date of this Agreement or until Ontario has approved the Final Report and released the Holdback, whichever is sooner.

**SECTION 19**  
**ONTARIO'S RIGHT OF "FIRST CALL"**

- 19.1 Ontario to Have Right of "First Call" On Any Proceeds of Insurance Policy.** The Recipient acknowledges that Ontario shall have a right of "first call" or priority over any other Person, including the Recipient, to use or enjoy the benefits of the proceeds from the insurance policy(ies) required under section 18.1 of this Agreement to pay any claim any 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*, and for any and all liability for damages to property and injury to persons, (including death)) that may be brought against Ontario as a result of this Agreement.

**SECTION 20**  
**CREDIT**

- 20.1 Ontario's Support to be Recognized.** The Recipient shall acknowledge the support of Ontario in all reports and materials and in all advertising and publicity relating to the Project, in a format approved by Ontario.
- 20.2 Ontario May Publicize Information About the Project.** The Recipient acknowledges that Ontario may publicize information regarding the Project.
- 20.3 Recipient's Views May Not Reflect Ontario's Views.** The Recipient shall ensure the acknowledgement in any report or materials indicates that the views expressed in the report or materials are the views of the Recipient and do not necessarily reflect those of Ontario.
- 20.4 Recipient to Follow Communication Requirement.** The Recipient shall follow the communications requirements set out in Schedule "H" of this Agreement.

## **SECTION 21 REPORTS**

- 21.1 Progress Reports.** The Recipient shall submit Progress Reports on the dates of, February 15 and August 15 throughout the Term of this Agreement in accordance with Schedule "F" of this Agreement unless Ontario agrees in writing otherwise. The Recipient shall follow such reasonable administrative procedures Ontario may specify from time to time.
- 21.2 Annual Financial Statements.** The Recipient shall, upon Ontario's written request, provide Ontario with a copy of its annual audited financial statements within thirty (30) Business Days of Ontario making the written request.
- 21.3 Projected Expenditure Report.** The Recipient shall, on or before February 15 and August 15 of each Fiscal Year, submit throughout the Term of this Agreement a projected expenditure report in accordance with Schedule "G" of this Agreement outlining the current incurred costs and projections. The Recipient shall follow such reasonable administrative procedures Ontario may specify from time to time.
- 21.4 Final Report.** The Recipient shall submit, subject to any events of Force Majeure or any other written direction the Recipient receives from Ontario, to Ontario a Final Report for the Project in accordance with Part I.2 of Schedule "I" of this Agreement and in a manner that is satisfactory to Ontario by the Final Report Date. The Recipient shall follow such reasonable administrative procedures Ontario may specify from time to time.
- 21.5 Additional Reports Upon Request.** The Recipient shall, upon Ontario's request, collect such information and provide such additional reports as Ontario may specify from time to time during the Term of this Agreement.

## **SECTION 22 INSPECTION**

- 22.1 Ontario May Inspect Project At Any Time.** Ontario reserves the right to inspect any aspect of the Project, including any Project Component thereof, at any time.
- 22.2 What Ontario May Inspect.** Ontario's right of inspection under this Agreement shall include, but is not necessarily limited to, the right to perform a full or partial technical audit from an independent technical expert to certify the full functionality and capability of the infrastructure and its components to the satisfaction of Ontario. Ontario will require the independent technical expert to sign a confidentiality agreement with the Recipient.

## **SECTION 23 RECORDS AND AUDIT**

- 23.1 Recipient's Obligations Under Agreement.** In completing the Project, the Recipient:
- (a) Shall keep and maintain all financial records, receipts, invoices and other financially-related documents relating to the Financial Assistance or otherwise to the Project in a manner consistent with generally accepted accounting principles and clerical

practices, and shall maintain such records and keep them available for review by Ontario for a period of ten (10) years from the Project Start Date;

- (b) Shall maintain all non-financial documents and records relating to the Financial Assistance or otherwise to the Project, including any records it receives about the people it serves, in a confidential manner consistent with all applicable laws; and
- (c) Hereby authorizes Ontario, its agents and employees, including Ontario's Auditor General's Office, upon twenty-four (24) hours' notice and during normal business hours, to enter upon the Recipient's premises, as well as any of the Project Sites, to review the status and manner of operation of the Project, to inspect the progress and monitor the Project Sites, to inspect and copy any financial records, invoices and other financially-related documents, and subject to consent by the person it serves, non-financial records and documents, in the possession or under the control of the Recipient which relate to the Financial Assistance or otherwise to the Project for auditing purposes.

**23.2 Audits.** Ontario may conduct audits of the Project. Ontario may require the assistance of an external auditor to carry out an audit. If so, Ontario shall be responsible for retaining the external auditor.

**23.3 Purpose of Conducting Audit.** The purposes for which Ontario may exercise its right under this section 23 include, but is not necessarily limited to, the following:

- (a) Determining for what items and purposes the Recipient expended the Financial Assistance;
- (b) Determining whether, and to what extent, the Recipient expended the Financial Assistance with due regard to economy and efficiency;
- (c) Determining whether the Recipient completed the Project effectively and in accordance with the terms of this Agreement;
- (d) Determining whether the Recipient is in compliance with the terms and conditions of this Agreement; and
- (e) Conducting technical audits of the Project or any Project Component thereof.

**23.4 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 Provincial Funds under this Agreement. For the purposes of facilitating such an inquiry, the Recipient shall release to Ontario 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 use of Provincial Funds; and such further information and explanations as the Auditor General of Ontario, or anyone acting on behalf of the Auditor General of Ontario, may request relating to any part of this Agreement or the use of Provincial Funds.

**23.5 Information.** The Recipient shall supply to Ontario, within five (5) Business Days of receiving a 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 Ontario may require. Ontario, its 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(s) at all reasonable times to:

- (a) Inspect the progress and monitor the Project;
- (b) Perform cost reviews and audits of the Project; and

- (c) Complete any other auditing or monitoring that may be reasonably required in relation to the Project.

**23.6 *Provision of Information True Condition Precedent.*** If, in the opinion of Ontario, any of the information requirements of this Agreement are not met, Ontario may, in its sole and absolute discretion, require the information as a condition precedent to any payment in relation to the Project or any other project(s) of the Recipient under this Agreement, or any other provincial program(s) (either current or future). In addition, Ontario may, in its sole discretion, Adjust the Financial Assistance for the Project.

**23.7 *Information For Program Evaluation Purposes.*** Upon request, the Recipient agrees to provide data and information about the Project relevant to any program evaluation exercise undertaken by the Province of Ontario for the Program.

## **SECTION 24**

### **DEFAULT AND TERMINATION**

**24.1 *Events of Default.*** Except where arising as a result of an event of Force Majeure, Ontario may, acting in a reasonable manner, without liability, cost or penalty, and without prejudice to any other rights or remedies of Ontario under this Agreement or at law or in equity, terminate this Agreement, subject to section 24.2, immediately upon giving notice to the Recipient if the following should take place:

- (a) In the opinion of Ontario:
  - (i) The Recipient has knowingly provided false or misleading information regarding its funding request or in any other communication with Ontario;
  - (ii) The Recipient breaches a material term or condition of this Agreement (where materiality is to be determined by Ontario, in its discretion, acting reasonably);
  - (iii) The Recipient breaches a material term or condition of any other funding agreement it has with Ontario (where materiality is to be determined by Ontario, in its discretion, acting reasonably);
  - (iv) The Recipient is unable to complete the Project or is likely to discontinue it;
  - (v) It is not reasonable for any reason for the Recipient to complete the Project or bring about the completion of the Project;
  - (vi) A material adverse change occurs such that the viability of a Recipient as a going concern is threatened; or if:
- (b) The Recipient makes an assignment, proposal, compromise, or arrangement for the benefit of creditors, or is petitioned into bankruptcy, or files for the appointment of a receiver; or
- (c) The Recipient ceases to operate.

**24.2 *Remedies on Default.*** Notwithstanding any other rights Ontario may have under this Agreement, if an Event of Default has occurred, Ontario shall have the following remedies:

- (a) Ontario shall have no further obligations to provide any Financial Assistance for the Project;
- (b) Ontario may, at its option, terminate this Agreement immediately after any notice period expires or may, in its sole and absolute discretion, Adjust the Financial Assistance;
- (c) Ontario may avail itself of any of its legal remedies that it may deem appropriate.

- 24.3 Recipient May Cure Event of Default.** Ontario shall, if Ontario determines an Event of Default is curable (in Ontario's sole and absolute discretion, acting reasonably) give the Recipient written notice of the Event of Default and provide the Recipient with at least thirty (30) Business Days, or such longer period of time as Ontario consents to in writing, to remedy the Event of Default prior to giving the Recipient notice under section 24.1 of this Agreement.
- 24.4 Additional Remedies.** In addition to the remedies described in section 24.2 of this Agreement, Ontario may commence such legal action or proceedings as it, in its sole and absolute discretion, may deem expedient, without any additional notice under this Agreement. The rights and remedies of Ontario hereunder are cumulative and in addition to, and not in substitution for, all other rights or remedies otherwise available to Ontario.
- 24.5 Recipient May Be Able to Wind Down Project.** Where notice to terminate is given under section 24.7 of this Agreement, Ontario may, in its sole and absolute discretion, assess the state of the Project and allow the Recipient to wind down the Project by the end of the notice period.
- 24.6 Waiver of Event of Default Must Be In Writing.** Ontario may, in its sole and absolute discretion, at any time, waive any above-mentioned Event of Default which may have occurred provided that no such waiver shall extend to, or be taken in any manner whatsoever to affect, any subsequent Event of Default or the right to remedies resulting therefrom, and that no such waiver shall be, or shall be deemed to constitute, a waiver of such Event of Default unless such waiver is in writing from Ontario.
- 24.7 Ontario's Discretion to Terminate Agreement.** Notwithstanding anything else contained in this Agreement, Ontario may, without liability, cost or penalty, and without prejudice to any other rights or remedies Ontario may have under this Agreement or at law or in equity terminate this Agreement at any time, provided it acts reasonably in doing so. For greater certainty, this includes the right to terminate the Agreement for consultation reasons in relation to section 14 of this Agreement.
- 24.8 Date of Termination.** In the event of termination pursuant to this section 24 the effective date of termination shall be the last day of the notice period, the last day of any subsequent notice period or immediately, whichever applies.
- 24.9 Force Majeure Termination.** In the event that an event of Force Majeure that directly and materially prevents the performance of the Project for a period of more than ninety (90) Business Days after the Recipient has provided notice of such event of Force Majeure to Ontario, this Agreement shall automatically terminate and the Recipient shall have the right to receive any Financial Assistance payable in respect of work on the Project performed to date.

## **SECTION 25**

### **GENERAL PROVISIONS**

- 25.1 Interpretation of Agreement.** For the purposes of interpreting this Agreement;
- (a) Words in the singular include the plural and vice-versa;
  - (b) Words in one gender include all genders;

- (c) Words such as “include”, “includes” and “including” shall not denote an exhaustive list;
  - (d) Words such as “herein”, “hereof” and “hereunder” and other words of similar import refer to this Agreement as a whole and not to any particular schedule, section, paragraph or other subdivision of the Agreement;
  - (e) The recitals and the headings in the Agreement do not form part of the Agreement; they are for reference only and shall not affect the interpretation of the Agreement;
  - (f) 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;
  - (g) 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; and
  - (h) All accounting terms not defined in this Agreement shall have the meanings usually assigned to them. All calculations will be made and all financial data to be submitted will be prepared in accordance with the applicable accepted accounting principles in effect in Ontario.
- 25.2 Terms Binding.** The Recipient shall take all reasonable measures to ensure that its officers, directors, partners, employees, agents, third party contractors shall be bound to observe all of the terms and conditions of this Agreement, including, but not limited to all of the covenants, representations and warranties set out herein. The Recipient shall include in all of its contract(s) terms and conditions similar to and not less favourable to Ontario than the terms and conditions of this Agreement to the extent that they are applicable to the work of third parties, including the requirements set out in section 12.9 of this Agreement.
- 25.3 Representatives May Bind Parties.** The Parties represent and warrant that their respective representatives have the authority to legally bind them to the extent permissible by the Requirements of Law.
- 25.4 Further Assurances.** The Parties agree to do or cause to be done all acts or things necessary to implement and carry into effect this Agreement to its full extent.
- 25.5 Agreement Binding.** This Agreement shall enure to the benefit of and be binding upon the Parties, their successors, executors, administrators and their permitted assigns.
- 25.6 Waivers in Writing.** If a Party fails to comply with any term of the Agreement, that Party may only rely on a waiver of the other Party if the other Party has provided a written waiver in accordance with the Notice provisions set out in section 25.23 of this Agreement. Any waiver must refer to a specific failure to comply and shall not have the effect of waiving any subsequent failures to comply.
- 25.7 Tolerance of Indulgence of Breach Not a Waiver.** Any failure by Ontario to insist in one or more instances upon strict performance by the Recipient of any of the terms or conditions of this Agreement shall not be construed as a waiver by Ontario of its rights to require strict performance of any such terms or conditions, and the obligations of the Recipient with respect to such performance shall continue in full force and effect.
- 25.8 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.

- 25.9 Severability.** If any term or condition of this Agreement, or the application thereof to the Parties or to any persons or circumstances, is to any extent invalid or unenforceable, the remainder of the Agreement, and the application of such term or condition to the Parties, persons or circumstances other than those to which it is held invalid or unenforceable, shall not be affected thereby.
- 25.10 No Assignment of Agreement Unless Other Party Agrees.** The Parties shall not assign this Agreement to any other person unless the non-assigning Party agrees to the assignment in writing.
- 25.11 No Amendment.** This Agreement shall not be varied or amended except by a document in writing, dated and signed on behalf of the Parties.
- 25.12 Joint Authorship of Agreement.** The Parties shall be considered joint authors of this Agreement and no provision shall be interpreted against one Party by the other Party because of authorship.
- 25.13 Parties Independent.** The Recipient acknowledges that it is not an agent, joint venturer, partner or employee of Ontario and the Recipient shall not take any actions that could establish or imply such a relationship.
- 25.14 Recipient Cannot Represent 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 represents, warrants and agrees that under no circumstances shall it enter into any contract or commitment in the name of or on behalf of Ontario. The Recipient acknowledges and agrees that it is not by the terms and conditions of this Agreement or otherwise granted any right or authority to assume or to create any obligations or responsibility, express or implied, on behalf of or in the name of Ontario, to act as an agent of Ontario or to bind Ontario in any manner whatsoever other than as specifically provided under this Agreement.
- 25.15 Consultants.** Ontario acknowledges and recognizes that, in connection with the carrying out of the Project, the Recipient may engage one or more Consultants. Ontario acknowledges and agrees that the Recipient shall have the sole authority and responsibility for such employees, agents or Consultants, including the hiring and termination. The Recipient acknowledges and agrees that the Recipient shall be responsible for all acts and actions of the Recipient's employees, agents and Consultants and that all such acts and actions shall be treated as actions of the Recipient for the purposes of this Agreement.
- 25.16 Lobbyists and Agent Fees.** The Recipient represents and warrants:
- (a) Any person hired by the Recipient to speak or correspond with any employee or other person representing Ontario concerning any matter relating to the Financial Assistance under this Agreement or any benefit hereunder is registered, if required to register, pursuant to the *Lobbyists Registration Act, 1998*;
  - (b) It has not and will not make a payment or other compensation to any legal entity that is contingent upon or is calculated upon the provision of Financial Assistance hereunder or negotiating the whole or any part of the terms and/or conditions of this Agreement; and
  - (c) No money from the Government of Ontario was used to lobby or otherwise secure the provision of Financial Assistance hereunder.



**25.17 Circumstances Beyond the Control of Either Party – Force Majeure.** For the purposes of this Agreement:

- (a) “Force Majeure” means an event that is:
  - (i) Beyond the reasonable control of a Party; and
  - (ii) Makes a Party’s performance of its obligations under the Agreement impossible or so impracticable as reasonably to be considered impossible in the circumstances.
- (b) Force Majeure includes:
  - (i) Infectious diseases, war, riots and civil disorder;
  - (ii) Storm, flood, earthquake or other severely adverse weather conditions;
  - (iii) Confiscation or other similar action by government agencies;
  - (iv) Lawful acts by a public authority; and,
  - (v) Strikes, lockouts and other labour actions,

if such events meet the test set out in paragraph (a) of this section 25.17 of the Agreement.

- (c) Force Majeure shall not include:
  - (i) Any event that is caused by the negligence or intentional action of a Party or such Party’s agents or employees;
  - (ii) Any event that a diligent Party could reasonably have been expected to:
    - (a) Take into account at the time of the execution of this Agreement; and
    - (b) Avoid or overcome in carrying out its obligations under the Agreement.
- (d) Subject to section 8.1 of this Agreement, the failure of either Party to fulfil any of its obligations under this Agreement shall not be considered to be a breach of, or Event of Default under, this Agreement to the extent that such failure to fulfill the obligation arose from an event of Force Majeure, if the Party affected by such an event has taken all reasonable precautions, due care and reasonable alternative measures, all with the objective of carrying out the terms and conditions of this Agreement.

**25.18 Joint and Several Liability.** Where the Recipient is comprised of more than one entity, all such entities shall be jointly and severally liable to Ontario for the fulfillment of the obligations of the Recipient under this Agreement.

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

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

**25.21 Repayment of Debt to Minister of Finance.** The Recipient shall repay any monies owing under this Agreement to Ontario by cheque payable to the “Ontario Minister of Finance” and mailed to the representative provided for in section 25.23 of this Agreement.

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

**25.23 Notice and Service of Documents Under Agreement.** Notices shall be in writing and shall be delivered by postage-prepaid mail, personal delivery or facsimile and shall be addressed to Ontario and the Recipient respectively, as set out below:

**Ontario**

To Ontario:

Ontario Ministry of Agriculture, Food and Rural Affairs  
Rural Community Development Branch  
1 Stone Road West, 4<sup>th</sup> floor NW  
Guelph, Ontario  
N1G 4Y2

Attention: Dino Radocchia  
Telephone: 519-826-3787  
Fax: 519-826-4336  
Email: dino.radocchia@ontario.ca

**Recipient**

To Anna Gibson-Olajos

Economic Development Officer  
P.O. Box 250  
466 Main Street  
Powassan, Ontario  
P0H 1Z0

Telephone: 705-724-2813 x237  
Email: agibsonolajos@powassan.net

Notice shall be deemed to have been received:

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

In the event of a postal disruption, Notices shall be given by personal delivery or by facsimile. Unless the Parties expressly agree in writing to additional methods of Notices, Notices may only be provided by the method(s) contemplated in this section 25.23 of the Agreement.

The Parties agree that for the purposes of this section 25.23 of the Agreement, the name(s) of the individuals may be changed without amending the Agreement through the Party making the change providing written Notice to the other Party of said change.

- 25.24 Governing Law.** This Agreement and the rights, obligations and relations of the Parties shall be governed by and construed in accordance with the laws of the Province of Ontario and the applicable federal laws of Canada. Any actions or proceedings in connection with this Agreement shall be conducted in Ontario.
- 25.25 Agreement Executed in Counterparts.** This Agreement may be executed in any number of counterparts, each of which shall be deemed an original, but all of which together, shall constitute one and the same agreement.
- 25.26 Entire Agreement.** This Agreement, including its schedules, embodies the entire Agreement between the Parties with respect to the subject matter contained in the Agreement and supersedes all prior oral or written representations or agreements. No prior document, discussion, negotiation, provision undertaking or agreement in relation to the subject matter of this Agreement has any legal effect. No representation or warranty, whether express, implied or otherwise, has been made by Ontario to the Recipient except as expressly set out in this Agreement.
- 25.27 Survival.** The provisions of this Agreement that by their nature survive the expiration or early termination shall so survive, including: sections 3 to 5; subsections 7.1, 7.2, 7.6, 7.11 and 7.15; sections 8, 11, 13, 14, 16, 17, 19, 20 to 24; and subsections 25.1, 25.6, 25.7, 25.8, 25.11 and 25.18 to 25.22 and all applicable definitions, cross-referenced provisions and Schedules shall continue in full force and effect for a period of seven (7) years from the Expiration Date or termination of this Agreement.

**[Rest of Page Intentionally Left Blank]**

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


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

as represented by the Minister of Agriculture, Food and Rural Affairs

  
\_\_\_\_\_  
Name: Martin Bohl Date: 9/21/11  
Title: Director, Rural Communities Development Branch

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

**THE CORPORATION OF THE MUNICIPALITY OF POWASSAN**

  
\_\_\_\_\_  
Name: Mayor Peter McIsaac Date: Aug. 16 / 2011  
Title:

  
\_\_\_\_\_  
Name: Maureen Lang Date: Aug 16 / 2011  
Title: Clerk-Treasurer

**I/We have the authority to bind the Recipient.**

**SCHEDULE "A"**  
**PROJECT INFORMATION**

**Part A.1 – Project Description:**

Powassan Wastewater Distribution Rehabilitation Project: Leakage repairs, focused on stopping infiltration.

For a complete Project description, refer to the Recipient's application under the Program, which is referentially incorporated into this Schedule "A.1" of the Agreement as it relates to how the Project is described and/or the work that the Recipient agreed to undertake in order to successfully complete the Project in its application.

Given the size of the Recipient's application under the Program, it has not been reproduced in this Schedule "A.1". However, the Parties agree that the application is the document that the Recipient submitted to OMAFRA.

**Part A.2 – Project Completion Date:**

The Project Completion Date is December 31, 2014.

**Part A.3 – Transfer of Assets Date:**

December 31, 2019

**Part A.4 – Insurance Amounts:**

The Recipient shall have two million dollars (\$2,000,000) in insurance per occurrence.

The Recipient shall have two million dollars (\$2,000,000) in insurance per products and completed operations aggregate.

**SCHEDULE "B"**  
**PROJECT FINANCIAL INFORMATION**

**Part B.1 – Maximum Financial Assistance:**

<b>PROJECT #</b>	<b>TOTAL NET ELIGIBLE COSTS</b>	<b>ONTARIO MAXIMUM FINANCIAL ASSISTANCE</b>
3245	\$860,686.73	\$573,820.00

**Part B.2 – End of Financial Assistance Date:**

The End of Financial Assistance Date for this Project shall be December 31, 2014.

**SCHEDULE "C"**  
**ABORIGINAL CONSULTATION REQUIREMENT**

**1.0 PURPOSE**

This Schedule sets out the responsibilities of Ontario and the Recipient in relation to consultation with an Aboriginal Group on the Project, and to delegate procedural aspects of consultation from Ontario to the Recipient.

**1.1 Definitions**

For the purposes of this Schedule:

**"S. 35 Duty"** means any duty Ontario may have to consult and, where appropriate, accommodate an Aboriginal Group 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 which (if any) Aboriginal Group should be consulted in relation to the Project and advising the Recipient of the same;
- (ii) The preliminary and ongoing assessment of the depth of consultation required with any Aboriginal Group;
- (iii) At its discretion, delegating procedural aspects of consultation to the Recipient pursuant to this Schedule "C" of the Agreement;
- (iv) Satisfying itself, where it is necessary to do so, that the consultation process in relation to the Project has been adequate and the Recipient is in compliance with this Schedule "C" of the Agreement; and
- (v) Satisfying itself, where any Aboriginal or treaty rights and asserted rights of any Aboriginal Group require accommodation, that that Aboriginal Group is appropriately accommodated in relation to the Project.

**3.0 RESPONSIBILITIES OF THE RECIPIENT**

**3.1** The Recipient is responsible for:

- (i) Giving notice to any Aboriginal Group regarding the Project as directed by Ontario, if such notice has not already been given by the Recipient or Ontario;
- (ii) Immediately notifying Ontario of contact by any Aboriginal Group regarding the Project and advising of the details of the same;
- (iii) Informing any Aboriginal Group interested about the Project and providing to those Aboriginal Groups a full description of the Project unless such description has been previously provided to them;

- (iv) Following up with any Aboriginal Group that has an interest in the Project in an appropriate manner to ensure that the Aboriginal Group is 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 Group, and immediately advising Ontario of the details of the same;
- (v) Informing the Aboriginal Group of the regulatory and approval processes that apply to the Project of which the Recipient is aware after reasonable inquiry;
- (vi) Maintaining the Aboriginal Group on the Recipient's mailing lists of interested parties for environmental assessment and other purposes and providing to the Aboriginal Group all notices and communications that the Recipient provides to interested parties and any notice of completion;
- (vii) Making all reasonable efforts to build a positive relationship with any Aboriginal Group that has an interest in the Project;
- (viii) Providing Aboriginal Groups with reasonable opportunities to meet with appropriate representatives of the Recipient and meeting with the Aboriginal Groups to discuss the Project (if requested);
- (ix) If appropriate, providing reasonable financial assistance to an Aboriginal Group to permit effective participation in consultation processes for the Project, but only after consulting with Ontario;
- (x) Considering comments provided by any Aboriginal Groups with an interest in the Project regarding the potential impacts of the Project on Aboriginal or treaty rights or asserted rights, including adverse impacts on hunting, trapping, fishing, plant harvesting or on burial grounds or archaeological sites of cultural significance to an Aboriginal Group, or on other interests, or any other concerns or issues regarding the Project;
- (xi) Answering any reasonable questions to the extent of the Recipient's ability and receiving comments from Aboriginal Groups, notifying Ontario of the nature of the questions or comments received and maintaining a chart showing the issues raised by any Aboriginal Group and any responses the Recipient has provided;
- (xii) Where an Aboriginal Group asks questions regarding the Project directly of Ontario, providing Ontario with the information reasonably necessary to answer the inquiry, upon Ontario's request;
- (xiii) Subject to subsection 3.1 (xiv), where appropriate, discussing with an Aboriginal Group 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 Group that relate to potential accommodation or mitigation of potential impacts;
- (xiv) Consulting regularly with Ontario during all discussions with any Aboriginal Group regarding accommodation measures, if applicable, and presenting to Ontario for the purposes of subsection 2.1 (v) hereof, the results of such discussions prior to implementing any applicable accommodation measures;



- (xv) Complying with Ontario's direction to take any actions, including without limitation, suspension of the Project, as Ontario may require; and
- (xvi) Providing in any contracts with third parties for the Recipient's right and ability to respond to direction from Ontario as Ontario may provide in accordance with subsection 3.1 (xv).

3.2 The Recipient hereby acknowledges that, notwithstanding Ontario's delegation of authority regarding consultations to the Recipient pursuant to section 14.2 of this Agreement, Ontario, any provincial ministry having an approval role in relation to the Project, or any responsible regulatory body, official, or provincial decision-maker, may participate in the matters and processes enumerated therein as they deem necessary.

3.3 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 any Aboriginal Group 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 Group in relation to the Project;
- (iv) Immediately notify Ontario of any contact by any Aboriginal Group regarding the Project and provide copies to Ontario of any documentation received from Aboriginal Groups;
- (v) Immediately notify Ontario 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 any Aboriginal Group, as may be requested by Ontario;
- (viii) If applicable, advise Ontario if the Recipient and an Aboriginal Group propose to enter into an agreement directed at mitigating or compensating for any impacts of the Project on Aboriginal or treaty rights or asserted rights (e.g. an impact-benefit agreement or other such similar agreement); and
- (ix) If applicable, and if requested, provide Ontario with a copy of the non-financial information of any agreement the Recipient and an Aboriginal Group enter into that is directed at mitigating or compensating for any impacts of the Project on Aboriginal or treaty rights or asserted rights (e.g. an impact-benefit agreement or other such similar agreement).

3.4 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 any Aboriginal Group 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 Schedule "C" 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 of this Schedule "C" 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 Schedule 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 "C" 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 NW  
Guelph, Ontario  
N1G 4Y2

Attention: Dino Radocchia  
Telephone: 519-826-3787  
Fax: 519-826-4336  
Email: dino.radocchia@ontario.ca

**SCHEDULE "D"**  
**ELIGIBLE AND INELIGIBLE COSTS**

**Part D.1 – Eligible Costs:**

Subject to Section D.2, Eligible Costs will be all direct costs that are in OMAFRA's sole and absolute discretionary opinion properly and reasonably incurred and paid by the Recipient 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 constructing, rehabilitating or improving, in whole or in part, 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 "H";
- (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;
- (d) The costs of engineering and environmental reviews, including environmental assessments and follow-up programs as defined in the *Environmental Assessment Act* (Ontario) 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 on matters pertaining to the project, including the translation of documents into languages spoken by the affected Aboriginal Group;
- (g) The costs of developing and implementing innovative techniques for carrying out the Project, as determined by OMAFRA;
- (h) if OMAFRA exercises its rights under sections 23.3 or 23.4 of the Agreement, the audit and evaluation costs incurred by the Recipient in response to the application of those rights; and
- (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.

**Part D.2 – Ineligible Costs:**

The following costs are ineligible for Financial Assistance:

- (a) Costs incurred prior to May 18, 2011;
- (b) Costs incurred after the Project Completion Date;
- (c) Land acquisition, leasing land, buildings, equipment and other facilities, real estate fees and related costs;
- (d) Financing charges, legal fees (other than those associated with consultation with an Aboriginal Group, provided those legal fees are reasonable), and loan interest payments (including those related to easements (e.g. surveys));
- (e) The value of any goods and services which are received through donations or in kind;
- (f) Employee wages and benefits, overhead costs as well as other direct or indirect operating, maintenance and administrative costs incurred by the Recipient for the Project, and more specifically costs relating to services delivered directly by permanent employees of the Recipient;
- (g) Meal, hospitality or incidental expenses of Consultants;
- (h) Harmonized Sales Tax for which the Recipient is eligible for a rebate, if any, and any other costs eligible for rebates; and
- (i) Any costs of accommodation for any Aboriginal Group(s).

**SCHEDULE "F"**  
**PROGRESS REPORT**



**Ontario Small Waterworks Assistance Program (OSWAP)**

**Project Report**

**Project Number :**  **Project Title :**

**% of Project Completed to Date :**

% (no decimals)

<b>Project Information :</b>	<b>Forecasted :</b>	<b>Actual :</b>
<b>Project Start Date :</b>		
<b>Construction Start Date :</b>		
<b>Construction End Date :</b>		
<b>Date of First Tender Call :</b>		
<b>Date of First Tender Award :</b>		

**Note: Actual  
dates must be  
in the past.**

**Variances (if any) and reasons for variances:**

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**Benefits to Community:**

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

## SCHEDULE "G"

### PROJECTED EXPENDITURE REPORT



Ontario Small Waterworks Assistance Program (OSWAP)

#### RECIPIENT EXPENDITURE & FORECAST REPORT

Recipient Municipality: \_\_\_\_\_  
 Project Number: \_\_\_\_\_  
 Approved Eligible Cost: \_\_\_\_\_

Quarter	(April - June) Q1	(July - Sept.) Q2	(Oct. - Dec.) Q3	(Jan. - March) Q4
2011/12				
2012/13				
2013/14				
2014/15				
Total Expenditures and Forecast				\$

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

**NOTES:**

- 1) Please report using the accrual method of accounting (that is the value of work completed to date, whether or not billed or paid).
- 2) Please only include Net Eligible Expenditures – total eligible costs net of HST rebates
- 3) If the project could not be completed within the timeframes of the program, please enter costs into the relevant quarter in which the costs were incurred or are anticipated to be incurred for the duration of the project.
- 4) The total expenses and forecast must not exceed the Approved Eligible Cost.
- 5) Initial report will be by hard copy. Subsequent reports must be completed on or before February 15<sup>th</sup> and August 15<sup>th</sup> until the project is complete.
- 6) Further instructions may be available online, including previously reported information, once your project is underway

## **SCHEDULE “H”**

### **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 Parties.*

#### **General Principles**

Any and all cost associated with this Schedule “H” must be expressly approved by Ontario in writing prior to being incurred.

The Recipient agrees to work with OSWAP officials and other partners to undertake communication activities for the Project in an open, effective and proactive manner, ensuring equal recognition of the Government of Ontario and the Recipient's financial contributions to the Project.

The Parties will receive equal recognition and prominence when logos, symbols, flags and other types of identification are incorporated into events, signs and plaques unless the Ontario Ministry of Agriculture, Food and Rural Affairs (OMAFRA) specifies otherwise.

All events, signs and plaques will follow these Communications Requirements and any other requirements that may be specified by OMAFRA from time to time.

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

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

#### **Events**

The Recipient agrees that all Project-related milestone events, such as groundbreaking and ribbon-cutting ceremonies, will be organized in cooperation with the Government of Ontario.

The Recipient will coordinate a mutually agreeable venue, date and time for the event in light of the availability of participants. Unless agreed to in advance, no event should take place without at least ten (10) Business Days notice to OMAFRA.

The Recipient may invite other elected officials (for example, Members of Provincial Parliament) and members of council. The Recipient may also invite local interested parties, such as contractors, architects, labour groups, and community leaders as early as possible, and in consultation with the Government of Ontario, prior to the event.

All written communications (invitations, media materials including news releases, public service announcements, posters, etc.) must indicate that the Project received Financial Assistance from the Government of Ontario under the Ontario Small Waterworks Assistance Program (OSWAP). The Government of Ontario will assist the Recipient in developing an agenda, media materials, etc. All parties will approve and receive final copies. Provincial and municipal flags should also be on display at all OSWAP events.

### **Temporary Signs**

Unless otherwise agreed to by OMAFRA, Recipients of projects with total eligible costs exceeding \$100,000 agree to produce and install a temporary Project sign to communicate the nature of the Project and the involvement of the Government of Ontario and the Recipient.

The Recipient must ensure that the design, wording and specifications for the sign are in accordance with provincial visual identity guidelines. New visual identity guidelines are currently being developed and will be made available in the near future. Staff from the OSWAP Secretariat (i.e. OMAFRA) will notify you once the new guidelines and an electronic sign template are available online.

A temporary sign must be installed within fifteen (15) Business Days of Project commencement. The temporary sign must be removed after sixty calendar days of Project completion.

### **Eligible Costs**

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

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

- Printing and mailing invitations
- Light refreshments, such as coffee, tea, and juice.
- Project material for display and/or media kit
- Temporary sign
- 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 will be capped at \$4,250.

## SCHEDULE "J" FINAL REPORT

### Part I.1 – Final Report Date:

The Final Report Date is March 31, 2015

### Part I. 2 – Final Report:



### Ontario Small Waterworks Assistance Program (OSWAP) Programme ontarien d'aide aux petits réseaux de distribution d'eau (POAPRDE)

#### FINAL REPORT/RAPPORT FINAL

##### Part 1 - Project Information / Partie 1 - Information sur le projet

Recipient/Bénéficiaire	
File Number/Numéro de dossier	
Project Name/Nom du projet	

Project Start Date / Date du début du projet	
Project Completion Date / Date de la fin du projet	

##### Authorized Official / Responsable autorisé(e)

Name/Nom	Date/Date
Title/Titre	
<p>I certify that the Project to which this Final Report relates has been completed in accordance with the terms and conditions of the Agreement and that supporting invoices and records are available for audit purposes, if required.</p>	
<p>J'atteste que le projet sur lequel porte le présent rapport final a été achevé conformément aux modalités de l'accord et que les factures et autres pièces justificatives sont disponibles aux fins de vérification, au besoin.</p>	
Signature/Signature :	

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

Environmental Assessment (If Applicable) Évaluation environnementale (s'il y a lieu)	\$
Engineering / Ingénierie	\$
Construction / Construction	\$
Project Management / Gestion de projet	\$
Materials Matériaux	\$
Miscellaneous / Divers	\$
H.S.T. / T.V.H.	\$
<b>GROSS ELIGIBLE COST CÔÛT BRUT ADMISSIBLE</b>	\$
Less HST Rebate / Moins remboursement de la TVH	\$
<b>NET ELIGIBLE COST CÔÛT NET ADMISSIBLE</b>	\$

\*NOTE: If the actual costs are 20% less or greater than the estimated costs on your application for any of the above categories, please attach an explanation of the variance for each.

\*REMARQUE: Si le coût actual est de 20 % supérieur ou inférieur au coût estimé figurant dans votre demande pour une des catégories ci-dessus, veuillez inclure une explication de l'écart pour chacun des totaux.