

THE CORPORATION OF THE TOWNSHIP OF WHITEWATER REGION

BY-LAW # 13-03-598

Being a bylaw to authorize the Mayor and CAO to execute an Agreement under the Municipal Infrastructure Investment Initiative (MIII) Asset Management Program.

WHEREAS pursuant to the Municipal Act 2001 S.O. as amended, a Council may enter into agreements;

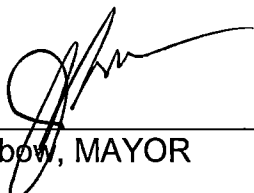
AND FURTHER that the Municipal Council for the Township of Whitewater Region deems it necessary to enter into an agreement under the Municipal Infrastructure Investment Initiative (MIII) Asset Management Program.

THEREFORE the Council of the Corporation of the Township of Whitewater Region enacts that:

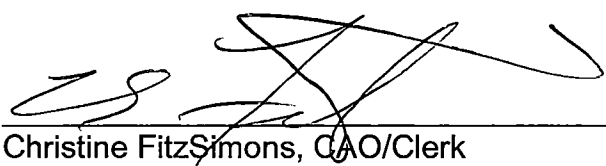
1. The Mayor and the CAO are hereby authorized to execute this Agreement under the Municipal Infrastructure Investment Initiative (MIII) Asset Management Program between the Minister of Agriculture and Food and the Minister of Rural Affairs and The Corporation of the Township of Whitewater Region as in Schedule A attached hereto.

All By-Laws or parts of By-Laws previously passed that are inconsistent with the provisions of By-Law 13-03-598 are hereby repealed.

Passed this 6th day of March, 2013



Jim Labow, MAYOR



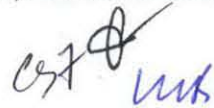
Christine FitzSimons, CAO/Clerk

THE AGREEMENT effective as of the 28th day of March, 2013.

BETWEEN:

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

("OMAFRA")



- and -

THE CORPORATION OF THE
Township of Whitewater Region

(the "Recipient")

Background:

The MOI funds projects similar to the Project described in Schedule "A".

The Recipient has proposed to carry out the Project and MOI wishes to provide funding.

MOI has asked OMAFRA to administer the funds on MOI's behalf. OMAFRA has agreed to manage the funds on behalf of MOI.

Consideration:

In consideration of the mutual covenants and agreements contained herein and for other good and valuable consideration, the receipt and sufficiency of which is expressly acknowledged, the Parties agree as follows:

ARTICLE 1. DEFINITIONS

1.1. **Interpretation.** For the purposes of interpretation:

- a) words in the singular include the plural and vice-versa;
- b) words in one gender include all genders;
- c) the background and the headings do not form part of the Agreement; they are for reference only and shall not affect the interpretation of the Agreement;
- d) any reference to dollars or currency shall be to Canadian dollars and currency; and
- e) "include", "includes" and "including" shall not denote an exhaustive list.

1.2. **Definitions.** In the Agreement the following terms shall have the following meanings:

"Agreement" means this agreement entered into between OMAFRA and the Recipient and includes all of the schedules listed in section 27.1.

"BPSAA" means the *Broader Public Sector Accountability Act, 2010* (Ontario), including any directives issued pursuant to that Act.

"Budget" means the budget attached to the Agreement as Schedule "B".

"Business Day" means any working day, Monday to Friday inclusive, but excluding statutory and other holidays, and any other day which the Ministry has elected to be closed for business.

"Effective Date" means the date set out at the top of the Agreement.

"Event of Default" has the meaning ascribed to it in section 14.1.

"Force Majeure" has the meaning ascribed to it in Article 25.

"Funding Year" means:

- a) the period commencing on the Effective Date and ending on the following March 31; and
- b) if there are Funding Years subsequent to the Funding Year in (a), the period commencing on April 1 following the end of the previous Funding Year and ending on the following March 31.

"Funds" means the money provided by OMAFRA to the Recipient pursuant to the Agreement.

"Indemnified Parties" means Her Majesty the Queen in right of Ontario, Her Ministers, agents, appointees and employees.

"Maximum Funds" means \$ 22,969.27.

"MOI" means the Ministry of Infrastructure.

"Notice" means a communication required to be given pursuant to the Agreement.

"Parties" means OMAFRA and the Recipient.

"Party" means either OMAFRA or the Recipient.

"Project" means the undertaking described in Schedule "A".

"Reports" means the reports described in Schedule "C".

"Requirements of Law" means all applicable requirements of law, as may be set out in statutes, regulations, by-laws, codes, rules, ordinances, official plans, approvals, permits, licences, authorizations, decrees, injunctions, orders and declarations or any other similar requirement of law that could be imposed upon a Recipient, by authorities that now or at any time hereafter during the term of Program may have jurisdiction over the Recipient.

"Timelines" means the Project schedule set out in Schedule "A".

"Wind Down Costs" means the Recipient's reasonable costs to wind down the Project.

ARTICLE 2. REPRESENTATIONS, WARRANTIES AND COVENANTS

- 2.1. **General.** The Recipient represents, warrants and covenants that:
- a) it is, and shall continue to be for the term of the Agreement, a validly existing legal entity with full power to fulfill its obligations under the Agreement;
 - b) it has, and shall continue to have for the term of the Agreement, the experience and expertise necessary to carry out the Project; and
 - c) any information the Recipient provided to OMAFRA in support of its request for funds (including information relating to any eligibility requirements) was true and complete at the time the Recipient provided it, and shall continue to be true and complete for the term of the Agreement in every respect.
- 2.2. **Execution of Agreement.** The Recipient represents and warrants that:
- a) it has the full power and authority to enter into the Agreement; and
 - b) it has taken all necessary actions to authorize the execution of the Agreement (including if necessary passing a Local Services Board resolution or a municipal by-law or resolution authorizing the Recipient to enter into the Agreement with OMAFRA).
- 2.3. **Governance.** The Recipient represents, warrants and covenants that it has, and shall maintain, in writing, for the period during which the Agreement is in effect:
- a) a code of conduct and ethical responsibilities for all persons at all levels of the Recipient's organization;
 - b) procedures to ensure the ongoing effective functioning of the Recipient;
 - c) decision-making mechanisms;
 - d) procedures to provide for the prudent and effective management of the Funds;
 - e) procedures to enable the successful completion of the Project;
 - f) procedures to enable the timely identification of risks to the completion of the Project and strategies to address the identified risks;
 - g) procedures to enable the preparation and delivery of all Reports required pursuant to Article 7; and
 - h) procedures to deal with such other matters as the Recipient considers necessary to ensure that the Recipient carries out its obligations under the Agreement.
- 2.4. **Supporting Documentation.** Upon request, the Recipient shall provide OMAFRA with proof of the matters referred to in Article 2.

ARTICLE 3. TERM OF THE AGREEMENT

- 3.1. **Term.** The term of the Agreement shall commence on the Effective Date and shall expire on March 31, 2015 unless terminated earlier pursuant to Article 12, Article 13 or Article 14.

ARTICLE 4. FUNDS AND CARRYING OUT THE PROJECT

4.1. **Funds Provided.** OMAFRA shall:

- a) provide up to the Maximum Funds to the Recipient for the purpose of carrying out the Project;
- b) provide the Funds to the Recipient in accordance with the payment schedule attached to the Agreement as Schedule "D";
- c) deposit the Funds into an account designated by the Recipient provided that the account:
 - i) resides at a Canadian financial institution; and
 - ii) is in the name of the Recipient.

4.2. **Limitation on Payment of Funds.** Despite section 4.1, OMAFRA:

- a) shall not provide any Funds to the Recipient until the Recipient provides the insurance certificate or other documents provided for in section 11.2;
- b) is not obligated to provide instalments of Funds until it is satisfied with the progress of the Project, if applicable; and
- c) may adjust the amount of Funds it provides to the Recipient in any Funding Year based upon OMAFRA's assessment of the information provided by the Recipient in the Reports, if applicable; and
- d) if, pursuant to the provisions of the *Financial Administration Act* (Ontario) as amended, OMAFRA does not receive the necessary appropriation from the Ontario Legislature for any payment OMAFRA is obligated to make under the Agreement, OMAFRA is not obligated to make the payment and OMAFRA may, pursuant to section 13.1, terminate the Agreement or may reduce the amount of the Funds and, in consultation with the Recipient, change the Project.

4.3. **Use of Funding and Project.** The Recipient shall:

- a) carry out the Project;
 - i) in accordance with the terms of the Agreement; and
 - ii) in compliance with all Requirements of Law related to any aspect of the Project;
- b) use the Funds only for the purpose of carrying out the Project; and
- c) spend the Funds only in accordance with the Budget.

4.4. **No Changes.** The Recipient shall:

- a) not make any changes to the Project, the Timelines and/or the Budget without the prior written consent of OMAFRA; and
- b) abide by the terms and conditions OMAFRA may require pursuant to any consent.

4.5. **Interest Bearing Account.** If OMAFRA provides Funds to the Recipient prior to the Recipient's immediate need for the Funds the Recipient shall place the Funds in an interest bearing account in the name of the Recipient at a Canadian financial institution.

- 4.6. **Interest.** If the Recipient earns any interest on the Funds:
- a) OMAFRA may deduct an amount equal to the interest from any further instalments of Funds; or
 - b) the Recipient shall pay an amount equal to the interest to OMAFRA as directed by OMAFRA.
- 4.7. **Maximum Funds.** The Recipient acknowledges that the Funds available to it pursuant to the Agreement shall not exceed the Maximum Funds.
- 4.8. **Rebates, Credits and Refunds.** The Recipient shall not use the Funds for any costs including taxes for which it has received, will receive, or is eligible to receive a rebate, credit or refund.

ARTICLE 5. ACQUISITION OF GOODS AND SERVICES, AND DISPOSAL OF ASSETS

- 5.1. **Acquisition.** Subject to section 32, if the Recipient acquires supplies, equipment or services with the Funds, it shall do so through a process that promotes the best value for the money.
- 5.2. **Disposal.** The Recipient shall not, without OMAFRA's prior written consent, sell, lease or otherwise dispose of any assets purchased with Funds, or for which Funds were provided.

ARTICLE 6. CONFLICT OF INTEREST

- 6.1. **No Conflict of Interest.** The Recipient shall carry out the Project and use the Funds without an actual, potential or perceived conflict of interest.
- 6.2. **Conflict of Interest Includes.** For the purposes of this Article, a conflict of interest includes any circumstances where:
- a) the Recipient; or
 - b) any person who has the capacity to influence the Recipient's decisions;
- has outside commitments, relationships or financial interests that could, or could be seen to, interfere with the Recipient's objective, unbiased and impartial judgment relating to the Project and the use of the Funds.
- 6.3. **Disclosure to OMAFRA.** The Recipient shall:
- a) disclose to OMAFRA without delay any situation that a reasonable person would interpret as an actual, potential or perceived conflict of interest; and
 - b) comply with any terms and conditions that OMAFRA may prescribe as a result of the disclosure.

ARTICLE 7. REPORTING, ACCOUNTING AND REVIEW

- 7.1. **Preparation and Submission.** The Recipient shall:
- a) submit to OMAFRA at the address provided in Section 18.1, all Reports in accordance with the timelines and content requirements set out in Schedule "C", or in a form as specified by OMAFRA from time to time;

- b) submit to OMAFRA at the address provided in Section 18.1, any other reports requested by OMAFRA in accordance with timeline and content requirements specified by OMAFRA;
- c) ensure that all Reports and other reports are completed to the satisfaction of OMAFRA; and
- d) ensure that all Reports and other reports are signed on behalf of the Recipient by an authorized signing officer.

7.2. **Record Maintenance.** The Recipient shall keep and maintain:

- a) all financial records (including invoices) relating to the Funds or otherwise to the Project in a manner consistent with generally accepted accounting principles; and
- b) all non-financial documents and records relating to the Funds or otherwise to the Project.

7.3. **Inspection.** OMAFRA, its authorized representatives or an independent auditor identified by OMAFRA may, at its own expense, upon twenty-four hours' Notice to the Recipient and during normal business hours, enter upon the Recipient's premises to review the progress of the Project and the Recipient's expenditure of the Funds, and for these purposes OMAFRA, its authorized representatives or an independent auditor identified by OMAFRA, may:

- a) inspect and copy the records and documents referred to in section 7.2; and
- b) conduct an audit or investigation of the Recipient in respect of the expenditure of the Funds and/or Project.

7.4. **Disclosure.** To assist in respect of the rights set out in Section 7.3, the Recipient shall disclose any information reasonably requested by OMAFRA, its authorized representatives or an independent auditor identified by OMAFRA, and shall do so in a form reasonably requested by OMAFRA, its authorized representatives or an independent auditor identified by OMAFRA, as the case may be.

7.5. **No Control Over Unrelated Information.** No provision of the Agreement shall be construed so as to give OMAFRA any control whatsoever over the Recipient's documentation or information that is not related to the Project or to the expenditure of Funds.

7.6. **Auditor General.** For greater certainty, OMAFRA's rights under this Article are in addition to any rights provided to the Auditor General pursuant to section 9(1) of the *Auditor General Act* (Ontario).

ARTICLE 8. CREDIT

8.1. **Acknowledge Support.** Unless otherwise directed by OMAFRA, the Recipient shall, in a form approved by OMAFRA, acknowledge the support of Ontario in any publication of any kind, written or oral, relating to the Project.

8.2. **Publication.** If the Recipient publishes any material of any kind, written or oral, relating to the Project, the Recipient shall indicate in the material that the views expressed in the material are the views of the Recipient and do not necessarily reflect those of OMAFRA.

ARTICLE 9. FREEDOM OF INFORMATION AND PROTECTION OF PRIVACY

- 9.1. **FIPPA.** The Recipient acknowledges that OMAFRA is bound by the *Freedom of Information and Protection of Privacy Act* (Ontario), as amended from time to time, and that any information provided to OMAFRA in connection with the Project or otherwise in connection with the Agreement is subject to disclosure in accordance with that Act.

ARTICLE 10. INDEMNITY

- 10.1. **Indemnification.** The Recipient hereby agrees to indemnify and hold harmless the Indemnified Parties from and against any and all liability, loss, costs, damages and expenses (including legal, expert and consultant fees), causes of action, actions, claims, demands, lawsuits or other proceedings, (collectively, "Claims"), by whomever made, sustained, incurred, brought or prosecuted, in any way arising out of or in connection with the Project or otherwise in connection with the Agreement, unless solely caused by the negligence or wilful misconduct of OMAFRA.

ARTICLE 11. INSURANCE

- 11.1. **Recipient's Insurance.** The Recipient represents and warrants that it has, and shall maintain for the term of the Agreement, at its own cost and expense, with insurers having a secure A.M. Best rating of B + or greater, or the equivalent, all the necessary and appropriate insurance that a prudent person carrying out a project similar to the Project would maintain, including the following:

- a) commercial general liability insurance on an occurrence basis for third party bodily injury, personal injury and property damage, to an inclusive limit of not less than two million dollars (\$2,000,000) per occurrence. The policy shall include the following:
 - i) the Indemnified Parties as additional insureds with respect to liability arising in the course of performance of the Recipient's obligations under, or otherwise in connection with, the Agreement;
 - ii) a cross-liability clause;
 - iii) contractual liability coverage; and
 - iv) thirty (30) day written notice of cancellation, termination or material change.

- 11.2. **Proof of Insurance.** The Recipient shall provide OMAFRA with certificates of insurance, or other proof as may be requested by OMAFRA, that confirms the insurance coverage as provided for in section 11.1. Upon the request of OMAFRA, the Recipient shall make available to OMAFRA a copy of each insurance policy.

ARTICLE 12. TERMINATION ON NOTICE

- 12.1. **Termination on Notice.** OMAFRA may terminate the Agreement at any time upon giving at least thirty (30) days' Notice to the Recipient.
- 12.2. **Consequences of Termination.** If OMAFRA terminates the Agreement pursuant to section 12.1, OMAFRA may:

- a) cancel all further instalments of Funds;
- b) demand the repayment of any Funds remaining in the possession or under the control of the Recipient; and
- c) determine the Wind Down Costs, and:
 - i) permit the Recipient to offset the Wind Down Costs against the amount the Recipient owes pursuant to subsection 12.2(b); and/or
 - ii) subject to section 4.7, provide Funds to the Recipient to cover the Wind Down Costs.

ARTICLE 13. TERMINATION WHERE NO APPROPRIATION

13.1. **Termination Where No Appropriation.** If, as provided for in section 4.2(d), OMAFRA does not receive the necessary appropriation from the Ontario Legislature for any payment OMAFRA is obligated to make under the Agreement, OMAFRA may terminate the Agreement immediately by giving Notice to the Recipient.

13.2. **Consequences of Termination.** If OMAFRA terminates the Agreement pursuant to section 13.1, OMAFRA may:

- a) cancel all further instalments of Funds, if applicable;
- b) demand the repayment of any Funds remaining in the possession or under the control of the Recipient; and/or
- c) determine the Wind Down Costs; and
 - permit the Recipient to offset such Wind Down Costs against the amount owing pursuant to subsection 13.2(b).

13.3. **No Additional Funds.** For purposes of clarity, if the Wind Down Costs exceed the Funds remaining in the possession or under the control of the Recipient, OMAFRA shall not provide additional Funds to the Recipient.

ARTICLE 14. EVENT OF DEFAULT, CORRECTIVE ACTION AND TERMINATION FOR DEFAULT

14.1. **Events of Default.** Each of the following events shall constitute an "Event of Default":

- a) in the opinion of OMAFRA the Recipient has knowingly provided false or misleading information regarding its request for funds or in any other communication with OMAFRA;
- b) in the opinion of OMAFRA the Recipient breaches any representation, warranty, covenant or material requirement of the Agreement, including failing to do any of the following in accordance with the terms of the Agreement:
 - i) carry out the Project;
 - ii) use or spend Funds; and/or
 - iii) provide Reports or such reports as may have been requested;
- c) the nature of the Recipient's operations, its corporate status or its organizational structure changes so that it no longer meets one or more of the applicable eligibility requirements of the program under which OMAFRA provides the Funds;

- d) 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;
- e) the Recipient ceases to operate; and
- f) an event of Force Majeure continues for a period of sixty (60) days or more.

14.2. **Corrective Action.** If an Event of Default occurs OMAFRA may, at any time, take one or more of the following actions:

- a) initiate any action OMAFRA considers necessary in order to facilitate the successful continuation or completion of the Project;
- b) suspend the payment of Funds for such period as OMAFRA determines appropriate;
- c) reduce the amount of the Funds;
- d) cancel all further payment of Funds;
- e) demand the repayment of any Funds remaining in the possession or under the control of the Recipient;
- f) demand the repayment of an amount equal to any Funds the Recipient used for purposes not agreed upon by OMAFRA;
- g) demand the repayment of an amount equal to any Funds OMAFRA provided to the Recipient; and/or
- h) terminate the Agreement at any time, including immediately, upon giving Notice to the Recipient.

14.3. **Opportunity to Remedy.** In addition to its rights provided for in section 14.2, OMAFRA may provide the Recipient an opportunity to remedy the Event of Default by providing Notice to the Recipient:

- a) of the particulars of the Event of Default; and
- b) of the period of time within which the Recipient is required to remedy the Event of Default.

14.4. **Recipient not Remediating.** If OMAFRA has provided the Recipient with an opportunity to remedy the Event of Default pursuant to section 14.3 and:

- a) the Recipient does not remedy the Event of Default within the time period specified in the Notice;
- b) it becomes apparent to OMAFRA that the Recipient cannot completely remedy the Event of Default within the time specified in the Notice or such further period of time as OMAFRA considers reasonable; or
- c) the Recipient is not proceeding to remedy the Event of Default in a way that is satisfactory to OMAFRA.

OMAFRA may initiate any one or more of the actions provided for in subsections 14.2 (a), (b), (c), (d), (e), (f), (g), and (h).

14.5. **Effective Date of Termination.** Termination under this Article shall take effect as set out in the Notice.

ARTICLE 15. FUNDS AT THE END OF A FUNDING YEAR

- 15.1. **Funds at the End of a Funding Year.** Without limiting any rights of OMAFRA under Article 14, if the Recipient has not spent all of the Funds allocated for the Funding Year as provided for in the Budget, OMAFRA may:
- a) demand the return to OMAFRA of the unspent Funds; or
 - b) adjust the amount of any further instalments of Funds accordingly.

ARTICLE 16. FUNDS UPON EXPIRY

- 16.1. **Funds Upon Expiry.** Without limiting any rights of OMAFRA under Article 14, the Recipient shall, upon expiry of the Agreement, return to OMAFRA any Funds remaining in its possession or under its control.

ARTICLE 17. REPAYMENT

- 17.1. **Debt Due.** If OMAFRA demands the payment of any monies, including any Funds from the Recipient or if the Recipient owes any monies, including any Funds, to OMAFRA, whether or not their return or repayment has been demanded by OMAFRA, such monies shall be deemed to be a debt due and owing to OMAFRA by the Recipient, and the Recipient shall pay or return the amount to OMAFRA immediately unless OMAFRA directs otherwise.
- 17.2. **Interest Rate.** OMAFRA 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.
- 17.3. **Cheque Payable To.** The Recipient shall pay any monies owing to OMAFRA by cheque payable to the "Ontario Minister of Finance" and mailed to OMAFRA at the address provided in section 18.1.

ARTICLE 18. NOTICE

- 18.1. **Notice in Writing and Addressed.** Notice shall be in writing and shall be delivered by postage-prepaid mail or personal delivery, and shall be addressed to, OMAFRA and the Recipient respectively, as set out below:

To OMAFRA:	To the Recipient:
Ministry of Agriculture, Food and Rural Affairs 4 th Floor 1 Stone Road West Guelph ON, N1G 4Y2	Township of Whitewater Region 44 Main Street P.O. Box 40 Cobden, ON K0J 1K0
Attention: Manager, Programs Operations Unit, Rural Programs Branch	Attention: Annette Mantifel, Treasurer/Deputy CAO

18.2. **Notice Given.** 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, one (1) Business Day after such Notice is received by the other Party.

18.3. **Postal Disruption.** Despite subsection 18.2(a), in the event of a postal disruption,

- a) Notice by postage-prepaid mail shall not be deemed to be received; and
- b) the Party giving Notice shall provide Notice by personal delivery.

ARTICLE 19. SEVERABILITY OF PROVISIONS

19.1. **Invalidity or Unenforceability of Any Provision.** The invalidity or unenforceability of any provision of the Agreement shall not affect the validity or enforceability of any other provision of the Agreement. Any invalid or unenforceable provision shall be deemed to be severed.

ARTICLE 20. WAIVER

20.1. **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 in Article 18. Any waiver must refer to a specific failure to comply and shall not have the effect of waiving any subsequent failures to comply.

ARTICLE 21. INDEPENDENT PARTIES

21.1. **Parties Independent.** The Recipient acknowledges that it is not an agent, joint venturer, partner or employee of OMAFRA and the Recipient shall not take any actions that could establish or imply such a relationship.

ARTICLE 22. ASSIGNMENT OF AGREEMENT OR FUNDS

22.1. **No Assignment.** The Recipient shall not assign any part of the Agreement or any Funds without the prior written consent of OMAFRA which OMAFRA may, in its sole discretion, provide or withhold.

22.2. **Agreement to Extend.** The rights and obligations contained in the Agreement shall extend to and be binding on the Parties' respective heirs, executors, administrators, successors and permitted assigns.

ARTICLE 23. GOVERNING LAW

23.1. **Agreement Governed By.** The 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 arising in connection with the Agreement shall be conducted in Ontario.

ARTICLE 24. FURTHER ASSURANCES

- 24.1. **Agreement into Effect.** The Parties shall do or cause to be done all acts or things necessary to implement and carry into effect the terms of the Agreement to its full extent.

ARTICLE 25. CIRCUMSTANCES BEYOND THE CONTROL OF EITHER PARTY

- 25.1. **Force Majeure Means.** For the purposes of the Agreement, "Force Majeure" means an event that is:

- a) beyond the reasonable control of a Party; and
- b) makes a Party's performance of its obligations under the Agreement impossible or so impracticable as reasonably to be considered impossible in the circumstances.

- 25.2. **Force Majeure Includes.** Force Majeure includes:

- a) infectious diseases, war, riots and civil disorder;
- b) storm, flood, earthquake or other severely adverse weather conditions;
- c) confiscation or other similar action by government agencies;
- d) lawful act by a public authority; and
- e) strikes, lockouts and other labour actions,

if such events meet the test set out in section 25.1.

- 25.3. **Force Majeure Shall Not Include.** Force Majeure shall not include:

- a) any event that is caused by the negligence or intentional action of a Party or such Party's agents or employees;
- b) any event that a diligent Party could reasonably have been expected to:
 - i) take into account at the time of the execution of the Agreement; and
 - ii) avoid or overcome in the carrying out of its obligations under the Agreement.

- 25.4. **Failure to Fulfil Obligations.** Subject to section 14.1(f), the failure of either Party to fulfil any of its obligations under the Agreement shall not be considered to be a breach of, or Event of Default under, the 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 the Agreement.

ARTICLE 26. SURVIVAL

- 26.1. **Survival.** The provisions in Article 1, sections 4.6(b), 4.8, 5.2, 7.1 (to the extent that the Recipient has not provided the Reports/reports), 7.2, 7.3, 7.4, 7.5, 7.6, Articles 8 and 10, sections 12.2, 13.2, 13.3, 14.1, 14.2 (c), (d), (e), (f) and (g), 14.4, Articles 16, 17, 18, 19, 23, 27, 28 and 30, 31, 35 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 date of expiry or termination of the Agreement.

ARTICLE 27. SCHEDULES

- 27.1. **Schedules.** The Agreement includes the following schedules:
- a) Schedule A - Project (Background, Scope and Timelines);
 - b) Schedule B - Budget;
 - c) Schedule C – Financial and Performance Reports; and
 - d) Schedule D - Payment Schedule.

ARTICLE 28. ENTIRE AGREEMENT

- 28.1. **Entire Agreement.** The Agreement constitutes the entire Agreement between the Parties with respect to the subject matter contained in the Agreement and supersedes all prior oral or written representations and agreements.
- 28.2. **Modification of Agreement.** The Agreement may only be amended by a written agreement duly executed by the Parties.

ARTICLE 29. COUNTERPARTS

- 29.1. **Counterparts.** The 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 instrument.

ARTICLE 30. JOINT AND SEVERAL LIABILITY

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

ARTICLE 31. RIGHTS AND REMEDIES CUMULATIVE

- 31.1. **Rights and Remedies Cumulative.** The rights and remedies of OMAFRA under the Agreement are cumulative and are in addition to, and not in substitution for, any of its rights and remedies provided by law or in equity.

ARTICLE 32. BPSAA

- 32.1. **BPSAA.** For the purposes of clarity, if the Recipient is subject to the BPSAA and there is a conflict between any of the requirements of the Agreement and the requirements of the BPSAA, the BPSAA shall prevail.

ARTICLE 33. FAILURE TO COMPLY WITH OTHER AGREEMENTS

- 33.1. **Other Agreements.** If the Recipient:
- a) has failed to comply (a 'Failure') with any term, condition or obligation under any other agreement with Her Majesty the Queen in Right of Ontario or a Crown agency;

- b) has been provided with notice of such Failure in accordance with the requirements of such other agreement; and
- c) has, if applicable, failed to rectify such Failure in accordance with the requirements of such other agreement,

OMAFRA may suspend the payment of any amount of Funds for such period as OMAFRA determines appropriate.

ARTICLE 34. CONSENT

34.1. **Consent.** OMAFRA may impose any terms and/or conditions on any consent OMAFRA may grant pursuant to the Agreement.

ARTICLE 35. JOINT AUTHORSHIP OF AGREEMENT

35.1 **Joint Authorship of Agreement.** The Parties shall be considered joint authors of this Agreement and no provision herein shall be interpreted against one Part by the other Party because of authorship. No Party shall seek to avoid a provision herein because of its authorship through recourse to a third party, court, tribunal or arbitrator.

The Parties have executed the Agreement on the dates set out below.

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

by:

M. Bohl
 Name: Martin Bohl

3/28/13
 Date

Title: Director, Rural Programs Branch

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 THE CORPORATION OF THE
TOWNSHIP OF WHITEWATER REGION
 by:

J. Labow
 Name: JIM LABOW
 Title: MAYOR

March 6, 2013
 Date

C. Fitzsimons
 Name: CHRISTINE FITZSIMONS
 Title: CAO/CLERK

March 6, 2013
 Date

I/we have authority to bind the Recipients.

SCHEDULE "A"

PROJECT

1.	Background:
	<p>The Government of Ontario recognizes that municipalities, as defined under the <i>Municipal Act, 2001</i>, S.O. 2001, c. 25, as amended, and local services boards (LSBs), as established under the <i>Northern Services Boards Act</i>, R.S.O. 1990, c. L. 28, as amended, deliver many of the services that are critical to Ontarians and these services rely on well-planned, well-built and well-maintained infrastructure. In order to be sustainable, there is a need to have universally implemented comprehensive asset management plans that clearly guide investment decisions. Within these plans, the maintenance of roads, bridges, water, wastewater and social housing should be a top priority along with movement toward optimal use of a full range of infrastructure financing tools.</p> <p>Such plans need to prioritize needs to maintain critical infrastructure over wants. Plans will help ensure that investments are made at the right time to minimize future repair and rehabilitation costs and maintain municipal assets.</p> <p>The Government of Ontario requires such comprehensive plans to form the base of requests for provincial infrastructure funding and as such municipalities are required to demonstrate that a full range of available financing and revenue generation tools have been explored.</p> <p>The Government of Ontario recognizes that small municipalities of less than 20,000 may have limited financial capacity to undertake asset management planning. In response, in 2012-13, the Government of Ontario is making up to \$8.25 million in funding available to small municipalities and LSBs responsible for managing water/wastewater systems in Northern Ontario through the Municipal Infrastructure Investment Initiative – Asset Management Program. The funding will help Recipients in need of support to achieve a best practice in asset management. Best practices in asset management will allow small municipalities and LSB to identify and prioritize the long-term needs of their infrastructure.</p>
2.	Project Scope:
	<p>Creation or improvement of existing proponent asset management plans in accordance with the <i>Building Together: Guide for Municipal Asset Management Plans</i>. Plans are to be based on the expected life-cycle of the assets, be comprehensive to include all assets but at a minimum any assets owned by the proponent related to Roads, Bridges, Water and/or Wastewater assets. Plans will include comprehensive financial planning making optimal use of the full range of budgeting and infrastructure financing tools and will fully integrate financial planning and budgeting in the plan.</p>
3.	Timelines:
	<p>Work on plans and any associate Project costs will be complete by December 31, 2013.</p>

SCHEDULE "B"

BUDGET

Items or Eligible Expenditure	AMOUNT (\$)
<ul style="list-style-type: none"> a) Cost incurred for professionals, technical personnel, consultants and contractors for work related to asset management planning (e.g. conducting building condition audits or assessments, creating tools to identify long-term capital needs). b) Staff costs for any staff members newly hired specifically for work related to asset management planning. (In order for the cost of a staff member to be eligible, the staff member must spend 100% of their time fully engaged in work related to asset management planning in addition to being newly hired). c) Purchasing software and/or other IT products required by the Recipient to undertake the asset management planning work required. d) Staff training costs, including training registration fees, some travel expenses (i.e. in-province transportation costs that are reasonable) and any materials that may be required to be purchased in advance of attending a training session such as books and/or training manuals specifically requested by the training seminar organizer. e) Any other asset management planning cost as is pre-approved in writing by OMAFRA. 	<p>\$ 22,969.27</p>

All costs set out in the immediately-above table shall be reasonable in nature. OMAFRA may find that a cost is ineligible if it is not reasonable in nature.

The following costs shall be considered ineligible under this Agreement:

- a) Costs incurred prior to August 16, 2012.
- b) Costs incurred after December 31, 2013.
- c) Salaries and other employment benefits of any employees of the Recipient that are not spending 100% of their time working on asset management activities.
- d) Overhead costs (e.g., supervision) for eligible staff members.
- e) Hospitality, incidental or food expenses of consultants.
- f) Taxes for which the Recipient or a third party is eligible for a tax rebate and all other costs eligible for rebates.
- g) Costs of repairs, rehabilitation, renewal, or operation of assets.
- h) Financing charges and interest costs.
- i) Costs of capital leasing of equipment by the Recipient.
- j) Legal fees.

SCHEDULE "C"

REPORTS

The following Reports are to be provided in a form and with such content that are satisfactory to OMAFRA.

	Name of Reports and Details required	Position of Accountable Person who must Approve the Report	Due Date
1.	Final Report (see details below)	Chief Administrative Officer or Equivalent (Note: Tailor for LSBs to show senior-most position)	March 15, 2014.
2.	Reports specified from time to time	Chief Administrative Officer or Equivalent (Note: Tailor for LSBs to show senior-most position)	On a date specified by OMAFRA

Report Details

1. **Other Reports:** OMAFRA will specify the timing and content of any other Reports as may be necessary.
2. **The Final Report shall include, but is not be limited to, the following and be required in a format as provided by OMAFRA:**
 - (i) Discuss progress against the submitted Expression of Interest, confirming that Project has met the Project Scope as outlined in Schedule "A" of this Agreement, or if not, barriers to this. The Final Report shall set out any lessons learned and outline any risks to implementing or maintaining the plan including any mitigation strategies to be employed.
 - (ii) Include an attestation that all Project expenditures were expended in accordance with Schedule "B" of this Agreement and has been used for the purposes identified in the Expression of Interest. Said attestation will be signed by the Chief Financial Officer, the Board chair or equivalent if applicable, or as otherwise agreed to by OMAFRA in writing.
 - (iv) Include a statement signed by the authorized official at the Recipient confirming the Recipient's compliance with the terms and conditions of the Agreement.
 - (v) Any additional information OMAFRA may request.

SCHEDULE "D"

PAYMENT SCHEDULE

PROJECT REPORT AND DATE	AMOUNT (\$)
Subject to subsection 4.2(c) Upon execution of this Agreement by the Parties	\$ 22,969.27